



Trade Policy Review Body

TRADE POLICY REVIEW

REPORT BY THE SECRETARIAT

UNITED STATES

This report, prepared for the 12th Trade Policy Review of the United States, has been drawn up by the WTO Secretariat on its own responsibility. The Secretariat has, as required by the Agreement establishing the Trade Policy Review Mechanism (Annex 3 of the Marrakesh Agreement Establishing the World Trade Organization), sought clarification from the United States on its trade policies and practices.

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SUMMARY

1. The U.S. economy has largely recovered from the recession of 2007-09. GDP growth has been steady albeit downsized by weaker import demand in the EU market. During most of the review period, private consumption, the main component of U.S. GDP, continued to expand steadily as the labour market improved, personal disposable income grew, and household wealth invigorated as a consequence of rising stock and home prices. Private domestic investments and exports also performed well and determined the overall positive growth performance.

2. The recent boom in shale oil and gas production in the United States has affected various aspects of the economy. It has lowered energy prices and has contributed to lowering production costs in the manufacturing sector, which has become an important job provider. The current account deficit improved to a four-year low in 2013 as a consequence of an important reduction in the oil trade deficit, which accounts for nearly half of the total deficit in trade in goods and services. While merchandise trade continued to expand during the review period, and exports grew to an all-time high in 2013, imports decreased for the first time in five years. The United States remains the world's leading services exporter, and its positive trade balance rose during the review period.

3. Macroeconomic policies continued to actively support the U.S. economy with a view to boosting economic growth and unemployment. Steps were taken to correct the large fiscal deficit caused by expansionary policies that prevailed during the recession; and although unconventional monetary policies continued to be implemented, the Fed announced in December 2013 that it would start scaling down its quantitative easing measures.

4. The United States remained the world's largest single recipient of foreign direct investment, although inflows have declined over the last two years. In order to counteract this trend, the government maintains or continues to develop programmes to promote foreign investment. The 2011 SelectUSA programme continues to serve as the centralized hub to attract and retain investment, and the 2012 "Make it in America" programme is designed to accelerate insourcing, i.e. bring back investments and jobs.

5. One of the most significant trade policy developments during the review period was the enactment of the new Farm Bill on 7 February 2014. This is a considerable change in agriculture policy for some commodities. Two long-standing pillars of dairy market support – price supports and export subsidies – have been removed. The new Farm Bill eliminates the decoupled direct payments system, a cornerstone of U.S. agricultural policy since the end of the Uruguay Round negotiations, and reforms the price-based and revenue-based commodity support programmes. The new Farm Bill moves from decoupled payments towards deficiency-payment-type instruments linked to current prices, such as the new Price Loss Coverage and Agriculture Risk Coverage programmes. The 2014 Farm Bill also continues a long-term policy shift from the traditional commodity, conservation, and disaster payments towards subsidized crop insurance.

6. While there have been no major changes in the United States' main trade policy framework some initiatives have been put in place by the Administration to improve trade enforcement, through the Interagency Trade Enforcement Center, and to combat wildlife trafficking and fishing fraud, through the establishment of task forces and related policies or strategies. Trade promotion authority remains lapsed, since 2007. Although Congress made some efforts during the review period to reauthorize it, no legislation has been enacted to date.

7. The United States continues to conduct the majority of its trade under MFN treatment; but approximately 22% of imports enter through FTA or unilateral preferential regimes. Imports entering through FTAs rose slightly during the review period, while those entering through unilateral preferential programmes declined, in part due the expiry of GSP, as well as the ATPA/ATPDEA, in July 2013. To date, Congress has not reauthorized these programmes, and no new FTAs were concluded during the review period.

8. In terms of policies affecting imports, developments on trade facilitating measures include the gradual implementation of a single window application, expansion of simplified entry programmes, and new or expanded trusted trader programmes. Regarding import prohibitions or restrictions, a few new measures were implemented during the review period. The legal and

regulatory frameworks for tariffs, rules of origin, import licensing, customs valuation, and other charges on imports remained unchanged during the review period.

9. Developments relating to exports include the on-going Export Control Reform (ECR) initiative, which aims to create a new export control system including a single control agency and a unified control list; and the creation of the NEI/NEXT programme, as a successor to the National Export Initiative, to provide a strategic framework to continue to support and promote exports. The United States continues to maintain a number of agencies or programmes to support exports such as the Ex-Im Bank for export credit and the Overseas Private Investment Corporation for development financing.

10. The regulatory regime for trade remedies remained relatively unchanged during the review period with the exception of four changes relating to targeted dumping regulations, internal regulations relating to submissions, selection of respondents in administrative review proceedings, and a change in practice regarding non-market economies. Anti-dumping and countervailing duty investigations were on the upswing, with a significant rise in 2013, in particular on steel products. Safeguards, on the other hand, remained dormant with no changes to policy and no investigations launched.

11. The United States is currently reviewing its TBT regulatory practices with respect to the use of voluntary consensus standards in technical regulations and federal procurement. The FDA Food Safety Modernization Act, a major reform of legislation on food safety and the safety of animal feed, entered into force in 2011, and the FDA is in the process of developing the regulations to implement some of the key elements of this new law.

12. The United States maintained its preeminent position in IP-related trade, as evidenced from its receipts of royalties and licence fees, which comprised 43% of the global total in 2012. While the U.S. intellectual property industry is among the world's most mature and well established, the dynamic character of intellectual property in the United States' economy led to various developments during the review period, including 21 legislative changes, patent regulatory reforms, a strategy on Mitigating the Theft of U.S. Trade Secrets, and the 2013 Joint Strategic Plan on Intellectual Property Enforcement.

13. The services sector continues to play an important role in the U.S. economy, and several services sectors underwent reforms during the review period. A number of enhanced prudential standards on financial services have been established, including on liquidity, risk management, and capital, to strengthen the supervision and regulation of financial institutions. Under the new rules, foreign banks with U.S. assets of at least US\$50 billion are required to establish intermediate holding companies for their U.S. financial operations and to meet, with some exceptions, the same capital, liquidity, and other standards as U.S. bank holding companies of comparable size. Domestic banks will need to comply by 1 January 2015, and foreign banks will be required to do so by 1 July 2016. U.S. financial firms in general have strengthened their position over the last few years. Nonetheless, more progress is needed in some areas, including on "too big to fail" banks, which receive an implicit subsidy of about US\$70 billion.

14. During the review period, the United States eliminated the International Settlements Policy in order to modernize its international telephony rules, further lower the price for international calls, and increase competition. Measures have also been taken to reform the universal service and inter-carrier compensation systems to make available affordable voice and broadband services, both fixed and mobile. Moreover, new Open Internet rules are expected to be adopted by the end of 2014, with the aim of enhancing transparency, reinstating the no-blocking rule with certain clarifications, and requiring fixed (and potentially mobile) broadband providers to ensure that their practices are commercially reasonable.

15. The institutional and legal framework for maritime transport has not changed over the last few years. Cabotage of goods and passengers continues to be restricted by Section 27 of the Merchant Marine Act of 1920 (Jones Act). The United States finances various maritime security programmes designed to protect the U.S.-flagged fleet and shipyards, such as the Maritime Security Programme. Port infrastructure projects are also eligible for support. The United States aims to address port congestion by doubling the cargo-handling capacity in every major port by 2020.

16. The United States is by far the largest market for health services with total spending of over US\$2.5 trillion in 2010. Private spending was about US\$1.2 trillion, and per capita spending approximately US\$8,000. The health insurance market is also the largest in the world as it ensures and finances a proportionally much larger share of the health expenditures than in other developed countries where public social security systems dominate. The main recent regulatory development is the 2010 Patient Protection and Affordable Care Act, whose provisions are scheduled to enter into force between 2010 and 2015. It is intended to considerably enlarge the number of persons covered and to improve the conditions of coverage for all insured individuals. It will therefore affect supply and demand of healthcare and health insurance services, and hence have an impact on trade. The United States is one of the few WTO Members with significant GATS commitments on health services.

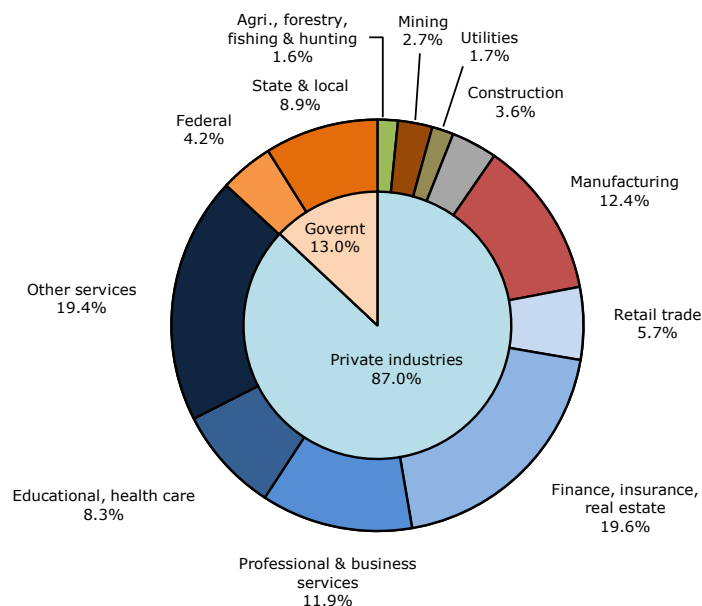
17. The U.S. audiovisual industry is the largest in the world, with revenues (2011) of about US\$46 billion for the motion picture production and distribution segment, US\$161 billion for the television segment (including broadcast television stations, cable TV, satellite TV, and online video distribution), US\$18 billion for the radio segment, and US\$8 billion for the music segment (record production and distribution). Exports largely exceed imports, as do outward foreign affiliate sales (sales by U.S. subsidiaries established abroad) compared to inward foreign trade affiliates sales. The trade relevant aspect of audiovisual services is fairly stable and the only major development during the review period was the relaxation by the Federal Communication Commission (FCC) of the foreign ownership policy scheduled under the GATS and FTA commitments.

1 ECONOMIC ENVIRONMENT

1.1 Main features of the economy

1.1. The United States' nominal GDP was estimated at US\$16.8 trillion in 2013, making it the world's largest single economy. Well developed infrastructure, high factor productivity, and a sound business environment contribute to its growing and diversified economy. Commercial services are the main contributor to its output, with an estimated contribution of 65% of GDP (Chart 1.1).

Chart 1.1 Value added by industry, 2013



Gross domestic product: US\$16,800 billion

Source: WTO Secretariat, based on Bureau of Economic Analysis (BEA) online information.

1.2. The United States remains one of the world's largest manufacturers, with manufacturing value added of US\$2.1 trillion in 2013.¹ Main industries include petroleum, steel, automobiles, construction, machinery, aerospace, agricultural machinery, telecommunications, chemicals, electronics, and food processing.

1.2 Recent economic developments

1.3. The U.S. economy has largely recovered from recession. During the review period, real GDP continued to grow, driven by buoyant personal consumption expenditures, which represented over 60% of national expenditures. Private domestic investments and exports have also contributed to the recent performance (Chart 1.2).

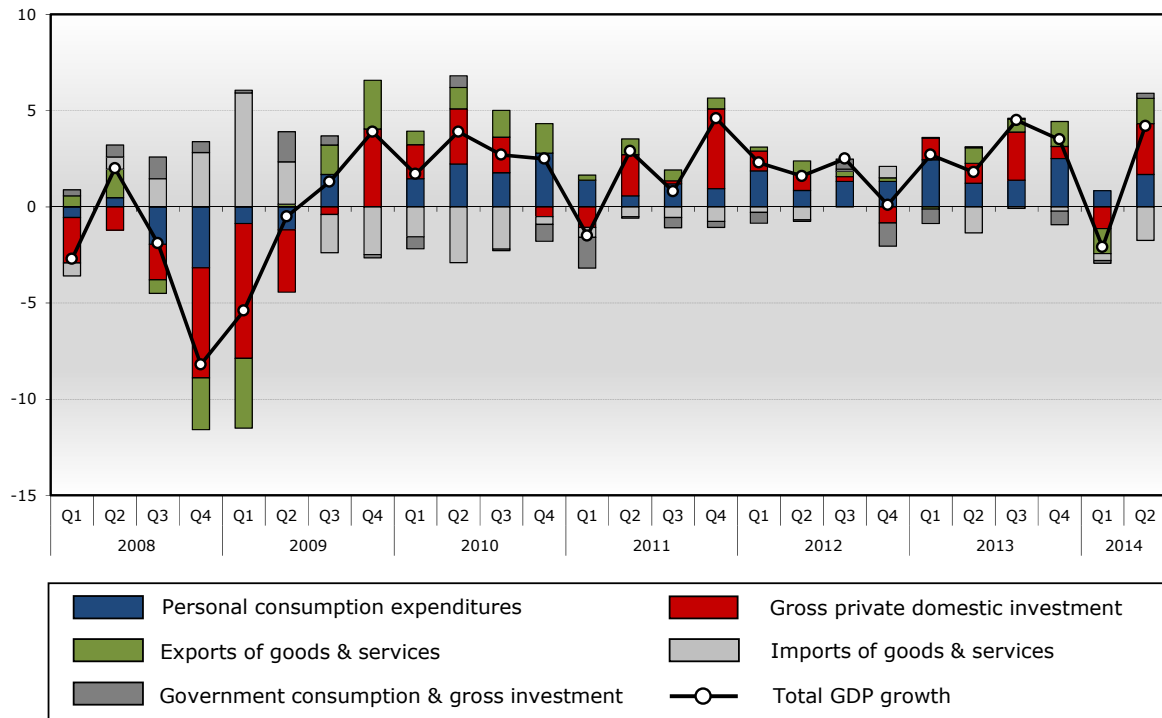
1.4. The economy has suffered from major adverse events such as Hurricane Sandy, which was estimated to have contributed to lower real GDP growth in the fourth quarter of 2012. In addition, the drought in the Midwest was estimated to have lowered real GDP growth in the second and third quarters of 2012.² However, rebuilding activities are likely to support subsequent economic growth.

¹ Bureau of Economic Analysis, online information. Viewed at: <http://bea.gov/iTable/iTable.cfm?ReqID=1#reqid=51&step=2&isuri=1>.

² The White House (2013b).

Chart 1.2 Contributions to percent change in real GDP, 2008 Q1 - 14 Q2

(Percentage point)



Source: WTO Secretariat, based on Bureau of Economic Analysis (BEA) online information. Viewed at: <http://www.bea.gov>.

1.5. Export growth has slowed in recent years. Since first quarter 2012, the volume of exports of goods and services has risen at less than 2%, as a consequence of weak global economic growth and, specifically, the effects of fiscal consolidation in Europe which slowed the European economies and import demand.

1.6. Growth in compensation of employees, in combination with moderate inflation (nearly 2% in 2012 and 2013), due to a drop in energy price inflation, has substantially increased personal disposable income - a key determinant of private consumption. The extension in January 2011 of the payroll tax cut under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act also played a significant part in supporting private spending. Household wealth, another determinant of private consumption, also invigorated as a result of rising homes and stocks prices.

1.7. Growth in private consumption expenditure is still below its pre-crisis levels, as some legacies of the economic downturn have not entirely vanished. In 2012 for instance, deleveraging was still perceptible (although at a slower pace), as household debt continued to decline (since 2008). However, recent reports show a noticeable revival of consumer debt as from third quarter 2013.³

1.8. The labour market situation continued to improve during the review period, as the unemployment rate dropped from 7.9% in January 2013 to 6.2% in July 2014, however it remains historically high.

1.9. After a decade of sluggish performance, the manufacturing sector has become an important aspect of U.S. economic recovery. Over 700,000 jobs have been created in the sector since 2010. However, these still represent a small proportion of overall job growth. Several factors contributed to that favourable economic context, and there has been some reporting of "in-sourcing", i.e. the homecoming of U.S. manufacturing. Soaring transportation costs, induced by rising oil prices have made production-close-to-customer more advantageous. The recent shale oil and gas development

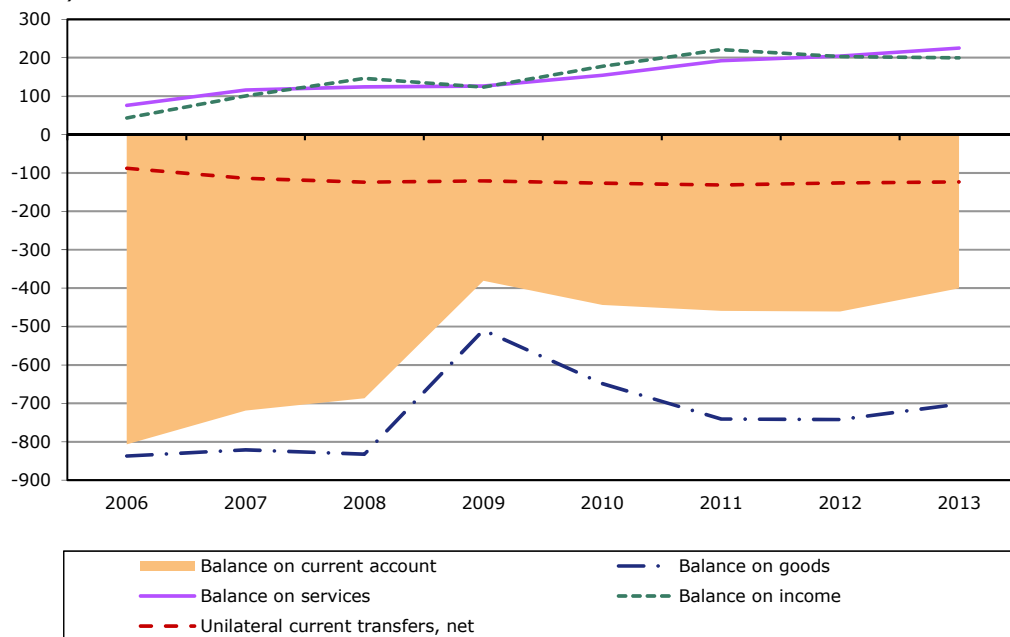
³ FRBNY (2013).

and low energy prices have also contributed to lowering production costs in the manufacturing sector. Other factors, such as increasing labour costs in some developing countries, the depreciating U.S. dollar, and the highly competitive workforce in the United States, have also played a crucial role in the recent recovery in manufacturing.⁴ However, the authorities expressed doubts regarding a genuine in-sourcing move in the United States as capital stock in manufacturing has not increased in a decade.

1.10. In 2013, the U.S. current account deficit shrank to a four-year low, as a consequence of a boom in shale oil/gas production and reduced demand, leading to a sharp reduction in the oil trade deficit, which accounts for nearly half of the total deficit in trade in goods and services. This is an important trend, as the deficit shrank from a peak of 5.8% of GDP to 3% between 2006 and 2012. Factors such as weaker domestic demand for imports, together with increased market shares for U.S. products, improved income balance, and healthier services balance supported the ongoing improvement.

Chart 1.3 U.S. current account and net financial flows, 2006-13

(US\$ billion)

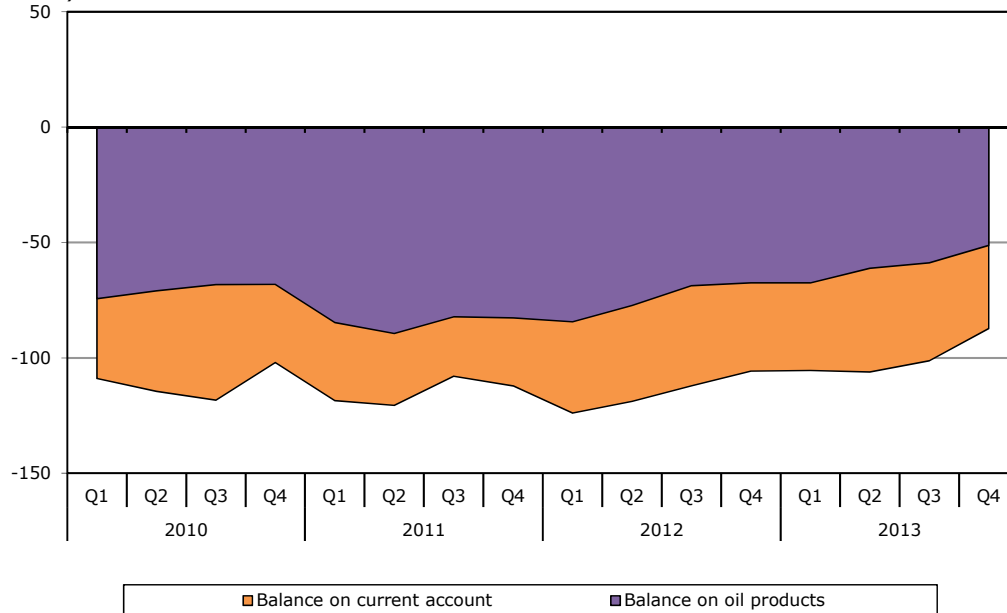


Source: WTO Secretariat, based on Bureau of Economic Analysis. Viewed at: <http://www.bea.gov>.

⁴ PwC (2012).

Chart 1.4 U.S. current account and oil products trade, 2010 Q1-13 Q4

(US\$ billion)



Source: WTO Secretariat, based on Bureau of Economic Analysis. Viewed at: <http://www.bea.gov>.

1.3 Policy measures

1.11. During the recent recession, as well as the ongoing recovery, U.S. authorities have been active on the macroeconomic front. With a view to promoting economic growth and employment, various fiscal and monetary policies were implemented with direct influence on domestic consumption, investments, and export competitiveness.

1.12. Federal fiscal policy during the recession was clearly expansionary, reflecting automatic stabilizers and legislative tax and spending changes such as the 2009 American Recovery and Reinvestment Act. However, fiscal policy has turned contractionary during the last two years, as a result of deliberate deficit-reduction measures. These include the Budget Control Act of 2011, which led to sequestration spending cuts, the increase in taxes on top earners in early 2013, as well as the ending in 2013 of the temporary payroll tax holiday instituted as part of the Tax Relief, Unemployment Reauthorization, and Job Creation Act of 2010.

1.13. Contractionary fiscal policies along with stronger economic growth, which boosted revenues and reduced the need for automatic stabilizers that raise outlays, reduced the federal government deficit from US\$1.1 trillion (6.8% of GDP) to US\$680 billion (4.1% of GDP) between 2012 and 2013. Furthermore, lower government spending has pushed down domestic demand, with the concomitant downward pressure on the current account deficit.

1.14. Moderate growth in domestic consumption, mainly government expenditure, has played a part in slower GDP growth through the multiplier effect. Analysts have recently discussed the extent and causes of the related fiscal drag, and estimates foresee a reduction in real GDP growth of about 1 percentage point per year over the next three years.⁵

1.15. With respect to monetary policy, the federal funds rate, the conventional monetary policy tool to promote price stability and maximum sustainable employment, is still low, with a target of between 0% and 0.25%.

1.16. However, in a context of relatively high unemployment, where the Fed cannot provide any further stimulus through conventional policy, since 2009 it has had rounds of large-scale asset

⁵ FRBSF (2013).

purchases of Treasury securities and securities issued by government-sponsored enterprises (GSEs).⁶

1.17. The unconventional monetary policy instrument, referred to as quantitative easing, aims at providing further stimulus to the economy by purchasing assets beyond Treasury and GSE securities. For example, purchases of mortgage-backed securities held by private banks. During the review period, a third round of quantitative easing (QE3) took place, in September 2012, in the context of high, although dropping, unemployment. In December 2013, the Fed announced that it would start scaling down its purchases. In addition, the Maturity Extension Program, under which the Fed purchased US\$667 billion in long-term Treasury securities and sold an equivalent amount of short-term Treasury securities from its portfolio, expired at the end of 2012.

1.18. The Fed also resorted to Central Bank liquidity swaps in order to provide liquidity to private banks in foreign currencies. The swaps have been operational with ten Central Banks, including the Bank of Canada, the Bank of England, the European Central Bank, the Bank of Japan, and the Swiss National Bank.

1.19. In September 2012, the Fed committed to keep the federal fund rates at their exceptionally low level until mid-2015, with a view to triggering long-term investment decisions.

1.4 Outlook

1.20. After stabilizing and achieving positive growth rates during the last three years, the U.S. economy is poised for further economic growth. According to the mid-session review of the U.S. Government Budget, GDP is expected to grow between 2.6% and 3.3% during the four years through 2017.⁷ According to the authorities, with continued growth, the unemployment rate is projected to continue to fall, and to stabilize at 5.4% by 2017.

1.21. Overall inflation, as measured by the consumer price index (CPI), has been roughly stable in the 1% to 2% range. Core inflation, excluding food and energy prices, was 2.0% during the 12 months through May 2014, close to the Federal Open Market Committee's (FOMC) target. In the long run, the overall CPI inflation rate is projected to be 2.3% per year. The chained price index for gross domestic product, another key measure of inflation, is projected to increase by 1.5% in 2014, and rise gradually to 2.0% in 2017 where it is expected to remain stable.

1.22. In general, yields on Treasury securities are set to rise, although below their long-term averages. The three-month Treasury bill rate is expected to average only 0.1% in 2014. It is expected to begin to rise in 2015 and to reach 1.3% in 2016. The yield on the ten-year Treasury note is expected to average 2.8% in 2014 and to edge up to an average of 3.7% during 2016.

1.5 Trade Performance

1.5.1 Trade in goods

1.23. U.S. merchandise trade continued to expand during the review period. While exports grew by some 2% between 2012 and 2013 to reach an all-time high, imports decreased, by 0.2%, for the first time in five years.

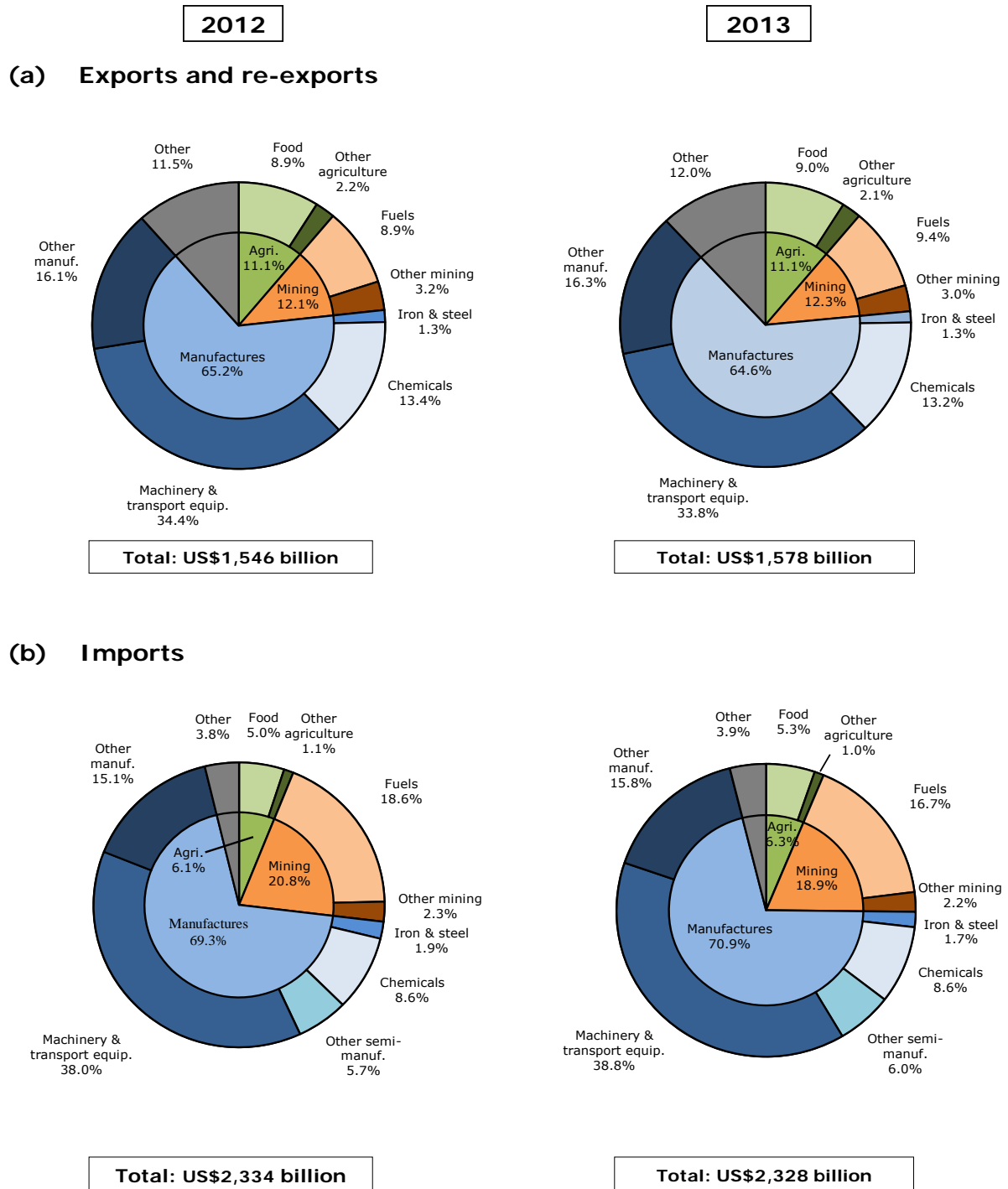
1.24. The merchandise trade deficit, mainly driven by fuel products, improved significantly in 2013 following weaker U.S. demand for foreign oil, higher exports, and an increase in U.S. production. Several economic indicators such as current account, consumer price index and production costs have recently benefited from the oil boom (Section 1.2).

1.25. Export performance remains on an upward trend but at a slower pace. In addition, increased oil and gas production pushed up U.S. exports of energy products from 6.7% to 9.4% of total exports between 2010 and 2013. Manufactured products dominate merchandise exports, with some 65% of the total in 2013 (Chart 1.5 and Table A1.1). Exports of agriculture products remained relatively high (over 11%) during the review period.

⁶ Congressional Research Service (2014b).

⁷ The White House (2014a).

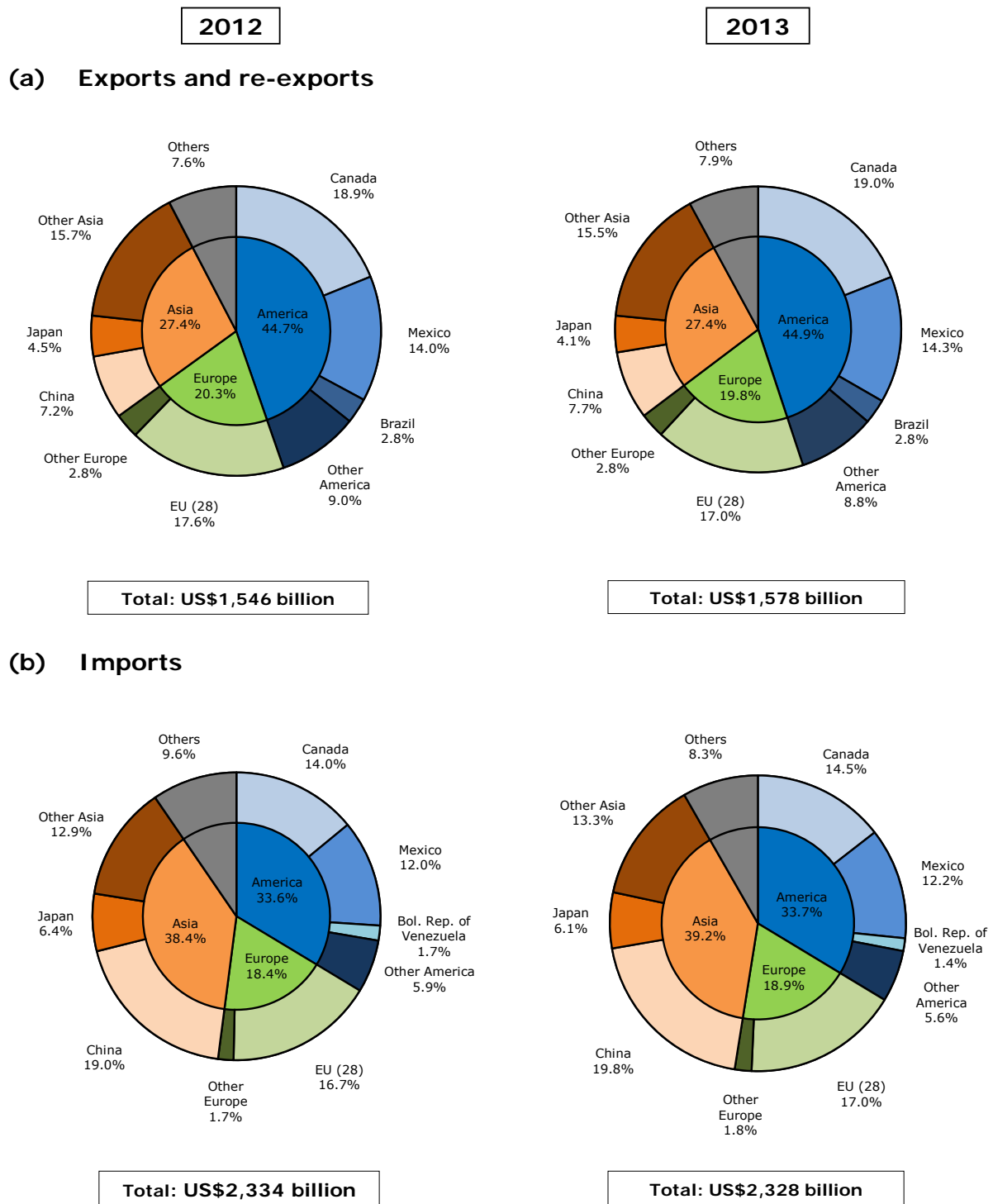
Chart 1.5 Merchandise trade, by product, 2012 and 2013



Source: UNSD, Comtrade database (SITC Rev.3).

1.26. During the review period, the United States continued to export to its traditional markets, led by the EU, Canada and Mexico. Between 2012 and 2013, the export shares of, *inter alia*, China, Mexico, and Canada increased, while the relative importance of the EU dropped from 17.6% to 17% (Chart 1.6 and Table A1.3).

Chart 1.6 Merchandise trade, by main origin and destination, 2012 and 2013



Source: UNSD, Comtrade database (SITC Rev.3).

1.27. Imports declined slightly during the review period. The composition is dominated by manufactured products, which made up over 70% of total imports. Machinery, transport equipment, and fuels constitute the main imported manufactures (Table A1.2). The relative importance of oil imports has continued its downward trend, with a decrease between 2012 and 2013, as the United States reduced its reliance on foreign sources as domestic production boomed.

1.28. China, the EU, and Canada, the largest suppliers of goods to the U.S. market further consolidated their positions during the review period. To some extent, this reflects declining import market share from oil-producing countries in the Middle East, and Nigeria (Table A1.4).

1.5.2 Trade in services

1.29. Services constitute the backbone of the U.S. economy, contributing nearly 80% of GDP and employment. Furthermore, the United States is the world's leading services market, in terms of both imports and exports. Services exports continue to outpace services imports, with a positive contribution to the current account balance (Section 1.2).

1.30. Recent trends in the services sector have mirrored overall trends in the U.S. economy. Between 2006 and 2011, average annual increases in services sector GDP, employment, and wages were within 1% of their respective overall annual growth rates registered for the United States.⁸

1.31. The United States is the world's leading services exporter. Its positive trade balance continued to rise during the review period. The expanding services exports are led by travel services, which accounted for 26% of total exports of commercial services in 2013, as well as royalties and licence fees (19%) (Table 1.1).

1.32. Services imports are as diversified as exports. Transport, travel, and insurance services are the main categories (Table 1.2). While the United States is a net exporter in the major services categories, its balance continues to be negative in transport, communication, and computer and information services.

1.33. The EU is the major export market for U.S. commercial services (one third of total U.S. exports in 2012), followed by Canada, Japan, China, and Mexico (Table 1.3). The EU is also the main commercial services provider for the U.S. market (Table 1.4).

1.34. Efforts have been under way since 2012 to boost the U.S. tourism trade. In May 2012 the Government launched the National Travel and Tourism Strategy to develop and further increase travel and tourism to the United States. Its long-term goal is for 100 million foreign visitors annually by 2021.⁹ In May 2014, the President issued a report detailing progress made, including significant increases in the use of the Trusted Travel Programs, and significant reductions in visa waiting times, especially in Brazil and China.¹⁰ The United States is the world's largest tourism exporter.

Table 1.1 Commercial services exports, by type, 2010-13

(US\$ million)

	2010	2011	2012	2013
Services pursuant to modes 1, 2, and 4				
Total commercial services	540,587	597,925	630,284	662,041
Transportation	71,426	79,600	82,826	86,467
Travel	133,620	147,774	160,733	172,577
Other commercial services	335,541	370,551	386,725	402,997
Communications services	11,141	13,081	14,398	14,813
Construction	2,804	3,248	3,335	n.a.
Insurance services	14,397	14,959	16,067	15,639
Financial services	72,348	78,243	76,418	83,862
Computer and information services	14,127	16,841	17,340	18,198
Royalties and licence fees	107,521	120,717	124,182	127,830
Other business services	112,206	122,638	134,225	138,242
Personal, cultural and recreational services	997	824	760	..

⁸ United States International Trade Commission (2013b).

⁹ Viewed at: <http://www.state.gov/r/pa/prs/ps/2012/05/189651.htm>.

¹⁰ Viewed at: <http://www.cbp.gov/sites/default/files/documents/Travel%2Band%2BTourism%2BProgress%2BReport.pdf>.

	2010	2011	2012	2013
<i>Memorandum items:</i>				
Government services, n.i.e.	17,045	21,229	21,208	21,432
Services pursuant to mode 3	1,155,178	1,287,021	..	..

.. Not available.

Source: WTO (2014 forthcoming), *International Trade Statistics*.

Table 1.2 Commercial services imports, by type, 2010-13

(US\$ million)

	2010	2011	2012	2013
Services pursuant to modes 1, 2, and 4				
Total commercial services	374,894	400,561	416,813	431,524
Transportation	78,097	85,348	89,657	95,694
Travel	83,057	86,247	91,918	95,914
Other commercial services	213,740	228,966	235,238	239,916
Communications services	8,347	8,153	8,449	8,585
Construction	2,510	2,965	3,276	..
Insurance services	61,478	55,794	52,564	49,849
Financial services	15,502	17,566	16,952	18,657
Computer and information services	21,029	24,331	25,657	26,279
Royalties and licence fees	32,551	34,786	39,889	39,399
Other business services	71,767	84,844	87,621	93,001
Personal, cultural and recreational services	556	527	830	..
<i>Memorandum items:</i>				
Government services, n.i.e.	31,961	31,293	27,861	25,345
Services pursuant to mode 3	690,623	744,388	..	..

.. Not available.

Source: WTO (2014 forthcoming), *International Trade Statistics*.

Table 1.3 U.S. commercial services exports (modes 1, 2, and 4), by destination, 2010-12

(US\$ million)

	2010	2011	2012
Total	540,587	597,925	630,284
EU (27)	175,327	194,723	199,120
Canada	52,452	58,445	61,214
Japan	43,487	44,346	46,479
China	21,323	27,081	30,034
Mexico	24,356	25,617	27,350
Switzerland	21,472	22,920	26,338
Brazil	17,236	22,286	23,864
Korea, Republic of	15,013	16,371	18,082
Australia	13,274	16,206	17,179
Singapore	9,544	10,505	12,249
India	10,401	11,243	11,932
Chinese Taipei	9,151	10,527	11,311
Bermuda	11,245	10,556	9,612
All others	116,306	127,099	135,520

Source: WTO (2014 forthcoming), *International Trade Statistics*.

Table 1.4 Commercial services imports (modes 1, 2, and 4), by origin, 2010-12

(US\$ million)

	2010	2011	2012
Total	374,894	400,561	416,813
EU (27)	128,761	140,637	143,204
Canada	26,460	28,422	29,778
Japan	23,325	24,847	26,916
Bermuda	31,986	29,106	25,919
Switzerland	19,692	18,940	21,094
India	14,602	17,460	18,527
Mexico	13,591	13,904	15,129
China	9,940	11,570	12,989
Korea, Republic of	7,715	8,577	9,357
Chinese Taipei	6,018	6,556	7,390
Hong Kong, China	6,414	6,811	7,048
Brazil	5,553	6,922	6,861
Australia	5,625	6,459	6,777
All others	75,212	80,350	85,824

Source: WTO (2014 forthcoming), International Trade Statistics.

1.6 Foreign Direct Investment

1.35. The United States continues to be the world's single largest recipient of foreign direct investment (FDI) stocks, and the leading destination for inward FDI flows. Inward FDI constitutes an essential component of the U.S. economy, in terms of production, exports, and jobs creation. U.S. subsidiaries of majority-foreign-owned companies employ some 5.6 million U.S. workers.¹¹ Recent empirical studies have shown a positive effect of FDI on output growth in the United States.¹²

1.36. Although the great recession negatively affected FDI figures (inflows decreased by over 50% between 2008 and 2009), government policy responses and various incentive schemes have helped FDI flows to gradually recover (Section 3.3.1). The decrease in 2012 coincided with a 16% decrease in global merger and acquisition activity.¹³ By industry, these decreases were largest in the finance sector (except banking). Manufacturing is now the main recipient of FDI in the United States (Chart 1.7).

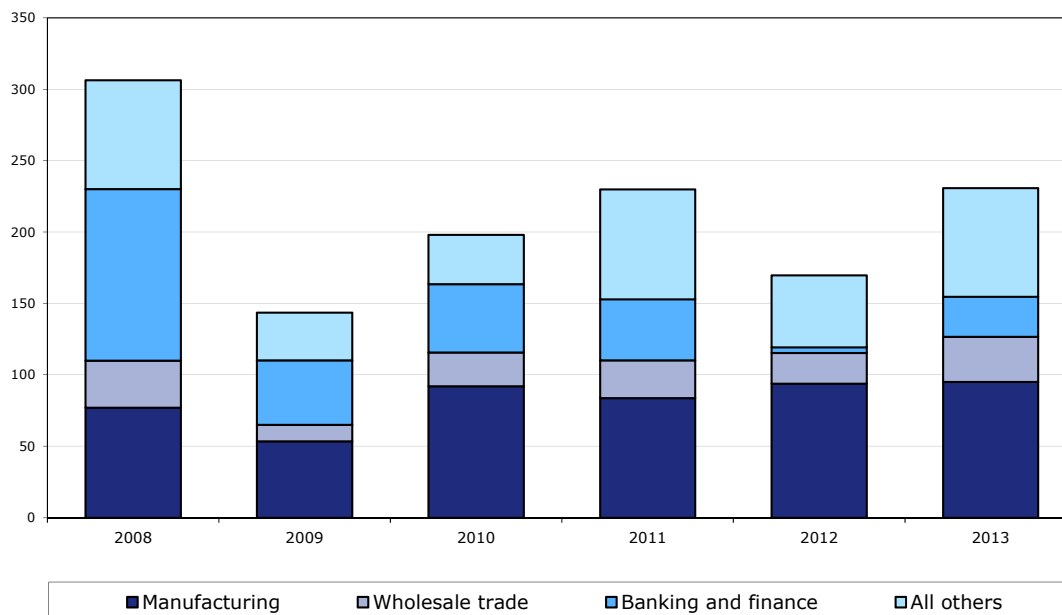
¹¹ BEA online information. Viewed at: http://www.bea.gov/international/fdius2011_preliminary.htm.

¹² Kornecki and Ekanayake (2012).

¹³ BEA (2013a).

Chart 1.7 Foreign direct investment into the United States, 2008-13

(US\$ billion)



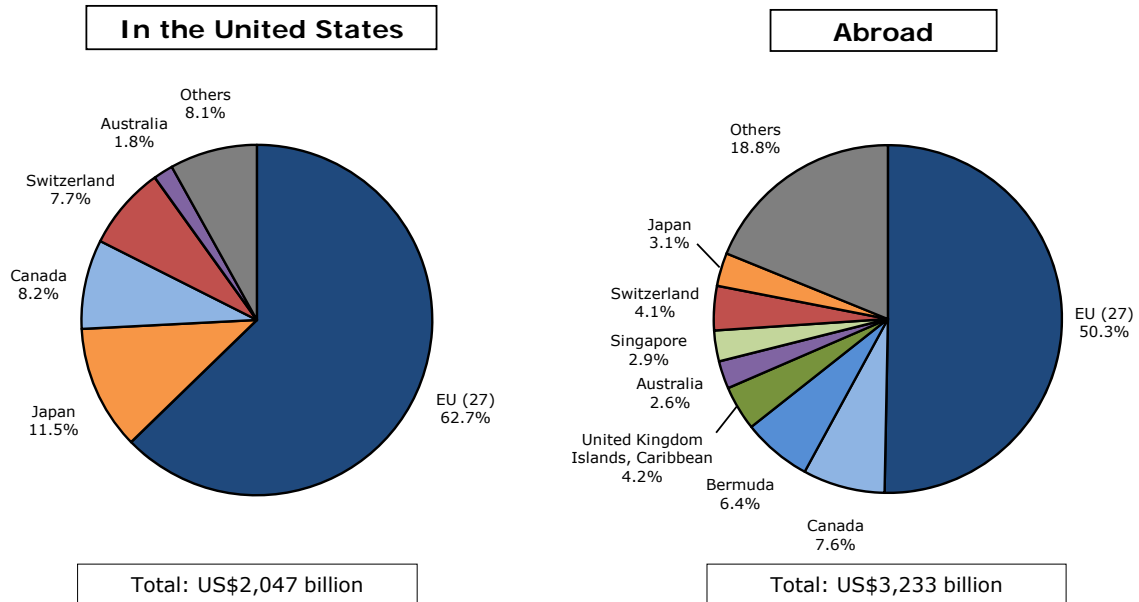
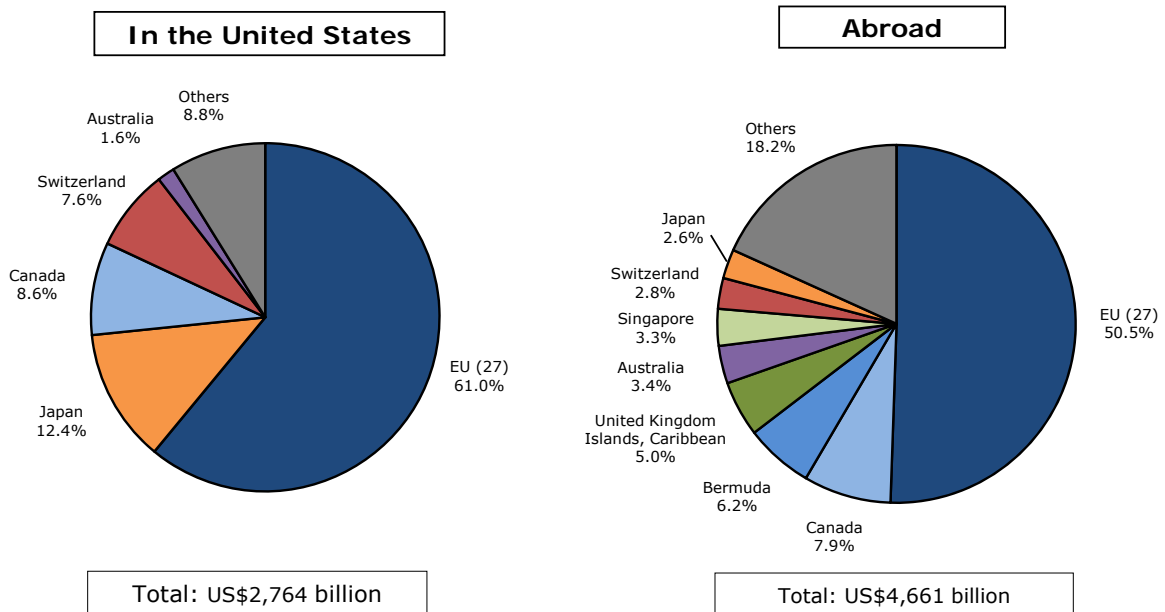
Source: WTO Secretariat, based on Bureau of Economic Analysis online information. Viewed at: <http://www.bea.gov>.

1.37. The EU, Japan, and Canada hold the largest share of inward FDI stock in the United States (Chart 1.8).

1.38. With an outbound direct investment position of US\$4.66 trillion in 2013 the United States remains the largest contributor to global FDI. However, its contribution in absolute terms, decreased significantly in the wake of the recent global crisis. The EU and Canada were the major recipients for U.S. investments between 2008 and 2013 (Chart 1.8).

Chart 1.8 Direct investment position by selected partners, 2008-13

(% of total investment)

2008**2013**

Source: Direct investment position on a historical-cost basis. WTO Secretariat, based on Bureau of Economic Analysis online information. Viewed at: <http://www.bea.gov>.

2 TRADE AND INVESTMENT REGIME

2.1 General Framework

2.1. The U.S. legislative (Congress) branch and the executive branch, under the President, have roles in the development and execution of U.S. trade policy.¹ These roles have not changed since the last Review of the United States and the same institutions and framework exist for the government process of law-making, consultation, and implementation of trade policies and instruments.

2.2. In the U.S. Congress, the House Ways and Means Committee in the House of Representatives, and the Senate Finance Committee in the Senate have the main jurisdictional responsibilities for trade. The Office of the United States Trade Representative located in the Executive Office of the President, is the executive branch entity responsible for coordinating the development and implementation of U.S. trade policy. It conducts its functions through a statutory inter-agency trade policy mechanism, composed of the Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC). The National Economic Council (NEC) an inter-agency cabinet-level body, with the participation of the President, coordinates policy for domestic and international economic issues.

2.3. Other executive branch agencies that have important roles in trade policy include the Departments of Agriculture, Commerce, Labor, State, and the Treasury. These and fourteen other executive branch agencies and offices are members of the TPRG and TPSC.

2.1.1 Trade promotion authority

2.4. A key procedural mechanism that demonstrates the unique balance between the executive and legislative branches on trade policy, is the use of trade promotion authority (TPA), to delegate and share certain trade negotiation powers and provisions. Some powers are granted by the Constitution to the Congress, i.e. regulation of foreign commerce, including the power to lay and collect duties, and to the President, i.e. to negotiate treaties. This separation of powers, combined with the unique qualities of trade agreements, have led to the establishment, through statutes effective for a period of years, of procedures for considering, negotiating, and approving trade agreements, including how the executive branch must consult with Congress. Since its formal establishment in the Trade Act of 1974, the TPA's main elements are the provision of expedited treatment of the agreements in Congress, and consultation and notification provisions between the President and Congress. Subsequent renewals of the authority have also included provisions on negotiating objectives, such as inclusion of labour and environmental provisions.² Historically, TPA has been backed by bi-partisan support when it has been granted.

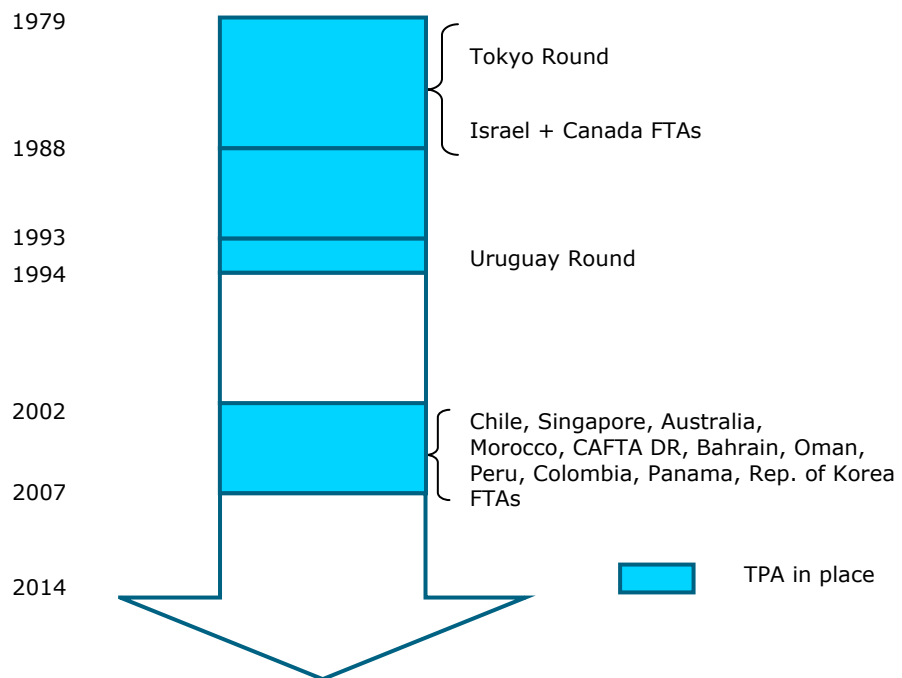
2.5. Procedures set out in the Trade Act of 1974 and its predecessor have been used for consultations and approvals of most multilateral and reciprocal trade agreements entered into by the United States in recent years. Following its establishment, TPA was renewed regularly, except during 1995-2002, and more recently since it lapsed in 2007 (Chart 2.1).

2.6. Recently, the President highlighted the importance of obtaining TPA authority in 2013 and 2014, given the two major regional negotiations which the United States intends to conclude or make significant progress on.³ A proposal to reauthorize TPA was introduced in the Congress in 2014, but to date no legislation has been approved.

¹ For further details see WTO document WT/TPR/S/275/Rev.2, 8 March 2013.

² For example, see the Bipartisan Trade Promotion Authority Act (BTPAA) of 2002.

³ USTR (2014d).

Chart 2.1 Overview of Trade Promotion Authority

Source: WTO Secretariat, compiled from various sources.

2.1.2 Role of the private sector and other stakeholders

2.7. The United States has a long history of involving the private sector in trade policy advice. In 1974, a USTR-led trade advisory committee system was created, to enable public- and private-sector input in the formulation and implementation of U.S. trade policies. There are currently 28 trade advisory committees covering, *inter alia*, agricultural, intergovernmental, labour, environmental, and U.S.-Africa issues. There is also a system of committees on industry trade, which includes 16 industry trade advisory committees (ITACs)--thirteen industrial sectors, three functional on intellectual property, customs matters, and standards and technical barriers; and an ITAC Committee of Chairs (Table 2.1).⁴

2.8. While the trade committees have remained relatively static in recent times, USTR has authority, pursuant to Section 135 of the Trade Act of 1974, to establish policy advisory committees. In February 2014, USTR proposed a new trade advisory committee covering public interest issues.⁵ This proposal, including its scope and purpose, is currently under consideration pending review and evaluation of public comments.

Table 2.1 Overview of the Trade Advisory Committee System

Type and Name	Maximum or approximate number of members ^a	Appointments by	Subject
President's Advisory Committee			
Trade Policy and Negotiations (ACTPN)	45	President	Examines U.S. trade policy and agreements
Policy advisory committees			
Intergovernmental Policy Advisory Committee (IGPAC)	35	USTR	Representation of States and non-federal government entities

⁴ USTR online information. Viewed at: <http://www.ustr.gov/about-us/intergovernmental-affairs/advisory-committees>.

⁵ 79 FR 10596.

Type and Name	Maximum or approximate number of members ^a	Appointments by	Subject
Trade and Environment Policy Advisory Committee (TEPAC)	35	USTR	Trade and environmental policy issues
Trade Advisory Committee for Africa (TACA)	30	USTR	Trade and development issues of sub-Saharan Africa
Agricultural Policy Advisory Committee (APAC)	35	USTR and the Department of Agriculture	Agriculture issues
Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC)	30	USTR and the Department of Labor	Representation from labour unions
Technical advisory committees			
Agricultural Technical Advisory Committees (ATACs):			
Animals and Animal Products	35	USTR and the Department of Agriculture	Animals and animal products
Fruits and Vegetables	35	USTR and the Department of Agriculture	Fruits and vegetables
Grains, Feed, and Oilseeds	35	USTR and the Department of Agriculture	Grains, feed, and oilseeds
Processed Foods	35	USTR and the Department of Agriculture	Processed foods
Sweeteners and Sweetener Products	35	USTR and the Department of Agriculture	Sweeteners and sweetener products
Tobacco, Cotton, Peanuts, and Planting Seeds	35	USTR and the Department of Agriculture	Tobacco, cotton, peanuts, and planting seeds
Industry Trade Advisory Committees (ITACs):			
Committee of Chairs of the Industry Trade Advisory Committee	16	Consists of Chairs of the 16 ITACs	Trade matters of common interest to the ITACs
Aerospace Equipment (ITAC 1)	50	USTR and the Department of Commerce	Aerospace Equipment
Automotive Equipment and Capital Goods (ITAC 2)	50	USTR and the Department of Commerce	Automotive equipment and capital goods
Chemicals, Pharmaceuticals, Health/Science Products and Services (ITAC 3)	50	USTR and the Department of Commerce	Chemicals, pharmaceuticals, health/science products and services
Consumer Goods (ITAC 4)	50	USTR and the Department of Commerce	Consumer goods
Distribution Services (ITAC 5)	50	USTR and the Department of Commerce	Distribution services
Energy and Energy Services (ITAC 6)	50	USTR and the Department of Commerce	Energy and energy services
Forest Products (ITAC 7)	50	USTR and the Department of Commerce	Forest products
Information and Communication Technologies Services and Electronic Commerce (ITAC 8)	50	USTR and the Department of Commerce	Information and communication technologies services and electronic commerce

Type and Name	Maximum or approximate number of members ^a	Appointments by	Subject
Building Materials, Construction, and Nonferrous Materials (ITAC 9)	50	USTR and the Department of Commerce	Building materials, construction, and nonferrous metals
Services and Finance Industries (ITAC 10)	50	USTR and the Department of Commerce	Services and finance industries
Small and Minority Business (ITAC 11)	50	USTR and the Department of Commerce	Small and minority business
Steel (ITAC 12)	50	USTR and the Department of Commerce	Steel
Textiles and Clothing (ITAC 13)	50	USTR and the Department of Commerce	Textiles and clothing
Customs Matters and Trade Facilitation (ITAC 14)	50	USTR and the Department of Commerce	Customs matters and trade facilitation
Intellectual Property Rights (ITAC 15)	50	USTR and the Department of Commerce	Intellectual property rights
Standards and Technical Trade Barriers (ITAC 16)	50	USTR and the Department of Commerce	Standards and technical trade barriers

a For the APAC and ATACs, there is no maximum number for membership. The charter indicates "sufficient membership" and suggests between 20-40 members.

Source: WTO Secretariat, based on: <http://www.ita.doc.gov/itac/committees/>, and <http://www.ustr.gov/about-us/intergovernmental-affairs/advisory-committees>.

2.1.3 New developments

2.1.3.1 Interagency Trade Enforcement Center

2.9. In early 2012 the United States established the Interagency Trade Enforcement Center (ITEC) to advance U.S. foreign policy and protect the national and economic security of the United States through strengthened enforcement of U.S. trade rights.⁶ The mission of ITEC is: (a) to be the primary forum for federal agencies to coordinate enforcement of U.S. rights; (b) to assist in the exchange of information related to potential violations; and (c) to conduct outreach for greater participation in the identification and elimination of foreign trade barriers. ITEC is established within USTR and involves coordination among the Departments of State, the Treasury, Justice, Agriculture, Commerce, Homeland Security, and the Office of the Director of National Intelligence.⁷

2.10. During its first year of operation, the ITEC was involved in a number of trade matters which resulted in the United States taking up at least four issues in the WTO DSB. ITEC was also involved in identifying priority projects for research and analysis regarding a number of countries and issues.⁸

2.1.3.2 Task Force on Wildlife Trafficking

2.11. In 2013 the President established a task force on wildlife trafficking to develop and implement a national strategy to combat wildlife trafficking, in particular poaching and illegal trade.⁹ The task force issued a national strategy in February 2014. The strategy focuses on (a) strengthening the enforcement of laws and the implementation of international agreements

⁶ Executive Order 13601.

⁷ Other agencies may be designated by the President or USTR.

⁸ USTR (2014d).

⁹ 78 FR 40619.

that protect wildlife; (b) reducing demand for illegal wildlife and wildlife products in the United States and abroad; and (c) strengthening partnerships with foreign governments, local communities, NGOs, and the private sector to enhance global commitment to combat wildlife trafficking. The third prong of the strategy provides for engaging trading partners regionally and bilaterally under existing and future free-trade agreements, environmental cooperation mechanisms, and other trade-related initiatives, to take measures to combat wildlife trafficking and to integrate wildlife trafficking and resource protection as priority areas for information exchange, cooperation, and capacity building.¹⁰

2.1.3.3 Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud

2.12. In June 2014, the President established a task force to enhance coordination of U.S. Government efforts to combat illegal, unreported, and unregulated (IUU) fishing and seafood fraud and directed the task force to develop and implement a comprehensive framework to combat IUU fishing and seafood fraud.¹¹ Further, the President noted the national interest to promote sustainable fishing practices and the plan to implement the UNFAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.¹² The framework acknowledges that the United States will continue to promote its policy of legally and sustainably caught, and accurately labelled seafood, and will assist foreign nations in building capacity to combat IUU fishing and seafood fraud.

2.2 Trade Policy Objectives

2.13. The President reports annually to the U.S. Congress on the full range of the trade activities conducted in the previous year as well as the trade policy agenda for the upcoming year. During the review period the President's trade agenda emphasized the importance of trade in supporting job creation and economic growth. By opening markets through trade and investment, and keeping a level playing field through enforcement, the United States hopes to capitalize on its strengths, including its comparative advantage in innovation, to raise standards of living and strengthen the middle class.

2.14. A number of trade priorities identified for 2013-14 included initiatives at the national, multilateral, bilateral, and regional levels: to continue progress towards the National Export Initiative (NEI) goals; to advance and conclude the Trans-Pacific Partnership (TPP) agreement; launch and advance the Transatlantic Trade and Investment Partnership (T-TIP) agreement; lead creative and effective efforts at the WTO to open markets, enforce rules, and combat protectionism; advance negotiations including with respect to services, environmental goods, and information technology products; support American job growth through increased agriculture, manufacturing, and services trade; promote and protect intellectual property rights associated with innovation and creativity; combat non-tariff barriers to trade and investment; expand trade opportunities through regional economic integration; and advance trade policy that reflect U.S. values, noting labour and environmental protection considerations. In addition to these specific trade priorities, the United States also emphasizes the importance of enforcement of trade rights, enhancing investment relationships, and fighting poverty and fostering economic growth through trade and development.¹³

2.3 Trade Agreements and Arrangements

2.3.1 Participation in the WTO

2.15. The United States takes an active leadership role in the WTO and, according to its trade policy agenda, plans to continue to play a major role in strengthening the multilateral trading system. It has identified a number of priority areas with respect to WTO work or initiatives,

¹⁰ The White House (2014c).

¹¹ White House, *Presidential Memorandum*, 17 June 2014. Viewed at: <http://www.whitehouse.gov/the-press-office/2014/06/17/presidential-memorandum-comprehensive-framework-combat-illegal-unreported>.

¹² The United States has signed the agreement but has not ratified nor accepted it, thus it is currently not in force. FAO online information. Viewed at: http://www.fao.org/fileadmin/user_upload/legal/docs/5_037s-e.pdf.

¹³ USTR (2014d) and (2013a).

including concluding the expanded product coverage negotiations under the ITA, launching negotiations on an environmental goods agreement (EGA), supporting implementation of the Trade Facilitation Agreement (TFA), and supporting accession negotiations, in particular Kazakhstan. As a strong supporter of transparency, the United States is committed to promoting and strengthening the WTO's core functions. On the DDA, the United States has stated its intention to take a leadership role following the Bali Ministerial, to inject new direction and seek creative approaches to other aspects of the round.¹⁴

2.16. In terms of the day-to-day work of the WTO, the United States is active in work of all Committees, the trade monitoring exercise, accessions, dispute settlement, and plurilateral initiatives such as the GPA and ITA. It has been committed to re-energizing the work of the regular committees. In terms of dispute settlement, the United States remains an active participant in DSU processes. During the period under review, the United States was a complainant in 4 disputes, a respondent in 6 disputes, a third party in 16 disputes, and involved in a number of appeals or arbitrations (Table A2.1). The United States submitted its instruments of acceptance of the revised GPA on 2 December 2013. It has been an active participant in the ongoing negotiations to enlarge the product coverage of the ITA.

2.17. In the on-going Doha Round, the United States played an active role in the Trade Facilitation negotiations, submitting 31 new or revised proposals. It has been a strong supporter of and participant in the TFA, including in reaching the successful Bali outcome. It continues to support developing and least developed countries in technical assistance activities. During the review period, the United States did not submit any proposals to other negotiating bodies.

2.18. Recently, the United States completed its domestic consultation procedures to enter into EGA negotiations. The United States and 13 other WTO Members announced their intention to start negotiations of an EGA in Davos in January 2014 and in June, shared information about this initiative in the WTO Committee on Trade and Environment.¹⁵ The negotiations were launched in July, with the aim of eliminating tariffs on a broad set of environmental goods.

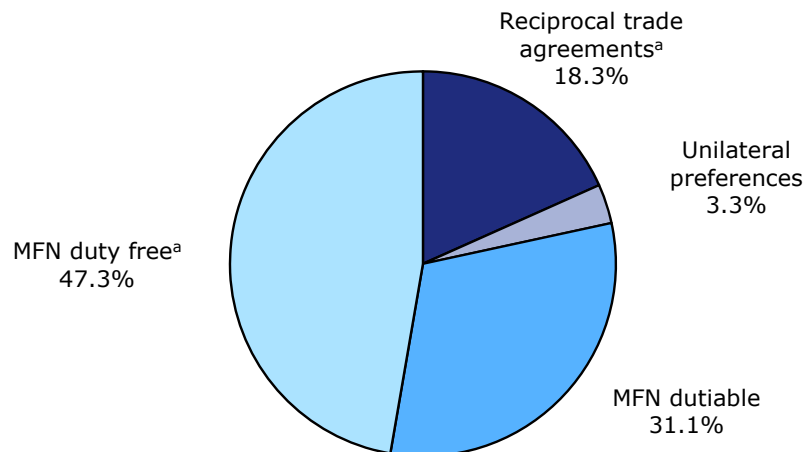
2.19. U.S. notifications during the review period have mainly covered trade remedies, technical barriers to trade, agriculture, and intellectual property (Table A2.2). The United States maintains a strong record of notifications, however, three notifications on agriculture are overdue or require updating (on export subsidies, domestic support, and tariff quota utilization).

2.3.2 Regional and preferential agreements

2.20. While the United States continues to conduct the majority of its trade through the MFN regime it has a long tradition of offering unilateral preferences to developing countries and more recently through bilateral or regional reciprocal free-trade agreements. Since the last Review of the United States, imports under reciprocal preferences have grown while unilateral preferential imports have declined as a percentage of total imports. In 2013, reciprocal trade preferences amounted to 18.3% and unilateral trade preferences to 3.3% of total imports (Chart 2.2).

¹⁴ USTR (2014d).

¹⁵ "Joint Statement Regarding Trade in Environmental Goods", 24 January 2014, Davos, Switzerland. Viewed at: <http://www.ustr.gov/sites/default/files/EGs-Announcement-joint-statement-012414-FINAL.pdf>; WT/CTE/M/57; and "Joint Statement Regarding the Launch of the Environmental Goods Agreement Negotiations", 8 July 2014, Geneva, Switzerland. Viewed at: <http://www.ustr.gov/about-us/press-office/press-releases/2014/July/Joint-Statement-Regarding-Launch-of-Environmental-Goods-Agreement-Negotiations>.

Chart 2.2 Imports, by import regime, 2013

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

Note Non-MFN trade statistically rounds to zero.

Source: WTO Secretariat, based on U.S. International Trade Commission (USITC), Trade Data Web; and information provided by the U.S. authorities.

2.3.2.1 Reciprocal trade agreements

2.21. There have been no major developments in reciprocal trade agreements since the last Review of the United States when the free-trade agreements with the Republic of Korea, Panama, and Colombia were entering into force. No new FTAs have been concluded or entered into force since that time. However, the United States is negotiating with the European Union on T-TIP, and with a group of countries in Asia, the Pacific, and the Americas, with TPP (see Section 2.2).¹⁶ At this time, neither has been concluded.

2.22. The share of imports under reciprocal trade agreements increased from 16.4% to 18.3% of total imports, between 2011 and 2013 (Chart 2.2). The United States has 14 bilateral or regional free-trade arrangements covering trade with 20 countries (Chart 2.3). The growth in reciprocal trade imports can be attributed to the more recent FTAs, in particular with the Republic of Korea and Colombia.

2.23. Imports entering from NAFTA partners continued to increase during the period and NAFTA is the single largest FTA block. The Republic of Korea and Colombia are now the United States' second and third largest FTA trading partners due to significant growth since the entry into force of their FTAs. The United States maintains an overall trade deficit with FTA partners due mostly to its trade deficit with NAFTA partners.

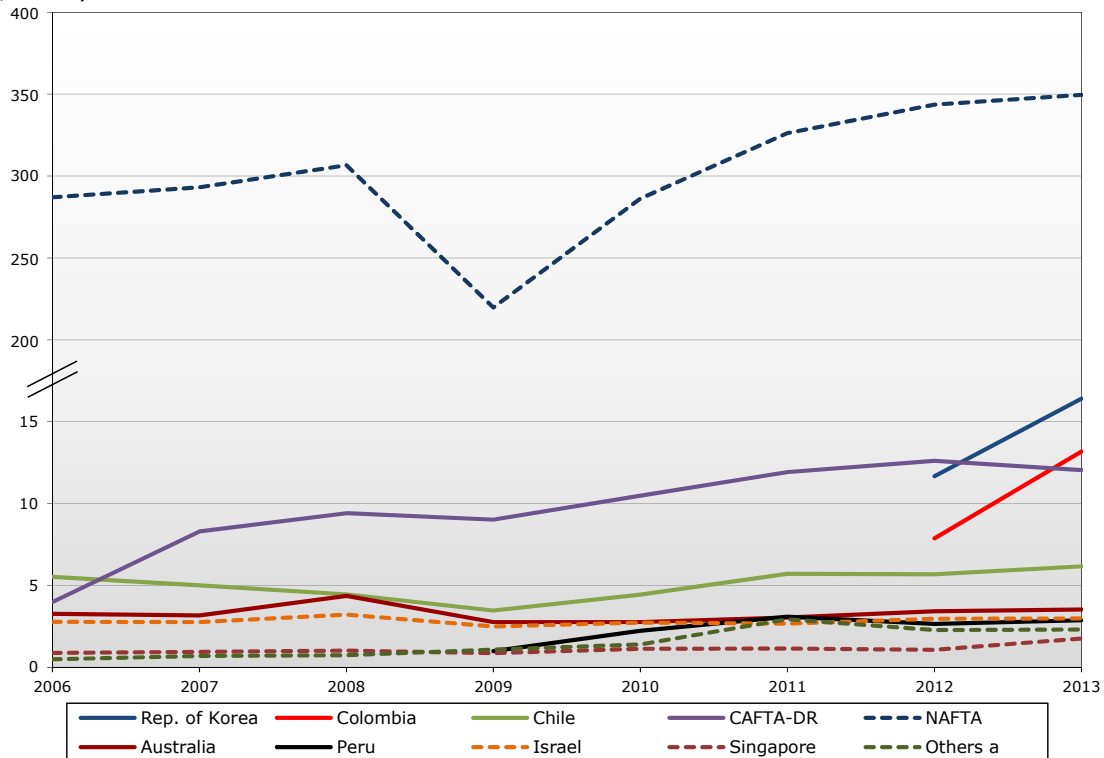
2.24. The United States has notified all of its reciprocal trade agreements to the WTO Committee on Regional Trade Agreements. However, three factual presentations involving the United States have not yet been considered under the Transparency Mechanism due to a lack of comments from one or both of the parties concerned.¹⁷

¹⁶ TPP participants are: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Viet Nam.

¹⁷ WTO document WT/REG/W/84, 13 June 2014.

Chart 2.3 Preferential imports, 2006-13

(US\$ billion)



a Includes Bahrain, Jordan, Morocco, Oman, and Panama.

Note Preferential imports covers only trade benefiting from the FTAs, and not trade entering at MFN duty-free levels, although the FTAs may provide concessions at zero that are already MFN duty-free.

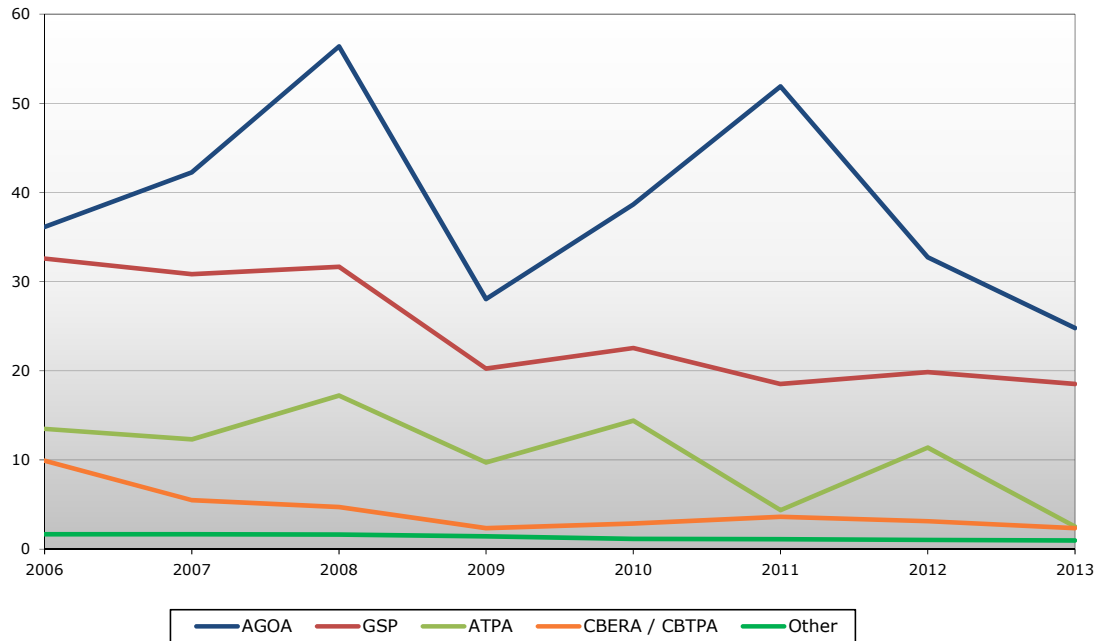
Source: WTO Secretariat calculations, based on U.S. International Trade Commission (USITC), Trade Data Web.

2.3.2.2 Unilateral preferential regimes

2.25. The United States continued to provide unilateral preferences to a number of countries or territories during the review period, although some programmes are in decline, have expired, or are undergoing review. The programmes are not mutually exclusive and some developing and least developed countries are eligible to participate in more than one programme (Table A2.3). In particular, there is overlap in the GSP and AGOA, with trade figures under each programme often changing year-to-year as traders choose one preference program over another (Chart 2.4).

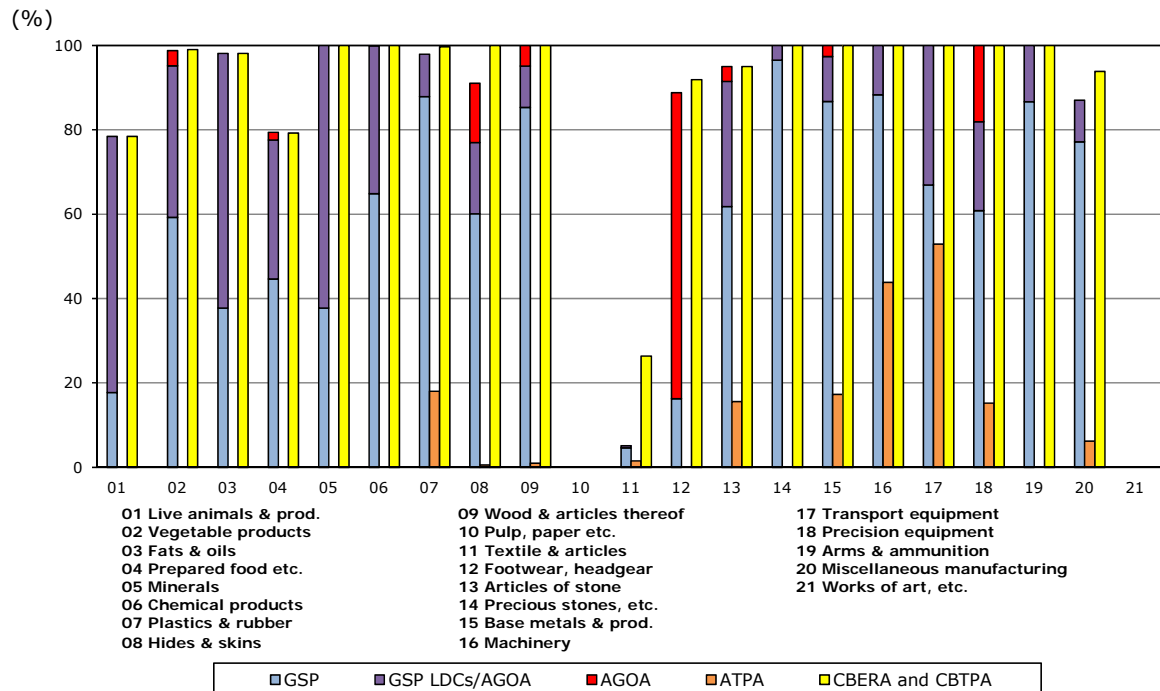
Chart 2.4 Unilateral preferential imports, 2006-13

(US\$ billion)



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

2.26. The product coverage of the programmes is not identical, nor are other aspects, such as rules of origin or textile provisions. In terms of tariff coverage, preferences granted to Caribbean countries and those granted under GSP are nearly identical, with the greatest product coverage. AGOA builds on GSP by providing AGOA beneficiaries (all are GSP beneficiaries) with additional product coverage, most notably for textile and footwear products. The ATPA has expired, but when it was in force ATPA coverage was built upon the GSP benefits that the ATPA countries also enjoyed. Generally, the least preferential coverage is given for textiles and apparel, which has traditionally been an import-sensitive industry for the United States (Chart 2.5).

Chart 2.5 Dutiable lines eligible for unilateral preferences, by regime and HS section, 2014

Notes: No preferences are given for sections 10 and 21, as 100% of the tariff lines are MFN duty free.

AGOA provides additional preferences to those of the GSP, as AGOA beneficiaries are also GSP beneficiaries. A number of AGOA beneficiaries are also GSP LDC beneficiaries, thus through AGOA, most tariff lines eligible for GSP LDCs also apply to AGOA beneficiaries.

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

2.3.2.2.1 African Growth and Opportunity Act (AGOA)

2.27. AGOA is the United States' main trade and investment policy instrument for sub-Saharan African countries. It entered into force in 2000 and is set to expire on 30 September 2015.¹⁸ In 2013, the Administration launched a comprehensive review of the AGOA programme to assess its performance and its goals. The results include recommendations to: (a) expand AGOA's product coverage, (b) improve rules of origin, (c) renew AGOA and the third-country fabric provisions for a long term, and (d) update AGOA's eligibility criteria and review processes. The review will help inform the Administration's consultations with Congress on the future of the AGOA programme after 2015.¹⁹

2.28. The main AGOA provision is the duty-free treatment granted to beneficiaries. The AGOA Forum is a high-level annual meeting to discuss trade and economic issues, and guide U.S. development assistance. AGOA also contains specific provisions for textile and apparel products. In particular, certain lesser developed beneficiary countries are allowed to use fabric inputs from third countries. This provision, known as the third-country fabric provision was set to expire in 2012, but was renewed and is currently in place until 30 September 2015.²⁰

2.29. Countries eligible for AGOA benefits must meet both the GSP economic and political criteria, and the AGOA specific eligibility criteria, including but not limited to establishing or making

¹⁸ Public Law 106-200.

¹⁹ USTR online information. Viewed at: <http://www.ustr.gov/about-us/press-office/speeches/transcripts/2014/July/Remarks-USTR-Froman-Brookings-US-Trade-Policy-Global-Development> and <http://www.whitehouse.gov/the-press-office/2014/08/04/fact-sheet-investing-african-trade-our-common-future>.

²⁰ Public Law 112-163 of August 10, 2012.

continual progress towards a market-based economy, rule of law, elimination of trade and investment barriers, poverty reduction, and worker and human rights. During the review period, AGOA eligibility was revoked for Mali, Swaziland²¹, and Guinea-Bissau, but subsequently reinstated for Mali.²² AGOA benefits were granted for South Sudan at the end of 2012, and for Madagascar in 2014.²³ Cote d'Ivoire was granted special textile and apparel benefits in 2013.²⁴ Currently, 41 of the 49 countries in sub-Saharan Africa have been designated as AGOA beneficiaries.

2.30. In May 2014, the U.S. Customs and Border Protection adopted a new rule, amending the customs regulations relating to the implementation of the AGOA textile provisions. The regulatory amendments clarify the preferential tariff treatment provisions by amending documentary, procedural, and other related requirements, and generally make it easier for certain textiles to qualify for AGOA preferences.²⁵

2.31. In 2013, the major products benefiting from AGOA preferences were crude petroleum, certain motor vehicles, light petroleum oils, and apparel. Crude petroleum was by far the largest, accounting for over 82% of AGOA imports. The major suppliers under AGOA were Nigeria, Angola, and South Africa.

2.3.2.2.2 Generalized System of Preferences (GSP)

2.32. The United States' GSP, its main global programme for preferences for developing and least developed countries, expired on 31 July 2013. Therefore, imports that benefited from GSP provisions are subject to MFN tariffs as of 1 August 2013. However, GSP-eligible imports from AGOA beneficiary countries continue to receive eligible GSP duty-free treatment.²⁶

2.33. A number of changes in country eligibility took place during the review period. The President, in May 2014, notified Congress of his intent to remove the Russian Federation as a GSP beneficiary, citing Russia's advance beyond a certain level of economic development and competitiveness.²⁷ In June 2013, the President suspended the eligibility of Bangladesh due to worker rights issues.²⁸ When the free-trade agreements with Colombia and Panama entered into force in 2012, these two countries ceased to be GSP beneficiaries. In 2012, Saint Kitts and Nevis, Gibraltar, and the Turks and Caicos Islands were designated as high-income countries and the President announced their removal from GSP eligibility effective 1 January 2014.²⁹ A review process to consider Myanmar and Lao PDR as possible beneficiary countries was still under way as of mid-2014.³⁰

2.34. Since the suspension of the GSP programme in July 2013, a number of countries³¹ continue to be reviewed for worker rights, child labour, IPR, or arbitral awards issues that could alter their beneficiary status. Product addition or removal petitions are also being reviewed. In 2013, the major products benefiting from GSP preferences were crude petroleum, automobile tyres, and jewellery of precious metal; and major beneficiaries of GSP were India, Thailand, and Brazil.

²¹ Effective 1 January 2015.

²² Presidential Proclamation, 8921, 20 December 2012, Presidential Proclamation, 9072, 23 December 2013, and Presidential Proclamation, 9145, 26 June 2014.

²³ Presidential Proclamation, 8921, 20 December 2012 and Presidential Proclamation, 9145, 26 June 2014.

²⁴ 78 FR 16908, 19 March 2013.

²⁵ 79 FR 30355, 27 May 2014.

²⁶ Duty-free treatment of imports qualifying for coverage under AGOA and the Caribbean Basin Trade Partnership Act are not affected by the lapse in GSP legislation. Viewed at: <http://www.ustr.gov/sites/default/files/03112014-FAQs-on-GSP-Expiration.pdf>.

²⁷ White House online information. Viewed at: <http://www.whitehouse.gov/the-press-office/2014/05/07/message-congress-respect-russia-s-status-under-generalized-system-prefer>.

²⁸ Presidential Proclamation 8997, 27 June 2013.

²⁹ Presidential Proclamation, 8921, 20 December 2012.

³⁰ Federal Register Vol. 78, No. 73, 16 April 2013.

³¹ Ecuador, Fiji, Georgia, Indonesia, Iraq, Niger, Philippines, the Russian Federation, and Uzbekistan.

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

2.35. CBERA and CBTPA were created to facilitate economic development and promote export diversification through duty-free access to the U.S. market for a number of eligible goods from certain countries in the Caribbean or Central America. In 2006, 2008, and 2010, additional provisions were added to aid Haiti, in particular with respect to textile exports, i.e. the HOPE and HELP amendments.

2.36. During the review period, Panama ceased to be a CBERA/CBTPA beneficiary upon the entry into force of the United States-Panama Trade Promotion Agreement, on 31 October 2012; and Curacao, as a successor to the Netherlands Antilles, was designated a CBERA/ CBTPA beneficiary in late 2013.³² There are currently 17 CBERA beneficiaries and 8 CBTPA beneficiaries (Table A2.3).

2.37. The major products imported into the United States under CBERA/CBTPA³³ preferences are methanol, petroleum oils, and T-shirts. The countries utilizing CBERA/CBTPA preference are highly concentrated; Trinidad and Tobago, Haiti, and the Bahamas together accounted for over 95% of CBERA/CBTPA imports in 2013.

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

2.38. Similar to GSP, ATPA/ATPDEA lapsed on 31 July 2013, and to date Congress has not renewed it.³⁴

2.39. The ATPA/ATPDEA was designed to promote broad-based economic development, diversify exports, and reduce drug-trafficking by providing alternative economic opportunities to beneficiary countries. Compared with other unilateral preference programmes, ATPA/ATPDEA adds more eligible products for preferential access (Chart 2.5). During 2012-13, crude petroleum was by far the main import under the programme. Other significant imports were fresh cut flowers and tuna.

2.40. Following the entry into force of the free-trade agreements with Peru in 2010, and Colombia in 2012, these two countries ceased to be beneficiaries. In 2009, Bolivia's eligibility was removed due to failure to meet eligibility provisions.³⁵

2.41. In April 2013, USTR requested a review (still on-going) of whether the remaining beneficiary, Ecuador, met the eligibility criteria.³⁶ Its eligibility was questioned especially regarding criteria for protecting intellectual property rights and upholding arbitral awards.³⁷

2.3.2.2.5 Other unilateral preferences

2.42. The United States continues to maintain special unilateral preference programmes for U.S. insular possessions³⁸, freely associated States³⁹, and the West Bank and Gaza Strip (including Qualified Industrial Zones). There were no changes to these programmes during the review period. Imports entering through these provisions, where data are available⁴⁰, account for only 2% of unilateral preferential imports, and for a very small percentage of U.S. imports.

³² Presidential Proclamation 9072 of 23 December 2013.

³³ Including HOPE and HELP.

³⁴ "Expiration of GSP, ATPA, and ATPDEA". Viewed at: <http://apps.cbp.gov/csms/viewmssg.asp?Recid=19484>.

³⁵ USTR (2013b).

³⁶ 78 FR 21002, 8 April 2013.

³⁷ USTR (2013b).

³⁸ U.S. Virgin Islands, Guam, American Samoa, Wake Island, Midway Islands, Johnston Atoll, and the Commonwealth of the Northern Mariana Islands.

³⁹ Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

⁴⁰ Trade data are not available for imports from U.S. insular possessions.

2.3.3 Other agreements and arrangements

2.3.3.1 Anti-counterfeiting Trade Agreement

2.43. The United States is a signatory to the Anti-Counterfeiting Trade Agreement (ACTA), a plurilateral agreement negotiated among 11 trading partners.⁴¹ The ACTA aims to combat infringement of intellectual property rights, in particular piracy and counterfeiting. It provides for enhanced international cooperation, promotion of enforcement practices, and a legal framework for IPR enforcement. Although the agreement was finalized in 2011, it has not yet entered into force. The agreement reportedly does not require any statutory changes to U.S. law.

2.4 Investment Flows and Regime

2.44. During the review period, the United States remained the world's largest single recipient of foreign direct investment, however, inflows have declined since 2012 reflecting the general trend of historically low FDI inflows to developed countries.⁴² Investment inflows fluctuated broadly year to year, often in relation to economic growth. After recovering from the economic downturn in 2009, investment inflows climbed in 2010 and 2011, but fell in 2012 and 2013. Sources of FDI are generally highly concentrated among highly industrialised countries, the United Kingdom and Switzerland are the largest contributors. Investment inflows from emerging economies remain relatively small. In terms of sectors, manufacturing has the largest share with 45%, followed by wholesale trade (11%), mining (11%), and non-bank holding companies (11%).⁴³

2.45. While the U.S. investment regime is generally open, restrictions remain in place in certain sectors or industries (section 2.4.3.3 below). The United States was active during the review period in promoting foreign investment to create jobs and bolster the economy. In particular, it hopes to capitalize on its skilled labour force, predictable regulatory regime, and large diverse economy to spur further investments from abroad.

2.4.1 Investment agreements

2.46. The United States has used international investment agreements as tool to encourage foreign direct investment. The agreements are in the form of trade and investment framework agreements (TIFAs), bilateral investment treaties (BITs), and FTAs that contain investment provisions (Table 2.2). TIFAs are generally the first step in establishing stronger trade and investment links with a country; there are currently 50 in place with individual or country groups. In 2013, new TIFAs were concluded with CARICOM countries, Myanmar, and Libya.⁴⁴

2.47. BITs have typically been at the core of U.S. reciprocal binding agreements on investment. The U.S. has negotiated BITs on a model framework, and in 2012, the Administration released a new model BIT, which contains key provisions on national and MFN treatment, the minimum standard of treatment, expropriation, transfers, and performance requirements, as well as provisions protecting the right of investors to engage senior managers of their choosing, and two sections on dispute settlement.⁴⁵

2.48. No new BITs were negotiated or entered into force during the review period. The United States does not have BITs with many of the emerging economies, which continue to be growing in importance as concerns investment flows.⁴⁶ Nevertheless, the United States has concluded an increasing number of FTAs during the last ten years with investment chapters that generally have the same provisions as BITs.

⁴¹ Signatories are Australia, Canada, the Republic of Korea, Japan, New Zealand, Morocco, Singapore, and the United States. Other parties to the negotiations include the European Union, Mexico, and Switzerland.

⁴² UNCTAD (2014).

⁴³ The White House (2013c).

⁴⁴ USTR (2014d).

⁴⁵ USTR online information. Viewed at: <http://www.ustr.gov/trade-agreements/bilateral-investment-treaties>.

⁴⁶ FDI flows to developing economies reached a new high in 2013, accounting for 52% of global FDI inflows in 2013. UNCTAD (2014).

Table 2.2 The Investment Agreements Framework

<p>Trade and investment framework agreements (TIFAs)</p> <p>Framework to improve cooperation and enhance opportunities for trade and investment</p> <p>Afghanistan, Algeria, Angola, ASEAN (Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, Viet Nam), Bahrain, Brunei, Burma, Cambodia, CARICOM (Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago), Central Asia (Kazakhstan, Kyrgyz Republic, Tajikistan, Turkmenistan, Uzbekistan), COMESA (Burundi, Comoros, D.R. Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Seychelles, Madagascar, Malawi, Mauritius, Rwanda, Sudan, Swaziland, Uganda, Zambia, Zimbabwe), East African Community (Burundi, Kenya, Rwanda, Tanzania, and Uganda), ECOWAS (Benin, Burkina Faso, Cabo Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo), Egypt, GCC (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates), Georgia, Ghana, Iceland, Indonesia, Iraq, Kuwait, Lebanon, Liberia, Libya, Maldives, Malaysia, Mauritius, Mozambique, Nepal, New Zealand, Nigeria, Pakistan, Philippines, Oman, Qatar, Rwanda, Kingdom of Saudi Arabia, South Africa, Sri Lanka, Switzerland, Thailand, Tunisia, Turkey, Ukraine, United Arab Emirates, WAEMU (Benin, Burkina Faso, Cote d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal, and Togo), Uruguay, Viet Nam, Yemen.</p>
<p>Bilateral investment treaties (BITs)</p> <p>Based on model BIT</p> <p>Albania, Argentina, Armenia, Azerbaijan, Bahrain, Bangladesh, Bulgaria, Cameroon, Congo, Croatia, Czech Republic, Democratic Republic of Congo, Ecuador, Egypt, Estonia, Georgia, Grenada, Honduras, Jamaica, Jordan, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, Morocco, Mozambique, Panama, Poland, Romania, Rwanda, Senegal, Slovak Republic, Sri Lanka, Trinidad and Tobago, Tunisia, Turkey, Ukraine, and Uruguay.</p>
<p>Free-trade agreement provisions</p> <p>Investment chapter with BIT-like investment provisions</p> <p>Australia, CAFTA-DR (El Salvador, Honduras, Nicaragua, Guatemala, Costa Rica, Dominican Republic), Chile, Colombia, Israel^a, Republic of Korea, Morocco, NAFTA (Canada and Mexico), Oman, Panama, Peru, and Singapore.</p>

a Limited provisions.

Source: WTO Secretariat, based on information viewed at: www.ustr.gov.

2.4.2 Investment promotion

2.49. The United States continues to develop and promote its SelectUSA programme, created in 2011 as the first centralized government investment promotion programme, provides services directly to companies considering investing in the United States, and works with cities and states to augment their own business attraction efforts. Building upon its initial programme, President Obama expanded and enhanced SelectUSA in 2013.⁴⁷ The specific points in the new and expanded program include:

- "Supporting states and cities to attract and compete for job-creating investment into the U.S.;
- Encouraging job-creating foreign direct investment as a core priority in a coordinated, all hands on deck manner;
- Developing the first-ever coordinated, global teams to actively work to bring jobs to the U.S. led directly by U.S. Ambassadors;
- Creating a seamless process to enlist top Administration officials all the way up to the President to actively advocate for high-impact investments into the U.S.; and

⁴⁷ The White House, Office of the Press Secretary, 31 October 2013.

- Creating for the first time single points of contact for investors looking to locate in the U.S."⁴⁸

2.50. SelectUSA is the federal government's centralized hub to attract and retain investment. In addition to the newly expanded services, it provides information and advocacy to potential investors, in particular counsel and advisory services for investors, ombudsman, problem-solving, investment advocacy promotion, outreach, and investment missions. It does not offer direct incentives but provides a link to federal government programmes offering incentives to businesses. In 2013, it held its first investment summit to bring international investors, government officials, U.S. companies, and economic development organizations together to facilitate foreign investment. SelectUSA is housed in the Department of Commerce with a proposed budget of US\$20 million for FY2014.⁴⁹

2.51. In September 2012, the Department of Commerce announced a related "Make it in America" programme to accelerate insourcing, i.e. by encouraging firms to bring back jobs and investments to the United States.⁵⁰ It offered a one-time US\$40 million competition to projects supporting regional economic development, advanced skills training, greater supply chain access, and other enhancements. As of October 2013, US\$20.5 million had been awarded to 10 applicants.⁵¹ On 3 December 2013, the Hollings Manufacturing Extension Partnership (MEP) awarded a total of US\$3.75 million in Make it in America grants to 10 MEP centers in nine states. The 3-year grant awards are in addition to the recently announced US\$20.5 million in Make it in America funding from the Department of Commerce's Economic Development Administration, the Department of Labor's Employment and Training Administration, and the Delta Regional Authority. The overall objective of the Make it in America Challenge is to make it more attractive for businesses to build, continue, or expand their operations in the United States.

2.4.3 Investment regulations and restrictions

2.4.3.1 The Committee on Foreign Investment in the United States (CFIUS)

2.52. CFIUS continues to review "covered" foreign investment transactions to determine whether the transaction threatens national security. A covered foreign investment transaction is one where a merger, acquisition, or takeover results in foreign control of a person engaged in interstate commerce in the United States. CFIUS considers whether the foreign entity is controlled by a foreign government or if the investment would give control of critical infrastructure. If CFIUS perceives a potential national security risk, the President can prohibit the transaction. There have been no changes to the law or regulations since the last amendments in 2008.

2.53. During 2010-12, there was a gradual increase in the number of notices⁵² of covered transactions submitted, from 93 to 114 in 2012.⁵³ In particular, investment reviews from China grew from 6 notices in 2010 to 23 in 2012 (Table 2.3). In terms of business sectors, manufacturing continues to dominate with 39% of the cases in 2012; followed by finance, information, and services (33%); mining, utilities, and construction (20%); and wholesale, retail, and transportation (7%).⁵⁴

2.54. In addition to receiving a gradual increase in notices, CFIUS investigations increased from 35 in 2010, to 40 in 2011, and 45 in 2012. A record number, of notices (20) were withdrawn after

⁴⁸ White House, Office of the Press Secretary, 31 October 2013.

⁴⁹ "Testimony on the President's Fiscal Year 2014 Budget Request for the Department of Commerce by Deputy Secretary Rebecca Blank House Appropriations Subcommittee on Commerce, Justice, Science and related agencies. Viewed at: <http://appropriations.house.gov/uploadedfiles/hhrg-113-ap19-wstate-blankr-20130411.pdf>, and "The Department of Commerce Budget in Brief, Fiscal Year 2014". Viewed at: <http://www.osec.doc.gov/bmi/budget/FY14BIB/ENTIREBIB.pdf>.

⁵⁰ "Obama Administration Announces US\$40 million Initiative to Challenge Businesses to Make it in America. Viewed at: <http://www.commerce.gov/news/press-releases/2012/09/25/obama-administration-announces-40-million-initiative-challenge-business>.

⁵¹ "Obama Administration Awards US\$20.5 million in *Make It in America* Challenge Grants to Spur Business Investment and Job Creation in the U.S.". Viewed at: http://www.eda.gov/news/press-releases/2013/10/22/make_it_in_america_awards.htm.

⁵² Notices to CFIUS are technically voluntary but CFIUS can also initiate cases.

⁵³ 2012 are the latest figures available. Committee on Foreign Investment in the United States (2013).

⁵⁴ Committee on Foreign Investment in the United States (2013).

an investigation was launched in 2012; some were subsequently re-filed while others were abandoned. In 2012, the President decided for the first time in many years to prohibit a transaction. The President's Order required Ralls Corporation to divest its interest in a wind farm project.⁵⁵

Table 2.3 Overview of CFIUS covered transactions by country, top 10, 2010-12

Country	2010	2011	2012	Total
United Kingdom	26	25	17	68
China	6	10	23	39
Canada	9	9	13	31
France	6	14	8	28
Japan	7	7	9	23
Israel	7	6	4	17
Netherlands	2	7	6	15
Sweden	5	6	2	13
Australia	3	4	3	10
Germany	2	3	4	9
All others	20	20	25	65
Total	93	111	114	318

Source: Committee on Foreign Investment in the United States, "Annual Report to Congress" (2013) CY2012, December.

2.4.3.2 National Industrial Security Program (NISP)

2.55. The NISP, established by Executive Order to safeguard classified information that is released to contractors, is administered primarily by the Department of Defense as the Executive Agent. The NISP is implemented through a regulation known as the NISP Operating Manual (NISPOM), which requires contractors to protect classified information from being compromised. The NISPOM contains provisions regarding certain foreign investment transactions under its broader mandate to require contractors to protect and safeguard classified information. The NISPOM section on Foreign Ownership, Control, or Influence (FOCI) contains the procedures to be followed for certain investment transactions that involve classified information. U.S. companies are subject to NISPOM reporting requirements when a foreign interest acquires control that may result in unauthorized access to classified information or adversely affect the performance of classified contracts. The NISPOM has various types of security agreements to mitigate or negate the risk of foreign ownership or control. The NISPOM was updated, with major changes, in March 2013, and a separate volume was published in April 2014 with Procedures for Government Activities Relating to FOCI, however these changes did not affect the provisions on foreign investment transactions.⁵⁶

2.4.3.3 Other investment laws or restrictions

2.56. While the United States remains an attractive investment location with few formal barriers to FDI, there remain a number of laws or regulations that restrict, have information gathering requirements, or otherwise impede investment flows in certain sectors (Table 2.4).

⁵⁵ Committee on Foreign Investment in the United States (2013).

⁵⁶ NISP manuals. Viewed at: http://fas.org/irp/doddir/dod/m5220_22_v3.pdf; and <http://fas.org/spp/library/nispom/nispom2006.pdf>.

Table 2.4 Foreign investment restrictions

Industry/subject	Provision	References	Restriction or information gathering/disclosure requirement ^a
Investment and foreign trade in services	Collection of information on investments	International Investment and Trade in Services Survey Act of 1976	Information gathering/disclosure
Investment	Exchange of information on investment and financial data	Foreign Direct Investment and International Financial Data Improvements Act of 1990	Information gathering/disclosure
Agriculture	Foreign ownership of agricultural land must be reported to the Secretary of Agriculture	Agriculture Foreign Investment Disclosure Act of 1978	Information gathering/disclosure
Equity investments	Equity in securities requires registration with the SEC and requirements to disclose certain information	Domestic and Foreign Investment Improved Disclosure Act of 1977	Information gathering/disclosure
Maritime	Restriction on the foreign ownership of U.S.-registered ships	Title 46 of the U.S.C.	Restriction
Aircraft	Restriction on foreign investment for U.S.-registered aircraft	49 U.S.C. 44101 49 U.S.C. 44102	Restriction
Mining	U.S. citizenship or U.S. corporation requirements for the exploration and purchase of land with mineral deposits as well as similar restrictions on certain leasing of mineral lands ^b	30 U.S.C. 22 30 U.S.C. 24 30 U.S.C. 181 43 U.S.C. 1331	Restriction
Energy	Licenses for the construction, operation, or maintenance of facilities for the transmission and utilization of power on land and water of which the Federal Government has control, is limited to U.S. citizens and domestic corporations ^b	16 U.S.C. 797(e) 42 U.S.C. 2133(d)	Restriction
Lands	Citizenship requirements to make a claim under the Desert Land Act and for a permit to allow grazing on public lands	43 U.S.C. 321 43 U.S.C. 315b	Restriction
Communications	Prohibition of foreign ownership and operation of mass communications media	47 U.S.C. 310(a)	Restriction
Banking	Regulations or restrictions on bank holding companies	12 U.S.C. 1841-1849	Restriction
Investment Company Regulations	Restriction on securities in interstate commerce	15 U.S.C. 80a-1 15 U.S.C. 15 U.S.C. 77jjj(a)(1)	Restriction

a For items noted as "Information gathering/disclosure", provisions may not present a formal restriction yet they may have the potential to impact or otherwise deter foreign investment.

b According to the U.S. authorities, this does not preclude foreign investors from obtaining mining licences through locally incorporated firms, thus it does not present a de facto barrier in practice.

Source: CRS (2013) *Foreign Investment in the United States: Major Federal Statutory Restrictions*, CRS publication RL33103, 17 June.

3 TRADE POLICIES AND PRACTICES BY MEASURE

3.1 Measures Directly Affecting Imports

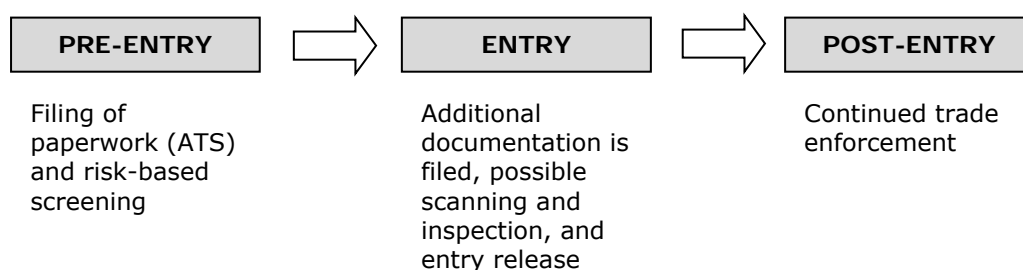
3.1.1 Customs procedures and requirements

3.1. The United States recognizes the importance of trade to its economy, and that an efficient and timely import process has a financial and important economic impact. The United States recognizes that a balance needs to be achieved between the primary policy of promoting trade flows, and enforcement and security. It initiated policies and practices, as from 1993, to shift control of the import process away from the government to that of shared responsibilities with traders, a process that has gradually continued to today. Under its "informed compliance" concept, the importer now has the duty of care to classify goods correctly in the HTS nomenclature, determine the origin of the goods, and provide the declared value for customs valuation purposes.

3.2. The U.S. Customs and Border Protection (CBP), as part of the Department of Homeland Security has a primary role in facilitating trade and enforcement, both security and trade related, at U.S. ports of entry. However, some 30 of federal agencies have a role in trade enforcement activities. Recent developments include more coordination and cooperation among federal agencies, including through the Border Interagency Executive Council (BIEC) and the International Trade Data System (ITDS).

3.3. The import process has three main stages, pre-entry, entry, and post-entry, each with specific requirements (Chart 3.1). CBP regulations from 2003 require advance electronic transmission of cargo information to CBP for both arriving and departing cargo and provide for various effective dates depending upon the mode of transportation. Section 2013 of the SAFE Port Act mandates development of a regulation to require additional data for improved high-risk targeting, including appropriate security elements to be provided prior to the cargo being loaded on a vessel destined for the United States. The Importer Security Filing (ISF) rule was established in 2008 and entered into effect in 2009; there have been no major changes since that time. For maritime shipments, the importer is responsible for providing an ISF, which consists of ten data elements ("importer of record" number, consignee number, seller (owner) name and address, buyer (owner) name and address, ship to party name and address, manufacturer (supplier) name and address, country of origin, HTS classification (to the 6-digit level), container stuffing location, and consolidator (stuffer) name and address) and two from the carrier (vessel stow plan and container status messages). The ISF information is generally due 24 hours prior to the cargo being loaded. Where a vessel voyage is less than 24 hours, the ISF may be submitted any time prior to arrival.

Chart 3.1 The U.S. import process



Source: Compiled by WTO Secretariat.

3.1.1.1 Trade facilitation measures

3.1.1.1.1 Single window

3.4. The United States has been working toward establishing a single-window application for a number of years. In 1984, CBP established the Automated Commercial System (ACS) to track, control, and process goods entering the United States; and it has collected data for customs purposes and on behalf of certain other government agencies, providing single-window functionality with respect to those agencies. In 2001, CBP began development of the Automated Commercial Environment (ACE) to facilitate trade while enhancing border security. Customs plans to gradually replace the ACS with ACE to meet all its import, security, and enforcement needs, and to develop ACE as its single-window application.

3.5. It is expected that by the end of 2016, ACE will provide single-window functionality for all agencies requiring documentation to clear imports or exports, allowing traders to submit electronic data and documentation for importation and exportation. Electronic filing options will be available in lieu of current paper filing requirements and manual processes will be streamlined. ACE is being implemented or deployed in seven phases, each allowing new modules and functions to be added. As of April 2014, ACE had deployed the third of the seven modules covering simplified entry, exports, and entry summary. All import and export cargo manifest data will have to be submitted through ACE as of 1 May 2015.

3.6. The President's recent executive order on "Streamlining the Export/Import Process for America's Businesses" requires completion of the single-window project, the International Trade Data System (ITDS) by 2016. When implemented through ACE, ITDS will allow traders to transmit, through an electronic single window, the data currently being submitted on paper. The executive order also requires improved coordination among the 47 federal agencies with respect to trade data and between the U.S. Government and other stakeholders. ITDS work is expected to be completed by December 2016.¹

3.1.1.1.2 Border Interagency Executive Council (BIEC)

3.7. By the same executive order, the President formally established the BIEC in 2014 to develop policies and processes to enhance coordination of customs, transportation security, health and safety, sanitary and phytosanitary, trade, and conservation agencies to improve supply chain processes and identification of illicit shipments.² The Council is composed of a Chairman from Homeland Security and members from the Departments of State, Treasury, Defense, Interior, Agriculture, Commerce, Health and Human Services, Transportation, Homeland Security, the Environmental Protection Agency, and other agencies with border management interests or authorities.

3.8. The tasks of the BIEC are to:

- develop common risk management principles and methods;
- develop policies and processes to improve and accelerate agency review of electronic trade data transmitted through systems and provide coordinated and streamlined responses back to users to facilitate trade and support and advance compliance;
- identify opportunities to streamline federal government systems as a means of improving supply chain management processes;
- assess the business need and benefit of private-sector web-based interfaces for electronic data systems;
- engage with stakeholders on ways to improve supply chain management processes;

¹ Executive Order 13659 of February 19, 2014.

² Executive Order 13659 of February 19, 2014.

- encourage other countries to develop similar single-window systems to facilitate the sharing of data; and
- assess opportunities to facilitate electronic payments of duties, fees, and taxes.³

3.1.1.1.3 Advance rulings

3.9. One of the CBP's trade facilitating measures in place for many years, concerns advance rulings. Pursuant to CBP regulations⁴, an importer may request an advance binding ruling or similar legal decision to have assurance of how the product will be treated by customs upon importation. Rulings may be requested by importers, exporters, or anyone having a demonstrable interest. Binding rulings may be issued on a variety of subject matters, but often involve classification, rules of origin, valuation, and carriers. At present, rulings related to valuation or carriers must be submitted by letter, while those on classification, marking, origin, NAFTA, and the applicability of a trade programme may be submitted electronically through CBP's eRulings template.

3.10. Advance binding rulings are published through the Customs Rulings On-line Search System (CROSS) or *the Customs Bulletin and Decisions* within 90 days of issuing the decision and are binding on CBP. However, there appear to be no set deadlines with respect to issuing a ruling. Rulings will not be issued on questions that are hypothetical or with respect to matters that are the subject of pending litigation. Binding rulings may be modified or revoked under certain conditions. A ruling that has been in effect for less than 60 calendar days may be revoked by simple notice to the applicant, whereas those in effect for longer periods require publication and a more formal procedure. CBP issues approximately 4,700 advanced rulings a year, on average.

3.1.1.1.4 Simplified Entry Pilot/ACE Cargo Release

3.11. In late 2011, CBP announced the Simplified Entry Pilot project for expedited treatment of imports arriving by air transport.⁵ The purpose of Simplified Entry is to reduce transactions costs, expedite cargo release, and enhance security. It reduces the data elements required for importation and allows for streamlined electronic transmissions. It initially included three pilot ports (airports). In August 2012, the pilot programme was expanded to include additional participants and ten additional airports.⁶

3.12. In 2014, CBP renamed the programme the ACE Cargo Release as it had been incorporated to the ACE electronic system for processing and is being expanded to include cargo transported by rail, ship, and truck. Its provisions were also expanded to include in-bond movements.⁷ As of June 2014, over 450,000 simplified entries had been filed by over 1,600 importers.⁸

3.1.1.1.5 Trusted Trader Programs

3.1.1.1.5.1 Customs-Trade Partnership Against Terrorism (C-TPAT)

3.13. C-TPAT is a voluntary public-private partnership programme which recognizes that CBP can provide the highest level of cargo security only through close cooperation with the principal stakeholders of the supply chain. Established in 2001, it was codified into law by the Security and Accountability for Every Port Act of 2006.⁹ Through this programme, CBP asks businesses to ensure the integrity of their security practices, and communicate and verify the security guidelines of their business partners within the supply chain. Businesses¹⁰ that apply to C-TPAT are reviewed,

³ Executive Order 13659 of February 19, 2014.

⁴ 19 C.F.R. Part 177.

⁵ 76 FR 69755.

⁶ 77 FR 48527 and CBP online information.

⁷ 79 FR 6210 and CBP online information.

⁸ Information provided by the U.S. authorities.

⁹ CBP online information. Viewed at: <http://www.cbp.gov/border-security/ports-entry/cargo-security/c-tpat-customs-trade-partnership-against-terrorism>.

¹⁰ A general term that allows the participation of U.S. importers, licensed U.S. customs brokers, consolidators, carriers, highway carriers (U.S., Canada, or Mexico), U.S. freight consolidators, ocean transport

and if the review is favourable, receive Tier I certification status. Thereafter, Tier II may be achieved after physical examination of a company's supply chain and minimum security measures. A third level, Tier III, exists for those importer partners that show a sustained commitment beyond minimum security and have exceeded the programme's requirements and applied best practices. The advantages of participating in the C-TPAT programme include a reduction of risk score that results in fewer CBP inspections, and eligibility for expedited treatment and processing. As of June 2014, there were more than 10,732 C-TPAT certified companies, resulting in over 25,160 total validations, and accounting for around 54.1% of total merchandise imports into the United States by value.¹¹

3.14. CBP has also signed mutual recognition arrangements (MRAs) with seven Customs administrations.¹² Through these MRAs, a linkage is established among the various international industry partnership programmes to recognize and validate the findings among the participants. These arrangements are security based; they do not address compliance issues. As of June 2014, seven C-TPAT MRAs were in place, with Canada, the EU, Japan, Jordan, the Republic of Korea, New Zealand, and Chinese Taipei. All are operational, with the exception of Jordan.

3.1.1.1.5.2 Importer Self-Assessment Program (ISA)

3.15. If a company is C-TPAT certified and has a two-year import history, it is eligible to become a participant of the ISA programme.¹³ Additional eligibility requirements have included being a resident importer in the United States, but the ISA was expanded in October 2012 to include Canadian importers and allowed a new fast-track membership option for importers that had completed a CBP Focused Assessment (FA) audit.¹⁴ ISA, like C-TPAT, is a voluntary programme allowing importers to assume a higher level of responsibility for monitoring their own compliance. Importers enter into a partnership with CBP, through a memorandum of understanding, to help expedite the flow of legitimate imports and achieve high compliance with trade laws. The benefits to the importer are exemption from comprehensive audits, less CBP intervention, and enhanced prior disclosure. As of June 2014, there were 298 participants in the ISA.

3.16. In 2008 and 2013, CBP established two pilot programmes under the ISA, the Importer Self-Assessment-Product Safety Pilot (ISA-PS), which focuses on product safety compliance in conjunction with the Consumer Product Safety Commission (CPSC), and the Customs Broker Importer Self-Assessment Pre-Certification (Broker ISA PC) test.¹⁵ The ISA-PS pilot is currently being evaluated and recommendations are expected in 2014 that may change or terminate the programme. The Broker ISA-PC test sets out to capitalize on the role of customs brokers to facilitate and promote importer participation in the ISA programme; it will be reviewed after one year for possible permanent status.

3.1.1.1.5.3 Free and Secure Trade System (FAST)

3.17. The FAST system is the trusted trader programme for commercial truck drivers who have completed certain background checks and are C-TPAT certified. The programme allows for the use of dedicated FAST lanes at 34 land border crossings from Canada or Mexico that have shorter waiting times, fewer inspections, and faster processing. More than 78,000 commercial drivers participate in the programme.¹⁶ It was put in place in the aftermath of the events of 9/11.

intermediaries, non-vessel operating common carriers, foreign manufacturers (limited to Canada and Mexico only), third-party logistics providers, and U.S. marine port/terminal operators.

¹¹ CBP online information. Viewed at: <http://www.cbp.gov/sites/default/files/documents/6-2-14%20C-TPAT%20Achievements.pdf> and http://www.cbp.gov/sites/default/files/documents/ctpat101_3.pdf.

¹² CPB online information. Viewed at: <http://www.cbp.gov/border-security/ports-entry/cargo-security/c-tpat-customs-trade-partnership-against-terrorism/mutual-recognition>.

¹³ 67 FR 41298.

¹⁴ 77 FR 61012.

¹⁵ 73 FR 64356 and 78 FR 22895.

¹⁶ CBP online information. Viewed at: http://www.cbp.gov/sites/default/files/documents/ofo_fast_final_file_3.pdf.

3.1.1.1.5.4 Trusted Trader Program Test

3.18. In June 2014, CBP in conjunction with the U.S. Consumer Product Safety Commission (CPSC) and the U.S. Food and Drug Administration (FDA) announced testing of the Trusted Trader programme which aims to strengthen security, identify low-risk trade, and improve trade efficiencies. The programme will widen the government's approach to supply-chain security and trade compliance. The new programme will go beyond the C-TPAT and ISA programs to offer further incentives for business participation. It is also expected to unify and eventually replace the C-TPAT and ISA programmes. The test phase is expected to last 18 months and will be limited to fewer than ten participants (Box 3.1).¹⁷

Box 3.1 Trusted Trade Program Test

Main participant incentives

- Incentives provided to C-TPAT importers
- Incentives provided under the ISA programme
- A reduced FDA targeting(examination risk score)
- As part of a CBP penalty mitigation decision, test participants may receive a penalty offset upon request
- CBP will reduce the number of Foreign Trade Zone (FTZ) on-site inspections
- Drawback claimants will be exempt from on-site visits from drawback specialists
- Full desk reviews will be limited to no more than one per year for drawback claimants
- CBP will exempt test participants from random non-intrusive inspections
- CPSC will provide access to the participants with special training
- CPSC will reduce product safety tests on goods imported by the participants
- CPSC laboratories will grant priority "front of the line testing" to participants

Main participant responsibilities

- Agree to comply with applicable CBP laws and regulations
- Agree to comply with applicable CPSC and FDA laws and regulations
- Submit a copy of the company's customs policies and procedures
- Perform annual risk assessments to identify risks that could impact compliance
- Develop and execute an annual self-testing plan based on risk and implement corrective action
- Comply with C-TPAT programme requirements
- Cooperate with CBP, domestic and foreign port authorities, foreign customs administrations and others in the trade community

Main eligibility requirements

- U.S. or non-resident Canadian importer
- Have written policies and procedures for its import process
- Have business office staffed in the United States or Canada
- Have at least two years of import history

Source: 79 FR 34334.

3.1.1.2 Import security initiatives

3.1.1.2.1 Container Security Initiative (CSI)

3.19. The provisions of the CSI originated in the 2006 SAFE Port Act¹⁸ in order to improve security following the 9/11 terrorist acts by developing a pre-screening process in foreign ports. CBP examines pre-shipment data to identify cargo with high risk that require radiation detection and scanning in foreign ports. CBP then works with foreign law enforcement agents to inspect or scan the cargo prior to its shipment to the United States. There have been no significant changes in the programme since the last Review of the United States; the CSI still operates in 58 ports

¹⁷ 79 FR 34334.

¹⁸ P.L. 109-347.

world-wide and pre-screens approximately 80% of all maritime container cargo destined to the United States.¹⁹

3.1.1.2.2 Secure Freight Initiative (SFI)

3.20. The SFI, like the CSI, has its beginnings in the 2006 SAFE Port Act in order to improve container security. Section 232 provides for the SFI to implement at least three pilot ports to test the feasibility of 100% scanning of cargo containers destined to the United States. The Implementing Recommendations of the 9/11 Commission Act of 2007 mandated that 100% of all maritime cargo be scanned by both x-ray imaging and radiation prior to lading on a vessel to the United States. The SFI relies on partners in foreign ports to perform radiation detection and scanning abroad, prior to shipment to the United States. The SFI has been continually delayed. The deadline of May 2012 was not met, and it was further extended by two years, to 1 July 2014. In May 2014, the Secretary of the Department of Homeland Security extended the deadline until July 2016, as the conditions cited for delay in 2012 still prevailed. Those conditions are: the use of systems that are available to scan containers would have a negative impact on trade capacity and the flow of cargo; and systems to scan containers cannot be purchased, deployed, or operated at ports overseas because ports do not have the physical characteristics to install such a system. Furthermore, the programme has been scaled back in recent years, from pilot operations in six foreign ports to only one foreign port currently, in Pakistan. Reportedly only about 1% of incoming cargo is scanned.

3.21. The Implementing Recommendations of the 9/11 Commission Act of 2007 on air traffic cargo are under the purview of the Transportation Security Administration (TSA) and require 100% screening of inbound passenger air cargo. The mandate of 100% screening of all cargo flown on passenger aircraft into, out of, and within the United States was met in December 2012.

3.1.1.3 Foreign Trade Zones (FTZs)

3.22. The United States has long-standing experience of using foreign trade zones (FTZs) to increase U.S. competitiveness through a variety of means, especially by reducing customs duties. U.S. FTZs also play a significant role in trade, as 13% of U.S. imports enter through FTZs. Manufacturing accounts for over 75% of zone activity, with inputs of both foreign and domestic origin, and with most of the output of zones being consumed in the United States; thus, they function more as import processing zones. Crude oil accounts for the largest share of imports into zones, and fuels and petrochemicals are often the output of the zones. FTZs are not only located in ports or border regions, but specified facilities may also be designated as part of a FTZ. Every U.S. State has at least one zone, and 174 in total had been established by 2012.²⁰

3.23. In 2012, the Foreign Trade Zone Board, which supervises and oversees the U.S. FTZ system, established new regulations for FTZs.²¹ While the regulations address a number of issues, they focus on streamlining the application process and reducing the time necessary to establish a zone or set up manufacturing within a zone. In addition, less information is required for the paperwork.

3.1.2 Customs valuation

3.24. United States' legislation on customs valuation remains unchanged since its enactment in 1980.²² It provides the hierarchical methods for determining the customs value as per the WTO Customs Valuation Agreement. The main method of determining customs valuation continues to be transaction value. In 1996 the United States notified its legislation by reference to its previous GATT notification.²³

3.25. No changes were made to customs valuation regulations during the review period. The United States assesses customs value on an f.o.b. basis and does not use pre-shipment inspection companies for determining value.

¹⁹ CDHS online information. Viewed at: <http://www.dhs.gov/container-security-initiative-ports>.

²⁰ Foreign-Trade Zones Board (2013).

²¹ 15 CFR Part 400.

²² Trade Agreements Act of 1979, 43 FR 45135.

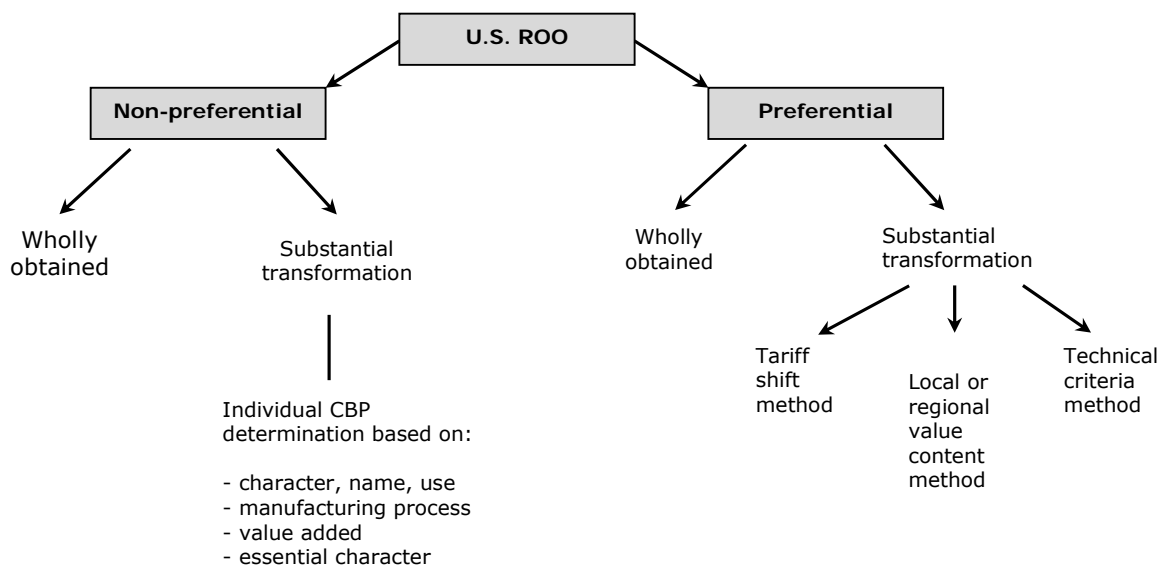
²³ WTO document G/VAL/N/1/USA/1, 1 April 1996.

3.1.3 Rules of origin

3.1.3.1 Non-preferential

3.26. U.S. non-preferential rules of origin, used to determine origin for MFN trade, recognize first the concept of wholly obtained, if a product was grown or manufactured in one country. When origin cannot be determined by this method, the criterion of substantial transformation is used to identify where a new product was obtained as a result of processes or operations as reflected by a change of name, character, or use. CBP may also use the value added or changes in nature or essential character resulting from the manufacturing process to determine substantial transformation. This methodology leaves issues open to interpretation by CBP when determining origin. CBP proposed alternatives to this methodology, but to date there have been no changes (Chart 3.2).

Chart 3.2 Rules-of-origin procedure



Source: WTO Secretariat, based on information viewed at: www.cbp.gov.

3.1.3.2 Preferential

3.27. Building upon the experience of non-preferential rules of origin, the United States and its NAFTA trading partners sought a different approach when negotiating one of the early FTAs. Thus, NAFTA and many other U.S. FTAs have incorporated a change in tariff classification "tariff shift" method to determine the eligibility of goods for FTA benefits, which may involve substantial transformation. However, the U.S. still employs other methods, such as local or regional value content, or technical or process criteria methods to determine origin (Chart 3.2). The variety of methods reflects the individually negotiated preferential agreements and the preference of certain industries for a particular method, such as for textiles. Each FTA or preference programme has a specific, unique set of origin criteria.²⁴

3.28. There were some minor changes to preferential rules of origin during the review period (Table 3.1). The United States notified its preferential origin rules to the WTO Committee on Rules of Origin in 2012.²⁵

²⁴ For an overview of the preferential rules of origin by agreement or preference programme, see WT/TPR/S/275/Rev. 2, Table III.1.

²⁵ WTO document G/RO/N/88, 18 January 2013.

Table 3.1 Changes to Preferential Rules of Origin, June 2012-July 2014

Agreement	Effective date	Citation	Change
CAFTA-DR	13 October 2012	77 FR 59241	Modification of certain textile and apparel ROO
NAFTA, Bahrain, Morocco	25 September 2012	77 FR 58931	Technical corrections as a result of the 2012 HTS changes
Australia	1 June 2012	77 FR 31683	Implementation of certain modifications to a product specific rule of origin
Chile	1 January 2013	77 FR 249	Technical corrections as a result of the 2012 HTS changes
Republic of Korea	1 January 2014	78 FR 251	Technical corrections as a result of the 2007 and 2012 HTS changes

Source: WTO Secretariat, based on the citations in the table.

3.1.3.3 Country-of-origin marking

3.29. Pursuant to long-standing laws and regulations, most foreign products must have a mark or label indicating to the final consumer where the product was manufactured. While the Tariff Act of 1930 contains the main provisions for marking, there are other product specific labelling laws at both the federal and state levels, and marking rules specific to NAFTA partners. U.S. country of origin marking rules are distinct and separate from eligibility determinations for customs purposes. It is possible that an article may be declared as a product of one country upon importation, yet possess a label indicating a different country of manufacture for marking purposes.

3.1.3.4 Certification of origin

3.30. An importer must certify the origin of a good to claim tariff preferences under an FTA or a preferential agreement. Most agreements do not require the certificate of origin to be in a specific format, with the notable exception of NAFTA. The importer must maintain documentation to support a claim for preferential treatment, which must be presented to CBP upon request. If a certificate of origin is required, it must be presented upon request.

3.1.4 Tariffs

3.31. The United States publishes its tariff schedule as the Harmonized Tariff Schedule of the United States (HTSUS), which is maintained by the U.S. International Trade Commission (USITC) pursuant to the Omnibus Trade and Competitiveness Act of 1988. The USITC regularly updates the HTSUS to reflect changes in tariff rates or other provisions. The latest version of the HTSUS was issued in January 2014. While the HTSUS is mainly concerned with tariff provisions, it also contains other legal provisions such as preferential rules of origin.

3.1.4.1 Nomenclature

3.32. There have been no nomenclature changes in the legal text of the HTSUS since the United States implemented the HS2012 changes in early 2012.²⁶ At that time, the United States did not implement a set of HS2012 changes relating to photographic films of Chapter 37, and these remain outstanding.²⁷ However, the USITC launched an investigation in late 2012 to propose certain modifications, including on Chapter 37.²⁸ The USITC has implemented relevant changes, backdated to 2012, to provide duty-free treatment for cordless video game console controllers that use infrared transmissions. Other proposed changes include modification of certain chemical products that were incorrectly named or described.

3.33. The HTSUS follows the WCO's Harmonised System nomenclature for Chapters 1 to 97. Two additional chapters, 98 and 99, contain special provisions on classification, temporary legislation, temporary modifications, or additional import restrictions.

²⁶ Proclamation 8771, 29 December 2011, 77 FR 413.

²⁷ HS 3702.96, 3702.97, and 3702.98.

²⁸ 77 FR 76300.

3.34. The United States has submitted documentation on proposed HS2007 and HS2012 changes to its WTO schedule, however these have not yet been approved or certified at this time. The United States is covered by the HS2007 and HS2012 waivers in order to implement the nomenclature changes.²⁹

3.35. The United States implemented other nomenclature changes to the HTSUS in 2011 relating to footwear³⁰; these have still not been notified to the WTO for modification of the WTO schedule.

3.1.4.2 Applied rates

3.36. The United States has three different types of tariff pertaining to: MFN rates of duty; special rates of duty for FTAs, non-reciprocal preferences, and special programmes like pharmaceuticals or civil aircraft; and a column for non-MFN duties.³¹ While the majority of tariffs are *ad valorem* (89%), the United States also uses specific and compound duty rates (11%). These are concentrated in agriculture, fish, fuels, textiles, and footwear sectors. The United States assesses duties on an f.o.b. basis.

3.37. In its current version, the HTSUS contains over 10,000, 8-digit tariff lines of which only a small per cent (1.9%) pertain to tariff-rate quotas. The applied rates have remained virtually unchanged for the past 10 years and have provided a high degree of predictability as they are generally identical to the WTO bindings. The simple average rate remains almost unchanged, at 4.8% in 2014 (Tables 3.2 and A3.1).

3.38. The United States' applied MFN rates are quite diverse, as a large number (37%) of tariff lines are free of duty, while there are a significant number (7%) of tariff peaks in sensitive sectors (tobacco, textiles, agriculture). Tariffs range from free to 510% (*ad valorem* equivalent) (Chart 3.3, Table A3.1). Many of the duty-free lines are a result of the United States' participation in the Uruguay Round zero-for-zero sectoral initiatives and sectoral agreements, ITA and Civil Aircraft. A significant number of tariffs are very low (Table 3.2). Tariffs above 25% *ad valorem* are in the agriculture sector, in particular dairy, tobacco, and vegetable products; footwear; and textiles. There is little or minimal tariff escalation in the U.S. tariff structure.

Table 3.2 Structure of the tariff schedules, selected years^a

(%)

		2004	2007	2009	2012	2014
1	Total number of tariff lines	10,304	10,253	10,253	10,511	10,514
2	Non- <i>ad valorem</i> tariffs (% of all tariff lines)	10.6	10.7	10.7	10.9	10.9
3	Non- <i>ad valorem</i> with no AVEs (% of all tariff lines)	0.0	0.0	0.0	0.0	0.0
4	Lines subject to tariff rate quotas (% of all tariff lines)	1.9	1.9	1.9	1.9	1.9
5	Duty-free tariff lines (% of all tariff lines)	37.7	36.5	36.3	37.0	36.8
6	Dutiable lines tariff average rate (%)	7.8	7.6	7.6	7.5	7.6
7	Simple average tariff (%)	4.9	4.8	4.8	4.7	4.8
8	WTO agriculture	9.7	8.9	8.9	8.5	9.0 ^b
9	WTO non-agriculture (incl. petroleum)	4.0	4.0	4.0	4.0	4.0
10	Agriculture, hunting, forestry and fishing (ISIC 1)	5.7	5.5	5.7	5.6	6.7
11	Mining and quarrying (ISIC 2)	0.4	0.3	0.4	0.4	0.4
12	Manufacturing (ISIC 3)	4.9	4.8	4.8	4.7	4.8
13	First stage of processing	3.7	3.7	3.7	3.7	4.3
14	Semi-processed products	4.3	4.2	4.2	4.2	4.2
15	Fully processed products	5.4	5.3	5.3	5.2	5.3
16	Domestic tariff "peaks" (% of all tariff lines) ^c	7.1	6.9	6.7	6.7	6.7

²⁹ WT/L/833 and WT/L/834.

³⁰ Proclamation 8742 of 31 October 2011.

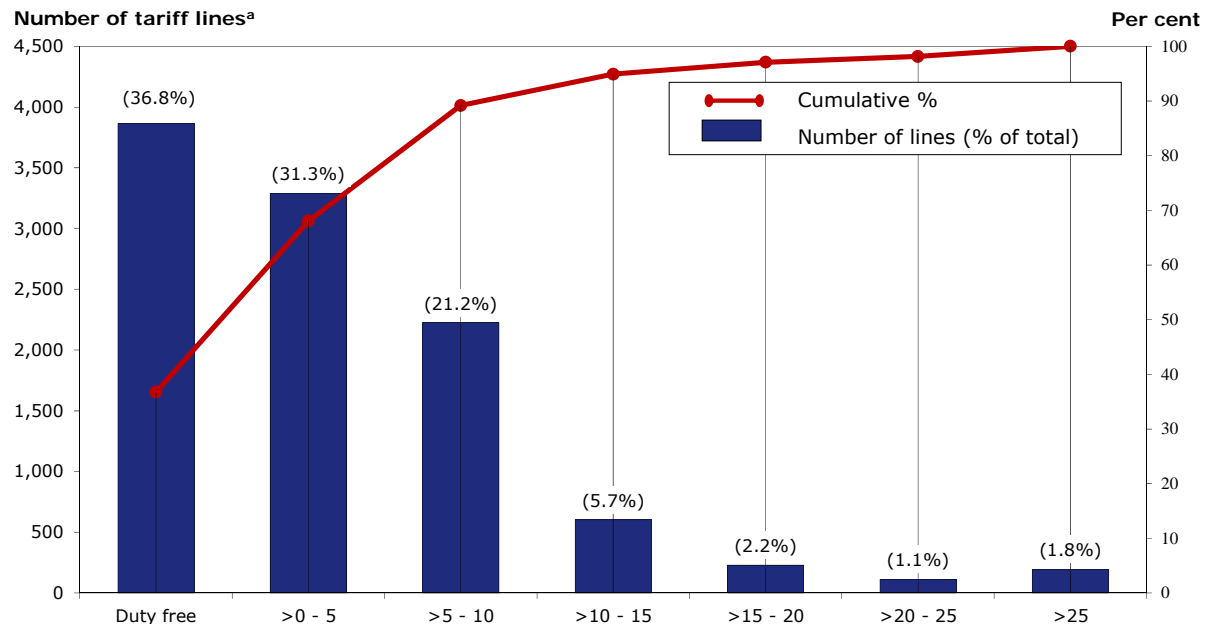
³¹ Only Cuba and North Korea are subject to these duties.

		2004	2007	2009	2012	2014
17	International tariff "peaks" (% of all tariff lines) ^d	5.5	5.2	5.3	5.0	5.1
18	Overall standard deviation	12.6	11.9	11.8	11.9	13.7
19	Nuisance applied rates (% of tariff lines) ^e	7.1	7.1	7.2	7.7	7.8
20	Bound tariff lines (% of all tariff lines) ^f	100.0	100.0	100.0	100.0	100.0

- a The tariff is provided at the 8-digit level. Averages exclude in-quota rates and lines. Calculations include *ad valorem* equivalents (AVEs) for non-*ad valorem* duties, calculated by the U.S. authorities using import price data.
- b In 2014, the average tariff on imports of agricultural products (WTO Definition) into the United States was slightly higher than in 2012 due to lower commodity prices that led to higher *ad valorem* equivalents for tariff lines with specific or compound duties. The increase was not caused by a change in tariff policy.
- c Domestic tariff peaks are defined as those exceeding three times the overall average applied rate.
- d International tariff peaks are defined as those exceeding 15%.
- e Nuisance rates are greater than 0% but inferior or equal to 2%.
- f Two lines applying to crude petroleum are not bound.

Source: WTO Secretariat calculations, based on data provided by the U.S. authorities and notifications.

Chart 3.3 Frequency distribution of MFN tariff rates, 2014



- a The total number of lines is 10,514, of which 9,368 are *ad valorem* lines and 1,146 non-*ad valorem*.

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

3.39. In 2010 the United States passed legislation providing temporary duty suspensions on several hundred products that would lower the manufacturing costs for many U.S. companies.³² While there were initiatives to extend these provisions in Congress, they expired on 31 December 2012, and no new legislation has been passed to date.

³² Pub.L. 111-227.

3.1.4.3 Bindings

3.40. U.S. WTO tariff commitments, as contained in Schedule XX, were last updated in 2011 after approval of the HS2002 nomenclature changes.³³ However, a number of changes to the HTSUS have not yet been notified to the WTO as a change to Schedule XX. These include the third and fourth revisions to the pharmaceutical coverage, Chapter notes, and Article XXVIII tobacco renegotiations.

3.41. The WTO tariff commitments result in 100% binding coverage statistically; however two tariff lines pertaining to crude petroleum, remain unbound. Other duties and charges are bound at zero with the exception of seven lines, which are bound at higher levels.³⁴

3.1.4.4 Tariff rate quotas

3.42. The United States maintains tariff-rate quotas on 200 tariff lines of agricultural products, (beef, dairy products, peanuts, sugar, chocolate & cocoa, olives, satsumas, animal feeds, tobacco, and cotton products). Approximately half are in the dairy sector, including milk, cream, butter, ice cream, and cheeses.

3.1.5 Other charges affecting imports

3.1.5.1 Customs user fees

3.1.5.1.1 Merchandise Processing Fee

3.43. The Merchandise Processing Fee (MPF) is applied on all formal and informal imports to offset the CBP commercial operations budget. For formal entries, an *ad valorem* fee of 0.3464% is applied to the customs value; subject to a minimum and maximum cap of US\$25 and US\$485. Informal entries, i.e. mail imports, are subject to a flat fee ranging between US\$2.00 and US\$9.00 per shipment.

3.44. CBP increased the limit qualifying as an informal entry from US\$2,000 to US\$2,500 in 2012. The rule also removes the requirement for formal entry of textiles formerly subject to absolute quotas under the ATC.³⁵

3.45. There are numerous exemptions to the merchandise processing fee, mostly for FTA or preferential imports. In addition to the exemptions noted in the previous report³⁶, exemptions were extended to new FTA partners, Colombia, the Republic of Korea, and Panama during the review period.³⁷

3.1.5.1.2 COBRA fees

3.46. Consolidated Omnibus Budget Reconciliation Act (COBRA) fees are assessed on all imports in order to offset inspection costs related to compliance with customs laws. The fee varies by the mode of arrival (Table 3.3).

Table 3.3 COBRA fees

Fee	Reference	Fee rate/annual decal/cap/user fee	Note
Commercial vessel	19 CFR 24.22(b)(1)	US\$437/ US\$5,955 (cap)	
Commercial vehicle	19 CFR 24.22(c)	US\$5.50/US\$100 (annual cap)	
Rail cars	19 CFR 24.22(d)	US\$8.25/ US\$100 (prepay)	

³³ WT/Let/754.

³⁴ Schedule XX.

³⁵ 77 FR 72715.

³⁶ WTO document WT/TPR/S/275/Rev.2, 8 March 2013.

³⁷ 78 FR 63052, 77 FR 59064, 77 FR 15943.

Fee	Reference	Fee rate/annual decal/cap/user fee	Note
Private aircraft/vessel	19 CFR 24.22(e)	US\$27.50 (annual decal)	Exemption for Canada, Mexico, and U.S. territories, possessions or adjacent islands
Air/sea passenger	19 CFR 24.22(g)	US\$5.50 (per arrival)	
Cruise vessel and ferry passenger travel from Canada, Mexico, and U.S. territories, possessions or adjacent islands	19 CFR 24.22(g)(ii)	US\$1.93 (per arrival)	
Dutiable mail	19 CFR 24.22(f)	US\$5.50 (per dutiable package)	
Customs broker	19 CFR 24.22(c)	US\$138 (annual fee)	
Barge/bulk carriers from Canada and Mexico	19 CFR 24.22(b)(2)(i)	US\$110/US\$1,500 (cap)	

Source: CBP online information. Viewed at: <http://www.cbp.gov/trade/basic-import-export/uftd-info>, and http://www.cbp.gov/sites/default/files/documents/userfee0407_3.pdf.

3.1.5.1.3 Harbor Maintenance Tax

3.47. The Harbor Maintenance Tax (HMT) is assessed on imported goods arriving by vessel.³⁸ The fees are placed in the Harbor Maintenance Trust Fund (HMTF), which is used by the U.S. Army Corps of Engineers to maintain navigation channels, mostly dredging ports and channels.³⁹ In recent times, the HMTF has accrued significant surpluses as typically only about half of collections have been appropriated for works. The fee rate remains unchanged at 0.125% on the declared value of commercial cargo.

3.1.5.1.4 Agriculture fees

3.48. Pursuant to a number of laws or regulations, CBP collects a number of agricultural fees on behalf of the Department of Agriculture (Table 3.4). The main agriculture fees, the Agriculture Quarantine and Inspection (AQI) fees vary according to the type of carrier, and are instituted to protect U.S. agriculture and the environment against the risks of invasive diseases and pests. The other fees concern services and lab fees for veterinary imports, and assessments on a number of products for research and promotion activities. These fees remain unchanged since the last review.

3.49. In 2013, the GAO issued a report highlighting the gaps between the fee revenues and the programme costs resulting in a US\$325 million shortfall in 2011, as well as concerns over the collection process for AQI fees.⁴⁰ As a result, in April 2014, APHIS proposed rules on new fee categories, adjusting fee rates, and a fee increase for overtime services.⁴¹

Table 3.4 Agricultural fees

Fee	Legal reference	Reason	Amount of fee
Beef Imports Assessment	7 CFR Part 1260	Beef research, promotion, consumer information	Varies according to the HTS number
Dairy Imports Assessment	7 CFR Part 1150	Dairy research, promotion, consumer information	US\$0.01327 per kg of milk solids
Pork Imports Assessment	7 CFR Part 1230	Pork research, promotion, consumer information	Varies according to the HTS number

³⁸ It is also assessed on cruise ship passengers, which accounts for a very small amount of revenues.

³⁹ The use of the funds by the U.S. Army Corps of Engineers requires an appropriation by Congress.

⁴⁰ GAO online information. Viewed at: <http://www.gao.gov/assets/660/652555.pdf>.

⁴¹ 79 FR 22895 and 79 FR 22887.

Fee	Legal reference	Reason	Amount of fee
Honey Imports Assessment	Honey Research, Promotion and Information Act of 1984; Public Law 98-590 7 CFR 1240	Honey research, promotion, consumer information	Varies according to the HTS number
Cotton Imports Assessment	Cotton Research and Promotion Act of 1989 7 CFR 1205	Cotton research, promotion, consumer information	Varies according to the HTS number
Potato Imports Assessment	Food, Agriculture and Conservation Act of 1990 7 CFR 1207	Potato research, promotion, consumer information	Varies according to the HTS number
Mushroom Imports Assessment	Food, Agriculture and Conservation Act of 1990 7 CFR 1209	Mushroom research, promotion, consumer information	Varies according to the HTS number
Watermelon Import Assessments	Watermelon Research and Promotion Act 7 CFR 1210	Watermelon research, promotion, consumer information	Varies according to the HTS number
AQI Commercial Vessel	Food, Agriculture and Conservation Act of 1990; also MOU	Agricultural quarantine and inspection services	US\$496.00 per arrival
AQI Commercial Truck	Food, Agriculture and Conservation Act of 1990; also MOU	Agricultural quarantine and inspection services	US\$5.25 per arrival
AQI Commercial Truck Decal	Food, Agriculture and Conservation Act of 1990; also MOU	Agricultural quarantine and inspection services	US\$105.00
AQI International Air Passenger	Food, Agriculture and Conservation Act of 1990; also MOU	Agricultural quarantine and inspection services	US\$5.00 per arrival
AQI Aircraft Clearance	Food, Agriculture and Conservation Act of 1990; also MOU	Agricultural quarantine and inspection services	US\$70.75 per arrival
AQI Loaded Rail Car	Food, Agriculture and Conservation Act of 1990; also MOU	Agricultural quarantine and inspection services	US\$7.75 per arrival
Veterinary Diagnostic User Fees	9CFR 130.14 through 130.19	Costs for tests from the national Veterinary Services Laboratories	Varies depending on the type of test
Veterinary Services User Fees	9CFR 130.2 through 130.30	Costs for veterinary services	Varies by type of service

Source: CPB online information. Viewed at: http://www.cbp.gov/sites/default/files/documents/userfee0407_3.pdf.

3.1.5.2 Excise taxes

3.50. U.S. excise taxes are assessed at the federal level on a variety of goods and services. Some excise taxes are allocated to trust funds for specific purposes, while others are generally available for expenditure (general fund) (Table 3.5).

3.51. Excise tax rates on air transportation were revised during the review period, and internal rules and regulations were amended for medical devices, tanning services, and foreign financial institutions.

Table 3.5 Federal Excise Taxes

Fund/Subject	Products
Trust funds	
Highway Trust Fund	Gasoline, diesel, and alcohol fuels; ethanol, liquid fuel, ethanol, methanol, bio-diesel, CNG, LPG, LNG, other special fuels, highway tractors, heavy trucks, trailers, tires for heavy vehicles, highway use by heavy vehicles
Airport and Airway Trust Fund	Domestic air passengers transportation, international air passengers transportation, air cargo, aviation fuels ^a
Inland Waterways Trust Fund	Diesel fuel and other
Harbour Maintenance Trust Fund	Commercial cargo
Leaking Underground Storage Tank Trust Fund Excise Tax	Certain fuels
Oil Spill Liability Trust Fund	Crude oil
Sport Fish Restoration and Boating Trust Fund	Fishing rods, reels, and other fishing equipment, motorboat fuel, small-engine fuel
Land and Water Conservation Fund	Bows and arrows, regular firearms and ammunition, motorboat fuel
Black Lung Disability Trust Fund	Coal
Vaccine Injury Compensation Trust Fund	Certain taxable vaccines
Patient-Centered Outcomes Research Trust Fund	Specified health insurance policy
Annual Fee on Branded Prescription Pharmaceutical Manufacturers and Importers	Annual fee for all covered manufacturers and importers
General funds	
Distilled spirits, wine, and beer	Distilled spirits, wine (including champagne and hard apple cider), and beer
Tobacco	Tobacco products, cigarette papers and tubes
Communications	Telephone service, teletypewriter service, and telephone cards
Gas Guzzler	Automobiles (tax is related to vehicle fuel economy rating)
Water Transportation Passenger	Per passenger per covered voyage on commercial vessels
Ozone-depleting chemicals	Certain CFC and related chemicals
Foreign procurement	Specified federal procurement payments
Certain medical devices	Instrument, apparatus, implement, machine, contrivance, implant, <i>in-vitro</i> reagent, or other similar or related articles
Non-regular firearms	Machine guns, destructive devices, sawed off shotguns, etc.
Foreign private foundation net investment income	Foreign private foundation net investment income
Insurance policies issued by foreign insurers	Insurance

- a 26 USC 4221 provides for an exemption, based on reciprocity, from U.S. excise taxes on fuel for civil aircraft engaged in foreign trade with the United States and any of its possessions, where the Department of Commerce has made a finding that a foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States.

Note: Other excise taxes related to health care, real estate, or miscellaneous regulatory excise taxes are not included as they are not trade related.

Source: Joint Committee on Taxation (2011), *Present Law and Background Information on Federal Excise Taxes*, January. Viewed at: <https://www.jct.gov/publications.html?func=startdown&id=3721>.

3.52. In addition to federal excise taxes, state excise taxes are imposed on cigarettes, other tobacco products, motor fuels, distilled spirits, wine, and beer. The rates vary widely from State to State.⁴² Some excise taxes are also at the local or municipal level.

⁴² The White House online information. Viewed at: http://www.taxadmin.org/fta/rate/tax_stru.html.

3.1.6 Import prohibitions, restrictions, and licensing

3.1.6.1 Prohibitions and restrictions

3.53. The United States imposed several measures during the review period to restrict or prohibit certain imports. As a result of the National Strategy for Combatting Wildlife Trafficking (Section 2.1.3), the United States announced a ban on the commercial import, export, or re-sale of elephant ivory.⁴³ In 2013, the President issued an executive order prohibiting imports from Burma of jadeite, rubies or jewellery containing jadeite or rubies.⁴⁴

3.54. In addition, since 2012, the United States has implemented or extended restrictions on the import of certain archaeological and ethnological materials from several countries, pursuant to UNESCO's 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, as implemented through the Convention on Cultural Property Implementation Act (CCPIA). These provisions entered into effect for certain cultural material imports from Belize and Bulgaria, and were extended for Cambodia, China, Cyprus, Guatemala, Honduras, Mali, and Peru. Each country has a specific list of archaeological and/or ethnological materials that are subject to the restrictions.⁴⁵ Pursuant to the CCPIA⁴⁶ import restrictions remain in place for Bolivia, Colombia, Nicaragua, El Salvador, Italy, and Greece. Restrictions also remain in place for Iraq pursuant to the Emergency Protection for Iraqi Cultural Antiquities Act of 2004.⁴⁷

3.55. The U.S. CBP is responsible for enforcing hundreds of laws, on behalf of around 40 federal agencies, that may restrict or prohibit importation.⁴⁸ The laws may prohibit the importation of a product or allow a product to be imported under certain conditions (e.g. licensing). Other restrictions, such as limitations on the entry via certain ports or restrictions on routing are also possible (Table 3.6).

Table 3.6 Prohibitions, restrictions, or other special requirements

Product	Prohibition, restriction, or requirement
Cheese, milk and dairy products	Subject to requirements of the Food and Drug Administration and the Department of Agriculture
Fruits, vegetables, and nuts	Import requirements relating to grade, size, quality, and maturity
Insects in a live state that are injurious to cultivated crops and the eggs, pupae, or larvae of such insects	Prohibited from importation, except for scientific purposes, under regulations prescribed by the Secretary of Agriculture
Livestock and animals	Inspection and quarantine requirements of the Animal and Plant Health Inspection Service (APHIS)
Meat, poultry and egg products	Subject to USDA regulations and must be inspected by the Food Safety and Inspection Service (FSIS)
Seeds	Provisions of the Federal Seed Act of 1939 and regulations of the Agricultural Marketing Service, govern the importation into the United States
Wood packing materials	Import regulations require wood packing material to be treated and marked
Household appliances	Energy standards to be met, and labeled to indicate expected energy consumption or efficiency
Commercial and industrial equipment	Energy performance standards to be met

⁴³ The White House online information. Viewed at: <http://www.whitehouse.gov/the-press-office/2014/02/11/fact-sheet-national-strategy-combatting-wildlife-trafficking-commercial-b>.

⁴⁴ Executive Order 13651 of August 6, 2013.

⁴⁵ 79 FR 2781, 79 FR 13873, 79 FR 2088, 78 FR 56832, 78 FR 14183, 77 FR 59541, 77 FR 58020, 77 FR 41266, 77 FR 33624.

⁴⁶ 66 FR 63490, 71 FR 13757, 65 FR 64140, 60 FR 13351, 76 FR 3012, 76 FR 74691.

⁴⁷ 73 FR 23334.

⁴⁸ CBP online information. Viewed at: <http://www.cbp.gov/travel/international-visitors/kbyg/prohibited-restricted>.

Product	Prohibition, restriction, or requirement
Toys and children's articles	Compliance with applicable regulations issued under the Federal Hazardous Substances Act
Lead in paint	Banned if they contain more than 0.06% lead by weight of the dried plant film
Bicycles and bicycle helmets	Bicycles to meet regulations issued under the Federal Hazardous Substances Act and helmets must CPSC's Safety Standard
Fireworks	Labeling requirements and technical specifications to be met
Flammable fabrics	Conform to applicable flammability standard under the Flammable Fabrics Act
Art materials	Conform to the provisions of the Labeling of Hazardous Art Materials Act
Cigarette lighters and multi-purpose lighters	Compliance with the child-resistant safety standard
Radiation- and sonic radiation-producing products	Compliance with a radiation performance standard
Radio frequency devices	Subject to radiation performance standards
Foods, drugs, cosmetics, and medical devices	Subject to the requirements of the Public Health Security and Bio-Terrorism Preparedness and Response Act of 2002
Foods, cosmetics, etc.	Prohibits the importation of articles that are adulterated or misbranded and products that are defective, unsafe, filthy, or produced under unsanitary conditions
Biological drugs	Domestic as well as foreign manufacturers of such products must obtain a U.S. license for both the manufacturing establishment and for the product intended to be produced or imported
Biological materials and vectors	Prohibited unless they have been propagated or prepared at an establishment with a U.S. license for such manufacturing issued by the Secretary of the Department of Health and Human Services
Gold and silver	Articles made of gold or alloys thereof are prohibited importation into the United States if the gold content is one half carat divergence below the indicated fineness
Counterfeit articles	Articles bearing facsimiles or replicas of coins or securities of the United States or of any foreign country cannot be imported
Monetary instruments	If a person receives more than US\$10,000 at one time from or through a place outside the United States, a report of the transportation (form FINCEN 105) must be filed with CBP
Pesticides	The regulations require importers to submit to CBP an EPA Notice of Arrival that the EPA has reviewed and approved before the importation arrives in the United States
Toxic substances	Imports will not be released from CBP custody unless proper certification is presented to presented to CBP indicating that the import "complies with" or "is not subject to" TSCA requirements
Hazardous substances	Substances be shipped to the United States in packages suitable for household use
Refrigerants	The EPA regulates the importation of ozone-depleting substances
Textile products	Must be stamped, tagged, labeled, or otherwise marked with the specific information
Wool	Must tagged, labeled, or otherwise clearly marked with specific information
Fur	Must tagged, labeled, or otherwise clearly marked with specific information
Dog or cat fur	The importation, exportation, transportation, distribution or sale of any product that consists of any dog fur, cat fur, or both, is prohibited
Matches, fireworks, knives	Certain matches, fireworks, and knives are prohibited
Obscene, immoral, or seditious matter and lottery tickets	Certain books, writings, advertisements, circulars, or pictures containing these are prohibited
Products of convict or forced labour	Merchandise produced, mined, or manufactured, wholly or in part by means of the use of convict labour, forced labor, or indentured labour under penal sanctions is prohibited from importation

Source: CBP online information. Viewed at: <http://www.cbp.gov/sites/default/files/documents/Importing%20into%20the%20U.S.pdf>.

3.56. In October 2012, the United States notified 12 specific quantitative restrictions to the WTO, under the new notification procedures.⁴⁹

3.1.6.2 Import licensing

3.57. The United States requires an import licence (automatic and non-automatic⁵⁰) for imports of certain product categories. The licensing requirements are imposed by six U.S. executive Departments under various statutes, and for various purposes (Table 3.7).

3.58. The United States has extended the provisions of the Steel Import Monitoring and Analysis System (due to expire in March 2013) to 21 March 2017.⁵¹ This licensing programme provides statistical data to the public on steel imports into the United States seven weeks in advance of when it would normally be available. In February 2013, the Department of Agriculture issued a proposed rule to amend certain aspects of the Dairy Import Licensing Program, including the methodology for issuing licences.⁵² To date, a final rule has not been issued.

Table 3.7 Products subject to import licensing

Category	Products	Agency	Purpose	Legal reference	Other info
Plant and plant products	Certain plant and plant products	Department of Agriculture	To protect against the entry of plant pests and diseases, and to protect endangered plant species	Section 412 of the Plant Protection Act, 7 U.S.C. 7712 and the Endangered Species Act,	Persons, firms, and institutions resident in the United States may apply for a licence
Animals and animal products	Certain animal and animal products	Department of Agriculture	To protect domestic agriculture from the introduction or entry of animal diseases or disease vectors	Title 9 C.F.R., Parts 92, 94.7, 94.16, 95.4, 95.18, 95.19, 95.20 through 98, 104 and 122; and: 21 U.S.C-102 to 105, 111, 134, 135, 151-159 and 19 U.S.C-1306	All persons, firms and institutions in the United States may apply for permits
Sugar	Raw and refined sugar	Department of Agriculture	To administer the sugar TRQ and the sugar re-export programme	15 CFR 2011, Sub-part A, 15 CFR 2011, Sub-part B.7 CFR 1530	All importers are eligible to apply for certificates for specialty sugars. Only U.S refiners may apply for licences to import quota-exempt sugar

⁴⁹ G/L/59/Rev.1.

⁵⁰ In its notification to the WTO, the United States did not distinguish between automatic and non-automatic licences. However it is clear that several are non-automatic.

⁵¹ 78 FR 11090.

⁵² 78 FR 8434.

Category	Products	Agency	Purpose	Legal reference	Other info
Dairy products	Certain dairy products	Department of Agriculture	An administrative tool that governs imports of certain dairy products subject to TRQs resulting from the Uruguay Round Agreement	CFR 6.20-6.37	Importers or manufacturers of dairy products may apply for import licences if they meet the Import Regulation performance criteria on the quantity of imports entered in a previous 12-month period, and for manufacturers the specified level of dairy production in a previous 12-month period. Manufacturers must be listed in USDA's <i>Dairy Plants Surveyed</i>
Steel	All basic steel mill product	Department of Commerce, International Trade Administration	To provide fast and reliable statistical information on steel imports to the government and the public	74 FR 11474, 78 FR 11090	Only registered users may file steel licences; registration is available to all and is free
Natural gas	Natural gas, including LNG and CNG	Department of Energy	To fulfil the requirements of the Natural Gas Act requiring authorization to import	15 U.S.C. 717b	All persons, firms, and institutions may import natural gas
Fish and wildlife	Fish and wildlife including endangered species	Department of the Interior, U.S. Fish and Wildlife service	To: identify commercial importers and exporters of wildlife; require records that fully and correctly disclose each importation or exportation of wildlife and the subsequent disposition of the wildlife by the importer or exporter	50 CFR Part 14	All persons, firms, and institutions may apply for a licence
Firearms and ammunition	Firearms and ammunition	Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives	To administer licensing provisions under three statutes	18 U.S.C., Chapter 44 and 27 CFR Part 478	All persons, firms, and institutions may apply for a licence
Firearms, ammunition, and implements of war	Defense articles on the U.S. munitions list	Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives	To regulate international trafficking in arms, consistent with U.S. national security and foreign policy interests	18 U.S.C. Chapter 44, 22 U.S.C. 2778, 26 U.S.C. Chapter 53	All persons, firms, and institutions may apply for a licence
Explosives	Explosives, blasting agents and detonators	Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives	To protect against the misuse and unsafe storage of explosive materials	18 USC Chapter 40; 27 CFR Part 555	All persons, firms, and institutions may apply for a licence

Category	Products	Agency	Purpose	Legal reference	Other info
Controlled substances and listed chemicals	Controlled substances and listed chemicals	Department of Justice, Drug Enforcement Administration	To restrict the quantity of imports of controlled substances and listed chemicals (not monetary value) and to maintain a monitoring system	Title 21, CFR, Part 1310, 1312, 1313, 21 USC sections 822, 823, 826, 953, 957 and 958	Importation only by approved, registered importers
Distilled spirits (beverages), wine, and malt beverages	Distilled spirits (beverages), wine, and malt beverages	Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau	To provide an enforcement mechanism to ensure that importers comply with all requirements of federal law relating to alcohol	Federal Alcohol Administration Act	Any person, firm or institution may apply for a licence
Distilled spirits or alcohol for industrial use	Distilled spirits or alcohol for industrial use, including denatured spirits	Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau	To prevent tax fraud	26 U.S.C. 5001, 26 U.S.C. 5002(a), 26 U.S.C. 5171, 26 U.S.C. 5181, 27 CFR Part 19	Any person, firm or institution may apply for a licence
Tobacco products	Tobacco products, processed tobacco, and proprietors of export warehouses	Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau	Primary purpose is to ensure proper collection of federal excise tax revenue on tobacco products	Title 26 U.S.C. Chapter 52	Any person, firm or institution may apply for a licence
Nuclear facilities and materials	Production and utilization facilities, special nuclear materials, source materials, and by-product materials, including when such materials are contained in radioactive waste.	Nuclear Regulatory Commission	To protect public health and safety and the environment, and maintain the common defence and security of the United States, by exercising prudent controls over the possession, use, distribution, and transport of such items	Atomic Energy Act, 10 CFR Part 110	All persons, firms and institutions must have a permanent (physical) address within the United States

Source: WTO document G/LIC/N/3/USA/10, 24 September 2013.

3.1.6.3 Sanctions, controls, or special procedures

3.59. The United States maintains a number of sanctions against certain countries, for various reasons, some of which impose trade restrictions. While the majority of sanctions do not have trade provisions, some have direct provisions on goods or services. A variety of trade sanctions remain in place for Cuba, Iran, North Korea, Sudan, and Syria.⁵³

3.60. Trade in rough diamonds is subject to special provisions in order to combat the trade of conflict diamonds. The regulations pertaining to Kimberly Process Certification Scheme for the importation or exportation of rough diamonds, as implemented by the United States as the Clean

⁵³ U.S. Department of the Treasury online information. Viewed at: <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>.

Diamond Trade Act of 2003, were amended in 2013.⁵⁴ These changes require importers and exporters to retain a copy of the original Kimberly Process Certificate for five years, and restate certain provisions of the Rough Diamonds Control Regulations for regulatory clarity.

3.61. Certain provisions with respect to Cuba pursuant to the Trading with the Enemy Act were set to expire in September 2012 and 2013. However the President prolonged those provisions for one-year periods, thus they are currently in place until September 2014.⁵⁵

3.62. In December 2012, the President extended Permanent Normal Trade Relations treatment to the Russian Federation and Moldova.⁵⁶

3.1.7 Anti-dumping, countervailing, and safeguard measures

3.1.7.1 Anti-dumping and countervailing duties

3.63. During the review period, the United States continued to use trade remedies, with a rise in activity in 2013, and made some changes or updates to internal regulations relating to anti-dumping or countervailing duty investigations. The main changes were with respect to the extension of time limits for submission, the definition of "factual information" and the time limits for submission of factual information, certification of factual information during proceedings, and a provision that strengthens the accountability of attorneys and non-attorney representatives who appear in proceedings.⁵⁷ All the changes cover both anti-dumping and countervailing duty investigations and relate to the investigation procedures.

3.64. Furthermore, the Department of Commerce instituted some changes in practice.⁵⁸ In late 2013, changes for anti-dumping investigations were announced regarding the selection of respondents in administrative review proceedings. This requires applying a statistically valid sampling method to select respondents, who are used to determine the applicable anti-dumping rate. Further, with respect to its practice regarding non-market economy anti-dumping proceedings, the Department of Commerce will no longer consider the non-market economy as an exporter conditionally subject to administrative reviews.⁵⁹

3.65. In 2014, following the outcome of a court case, the Department of Commerce confirmed that it would not apply the previously withdrawn regulatory provisions governing targeted dumping.⁶⁰ The Department of Commerce also issued a final rule on the use of market economy input prices in non-market economy proceedings.⁶¹ Under the new rules, additional parameters must be met, such as a threshold, before the Department of Commerce will use market economy input prices in non-market economy investigations.

3.66. The United States had 294 anti-dumping and countervailing measures in place at the end of 2013, an increase of 18% since 2010. There was a general increase in the use of anti-dumping and countervailing duties on emerging markets during 2010-14, while remedies with respect to developed countries decreased. China was the country mainly affected, accounting for over 40% of all orders in 2013. The Republic of Korea and Chinese Taipei were also slightly more impacted during the period, whereas EU countries, Japan, and Brazil all had slightly lower levels of remedies applied (Table 3.8).

⁵⁴ 78 FR 40627.

⁵⁵ 77 FR 56753, 78 FR 57790, and 78 FR 57223. WTO documents G/ADP/N/1/USA/1/Suppl.15 and G/SCM/N/1/USA/1/Suppl.15, 10 October 2013.

⁵⁶ Proclamation 8920 of December 20, 2012.

⁵⁷ 78 FR 22773, 78 FR 21246, 78 FR 42678. WTO documents G/ADP/N/1/USA/1/Suppl.14 and G/SCM/N/1/USA/1/Suppl.14, 29 July 2013; and WTO documents G/ADP/N/1/USA/1/Suppl.12 and G/SCM/N/1/USA/1/Suppl.12, 22 April 2013.

⁵⁸ 78 FR 65963.

⁵⁹ 78 FR 65963.

⁶⁰ 79 FR 22371.

⁶¹ 78 FR 46799.

Table 3.8 Anti-dumping and countervailing duty measures, by trading partner, 2010-13

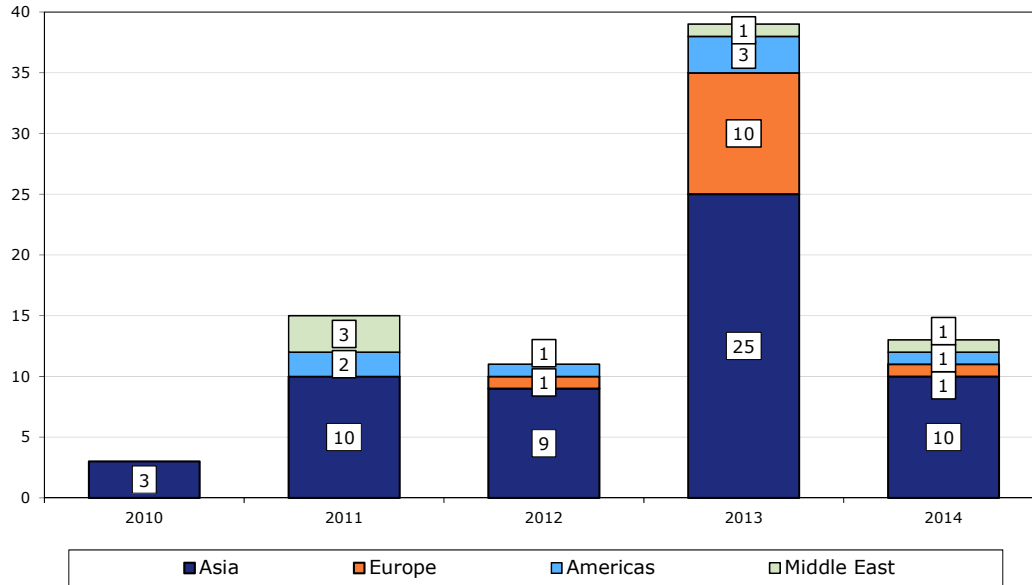
	2010	2011	2012	2013
Trading partner/region				
China	108	114	118	123
EU countries (27)	34	25	23	23
India	24	23	23	23
Chinese Taipei	16	16	18	18
Korea, Republic of	16	14	15	15
Japan	16	14	13	14
Brazil	14	12	10	10
Mexico	8	6	6	7
Other America	7	7	5	5
Other Asia (including Australia)	29	29	27	30
Other Europe	20	20	17	17
Africa	4	4	4	4
Middle East	4	4	5	5
Total	300	288	284	294

Source: WTO Secretariat, based on USITC (2011), "Antidumping and Countervailing Duty Orders in place as of 29 May 2014". Viewed at: www.usitc.gov/trade_remedy/documents/orders.xls, http://www.usitc.gov/trade_remedy/documents/historical_case_stats.pdf; and Department of Commerce, Import Administration online information. Viewed at: <http://enforcement.trade.gov/frn/index.html>.

3.67. U.S. anti-dumping investigations have generally been below historic levels in recent years, with the exception of 2013, when there was a significant increase in investigations. Some 39 investigations were initiated in 2013, compared to an average in the other 4 years of 2010-14 of 9 per year.

Chart 3.4 Anti-dumping investigations initiated by region, 2010-14

(N° of investigations)



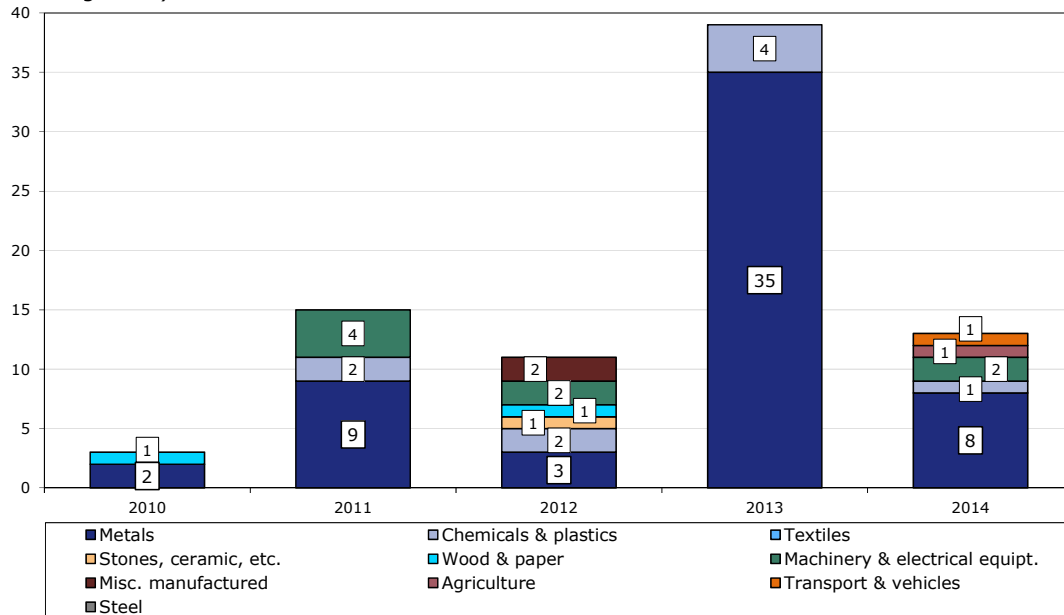
Note: Data until 30 June 2014.

Source: WTO Secretariat, based on U.S. Department of Commerce online information. Viewed at: <http://enforcement.trade.gov/frn/index.html>; <http://enforcement.trade.gov/stats/inv-initiations-2000-current.html>; and USITC online information. Viewed at: http://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/active/index.htm.

3.68. In terms of product groups, anti-dumping investigations generally targeted a mix of products, except in 2013 when 35 investigations were launched in the metals sector, 33 of them relating to steel products (Chart 3.5).

Chart 3.5 Anti-dumping investigations initiated by product, 2010-14

(N° of investigations)

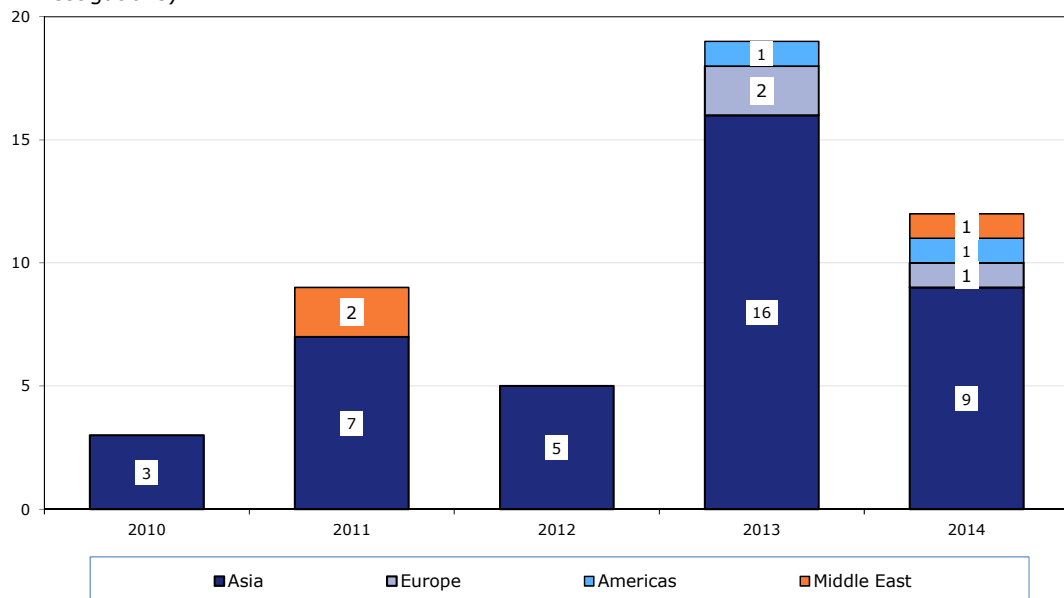


Note: Data until 30 June 2014.

Source: WTO Secretariat, based on U.S. Department of Commerce online information. Viewed at: <http://enforcement.trade.gov/frn/index.html>; <http://enforcement.trade.gov/stats/inv-initiations-2000-current.html>; and USITC online information. Viewed at: http://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/active/index.htm.

Chart 3.6 Countervailing measures initiated by region, 2010-14

(N° of investigations)



Note: Data until 30 June 2014.

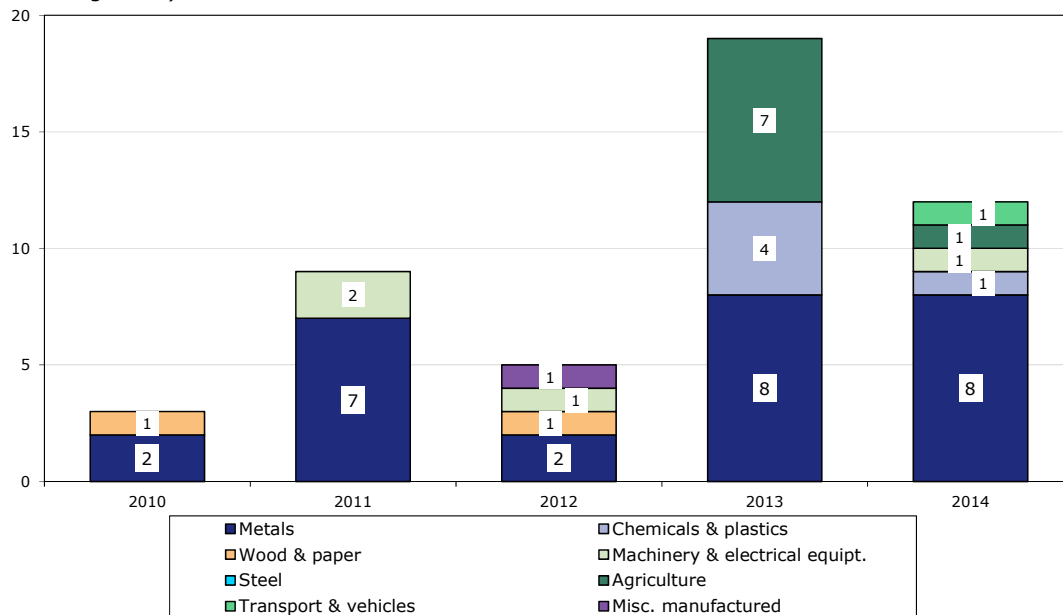
Source: WTO Secretariat, based on U.S. Department of Commerce online information. Viewed at: <http://enforcement.trade.gov/frn/index.html>; <http://enforcement.trade.gov/stats/inv-initiations-2000-current.html>; and USITC online information. Viewed at: http://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/active/index.htm.

3.69. The trend for countervailing duty investigations during 2010-14 was similar to that of anti-dumping investigations. They remained relatively low with the exception of 2013 when 19 investigations were initiated. Asian countries, in particular China, were the most affected with countervailing duty investigations (Chart 3.6).

3.70. In terms of products covered, the impact is diverse. In 2011 and 2013, the metals sector was particularly affected, while in other years agriculture, wood, machinery, chemicals, and transport and vehicles were the subject of investigations (Chart 3.7).

Chart 3.7 Countervailing measures initiated by product, 2010-14

(N° of investigations)



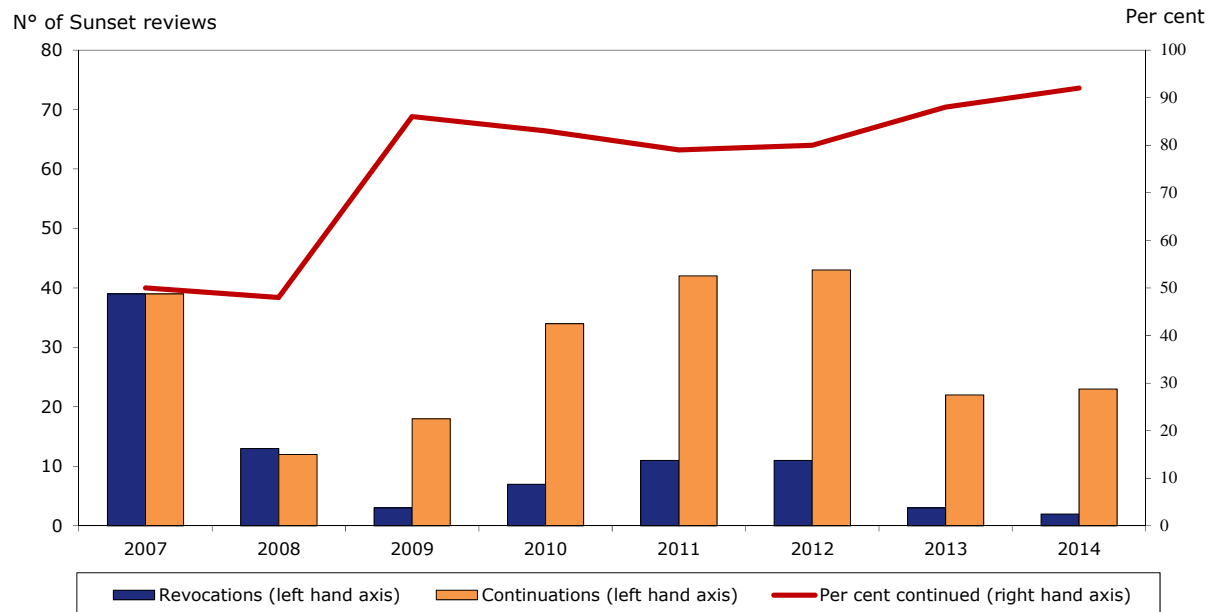
Note: Data until 30 June 2014.

Source: WTO Secretariat, based on U.S. Department of Commerce online information. Viewed at: <http://enforcement.trade.gov/frn/index.html>; <http://enforcement.trade.gov/stats/inv-initiations-2000-current.html>; and USITC online information. Viewed at: http://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/active/index.htm.

3.1.7.2 Sunset reviews

3.71. Section 751 of the Tariff Act of 1930 provides for the review of anti-dumping and countervailing duty orders no later than five years after their publication. An average of 40 reviews per year have been conducted in the United States over the last several years, to determine whether revocation of the order would lead to continuation or recurrence of dumping or subsidy, and material injury. Through the domestic processes for review, the Department of Commerce and the USITC determine whether the duties should be kept in place (continued) or lifted (revoked).

3.72. While the number of reviews has varied over the last eight years, there has been a significant trend with fewer orders being revoked. In 2007-8, approximately half of all orders were revoked, whereas in 2013-14, about 90% of reviews resulted in the continuation of the remedy (Chart 3.8).

Chart 3.8 Overview of sunset reviews, anti-dumping and countervailing measures, 2007-14

Note: Until 30 June 2014.

Source: Viewed at: <http://enforcement.trade.gov/stats/iastats1.html>.

3.1.7.3 Safeguards

3.73. U.S. safeguard legislation remains in place under the global safeguard provisions, Sections 201-204 of the Trade Act of 1974 as amended; and for communist countries, Section 406 of the Trade Act of 1974. Action under sections 421-423 of the Trade Act of 1974, pertaining to relief from market disruption by imports from the People's Republic of China, was terminated on 10 December 2013.⁶² There have been no changes to the legislation nor to regulations implementing U.S. safeguard procedures during the review period. The United States also has safeguard provisions in most of its FTAs.⁶³

3.74. No safeguard investigation has been instituted under the global provisions since 2001 or under the China safeguard provision since 2009.

3.1.8 Technical regulations and standards

3.75. In the period under review, no major changes were made to U.S. regulatory policy.⁶⁴ However, regulatory practices are currently under review with respect to the participation of federal regulators in the development and use of standards, and in conformity assessment activities.

3.76. The National Technology Transfer and Advancement Act of 1995 and Circular A-119 (Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities) of the U.S. Office of Management and Budget (OMB) direct federal agencies to use "voluntary consensus standards" as a basis for technical regulations and government procurement bids, except where inconsistent with law or otherwise impractical. Thus, where a federal regulatory agency determines that mandatory compliance with a standard is needed to address a particular policy objective, it is required to rely on voluntary consensus standards and avoid developing its own "government unique standard". A standard becomes mandatory when the

⁶² See Section 423(c) of the Trade Act of 1974.

⁶³ WTO document WT/TPR/S/275/Rev.2, 8 March 2013.

⁶⁴ For an overview of the U.S. rule-making procedures, see USTR (2014b). See also WTO documents G/TBT/W/315, 10 June 2009, and WT/TPR/S/275/Rev.2, Table III.15.

standard (or relevant parts thereof) is incorporated into a technical regulation and a regulatory agency requires compliance with the standard. The Standards Incorporated by Reference Database (SIBR), maintained by the National Institute of Standards and Technology of the Department of Commerce, includes voluntary consensus standards, government unique standards, private industry standards, and international standards referenced in the Code of Federal Regulations (C.F.R.).⁶⁵ The Institute has identified 10,590 citations of standards incorporated by reference in regulatory documents (as of June 2014).

3.77. Proposed revisions to Circular A-119⁶⁶ would maintain a "strong preference" for the use of voluntary consensus standards in federal regulation and procurement, but would acknowledge that standards not developed using a consensus-driven process are also in use in the market (particularly in information technology), which may be relevant or necessary for regulation. The proposed revisions would also encourage federal agencies to consider international and private instead of government conformity assessment procedures or schemes. The proposed revisions also refer to the retrospective review mechanism set out in Executive Orders 13563 (Improving Regulation and Regulatory Review) and 13610 (Identifying and Reducing Regulatory Burdens), and highlight the mechanism as a tool to ensure that standards incorporated by reference are updated on a timely basis and to review and update its conformity assessment requirements. The retrospective evaluation focuses on the *ex-post* effects of regulations to determine, *inter alia*, whether these should be modified or repealed.

3.78. Executive Order 12866 (Regulatory Planning and Review) directs federal agencies to follow certain principles in planning, developing, and reviewing federal regulations, and describes the role of the Office of Information and Regulatory Affairs (OIRA) within the OMB in the rule-making process. All "significant" regulatory actions by federal agencies⁶⁷ must be reviewed by OIRA before publication and, to this end, agencies must submit the text of the draft regulatory action to OIRA along with, *inter alia*, an assessment of the potential costs and benefits of the regulatory action. In addition, agencies must prepare a regulatory impact analysis (RIA) for each regulation that OIRA or the agency designates as "economically significant" with an impact on the economy of over US\$100 million in at least one year.⁶⁸ The regulatory impact analysis provides a more in-depth cost-benefit analysis of feasible regulatory alternatives.

3.79. Under the Administrative Procedure Act of 1946, federal agencies must provide an opportunity for public comment on a proposed rule published in the Federal Register, before it may issue a final regulation. While the Act does not establish a minimum comment period, Executive Order 13563 establishes no less than 60-days as the norm. The final rule must be published in the Federal Register no less than 30 days before it is effective.

3.80. The United States submitted 269 TBT notifications in 2013 (248 in 2012)⁶⁹, including sub-federal measures notified under Article 3.2 of the TBT Agreement (Table A2.2). The United States was the only WTO Member to notify at the local government level during the review period, with 11 sub-federal notifications submitted in 2013, mainly relating to environmental protection. The federal regulatory agencies with greatest number of TBT notifications related to international trade include: the Department of Energy (DOE), Food and Drug Administration (FDA), Environmental Protection Agency (EPA), Department of Transportation (DOT), Department of Agriculture (USDA), Consumer Product Safety Commission (CPSC), and the Federal Trade Commission (FTC). The National Institute of Standards and Technology is the United States' enquiry point and notification authority under the TBT Agreement and responds to

⁶⁵ National Institute of Standards and Technology online information. Viewed at: <https://standards.gov/sibr/query/index.cfm>.

⁶⁶ WTO document G/TBT/GEN/144/Add.1, 26 March 2014. See also White House online information. Viewed at http://www.whitehouse.gov/omb/inforeg_infopoltech. The comment period on the proposed revisions closed on 12 May 2014 and the U.S. government is now considering the comments before issuing the revised circular.

⁶⁷ With the exception of the "independent" regulatory agencies (e.g. Consumer Safety Protection Commission).

⁶⁸ "Economically significant" regulation means any regulatory action that is likely to result in a rule that may: "Have an annual effect on the economy of US\$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities." Federal Register online information. Viewed at: <http://www.archives.gov/federal-register/executive-orders/pdf/12866.pdf>.

⁶⁹ Including revised notifications, addenda and corrigenda.

Members' requests for documents and information within two days, and usually within one day, according to the authorities. Comments received or inquiries for clarification of technical details in a notified measure are transmitted by the enquiry point to the relevant U.S. regulatory agency for reply as soon as possible.

3.81. Since the last Review of the United States, five specific trade concerns have been raised in the TBT Committee against measures taken by the United States.⁷⁰ Furthermore, three WTO dispute settlement proceedings taken against the United States under the TBT Agreement are pending (Table A2.1).⁷¹

3.82. There were no major new policy developments on standardization during the review period.⁷² The American National Standards Institute (ANSI), a non-governmental body and the national standardization body, coordinates private-sector standardization and conformity assessment activities, and accredits organizations whose standards development process meets ANSI requirements of due process and consensus.⁷³ U.S. agencies participate in national and international standards development activities and ANSI committees. In 2012, the U.S. Government announced a new funding facility in collaboration with ANSI that is intended to assist developing countries in implementing their commitments under the TBT Agreement.⁷⁴

3.83. The United States relies on a broad range of approaches to conformity assessment, depending on the sector (supplier's declaration of conformity, third-party testing or certification, etc.). Accreditation programmes are operated by all levels of government and the private sector, and frequently rely on private-sector conformity assessment bodies. Bodies fulfilling the criteria specified by the regulator, domestic or foreign-based, are accredited or otherwise recognized to perform conformity assessment activities.

3.84. Executive Order 13609 of 1 May 2012 seeks to promote international cooperation to address unnecessary differences between the regulatory approaches of U.S. agencies and their foreign counterparts.⁷⁵ Regulatory cooperation activities pursuant to USTR's statutory authorities for trade policy are excluded from the scope of the Executive Order, and continue to be pursued, *inter alia*, through U.S. work in APEC, the WTO TBT Committee, and bilateral free-trade agreements. The United States uses a number of mechanisms for regulatory cooperation, including cooperation in standards development organizations; regulator-to-regulator dialogues, such as the International Medical Device Regulatory Forum (IMDRF); regulatory cooperation efforts through regional fora, such as APEC; bilateral initiatives, such as the Regulatory Cooperation Councils between the United States, and Canada and Mexico (see also SPS section 3); as well as mutual recognition agreements (MRAs).

3.85. For testing and certification of telecommunication equipment, the United States has signed non-binding MRA frameworks with APEC (1999) and the Inter-American Telecommunications Commission (CITEL) of the Organization of the American States (1999). The United States implemented the APEC MRA with several countries, including Korea and Australia. In addition, the United States has signed MRAs with the EU (1998) covering six sectors, EEA-EFTA (2006) covering

⁷⁰ Energy Conservation Program for Consumer Products (WTO documents G/TBT/N/USA/842, G/TBT/N/USA/842/Corr.1, and G/TBT/N/USA/848; see also G/TBT/M/60, 23 September 2013 and G/TBT/M/62, 20 May 2014); Proposed Significant New Use Rules on Certain Chemical Substances (G/TBT/N/USA/840, see also G/TBT/M/60, 23 September 2013); United States – EPA Palm Oil Biofuels Regulatory Program (IMS ID 408, see also G/TBT/M/61, 5 February 2014 and G/TBT/M/62, 20 May 2014); Energy Conservation Program: Test Procedure for Commercial Refrigeration Equipment (G/TBT/N/USA/865, see also G/TBT/M/62, 20 May 2014); and US – Formaldehyde: Third-Party Certification Framework for the Formaldehyde Standards for Composite Wood Products (G/TBT/N/USA/828, see also G/TBT/M/63).

⁷¹ United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products (Tuna II) (DS381); United States – Certain Country of Origin Labelling (COOL) Requirements (DS386 and DS384); and United States – Measures Affecting the Production and Sale of Clove Cigarettes (DS406).

⁷² For the U.S. Standards Strategy (updated December 2010), see ANSI online information. Viewed at: http://publicaa.ansi.org/sites/apdl/Documents/Standards%20Activities/NSSC/ USSS_Third_edition/ USSS%202010-sm.pdf.

⁷³ ANSI online information. Viewed at: http://www.ansi.org/standards_activities/domestic_programs/accreditation_as_developer/accredit.aspx?menuid=3.

⁷⁴ ANSI online information. Viewed at: http://www.ansi.org/news_publications/news_story.aspx?menuid=7&articleid=3655.

⁷⁵ Federal Register online information. Viewed at: http://www.whitehouse.gov/sites/default/files/omb/inforeg/eo_13609/eo13609_05012012.pdf.

three sectors, and with Japan (2007), Mexico (2011), and Israel (2012) covering telecom equipment. The United States has also signed separate MRAs with the EU (2004) and EFTA (2006) covering marine safety equipment.

3.1.9 Sanitary and phytosanitary requirements

3.1.9.1 Food and Drug Administration

3.86. The responsibilities of the Food and Drug Administration (FDA) include the regulation of food, except meat, poultry, and processed eggs, which are regulated by the USDA⁷⁶; food additives; human and veterinary drugs; cosmetics; and dietary supplements.

3.87. The FDA Food Safety Modernization Act (FSMA), a major reform of legislation on food safety and the safety of animal feed under the responsibility of the FDA, entered into force on 4 January 2011 (P.L. 111-353).⁷⁷ The import-related reforms include: foreign supplier verification (i.e. importers are responsible for ensuring that their foreign suppliers have adequate preventive controls in place); a voluntary qualified importer programme for expedited review and importation of food; an accredited third-party auditor programme; authority to require certification of imported food items where there is a known food-safety risk; and possible refusal of entry into the United States if FDA access to inspect a foreign facility is denied.

3.88. Between January 2013 and January 2014, the FDA published for public comment seven proposed regulations to implement some of the key elements of the FSMA.⁷⁸ The proposed regulations address produce safety⁷⁹, preventive food controls⁸⁰, foreign supplier verification programme⁸¹, accreditation of third-party auditors⁸², preventive controls in the animal feed supply⁸³, protection against intentional adulteration of food⁸⁴, and sanitary transportation of food.⁸⁵ The regulatory drafting process is ongoing. Prior to the issuance of the final rules, the FDA has announced that it will issue revisions for several of the previously published proposed regulations and interested stakeholders will have an opportunity to provide comments.

3.89. U.S. law requires that an importer provide advance notice of shipments of certain imported food.⁸⁶ Section 304 of the FSMA amended the prior-notice statute, adding a requirement that the notice include information on "any country to which the article has been refused entry". The enacting regulation (Prior Notice of Imported Food) entered into force on 30 May 2013.

3.90. The FSMA authorizes the FDA to levy fees on certain domestic and foreign facilities and importer re-inspections. The costs of these activities were previously borne by the FDA. Fees may also be assessed for food recall activities when a domestic food facility or importer does not comply with a recall order, and for administrative costs associated with the voluntary qualified importer programme, food export certifications, and the third-party auditor programme.⁸⁷

3.1.9.2 Food Safety and Inspection Service

3.91. The Food Safety and Inspection Service (FSIS) of the USDA is responsible, *inter alia*, for ensuring the safety and accurate labelling of meat, poultry, and processed egg products, including imports. The FSIS is also responsible for recognizing foreign regulatory systems as providing a level of protection for these commodities equivalent to that provided in the United States. The United States has recognized 35 countries with meat, poultry, and/or egg inspection systems

⁷⁶ For information concerning jurisdiction overlap for products regulated by FDA and USDA, see FDA online information. Viewed at: <http://www.fda.gov/downloads/iceci/inspections/iom/ucm127390.pdf>.

⁷⁷ WTO document G/SPS/N/USA/2156, 14 February 2011. See also U.S. TPR (2012).

⁷⁸ FDA online information. Viewed at: <http://www.fda.gov/Food/GuidanceRegulation/FSMA/>.

⁷⁹ WTO document G/SPS/N/USA/2503, 10 January 2013.

⁸⁰ WTO document G/SPS/N/USA/2502, 10 January 2013.

⁸¹ WTO document G/SPS/N/USA/2569, 30 July 2013.

⁸² WTO document G/SPS/N/USA/2570, 30 July 2013.

⁸³ WTO document G/SPS/N/USA/2593, 30 October 2013.

⁸⁴ WTO document G/SPS/N/USA/2610, 13 January 2014.

⁸⁵ WTO document G/SPS/N/USA/2631, 10 February 2014.

⁸⁶ 28 U.S.C. para. 381; 21 C.F.R. para. 1.276 et seq.

⁸⁷ The fee rates for importer re-inspection for FY2014 are US\$237 per hour (US\$302 per hour, if foreign travel is required). See addenda notifications to WTO document G/SPS/N/USA/2656, 11 April 2014.

equivalent to its own.⁸⁸ According to the authorities, these are not equivalence agreements but rather recognitions by the FSIS. In December 2012, the FDA reached its first such arrangement with the Ministry for Primary Industries of New Zealand, whereby the participants recognize their food safety systems as comparable to each other. This Food Safety Systems Recognition Arrangement does not grant New Zealand and the United States any additional access to each other's markets. There are no major new developments regarding FSIS import requirements since the last Review of the United States.

3.1.9.3 Animal and Plant Health Inspection Service

3.92. The Animal and Plant Health Inspection Service (APHIS) of the Department of Agriculture is responsible for regulations to protect against the introduction of plant and animal diseases and pests. To this end, APHIS regulates imports of live plants; grain, oilseed and horticultural products; live animals (including embryos, semen, ova), animal products, and research and exhibition animals. A number of APHIS-regulated products are also regulated by FSIS; in those instances imports must comply with both APHIS and FSIS requirements. For example, certain animal products may be subject to import restrictions by APHIS due to disease risks, and once those risks are mitigated, the products may be subject to FSIS requirements.

3.93. On 29 May 2013, the OIE upgraded the U.S. risk classification for bovine spongiform encephalopathy (BSE) to negligible. On 4 March 2014, a new APHIS regulation (BSE Comprehensive Rule) entered into force bringing U.S. import requirements generally into line with the OIE's criteria for classifying regions for BSE risk status (negligible, controlled, and undetermined risk).⁸⁹ The regulation also allows APHIS to conduct its own risk assessment. As a result, products that were previously restricted but pose no risk to human health (e.g. boneless beef from countries that have had a case of BSE) may be imported into the United States, provided other import requirements are met.

3.1.9.4 Environmental Protection Agency

3.94. The Environmental Protection Agency (EPA) is responsible, *inter alia*, for registering pesticides (including herbicides and fungicides) for use in the United States, and establishing maximum residue limits (MRLs) for pesticides on food, known as "tolerances" in the United States. The EPA is required to conduct a risk assessment to study the potential health and ecological effects of a pesticide before it can enter the U.S. market. Since 2012, the EPA has established 897 tolerances for pesticides on food, 827 of which are new trade facilitating tolerances, according to the authorities; the remainder are revised tolerances.

3.95. Since the last Review of the United States, three specific trade concerns have been raised in the SPS Committee against measures taken by the United States.⁹⁰ The United States submitted 169 SPS notifications in 2013 (204 in 2012).⁹¹

3.2 Measures Directly Affecting Exports

3.2.1 Export procedures and requirements

3.96. As with imports, Customs and Border Protection is responsible for enforcing U.S. export laws, rules, and regulations at the border for customs and on behalf of other U.S. Government agencies. CBP requires export data to be filed electronically via the Automated Export System (AES) prior to departure of the cargo. The timeframes for electronic submission vary according to

⁸⁸ For the list of certified facilities, see FSIS online information. Viewed at: <http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/eligible-countries-products-foreign-establishments/eligible-foreign-establishments>.

⁸⁹ Federal Register online information. Viewed at: <https://www.federalregister.gov/articles/2013/12/04/2013-28228/bovine-spongiform-encephalopathy-importation-of-bovines-and-bovine-products>.

⁹⁰ U.S. proposed rule on good manufacturing process and hazard analysis and risk-based controls for human food- Concerns of China (G/SPS/R/71, paras. 4.1-4.2, 28 August 2013); Accreditation of third-party bodies to conduct food safety audits and to issue certifications – Concerns of China (G/SPS/R/73, paras. 3.1-3.3, 15 January 2014); U.S. imports of meat from Brazil – Concerns of Nicaragua (G/SPS/R/74, paras. 3.5-3.8, 6 June 2014).

⁹¹ Including revised notifications, addenda, and corrigenda.

mode of transportation; e.g. for air cargo, no later than 2 hours prior to scheduled departure; for vessels, 24 hours prior to loading; and for truck/train, no later than one/two hours prior to arrival at the border. For participants in the post-departure filing programme, exporters may file their electronic submissions of the Electronic Export Information in AES up to five calendar days after the departure of the conveyance.

3.97. The Automated Export System (AES), CBP's automated electronic system for exports, replaced the Shipper's Export Declaration. All export data have been processed electronically since 2008. The AES provides an interface for export shipment data and export manifests to be sent to CBP for processing; it also validates exports that require export licences. All export shipments valued over US\$2,500 must be filed through the AES.

3.98. With the development of the Automated Commercial Environment (ACE) (Section 3.1.1.1.1) as the single window application for CBP, it will be the electronic platform for filing export data. The AES was transferred and updated onto the ACE platform during the second quarter of 2014.⁹²

3.99. Exports are generally required to be classified using the nomenclature of Schedule B, produced by the U.S. Census, for export classification. Schedule B follows the HS nomenclature, but it differs from the HTSUS, and is not updated as frequently. In certain cases, exporters may also use HTSUS classification when filing through the AES.

3.100. New export reporting requirements published in March 2013 went into effect in April 2014 with respect to amending certain export regulations.⁹³ The changes were:

- post departure filing was reduced from 10 to 5 calendar days;
- temporary shipments must be filed through the AES;
- the data elements of licence value and ultimate consignee have been added;
- specific exclusions or exemptions have been added, in particular with regard to certain licensed goods;
- all used self-propelled vehicles must be filed through the AES, irrespective of value, and these must be filed at least 72 hours in advance; and
- the definitions of household goods and international waters have been modified.⁹⁴

3.101. In January 2014, the Census Bureau, in cooperation with CBP, announced the Advance Export Information (AEI) pilot project, to help improve filing requirements and facilitate exports. The pilot program requires the participants to submit less information in its electronic filing through the AES. There are ten mandatory elements (USPPI identification, ultimate consignee, commodity classification number, commodity description, port of export, date of export, carrier identification, conveyance name, licence code, shipment reference number), and two optional elements (authorized agent's identification number, export control classification number) to submit pre-departure. To participate in the pilot, the exporter must be a USPPI⁹⁵, have 12 months of exporting history, have a minimum of 10 shipments per month, demonstrate an acceptable level of compliance, and be in compliance with other federal trade regulations.⁹⁶

⁹² CBP online information. Viewed at: <http://www.cbp.gov/trade/automated/systems>.

⁹³ Originally scheduled to go into effect in January, but delayed until April 2014. Source: 78 FR 67927.

⁹⁴ CBP online information. Viewed at: http://www.cbp.gov/sites/default/files/documents/changes_foreign_trer_3_0.pdf; and 78 FR 16366.

⁹⁵ U.S. Principal Party in Interest, i.e. the person in the United States that receives the primary benefit of the export.

⁹⁶ 79 FR 5330.

3.2.2 Export taxes, charges, and levies

3.102. The United States does not impose export taxes or duties on exports as they are prohibited by the Constitution.⁹⁷

3.103. General export levies or fees are not applied, and have been revoked when examined by the courts and found unconstitutional. However, fees may be charged for specific services that aid exporters, such as inspection or certification fees for agricultural products.

3.2.3 Export prohibitions, restrictions, and licensing

3.104. The United States imposes restrictions, licensing requirements, additional controls and prohibitions on a variety of exports for national security and foreign policy reasons. The exporter may have to identify additional factors such as the country of destination, end-use, and foreign person or firm, depending upon the relevant requirements. The categories of items subject to controls were not changed during the review period (Table 3.9).

Table 3.9 Items subject to export restrictions, controls, or licensing

Product category	Responsible agency	Legal reference
Natural gas and electric power	Department of Energy, Office of Fossil Energy, Office of Imports and Exports, and Office of Electricity Delivery & Energy Reliability	15 U.S.C. 717b
Fish and wildlife, including endangered species	Department of the Interior	50 CFR Part 14
Dual-use items and certain munitions and military items and items controlled for short supply	Department of Commerce, Bureau of Industry and Security	Export Administration Act (EAA) and International Emergency Economic Powers Act (IEEPA)
Munitions	Department of State, Directorate of Defense Trade Controls	Arms Exports Control Acts (AECA)
Nuclear materials and equipment	Nuclear Regulatory Commission	Atomic Energy Act
Nuclear technology, technical data, and special nuclear materials	Department of Energy, Office of Export Control Policy and Cooperation	Atomic Energy Act
Controlled substances and precursor chemicals	Drug Enforcement Administration	21 U.S.C. 1312
Food, drugs, cosmetics	Food and Drug Administration	Federal Food, Drug, and Cosmetic Act (FD&C Act)
Meat, poultry, and egg products	Department of Agriculture, Food Safety and Inspection Service	Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 et seq.); Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 et seq.); Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 et seq.)
Agriculture risk products	Department of Agriculture, Animal and Plant Health Inspection Service	7 CFR Part 37
High value and value added agriculture products	Department of Agriculture, Agricultural Marketing Service	7 CFR Part 36
Economic sanctions	Department of the Treasury, Office of Foreign Asset Control	Various laws and provisions

Source: Viewed at: www.export.gov.

3.105. The main items subject to export licences are munitions, controlled by the Department of State, and dual use items, i.e. military and civilian, and certain military items; under the Department of Commerce, both of the schemes are currently undergoing reform

⁹⁷ U.S. Constitution, Article 1, Section 9.

(see section 3.2.3.1 below). Services, data, and technology are also covered. The Department of State maintains the U.S. Munitions List (USML) to identify items controlled and regulated by the International Traffic in Arms Regulations (ITAR), and the Department of Commerce maintains the Commerce Control List (CCL), which is regulated by the Export Administration Regulations (EAR). There are some items that are similar to both list, while others are unique to one or the other list (Table 3.10).

Table 3.10 Commerce Control List (CCL) and U.S. Munitions List (USML)

Commerce Control List		U.S. Munitions List	
Category	Products	Category	Products
0	Nuclear & Miscellaneous	I	Firearms, close assault weapons, and combat shotguns
1	Materials, Chemicals, Microorganisms and Toxins	II	Guns and armament
2	Materials Processing	III	Ammunition/Ordnance
3	Electronics	IV	Launch vehicles, guided missiles, ballistic missiles, rockets, torpedoes, bombs and mines
4	Computers	V	Explosives and energetic materials, propellants, incendiary agents and their constituents
5 Part 1	Telecommunications	VI	Vessels of war and special naval equipment
5 Part 2	Information Security	VII	Tanks and military vehicles
6	Sensors and Lasers	VIII	Aircraft and associated equipment
7	Navigation and Avionics	IX	Military training equipment and training
8	Marine	X	Protective personal equipment and shelters
9	Aerospace and Propulsion	XI	Military electronics
		XII	Fire control, range finder, optical and guidance and control equipment
		XIII	Auxiliary military equipment
		XIV	Toxicological agents, including chemical agents, biological agents, and associated equipment
		XV	Spacecraft systems and associated equipment
		XVI	Nuclear weapons, design and testing related items
		XVII	Classified articles, technical data and defense services not otherwise enumerated
		XVIII	Directed energy weapons
		XIX	Gas turbine engines (GTE)
		XX	Submersible vessels, oceanographic and associated equipment
		XXI	Miscellaneous articles

Source: U.S. Department of Commerce, Bureau of Industry and Security online information. Viewed at: <http://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl> and 22 CFR Part 121.

3.106. Enforcement of U.S. export controls is shared among the Department of Homeland Security, Department of Justice, and the Department of Commerce. Furthermore, penalties or criminal acts vary depending on the type of product and the relevant agency or law.

3.107. The United States has negotiated two defense trade cooperation treaties, with Australia and the United Kingdom⁹⁸; the treaties entered into force in 2013 and respectively 2012.⁹⁹ Both

⁹⁸ U.S. Department of State, Directorate of Defense Trade Controls online information. Viewed at: <http://pmdtdc.state.gov/treaties/index.html>.

create exemptions for certain persons or entities from having to obtain an export license or authorization for exportation of certain defense products or services upon meeting certain criteria.

3.2.3.1 Export Control Reform (ECR) Initiative

3.108. In 2009, President Obama launched the ECR Initiative to review and reform the U.S. export control system (e.g. licences, prohibitions, monitoring, controls). This review determined the current system was overly complicated, and fragmented and needed updating to address the changing economic and technological landscape. The review also determined that fundamental reform of the U.S. export system was required and recommended the creation of a new export control system based on comprehensive reform in four key areas:

- (1) a single export control agency;
- (2) a unified control list;
- (3) a single primary enforcement coordination agency; and
- (4) a single integrated information technology system.

3.109. The goal of the ECR is not to eliminate or reduce export controls but to reprioritize controls to better use government resources and enhance controls where they are needed on more sensitive items. The ECR plans to ease export requirements on a select group of less sensitive items, such as parts and components to a specified group of 36 countries¹⁰⁰, while enhancing national security and foreign policy interests with respect to certain items and markets.¹⁰¹ For example, it plans to tighten controls by adding items that were not previously subject to U.S. or UN arms embargoes.¹⁰²

3.110. The process has been ongoing since 2009 and is being implemented in phases. Three phases are envisioned, and the final phase would require legislative action. Work on establishing coordinated enforcement began in 2012 with the establishment of the Export Enforcement Coordination Center, with the Department of Homeland Security taking the lead to coordinate and enhance efforts on export control enforcement among nine federal agencies.¹⁰³ Work has also proceeded on integrating IT systems. In July 2013, the State Department transferred its licensing database and IT platform to that of the Department of Defense, and a similar effort is being made by the Department of Commerce to link the three main Departments' IT infrastructures.¹⁰⁴

3.111. Much of the work to date has been concentrated on rationalizing and merging the two export control lists, CCL and USML (Table 3.10). In October 2013, the first major regulatory changes were introduced migrating a number of USML items related to aircraft, gas turbine engines, classified defense, and miscellaneous articles to the CCL. In January 2014, another set of regulations were published, migrating items in another five categories of the USML to the CCL. There have been many regulatory changes implementing the ECR; most have migrated items from the USML (generally a negative list) to the CCL (a positive list) (Table 3.11).

⁹⁹ FR Vol. 78, No. 104.

¹⁰⁰ The 36 countries are NATO members or members of the four multilateral export control agreements (Australia Group, Missile Technology Control Regime, Nuclear Suppliers Group, and the Wassenaar Arrangement).

¹⁰¹ U.S. Department of Commerce online information. Viewed at: <http://www.export.gov/ecr/index.asp>.

¹⁰² U.S. Department of Commerce online information. Viewed at: http://export.gov/static/ECR%20Factsheet%20-%20Foreign%20Policy%20ECR%20Myths%20and%20Facts_Latest_eg_main_067666.pdf.

¹⁰³ Executive Order 13558.

¹⁰⁴ The White House online information. Viewed at: <http://www.whitehouse.gov/the-press-office/2013/10/15/fact-sheet-announcing-revised-us-export-control-system>.

Table 3.11 Main Changes to Export Administration Regulations, July 2012-June 2014

Date	Subject	Reference
11/28/12	Revisions to the Export Administration Regulations (EAR): Control of Military Electronic Equipment and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)	77 FR 70945
11/29/12	Revisions to the Export Administration Regulations (EAR) To Make the Commerce Control List (CCL) Clearer	77 FR 71214
10/3/13	Revisions to the Export Administration Regulations (EAR): Initial Implementation of Export Control Reform; Correction; Final Rule	78 FR 61744
07/25/13	Second proposed rule – Revisions to the Export Administration Regulations (EAR): Control of Military Electronic Equipment and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML).	78 FR 45026
07/08/13	Revisions to the Export Administration Regulations: Military Vehicles; Vessels of War; Submersible Vessels, Oceanographic Equipment; Related Items; and Auxiliary and Miscellaneous Items that the President Determines No Longer Warrant Control under the United States Munitions List	78 FR 40892
05/24/13	Export Administration Regulations (EAR): Control of Spacecraft Systems and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML); Proposed Rule	78 FR 31431
4/16/13	Revisions to the Export Administration Regulations: Initial Implementation of Export Control Reform	78 FR 22660
1/31/13	Proposed Revisions to the Export Administration Regulations (EAR): Articles the President Determines No Longer Warrant Control under the U.S. Munitions List that are Related to Launch Vehicles, Missiles, Rockets, and Military Explosive Devices.	78 FR 6750
5/13/14	Revisions to the Export Administration Regulations(EAR): Control of Spacecraft Systems and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML); Interim Final Rule with request for comments	79 FR 27418
1/2/14	Revisions to the Export Administration Regulations: Military Vehicles; Vessels of War; Submersible Vessels, Oceanographic Equipment; Related Items; and Auxiliary and Miscellaneous Items That the President Determines No Longer Warrant Control Under the United States Munitions List; Final Rule; Correction	79 FR 22
1/2/14	Control of Military Training Equipment, Energetic Materials, Personal Protective Equipment, Shelters, Articles Related to Launch Vehicles, Missiles, Rockets, Military Explosives, and Related Items	79 FR 264

Source: Federal Register.

3.2.4 Export support and promotion

3.2.4.1 Structures

3.2.4.1.1 Trade Promotion Coordinating Committee (TPCC) and National Export Strategy

3.112. The TPCC remains the government's main interagency body for coordinating export promotion policies. It comprises 20 federal agencies that have export related programmes.¹⁰⁵ It provides a framework to coordinate export promotion and financing activities in particular.

3.113. The TPCC's annual National Export Strategy, establishes priorities and reports on activities of the member agencies. However, no report has been issued since the 2012 report¹⁰⁶, which focused on the National Export Initiative (NEI) and on reducing trade barriers for U.S. exports.

¹⁰⁵ Executive Order 12870 of September 30, 1993.

3.2.4.1.2 President's Export Council (PEC)

3.114. The PEC, the main national advisory committee on exports, has 28 members from the private sector and a number of government representatives. It reports to the President on proposals and recommendations for expanding U.S. exports. In its most recent meeting of June 2014, the Council adopted nine letters with recommendations on: trade promotion authority, cross-border data flows, innovation policy, agreement on trade facilitation implementation, national travel and tourism strategy, access to capital for small businesses and startups, technology-enabled SME exports, reauthorization of the Export-Import Bank, and the NEI/NEXT initiative.¹⁰⁷

3.2.4.1.3 Export Promotion Cabinet

3.115. The Export Promotion Cabinet was created as part of the President's 2010 National Export Initiative (NEI).¹⁰⁸ It is tasked to develop and coordinate the implementation of the NEI and to coordinate with the TPCC on export promotion matters. The Cabinet comprises 11 government agencies involved in exports and 3 senior advisors or assistants to the President.

3.2.4.2 National Export Initiative (NEI) and NEI/NEXT

3.116. As part of the initiatives to spur the economy after the 2009 economic downturn, President Obama announced the NEI as a government-wide programme to promote exports, with the goal of doubling the amount of exports over five years.¹⁰⁹ The NEI's focus was on improving trade promotion and advocacy, improving access to finance, reducing trade barriers, and enforcing trade rules, with a particular emphasis on developing export programmes for SMEs. Certain agencies also developed their own targets as part of the NEI, such as the Department of Agriculture's goal to expand agricultural exports to US\$150 billion by FY2013, and the Department of Commerce's target to increase the number of new markets entered by client firms by 7%.¹¹⁰

3.117. While exports have grown significantly, up 44% in 2013 compared with 2009, it has been acknowledged that the programme will not meet its goal of doubling exports in five years. However, since the NEI was launched, more businesses export, and export growth has reached record levels. Nevertheless, only a small percentage of U.S. companies export and, among those that do, the majority only export to one market.¹¹¹

3.118. In May 2014, the Administration launched NEI/NEXT as the successor of the NEI. It builds on the principles of the NEI and lessons learned from NEI customer surveys, and provides a strategic framework to continue export growth. There are five main points: connect more U.S. businesses to global customers, streamline U.S. export services and processes, expand access to finance, promote exports and FDI, and help developing economies improve their business environment to open new markets. NEI/NEXT is a long-term project to help U.S. companies reach their export potential and create and support American jobs.

3.2.4.3 Export Trade Promotion Activities of U.S. Government Departments

3.119. Several government agencies or departments have specific programmes to support or otherwise encourage exports (Table 3.12).

¹⁰⁶ TPPC (2012). A new export strategy report is under preparation but not available at the time of writing this report.

¹⁰⁷ U.S. Department of Commerce, International Trade Administration online information. Viewed at: <http://trade.gov/pec/>.

¹⁰⁸ Executive Order 13534.

¹⁰⁹ Executive Order 13534.

¹¹⁰ U.S. Department of Commerce, International Trade Administration online information. Viewed at: <http://my-goals.performance.gov/sites/default/files/images/Exports%20CAP%20Goal%20-%20FY2013%20Quarter%201%20Update.pdf>.

¹¹¹ U.S. Department of Commerce, International Trade Administration online information. Viewed at: <http://trade.gov/neinext/neinext-strategic-framework.pdf>.

Table 3.12 Specific government programmes supporting export activities

Department	Programme	Activity
Department of Agriculture	Commodity Credit Corporation	Export promotion, financing, and subsidies
Department of Agriculture	Foreign Market Development Program	Export promotion of commodities
Department of Agriculture	Market Access Program	Finances promotional activities
Department of Agriculture	Emerging Markets Program	Funds technical assistance to promote commodity exports
Department of Agriculture	Quality Samples Program	Provides small samples of U.S. agricultural products to foreign manufacturers
Department of Agriculture	Technical Assistance for Specialty Crops	Funding for projects that address SPS or technical barriers
Department of Agriculture	Export Credit Guarantee Program	Export financing
Department of Agriculture	Facilities Guarantee Program	Export financing
Department of Agriculture	Dairy Export Initiative program	Export subsidy program
Department of Commerce	U.S. Foreign and Commercial Service	Trade promotion activities including counselling and advocacy
Department of Commerce	Manufacturing and Services	Industry and trade analysis
Department of State	Jobs Diplomacy initiative	Disseminate trade information and advocacy activities

Source: Congressional Research Service (2013), *U.S. Government Agencies Involved in Export Promotion: Overview and Issues for Congress*, CRS publication R41495. Viewed at: <http://fas.org/sgp/crs/misc/R41495.pdf>.

3.2.4.4 U.S. Trade and Development Agency (USTDA)

3.120. The U.S. Trade and Development Agency is a foreign assistance agency that promotes the export of U.S. goods and services for infrastructure development projects in emerging economies. USTDA provides grant funding for early project planning activities such as feasibility studies, pilot projects, and technical assistance to introduce foreign grantees to U.S. technologies. USTDA also introduces procurement officials and senior decision-makers from emerging markets to U.S. companies through its reverse trade missions, which are designed to introduce delegates to the design, manufacture, and operation of U.S. goods and services that can help them achieve their development goals. Over the past ten years, USTDA has identified US\$2.95 billion of U.S. exports from USTDA-funded activities.¹¹² USTDA prioritizes its activities in markets and sectors where U.S. goods and services are most likely to be utilized, including the energy, telecommunications, and transportation sectors.

3.2.5 Export finance, insurance, guarantees

3.2.5.1 Export-Import Bank (Ex-Im Bank)

3.121. The Ex-Im Bank is an independent government agency, and serves as the official export credit agency of the United States. It is self-financed in the sense that its fees and services charged, cover its operating costs. However Congress sets a limit on the Bank's activities per the appropriations process.¹¹³ In its last reauthorization in 2012, Congress set its lending authority limit to US\$100 billion, rising to US\$140 billion in FY2014.

3.122. The main focus of the Ex-Im Bank is to provide direct loans, guarantees, and insurance to help finance U.S. exports of goods and services. It fills a gap in the export financing sector where financing support is needed because of a perception of risk or political uncertainty, and helps create a level playing field for U.S. exporters who compete with others that have similar backing or financing from foreign governments. There were no significant changes in policy during the review period.

¹¹² U.S. Trade and Development Agency (2013).

¹¹³ It has the status of a government corporation.

3.123. The Ex-Im Bank has grown in recent years, especially 2012, in part fuelled by the NEI initiative. In FY2013, it authorized total financing of US\$27.3 billion to support US\$37.4 billion in exports, a slight decrease compared to the record levels in FY2012¹¹⁴ (Table 3.13).

3.124. In terms of destinations, the Ex-Im Bank authorizations and activities are very diverse, with activities in over 150 countries. In terms of exposure, Mexico, India, the Kingdom of Saudi Arabia, the United Arab Emirates, Australia, Ireland, and Turkey are the dominant destinations.

Table 3.13 Ex-Im Bank authorizations, 2011-13

	2011		2012		2013	
	N°	US\$ million	N°	US\$ million	N°	US\$ million
Loans	18	6,322.9	24	11,765.7	71	6,893.8
Long term	17	6,315.0	18	11,751.7	29	6,878.4
Medium term	1	7.9	2	12.8	0	0
Working capital	0	0	4	1.2	42	15.4
Guarantees	784	19,400.4	744	18,319.3	674	14,911.8
Long term	97	15,479.4	92	14,879.6	73	12,179.7
Medium term	81	693.0	62	186.8	68	132.5
Working capital	606	3,228.0	590	3,252.9	533	2,599.6
Credit Insurance	2,949	7,003.8	3,028	5,699.3	3,097	5,542.0
Short term	2,836	6,765.0	2,934	5,534.3	3,027	5,440.3
Medium term	113	238.8	94	165.0	70	101.7

Source: Export-Import Bank of the United States (2013), *Annual Report 2013*, Revised April 2014. Viewed at: <http://www.exim.gov/about/library/reports/annualreports/2013>.

3.125. As of June 2014, the Ex-Im bank faced an uncertain future as Congress debated its reauthorization; its current mandate and authorization are scheduled to expire at the end of September 2014.

3.2.5.2 Overseas Private Investment Corporation (OPIC)

3.126. OPIC is the government's development finance institution. It facilitates U.S. investment in developing countries by providing investors with financing, guarantees, political-risk insurance, and support for private equity investment funds. Like the Ex-Im Bank, OPIC is a self-financed, independent government corporation. It promotes U.S. investments in developing countries by mitigating risk factors.

3.127. The main elements that OPIC offers to companies are: financing—medium to long-term funding through direct loans or loan guarantees for investment projects in developing and emerging markets; insurance—provision of political-risk insurance to mitigate or cover losses to tangible assets, investment value, and earnings; and investment funds—support for privately owned and managed investment funds that make investments in emerging market businesses.

3.128. OPIC has special provisions on where it can operate and who it is may work with. Partners must be U.S. citizens or U.S. companies, and projects should not result in the closing of U.S. operations or reduce the U.S. workforce. The countries in which OPIC works must uphold worker rights' rules or be taking steps to do so. Also, certain sectors are prohibited as they have

¹¹⁴ Export-Import Bank of the United States (2013).

adverse environmental or social effects.¹¹⁵ As of 2013, it had operations in 102 countries. Its total portfolio grew over 2011-13 (Table 3.14).

Table 3.14 Overview of OPIC activities, 2011-13

(US\$)

	2011	2012	2013
New Commitments			
Financing	2.39 billion	2.95 billion	3.75 billion
Investment funds	455 million	288 million	178 million
Insurance	354 million	683 million	171 million
Total	2.7 billion	3.6 billion	3.9 billion
U.S. exports projected	1 billion	435 million	833 million
Portfolio			
Total portfolio	14.5 billion	16.4 billion	18.0 billion
Active countries	107	103	102

Source: OPIC *Annual Reports*, 2011-13; and information provided by the U.S. authorities.

3.3 Measures Affecting Production and Trade

3.3.1 Incentives

3.129. The U.S. business climate continues to encourage private enterprise and competition, based on free-market economic principles. According to the World Bank, the United States ranks fourth among 189 economies on the ease of doing business index, thus highlighting a regulatory framework conducive to operating a business.¹¹⁶ The United States ranks third and sixth on the "getting credit" and "protecting investors" sub-indices, respectively. On average, it takes five days to start a business and entrepreneurs may expect to go through six procedures to register their firm. It takes five days to comply with all procedures required to import goods, against an average of ten days for OECD countries. The U.S. performance seems to have remained stable throughout the years, as the 2004 Doing Business Report already ranked it among the top five economies for doing business.¹¹⁷

3.130. During the review period, the U.S. business incentives framework continued to evolve, with a view to boosting competitiveness and improving its attractiveness. Several federal incentive programmes were extended or modified.

3.131. The American Taxpayer Relief Act of 2012 signed into law in January 2013 further extended the 50% first-year bonus depreciation for qualified property acquired and placed in service from 1 January 2013 through 31 December 2013. It also provided one-year extensions for several tax credits, including: credit for alternative-fuel vehicle refuelling property; alternative fuels excise tax credits; extension and modification of cellulosic biofuel producer credit; incentives for biodiesel and renewable diesel; and special allowance for cellulosic biofuel plant property.

3.132. The Act did not prolong the 2% reduction in payroll and self-employment taxes, which had been in place for two years under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (TRUIRJCA). However, it extended a number of favourable business tax provisions through 2013, for instance, the Work Opportunity Tax Credit (WOTC) programme, under which eligible businesses may claim a tax credit for hiring individuals meeting specific

¹¹⁵ OPIC online information. Viewed at: <http://www.opic.gov/what-we-offer/financial-products/financing-details/investor-screener>.

¹¹⁶ World Bank (2013).

¹¹⁷ World Bank (2013).

criteria.¹¹⁸ It also renewed the federal New Markets Tax Credit Programme (NMTCT), which provides tax incentives for companies that invest in economically challenged communities.¹¹⁹

3.133. The United States is also committed to enhancing the national business framework by promoting innovation in the private sector. To this end, the Innovative Technologies Investment Incentive Act of 2013 provides credit for equity investments to high technology or biotechnology businesses that employ less than 500 employees.¹²⁰

3.134. State-level legislatures have also focused on providing investment incentives to businesses through grants, tax credits, loans, and corporate income tax abatement with the aim of promoting, *inter alia*, job creation (New Jersey, Oregon), clean technology (New Mexico, Wyoming), and development activities (Colorado).¹²¹

3.135. Discussions on a tax reform to simplify the corporate tax code and lower its top rate are ongoing.¹²²

3.136. Suggested measures include eliminating tax loopholes, providing small businesses with incentives to invest, setting the tax rate on manufacturing at a maximum of 25%, and removing incentives to locate overseas by establishing a minimum tax on foreign earnings. Moreover, support to middle class job creation could be achieved through investments aimed at modernizing the infrastructure, creating manufacturing innovation institutes, and training a skilled workforce. The package also provides for the reintegration of the long-term unemployed, as well as the expansion of the SelectUSA initiative.¹²³

3.137. Given their role in supporting job creation and fostering economic growth, small businesses continue to be a priority on the government's agenda.¹²⁴ The U.S. Small Business Administration (SBA) provides counselling and financial assistance to small businesses through, *inter alia*, loan guarantees and federal procurement opportunities. Within this framework, the SBA has 32 permanent programmes, and approved 101,066 loans over the fiscal year 2013.¹²⁵

3.3.2 Subsidies and other government assistance

3.138. According to the authorities, there is no overarching, legal framework governing subsidies in the United States. Rather, various subsidy programmes are in place at the federal level, pursuant to legislation or government programmes under many executive branch agencies.

3.139. The latest subsidies notification to the WTO on federal and sub-federal programmes, submitted in May 2014, contained statistical information up to 2012. The magnitude of government assistance has decreased since the previous review (Table 3.15).

3.140. In most cases, subsidies take the form of grants, tax concession, loan guarantees, and direct payments. The agriculture and energy sectors remain the largest recipients.

¹¹⁸ For example qualified veterans from certain target groups. Viewed at: <http://www.doleta.gov/business/incentives/opptax/whatsnew.cfm#wotc>.

¹¹⁹ U.S. Department of Treasury online information. Viewed at: <http://www.treasury.gov/initiatives/recovery/Documents/Updated%20ARRA%20Program%20Plan%20NMTCT%20Program%205%2012%202010.pdf>.

¹²⁰ Viewed at: <http://legiscan.com/US/text/HB1415/2013>.

¹²¹ Area Development Site and Facility Planning online information. Viewed at: <http://www.areadevelopment.com/EconomicsGovernmentPolicy/Q1-2013/state-federal-legislation-boost-business-climate-2727261.shtml>.

¹²² The White House online information. Viewed at: <http://www.whitehouse.gov/the-press-office/2013/07/30/fact-sheet-better-bargain-middle-class-jobs>.

¹²³ Viewed at: <http://selectusa.commerce.gov/about-selectusa>.

¹²⁴ *The Washington Post* "Today, there are more than 28 million small businesses in the United States, and those firms create two out of every three net new jobs and employ half of America's workforce." Viewed at: http://www.washingtonpost.com/business/on-small-business/new-blog-series-with-sbas-karen-mills-who-are-americas-job-creators/2013/04/16/8bdcde40-a634-11e2-a8e2-5b98cb59187f_story.html.

¹²⁵ U.S. Small Business Administration online information. Viewed at: <http://www.sba.gov/sites/default/files/files/SBA%20Program%20Inventory.pdf>.

3.141. While the United States has been progressively phasing out its fiscal stimulus measures, some programmes have been maintained. These were set up in the aftermath of the global crisis of 2008-12, when the government took unprecedented action to restore demand, stabilize financial markets, and put people back to work.

Table 3.15 Federal subsidy programmes, 2012

(US\$ million)

Federal programmes	Amount reported
Agriculture	6,734
Energy and fuels	9,363.8
Fisheries	65.9
Lumber and timber	420
Medical	859.08
Metals, minerals, and extraction (non-fuel)	610
Shipyards	9.98
Textiles	1.7
Timepieces and jewellery	1.96
Other	2,160

Note: Sub-federal entities are not included (see WTO document G/SCM/N/253/USA, 9 May 2014 for details).

Source: WTO document G/SCM/N/253/USA, 9 May 2014.

3.142. As of September 2013, outlays under the American Recovery and Re-investment Act (ARRA) of 2009 have included tax cuts (US\$212 billion), mandatory spending on programmes such as Medicaid and unemployment benefits (US\$296 billion), and discretionary spending (US\$279 billion) for individuals and investments in infrastructure, energy, education, and health care. The most recent CBO estimates show that the fiscal support from the Recovery Act will total US\$832 billion through 2019.¹²⁶

3.143. Trade Adjustment Assistance (TAA) continues to be an important aspect of U.S. trade policy, helping firms and workers adjust to trade liberalization. In 2011, the President signed an extension of the worker, firm, and farmer programmes until 31 December 2014.

3.144. The Troubled Asset Relief Program (TARP) in conjunction with the Emergency Economic Stabilization Act (EESA), 2008, was not set to undertake new commitments after October 2010, but the Treasury could continue to make additional payments with respect to previous agreements. TARP is currently projected to cost approximately US\$37.5 billion, significantly less than the US\$700 billion originally authorized by Congress.¹²⁷

3.3.3 Competition policy

3.145. The competition policy framework has not undergone substantial changes for many years. The Sherman Act, the Clayton Act, and the Federal Trade Commission Act are the core federal competition (antitrust) laws. In general, the main changes in competition policy framework are made through agency guidance, court, and administrative proceedings providing for interpretation of the statutes, and these reflect new developments, such as increased application of econometric tools and economic theory to assess market conditions. In addition to the main federal laws, most states have antitrust laws, often modelled after the federal laws. Private civil suits may be brought for violations of state or federal antitrust law.

3.146. The Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ) are responsible for enforcing the federal antitrust laws. In general, the FTC enforces the Clayton Act and the Federal Trade Commission Act, while the Antitrust Division of the Department of Justice enforces the Sherman and Clayton Acts.

¹²⁶ The White House (2014b).

¹²⁷ U. S. Department of the Treasury online information. Viewed at: <http://www.treasury.gov/initiatives/financial-stability/about-tarp/Pages/default.aspx>.

3.147. Both the Antitrust Division of the Department of Justice and the FTC are involved in the formulation and implementation of U.S. international trade and investment policy as they concern competition policy. In addition, they participate in negotiations and working groups related to regional and bilateral trade agreements as concerns competition policy.

3.148. Pursuant to United States law and practice, hard-core agreements among competitors that unreasonably restrain interstate domestic and foreign trade, i.e. those that encompass price fixing, bid rigging, customer or territory allocation, or output restriction, are subject to criminal investigations as well as civil lawsuits. Such agreements, referred to as *per se* violations in the U.S. antitrust policy and practices, are considered to be illegal without inquiry into the harm or business rationales for their use.

3.149. By contrast, determining whether other restrictions to competition are illegal depends on applying U.S. courts' "rule of reason", which is a court's assessment of actual or likely anticompetitive effect in a particular case. The authorities indicated that, over time, a number of decisions by courts and guidelines by antitrust agencies have increased commercial actors' understanding of the factors courts will take into account in conducting the rule of reason analysis.

3.150. Certain industries are currently exempt from the scope of the federal legislation. Competition in these industries may be covered by other federal legislation, on which the agencies may provide comments through advocacies, and over which the DOJ may have an advisory role.¹²⁸

Table 3.16 Exemptions from federal competition legislation

Legislation	Nature of exemption
Capper-Volstead Act	Partial antitrust immunity for farmers and fishers to form co-operatives to process or market their produce
Sports Broadcasting Act	Exempts certain television agreements by sports leagues such as the National Football League and the Major League Baseball
Shipping Act	Allows ocean carriers to establish ocean shipping conferences
Department of Transportation	Under certain competitive conditions, the Department may approve antitrust immunity for marketing alliances between domestic and foreign airlines
Charitable Donation Antitrust Immunity Act	Exempts charitable gift annuities
Small Business Act	Authorizes the federal government to confer antitrust immunity on businesses under specific circumstances
McCarran-Ferguson Act	Allows certain antitrust exemptions for insurance companies
Defence Production Act	Provides protection against antitrust claims for conduct supporting certain approved programs that the President has determined as necessary or appropriate to promote national defence
Export Trading Company Act	Allows the Department of Commerce to issue export trade certificates of review, which offer limited antitrust immunity to companies named in the certificate for certain specified activities, as long as the applicant can establish that its export trade will not harm competition in the United States
Newspaper Preservation Act	Gives the Attorney General the authority to approve joint operating arrangements between newspapers when one is a firm in economic difficulties. The newspapers are required to maintain regular editorial and reporting staffs and to determine their editorial policies independently

Source: WTO Secretariat, based on Hong Kong Legislative Council Secretariat (2010). Viewed at: <http://www.legco.gov.hk/yr09-10/english/sec/library/0910rp02-e.pdf>.

3.151. U.S. government institutions, even those involved in commercial operations, are entirely exempted unless the federal statute explicitly provides otherwise. However, federal government departments and agencies seldom engage in the same sorts of commercial activities as private parties. In addition, the "state-action doctrine" exempts anticompetitive conduct (1) by state instrumentalities or municipalities that is authorized by a clearly articulated state policy or law, and (2) by private parties when, in addition to receiving such legislative authorization, the conduct is actively supervised by the state.

¹²⁸ Hong Kong Legislative Council Secretariat (2010).

3.152. The recent Supreme Court, case *FTC v. Phoebe Putney Health System Inc.*, 133 S. Ct. 1003, 1016 (2013), clarified and narrowed the contours of the state-action doctrine. The Court indicated that, in order to be clearly articulated, the power to act in an anticompetitive manner must either be expressly given or be the "inherent, logical, or ordinary result of the authority delegated by the state legislature."

3.153. During the review period, the U.S. antitrust agencies increased engagement and bilateral cooperation with several competition authorities, as well as within international frameworks, such as the International Competition Network (ICN), the Competition Committee of the OECD, UNCTAD, and the Asia-Pacific Economic Cooperation (APEC).

3.154. Tighter international collaboration continued to be sought through different types of agreement, including memoranda of understanding (MoU) and the issuance of joint documents on best practices. In 2012, for example, an antitrust MoU was signed with India's Ministry of Corporate Affairs and the Competition Commission of India. The MoU covers cooperation on policy and enforcement matters, as well as technical cooperation.

3.155. In addition, an MoU was signed with Chinese agencies in charge of competition in order to promote communication and cooperation with U.S. agencies. The FTC and DOJ cooperate with foreign competition agencies through various agreements and arrangements. They have bilateral cooperation agreements with nine jurisdictions and have entered into MoUs with competition agencies from three countries (Tables 3.17 and 3.18).

Table 3.17 U.S. cooperation agreements on competition matters

Cooperation agreements	Entry into force
Australia	29 June 1982
Brazil	26 October 1999
Canada	August 1995
Chile	31 March 2011
Germany	23 June 1976
European Commission	23 September 1991
Israel	15 March 1999
Japan	7 October 1999
Mexico	11 July 2000

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

Table 3.18 U.S. Memoranda of understanding on competition matters

Memorandum of understanding	Entry into force
China	27 July 2011
India	27 September 2012
Russian Federation	10 November 2009

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

3.156. Under the existing cooperation frameworks, the U.S. antitrust agencies frequently cooperate on merger and non-merger cases. The nature of cooperation includes discussion of timing, relevant market definition, and theories of harm and coordination of possible remedies. The FTC had 51 substantive contacts on 26 enforcement matters with 15 foreign competition agencies in fiscal year 2012, and 24 substantive contacts on 17 enforcement matters in fiscal year 2013.

3.157. In addition, the United States has competition clauses in many regional or FTAs (Table 3.19).

Table 3.19 U.S. regional agreements containing competition chapters

Agreements partner	Entry into force
Australia	1 January 2005
Chile	1 January 2004
Colombia	15 May 2012
Korea, Republic of	15 March 2012

Agreements partner	Entry into force
NAFTA (Canada and Mexico)	1 January 1994
Peru	1 February 2009
Singapore	1 January 2004

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

3.3.4 State trading, state-owned enterprises

3.158. In 2014, the United States notified the Commodity Credit Corporation (CCC), the Isotope Production and Distribution Program Fund (IP & D), some power administrations, and the Strategic Petroleum Reserve (SPR) as state trading enterprises (STEs), pursuant to the provisions of Article XVII: 4(a) of the GATT 1994 and Paragraph 1 of the Understanding on the Interpretation of Article XVII.¹²⁹

3.159. The products of the STEs, the purposes for running the STEs, as well as the nature of the exclusive or special rights or privileges of the STEs have not changed since the last review of the United States.¹³⁰ None of the listed STEs hold exclusive rights to import, export, or market the products they trade, as domestic and international trade activities may be freely entered into by private sector traders. In general, the U.S. legislation allows numerous private dealers to operate on the same terms as STEs.

3.160. The share of products affected by STEs' activities in U.S. trade varies from one STE to another, and is generally small. The CCC has the most trade impact, with over 13% of import value and less than 4% of export value in 2012. These proportions are marginal for the remaining STEs (less than 0.5% of import and export value).

3.161. As concerns, state-owned enterprises (SOEs), the various levels of government (federal, State, and local) continue to be involved in commercial activities, though on a relatively limited scale. The OECD has recently documented the significance of state ownership within OECD countries; it appears that the United States has a relatively low share of (SOEs).¹³¹

3.162. The United States has two main formal structures in which the federal government is involved, for public policy reasons, in generally private sector activities; these are government corporations and government-sponsored enterprises (GSEs).

3.163. Government corporations are defined in Title 5 of the US Code as "a corporation owned or controlled by the Government of the United States"¹³²; while the Government Corporation Control Act definition is "a mixed-ownership Government corporation and a wholly-owned Government corporation".¹³³

3.164. The Federal Government owns a number of corporations with a separate legal personality, established by Congress to perform a public purpose. They may receive federal budgetary allocations, but many have independent sources of revenue. The list of government corporations described in the previous TPR of the United States, remains valid.¹³⁴

3.165. In addition, the Federal Government has established a number of financial institutions for public policy purposes. These "quasi-governmental entities" referred to as government-sponsored enterprises (GSEs) are private corporations with nationwide lending power; they are structured and regulated by the government in order to enhance their ability to borrow money. Their securities are not backed by the full faith or credit of the U.S. Government, but they receive certain special privileges or, as in the case of Fannie Mae and Freddie Mac, receive federal assistance as a result of the financial crisis (Table 3.20).¹³⁵

¹²⁹ WTO document G/STR/N/15/USA, 7 July 2014.

¹³⁰ WTO document WT/TPR/S/275/Rev.2, 8 March 2013.

¹³¹ OECD (2013b).

¹³² 5 U.S.C.103.

¹³³ 31 U.S.C. 9101-10.

¹³⁴ WTO document WT/TPR/S/275/Rev.2, 8 March 2013.

¹³⁵ GPO (2014).

Table 3.20 Government-sponsored enterprises

GSE	Area of operation	Total assets 2012 (US\$ million)
Federal National Mortgage Association (Fannie Mae) ^a	Residential and multi-family mortgages	3,226,250
Federal Home Loan Mortgage Corporation (Freddie Mac) ^a	Residential and multi-family mortgages	2,016,503
Federal Agricultural Mortgage Corporation (Farmer Mac)	Creates a secondary market for agricultural, rural housing, and rural utility loans	12,502
Federal Home Loan Bank System	Provides funding to member banks so the banks can provide community development credit	748,982
Farm Credit System ^b	Guarantees payments as to principal and interest on securities issues by member banks	122,453 (Farm Credit Bank) 90,256 (Agricultural Credit Bank)

a Currently in conservatorship; the U.S. Department of the Treasury entered into a Senior Preferred Stock Purchase Agreement (PSPA) to make investments in senior preferred stock to maintain positive equity.

b The Farm Credit System now encompasses the roles of the Federal Intermediate Credit Banks, Federal Land Banks, and the Regional Banks for Cooperatives.

Source: GPO (2014) *Budget of the United States Government, Fiscal Year 2014*, Appendix. Viewed at: <http://www.gpo.gov/fdsys/pkg/BUDGET-2014-APP/pdf/BUDGET-2014-APP-4.pdf>.

3.3.5 Government procurement

3.3.5.1 Overview

3.166. In fiscal year 2012, U.S. spending on federal procurement contracts amounted to US\$517.9 billion, approximately 14% of 2012 total federal government expenditure. The Department of Defense (DoD) accounted for almost 70%.¹³⁶

3.167. The United States passed new legislation in late 2010 to create a federal excise tax on foreign entities receiving payments for purchases of goods and services.¹³⁷ When the law goes into effect, a 2% tax is to be applied to foreign entities not party to an international procurement agreement. The regulatory changes to implement the law have not yet been finalized. According to the authorities, the definition of "international procurement agreement" for this legislation remains under review.

3.168. The legal framework has not changed substantially since 2012.¹³⁸ The main legislation remains the Buy American Act, which requires the federal government to purchase domestic goods; and the Trade Agreements Act of 1979, which allows the President to waive the discriminatory purchasing requirements with respect to purchases covered by the GPA and FTAs.

3.169. In addition, the Federal Acquisition Regulation (FAR), issued pursuant to the Office of Federal Procurement Policy Act of 1974, remains the primary regulatory tool for acquisition and contracting procedures in the federal government. The main purpose of the FAR is to provide "uniform policies and procedures for acquisitions". Additionally, many departments and agencies issue and maintain specific regulations also known as Agency FAR Supplements to address unique agency requirements and implement laws specific to their agencies.

3.170. Heads of major purchasing entities, i.e. the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration, have the authority to issue regulations in the context of the FAR, following approval by the Office of Management and Budget (OMB), specifically the Administrator of the Office of Federal Procurement Policy (OFPP) and the Office of Information and Regulatory Affairs.

¹³⁶ U.S. Government online information. Viewed at: <http://www.usaspending.gov/>.

¹³⁷ Public Law 111-347.

¹³⁸ WTO document WT/TPR/S/275/Rev.2, 8 March 2013.

3.171. The General Services Administration (GSA) is responsible for supporting other federal agencies with basic functions, including procurement services. It holds the "GSA Multiple Award Schedules", under which long-term contracts are established to provide access for agencies to products and services, including via an online acquisition tool called GSA Advantage (www.gsaadvantage.gov).

3.172. The Department of Defense uses various methods of procurement, including GSA Schedules; it has its own on-line acquisition site referred to as DOD e-Mall (<https://dod.emall.dla.mil/acct/>).

3.173. The National Aeronautics and Space Administration manages a government-wide acquisition contract vehicle for IT products and product-based services known as Solutions for Enterprise-Wide Procurement (SEWP). SEWP is an OMB-authorized government wide acquisition contracts (GWAC), which is a multi-award contract vehicle that all federal agencies may use. Contract holders offer a wide range of advanced technology including tablets, desktops and servers; IT peripherals; network equipment; storage systems; security tools; software products; cloud based services; video conferencing systems and other IT and audio-visual products. Installation, training, maintenance, and warranty are also available through SEWP.

3.3.5.2 Procedures

3.174. Bidding procedures are regulated under FAR parts 8, 13, 14 and 15 and are of two basic types - sealed bidding and contracting by negotiation. Sealed bidding is the most used method; it requires that the final decision by agencies be based on "only price and the price-related factors included in the invitation". The contract is awarded to the lowest bidder who meets the contract requirements. A two-step sealed bidding process is used where the Government needs to gather more information from suppliers before the sealed bidding process is initiated. Contracting by negotiation is required where sealed bidding is not applicable, such as when the agency anticipates more variety among proposed solutions, a need to conduct discussions, or consideration of evaluation factors other than price and price-related factors.

3.175. In general, 15 days before solicitations begin, contracts exceeding US\$25,000 are published on a centralized website (www.fedbizopps.gov) and government agencies are generally required to allow for a 30-day response time, however, a 40-day response time is required for procurements covered under an international trade agreement. Contracts may also be publicized through paid advertisements, if necessary.

3.176. Pursuant to Part 8 of the FAR, agencies are required to give consideration first to "required sources" for their supplies and services needs. The list of "required sources" is made up of various sources, including excess (left over) from other agencies and supplies from the Federal Prison Industries. Required sources take priority over all other sources, including the programmes authorized by the Small Business Act.

3.177. Under part 13 of the FAR, a "simplified acquisition procedure" is used for purchases below US\$150,000, and they are normally reserved (set-asides) for small business categories when there is a reasonable expectation that a minimum of two small businesses are able to provide the product/service competitively in terms of market prices, quality, and delivery.¹³⁹ The Small Business Act of 1953 states that small businesses shall receive a "fair proportion" of federal contracts. Congress has established a 23% government-wide goal for awards of contracts to small businesses.¹⁴⁰

¹³⁹ There are five set-aside categories: (i) small business; (ii) woman-owned small business/economically disadvantaged women-owned small business; (iii) service-disabled veteran-owned small business; (iv) historically under-utilized business zone small business (HUBZone); and (v) a small disadvantaged businesses (SDB). The U.S. Department of Veterans Affairs has its own Veteran Small Business and Service-Disabled Veteran-Owned Small Business Set-Aside Program for contracts it awards.

¹⁴⁰ Subsets of the small business goal are: a 5% government-wide goal for awards to small disadvantaged businesses (SDBs), a 5% government-wide goal for awards to women-owned small businesses (WOSB), a 3% government-wide goal for awards to historically underutilized business zone (HUBZone) small businesses, and a 3% government-wide goal for awards to service-disabled veteran-owned small businesses (SDVOSB).

3.178. All contracts over US\$650,000 (US\$1.5 million for construction) must include a small business subcontracting plan so that small businesses can obtain work under these large contracts.¹⁴¹ Pursuant to the Small Business Act, the Small Business Administration is responsible for defining the specific size standards for each industry to determine which businesses qualify as small. The size standards are for the most part expressed in either millions of dollars in average annual receipts or number of employees, and are updated regularly.

3.179. Agencies are required to use the System for Award Management (SAM) to obtain information on vendors. In general, most awardees, including small businesses, must be registered in SAM as the official database for information on vendors. Agencies may also research small businesses on SBA's Dynamic Small Business Search (DSBS) engine.

3.180. Subpart 13.3 of the FAR provides guidance for the use of methods to simplify the acquisition process. Agencies may use government-wide commercial purchase cards for quick payments of certain goods and services. The purchase orders method allows agencies, after deciding upon a vendor, to issue a legal document, i.e. the purchase order, which details the type, quantity, and delivery date of the goods or services. Where there is a repetitive need for supplies or services, the FAR allows for blanket purchase agreements (BPAs), which establish regular "charge accounts" with suppliers found after a competitive bidding process.

3.181. Bid protests, i.e. on actions that occur before the contract is awarded, are dealt with under federal statutes including the Competition in Contracting Act of 1984 and the Federal Courts Improvement Act of 1982. Bid protests may be taken to the Government Accountability Office (GAO) or the U.S. Court of Federal Claims (COFC). If a party is dissatisfied with a decision by the GAO, it may file a new protest with COFC. COFC decisions may be appealed to the U.S. Court of Appeals for the Federal Circuit. In 2013 2,429 bid protest cases were filed with GAO and 102 bid protests were filed with the COFC.

3.182. Contract disputes in government procurement, i.e. on actions and events that occur after the contract is awarded, are dealt with under the Contract Disputes Act of 1978. The parties may file contract dispute claims to either an agency board of contract appeals or the COFC, whose decisions may be appealed to the U.S. Court of Appeals for the Federal Circuit.

3.3.5.3 Foreign participation

3.183. In principle, pursuant to the Buy American Act, the U.S. federal acquisition process is based on preferential treatment of U.S.-made products. Manufactures are considered as U.S. products if manufactured in the United States and the cost of U.S. components is more than 50% of the overall cost of all components. Non-manufactures are considered U.S. products if mined or produced in the United States. Special rules apply for construction contracts: origin is not based on the nationality of the contractor or similar, but on the origin of the articles, materials, and supplies used by the contractor in constructing or repairing the building or work.¹⁴² Under certain conditions however, the Buy American Act may be waived.¹⁴³

3.184. The Trade Agreements Act gives the President authority to waive Buy American Act requirements for certain procurements. The waiver authority is delegated to USTR. USTR has waived the Buy American Act for eligible products in acquisitions covered by the WTO Government Procurement Agreement, some relevant free trade agreements (FTA), as well as for least-developed countries.

3.185. In the WTO Government Procurement Agreement and each relevant FTA involving the United States, there is a schedule that lists the services excluded by the United States (Table 3.21).

¹⁴¹ Definition of small business. Viewed at: http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

¹⁴² See WTO document WT/TPR/S/275 Rev.2.

¹⁴³ For example, if: (i) it is deemed inconsistent with the public interest; (ii) the cost is considered unreasonable; (iii) the products are for use outside of the United States; (iv) the products are not produced or manufactured in the United States in sufficient quantities or of satisfactory quality; and (v) the procurement is for less than US\$2,500.

3.186. According to the authorities, the United States is overhauling its database of procurements covered under international agreements. The United States expects the database to be completed by end-2014, at which time it will submit data to the WTO GPA committee.

Table 3.21 Services excluded by the United States from trade agreements

	Service	WTO GPA, KORUS	Bahrain FTA, CAFTA-DR, Chile FTA, Colombia FTA, NAFTA, Oman FTA, Panama FTA and Peru FTA	Singapore FTA	Australia and Morocco FTA
1.	All services purchased in support of military services overseas	X	X	X	X
2.	(i) Automatic data processing (ADP) telecommunications and transmission services (D304), except enhanced (i.e. value-added) telecommunications services	X	X		
	(ii) ADP teleprocessing and timesharing services (D305), telecommunications network management services (D316), automated news services, data services or other information services (D317), and other ADP and telecommunications services (D399)	X	X		
	(iii) Basic telecommunications network services (i.e. voice telephone services, packet-switched data transmission services, circuit-switched data transmission services, telex services, telegraph services, facsimile services, and private leased circuit services, but not information services, as defined in 47 U.S.C. 153(20))	^a	^a	X	X
3.	Dredging	X	X	X	X
4.	(i) Operation and management contracts of certain Government or privately owned facilities used for Government purposes, including Federally Funded Research and Development Centers	X		X	
	(ii) Operation of all Department of Defense, Department of Energy, or the National Aeronautics and Space Administration facilities; and all Government-owned research and development facilities or Government-owned environmental laboratories	^b	X	^b	X
5.	Research and development	X	X	X	X
6.	Transportation services (including launching services, but not including travel agent services - V503)	X	X	X	X
7.	Utility services	X	X	X	X
8.	Maintenance, repair, modification, rebuilding and installation of equipment related to ships (J019)		X		X
9.	Nonnuclear ship repair (J998)		X		X

a Acquisitions of the services listed at (2)(iii) of this table are a subset of the excluded services at (2)(i) and (ii), and are therefore not covered under the WTO GPA.

b Acquisitions of the services listed at (4)(ii) of this table are a subset of the excluded services at (4)(i), and are therefore not covered under the WTO GPA.

Source: Acquisition Central online information. Viewed at: http://www.acquisition.gov/far/html/Subpart%2025_4.html; and information provided by the authorities.

3.187. The value of the acquisition is a determining factor in the applicability of trade agreements. These thresholds are fixed by the U.S. Trade Representative and are subject to revision approximately every two years (Table 3.22).

Table 3.22 Thresholds for the application of trade agreements, 2014

(US\$)

Trade agreement	Supply contract equal or exceeding	Service contract	Construction contract
WTO GPA	204,000	204,000	7,864,000
Australia FTA	79,507	79,507	7,864,000
Bahrain FTA	204,000	204,000	10,335,931
CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	79,507	79,507	7,864,000
Chile FTA	79,507	79,507	7,864,000
Colombia FTA	79,507	79,507	7,864,000
KORUS	100,000	100,000	7,864,000
Morocco FTA	204,000	204,000	7,864,000
NAFTA			
Canada	25,000	79,507	10,335,931
Mexico	79,507	79,507	10,335,931
Oman FTA	204,000	204,000	10,335,931
Panama FTA	204,000	204,000	7,864,000
Peru FTA	204,000	204,000	7,864,000
Singapore FTA	79,507	79,507	7,864,000
Israel FTA	50,000	-	-

Source: Acquisition Central online information. Viewed at: http://www.acquisition.gov/far/html/Subpart%2025_4.html; and information provided by the authorities.

3.188. Access conditions to state procurement are defined in state legislation. Some 37 states participate in the GPA, and their procurement is in accordance with the provisions of the Agreement for contracts above 355,000 SDRs for supplies and services, and 5 million SDRs for construction.

3.3.6 Intellectual property rights

3.189. Intellectual property (IP) – how it is protected, administered and enforced, both domestically and in exports markets – is a central consideration of United States trade policy. In articulating its objectives in the context of current trade negotiations, the Administration has stressed the importance of IP for the U.S. economy, both in creating well-paid jobs and in supporting high value exports. It attributes nearly 40 million jobs and 60% of merchandise exports to "IP-intensive" industries, on the basis of a 2012 report by the Economics and Statistics Administration and the U.S. Patent and Trademark Office.¹⁴⁴ While the U.S. IP system is among the world's most mature and well established, the dynamic character of IP in the contemporary United States economy led to various developments during the review period; policy initiatives on the part of the Administration and the legislature (see below for some key examples) underscored the continuing significance of legal and policy settings in this field for the overall U.S. trade profile.

3.3.6.1 Trade context

3.190. IP takes diverse forms in international trade, including IP embedded in manufactured goods, IP royalties recorded as services trade, and consumer downloads of IP content. Accordingly, it is difficult to establish a comprehensive tally of the full IP component of international trade involving the United States. However, several indicators confirm the growing importance of IP for the economy and international trade profile of the United States.

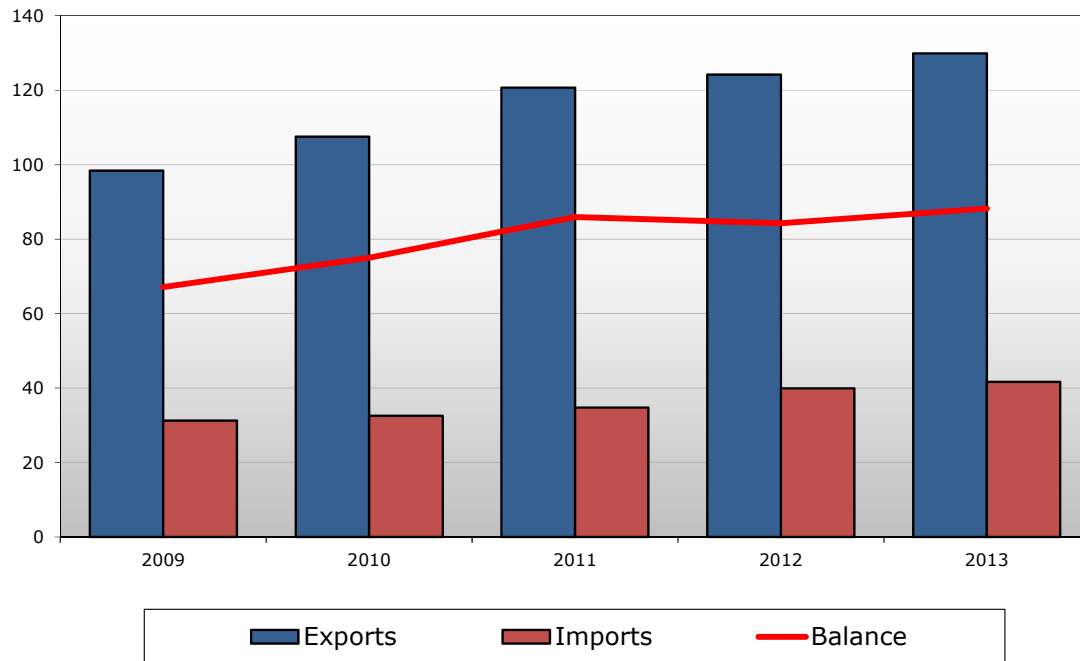
3.191. The preeminent position of the United States in IP-related trade was evident from its reported receipts of royalties and licence fees (reported in service trade statistics¹⁴⁵). The U.S. share of such royalties and fees comprised 43% of the global total in 2012; its outgoing payments amounted to approximately 14% of global transactions. U.S. receipts of such royalties and fees continued to grow rapidly in recent years, rising from US\$98 billion in 2009 to US\$130 billion in 2013, including an annual increase of 5% in 2013. Payments to foreign

¹⁴⁴ See WTO document WT/TPR/S/275/Rev.2, and Economics and Statistics Administration and U.S. Patent and Trademark Office (2012).

¹⁴⁵ The Bureau of Economic Analysis classified film and television tape distribution services under royalties and licence fees, in place of its previous classification under audiovisual and related services.

rightholders grew sharply in 2012, increasing 15% over the previous year. This increase is attributable in part to a surge in payments for sports licensing connected with the 2012 Summer Olympics. Growth in such payments slowed somewhat in 2013 to reach a total of US\$42 billion. Overall, the United States increased its traditionally robust surplus in royalty and licence fee payments, which rose from US\$84 billion in 2012 to US\$88 billion in 2013 (Chart 3.9).

Chart 3.9 Trade flows in royalties and licence fees, 2009-13



Source: Viewed at: <http://stat.wto.org/>.

3.192. Industrial processes (at 34%) and computer software (at 32%) comprised the greatest part of the reported receipts of royalties and licence fees in 2012.¹⁴⁶ However, the most rapid growth (at 11%) in fees received was in the film and television sectors. This growth is attributable to greater demand for U.S. entertainment products, especially from the United Kingdom and the Asia-Pacific region.¹⁴⁷ The geographic composition of this trade continued to diversify. Payments from the historically most significant partners fell overall in 2012, despite vigorous growth from the United Kingdom, while receipts from other economies rose by US\$3.5 billion. An 11% rise in reported payments by U.S.-based firms for new industrial processes, particularly in the automobile and pharmaceutical sectors, corresponded with growing domestic manufacturing in these sectors. U.S. payments for rights to foreign movies and television programmes grew 28%, mostly reflecting increased demand for content from the United Kingdom and South and Central America.¹⁴⁸

3.193. The largest share of U.S. trade in IP licences constituted transactions between affiliates servicing foreign markets and their multinational corporate parent entities in the United States. However, the share of unaffiliated trade (IP licence receipts from unaffiliated firms) grew steadily, from 34% in 2006 to 38% in 2012. In 2008-09, there was a decrease in growth in these receipts that was not similarly reflected in licence receipts from affiliated firms. This appears to indicate that affiliated transactions are based on longer term contracts, rather than one-off licences, and are therefore less responsive to fluctuations in the business cycle.¹⁴⁹ However, by the same token, unaffiliated trade grew more steeply in more recent years in response to growing demand for U.S. licence content, including from an increasingly diverse geographical base (Chart 3.10).

¹⁴⁶ Bureau of Economic Analysis online information. Viewed at: www.bea.gov/international/international_services.htm.

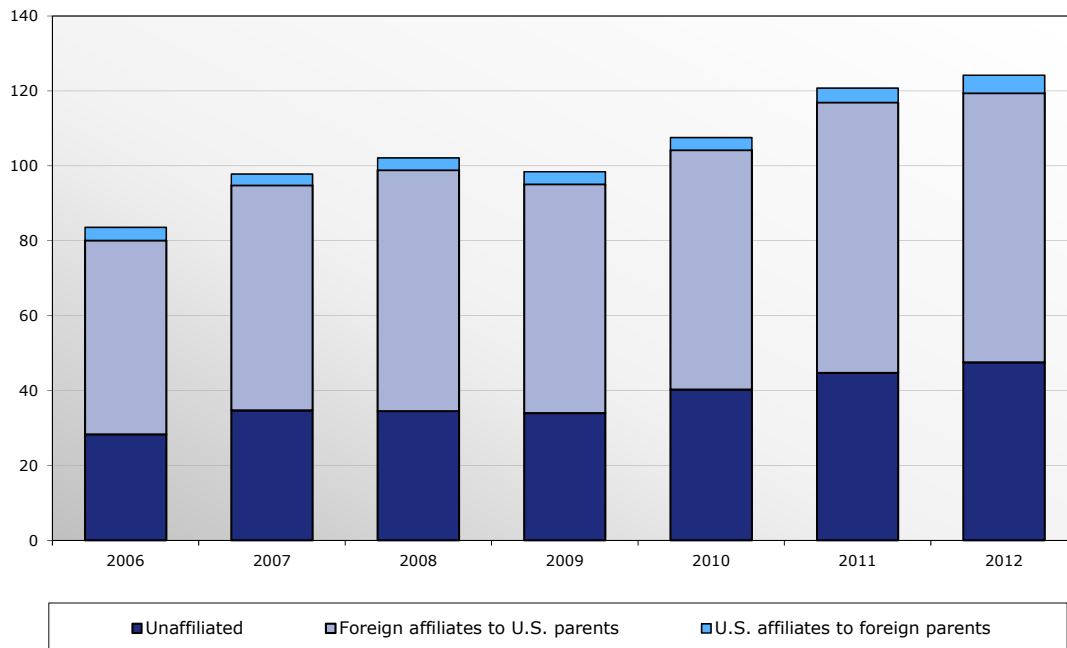
¹⁴⁷ BEA (2013b).

¹⁴⁸ BEA (2013b).

¹⁴⁹ BEA (2011).

Chart 3.10 IP licence and royalty receipts, by affiliation, 2006-12

(US\$ billion)



Source: WTO Secretariat, based on Bureau Economic Analysis online information. Viewed at: www.bea.gov.

3.194. The significance of domestic and international trade in IP licences at the consumer level was evident in the consolidation of markets for content in the form of digital downloads, notably software applications for mobile platforms, e-books, and audio and audiovisual works, coupled with a progressive transformation of business models in the music, publishing, audiovisual, gaming, and consumer software sectors. The U.S. International Trade Commission (ITC) reported on the difficulty of measuring international digital trade ("commerce in products and services delivered via the Internet"), noting anecdotal evidence of rapid growth in international trade in digital products (e.g. when "digital music owned by parties in one country is downloaded by consumers in other countries"), but concluding that "data on such transactions are scarce, and the need for better information is a common refrain among industry and researchers".¹⁵⁰ Reviewing IP-related trade concerns, the ITC reported that content industries (including software, music, movies, books, and video games) identified internet piracy as "the single most important barrier to digital trade for their industries"; and that internet intermediaries expressed concerns about "unclear legal frameworks and being held liable for the infringing or illegal conduct of users of their systems".

3.195. Available industry figures for trade in consumer IP licences connected with digital content suggested strong growth, varying capacity to derive revenues from download trade, and increasing breadth of exports of consumer IP licences, including to the developing world. One music industry report¹⁵¹ estimated digital revenues at 60% of the domestic music market, following 3.4% growth in 2013. The report charted pronounced growth in subscription and advertisement-supported streaming (described as a business model based on access to, and not only ownership of music), their share of digital revenues rising to 27%, up from 14% in 2011. This growth was attributed in part to music consumers moving away from pirate services. The U.S. publishing industry reported significant growth in the export of e-books in 2012¹⁵², export revenues rising by 63%: major export markets comprised the United Kingdom, Australia, Germany, France, Norway, and Switzerland, while the fastest growing markets were Germany, New Zealand, Spain, Italy, South Africa, and Brazil. By contrast, export revenues for printed books rose by 1.3%. The market for applications ("apps") for mobile devices grew exponentially: one on-line store reported a 50% rise in app downloads from US\$50 billion to US\$75 billion in the year to June 2014¹⁵³, with

¹⁵⁰ U.S. International Trade Commission (2013a).

¹⁵¹ IFPI (2014).

¹⁵² AAP (2013).

¹⁵³ Viewed at: www.apple.com/pr/library/2014/01/07App-Store-Sales-Top-10-Billion-in-2013.html.

sales of US\$10 billion in 2013 derived from 155 countries, and with an overall total of US\$15 billion paid to software developers. One industry estimate of another on-line store reported strong growth from 2013 to 2014 both in downloads (a 50% rise) and revenues (140% growth)¹⁵⁴, suggesting increasing capacity to derive revenue from downloaded apps. Fastest growth in downloads reportedly came from the United States, Brazil, the Russian Federation, the Republic of Korea, and India, while growth in revenues was greatest for Japan, the United States, the Republic of Korea, Germany, and the United Kingdom, with growth in Indonesia, Mexico and Turkey also noteworthy.

3.196. Patenting activity gives a further indication of the significance of IP for U.S. international trade policy. Growth in U.S. innovators' use of the international patent system was strong in 2013: U.S. filings under the Patent Cooperation Treaty rose 11%, the fastest growth since 2001, accounting for 56% of global growth and surpassing its 2007 (pre-financial crisis) filing level for the first time. The U.S. share of ownership of patent families worldwide among high income countries increased slightly to 21% in 2011, from 20% in 2001, but the strong relative rise in patent ownership among emerging economies reduced its global share of patent families from 18% to 14% in the same period. The United States Patent and Trademark Office (USPTO) received 542,815 patent applications in 2012¹⁵⁵, representing 7.8% growth, maintaining its position since 2011 as the world's second largest recipient of applications after China's patent office. A WIPO study of inventor mobility¹⁵⁶, based on patent filing statistics, concluded that between 2006 and 2010 the United States received 117,244 inventor immigrants, 57% of the global total. Concerning public sector patenting, a WIPO study reported that U.S. universities accounted for 10 of the 11 highest users of the patent system.¹⁵⁷

3.3.6.2 Participation in WTO and international initiatives

3.197. USTR reported active participation in the TRIPS Council reviews of TRIPS Agreement implementation and use of the TPR mechanism to "seek constructive engagement on issues related to TRIPS Agreement implementation"¹⁵⁸, and has raised a wide range of IP interests in these processes. The United States introduced TRIPS Council discussions on IP and innovation and the role of IP in sport, and contributed to discussions regarding IP and climate-related technology. In turn, during the most recent review of U.S. trade policies, other Members raised questions on methodologies for assessing the contribution of IP to the economy, as well as on many patent issues (patent quality and pendency, unity of invention, litigation by non-practicing or patent-assertion entities, humanitarian and green-technology initiatives, disclosure standards, remedies, post grant review, grace periods), copyright (foreign works, performers' rights, technological protection measures), trademarks and geographical indications, and enforcement of foreign-owned IP rights.¹⁵⁹ In its Trade Policy Review and at the DSB, the United States also reported on legislative activities linked to implementation of DSB recommendations concerning IP-related case.¹⁶⁰

3.198. During the review period, the United States made 21 legislative notifications to the TRIPS Council, including Consolidated Copyright Regulations, Consolidated Patent Laws and Rules, legislation to implement the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs and Patent Law Treaty, and a wide range of other patent, trademark, copyright, and enforcement measures.¹⁶¹ The United States updated the Council on its implementation of Article 66.2 of the TRIPS Agreement¹⁶², noting that the primary driver for technology transfer from the United States is the private sector, observing that the U.S. tax system contributes to technology transfer through allowing tax-exempt donations to non-profit organizations, and identifying U.S. institutes of higher learning as a major source of technology transfer to LDCs. TRIPS Agreement-related technical assistance included IP protection and management, administration and human resource development, border enforcement, adjudication of IP cases, methodologies and forensics for criminal cases and law enforcement, pharmaceutical

¹⁵⁴ The State of Play: A Look at the Growth of Google Play. Viewed at: www.appannie.com.

¹⁵⁵ WIPO (2013).

¹⁵⁶ WIPO (2014b).

¹⁵⁷ WIPO, How Universities and Public Research Organizations Use the PCT System.

¹⁵⁸ USTR (2014c).

¹⁵⁹ WTO document WT/TPR/M/275/Add.1, 1 November 2012.

¹⁶⁰ WTO documents WT/DS160/R, 15 June 2000; and WT/DS176/R, 6 August 2001.

¹⁶¹ IP/N/1/USA/6.

¹⁶² IP/C/W/594/Add.6.

counterfeiting, and public education and consumer awareness. Some 15 U.S. agencies were reported as providing technical assistance.

Table 3.23 Summary of intellectual property protection in the United States, May 2014

Form	Main legislation	Coverage	Duration
Copyright and related rights	Copyright Law of the United States, Title 17 of the U.S. Code	Authors' rights in the artistic, literary and scientific domains; to enjoy copyright protection a work must be an original creation	Life of author plus 70 years for works created on or after 1 January 1978. Anonymous works, pseudonymous works, and works made for hire protected for 95 years after publication or 120 years after creation, whichever is the shorter
Patents	Patent Law of the United States, as incorporated in Title 35 of the U.S. Code	Any inventions that are new, useful, and non-obvious. Apply to process, machine, manufacture or composition of matter, or improvements thereof	20 years from filing date
Industrial designs	Patent Law of the United States, as incorporated in Title 35 of the US Code	Any new, original and ornamental design for an article of manufacture	14 years from date of grant
Trademarks	The Lanham Act of 1946, as amended (15 U.S.C. 1051 et seq.) and state laws.	Any sign used to identify and distinguish goods or services of one enterprise from those of another enterprise	10 years from registration date; renewable indefinitely as long as the trademark is in use in commerce that is lawfully regulated by Congress
Geographical indications	The Lanham Act of 1946, as amended (15 U.S.C. 1051 et seq.), and Federal Alcohol Administration Act of 1935	Protection against misuse of geographic signs and names of viticultural significance	Unlimited
New plant varieties	Plant Variety Protection Act Amendments of 1994 (7 U.S.C. 2321 et seq.)	New plant varieties which are sexually reproduced (by seed) or tuber-propagated: not previously sold for purposes of exploitation of the variety, in the United States, more than 1 year prior to the date of filing; or in any area outside of the United States more than 4 years prior to the date of filing, or, in the case of a tree or vine, more than 6 years prior to the date of filing	20 years from date of issue of the certificate in the United States
Layout designs of integrated circuits	Semiconductor Chip Protection Act of 1984 (17 U.S.C. 901 et seq.)	Topography of microelectronic semiconductor products provided it is original (the result of its creator's own intellectual effort) and is not staple, commonplace or familiar in the industry at the time of its creation	10 years from filing date (or, if earlier, from first use)

Form	Main legislation	Coverage	Duration
Trade Secrets	Economic Espionage Act of 1996 and state laws	Any information, including a formula, pattern, compilation, program device, method, technique, or process, not generally known to the relevant portion of the public, that provides an economic benefit to its holder, and is the subject of reasonable efforts to maintain its secrecy	Indefinite

Source: WTO document WT/TPR/S/235/Rev.1, 29 October 2010, updated by the WTO Secretariat.

3.199. U.S. trade agreements with Colombia, the Republic of Korea, and Panama, which entered into force in 2012, included new IP standards for those countries as well as new consultative mechanisms between each of these countries and the United States.

3.3.6.3 The patent system

3.200. The overall strategic goal of the Department of Commerce Strategic Plan for 2014-18 is to expand the U.S. economy and fostering U.S. job growth through increased exports and inward foreign investment.¹⁶³ It identified a role for the USPTO in helping build the capacity of U.S. regional economies to accelerate the production of value-added goods and services, strengthening the digital economy, and accelerating the growth of innovation-intensive economic sectors by building public and private capacity to invent, improve, and commercialize new products and services, as well as promoting enhanced IP protection abroad. The USPTO's own strategic plan for 2014-18¹⁶⁴ sets out three goals for this period: optimize patent quality and timeliness; optimize trademark quality and timeliness; and provide domestic and global leadership to improve IP policy, protection, and enforcement.

3.201. The continuing significance of international cooperation to improve examination processes was marked by the establishment within USPTO of an Office of International Patent Cooperation (OIPC). The OIPC is responsible for implementing technical cooperative projects for improving the effectiveness and quality of examination, such as the Patent Prosecution Highway, the Global Patent Search Network, the Cooperative Patent Classification system, and the Global Dossier Initiative.

3.202. Patent timeliness, measured in terms of total pendency (time from filing date to final disposition), improved from 33.9 months in October 2012 to 27.8 months in June 2014¹⁶⁵, progressing towards the goal of 20 months by 2019. Several WTO Members showed interest in the metrics and initiatives to improve patent quality in the 2012 Trade Policy Review, which elaborated further on these measures, including their role in providing feedback and training to help reduce overall examination time and promote high quality examination.¹⁶⁶ The Office of Patent Quality Assurance (OPQA) aims to monitor examination quality, including through the Quality Composite Score, comprising a weighted total of seven distinct patent quality indicators, such as compliance of initial findings of patentability with final decisions, and internal and external survey data. This score rose from 35.2 in first quarter 2012 to 75.9 in second quarter 2014, with 100 representing attainment of a "superior level ... identified as a stretch goal".¹⁶⁷

3.203. Following enactment of the Leahy-Smith America Invents Act (AIA) in 2011¹⁶⁸, significant regulatory and administrative reforms were required to give effect to what was described as "the

¹⁶³ Department of Commerce, America is Open for Business, Strategic Plan for Fiscal Years 2014-2018 (2013).

¹⁶⁴ USPTO Strategic Plan 2014-2018. Viewed at: www.uspto.gov/about/stratplan/.

¹⁶⁵ USPTO, Patents Dashboard June 2014, online information. Viewed at: <http://www.uspto.gov/dashboards/patents/main.dashxml>.

¹⁶⁶ WTO document WT/TPR/M/275/Add.1, 15 May 2013.

¹⁶⁷ USPTO online information. Viewed at: <http://www.uspto.gov/dashboards/patents/main.dashxml>.

¹⁶⁸ Pub. Law. No. 112-29. Viewed at: www.gpo.gov/fdsys/pkg/PLAW-112publ29/content-detail.html.

most significant reforms to the U.S. patent law in 60 years".¹⁶⁹ These entailed transition to a first-inventor-to-file system, an enhanced grace period, new prior art standards, post grant review, and fee discounts for micro entities. The USPTO identified AIA implementation as helping "the U.S. align with international norms", in turn providing "a renewed opportunity to harmonize the international patent system and facilitate office cooperation through work-sharing with international patent offices," leading to higher quality examination, more predictability in prosecution process, and cost reduction for applicants around the world.¹⁷⁰

3.204. During the review period, the Administration announced a series of initiatives to build on the AIA reforms with a view to improving the patent system foster innovation and to protect innovators from what was termed "frivolous litigation".¹⁷¹ These included:

- (a) a proposed rule on transparency to ensure that records of patent ownership are accurate and up to date. This would require patent owners and applicants to provide the USPTO with information on the attributable owners of patents and applications, with a view to illuminating the competitive landscape, facilitating more efficient technology transfers, reducing abusive patent litigation, helping ensure the highest quality patents, and leveling the playing field for all innovators¹⁷²; and
- (b) a crowdsourcing initiative, making use of crowdsourcing techniques and resources, so as to expand ways for identifying prior art relevant to determining the novelty of claimed inventions.¹⁷³

3.205. These initiatives also included annual renewal of the pilot Patents for Humanity Program, which created incentives to leverage patented technology to address global humanitarian needs. Past awards aimed at lowering the price of HIV and malaria drugs, improve food nutrition, provide solar energy to remote locations, address toxic counterfeit drugs, and provide safe drinking water. Under the programme, the USPTO provides grant awards in the five development categories of medicine, nutrition, sanitation, household energy, and living standards.

3.206. During the review period, the United States Supreme Court issued several significant decisions involving the issue of patent-eligible subject matter. Cases included *Association for Molecular Pathology v. Myriad Genetics* (concerning the patent-eligibility of a naturally occurring DNA segment, in which it found that it is "a product of nature and not patent eligible merely because it has been isolated," in contrast with complementary DNA (cDNA), which is "not naturally occurring"); and *Alice Corporation Pty. Ltd. v. CLS Bank International*, in which it held that mere computer implementation of an "abstract idea" in the form of the established commercial practice of intermediated settlement, was insufficient to form a patent-eligible invention.

3.3.6.4 Trade secret protection

3.207. The Administration issued a Strategy on Mitigating the Theft of U.S. Trade Secrets in 2013.¹⁷⁴ The strategy lays out a series of steps to curb the theft of trade secrets, including diplomatic efforts to protect trade secrets overseas, voluntary best practices by private industry, enhanced domestic law enforcement operations, improved domestic legislation, and public awareness and stakeholder outreach. It proposed the use of "trade policy tools", including cooperation with trading partners, using the Special 301 process to identify weaknesses in trade secret protection, seeking new provisions in trade negotiations that would make available remedies similar to those under U.S. law, and raising trade secret protection in bilateral, regional, and multilateral forums, including the TRIPS Council. Domestically, while civil enforcement is

¹⁶⁹ USPTO online information. "Global Impacts of the AIA". Viewed at: www.uspto.gov/aia_implementation/global_impacts.jsp.

¹⁷⁰ USPTO online information. Viewed at: <http://www.uspto.gov/dashboards/patents/main.dashxml>.

¹⁷¹ The White House Fact Sheet: White House Task Force on High-Tech Patent Issues, June 4, 2013. Viewed at: www.whitehouse.gov/the-press-office/2013/06/04/fact-sheet-white-house-task-force-high-tech-patent-issues.

¹⁷² USPTO online information. "USPTO-led Executive Actions on High-Tech Patent Issues". Viewed at: http://www.uspto.gov/patents/init_events/executive_actions.jsp.

¹⁷³ USPTO online information. "USPTO-led Executive Actions on High-Tech Patent Issues". Viewed at: http://www.uspto.gov/patents/init_events/executive_actions.jsp.

¹⁷⁴ The White House (2013a).

principally addressed through state law, criminal enforcement is principally governed by Federal law, e.g., the Economic Espionage Act. With respect to civil enforcement, all 50 states maintain common law courses of action covering trade secret theft, and the Uniform Trade Secrets Act (UTSA), developed by the Uniform Legal Commission, has been adopted by 48 states (as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands). On 1 September 2013, Texas enacted legislation implementing the UTSA. Implementing legislation was also introduced in Massachusetts. At the federal level, the Theft of Trade Secrets Clarification Act of 2012 clarified the application of the Economic Espionage Act to source code, following the 2012 decision of the U.S. Court of Appeals for the Second Circuit in *United States v. Aleynikov*.

3.3.6.5 Copyright

3.208. The Administration and Congress have focused on the increasing significance of the digital environment for dissemination of copyright material. The Department of Commerce Internet Policy Task Force (IPTF or Task Force) was launched in 2010 to conduct a comprehensive review of the nexus between privacy policy, copyright, global free flow of information, cybersecurity, and innovation in the internet economy. It draws on the expertise of the National Telecommunications and Information Administration (NTIA), the USPTO, the National Institute of Standards and Technology (NIST), and the International Trade Administration (ITA). In July 2013, the IPTF released a green paper¹⁷⁵, which framed the policy questions in terms of "how to retain a meaningful copyright system that continues to drive the production of creative works while at the same time preserving the innovative power of the Internet and the free flow of information" at a time when a "broadening array of creators continue to express themselves and share their valuable works with the world, and as the Internet continues to grow in economic, social and cultural relevance." Its recommendations include:

- (a) adjustments to the public performance right for sound recordings by extending the right to cover broadcasting, and urging that any reassessment of the appropriateness of different rate-setting standards for different types of digital music services take into account the impact on creators and right holders as well as on different types of services;
- (b) assessing and improving enforcement tools to combat online infringement and promote the growth of legitimate services while preserving the Internet's essential functioning. It included a call for legislation to adopt the same range of penalties for criminal streaming of copyrighted works as exists for criminal reproduction and distribution, and a proposal for policy discussions on statutory damages in the context of individual file-sharers and secondary liability for large-scale online infringement. The Task Force proposed establishing a multi-stakeholder dialogue on how to improve the operation of the DMCA's notice and takedown system, and support the work of the Copyright Office to improve the DMCA database of designated agents and examine possible small claims procedures that can assist individual creators and SMEs in enforcing their rights online. The Task Force also encouraged appropriate voluntary private sector initiatives for online enforcement, proposing to monitor and evaluate their effectiveness; and encouraged public education and outreach efforts for consumers; and
- (c) realizing the potential of the Internet as a legitimate marketplace for copyrighted works and as a vehicle for streamlining licensing, foreshadowing input into Congressional review of music licensing, support for the Copyright Office's improvements on registration and recordation, and enhanced incentives to use such systems; and promoting policy discussion on the Government's role in improving the online licensing environment.

3.209. The IPTF established a multi-stakeholder dialogue on improving the operation of the DMCA takedown system, including a forum convened in March 2014. Further policy roundtables took place during 2014 and covered remixes, the first sale doctrine, and statutory damages in the context of individual file sharers and of secondary liability for large-scale infringement.

¹⁷⁵ USPTO online information. Viewed at: <http://www.uspto.gov/news/publications/copyright/greenpaper.pdf>.

3.210. The U.S. House of Representatives' Subcommittee on Courts, Intellectual Property and the Internet is currently undertaking a comprehensive review of U.S. copyright law to ensure that current law keeps pace with the digital environment.

3.211. The U.S. Copyright Office undertakes studies on U.S. copyright law at the request of Congress and also under its own initiative. Recent reports prepared for Congress have included:

- (a) Small Copyright Claims (September 2013)¹⁷⁶: Congress asked the Copyright Office to study the challenges of the current system for resolving small copyright claim disputes, as well as possible alternative systems; and
- (b) Resale Royalties: An Updated Analysis (December 2013)¹⁷⁷: Congress asked the Copyright Office to review how the current copyright legal system affects and supports visual artists; and how a federal resale royalty right for visual artists would affect current and future practices of groups or individuals involved in the creation, licensing, sale, exhibition, dissemination, and preservation of works of visual art.

3.212. The Copyright Office is also engaged in several ongoing studies in order to advise Congress and the public on issues of importance. These include requests for public comment, and often involve public roundtables. Current active studies on U.S. copyright law include:

- (a) orphan works and mass digitization (initiated in October 2012)¹⁷⁸: the Copyright Office is continuing its previous work undertaken by the Copyright Office on the problem of orphan works and mass digitization in order to advise Congress as to possible next legislative steps. The Copyright Office held a public roundtable issues in March 2014 and has sought written public comments for the record;
- (b) the right of making available (initiated in February 2014)¹⁷⁹: the Copyright Office has been asked by Congress to review and assess: how the existing bundle of exclusive rights under Title 17 of the U.S. Code covers the making available and communication to the public rights in the context of digital on-demand transmissions such as peer-to-peer networks, streaming services, and music downloads, as well as more broadly in the digital environment; how foreign laws have interpreted and implemented the relevant provisions of the WIPO internet treaties; and the feasibility and necessity of amending U.S. law to strengthen or clarify U.S. law in this area. The Copyright Office held a two-day public roundtable in May 2014, and has sought written public comments for the record; and
- (c) Music licensing (initiated in March 2014)¹⁸⁰: the Copyright Office is undertaking a study to evaluate the effectiveness of the existing methods of licensing musical works and sound recordings. In June 2014, the Copyright Office hosted a series of public roundtables in several cities across the United States on music licensing issues, particularly issues in the digital and online environment. The Copyright Office has also sought written public comments for the record.

3.213. The Copyright Office is also engaged in additional work on issues related to copyright registration, a review of the copyright recordation system, an inquiry into technological updates, and associated regulatory rulemakings.¹⁸¹

¹⁷⁶ U.S. Copyright Office, Report on Small Copyright Claims. Viewed at: <http://www.copyright.gov/docs/smallclaims/>.

¹⁷⁷ U.S. Copyright Office, Report on Resale Royalties. Viewed at: <http://www.copyright.gov/docs/resaleroyalty/>.

¹⁷⁸ U.S. Copyright Office, online information. Viewed at: <http://www.copyright.gov/orphan/>.

¹⁷⁹ U.S. Copyright Office, online information. Viewed at: http://www.copyright.gov/docs/making_available/.

¹⁸⁰ U.S. Copyright Office, online information. Viewed at: <http://www.copyright.gov/docs/musiclicensingstudy/>.

¹⁸¹ For links to all ongoing work of the Copyright Office, see: www.copyright.gov.

3.214. Statutory licensing provisions in the U.S. Copyright Act govern the retransmission of distant and local television broadcast signals by cable operators and satellite carriers to those who cannot receive broadcast signals. A Copyright Office report issued in August 2011 on marketplace alternatives to replace these statutory licences, considered the repeal of these provisions, and addressed how the licenses may be phased out.¹⁸² The statutory licensing authority for such satellite retransmissions is scheduled to expire on 31 December 2014. In July 2014, the U.S. Congress also passed the Unlocking Consumer Choice and Wireless Competition Act¹⁸³, which re-establishes a limited exemption to prohibitions on circumvention of certain technological protection measures for the purposes of "unlocking" wireless telephone handsets to allow cell phone owners to connect to different wireless network providers. The President signed the Act into law on 1 August 2014.

3.215. The challenges of copyright in the online environment have led to continued litigation with significant implications for the publishing industry, including foreign holders of copyright. For instance, associations of publishers and artists had brought separate lawsuits against Google, Inc. for copyright infringement in relation to the Google Book Search project, an initiative to digitize books in libraries and make them searchable on the Internet, against a background of concern about the scanning and digitizing of millions of works, both foreign and domestic, still under copyright without the permission of the author and the international copyright implication of such an undertaking. Following rejection of a proposed settlement agreement in 2011, the Authors Guild v. Google, Inc. litigation led to a judgment in 2013 that the digitization project conformed with the fair use doctrine in U.S. copyright law.¹⁸⁴ This decision, at District Court level, was reportedly appealed to the U.S. Court of Appeals for the Second Circuit in April 2014.¹⁸⁵ The Copyright Office had earlier published "Legal Issues in Mass Digitization: A Preliminary Analysis and Discussion Document" to promote policy discussion on mass digitization of books, and as mentioned above, is undertaking a study on orphan works and mass digitization.

3.216. With respect to judicial developments, the Supreme Court considered several significant copyright questions during the review period, including *Kirtsaeng v. John Wiley & Sons, Inc.*, on the application of the "first sale" doctrine to textbooks published abroad with the copyright holder's consent and then imported into the United States for sale, holding that there was no geographical limitation on the doctrine and that the owner of a copy "lawfully made" under U.S. copyright law, which the Court held included copies purchased abroad, is entitled to sell or otherwise dispose of the textbook copy in the United States without the copyright owner's authorisation¹⁸⁶; *American Broadcasting Cos., Inc., v. Aereo, Inc.*, the creation by Aereo of subscriber-specific copies of television programmes to be streamed to the subscriber's computer or Internet-connected device. The Supreme Court held that this activity infringed the exclusive right of the owners of the copyrights in the programmes to perform those works publicly.¹⁸⁷

3.3.6.6 Registered designs

3.217. A landmark in design protection in the United States was reached with the entry into force of the Patent Law Treaties Implementation Act of 2012, establishing the legal basis to implement The Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs (the Hague Agreement). This enables the United States to join the WIPO-administered system for filing a single international application for protection of industrial designs, with potential effect in the currently 47 parties to the Geneva Act (including two regional organizations, the EU and OAPI, *Organisation Africaine de la Propriété intellectuelle*). Rule changes proposed to

¹⁸² U.S. Copyright Office (2011).

¹⁸³ Unlocking Consumer Choice and Wireless Competition Act, S. 517, 113th Cong (2014).

¹⁸⁴ 954 F. Supp. 2d 282 (S.D.N.Y. 2013). Viewed at: <http://docs.justia.com/cases/federal/district-courts/new-york/nysdce/1:2005cv08136/273913/1088/0.pdf?1384528570>.

¹⁸⁵ 954 F. Supp. 2d 282 (S.D.N.Y. 2013), *appeal docketed*, No. 13-4829 (2d Cir. Dec. 23, 2013). Viewed at: <http://docs.justia.com/cases/federal/district-courts/new-york/nysdce/1:2005cv08136/273913/1088/0.pdf?1384528570>.

¹⁸⁶ 568 U.S. ___, No. 11-697, 2013 U.S. LEXIS 2371 (March 19, 2013). Viewed at: http://www.supremecourt.gov/opinions/12pdf/11-697_4g15.pdf.

¹⁸⁷ 573 U.S. ___, No. 13-461, 2014 U.S. LEXIS 4496 (June 25, 2014). Viewed at: http://www.supremecourt.gov/opinions/13pdf/13-461_1537.pdf.

implement the Hague system in the United States included¹⁸⁸: standardized formality requirements; the USPTO established as a receiving office for international design applications; substantive examination of international design applications designating the United States; provisional rights for international design applications designating the United States; and extension of term of protection to 15 years from grant.

3.218. U.S. participation in the Hague system progressed with the policy objective of protecting SMEs that "lack a global footprint by enabling them to easily and swiftly acquire design protection in multiple markets", and recognizing the importance of industrial design, whether in mobile technologies, manufacturing, or household appliances, to bridge "the gap between complex computer operations and a user-friendly interface."¹⁸⁹

3.3.6.7 IP enforcement

3.219. Coordination and effectiveness of mechanisms to enforce IP rights both domestically and in foreign markets remain a major policy concern for the United States. The Intellectual Property Enforcement Coordinator (IPEC) issued the 2013 Joint Strategic Plan on Intellectual Property Enforcement¹⁹⁰, which highlighted developments in enforcement since 2009. These included increases of 71% in new cases, 159% in arrests, 103% in convictions, and 264% in indictments by Immigration and Customs Enforcement (ICE)-Homeland Security Investigations (HSI). Pending Federal Bureau of Investigation health and safety-focused investigations rose by 308% and related arrests by 286%. Seizures of infringing imports increased by 53%. Voluntary private sector "best practice" initiatives were undertaken by financial service providers, on-line markets, Internet service providers, and advertisers.

3.220. Of 20 recommendations put forward by the Administration in the 2011 White Paper on Intellectual Property Enforcement Legislative Recommendations¹⁹¹, the 2013 Joint Strategic Plan noted that seven had been enacted into law, including increased penalties for counterfeit goods or services sold to, or for use by, the military or national security apparatus, for economic espionage, and for trafficking in counterfeit drugs. The Food and Drug Administration (FDA) was given authority to destroy counterfeit or adulterated drugs imported in small packages, and to require pharmaceutical manufacturers to report when a drug they manufacture has been found to be counterfeited or stolen (to address the sale of counterfeit goods and reducing online piracy). Alongside a range of domestic measures that bolstered or added to existing domestic measures, the 2013 Joint Strategic Plan identified action items for enforcing U.S. rights abroad by means of foreign law enforcement cooperation; IP enforcement through international organizations; IP enforcement through trade policy tools; combating foreign websites that infringe U.S. IP rights; protecting intellectual property at ICANN; supporting U.S. SMEs in foreign markets; and examining labour conditions associated with infringing goods.

3.221. There has been extensive discussion in the United States about the concept of "standard essential patents" that are encumbered by voluntary commitments to licence on fair reasonable and non-discriminatory terms in high-tech industry sectors. The issue was addressed in a joint Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary FRAND Commitments issued by the Department of Justice and the USPTO.¹⁹² It was also discussed in the disapproval by USTR of a final ITC determination under Section 337 of the Tariff Act of 1930¹⁹³, which had granted a border exclusion order prohibiting the importation of certain infringing Apple communication, music, and data processing devices, and a cease and desist order concerning domestic sales. The USTR referred to policy considerations related to the "effect on

¹⁸⁸ Federal Register Notice, Proposed Rule: Changes To Implement the Hague Agreement Concerning International Registration of Industrial Designs, November 29, 2013. Viewed at: <https://www.federalregister.gov/articles/2013/11/29/>.

¹⁸⁹ USPTO online information, Director's Forum Blog, *A New Chapter for Protection of Industrial Design for the United States*, March 1, 2013. Viewed at: www.uspto.gov.

¹⁹⁰ IPEC (2013).

¹⁹¹ The White House online information. Viewed at: http://www.whitehouse.gov/sites/default/files/ip_white_paper.pdf.

¹⁹² USPTO online information. Viewed at: http://www.uspto.gov/about/offices/ogc/Final_DOJ-PTO_Policy_Statement_on_FRAND_SEPs_1-8-13.pdf.

¹⁹³ Letter from USTR Ambassador Michael Froman to ITC Chairman Irving Williamson, Disapproval of Determination in the Matter of Certain Electronic Devices, Including Wireless Communication Devices, Portable Music and Data Processing Devices, and Tablet Computers, Investigation No. 337-TA-794 (August 3, 2013).

competitive conditions in the U.S. economy and the effect on U.S. consumers", citing the joint Policy Statement on this matter. Separately, in 2013 the IPEC launched an interagency review of the exclusion orders pertaining to intellectual property issued by U.S. Customs and Border Protection and the ITC under Section 337, including a request for submissions from the public.¹⁹⁴ The review was announced as "directed at strengthening the procedures and practices used during enforcement of exclusion orders pertaining to intellectual property." An interagency working group would review procedures used "to evaluate the scope of exclusion orders and work to ensure the process and criteria utilized during exclusion order enforcement activities are transparent, effective, and efficient." One specific question cited in the background to the review was the complexity of determining whether imported articles fall within the scope of an exclusion order "particularly in cases in which a technologically sophisticated product such as a smartphone has been successfully redesigned to not fall within the scope of the exclusion order."¹⁹⁵ Recommendations resulting from the review are yet to be made.

3.222. The USTR 25th annual Special 301 Report¹⁹⁶ monitoring IP protection in trading partners linked IP protection to global health, the digital economy, education, and entertainment internationally, and to more than 30 million jobs in the United States. The report focused on concerns about trademark counterfeiting and copyright piracy; digital, internet, and broadcast piracy; government use of software; and trademark and domain name disputes. It recorded concerns that geographical indications (GI) protection should not violate prior trademark rights or deprive interested parties of the ability to use generic or common terms. Other aspects included IP and health policy, and supporting pharmaceutical and medical device innovation through improved market access. Some 95 trading partners were reviewed in 2013 and 82 in 2014; with 40 and 36 placed on the Priority Watch List or Watch List, respectively. The Special 301 Report also described positive trends in a number of countries, outlined international cooperation and capacity building on enforcement, and identified international best practices among trading partners.

3.223. The *Special 301 Out-of-Cycle Review of Notorious Markets* for 2013 identified specific markets around the world that were assessed as causing particular economic harm to U.S. businesses and workers, through IP infringement.¹⁹⁷ The report listed 23 online markets, located in Canada, East Asia, Eastern Europe, and the EU that were assessed as responsible for extensive copyright piracy, as well as a number of physical markets in Asia, Latin America, and Eastern Europe. The report cited successful enforcement actions to close or disrupt a number of online markets listed in the corresponding review for 2012, including the closure of a BitTorrent index in Canada and the restriction of facilities enabling infringing activities and pirate and counterfeit trade on sites in China, as well as a major licensing deal with a Chinese website. Successful enforcement activities against physical markets in infringing goods were reported in Pakistan and Mexico.

¹⁹⁴ Viewed at: <https://federalregister.gov/a/2013-14743>.

¹⁹⁵ The White House, Fact Sheet: White House Task Force on High-Tech Patent Issues: Legislative Priorities & Executive Actions". Viewed at: www.whitehouse.gov/the-press-office/2013/06/04/fact-sheet-white-house-task-force-high-tech-patent-issues.

¹⁹⁶ USTR (2014c).

¹⁹⁷ USTR (2014a).

4 TRADE POLICIES BY SECTOR

4.1 Agriculture

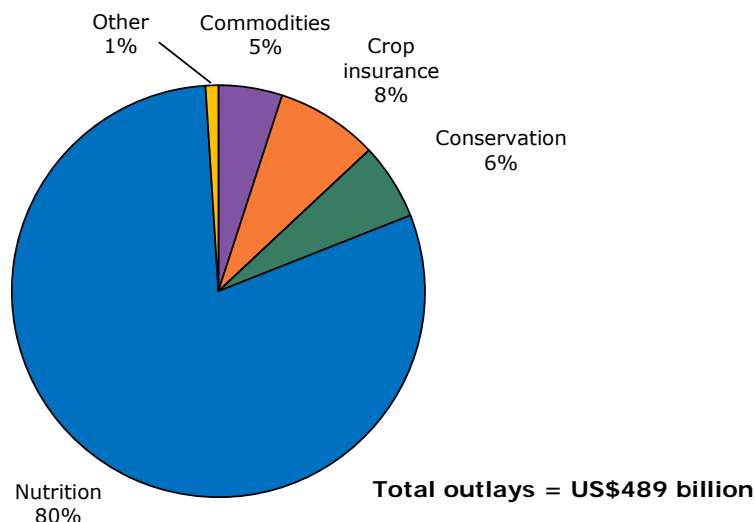
4.1.1 Agricultural Act of 2014

4.1.1.1 Overview

4.1. The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) expired in 2012, although many provisions were extended for another year by the American Taxpayer Relief Act of 2012. The new Farm Bill, the Agricultural Act of 2014 (P.L. 113-79) was enacted on 7 February 2014. Most programmes are authorized for a period of five years (crop or fiscal years 2014-18), although some are permanently authorized by the legislation. As required by the Act, the USDA is in the process of developing the implementing regulations, which are necessary for producer sign-up and government payments.

4.2. The 2014 Farm Bill was prepared during a period (2012-13) of exacerbating budgetary pressures. Government expenditures are estimated at US\$489 billion for the life of the new Farm Bill, with savings of about US\$5 billion (Chart 4.1).¹ However, about 80% of the projected expenditures under the new Farm Bill are for nutrition programmes. The 2014 Farm Bill continues a long-term policy shift from the traditional commodity, conservation, and disaster payments towards subsidized crop insurance (Chart 4.2).

Chart 4.1 Projected outlays under the 2014 Farm Bill, fiscal years 2014-18



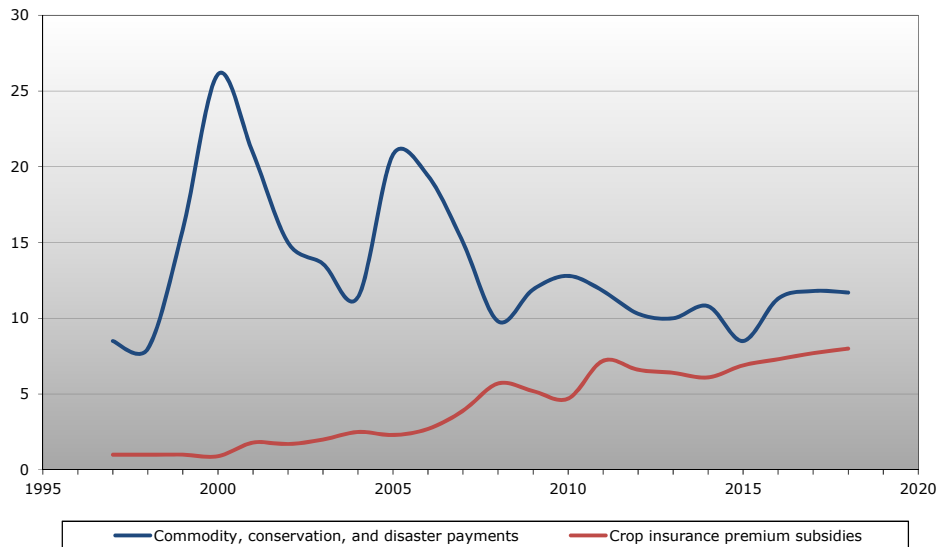
Note: USDA Economic Research Service using data from Congressional Budget Office, Cost Estimates for the Agricultural Act of 2014, January 2014.

Source: Source: USDA ERS online information. Viewed at: <http://www.ers.usda.gov/agricultural-act-of-2014-highlights-and-implications.aspx#.VBrVhZVoUM>.

¹ The U.S. Congressional Budget Office estimates that mandatory outlays would have been US\$494 billion for the five-year period FY2014/18, if the 2008 Farm Bill had continued (the baseline assumption).

Chart 4.2 Crop insurance subsidies and other farm safety net payments

(US\$ billion)



Notes: ERS analysis of Office of Budget and Policy Analysis data on actual expenditures for 1997-2013; the 2014 Farm Act Congressional Budget Office estimates for 2014-18.

Source: USDA ERS online information. Viewed at: <http://www.ers.usda.gov/amber-waves/2014-may/2014-farm-act-continues-most-previous-trends-in-conservation.aspx#.VBrwORZvoUM>.

Crop sector

4.3. One of the most significant changes affecting the structure of the U.S. farm safety net is the elimination of the Direct Payments (DP) programme. The DP programme has been a cornerstone of U.S. agricultural policy reforms since the end of the Uruguay Round negotiations, and provided about US\$5 billion annually in decoupled income support to farmers and landlords. The Counter-Cyclical Payments (CCP) programme and the Average Crop Revenue Election (ACRE) programme have also been eliminated. These three measures (DP, CCP, and ACRE) have been replaced by two new measures, the Price Loss Coverage (PLC) and Agriculture Risk Coverage (ARC).

4.4. In the PLC programme, deficiency payments are provided when commodity prices fall below the statutory "reference prices". The PLC payments are coupled to current prices, but decoupled from actual production, to the extent that payments are based on historical yields and a percentage of historical planted acres (base acres). Farmers have a one-time opportunity under the new Farm Bill to update their historical payment yields and re-allocate base acreage, which may more closely align base acres with recent planting, thereby linking payments to a more recent base period.

4.5. As an alternative to the PLC, farmers may participate in the new ARC programme, a revenue-based deficiency payments scheme, which is coupled to current prices and also tied to a percentage of base acres, amongst other parameters. The PLC and ARC have the same commodity coverage as the repealed programmes (grains, rice, oilseeds, pulses, peanuts), excluding upland cotton.

4.6. The marketing loan programme, which provides income support via loan deficiency payments/marketing loan gains in a low-price environment, remains unchanged (with the exception of a potentially lower loan rate for upland cotton). Thus, the key commodity programmes may be considered as variants of deficiency payment schemes in the trade-distorting category.

4.7. Federal crop insurance with subsidized insurance premiums is available for over 100 commodities and livestock. Crop insurance traditionally provides coverage for about 70-75%

of expected revenues or yields. The 2014 Farm Bill introduces a new subsidized insurance programme (Supplemental Coverage Option) that allows eligible farmers to top up their crop insurance, in order to cover a portion of the deductible of the insurance.² For producers of upland cotton, a new subsidized insurance plan, Stacked Income Protection (STAX), will be available starting in the 2015 marketing year. The Supplemental Coverage Option (SCO) is not available for ARC and STAX participants. These are examples of how the new Farm Bill attempts to address the issue of overlap of the price- and revenue-based income supports and crop insurances, and the potential for overcompensation of farmers' actual losses.³ The sugar regime with its key instruments (price support; a domestic marketing allotment fixed at 85% of domestic consumption; feedstock flexibility programme and other measures to divert surplus sugar to ethanol production and other uses; tariff rate quotas) remains unchanged.

Livestock sector

4.8. Some of the biggest reforms will be introduced in the dairy regime. Two long-standing pillars of dairy market support – price supports and export subsidies – have been removed. The dairy deficiency payment programme (Milk Income Loss Contract (MILC) Program) has also been eliminated. Two new policy instruments are introduced in the 2014 Farm Bill. The new Margin Protection Program for Dairy Producers takes a new direction in dairy policy by providing subsidized insurance coverage for dairy producers, to insure against declines in milk production margins (the difference between farm-gate milk price and average feed costs). Payments are decoupled from current production levels. Under the new Dairy Product Donation Program, the CCC is authorized to temporarily purchase dairy products at prevailing market prices for distribution to low-income residents when dairy milk margins are depressed. Three livestock disaster programmes that ended in September 2011 were restored retro-actively (Table 4.1).

Table 4.1 Overview of main programme changes in the 2014 Farm Bill

	2008 Farm Bill	2014 Farm Bill
Commodity programmes	Marketing loan programme	Maintained <ul style="list-style-type: none"> • Coupled to current prices and production • Loan rates unchanged, except for potential downward adjustment of upland cotton loan rate
	Direct payments	Eliminated <ul style="list-style-type: none"> • DP-style programme for upland cotton until Stacked Income Protection (STAX) is implemented
	Counter-cyclical payments (CCP)	Eliminated
		Introduces Price Loss Coverage (PLC). <ul style="list-style-type: none"> • Payments coupled to current prices (counter-cyclical) with a guarantee price level higher than in the CCP programme • Payments are tied to base acres and historical yields with the option of updating yields and reallocating base acres
	Average Crop Revenue Election (ACRE) programme	Eliminated <p>Introduces Agriculture Risk Coverage (ARC).</p> <ul style="list-style-type: none"> • Payments based on revenue loss • Choice between revenue guarantee at county level (county ARC) and farm-level (individual ARC) • Payments are coupled to current prices • Payments are tied to base acres, with the option of reallocating base acres

² The deductible is the amount of expenses that must be paid out of pocket before an insurer will pay any expenses.

³ Given the complexity of the U.S. farm programmes, the USDA has previously drawn attention to this issue, see USDA online information, "Identifying Overlap in the Farm Safety Net". Viewed at: <http://www.ers.usda.gov/publications/eib-economic-information-bulletin/eib87.aspx>.

	2008 Farm Bill	2014 Farm Bill
Crop insurance	Federal Crop Insurance Programme (permanently authorized)	Maintained Amendments include new subsidized insurance programmes: <ul style="list-style-type: none"> • Supplemental Coverage Option (SCO) • Stacked Income Protection Plan for producers of upland cotton (STAX)
Disaster assistance	Non-insured Crop Disaster Assistance Programme (NAP)	Maintained
	Supplemental Revenue Assistance Payments Programme (SURE)	Not authorized after FY2011.
	Livestock Indemnity Programme (LIP)	Renewed retroactively to cover losses in FY2012 and FY2013, and beyond
	Livestock Forage Disaster Programme (LFP)	Renewed retroactively to cover losses in FY2012 and FY2013, and beyond
	Emergency Livestock Assistance Programme (ELAP)	Renewed retroactively to cover losses in FY2012 and FY2013, and beyond
	Tree Assistance Programme (TAP)	Renewed retroactively to cover losses in FY2012 and FY2013, and beyond
Export credit guarantees	Export credit guarantee programme (GSM-102)	Maintained Amendments include: <ul style="list-style-type: none"> • Maximum tenor reduced to 24 months • Flexibility given to the U.S. Secretary of Agriculture to adapt the programme pursuant to such terms as may be agreed between the United States and Brazil in the cotton dispute WTO/DS267
Sugar	Sugar programme	Unchanged Includes price support and supply control measures.
Dairy	Dairy Export Subsidy Programme (DEIP)	Eliminated
	Dairy Product Price Support Programme	Eliminated
	Milk Income Loss Contract (MILC) Programme	Eliminated.
		Introduces Margin Protection Programme for Dairy <ul style="list-style-type: none"> • Subsidized scheme for insuring milk margins (US\$4-8/cwt) • Deficiency payments are made when milk margin declines below (insured) level of US\$4-8/cwt • Decoupled from actual production
		Introduces Dairy Product Donation Program. <ul style="list-style-type: none"> • CCC dairy product purchase programme for distribution to low-income people in times of low margins (US\$4/cwt or below) • Time-limited market support purchases at prevailing market prices
	Federal Milk Marketing Orders	Unchanged

Source: WTO Secretariat.

4.9. Overall, the new Farm Bill is a big change in agriculture policy for some products. Its impact will depend upon a number of choices producers must make (e.g., PLC versus ARC; ARC versus SCO; reallocation of base acreage, etc.). The new Farm Bill eliminates market price support and export subsidies for dairy products, and direct payments for historical crop production. However, the move from decoupled direct payments to deficiency-payment type instruments linked to current prices could potentially cause an increase in trade and production distortions.

4.10. Tariffs and tariff rate quotas are not covered by the 2014 Farm Bill. The export credit guarantee programme (GSM-102) is maintained, though the maximum loan tenor has been reduced to 24 months, and the US Secretary of Agriculture is granted flexibility to adjust the programme on terms agreed with Brazil in the WTO cotton dispute. The 2014 Farm Bill also retains the so-called WTO circuit breaker provision, whereby the Secretary of Agriculture is required, to the maximum extent practicable, to adjust if necessary commodity programme expenditures, to

ensure that they do not exceed allowable levels (e.g. AMS) under the WTO Agreement on Agriculture (P.L. 113-79, Sec. 1601(d)).

4.11. The following description of individual measures roughly follows the 356-page 2014 Farm Bill, which is divided into 12 titles.⁴ The Congressional Research Service of the United States has prepared a detailed comparison between the new Farm Bill and prior law.⁵

4.1.1.2 Title I (Commodities)

4.1.1.2.1 Elimination of direct payments

4.12. Direct payments (DPs) were eliminated at the end the 2013 crop year (P.L. 113-79, Sec. 1101).⁶ DPs have been controversial in the United States in a climate of fiscal restraint because they were paid out to farmers and some landlords irrespective of record commodity prices and healthy farm incomes in recent years and even if no crops were grown on eligible land.⁷ The DP programme and its predecessor (Production Flexibility Contract payments) have been a feature of US agricultural policy since the 1996 Farm Bill, following the conclusion of the Uruguay Round. Both schemes were notified in terms of Green Box decoupled income support. Since the introduction of DPs in the 2002 Farm Bill, annual budgetary expenditures have been relatively constant, averaging about US\$5 billion (Table 4.2).

Table 4.2 Key domestic support programmes

(US\$ million)

	Marketing year 2010	Marketing year 2011
Green Box	118,958	125,117
Domestic food aid	94,915	103,151
Direct payments	4,898	4,745
Conservation Reserve Program	1,793	1,795
Environmental Quality Incentives Program (EQIP)	1,246	1,231
Blue Box	0	0
Current Total AMS	4,119	4,654
Dairy product price support	2,845	2,835
Milk income loss contract payments (MILC)	0.6	403
Sugar price support	1,258	1,406
De minimis	5,880	9,714
Subsidized crop insurance	4,712	7,461
Supplemental Revenue Assistance Payments (SURE)	525	1,442
Counter-cyclical payments	17	0
ACRE payments	9	52
Marketing loan payments ^a	349	89
Total domestic support	128,958	139,485

- a Mainly loan deficiency payments for wheat (MY 2010), and commodity loan interest subsidies. US\$6 million in loan deficiency payments for wool in MY 2010 are included in the Current Total AMS, to avoid double-counting.

Source: WTO documents G/AG/N/USA/89/Rev.1 and G/AG/N/USA/93, 9 January 2014.

4.1.1.2.2 Price Loss Coverage

4.13. The Counter-Cyclical Payments (CCP) programme has been repealed (P.L. 113-79, Sec. 1102) and a similar price-based programme, Price Loss Coverage (PLC), introduced. The main purpose of both the CCP and the PLC is to help stabilize farm incomes by providing deficiency

⁴ US Government Printing Office online information. Viewed at: <http://www.gpo.gov/fdsys/pkg/BILLS-113hr2642enr/pdf/BILLS-113hr2642enr.pdf>.

⁵ Congressional Research Service (2014c).

⁶ Transitional DPs for upland cotton apply in the crop year 2014 and possibly also in crop year 2015 in some areas, due to the delayed implementation of the STAX programme (P.L. 113-79, Sec. 1119).

⁷ The DPs are fixed payments for producers and some landowners based on historical acreage and yields of covered commodities (wheat, corn, grain sorghum, barley, oats, rice, upland cotton, rice, soybeans and other oilseeds, and peanuts). The programme has planting flexibility provisions, but production is not required to receive the DPs.

payments when commodity prices fall below certain levels (target prices under CCP, reference prices under PLC).

4.14. The PLC is open for enrolment by farmers with eligible historical acreage (base acres) of "covered" commodities.⁸ Eligible commodities are the same as under the CCP programme (wheat, feed grains, rice, oilseeds, peanuts, and pulses), with the exception of upland cotton, for which a new insurance programme was established (Stacked Income Protection Plan). The voluntary enrolment for PLC is on a commodity-by-commodity basis and the farmer's decision cannot be changed during the lifetime of the new Farm Bill.⁹ PLC payments are linked to current prices, as under the CCP programme. The payment rate equals the difference between the reference price minus the higher of the national average market price during the marketing year or the loan rate.¹⁰ The reference prices are fixed for crop years 2014-18 (Table A4.2). Overall, the new reference prices are higher than under the CCP programme. According to U.S. Congressional Budget Office projections, PLC expenditures are forecast to be US\$5.1 billion over 2014-18.¹¹ In the 2014 Farm Bill, some of the DP-related savings might be used indirectly in PLC payments (where those payments are actually triggered), where the "effective" price to be compared with the trigger price no longer includes DP rates.

4.15. Like the expired CCP programme, PLC payments are based on a percentage (85%) of base acres and historical yields, i.e. they are decoupled from current production. However, farmers have the one-time option of updating yields, and of allocating base acres among covered commodities based on the average planted acres in 2009-12. Acreage shifts among commodities in recent years, include an increase in corn and soybeans, and a decline in wheat, feed grains, and upland cotton (Table 4.3). A reallocation of base acres and yield updating could increase the link or correlation between base acres, and actual crop production and farmers' risks. Base acres for upland cotton ("generic" base acres) are excluded from reallocation. The payments on generic base acres are tied to the covered commodities planted on those acres (i.e. payments are coupled to current planting decisions), which increases the link between current production and payment on those acres. However, rules governing the allocation of payments from generic and commodity-specific base acres aim to minimize some of those effects. The maximum total base acreage remains the same as in previous Farm Bills, i.e. the number of acres that may receive payments is unchanged. Producers are free to produce most crops on base acres (with some limits, though less restrictive than before, on fruits and vegetables, and wild rice), but production is not required in order to receive the PLC payments. Conservation compliance provisions apply (Section 4.1.1.3).

Table 4.3 Reallocation of base acreage

	Base acres (million), 2008 Farm Bill	Planted acres (million), 2009-12 average
Wheat	73.7	55.7
Corn	84.3	90.9
Feed grains	23.3	12.0
Soybeans	50.1	76.8
Upland cotton	17.9	11.6
Rice	4.4	3.0
Peanuts	1.5	1.3

Source: Information provided by the U.S. authorities.

4.16. The United States has notified the CCP programme in terms of non-product-specific AMS (*de minimis*), arguing that payments cannot be ascribed to a specific product. Counter-cyclical payments declined to US\$16.9 million in FY2010 and zero in FY2011, as market prices of most covered commodities have been above target prices in recent years (Table 4.2). Since the 2006

⁸ To acquire base acres, a new farmer would have to buy or rent a farm with existing base acres.

⁹ A farmer may elect to enroll one or more commodities under PLC and other covered commodities under county level ARC. Additionally, farmers who enroll in PLC may also receive the Supplemental Coverage Option.

¹⁰ By comparison, the CCP rates equalled the target price minus the direct payment rate minus the higher of the loan rate or the (marketing year average) market price of the covered commodity.

¹¹ USDA online information. Viewed at: <http://www.ers.usda.gov/agricultural-act-of-2014-highlights-and-implications/crop-commodity-programs.aspx>.

marketing year, payments have been made only for upland cotton and peanuts base acres. CCP payments were terminated at the end of the 2013 crop year.

4.1.1.2.3 Agriculture Risk Coverage

4.17. The Average Crop Revenue Election (ACRE) programme ends with the 2013 crop year (P.L. 113-79, Sec. 1103) and a new revenue-based programme, the Agriculture Risk Coverage (ARC), begins with the 2014 crop year (Sec. 1117). The ACRE programme was available to farmers as an alternative to the CCP programme, to guard against a decline in market revenues rather than price. The ACRE programme, which also required acceptance of a reduced DP and lower marketing assistance loan rate, was much less popular among farmers than the CCP scheme.¹² The United States notified the ACRE payments in terms of non-exempt direct payments (product-specific AMS). Most ACRE payments went to wheat (US\$40.1 million in MY2010 and US\$5.5 million in MY2011).

4.18. The ARC scheme is revenue-based. The programme guarantees a portion of a producer's revenue loss relative to a target (benchmark) revenue from covered commodities (Table A4.1).¹³ When actual revenues are below the benchmark, producers absorb the first 14% of the revenue loss¹⁴, and the government pays for the next 10%.¹⁵ The programme was designed to provide payments only for losses not already covered by traditional crop insurance, where typical coverage is 70-75% of expected revenues or yields. Farmers are given a choice between a revenue guarantee that is determined at farm-level (individual ARC) or at county level.¹⁶ The county level ARC option applies commodity-by-commodity. A farmer may opt, for example, for PLC for wheat and county ARC for soybeans but cannot switch back and forth. If a farmer chooses individual ARC, then every covered commodity on the farm must participate in individual ARC.

4.19. County-level ARC payments are made on revenue calculations using current prices (i.e. PLC reference prices or current national market prices) and current yields, but are made on 85% of base acres of the commodity enrolled in ARC. A particular feature of the individual ARC is that payments to the farm as a whole are based on revenue calculated using current planted acres, but are paid on a proportion (65%) of historical base acres for all covered commodities on the farm. Like PLC, the ARC programme provides the possibility of reallocating base acres, excluding generic base acres.

4.1.1.2.4 Marketing loan programme

4.20. The marketing loan programme remains unchanged, with the exception of a potential downward adjustment of the loan rate for upland cotton. Marketing assistance loans (i.e. nine-month post-harvest loans) at below market interest rates are available from USDA to eligible producers of covered commodities (i.e. a slightly larger set of eligible commodities than those eligible for PLC or ARC, see Table A4.2). Such loans allow for delayed sale of the commodity until prices are at their highest. The loan may be repaid at the loan rate plus interest, or at a lower marketing loan repayment rate when market prices are below the loan rate, or the loan collateral may be forfeited to the Commodity Credit Corporation.¹⁷ Marketing loan benefits (marketing loan gains or loan deficiency payments) accrue to farmers when commodity prices are lower than the respective loan rates; these options aim to minimize potential crop forfeitures and accumulation of government stocks.

¹² In CY2013, 234.9 million base acres were enrolled in the CCP programme, and 20.2 million base acres in the ACRE programme.

¹³ The ARC benchmark revenue equals 86% of the moving average of revenues during the preceding five marketing years (i.e. the "Olympic average" removing the lowest and highest number), meaning the ARC revenue guarantee is adjusted annually to market price trends.

¹⁴ "The agricultural risk coverage guarantee for a crop year for a covered commodity shall equal 86% of the benchmark revenue", see Sec. 1117(c)(1).

¹⁵ The maximum government payment rate is 10% of the historical benchmark revenue (Sec. 1117(d)(2)). Such coverage for "shallow losses" is often complemented by farmers' crop insurance for larger revenue losses.

¹⁶ Payments are made when the applicable trigger (farm revenue trigger or county revenue trigger) is met. ACRE payments were made when two triggers were met at the state and farm level.

¹⁷ Because the loans are non-recourse, producers may choose to forfeit the commodity when the loan matures.

4.21. With the exception of upland cotton, the 2014 Farm Bill holds the loan rates at the same level as for crop years 2010-13 and the statutory rates are fixed for the crop years 2014-18. For most commodities, loan rates in recent years have been far below current market prices and cost of production, thus providing income support in a low-price environment.¹⁸ Unlike the PLC or ARC, marketing loan programme payments are not tied to, or capped by, base acres. Thus, marketing loan support is fully coupled to current prices and production. To be eligible, farmers must comply with environmental cross-compliance provisions and report all crop acreage planted on the farm.

4.22. The marketing loan programme figures as trade-distorting domestic support (AMS) in U.S. domestic support notifications, with loan deficiency payments, marketing loan gains, and forfeitures classified as non-exempt direct payments. The United States has also notified interest rate subsidies resulting from below market interest rates and any interest waived on marketing loans.¹⁹ Marketing loan payments reached a peak of US\$5.5 billion in 2005-06. Apart from US\$104 million in marketing loan benefits for wheat in MY2010, marketing loan payments were relatively small in MYs in 2010 and 2011, since market prices were higher than the loan rates (Table 4.2).

4.1.1.2.5 Sugar

4.23. The U.S. sugar programme, composed of price support and supply control measures, remains unchanged. The "non-recourse" sugar loan programme guarantees a minimum or floor price to domestic sugar producers. The 2008 Farm Bill requires the sugar programme to be administered, to the maximum extent possible, with no cost by avoiding forfeitures of sugar loan collateral. Hence, USDA must establish a level of domestic marketable supply to support a market price that is higher than the loan rate offered by the sugar loan programme (so-called loan forfeiture level). Once the U.S. government acquires ownership of the sugar, the CCC is limited in the ways it may dispose of it, and the CCC will always lose money when it sells its inventory. USDA controls the level of marketable sugar supply through: (1) management of the marketing allotments, which limits the amount of domestic sugar that may be marketed for food or human consumption during the year, (2) limiting import access via tariff quota administration, and (3) the Feedstock Flexibility Program, which authorizes the Secretary of Agriculture to sell surplus sugar to bio-energy producers (sugar for ethanol).²⁰ The United States is traditionally a net-importer of sugar.

4.24. In crop year 2012/13, U.S. sugar prices declined below the forfeiture loan levels, and as a result USDA took several actions to support U.S. sugar prices. The USDA spent US\$174 million to acquire 440,000 short tons of sugar, which was auctioned to ethanol producers under the Feedstock Flexibility Program; another US\$85 million was spent to purchase 608,000 tons of import access rights; and the total net government spending on sugar price support in 2013 was US\$259 million.²¹ Sugar cane and sugar beets crops are not eligible for direct payments, counter-cyclical or ACRE payments, or PLC or ARC payments.

4.25. The sugar tariff rate quotas are administered by USDA and USTR as part of the U.S. Uruguay Round and other commitments.²² Before 1 October, USDA must set the WTO sugar tariff quota at the minimum level necessary to comply with international trade agreements, and cannot increase the tariff quota before 1 April²³, unless there is an emergency shortage declared by the Secretary.

¹⁸ Sugar has been the exception. Since the last TPR of the United States in December 2012, world market prices for raw cane sugar (New York N.11) have been near or slightly below the loan rate for raw cane sugar (US\$ 0.1875/lb).

¹⁹ WTO document G/AG/N/USA/93, 9 January 2014, Supporting Table DS:7.

²⁰ The Feedstock Flexibility Program for Bioenergy Producers has been renewed until FY2018 (Sec. 9009). For the sugar re-export programmes, see WTO (2010).

²¹ USDA Economic Research Service online information, "Sugar & Sweeteners Outlook: January 2014". Viewed at: <http://www.ers.usda.gov/publications/sssm-sugar-and-sweeteners-outlook/sssm-305.aspx#.U6xwQ7EvD5w>.

²² See WTO document G/AG/N/USA/92, 11 February 2013.

²³ See WTO documents G/AG/N/USA/79/Add.1, 8 February 2013 and G/AG/N/USA/94, 4 February 2014.

4.1.1.2.6 Dairy

Elimination of the Dairy Product Price Support Program

4.26. The Dairy Product Price Support Program was repealed (P.L. 113-79, Sec. 1421). Under this programme, price support was provided by USDA standing ready to purchase unlimited quantities of designated dairy products (cheese, butter and non-fat dry milk) at statutory purchase (intervention) prices. The price support programme figured as one of the main trade-distorting domestic support measures (US\$2.83 billion in terms of price-gap calculation, see Table 4.2).²⁴ Significant government purchases were last made in 2009. Surplus dairy products were made available under several domestic and foreign food aid programmes, some of which remain in force.

Elimination of the Dairy Export Incentive Program

4.27. The Dairy Export Incentive Program (DEIP) was repealed (P.L. 113-79, Sec. 1423). The DEIP was introduced in 1985 during the Uruguay Round mainly to counter the EU's subsidized exports of dairy products. Export subsidies (bonuses) were awarded by USDA for targeted products (non-fat dry milk, cheese and butterfat) and destinations, within the limits of the U.S. WTO export subsidy commitments. Export bonuses were last granted during the marketing/fiscal year 2009.²⁵ Termination of the price support scheme for dairy products means there is no longer any need for dairy export subsidies because U.S. prices will follow world market prices.

Elimination of the Milk Income Loss Contract Program

4.28. The Milk Income Loss Contract (MILC) Program was repealed and ends upon entry into force of the new Margin Protection Program for Dairy Producers (P.L. 113-79, Sec. 1422). The MILC Programme provided deficiency payments based on a target price of US\$16.94 per cwt of milk, with adjustments for feed costs. The payment rate was 45% of the difference between the target price and the Class I price in the Boston milk marketing order. In marketing year 2012/13, individual producer payments were capped at 2.985 million lb of milk marketed, equivalent to annual milk production from a herd of about 100-150 cows.²⁶ The MILC scheme covered about 35% of domestic milk supply. The MILC payments were notified in terms of non-exempt direct payments and have varied considerably depending on the milk order price and feed costs (Table 4.2).

Margin Protection Program for Dairy Producers

4.29. No later than 1 September 2014, the new Margin Protection Program for Dairy Producers will be implemented and the 2008 Farm Bill dairy programmes will be eliminated. The new programme is a subsidized governmental insurance scheme against declines of milk production margins (difference between farm-gate milk prices and average feed costs). Government payments to enrolled producers are triggered when the actual national benchmark milk margin falls below the chosen threshold margin of US\$4-8 per cwt of milk for two (statutorily-paired) successive months.²⁷ The scheme is intended to protect against increased milk price volatility and rising input costs, which occurred in 2009 and 2012 when milk prices fell below production costs.²⁸ The basic programme parameters include (P.L. 113-79, Sec. 1402-1407):

- (a) actual dairy production margin: the actual national benchmark margin for triggering government payments is defined as the national average "all milk price" minus national representative feed costs per cwt of milk, as calculated by USDA for a consecutive paired two-month period;

²⁴ Total milk production was eligible to receive the applied administered price. WTO document G/AG/N/USA/93, 9 January 2014, ST DS:5.

²⁵ WTO document G/AG/N/USA/82, 13 September 2011.

²⁶ FAPRI (2010).

²⁷ During 2000-13, the dairy production margin averaged US\$8.26 per cwt of milk. Statutorily paired months means January-February, March-April, and so on.

²⁸ FAPRI (2010).

- (b) production history: each enrolled dairy operation is assigned a production history equal to the highest annual milk sales in any of the 2011, 2012 or 2013 calendar years; in subsequent years, USDA is to adjust individual producers' production history reflective of overall increases in the national milk production;
- (c) coverage percentage: between 25% and 90% of production history may be insured;
- (d) coverage level: margin protection levels range from US\$4 to US\$8 per cwt of milk²⁹;
- (e) insurance premiums: insurance of a US\$4 per cwt margin is free with respect to the first 4 million lb of annual production history; premiums increase incrementally for supplemental margin coverage and incremental production history sales; the premium schedule is specified in the 2014 Farm Bill.

4.30. The voluntary programme requires annual enrolment and selection of coverage against an administrative fee of US\$100. There are no restrictions on eligibility by farm size.³⁰ The Congressional Budget Office of the United States estimates the annual cost of the programme at US\$30-190 million over the life of the new Farm Bill.

Dairy Product Donation Program

4.31. The new Dairy Product Donation Program has the objective of intervening in the market when prices are low to promote demand for dairy products and provide nutrition assistance to low-income people (P.L. 113-79, Sec. 1431). Purchases are triggered (immediately) when actual dairy production margins fall below US\$4 per cwt of milk for two consecutive months. The types and quantities of dairy products for purchases are determined by USDA in consultation with public and private non-profit organizations. Purchases of dairy products are made at prevailing market prices, for distribution as food assistance and not for storage. Organizations are prohibited from reselling the products in commercial markets. The suspension of purchases is subject to a number of triggers (dairy production margin, as well as domestic and world market prices for cheddar cheese and SMP). The programme enters into force in 2014 and ends in 2018.

Other Dairy Programmes

4.32. The system of Federal Milk Marketing Orders, aimed at classified pricing and price pooling, is maintained without change.³¹

4.33. The Dairy Forward Pricing Program and the Dairy Indemnity Program (payments following government directives to remove milk from markets due to chemical residues) were extended through 2018. The Dairy Promotion and Research Program, also extended, authorizes assessment and collection of a payment on dairy products, domestic and imported, at a rate of US\$0.075 per cwt of milk.

4.1.1.2.7 Supplemental agricultural disaster assistance program

4.34. The Supplemental Revenue Assistance Payments Program (SURE), the main disaster assistance programme under the 2008 Farm Bill, expired on 30 September 2011. The SURE programme provided financial compensation to eligible farmers for a portion of revenue losses not covered by crop insurance (i.e. the portion subject to the deductible of the policy). Elements of the SURE programme were incorporated in the ARC programme. Outlays under SURE were notified in terms of non-product-specific AMS (Table 4.2).

4.35. Four disaster programmes under the 2008 Farm Bill have been reauthorized retroactively to cover losses that have occurred since 1 October 2011. These programmes are now permanent and

²⁹ According to the authorities, during the last two calendar years (2012 and 2013) the national benchmark milk margin was often below US\$8/cwt and twice below US\$4/cwt for two successive months.

³⁰ Participants in this programme are ineligible for enrolment in the Livestock Gross Margin for Dairy Cattle Program, a small-scale insurance programme implemented by USDA Risk Management Agency.

³¹ See WTO document WT/TPR/S/275/Rev.2.

are funded by the CCC. The Livestock Indemnity Program (LIP) provides payments to eligible producers at a rate of 75% market value (unchanged) due to weather-related livestock losses and attacks by animals.³² The Livestock Forage Disaster Program (LFP) provides payments to eligible producers of covered livestock for grazing losses due to drought or fire on public managed land.³³ The Emergency Assistance for Livestock, Honeybees, and Farm-Raised Catfish (ELAP) provides emergency relief due to disease, adverse weather, wildfires, or other conditions not covered by LIP and LFP. The Tree Assistance Program (TAP) provides assistance to eligible orchardists and nursery tree growers to cover 65% of the cost of replanting or 50% for rehabilitating eligible trees, bushes, and vines damaged by natural disasters. Expenditures under the four disaster programmes were notified in terms of non-exempt direct payments (product-specific AMS) for livestock, and orchards/vineyards/nurseries.

4.1.1.2.8 Eligibility criteria

Payment limitations

4.36. Total payments for covered commodities (except peanuts) in terms of marketing loan gains, loan deficiency payments, PLC payments, and ARC payments are subject to a limit of US\$125,000 per person (P.L. 113-79, Sec. 1603).³⁴ Peanuts are subject to a separate payment limit of US\$125,000 per person. There are also separate payment limitations on Supplemental Agricultural Disaster Assistance (Sec. 1501), Transition Assistance for Producers of Upland Cotton (Sec. 1119), Non-Insured Crop Assistance Program (NAP), LIP, LFP and ELAP. There are no payment caps on crop insurance, Supplemental Coverage Option, and STAX. To receive a payment under the commodity programmes, an individual with a farming operation must be "actively engaged in farming". The Secretary of Agriculture has been mandated to promulgate new regulations on eligibility requirements for being actively engaged in farming (Sec. 1604).³⁵

Adjusted gross income limitation

4.37. Commodity programmes in Title I of the Farm Bill are subject to an adjusted gross income limit from all sources of US\$900,000 for receiving a payment or "benefit."³⁶

4.1.1.3 Title II (Conservation)

4.38. The 2008 Farm Bill authorized a range of conservation measures, 13 of which were notified by the United States in the environmental payments category of the Green Box (totalling US\$4.9 billion in FY2011).³⁷ The 2014 Farm Bill retains the three main agricultural conservation programmes (Conservation Reserve Program, Environment Quality Incentive Program (EQIP), and Conservation Stewardship Program), while the smaller programmes were repealed and consolidated into two new programmes.³⁸ All notified conservation programmes are administered by USDA. Overall, the new Farm Bill reduces expenditures for conservation measures.

4.39. The Conservation Reserve Program (CRP) offers financial compensation to farmers willing to retire environmentally sensitive land from crop production for at least ten years.³⁹ The CRP cap will be gradually reduced from 32 million acres in the 2008 Farm Bill to 24 million acres by FY2017⁴⁰,

³² Animals reintroduced into the wild by federal government or protected by federal law.

³³ The 2014 Farm Bill drought designation categories for LFP have been changed. In addition, the risk-management purchase requirement contained in the 2008 Farm Bill has been eliminated.

³⁴ Per crop year and per person or legal entity, excluding joint ventures or general partnerships. The 2014 Farm Bill reinstates payment limits on marketing loan gains and loan deficiency payments that were eliminated in the 2008 Farm Bill.

³⁵ See also U.S. Government Accountability Office (2013).

³⁶ Per person or legal entity; income is averaged over the three most recent taxable years.

³⁷ WTO document G/AG/N/USA/93, 9 January 2014.

³⁸ The new Agricultural Conservation Easement Program combines and replaces the Grassland Reserve Program, Wetlands Reserve Program, Farmland and Ranch Land Protection Program, amongst other repealed programmes. The new Regional Conservation Partnership Program combines and replaces, amongst others, the Agricultural Water Enhancement Program, and Chesapeake Bay Watershed Initiative.

³⁹ For annual CRP rental payments (about US\$64 per acre, as of June 2014) and other incentives for conservation practices, see FSA online information. Viewed at:

<http://www.fsa.usda.gov/FSA/webapp?area=home&subject=copr&topic=crp-st>.

⁴⁰ The CRP cap includes a maximum of 2 million CRP acres for grassland.

continuing the policy shift away from land retirement through the CRP towards conservation measures on land that is in agricultural production (EQIP or Conservation Stewardship Program).

4.40. Participation in conservation programmes is voluntary, although a number of farm programme benefits are tied to conservation compliance requirements, notably the requirement to implement an approved soil conservation system on highly erodible land. The new Farm Bill adds premium subsidies under the crop insurance programme to the list of benefits (marketing loan programme, PLC, ARC, and disaster payments) that farmers risk losing in case of non-compliance (P.L. 113-79, Sec. 1118 and Sec. 2611).

4.1.1.4 Title III (Trade)

4.41. The trade title of the 2014 Farm Bill deals with the U.S. international food aid programmes, the Export Credit Guarantee Program (GSM-102), and export promotion programmes.

4.1.1.4.1 Food aid

4.42. For many years, the United States has been the world's largest donor of food aid, providing about half of the total.⁴¹ Most U.S. food aid is provided fully on a grant basis as emergency or development food aid under Title II of the Food for Peace Act of 2008.⁴² In FY2013, the United States shipped 1.37 million tons of in-kind food aid with a total value of US\$694 million to meet emergency and development food-aid needs, and provided US\$577 million through cash, vouchers, and locally procured commodities.⁴³ U.S. food aid is channelled to the recipients through the WFP, private voluntary organizations, cooperatives, intergovernmental organizations, and governments.

4.43. All international food-aid programmes have been extended in the new Farm Bill until FY2018.⁴⁴ Funding for the Food for Progress programme was not changed in the Farm Bill, while funding for the Food for Peace program and the McGovern-Dole International Food for Education and Child Nutrition program was not affected by the Bill (US\$1.65 billion in FY2014). The U.S. move from quantity to cash commitment under the new Food Assistance Convention 2013, with a minimum food assistance level of US\$1.6 billion, reflects the focus on budgetary resources. The Farm Bill has not changed the requirement to use U.S.-flagged ships to transport at least 50% of the total food-aid tonnage each year.

4.44. The 2014 Farm Bill extends the authorization to monetize food aid through each of the international food-aid programs. The current Food for Peace law requires a minimum of 15% of Food for Peace non-emergency food aid be monetized.⁴⁵ Under the Food for Peace program, the Farm Bill provides new flexibilities to provide cash to the organizations distributing the food aid, allowing them to cover implementation costs and other expenses. According to the authorities, this will eliminate the need to use monetization to generate cash in many situations and allow USAID to reduce monetization to the 15% floor.⁴⁶ USAID is also required by the new Farm Bill to report to Congress on the comparison of the revenue generated from monetization with the government cost incurred in procuring and shipping the food aid commodities to the recipients (P.L. 113-79, Sec. 3008). Monetization has been controversial because of the risk of commercial displacement in local markets.

4.45. In order to allow USDA more flexibility in administering food aid programmes, the 2008 Farm Bill provided authority under a pilot programme to purchase food aid in local and regional markets. The new Farm Bill establishes a statutory "local and regional food aid

⁴¹ U.S. deliveries corresponded to 4.9-6.9 million tons of grain equivalents in 2010-12 (WFP Food Aid Information System. Viewed at: <http://www.wfp.org/fais/>).

⁴² Commonly referred to as P.L. 480.

⁴³ WTO document G/AG/W/125/Add.3, 21 May 2014.

⁴⁴ The relevant statutes are: Food for Peace Act of 2008; Food for Progress Act of 1985; Bill Emerson Humanitarian Trust Act; McGovern-Dole International Food for Education and Child Nutrition Program. The Section 416(b) programme under the permanent authority of Agricultural Act of 1949, which provides food-aid donations via surplus removal of CCC stocks, has been inactive since FY2007.

⁴⁵ 7 USC 1723: Generation and use of currencies by private voluntary organizations and cooperatives.

⁴⁶ USAID online information. Viewed at: <http://www.usaid.gov/foodaidreform/>.

procurement programme" (P.L. 113-79, Sec. 3207) with increased funding (up to US\$80 million annually in FY2014/18).

4.1.1.4.2 Export credit guarantees

4.46. The Export Credit Guarantee Program (GSM-102) is administered by USDA, which is required by statute to make US\$5.5 billion of loan guarantees available each fiscal year, to encourage U.S. private-sector financing of commercial exports of U.S. agricultural products, particularly to developing countries. The programme provides guarantees for credits extended by U.S. exporters or, more commonly, U.S. financial institutions to approved foreign banks for purchases of US agricultural products by foreign buyers. In FY2013, US exporters had registered GSM-102 loan guarantees totalling US\$3.0 billion.⁴⁷ The programme operates under the statutory requirement that fees cover the operating costs and losses of the programme over the long term. Fees also vary by tenor, risk category of the obligor country, and repayment frequency.⁴⁸

4.47. Amendments to the GSM-102 in 2014 Farm Bill include the reduction of the maximum loan guarantee term from three to two years; and the modification of the Secretary of Agriculture's authority to implement the programme (following consultation with the Congressional Committees on Agriculture) pursuant to such terms as may be agreed between the United States and Brazil in the cotton dispute WTO/DS267.

4.1.1.4.3 Export promotion

4.48. The Foreign Agricultural Service of the USDA administers four export promotion programmes, which were reauthorized until FY2018 without changes in funding. The Market Access Program (P.L. 113-79, Sec. 3102) provides cost-share financial assistance for export promotion activities benefiting generic and branded U.S. products (US\$189.8 million in FY2013).⁴⁹ The Foreign Market Development Program (Sec. 3103) provides matching funding, mainly for generic and bulk commodities (US\$32.7 million in FY2013). The Emerging Markets Program (Sec. 3203) provides funding of technical assistance for the promotion of U.S. agricultural exports to these markets (US\$9.2 million in FY2013). The Technical Assistance for Specialty Crops Program (Sec. 3205) assists U.S. organizations in projects to address SPS-related trade barriers and technical barriers to trade (US\$7.3 million in FY2013).

4.1.1.5 Title IV (Nutrition)

4.49. The United States has notified six domestic food-aid programmes or measures under the Green Box, which together amounted to US\$103 billion in FY2011 or almost 80% of total domestic support (Table 4.2). Under the new Farm Bill, domestic food-aid programmes/measures have been reauthorized with minor changes. The largest programme by far, the Supplemental Nutritional Assistance Programme (SNAP), maintains the basic eligibility criteria, but projected spending on programme benefits is cut by US\$8.6 billion over ten years, because of changes in the calculation of benefits.⁵⁰

4.1.1.6 Title V (Credit)

4.50. The credit title of the 2014 Farm Bill deals with various farm ownership, operating and emergency loan programmes administered by the USDA Farm Service Agency (FSA) under the authority of the Consolidated Farm and Rural Development Act. The farm loan programmes have been reauthorized with relatively minor amendments. The FSA functions as a lender of first opportunity for family farms and ranches that are unable to obtain sufficient credit elsewhere at reasonable terms and conditions. The agency provides short-term and long-term loans at preferential interest rates, and guarantees up to 95% of private loans. Emergency loans are

⁴⁷ USDA online information. Viewed at: <http://www.fas.usda.gov/sites/default/files/2013-12/gsm2013-final.pdf>.

⁴⁸ USDA online information. Viewed at: <http://www.fas.usda.gov/programs/export-credit-guarantee-program-gsm-102>.

⁴⁹ Fruits, vegetables, nuts, processed products, and bulk and intermediate products.

⁵⁰ H.R. 2642, Agricultural Act of 2014, United States Congressional Budget Office Cost Estimate. Viewed at: <http://www.cbo.gov/publication/45049>.

subject to an official disaster declaration of a county. In FY2014, US\$5.5 billion are available for farm loan programmes.

4.51. The value of preferential interest rates (relative to commercial interest rates) for direct ownership and operating loans, as well as the value of FSA guarantees of commercial ownership and operating loans are reported in the Green Box under "structural adjustment assistance provided through investment aids" (US\$150 million in FY2011). The value of lower-than-commercial interest rates for FSA emergency loans are notified under "payments for relief from natural disasters" (US\$2 million in FY2011).

4.1.1.7 Title VI (Rural Development)

4.52. The 2014 Farm Bill reauthorizes most of the rural development programmes administered by USDA and other agencies, with overall reduced funding. For FY2014, USDA Rural Development will make available US\$38 billion in loans, loan guarantees and grants through a variety of programmes.⁵¹ Financial support for rural development includes Value-added Agricultural Producer Grants⁵², and Rural Cooperative Development Grants, which is the only rural development program notified by the United States (in the general services category of the Green Box).

4.1.1.8 Title IX (Energy)

4.53. The energy title of the 2014 Farm Bill deals with various renewable energy programmes that provide incentives for research, development, and production of bio-fuels.

4.54. The Biomass Crop Assistance Program (P.L. 113-79, Sec. 9010) was established under the 2008 Farm Bill to meet the target of the Federal Renewable Fuels Standards II⁵³, which demands a shift from mainly corn-based bio-fuels towards new non-food energy crops. The USDA FSA provides three types of incentives for the production of perennial bio-energy crops and woody biomass on eligible and FSA designated land: payments of up to 50% of the cost of establishing the perennial crops (75% under the 2008 Farm Bill), with a cap of US\$500 per acre or US\$750 per acre for socially disadvantaged farmers; annual rental payments for up to 5 years for herbaceous perennial crops and up to 15 years for wood perennial crops; and a matching payment of up to US\$20 per dry ton (US\$45/t under the 2008 Farm Bill) to mitigate the cost of collecting, harvesting, storing, and transporting the crop to designated biomass conversion plants. The United States has notified expenditures for the programme component "collection, harvest, storage and transportation" in terms of non-product-specific support. As of 2014, 48,000 acres were enrolled in Biomass Crop Assistance Program. The programme funding was reduced in recent years (US\$432 million FY2010, US\$112 million in FY2011, and US\$17 million in FY2012). Under the 2014 Farm Bill, the Biomass Crop Assistance Program has a mandatory funding level of US\$25 million per FY until 2018.

4.55. The Rural Energy for America Program (P.L. 113-79, Sec. 9007) provides financial assistance in the form of grants, loans, and loan guarantees to eligible applicants (including agricultural producers) to purchase renewable energy systems and make energy efficiency improvements. The new Farm Bill reduces the funding of the programme (mandatory funding of US\$50 million per FY plus discretionary funding of US\$20 per FY). The programme was notified as non-product-specific support.⁵⁴

⁵¹ For USDA rural development programmes. Viewed at: <http://www.rurdev.usda.gov/AboutRD.html>.

⁵² USDA online information. Viewed at: http://www.rurdev.usda.gov/bcp_vapg.html. The 2014 Farm Bill increases the mandatory funding for Value-added Agricultural Producer Grants from US\$15 million to US\$63 million per fiscal year.

⁵³ The Renewable Fuel Standards II under the Energy Independence and Security Act of 2007 establish a target of 36 billion gallons of biofuels by 2022, with a maximum of 15 billion gallons from corn starch; thus, 21 billion gallons in the national fuel supply must come from non-corn-starch biofuels.

⁵⁴ In addition, the United States has notified the Biomass Research and Development Program in the General Services category of the Green Box.

4.1.1.9 Title X (Horticulture)

4.56. Most of the existing programmes in the horticulture title aimed at supporting the specialty crop⁵⁵ and organic agriculture sector have been extended, with overall increased funding. The provisions and programmes deal mainly with certification of organic operations; research; SPS measures; and marketing and promotion of locally grown products. The Farmers Market and Local Food Promotion Program (funded with US\$30 million) is intended, *inter alia*, "to increase consumption of and access to locally and regionally produced agricultural products" (P.L. 113-79, Sec. 10003). In addition, programmes in other Farm Bill sections benefit the specialty crop and organic agriculture sector (e.g. Market Access Program and Technical Assistance for Specialty Crops in Title III, Value-Added Producer Grant Program in Title V). According to the authorities, most of these programmes are not individually notified, but expenditures are covered by General Services entries for the agencies that implement them.

4.1.1.10 Title XI (Crop Insurance)

4.1.1.10.1 Overview

4.57. The Federal crop insurance programme is permanently authorized under the Federal Crop Insurance Act of 1980, as amended, *inter alia*, by subsequent Farm Bills. The new Farm Bill retains the federal crop insurance programme, albeit with a number of amendments and increased spending for subsidized crop insurance. Most of the increase is due to two new insurance plans: for cotton (Stacked Income Protection Plan for producers of upland cotton), and for other crops (Supplemental Coverage Option). New insurance plans will also be made available for peanuts (peanut revenue insurance) and bio-energy crops, amongst others.

4.58. Crop insurance is administered by the USDA Risk Management Agency (RMA), which manages the Federal Crop Insurance Corporation. Insurance policies are currently available for about 130 crops, as well as livestock.⁵⁶ In 2013, about 295 million acres (83% of the total acreage of major row crops) were insured by federal crop insurance.⁵⁷ In general, crop insurance is based on the yield or revenue of the insured crop or whole farm revenue; most crop insurance plans are revenue-based. The insurance guarantee is based on the expected/estimated market price of the current crop year (not statutory minimum prices).⁵⁸ The coverage (indemnity) level is commonly at 70-75% (with a range from 50% to 85%) of the historical average yield or expected revenue. Catastrophic coverage (CAT) is the basic crop insurance, while buy-up coverage plans offer additional insurance coverage.

4.59. Premium rates are set by the Federal Crop Insurance Corporation and subsidized by the federal government. CAT premiums are 100% subsidized, although farmers pay a fee of US\$300 per insured crop, subject to a waiver. Premium rates for buy-up plans are also subsidized, ranging from 38-80%, depending on the insurance plan and coverage options selected. Overall, the premium subsidy rate for crop insurance averaged 62% in 2013.⁵⁹ Subsidized crop insurance has become the United States' most expensive instrument of income support to farmers (followed by direct payments): US\$7.46 billion in FY2011, up from US\$4.7 billion in FY2010, notified in terms of non-product-specific AMS (Table 4.2 and Chart 4.2). While coverage has not increased significantly in recent years, commodity prices have increased significantly, which translate into more expensive crop insurance and higher premium subsidies. Four crops (corn, soybeans, wheat, and cotton) accounted for most of the premium subsidies (84% of the total in crop year 2009).⁶⁰ Insurance policies are sold by 18 approved private insurance companies, whose operating and administrative costs are partially reimbursed and losses underwritten by the Federal Government (as notified by the United States in the General Services category of the Green Box).

⁵⁵ For a definition see USDA online information. Viewed at: <http://www.ams.usda.gov/AMSV1.0/scbgpdefinitions>.

⁵⁶ USDA Risk Management Agency online information. Viewed at: <http://www.rma.usda.gov/policies/>.

⁵⁷ Congressional Research Service (2013a), notes (page 4) that "in some cases, RMA has not pursued policies for particular commodities because producers have expressed concerns that offering insurance could adversely affect the market (because an insurance policy reduces producer risk, farmers may plant more acreage, which could drive down prices and total crop revenue)."

⁵⁸ This is in contrast to the price/revenue-based income support programmes (PLC and ARC) that use historical (moving average) prices as a benchmark.

⁵⁹ Congressional Research Service (2013a).

⁶⁰ Congressional Research Service (2013a).

4.1.1.10.2 Supplemental Coverage Option

4.60. The Supplemental Coverage Option (SCO) is a new statutory insurance plan that allows farmers to supplement their coverage under crop insurance, by covering a portion of the plan's deductible (P.L. 113-79, Sec. 11003). SCO payments are triggered for all enrolled farmers in a county when a county-wide yield or revenue loss exceeds 14% of normal levels, i.e. the first 14% of any losses are borne by the farmer, the same percentage as under ARC.⁶¹ Effectively, the optional SCO in combination with crop insurance provides coverage of up to 86% of farmers' expected revenues in a crop year. The SCO is available in combination with PLC, but not with ARC; acres enrolled with STAX are not eligible for SCO. The premium subsidy rate for the SCO is 65%. The Federal Crop Insurance Corporation is to offer the SCO no later than for the 2015 crop year.

4.1.1.10.3 Stacked Income Protection Plan for Producers of Upland Cotton

4.61. The Stacked Income Protection Plan for Producers of Upland Cotton (STAX) is a new statutory revenue insurance that covers losses of up to 20% of expected county revenues (P.L. 113-79, Sec. 11017). Historical acreage planted with upland cotton is not eligible for payments under the PLC or ARC programmes. The STAX is generally meant to supplement producers' other insurance policies. The policy includes a multiplier factor of 80%-120%, allowing producers to adjust the amount of protection per acre. The premium subsidy rate is set at 80%. STAX will not be operational until the 2015 marketing year.

4.1.1.11 Title XII (Miscellaneous)

4.62. The "miscellaneous" title of the 2014 Farm Bill contains a variety of measures, including SPS or TBT measures (e.g. country-of-origin labelling), and the Non-insured Crop Disaster Assistance programme, which was notified in the natural disaster relief category of the Green Box (US\$262 million in FY2011).

4.1.1.11.1 Non-insured crop disaster assistance

4.63. The NAP is administered by the USDA FSA for producers of crops that are not eligible under crop insurance programmes (administered by the RMA). Prior to the 2014 Farm Bill, the NAP coverage was similar to the Catastrophic Coverage (CAT) crop insurance, and covered losses due to drought, flood, or other natural disasters, as determined by the Secretary of Agriculture. Payments were made to producers if the FSA determined that there was a yield loss greater than 50% of the historical yield for the individual farm; the payment rate was 55% of the average market price. The 2014 Farm Bill makes a number of amendments to the programme (P.L. 113-79, Sec. 12305): additional "buy-up" coverage above the catastrophic level (50%), ranging up to 65% of historical yields and 100% payment rate, for a fee and premium charge; changes the definition (eligibility) from "industrial crops" to "sweet sorghum, biomass sorghum, and industrial crops (including those grown expressly for the purpose of producing a feedstock for renewable biofuel, renewable electricity, or biobased product)"⁶²; and increases the annual payment limit from US\$100,000 to US\$125,000 per person.

4.1.2 Agricultural tariffs and tariff rate quotas

4.64. Tariffs and tariff rate quotas are not covered in the 2014 Farm Bill. The average tariff on imports of agricultural products (WTO definition) into the United States in 2014 was 9.0%, slightly higher than in 2012 due to lower commodity prices, which led to higher *ad valorem* equivalents for tariff lines with specific or compound duties (Table 3.2).⁶³ 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 zero⁶⁴ to 510.9% *ad-valorem* equivalent for one dairy tariff line (Table A3.1). The highest tariffs are out-of-quota tariffs on tobacco, dairy products, peanuts, and sugar.

⁶¹ The actual indemnity received by a farmer is tied to his chosen deductible level of the underlying insurance.

⁶² Trees grown for paper or pulp are not eligible.

⁶³ Some 754 tariff lines (44.6% of agricultural tariff lines) are non-*ad valorem* duties.

⁶⁴ 385 tariff lines (22.8% of agricultural tariff lines).

4.65. The United States notifies the Committee on Agriculture for 44 tariff rate quotas (Section 3.1.4.4).⁶⁵ The most recent notification is for 2012.⁶⁶ Fill rates varied significantly from one tariff quota to another, but most tariff rate quotas were under-filled. Fill rates have been particularly low for cotton and tobacco in recent years. On the other hand, the two sugar tariff rate quotas were overfilled.

4.66. The United States has reserved the right to use the Special Agricultural Safeguard on 189 tariff lines, mostly dairy products, sugar, products containing sugar and/or dairy ingredients, and cotton. Price-based safeguards are invoked automatically on a shipment-by-shipment basis. Importers that enter goods under an over-quota tariff line are required to declare which pre-established price range is applicable to its product. If there is a safeguard duty associated with that price range, the additional charge is assessed. In nearly all cases, the affected quantities were very small.⁶⁷ The quantity-based SSG has not been used since 2003 as trigger conditions are rarely met.

4.1.3 Level of support

4.67. Notifications by the United States to the WTO Committee on Agriculture cover domestic support through marketing year 2011. Total support to agriculture was US\$139.5 billion, an 8% increase over the 2010 marketing year, largely because of higher expenditures for domestic food aid (Table 4.2). The current total AMS remained well below the US\$19.1 billion limit (total bound AMS commitment level). In addition, the notification specifies US\$9.7 billion of Amber Box support below the *de minimis* limits, a large part of which is for subsidized crop insurance premiums. A number of the Amber Box measures are related to prices, production or both, including counter-cyclical payments, marketing loan payments, and market price supports. Reflecting the continued high prices for commodities, budgetary expenditures for these programmes have declined considerably in recent years.

4.68. Agricultural policy in the United States has changed considerably since the Uruguay Round negotiations, which is reflected in a reduction in the level of support⁶⁸ and in the proportion of support provided through the most trade-distorting measures (Chart 4.3). This signals progress on both fronts compared with the OECD. The United States has one of the lowest levels of support in the OECD, with a PSE as a percentage of gross farm revenues at 7% in 2012. However, according to the OECD, the decline since 2002 was largely attributable to higher world market prices for agricultural commodities, rather than policy reform.⁶⁹ Most U.S. support is provided in the form of government payments, rather than market price support financed by consumers. Payments amounted to about US\$27 billion in 2012.⁷⁰ Although market prices are generally not supported⁷¹, farmers were and/or will be protected from low prices and/or revenue falls through marketing loans, PLC, and ARC. The OECD's Single Commodity Transfer (SCT) figures show that for commodities receiving commodity-specific support, sugar received the most support in 2010-12 through price support and other measures, followed by sheep-meat and milk.

⁶⁵ The United States has 54 separate WTO tariff-quota commitments.

⁶⁶ WTO document G/AG/N/USA/94, 5 February 2014.

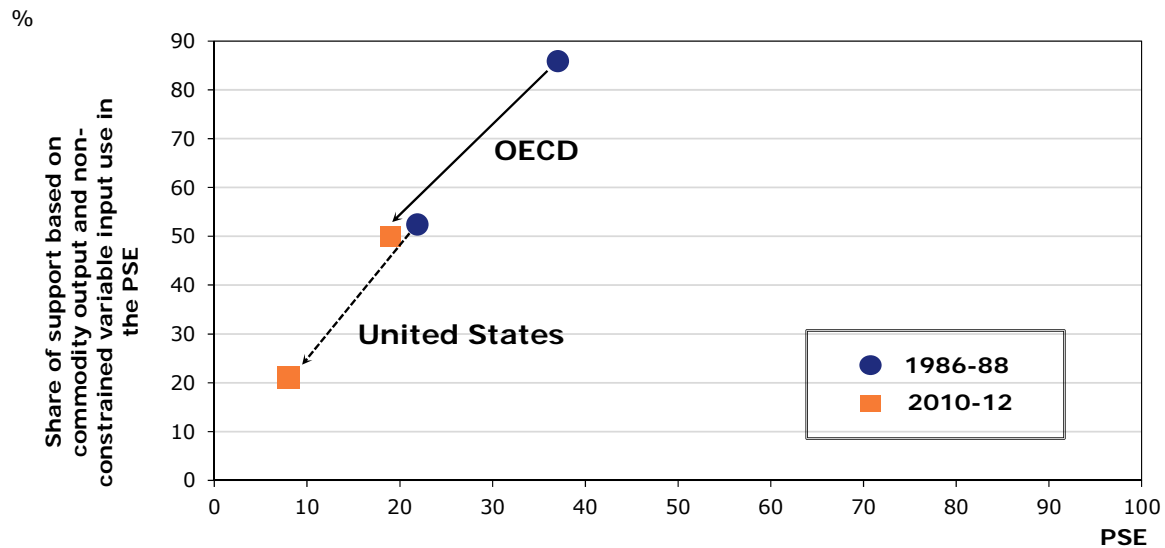
⁶⁷ WTO document G/AG/N/USA/95, 5 February 2014.

⁶⁸ As measured in terms of the OECD's percentage PSE, i.e. the support as a share of gross farm revenues. The PSE is defined as: total annual monetary transfers to farmers individually (not agriculture generally) from market price support, mainly through border measures but also food aid, export subsidies (calculated by the price gap between domestic and border price), payments to farmers, and tax/fee reductions (revenue forgone). The percentage PSE is a useful indicator for comparisons over time and among countries, *inter alia*, because it eliminates the effect of inflation.

⁶⁹ OECD (2013a), p. 288.

⁷⁰ Calculated as PSE 2012 minus market price support 2012 (US\$30.17 billion - US\$3.07 billion), see OECD PSE/CSE database. Viewed at: <http://www.oecd.org/agriculture/agricultural-policies/producerandconsumersupport/estimatesdatabase.htm>.

⁷¹ The 2014 Farm Bill eliminates the price support scheme for dairy products.

Chart 4.3 Level and composition of support to agricultural producers

Note: The level of support is presented by the percentage PSE. The composition of support is presented by the share in gross farm receipts of market price support, payments based on output, and payments based on non-constrained variable input use.

Source: OECD (2013), *Agricultural Policy Monitoring and Evaluation*, OECD Publishing. Viewed at: http://dx.doi.org/10.1787/agr_pol-2013-en; and PSE/CSE database. Viewed at: <http://www.oecd.org/agriculture/agricultural-policies/producerandconsumersupportestimatesdatabase.htm>.

4.2 Services

4.2.1 Financial services

4.2.1.1 Main features

4.69. Financial services, led by banking activities, accounted for 7% of the United States' GDP in 2012 (7.5% in 2009). The sector (finance and insurance) employs 4.5% of the non-farm workforce.⁷² The United States continues to have the world's biggest banking subsector (in terms of assets), and the largest insurance and securities markets.

4.70. There were 1,711 "large" commercial banks in the United States at end-June 2013, each with consolidated assets of US\$300 million or more. Their total consolidated assets amounted to almost US\$13 trillion, representing some three-quarters of GDP; 87% were domestic assets.⁷³ At end June 2013, foreign banks from 55 countries and territories⁷⁴ operated 440 institutions (branches, agencies, representative offices of foreign banks, as well as U.S. commercial banks at least 25% owned by foreign entities, and Edge corporations⁷⁵) in the United States, with assets totalling some US\$3.5 trillion at end-December 2013, accounting for 22% of the total assets of the U.S. commercial banking system.⁷⁶

4.71. The U.S. insurance market had gross insurance premiums of US\$1.3 trillion in 2012, or 27.5% of the world market; US\$568 billion were in life and health insurance, and US\$703 billion in

⁷² Bureau of Economic Analysis online information. "Industry Economic Accounts". Viewed at: www.bea.gov/industry/gdpbyind_data.htm.

⁷³ Federal Reserve online information. Viewed at: <http://www.federalreserve.gov/releases/lbr/current/default.htm>.

⁷⁴ Offices located in Puerto Rico, American Samoa, Guam, the Virgin Islands and other U.S.-affiliated insular areas are excluded.

⁷⁵ An Edge corporation is a subsidiary of a bank or bank holding company or financial holding company, chartered under the Edge Act of 1919, to engage in foreign banking activities.

⁷⁶ Federal Reserve online information. Viewed at: www.federalreserve.gov/releases/iba/fboshtr.htm.

property and casualty insurance.⁷⁷ The United States is tenth in the world with respect to insurance premiums per capita, with US\$4,047 per head in 2012; it is 13th with respect to premiums as a percentage of GDP (8% in 2012). Some US\$94 billion in premiums are estimated to have been paid through cross-border trade to foreign-based insurers to cover risks in the United States in 2013; they consisted mostly of reinsurance. Some US\$29 billion are calculated to have been paid to U.S.-owned insurers established abroad. In 2013, losses paid to U.S. firms are estimated at around US\$57 billion, while losses paid by U.S. firms were US\$20 billion.⁷⁸

4.72. With some 8,000 listed issues (excluding equities traded through Euronext exchanges), NYSE Euronext equities markets represent one-third of the world's equities trading, including about 90% of the Dow Jones Industrial Average. The NASDAQ is the second largest stock exchange in the world with some 3,500 listed companies. In November 2013, Intercontinental Exchange (ICE), completed a US\$11 billion cash and shares deal for NYSE Euronext creating the leading global network of regulated exchanges and clearing houses.⁷⁹

4.2.1.2 Recent developments

4.73. Bank consolidation and asset concentration are long-term industry trends and have become particularly acute among top-tier U.S. banks in the aftermath of the financial crisis. The assets of the U.S. banking system are dominated by the eight largest banks (designated as global systemically-important financial institutions, or "G-SIFIs"), followed by a tier of large regional banks with over US\$250 billion in assets. JP Morgan Chase is the largest commercial bank in terms of worldwide assets (about US\$2.5 trillion as of 1Q2014)⁸⁰, followed by Bank of America (US\$2.1 trillion), Citigroup (US\$1.9 trillion), and Wells Fargo (US\$1.5 trillion). In terms of insurance, the top ten firms account for just over 50% of premiums in the sector.⁸¹

4.74. The U.S. banking system is highly decentralized. As of 4Q2013, there were 1,054 bank holding companies in the United States (excluding Puerto Rico) with more than US\$500 million in assets, and with total aggregate assets of about US\$18.0 trillion.⁸² Furthermore, the banking sector is comprised of more than 7,300 commercial banks and savings associations; of these, approximately 6,600 institutions have assets under US\$1 billion, 88 have assets between US\$10 billion and US\$100 billion, and 19 institutions have assets over US\$100 billion.

4.75. The recent financial crisis revealed the need to implement financial regulatory reforms to address critical gaps and weaknesses within the U.S. financial system. On 21 July 2010, the "Dodd-Frank Act"⁸³ was signed into law, instituting the most sweeping set of reforms to the financial regulatory system since the Great Depression. Among its aims were to promote robust supervision and regulation of financial firms; establish comprehensive supervision of financial markets; protect consumers and investors from financial abuses; provide the government with the tools needed to manage financial crises; and raise international regulatory standards and improve international cooperation. Toward these ends, some of the key reforms established by the Dodd-Frank Act include the following:

- (a) the Financial Stability Oversight Council (FSOC) was created to identify risks to financial stability emanating from both large, interconnected banks and nonbank

⁷⁷ Swiss Re (2013).

⁷⁸ Bureau of Economic Analysis online information. U.S. International Transactions Accounts Data.

Table 3: Private Services Transactions. Viewed at: www.bea.gov/iTable/print.

⁷⁹ ICE online information. Viewed at: www.theice.com/about.jhtml.

⁸⁰ In 2013, JP Morgan Chase agreed to a US\$13 billion settlement over mortgage-backed securities sold ahead of the financial crisis. It is the largest settlement with a single entity in the history of the United States, and at issue were allegations that JP Morgan and firms it later purchased, Bear Stearns and Washington Mutual, sold risky mortgage securities during the housing bubble while misrepresenting their quality. The settlement includes US\$9 billion in fines and US\$4 billion in additional relief for struggling homeowners. Federal Housing Finance Agency online information. Viewed at: www.fhfa.gov/webfiles/25649/FHFAJPMorganSettlementAgreement.pdf.

⁸¹ Federal Reserve online information. Viewed at: www.federalreserve.gov/releases/iba/fboshtr.htm.

⁸² US Department of the Treasury online information. Viewed at: www.treasury.gov/initiatives/fsoc/documents/FSOC%202014%20Annual%20Report.pdf.

⁸³ The full name is the Dodd-Frank Wall Street Reform and Consumer Protection Act. In June 2009, President Obama called for a "sweeping overhaul of the United States financial regulatory system, a transformation on a scale not seen since the reforms that followed the Great Depression".

financial companies, promote market discipline by eliminating expectations of government bailouts, and respond to emerging threats to financial stability.⁸⁴ The Office of Financial Research (OFR) was also established to support the FSOC through data collection and research⁸⁵;

- (b) an independent Consumer Financial Protection Bureau (CFPB) was created to enforce federal consumer financial protection laws, and to protect consumers in the financial marketplace from unfair, deceptive or abusive practices. The CFPB, inter alia, oversees the student loan industry, credit and debit cards, payday and some consumer loans, as well as mortgage underwriting standards⁸⁶;
- (c) the Office of Credit Rating (OCR), within the Securities and Exchange Commission (SEC), was established to administer the SEC's rules regarding credit rating agencies, registered as nationally-recognized statistical rating organizations (NRSROs) and to conduct annual examinations of NRSROs.⁸⁷ Concerns over credit rating agencies also led the U.S. Congress to mandate that the SEC adopt additional rules intended to increase transparency and improve the integrity credit ratings within a year as part of the Dodd-Frank Act. The SEC proposed new draft rules by May 2011 but so far no final rules have been adopted. Congress also mandated that U.S. Government agencies remove certain references to credit ratings from their rules and regulations;
- (d) the Federal Insurance Office (FIO), within the Treasury, was created to coordinate federal efforts and develop federal policy on prudential aspects of international insurance matters. FIO was established to monitor all aspects of the insurance industry (except health insurance, some long-term care insurance, and crop insurance), including identifying issues or gaps in regulation of insurers that could contribute to systemic crisis in the insurance industry or within the U.S. financial system⁸⁸;
- (e) The Office of Thrift Supervision (OTS) was eliminated, shifting to the Federal Reserve all regulatory and supervisory authority with respect to savings and loan-holding companies. In addition, the Dodd-Frank Act shifted all examination and supervisory authority over federal thrift and savings associations to the Office of the Comptroller of the Currency, and regulatory authority over state-chartered thrifts to the FDIC⁸⁹;
- (f) Title II of the Act granted the FDIC new authorities to liquidate large, interconnected financial companies whose failure could pose a significant threat to U.S. financial stability. It is designed to ensure that losses are borne by creditors and shareholders, rather than taxpayers⁹⁰;
- (g) the Volcker Rule (section 619 of the Dodd-Frank Act) prohibits insured depository institutions and their affiliates from engaging in short-term proprietary trading of certain securities, derivatives, and commodities. Additionally, the Volcker Rule

⁸⁴ US Department of the Treasury online information. Viewed at: <http://www.treasury.gov/initiatives/fsoc/Pages/home.aspx>. The FSOC's authority to designate certain nonbank financial companies as systemically important financial institutions, thereby subjecting them to supervision by the Federal Reserve, derives from Section 115 of the Dodd-Frank Act.

⁸⁵ US Department of the Treasury online information. Viewed at: www.treasury.gov/about/initiatives/fsoc/about/Pages/default.aspx.

⁸⁶ CFPB online information. Viewed at: www.consumerfinance.gov/the-bureau/.

⁸⁷ SEC online information. Viewed at: www.sec.gov/about/offices/ocr.shtml. During the crisis, certain credit rating agencies were blamed for overrating some bundles of derivatives and mortgage-backed securities, which misled investors who failed to realize the debt was in danger of not being repaid.

⁸⁸ FIO is also charged with monitoring the extent to which traditionally underserved communities and consumers, minorities, and low-and moderate-income persons have access to affordable insurance (except health insurance), and making recommendations to the FSOC regarding the designation of insurers as systemically important. US Department of the Treasury online information. Viewed at: www.treasury.gov/about/organizational-structure/office/Pages/Federal-Insurance.aspx.

⁸⁹ FDIC online information. Viewed at: www.fdic.gov/about/learn/symbol.

⁹⁰ The Dodd-Frank Act established an Orderly Liquidation Fund to facilitate the resolution process by providing temporary liquidity. FDIC online information. Viewed at: www.fdic.gov.

prohibits depository institutions from investing in or sponsoring hedge funds or private equity funds. However, the Rule provides exemptions for certain activities, including market-making, underwriting, hedging, and trading in government obligations, as well as insurance company activities. Although the Volcker Rule came into effect on 1 April 2014, the Federal Reserve has extended the period for covered banking organizations to bring their activities and investment into conformity with the rule until 21 July 2015;

- (h) Title VII of the Act addressed the gap in U.S. financial regulation of derivatives⁹¹, by providing a comprehensive framework for the regulation of over-the-counter (OTC) swap markets. Standardized OTC derivative instruments will generally have to be cleared through central counterparties, traded on exchanges or electronic trading platforms, where appropriate, and reported to trade repositories. Non-centrally cleared contracts should be subject to higher capital and margin requirements.

4.76. On 18 February 2014, the Federal Reserve approved a final rule establishing a number of enhanced prudential standards, including liquidity, risk management, and capital to strengthen the supervision and regulation of U.S. banks with assets of at least US\$50 billion, as well as U.S. operations of foreign banks that have more than US\$50 billion in non-agency U.S. assets.⁹² Under the new rule, foreign banks with U.S. assets of at least US\$50 billion are required to establish intermediate holding companies for their U.S. financial operations (other than branches and agencies) and to meet, with some accommodative exceptions, the same capital⁹³, liquidity and other standards as U.S. bank holding companies of comparable size.⁹⁴ The Federal Reserve estimates that approximately 20 foreign banks, many based in the European Union, will have to establish intermediate holding companies in the United States.⁹⁵ Domestic banks subject to the new rule will need to comply by 1 January 2015, while foreign banks will generally be required to do so by 1 July 2016.

4.77. The implementation of Title VII of the Dodd-Frank Act on OTC derivatives has been entrusted by the Act to the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC). To resolve regulatory differences regarding the regulation of cross-border swap activities, most of which are conducted within or between the European Union and the United States, the CFTC and the European Union recently agreed that jurisdictions and regulators should be able to defer to each other when it is justified by the quality of their respective regulation and enforcement regimes.⁹⁶ In addition, on 10 March 2014, the CFTC and

⁹¹ A derivative is a financial instrument whose price is derived from the value of one or more underlying assets, liabilities, or indices. Before the crisis, certain OTC derivatives known as swaps operated largely in the shadows, without effective oversight or transparency. Some firms took on huge risks that they did not fully understand and put the entire financial system in jeopardy. U.S. Department of the Treasury online information. Viewed at: www.treasury.gov/resource-center/faqs/Markets/Pages/derivatives.aspx.

⁹² Threshold established by the Dodd-Frank Act for special prudential measures. The final rule was required by section 165 of the Dodd-Frank Act. See "Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations" Final Rule, Federal Reserve System, 12 CFR Part 252 [Regulation YY; Docket No. 1438], Federal Register, Vol. 79, No. 59 / Thursday, March 27, 2014 / Rules and Regulations.

⁹³ For instance, Deutsche Bank, whose U.S. unit at times has operated with virtually zero capital, faces a shortfall of about US\$7 billion under the new rules, according to Citigroup. Morgan Stanley sees a "capital gap" at Deutsche Bank and Barclays but expects some of it to be addressed by shrinking their balance sheets.

⁹⁴ According to the U.S. authorities, this represents a major change from the current deference of the Federal Reserve to countries with comparable capital standards, particularly in light of section 171 of the Dodd Frank Act, which mandates that the same capital requirements applicable to U.S. banking holding companies be applied to foreign banks' U.S. operations.

⁹⁵ Ten foreign banks now account for more than two-thirds of foreign bank third-party assets held in the U.S., up from 40% in 1995. Foreign banks also play a major role in the US securities market. Five of the top-10 U.S. broker-dealers are owned by foreign banks. Like their U.S.-owned counterparts, large foreign-owned U.S. broker-dealers were highly leveraged in the years leading up to the financial crisis.

⁹⁶ CTF Press Release, see "Cross-Border Regulation of Swaps/Derivatives Discussions between the Commodity Futures Trading Commission and the European Union – A Path Forward", 11 July 2013; and "Statement by the CFTC and the European Commission on progress relating to the implementation of the 2013 Path Forward Statement", 14 February 2014. Some analysts argue that due to the global nature of derivatives transactions, the simultaneous application of US and EU's requirements might lead to overlapping demands and legal uncertainty.

Japan signed a Memorandum of Cooperation to enhance supervision of cross-border regulated entities dealing in derivatives markets.⁹⁷

4.78. Measures taken to strengthen the U.S. banking system will be complemented by the U.S. banking agencies' implementation of the Basel III increased capital and liquidity standards adopted by the Basel Committee on Banking Supervision. Basel III is aimed at strengthening the regulation, supervision and risk management of banks worldwide.⁹⁸ The Federal Reserve has announced that the minimum Basel III leverage ratio would be 6% for eight banks with assets above US\$50 billion and 5% for their insured bank holding companies.⁹⁹ The U.S. banking agencies have adopted most of the Basel III capital requirements by issuing a final rule in July 2013. They are currently engaged in rulemaking, or are planning to commence rulemaking, to adopt other Basel III capital and liquidity standards.

4.2.1.3 Other policy actions

4.79. The Emergency Economic Stabilization Act of 2008 (EESA) provided budgetary authorization of up to US\$700 billion to respond to the financial crisis. That authority was reduced to US\$475 billion by the Dodd-Frank Act and is being utilized through the Troubled Assets Relief Program (TARP) to restore the liquidity and stability of the financial system. Foreign institutions established and regulated in the United States were, in principle, eligible for relief. As of 30 June 2014, a total of US\$424.5 billion had been disbursed under TARP. The authority to make new commitments under TARP ended on 3 October 2010. The Treasury continues to disburse funds related to its housing programs. Cumulative collections, together with the Treasury's additional proceeds from the sale of non-TARP shares of AIG amounted to US\$438.7 billion. Bank support programs, including the Capital Purchase Program providing capital to viable banking institutions of all sizes throughout the nation, have thus far recovered US\$273.6 billion from the US\$245.1 billion disbursed. As of 31 May 2014, the overall cost of TARP programs was estimated at US\$37.5 billion (assuming full disbursement of the TARP housing program budget and excluding the Treasury's proceeds of US\$17.6 billion from non-TARP AIG shares).

4.80. The Dodd-Frank Act does not address the problem of housing finance and the future of the two giant mortgage-finance agencies, Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corp (Freddie Mac), which remain under the control of the Federal Housing Finance Agency (FHFA).¹⁰⁰ On 16 March 2014, the Housing Reform and Taxpayer Protection Act was introduced in the Senate and remains pending. It would wind down Fannie Mae and Freddie Mac over the next five years and establish a new system to be regulated by a new entity known as the Federal Mortgage Insurance Corporation (FMIC), modelled in part after the FDIC. The Act would also change other aspects of government regulation surrounding the US\$10 trillion mortgage market. For instance, under the terms of the legislation, private investors would be responsible for taking a first loss position of at least 10% of the mortgage-backed security's value.¹⁰¹

4.81. According to the IMF, U.S. financial firms in general have strengthened their balance sheets over the last few years. However, more progress is needed in some areas, notably in terms of "shadow banking", i.e. given the size and prominence of money market mutual funds in short-term funding markets, their regulation should be reinforced to further enhance financial stability¹⁰²; and U.S. banks' exposure to struggling euro-zone sovereigns, although improved recently, is still

⁹⁷ CFTC Press Release, 10 March 2014.

⁹⁸ Basel III strengthens prudential requirements on banks with a view to achieving a safer financial system. New guidelines on capital, liquidity, maturity and leverage aim at reducing the incentives for building-up high-risk, highly leveraged bank assets responsible for the 2008-09 financial crisis. Bank for International Settlements online information. Viewed at: www.bis.org/bcbs/basel3.htm.

⁹⁹ Federal Reserve Press Release, 24 October 2013.

¹⁰⁰ Fannie Mae and Freddie Mac received support for around US\$188 billion, although they are now on track to pay back almost all of it.

¹⁰¹ Summary of the Senate Banking Committee Leaders' Bipartisan Housing Finance Reform Draft. Viewed at: http://www.banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=2cbe807d-0b28-4980-b017-1cb1a43079ef.

¹⁰² As was the case with American International Group (AIG), any institution holding low-risk securities can build their own shadow bank by lending-out ("repo-ing") their securities for cash and investing the proceeds in a riskier credit portfolio.

relatively high at around 5% of their assets if indirect exposure through derivatives and guarantees is included. Moreover, the IMF has warned that "too big to fail" banks are still major sources of systemic risks and has called for tighter supervision. The implicit subsidy for "too big to fail" banks in the United States is estimated at about US\$70 billion.¹⁰³

4.2.2 Telecom

4.2.2.1 Recent developments

4.82. The telecommunications market in the United States is the largest in the world by revenue (US\$526 billion in 2011, up from US\$400 billion in 2007), and ICT spending at US\$1.2 trillion in 2013, i.e. about a quarter of worldwide spending.¹⁰⁴ The United States ranks 17th out of 157 countries in the ITU's ICT latest Development Index.¹⁰⁵ In 2013, the United States had a trade surplus in telecommunication services estimated at around US\$6 billion.¹⁰⁶

4.83. During 2009-13, mobile phone subscriptions continued to increase and reached a penetration rate of 96.8% in 2013, while fixed-line subscribers decreased to 42.7 per 100 inhabitants (Table 4.4).¹⁰⁷ In 2012, some 236 million individuals in the United States used the internet (213 million in 2009), and there were 29.7 fixed-broadband subscribers per 100 people.¹⁰⁸ Some U.S. companies that began as internet search engines have further expanded their telecoms offerings, including mobile-phone operating systems.¹⁰⁹

Table 4.4 Selected telecommunications indicators, 2009-13

	2009	2010	2011	2012	2013
Fixed telephone subscriptions (million)	153	150	143	138	135
Fixed telephone lines per 100 inhabitants	49.8	48.5	45.8	44.0	42.7
Mobile cellular subscriptions (million)	274	285	298	305	306
Mobile cellular per 100 inhabitants	89.2	92.2	95.2	97.1	96.8
Internet users (%)	73.5	75.9	76.5	79.3	80.0
Fixed broadband subscriptions (million)	80	84	88	93	94
Fixed broadband subscriptions per 100 inhabitants	26.0	27.2	28.2	28.6	29.7
Fixed and mobile wireless broadband subscriptions (million)	136	182	230	261	276
Per 100 inhabitants	44.3	58.8	73.7	83.1	87.3

Source: ITU online information. Viewed at: www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx; and information provided by the United States authorities.

4.84. The United States is the world leader in third-generation (3G) and fourth-generation (4G) long-term evolution (LTE) networks which provide faster and more spectrally-efficient technologies for mobile broadband, with 5.6 million of the roughly 9 million LTE subscribers in the world at the end of 2011. According to some estimates, U.S. investment in wireless broadband networks

¹⁰³ IMF (2014).

¹⁰⁴ ICT or Information and Communication Technologies includes landlines, data networks, internet, wireless communications such as cellular and remote wireless sensors, and satellites. Plunkett Research online information. Viewed at: www.plunkettresearch.com/telecommunications-market-research/industry-statistics.

¹⁰⁵ The ICT Development Index comprises 11 indicators covering ICT access, use, and skills. ITU online information. Viewed at: http://www.itu.int/dms_pub/itu-d/opb/ind/D-IND-ICTOI-2013-U2-SUM-PDF-E.pdf.

¹⁰⁶ Bureau of Economic Analysis online information. U.S. International Transactions Accounts Data. Table 3: Private Services Transactions. Viewed at: www.bea.gov/iTable/print.

¹⁰⁷ Consumers worldwide continue to move away from fixed-line telephony by using, *inter alia*, not only mobile phones but also Voice over Internet Protocol (VoIP) services and other options.

¹⁰⁸ ITU online information. Viewed at: <http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>.

¹⁰⁹ Google, for example, provides Android, which accounted for almost 80% of smartphone software in 2013. Economist Intelligence Unit (2013).

increased from US\$21 billion in 2009 to US\$35 billion for 2013.¹¹⁰ Nonetheless, the average speed of the internet in the United States is slower than in most developed economies.¹¹¹

4.85. This investment and technological progress has also been crucial during the last few years in allowing e-commerce to grow rapidly, both in consumer trade and in terms of firms' fulfilment of orders and handling of inventories. Online retail sales accounted for almost 6% of total retail sales in the second quarter of 2013, an annual increase of 18%, faster than overall retail sales growth of 5% in the same period.¹¹² Similarly, U.S. consumers are increasingly accessing the internet through their smartphones and tablets and are using mobile internet rather than their PC for emails, online retailing, banking and other functions.

4.86. The merger and consolidation trend, which dominated the U.S. telecommunications industry for the past decade, has continued providing companies with a way to obtain scarce wireless spectrum and the means to afford large infrastructure investments. The major domestic players are Verizon, the largest mobile-phone provider in the United States, followed by AT&T, the world's biggest telecoms operator by revenue, and Sprint.¹¹³

4.87. In February 2014, Verizon increased its lead in the U.S. market when it acquired a 45% stake in Verizon Wireless held by Vodafone (the largest mobile company in Europe) for US\$130 billion. The acquisition, the third-largest in corporate history and the second-largest in telecoms, meant that Verizon now has 100% ownership of its wireless operation.

4.88. Overall the United States was ranked eighth out of 161 countries in the ITU's ICT Price Basket in 2012. This study finds that measured as a percentage of GNI per capita, the United States has the third lowest fixed-broadband prices in the world. Mobile cellular prices, on the other hand, are relatively high.¹¹⁴

4.2.2.2 Legal and institutional framework

4.89. The principal legislation covering telecommunications remains the Communications Act of 1934 and its amendments, and the Telecommunications Act of 1996.¹¹⁵ The Federal Communications Commission (FCC) is responsible for "regulating interstate and international communications by radio, television, wire, satellite, and cable."¹¹⁶ The National Telecommunications and Information Administration (NTIA) of the Department of Commerce is the principal advisor to the President on telecommunications and information policy issues.¹¹⁷ The International Communication and Information Policy (CIP) Office in the Department of State, along with the FCC and NTIA, represent the United States in bilateral and multilateral affairs concerning telecommunications, the Internet, and information technology.¹¹⁸ The United States Trade Representative (USTR) is responsible for developing and coordinating trade policy, including the negotiation and enforcement of specific provisions relating to telecommunications in the trade agreements to which the United States is a party.

4.90. Section 310 of the Communications Act, restricts granting of a common carrier wireless licence to foreign governments, as well as to any non-U.S. citizens or corporations, or any corporation with more than 20% foreign ownership. However, under its statutory "forbearance"

¹¹⁰ USTR (2014d).

¹¹¹ For example, it is a tenth as fast as in Japan and Singapore. Financial Times, 15 April 2014. The U.S. average download speed of 44.69 Mbps ranks slightly above the OECD average of 44.44 Mbps. OECD online information. Viewed at: <http://www.oecd.org/sti/broadband/BB-Portal-5a.xls>.

¹¹² The Economist Intelligence Unit (2013).

¹¹³ In the context of this review, FCC reported that the market share by subscriber for mobile wireless providers is confidential.

¹¹⁴ The United States was ranked 24th out of 161 countries in the ITU's mobile-cellular sub-basket. ITU (2013).

¹¹⁵ See WTO (2010).

¹¹⁶ The FCC was established by the Communications Act of 1934, as amended, as an independent government agency. Intra-state basic telecoms services continue to be regulated by the state authorities. The FCC's jurisdiction covers the 50 states, the District of Columbia, and U.S. possessions. FCC online information. Viewed at: <http://www.fcc.gov/aboutus.html>.

¹¹⁷ For more information on the NTIA see: <http://www.ntia.doc.gov/about.html>.

¹¹⁸ For more information on the International Communication and Information Policy Group see: <http://www.state.gov/e/eeb/cip/abt/index.htm>.

authority, the FCC has determined that it will not apply the 20% limit to the class of common carrier wireless licensees in which the foreign investment is held in the licensee through U.S.-organized entities that do not control the licensee, to the extent the FCC determines, upon the filing of a petition for declaratory ruling by the licensee, that the particular foreign investment is consistent with the public interest. In addition, where a common carrier wireless licensee is controlled by a U.S.-organized parent company, Section 310 allows foreign individuals, corporations, or governments to own and vote 25% of the U.S. parent's capital stock.¹¹⁹ In all cases, whether an applicant is domestic or foreign, the FCC is authorized to attach conditions to a licence, or to deny a licence, if it finds it is in the public interest to do so.

4.91. The FCC seeks the advice of other government agencies on matters concerning national security, law enforcement, foreign policy and trade policy concerns when it considers an application from an entity with foreign ownership interests to provide international telecoms services or to acquire control of, or the regulated telecom assets of, an existing provider of domestic or international telecoms services.

4.92. The United States' commitments on basic telecommunications attached to the Fourth Protocol of the GATS cover most services.¹²⁰ Excluded from the commitments are one-way satellite transmissions of direct-to-home (DTH) services, direct broadcast satellite (DBS) services, and digital audio radio services (DARS). The United States has taken an exemption under GATS Article II (MFN) to allow for "differential treatment of countries due to application of reciprocity measures or through international agreements guaranteeing market access or national treatment" for DTH and DBS television services and digital audio services (DARS).¹²¹ The United States also reserved the right to "allow the deduction for expenses of an advertisement carried by a foreign broadcast undertaking and directed primarily at U.S. market only where the broadcast undertaking is located in a foreign country that allows a similar deduction for an advertisement placed with a U.S. broadcast undertaking". The purpose of this MFN exemption is to "encourage the allowance of advertising expenses internationally".¹²²

4.2.2.3 Policy actions

4.93. In November 2012, the FCC adopted the Report and Order (FCC-12-145) and eliminated the International Settlements Policy (ISP)¹²³ in order to modernize its international telephony rules, further lower the price for international calls¹²⁴, and increase competition. At the same time, the FCC adopted safeguards to protect against anticompetitive conduct in specific cases. Nonetheless, the FCC maintains a "List of Foreign Carriers that are Presumed to Possess Market Power in Foreign Telecommunications Markets". This list of carriers is used for the purposes of implementing certain FCC rules on switched services over private lines and U.S. international common carriers and cable landing licensees.

4.94. The FCC has also taken measures to reform and modernize the universal service and intercarrier compensation systems to make available affordable voice and broadband service, both fixed and mobile.¹²⁵ As of June 2012, about 15 million people in the United States lived in areas

¹¹⁹ Section 310 provides the FCC with the discretion to allow such foreign investors to own and vote up to 100% of the U.S. parent's capital stock to the extent the FCC determines, upon filing of a petition for declaratory ruling by the licensee, that the particular foreign investment is consistent with the public interest.

¹²⁰ WTO documents GATS/SC/90/Suppl.2, 11 April 1997 and S/DCS/W/USA, 27 February 2003.

¹²¹ WTO document GATS/EL/90/Suppl.2, 11 April 1997.

¹²² WTO document GATS/EL/90, 15 April 1994.

¹²³ The ISP, originated in the 1930s and incorporated into the FCC's rules in the 1980s, had been created to ensure fair treatment for U.S. international carriers negotiating agreements with foreign carriers with market power by, *inter alia*, requiring foreign providers to offer all U.S. carriers the same settlement rate. But as global competition increased, traffic routing possibilities multiplied, and the ISP was impeding competition. As a result, over the last decade, the ISP was gradually removed from most international routes. FCC online information. Viewed at: <http://fcc.gov/document/international-settlements-policy-reform>.

¹²⁴ The average U.S. calling price for international phone calls fell from US\$0.74 to about US\$0.053 per minute from 1996 to 2011 due to global competition, even as minutes of use increased over 250% during the period. FCC online information. Viewed at: <http://fcc.gov/document/international-settlements-policy-reform>.

¹²⁵ The previous universal service and intercarrier compensation systems were considered ill equipped to address the universal service challenges raised by broadband, mobility, and the transition to Internet Protocol (IP) networks. FCC online information. Viewed at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-161A1_Rcd.pdf.

where there was no access to robust fixed broadband networks.¹²⁶ Some of the key elements of the universal service and intercarrier compensation reforms are described in Box 4.1.

Box 4.1 Telecoms Universal Service and Intercarrier Compensation Reforms

Universal service reform

Budget:

The annual funding target is set at no more than US\$4.5 billion per year until 2017 (same as in FY2011), with an automatic review trigger if the budget is threatened to be exceeded.

Public interest obligations:

All eligible telecommunications carriers (ETCs) are required to offer voice services and also broadband services.

Connect America Fund (CAF):

The CAF aims to help make broadband available to homes, businesses, and community anchor institutions in areas that do not, or would not otherwise, have broadband, by expanding the availability of broadband-capable fixed and mobile networks. The CAF will replace all existing high-cost support mechanisms with mechanisms that rely on incentive-based, market-driven policies, such as competitive bidding, to distribute universal service funds efficiently.

Price-cap territories:

In areas served by price-cap carriers—Bell Operating Companies and other large and mid-sized carriers, the CAF provides targeted support for broadband in two phases: (1) in Phase I, the FCC froze existing support at 2011 levels and spurred immediate broadband build out-by providing US\$438 million in additional funding for price-cap carriers to extend broadband to unserved locations; and (2) in Phase II, the FCC will distribute up to US\$1.8 billion annually for up to ten years in support for areas with no unsubsidized broadband competitor using a combination of a forward-looking broadband cost models and competitive bidding.

Rate of return reforms:

Various measures are underway to support continued broadband investment in many of the most difficult and expensive areas to serve while increasing accountability and incentives for efficient use of public resources.

CAF Mobility Fund:

The Mobility Fund ensures availability of mobile broadband networks in areas where a private-sector business case is lacking. It had two phases: (1) in Phase I, US\$300 million in one-time support was authorized to immediately accelerate deployment of networks for mobile voice and broadband services in unserved areas, and (2) in Phase II, up to US\$500 million per year in ongoing support will be provided to sustain and expand the availability of mobile broadband.

Remote areas fund:

At least US\$100 million per year will be made available to ensure that people living in the most remote areas, where the cost of deploying traditional terrestrial broadband networks is extremely high, can obtain affordable access through alternative technology platforms, including satellite services.

Waiver:

As a safeguard to protect consumers, an explicit waiver mechanism is created under which a carrier can seek relief from some/all of the reforms if the carrier demonstrates that the reduction in existing high-cost support would put consumers at risk of losing voice service, with no alternative terrestrial providers available to provide voice telephony.

Fees:

Under the Telecommunications Act of 1996 and FCC Rules, telecommunications carriers and certain other providers of telecommunications that provide service between states and internationally must contribute to the Universal Service Fund. Currently, the types of telecommunications providers that must contribute to the Universal Service Fund include long-distance companies, local telephone companies, wireless telephone companies, paging companies, payphone providers that are aggregators, and Interconnected Voice over Internet Protocol (VoIP) providers.

¹²⁶ According to State Broadband Initiative data, there were approximately 15 million people in the U.S. unserved by fixed broadband with speeds of 3 Mbps downstream and 768 kbps upstream as of June 2012. See National Broadband Map online information. Viewed at: <http://www.broadbandmap.gov>.

These providers must pay a specified percentage of their interstate and international end-user revenues into the Universal Service Fund. This percentage is called the "contribution factor". The contribution factor changes four times a year (quarterly) and is increased or decreased depending on the projected Universal Service program demand and the revenues reported by contributors. The current contribution factor is available on the FCC's website. Viewed at: <http://www.fcc.gov/encyclopedia/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support>.

Intercarrier compensation reform

Access stimulation:

To address the practice of access stimulation, in which carriers artificially inflate their traffic volumes to increase intercarrier compensation (ICC) payments, the new rules require competitive carriers and rate-of-return incumbent local exchange carriers (LECs) to refile their interstate switched access tariffs at lower rates if two conditions are met: (1) a LEC has a revenue-sharing agreement, and (2) the LEC either has (a) a three-to-one ratio of terminating-to-originating traffic in any month or (b) experiences more than a 100% increase in traffic volume in any month measured against the same month the previous year.

Phantom traffic:

To tackle "phantom traffic" (calls for which identifying information is missing or masked in ways that frustrate intercarrier billing), telecommunications carriers and providers of interconnected VoIP service are now required to include the calling party's telephone number in all call-signalling. Intermediate carriers are also required to pass this signalling information, unaltered, to the next provider in a call path.

Comprehensive ICC reform:

A uniform national default bill-and-keep framework is adopted as the ultimate end state for all telecommunications traffic exchanged with a LEC. Under bill-and-keep, carriers look first to their subscribers to cover the costs of the network, then to explicit universal service support where necessary. The reform goes against the notion that only the calling party benefits from a call and therefore should bear the entire cost of originating, transporting, and terminating a call. Thus, the calling-party-network-pays model of ICC regimes is rejected as outdated.

Multi-year transition:

Initial reforms focus on reducing terminating switched access rates, which are a major source of arbitrage problems, and promoting the migration to all-IP networks. First, carriers have to cap most ICC rates as of the effective date of the rules. Then, to reduce the disparity between intrastate and interstate terminating-end office rates, carriers were required to bring these rates to parity within two steps by July 2013. Thereafter, carriers must reduce their termination (and for some carriers also transport) rates to bill-and-keep, within six years for price-cap carriers and nine for rate-of-return carriers.

New recovery mechanism:

A transitional recovery mechanism is adopted to mitigate the effect of reduced intercarrier revenues on carriers and facilitate continued investment in broadband infrastructure, while providing greater certainty and predictability than the *status quo*.

Treatment of VoIP traffic:

A transitional framework for VoIP ICC is adopted so that all carriers originating and terminating VoIP calls will be on equal footing in their ability to obtain compensation for this traffic. Default charges for "toll" VoIP-PSTN traffic are equal to interstate rates applicable to non-VoIP traffic, and default charges for other VoIP-PSTN traffic will be the applicable reciprocal compensation rates.

Source: FCC online information. Viewed at: http://hraunfoss.fcc.gov/edocs_public/attachment/FCC-11-161A1_Rcd.pdf.

4.95. In December 2010, the FCC issued a Report and Order (FCC 10-201) to adopt open internet rules.¹²⁷ The FCC prohibited fixed broadband providers from unreasonably discriminating in transmitting lawful network traffic and from blocking lawful content, applications, and services. The FCC also imposed more limited anti-blocking rules on mobile broadband providers, and required both fixed and mobile broadband providers to disclose their network management practices. In September 2011, Verizon appealed the FCC's Open Internet Order. In January 2014, the U.S. Court of Appeals for the District of Columbia Circuit overturned the FCC's blocking and discriminations rules for the internet, but also upheld the FCC's authority to adopt open Internet rules under section 706 of the Telecommunications Act.

¹²⁷ FCC online information. Viewed at: <http://fcc.gov/guides/open-internet>.

4.96. In response to the Court's decision, on 15 May 2014 the FCC proposed new Open Internet rules, so as to enhance the existing transparency requirement, reinstate the no-blocking rule with certain clarifications, and require fixed (and potentially mobile) broadband providers to ensure that their practices are commercially reasonable. The FCC also sought comment on whether it should adopt legal presumptions that certain practices by broadband providers are commercially unreasonable, including with respect to prioritization of traffic from affiliated services. The FCC sought public comment on these proposed rules and on alternative proposals to protect the open Internet, including those that would regulate broadband providers as common carriers under certain circumstances. The deadline for submitting initial comments was 15 July 2014, and replies to those comments were due on 15 September 2014.¹²⁸ New Open Internet rules are expected to be adopted by the end of 2014.¹²⁹

4.97. On 4 March 2014, the United States announced its intention to negotiate Telecommunications Mutual Recognition Agreements (MRAs) with selected countries "to facilitate U.S. exports of telecommunications equipment."¹³⁰ The United States has negotiated MRAs with a number of multilateral organizations and economies, including in the context of APEC.¹³¹

4.2.3 Audiovisual services

4.2.3.1 Statistical overview

4.98. The U.S. market for audiovisual services (as defined by the GATS standard nomenclature, i.e. services provided by the film, TV, radio and sound recording industries¹³²) is one of the largest worldwide in value. The statistical tables below describe the main economic indicators of the sector in terms of exports and imports, main trading partners, and inward/outward foreign affiliated, i.e. sales by subsidiaries of U.S. companies established abroad (Tables 4.5, 4.6 and 4.7).

Table 4.5 Imports and exports of audiovisual services, 2010-12

(US\$ million)

	2010	2011	2012
Imports			
Film and television tape distribution	1,661	2,064	2,648
Exports			
Film and television tape distribution	13,690	14,567	16,222

Source: Organisation for Economic Co-operation and Development (OECD) data base, February 2014; and US Department of Commerce, Bureau of Economic Analysis, March 2014.

¹²⁸ FCC 14-61 (2014), *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Notice of Proposed Rulemaking, Washington DC.

¹²⁹ Both the Open Internet rules adopted in 2010 and those proposed earlier in 2014 concern the manner in which broadband providers manage traffic *within* their own networks to and from their end-user subscribers.

¹³⁰ *Financial Times*, 5 March 2014.

¹³¹ The United States has MRAs in force with seven economies (Australia, Canada, Chinese Taipei, Hong Kong-China, Singapore, Republic of Korea and Vietnam) in the context of APEC. In addition, the United States has MRAs with the European Free Trade Association (Norway, Iceland and Liechtenstein); the EU; Israel; Japan; and Mexico (not yet operational). The FCC and USTR are working with Mexico to make a Phase 1 MRA operational. Discussions about possible MRAs are also being held with other partners such as: Chinese Taipei (Phase 2), Republic of Korea (Phase 2), and Malaysia (Phase 1).

¹³² Due to statistical limitations and data-collection problems, the trade data do not cover the totality of the sub-segments of the audiovisual industry, in particular the omission of radio and sound-recording subsectors for the trade data (Tables 4.5 and 4.6). More precisely, the sub-items of sector 2 D "Audiovisual services" of GATT document MTN.GNS/W/120, 10 July 1991 (viewed at: http://www.wto.org/english/tratop_e/serv_e.htm), namely 2.D.a motion picture and videotape distribution services, 2.D.b motion picture projection services, 2.D.c radio and television services, 2.D.d radio and television transmission services and 2.D.e. sound-recording.

Table 4.6 Film and television tape distribution, top 10 trading partners, 2012

(US\$ million)

Exports		Imports	
Partner	Payment	Partner	Payment
European Union ^a	9,093	Brazil	1,194
United Kingdom	3,855	European Union ^a	525
Netherlands	1,356	United Kingdom	443
Germany	1,162	Ireland	30
France	694	Netherlands	16
Spain	446	France	13
Italy	422	Mexico	316
Canada	1,498	Argentina	199
Australia	906	Venezuela, Bolivarian Republic of	139
Japan	830	Canada	59
Brazil	525	Chile	46

a Reflects the country composition of the European Union for the period covered.

Source: WTO Secretariat, based on the U.S. Department of Commerce, Bureau of Economic Analysis, March 2014.

Table 4.7 Inward and outward foreign affiliates statistics (FATS), 2009-11

(ISIC Rev4, US\$ million)

Services supplied to U.S. persons by foreign companies through affiliates	2009	2010	2011
Inward foreign affiliates statistics (FATS)			
Motion picture, radio, television and other entertainment act	8,486	...	...
Programming and broadcasting activities	167	174	150

(ISIC Rev4, US\$ million)

Services supplied to foreign persons by U.S. companies through affiliates	2009	2010	2011
Outward foreign affiliates statistics (FATS)			
Motion picture, radio, television and other entertainment act	15,689	15,345	14,192
Programming and broadcasting activities	9,764	11,916	13,207

.. Not available.

Source: OECD, July 2013.

4.99. With regard to specific sub-segments of the audiovisual industry, the tables and boxes below provide the main economic indicators for the motion picture production and distribution subsector (Table 4.8), the television and video programming subsector (Table 4.9), the radio subsector (Box 4.2), and the sound recording/recorded music industry subsector (Box 4.3).

Table 4.8 Motion picture production and distribution services, 2010-11

	2010	2011
Percentage of feature films that are 100% nationally-produced	87.9	88.4
Total number of gross box office receipts of feature films exhibited (US\$ million)	10,580	10,186
Total number of national feature films produced	792	819
Employment in the film industry:		
Direct	..	284,000
Indirect	..	365,000
Supported	..	1.9 million

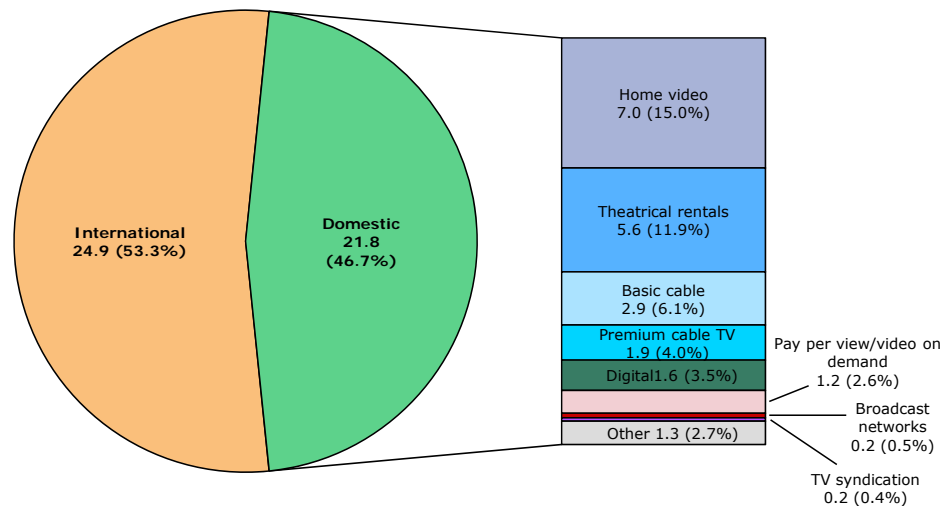
.. Not available.

Source: United Nations Educational, Scientific and Cultural Organization (UNESCO), March 2014; Motion Pictures Association of the Americas (MPAA); and FCC 15 report on video competition.

4.100. The U.S. motion picture production and distribution market and industry are by far the largest in the world and, in addition, the industry is a dynamic and major export sector. Table 4.8 describes the main economic indicators of that subsector, and Chart 4.4 describes the revenue streams.

Chart 4.4 Motion picture studio revenue streams, 2011

(US\$ billion)



Note: Figures in parentheses indicate the share of total revenue.

Source: United Nations Educational, Scientific and Cultural Organization (UNESCO), March 2014; Motion Pictures Association of the Americas (MPAA); and FCC 15 report on video competition.

4.101. For the purpose of economic monitoring of the television and video programming sector, as mandated by the various statutes of the Federal Communication Commission (FCC), three main subsectors can be distinguished: the broadcast television stations and networks, the multichannel video programming distributors (MPVD), and the online video distributors (OVD).¹³³

¹³³ This division in three categories is not strictly speaking a regulatory distinction: the three categories may cover very different types of actors; a single actor may fall within several of these categories; and cross-ownership and inter-twinned alliances and contractual relationships are extremely frequent among the various types of actors. It is nevertheless the most operational classification to describe this complex and rapidly evolving sector.

Table 4.9 Main economic indicators of the TV and video programming subsector

	Broadcast television stations	Multichannel video-programming distributors (MPVD)	Online video distributors (OVD)	Total for the television and video-programming sector
Number and types of actors	End 2012: - 1,028 commercial UHF stations - 358 commercial VHF stations - 288 non-commercial UHF stations - 107 non-commercial VHF stations - four major networks (ABC, CBS, FOX, NBC) - other significant broadcast networks : the CW; my network TV, Univision, Telemundo, Telefuture, HSN, TBN, CTN, memorable entertainment television	By June 2012: - 38 cable MPVD, with over 20,000 subscribers and 1,000 with less than 20,000 subscribers (top 4: Comcast, Time Warner, Charter, Cablevision) - 2 Direct Broadcasting Satellite (DBS) MPVD: DIRECTV and DISH Network - 2 large telephone companies MPVD: ATT U-verse and Verizon FIOS	Broadcast networks (e.g. CBS, FOX, Viacom central), pure player (e.g. Hulu owned Newscorp, NBC Universal and Walt Disney Corp), Film studios (e.g. Sony's Crackle, Paramount's Ultraviolet), professional sports league (e.g. NBA NHL) internet portals (e.g. Yahoo's YahooScreen), tech companies (e.g. Amazon's prime service, Apple's iTunes and AppleTV, Google's google TV, Microsoft via its commercial agreements for Xbox360 video content), retailers (e.g. Walmart's Vudu, best Buy's Cinemanow), ex-DVD rental companies (e.g. Netflix), MPVD (e.g. Dish's Dishworld, Verizon's Redbox instant)	n.a.
Audience and market share	Number of households relying <u>only</u> on over the air (hertzian) broadcast services: 2012: 11.1 million (i.e. 9.7% of total audience) - about 90% of the households receive broadcast stations through an MPVD	<u>End 2010</u> : 100.8 million of which - cable MPVD: 59.3% - DBS MPVD: 33.1% - telephone MPVD: 6.9% <u>June 2012</u> : 101 million of which: - cable MPVD: 55.7% (top 10 cable companies: 90.4% of that share) - DBS MPVD: 33.6% (Directv: 19.9 million, Dish network: 14 million) - telephone MPVD 8.5% (Verizon: 4.5 million, ATT: 4.1 million)	In <u>June 2102</u> : 180 million internet users watched online video content for an average of 20.6 hours per viewer <u>Subscriptions</u> : (mid 2012) - Netflix: 22million - Hulu plus: 2 million - Amazon prime service: between 3 and 5 million (est.)	In percentage 2011-12: - Network affiliates: 28% - independent: 3% - Non- commercial networks: 2% - Ad-supported cable: 52% - premium pay networks: 4% All other cable networks: 6% All other tuning: 5%
Degree of geographical overlap/competition	n.a.	In <u>2011</u> : 132.5 million homes had access to at least 2 MPVD, 130.7 million to 3, 46.8 to 4	n.a.	n.a.
Revenues	2010: US\$22.22 billion 2011: US\$21,31 billion 2012: US\$24.7 billion	<u>End 2010</u> : total MPVD US\$137 billion of which cable 93.8, DBS 32.9, telephone 11.2 <u>End 2011</u> : total US\$148.8 billion of which cable 97.9, DBS 35.9, and telephone 15	<u>2011</u> : US\$3.1 billion of which: - subscription: 2,076; - movie purchases: 0,327, - TV purchases 0,263, - movie rentals 0,455, - TV rentals: 0,007) <u>2012</u> : US\$3.9 billion (est.)	n.a.

	Broadcast television stations	Multichannel video-programming distributors (MPVD)	Online video distributors (OVD)	Total for the television and video-programming sector
Main technological and commercial trends	More HD, multicasting, networks targeting minorities, programming targeting niche audiences, HD and connected TV sets with digital video recorders, time shift, video on demand and online video distribution	TV everywhere i.e. on tablets, mobile phone and pc subscription contract, more HD channels, more video on demand channels, more digital channels	n.a.	n.a.

n.a. Not applicable.

Source: FCC 15th report on video competition. Viewed at: <http://www.fcc.gov/document/fcc-adopts-15th-report-video-competition-0>.

4.102. The radio sector is suffering from the increased competition of digital media and remains dominant only in certain sub-segments of the media market (e.g. car listening). Therefore its revenues (essentially based on advertisement, with satellite radio subscription revenues remaining marginal) are at best stable, although it is difficult to separate the impact of the recession and subsequent recovery from these structural shifts (Box 4.2).

Box 4.2 Main economic indicators of the radio subsector

Number of commercial radio stations (March 2014)	AM: 4,725; FM: 6,624
Revenues of the industry (2011)	US\$17.4 billion
Employment (2012)	225,000
Number of subscribers of the sole satellite radio network (Sirius sat) (2012)	24 million
<u>Detailed subsector indicators:</u> (2007) - radio networks (NAICS 515111)	Number of establishments: 858; Paid employees: 12,400; Annual payroll: US\$782 million
- Radio stations (NAICS 515112)	Number of establishments: 6,587; Paid employees: 111,800; Annual payroll: US\$5,247 million

Source: FCC; Radio Advertising Bureau; National Association of Broadcasters (NAB); and U.S. Census Bureau.

4.103. The U.S. sound-recording/recorded-music distribution market and industry are among the largest in the world. In 2013, legal digital sales for the first time surpassed physical ones. The transition to digital music has been difficult for the subsector, which has lost revenue due to piracy. According to the Recording Industry Association of America, the subsector lost 47% of its sales between 2004 and 2009, and 71,000 jobs during the same period. Box 4.3 describes the main economic indicators for the subsector, i.e. the music sector in general, as statistics do not allow the separation of the recorded-music industry from the live-music industry.

Box 4.3 Main economic indicators of the sound-recording/recorded-music subsector

Employment including bands and musicians ^a (2009)	146,500
Number of businesses, including bands and musicians (2009)	40,000
<u>Detailed subsector indicators:</u> (2007) - Record production (NAICS 51221)	Number of establishments: 395; Paid employees: 1,500; Annual payroll: US\$82 million
- Integrated record-production/distribution	Number of establishments: 390;

(NAICS 51222)	Paid employees: 7,200; Annual payroll: US\$989 million
- Music publishers (NAICS 51223)	Number of establishments: 710; Paid employees: 4,400; Annual payroll: US\$357 million
- Sound-recording studios (NAICS 51224)	Number of establishments: 1,745; Paid employees: 5,600; Annual payroll: US\$257 million
- Other sound-recording industries (NAICS 51229)	Number of establishments: 525; Paid employees: 3,400; Annual payroll: US\$157 million
<u>Sound-recording industries revenue streams and estimated revenues by subsectors: (2008)</u>	
- Integrated record-production and distribution	US\$14,931 million
- licensing of rights to use musical compositions	US\$1,364 million
- licensing of rights to use musical recordings	US\$879 million
- sales of recordings	US\$11,814 million
- Music publishers	US\$4,231 million
- licensing of rights to use musical compositions	US\$2,712 million
- licensing of rights to use musical recordings	n.a.
- print music	US\$1,221 million
- Sound-recording studios	US\$949 million
- studio recording	US\$624 million
<u>Revenues of the music industry (including concerts and touring): (2011)^a</u>	
of which:	US\$15.2 billion
- integrated record-production/distribution	US\$8.3 billion
- music publishers	US\$3.7 billion

n.a. Not applicable.

a Live performance of music is classified by the WTO standard services classification MTN/GNS.W120 – CPVC as an entertainment service. Those statistics do not allow the split between sound-recording and live performance, hence the discrepancies of data with the detailed number of establishment for sound-recording.

Source: RIAA; US Census Bureau; and Selectusa.commerce.gov.

4.2.3.2 Trade regulatory regimes

4.2.3.2.1 GATS commitments

4.104. The U.S. GATS commitments on audiovisual services cover all the subsectors and are overall very open. There are no restrictions on market access for modes 1, 2 and 3 for motion picture and video-tape production and distribution services (2.D.a), motion picture projection services (2.D.b), radio and television services (2.D.c), sound-recording (2.D.e) and for the undefined "other audiovisual services"(2.D.f). As for radio and television transmission services (2.D.d), there are no restrictions under mode 1 and on market access, and for mode 3, a limitation stipulates that:

"A single company or firm is prohibited from owning a combination of newspapers, radio and/or TV broadcast stations serving the same local market. Radio and television licences may not be held by: a foreign government; a corporation chartered under the law of a foreign country or which has a non-U.S. citizen as an officer or director or more than 20% of the capital stock of which is owned or voted by non-U.S. citizens; a corporation chartered under the laws of the United States that is directly or indirectly controlled by a corporation more than 25% of whose capital stock is owned by non-U.S. citizens or a foreign government or a corporation of which any officer or more than 25% of the directors are non-U.S. citizens".

Mode 4 commitments for the four subsectors make a cross-reference for market access to the horizontal commitment limitations, which concerns limitations on the temporary entry and stay of natural persons.

4.105. Regarding national treatment, all subsectors are free of restrictions for all four modes, except motion picture, video-tape production, and distribution services. For modes 1 and 3, a limitation exists whereby: "Grants from the National Endowment for the Arts are only available for individuals with U.S. citizenship or permanent resident alien status, and non-profit companies".

4.106. In its GATS Schedule of MFN exemptions, the United States also reserved the right to "allow the deduction for expenses of an advertisement carried by a foreign broadcast undertaking and directed primarily to a U.S. market only where the broadcast undertaking is located in a foreign country that allows a similar deduction for an advertisement placed with a U.S. broadcast undertaking". The purpose of this exemption is to "encourage the allowance of advertising expenses internationally".¹³⁴ According to the authorities, in practice these measures apply only to Canada.

4.2.3.2.2 FTA commitments

4.107. Like for the GATS, the U.S. FTA commitments on audiovisual services cover all the subsectors and are very open. The limitations on combined ownership of newspapers, radio and/or TV broadcast stations serving the same local market and the limitation on foreign ownership on radio and television licences contained in the GATS schedule are shown in identical terms in the positive list FTA between the United States and Jordan. As far as negative list FTAs, these licensing restrictions are incorporated as an existing non-conforming measure, with some variations, through a reference to the corresponding legislation in the FTAs concluded with the Republic of Korea, Australia, Chile, Colombia, Jordan, Morocco, Oman, Panama, Peru, and Singapore and in the NAFTA and the CAFTA-DR agreements.

4.108. The GATS reservation for grants from the National Endowment for the Arts is not reflected in the positive list US-Jordan FTA, in which the motion picture, video-tape production, and distribution sector have no restrictions for all four modes, nor does it appear in the negative list agreements concluded so far by the United States, which all carve out subsidies and grants from their scope.

4.109. Some FTAs (CAFTA-DR, NAFTA, US-Australia, US-Oman, US-Panama, US-Singapore) also contain an annex II reservation (national treatment, MFN and senior management and board of directors) in the investment chapter on cable television, whereby: "The United States reserves the right to adopt or maintain any measure that accords equivalent treatment to persons of any country that limits ownership by persons of the United States in an enterprise engaged in the operation of a cable television system in that country." These provisions have not been invoked so far.

4.110. The NAFTA contains a reservation in Article 1207 (quantitative restrictions) for an existing non-conforming measure on cross-border trade in radio and cable television services whose main objective is to prevent anti-competitive practices by imposing limitations on the carriage of the signal in cases where the cable operator would be in a dominant position through its interests in other radio and television networks or stations. The reservation also stringently limits the ability of telephone common carriers to own or operate cable networks.

4.2.3.2.3 Applied regime

4.111. The only significant trade-related regulatory development during the review period concerns radio licences. In August 2012 and April 2013, the FCC relaxed the ownership policy scheduled under the GATS and FTA commitments. Prior to these rulings, Section 310(b) of the Communications Act required the FCC to review foreign investment in any "broadcast or common carrier or aeronautical *en route* or aeronautical fixed radio station licence". Specifically, Section 310(b)(3) prohibited a corporation from holding these types of licences if more than 20% of the corporation's equity or voting interests was held by foreign governments or representatives thereof, or by a foreign corporation. In addition, Section 310(b)(4) prohibited a corporation from

¹³⁴ WTO document GATS/EL/90, 15 April 1994.

holding these types of licences if it was directly or indirectly controlled by any other corporation of which more than 25% of the capital stock is owned or voted by aliens, foreign governments or foreign corporations. Unlike Section 310(b)(3), however, Section 310(b)(4) grants the FCC discretion to allow higher levels of foreign ownership in controlling U.S. parent companies, unless it finds such ownership would be inconsistent with the public interest.

4.112. In August 2012, the FCC ruled that it would no longer apply the 20% foreign-ownership limit set forth in Section 310(b)(3) of the Communications Act. Instead, the FCC would now draw upon the discretionary authority found in Section 310(b)(4) of the same Act to determine on a case-by-case basis whether proposed foreign investment in a common carrier licensee is in the public interest. The FCC has not specified, in generic terms, the criteria it would apply to grant licences. If less than 20% of the corporation is held by foreign governments or representatives thereof or by a foreign corporation, the FCC cannot refuse to grant the licence based on "foreign-ness" grounds, but could do it under other, non-discriminatory bases (e.g. criminal convictions). The prior approval requirement remains in place. In April 2013, the FCC took additional steps to streamline foreign-ownership policies. The FCC will now eliminate the distinction between foreign investment from WTO Members and non-WTO members, and streamline the review of foreign investment by (i) requiring identification of only those foreign investors that would hold equity and/or voting interests greater than 5% (or 10% in certain situations); (ii) considering requests for specific approval for any named foreign investor (even those holding interests below these amounts) to increase its equity and/or voting interest at some future time; and (iii) considering requests under Section 310(b)(4) for specific approval of any named foreign investor to acquire a controlling interest up to 100% at some future time.

4.113. There is no subsidy-based support regime at the federal level for any of the audiovisual industries except for the grants of the National Endowment for the Arts, which devotes only a small fraction (US\$6.3 million of US\$49.6 million in 2013¹³⁵) of its budgetary allowances to projects involving media, as its main focus is the performing arts and exhibitions.

4.114. At sub-federal and municipal levels there exist numerous recent support schemes designed to attract, through subsidies or tax breaks, the production of films and television programs. Table 4.10 contains a non-exhaustive inventory of those schemes at the state level.

Table 4.10 Non-exhaustive inventory of state-level support schemes for the production of films and television programs, 2013

State-level support schemes
Alabama: Refundable tax credit/rebate of 25%, if the in-state spending ranges from US\$500,000 to US\$10 million. Productions covered include film and TV, interactive games, digital media, etc. There is a 35% rebate for wages paid to Alabama residents. The rebates are capped at US\$10 million awarded each fiscal year. A new amendment increases the amount that can be rebated per year to US\$15 million in 2013 and 2014, and US\$20 million in 2015 and each year thereafter.
Alaska: A 2008 law created the Alaska Film Office and included a transferable tax credit equal to 30% of in-state qualified production expenditures (including payroll for services performed in Alaska) for film, television, video, and commercial productions.
Arkansas: The Digital Product and Motion Picture Industry Development Act of 2009 created incentives for digital product and motion picture productions. The incentives include a 15% rebate on all qualified production expenditures made in Arkansas.
California: Legislation signed in 2009 created tax credits for film and television productions. Qualified taxpayers are allowed a 20% or 25% credit against income and/or sales and use taxes, based on qualified expenditures, for taxable years beginning on 1 January 2011.
Colorado: Incentives to production include a 10% rebate on qualifying in-state expenditures, provided 25% of the actors and crew are Colorado residents.
Connecticut: Incentives to production include a tax credit of up to 30% of qualified digital media and motion picture production, pre-production and post-production expenses incurred in Connecticut for eligible production companies. The credit for compensation paid is capped at the first US\$20 million.
District of Columbia: As of June 2011, the District of Columbia's incentive programme is not funded. It would otherwise include a rebate of 42% on qualifying direct production expenditures subject to D.C. tax. Expenditures not subject to D.C. taxes may apply for a 21% rebate. There is a 30% rebate on qualified payroll expenditures.
Florida: Production incentives include a cash rebate programme on in-state expenditures. There are 4 queues: (1) films, TV, commercials, or music videos with expenditures in excess of US\$650,000 receive a 15%-22% rebate; (2) multiple commercials or music videos with minimum combined expenditures of US\$500,000 and a US\$100,000 per project receive a 15%-20% rebate; (3) indies spending US\$100,000-US\$625,000 receive a 15%-17% rebate; and (4) digital media projects receive a 10% rebate.

¹³⁵ Viewed at: <http://arts.gov/grants/recent-grants>.

State-level support schemes

Georgia: The 2008 Georgia Entertainment Industry Investment Act grants to qualified productions a transferable income tax credit of 20% of all in-state costs for film and television investments of US\$500,000 or more. An additional 10% tax credit is provided to approve projects that embed a Georgia Entertainment Promotional logo within the titles or credits of each production.

Hawaii: Production incentives include a refundable income tax credit of 15%-20% (in certain counties) of the costs incurred in the State, capped at US\$8 million per production that spends at least US\$200,000 in Hawaii, and up to 7.25% rebate for the transient accommodation tax (hotel room tax). Set to expire 1 January 2016.

Idaho: Idaho's Motion Media Rebate Program was passed on 25 March 2008, offering a 20% rebate for qualifying productions on all goods and services purchased in Idaho if at least US\$200,000 is spent in Idaho and at least 20% of crew is Idaho residents. However, the programme is currently not funded.

Illinois: The Illinois Film Production Tax Credit entered into effect on 1 January 2009. The tax credit has no sunset and consists of: (1) 30% of the Illinois production spending for the taxable year; and (2) 30% credit on Illinois salaries up to US\$100,000 per worker.

Kansas: Provides a 30% tax credit on direct production expenditures made by an eligible film production company capped at US\$2 million per year through 2013.

Kentucky: Incentives to production include a 20% refundable tax credit for qualifying production and postproduction-related expenditures, including payroll with a minimum in-state expenditure of US\$500,000. As an alternative, productions can take a sales and use tax refund for purchases made by a motion picture production company in connection with filming in Kentucky if the company films or produces one or more motion pictures in the State during any 12-month period.

Louisiana: Provides a transferable investor tax credit equal to 30% of the in-state investment made if it is in excess of US\$300,000. The transferable employment tax credit is equal to 5% of the salaries of in-state residents hired.

Maine: Production incentives include a wage tax rebate equal to 10% of non-Maine residents' wages and 12% of Maine residents' wages on qualified productions and an income tax offset for companies investing in Maine productions. There is a separate 5% credit on in-state expenditures.

Maryland: Film production incentives include a refundable tax credit of 25% for films and 27% for TV series on eligible production-related expenditures, including wages. The programme requires a minimum in-state spend of US\$500,000 and requires that 50% of principal photography occur in Maryland.

Massachusetts: Producers and filmmakers, who either shoot at least half of their movie or spend at least half of their production budget in Massachusetts, are eligible for a tax credit equal to 25 cents for every new dollar of spending brought to Massachusetts. Filmmakers may take the credit as either a direct rebate at 90% of the face value (guaranteed) or to sell them at market rate, whichever is more favourable.

Michigan: Beginning in February 2008, the Michigan film production credit provides a refundable, assignable tax credit of up to 42% of the amount of a production company's expenditures (depending upon type) that are incurred in producing a film or other media entertainment project in Michigan.

Minnesota: Snowbate, Minnesota's Film Jobs Production Programme, provides a reimbursement of 15%-20% of Minnesota production expenditures to films, television and internet programs and other content. Snowbate funds are limited (subject to an appropriation of approximately US\$1 million annually) and are approved biennially.

Mississippi: Incentives to production include a 25% rebate for in-state investments, with a separate employment rebate of 30% or 25% for state residents and non-residents respectively. The per project rebate is capped at US\$8 million and the annual amount of available rebates is capped at US\$20 million per fiscal year.

Missouri: Incentives to production include State Tax Credits, which are issued to a qualified film production company for up to 35% of the amount spent in Missouri (or up to 30% for qualifying out-of-state cast and crew when Missouri income taxes are withheld) for production or production-related activities to facilitate film production in Missouri.

Montana: Under the Big Sky on the Big Screen Act, film and TV productions are eligible for a 14% refundable tax credit on up to US\$50,000 in wages paid to Montana residents and a 9% refundable tax credit on their total qualified expenditures in the state.

New Jersey: Production incentives include a 20% tax credit instituted in 2006. This tax credit is available to producers who spend 60% of their budgets in New Jersey, exclusive of post-production costs. The credit is both saleable and transferable and may be carried over to subsequent tax years.

New Mexico: 25% tax rebate on all direct production expenditures, including New Mexico crews that are subject to taxation by the State. The rebate applies to feature films, independent films, television, regional and national commercials, documentaries, video games and post-production. Non-resident actors and stunt performers will also qualify under a separate tax structure.

New York: Production incentives include a 30% fully refundable tax credit on qualified expenses while filming in New York State, certain sales tax exemptions and an up to 5% tax credit on investment in construction and upgrades to qualified film production facilities.

North Carolina: Effective January 2011, tax incentives include a refundable credit equal to 25% of qualifying in-state production expenses, provided an in-state minimum of at least US\$250,000 is met. There is a per feature credit cap of US\$20 million.

Ohio: The tax incentives for Ohio include refundable credits for film, TV, video and digital media equal to 25% of production expenditures (with a minimum in-state spend of US\$300,000) including out-of-state wages. There is a separate 35% refundable credit for wages paid to Ohio residents. Individual productions are capped at US\$5 million and there is an annual cap on available credits of US\$10 million per year.

Oklahoma: The Oklahoma Film Enhancement Rebate offers up to 37% on Oklahoma expenditures to qualifying companies filming in the State capped at US\$5 million per year. The rebate is extended to film, television and commercial productions with a minimum budget of US\$500,000 and spending at least US\$300,000 in Oklahoma, based on certain criteria.

Oregon: Incentives to production include rebates on 20% of a production's Oregon-based goods and services and additional cash rebate of up to 16.2% of wages paid to production personnel. The annual cap on rebates is US\$7.5 million per fiscal year.

State-level support schemes
Pennsylvania: Under the Film Tax Credit Program, Pennsylvania offers a 25% tax credit to eligible productions (feature films, TV shows and series, and commercials intended for a national audience) that spend at least 60% of their total budget in the Commonwealth.
Puerto Rico: Provides a 40% rebate on all payments to Puerto Rico residents and 20% on non-residents (subject to a 20% withholding over their PR income). There are no salary caps, but there are minimum spending levels and an overall annual cap on credits for payments to Puerto Rico residents (US\$50 million), which may increase if the production meets additional requirements.
Rhode Island: Provides a 25% transferable tax credit for all Rhode Island production-related expenditures - including salaries for people working on the ground locally - as well as a non-transferable investor tax credit for Rhode Island residents who invest in projects filmed primarily in Rhode Island. The credits cover eligible films, TV shows, commercials and video games. There is a US\$15 million annual cap on the total credits approved.
South Carolina: Productions that film in South Carolina can receive up to a 20% cash rebate on in-state employee wages and a 10% cash rebate up to US\$3,500 on out-of-state employee wages. Out-of-state performing artists (including stunt performers) are eligible for the full 20% cash rebate. Additionally, South Carolina offers up to a 30% cash rebate on in-state supplier expenditures if at least US\$1 million is spent in the state.
Tennessee: Offers two incentive programmes for a total possible rebate of 32% of qualified spending, including a cash rebate equal to 17% of qualified spending and a rebate of 15% of all qualified expenditures, including promotion and advertising, if the production company establishes its headquarters in Tennessee.
Texas: The Texas Moving Image Industry Incentive Program offers qualifying feature films, television programs, commercials, video games, and stand-alone post-production/finishing projects the opportunity to receive a rebate payment of 5%-17.5% of eligible Texas spending upon completion of a review of their Texas expenditures. There is a cap of US\$2 million per film.
Utah: Offers up to a 25% rebate or refundable tax credit for films, TV and digital media programs with a minimum spend of US\$1 million. Another incentive is available for productions with less than US\$1 million in-state expenditures, which provides a cash rebate of 15% on qualified spend.
Virginia: Virginia's Governor's Motion Picture Opportunity Fund provides a performance-based cash rebate at the Governor's discretion, taking into consideration length of filming, job creation, trainees hired and goods and services purchased in Virginia. In 2010, productions receiving tax incentives generated an economic impact of US\$14.2 million.
Washington: Incentives to production include Washington's designated production-assistance organization, Washington FilmWorks, that offers funding assistance of up to 30% of total in-state qualified expenditures (including labour and talent who are Washington state residents) to commercial, television and feature film productions selected to be funded by WFW. The production company must meet certain in-state spending thresholds.
West Virginia: Incentives to production include the West Virginia Film Industry Investment Act that currently provides for transferable tax credits of up to 31% of qualified in-state spend for production on eligible feature length theatrical or direct-to-video motion pictures, made-for-TV motion pictures, TV pilots, series, and miniseries and more.
Wisconsin: Production incentives include a refundable individual/corporate income/franchise tax credit equal to 25% of in-state production-related expenditures and a non-refundable wage credit equal to 25% up to the first US\$250,000 for in-state wages on salaries up to US\$250,000. 35% of the total production budget must be spent in Wisconsin. The annual aggregate amount of credits caps at US\$500,000.
Wyoming: The Film Industry Financial Incentive (FIFI) programme provides a cash rebate for production companies of up to 15% of qualifying motion picture-related expenditures in the state of Wyoming, including post-production and digital effects services. The production company must spend a minimum amount of US\$200,000 to qualify for a potential rebate percentage between 12%-15%.

Source: MPAA online information. Viewed at: <http://www.mpa.org/policy/state-by-state>.

4.2.4 Health, medical and medical insurance services

4.115. Health services, medical services, and medical insurance services constitute three different subsectors in the GATS standard nomenclature,¹³⁶ but they are nevertheless examined together since they constitute an economic cluster, especially in the case of the United States, where the bulk of the financing of the health system comes from private medical insurance.

4.2.4.1 Statistical overview

4.116. The United States is by far the largest market for health services with a total spending of US\$2,584 billion in 2010 (five times the size of the next largest market, Japan), and with private spending of US\$1,213.1 billion (ten times the size of the next largest market, China), and a

¹³⁶ WTO document MTN/GNS.W 120. More precisely, 1.A.h "medical and dental services" and 1.A.j "services provided by midwives, nurses physiotherapists and paramedical personnel" within professional services for medical services *lato sensu*, 8.A hospital services, 8.B other human health services (ambulance services, residential health facilities services other than hospital services) and 8.C social services (welfare services delivered through residential institutions to old persons, the handicapped, children and other clients, child day-care services including day care services for the handicapped, guidance and counselling relating to children, welfare services not delivered through residential institutions and vocational rehabilitation services for health and social services *stricto sensu* and part of 7.A.a "life, accident and health insurance services" within financial services for private health insurance.

per capita spending of US\$8,233 in 2010 (more than twice the European Union average: US\$3,268). However as with other developed countries, global health expenditures in the United States in recent years have grown more slowly (compound annual growth rate 2006-10: 5.19% for global spending, 1.05% for private spending) than the global average (7.5% for global spending) due to the growing private expenditures on health services in developing and emerging economies.

4.117. The United States continues to maintain a trade surplus in healthcare services which totalled US\$1.89 billion in 2013. While representing far less than 1% of the overall U.S. health care market, U.S. exports of health-related travel services in 2012 of US\$3.1 billion exceed imports of such services of US\$1.2 billion (Table 4.11). By contrast, services supplied by foreign owned U.S. affiliates significantly exceed supplies by foreign affiliates of U.S. firms, largely due to the opportunities offered by the U.S. market with a net surplus of nearly US\$8.2 billion in 2009 (Table 4.12).

Table 4.11 Health-related travel: imports and exports

	2010	2011	2012
Imports (US\$ million)	1,019	1,139	1,282
Exports (US\$ million)	2,876	3,032	3,176

Source: Organisation for Economic Co-operation and Development (OECD), February 2013. Health-related expenditure includes expenditure for medical services, other health care, food, accommodation and local transport, acquired by persons travelling for medical reasons (*Manual on Statistics of International Trade in Services 2010 (MSITS 2010)*).

Table 4.12 Inward and outward foreign affiliates trade sales and value added employment for health and social work activities

	2009	2010	2011
Inward FATS (ISIC Rev4, US\$ million) ^a	10,799	..	..
Outward FATS (ISIC Rev4, US\$ million) ^a	2,607	..	..
Value added (ISIC Rev3, US\$ million) ^b	1,062,400	1,102,700	1,136,900
Employment (ISIC Rev3, in numbers) ^c	1,4684,000	1,4916,000	1,5158,000

.. Not available.

a Source: OECD, July 2013.

b Source: United Nations Statistics Division (UNSD), July 2013.

c Source: International Labour Organization (ILO), May 2013.

4.118. The world's largest health organizations are located in the United States and most of them are private, in contrast to those in other countries where there are often limits for the scope of private economic activity in the sector. Further, eight of the world's ten largest private healthcare companies are American.

4.119. The total revenues of the U.S. healthcare industry were US\$1.75 trillion in 2010, with total employment of 14 million persons. The most important healthcare subsectors, by expenditures, were hospital in-patient care (US\$829 billion), ambulatory care (US\$750 billion) and nursing and residential care (US\$190 billion). For healthcare insurance, the size of the market amounted to US\$712 billion, in premiums collected, in 2012 (Table 4.13).

Table 4.13 Main economic indicators for the U.S. health insurance sector

Indicator	Level
Premiums collected (2012)	US\$712 billion
Annual growth 2009-14	+0.7%
Employment (2013)	452,500
Number of companies	956
Concentration	Top 25 = 2/3 of the premium collected

Source: National Association of Insurance Commissioners, and Ibis world database. Viewed at: <http://www.ibisworld.com/industry/default.aspx?indid=1324>.

4.2.4.2 Regulatory regime

4.2.4.2.1 Recent development in the general regulatory framework

4.120. The main recent regulatory development concerning the U.S. health system is the 2010 Patient Protection and Affordable Care Act (PPACA) (see main provisions, Table A4.3) The PPACA represents a significant reform of the U.S. health care system. An important objective of the Act is to increase access to care by providing insurance coverage to previously uninsured individuals as of 2014.

4.121. The reform builds on the current financing structure of the U.S. healthcare system, which is based on multiple payers. Healthcare payments are split between federal and state governments, private businesses (health insurers, employers and providers) and households. In 2012, 47% of national health expenditure was financed by the federal, state and local governments, 41% by private business and 12% by households through out-of-pocket payments.

4.122. Most health insurance coverage in the United States is provided by employers, partly due to the tax deductibility of premiums for employer-sponsored plans. These plans offer medical coverage to more than half of the population, though the proportion has been declining steadily, from close to 60% in 2006 to 55% in 2012.

4.123. Eligible persons aged 65 and over generally receive core coverage from the federal government through the Medicare program and may add coverage with a "Medicare supplement" plan from a private carrier. Alternatively, they have the option to enrol in a Medicare Advantage plan from a private insurer. In 2012, 15.7% of the population was covered by Medicare. Combined federal and state programs provide coverage for the poor through Medicaid, and for uninsured children through the Children's Health Insurance Program (CHIP).

4.124. Prior to the PPACA, individuals who did not have access to any of the above sources of health coverage could purchase medically underwritten health insurance from regional or national insurers. Several states actually did have restrictions on medical underwriting, but most did not. Options to buy insurance on the individual market were limited and offered at higher prices than group coverage. People with serious pre-existing¹³⁷ conditions were often deemed uninsurable and denied coverage.¹³⁸

4.125. The PPACA entails significant regulatory changes to the health insurance industry and the healthcare system which are scheduled to enter into force between 2010 and 2015 (Table A4.3).

4.126. From the international trade perspective, the key measures of the PPACA are those that have an impact on supply and demand of healthcare, i.e. those that extend the number of individuals covered, limit the possibilities for health insurance companies to deny or limit coverage or to increase premiums, and create an online market place/insurance exchange that is publicly administered by the state or, by default, federal level, in order to offer comparable insurance products on a competitive basis to individuals and employers.

4.127. The PPACA allows states leeway as to how they will implement the exchanges. Each state may choose to operate its own exchange or operate a joint partnership with the Federal Government, or defer their exchange to the Federal Government completely.

4.128. In terms of impact and coverage¹³⁹, 8 million Americans purchased private insurance on the marketplace in 2014 and 9 million Americans are projected to enrol in Medicaid or CHIP in 2014, whereby the marketplace may be used. The Congressional Budget Office projects the rate of uninsured to drop by 14 million people in 2014. The 170.9 million people covered by employer insurance will not need to use the marketplace, although many employers will use the marketplace

¹³⁷ A "pre-existing condition" is a health risk or a chronic disease that allows the health insurance company to deny or limit coverage or to increase premiums.

¹³⁸ For a more detailed description of the U.S. health insurance system and of its various types of plans and coverages (which is not the central object of the present report) before and after the reform see for instance Swiss Re (2014).

¹³⁹ Viewed at: <http://obamacarefacts.com/obamacare-health-insurance-exchange.php>.

to purchase group health plans through a part of the marketplace called "The SHOP" or the Small Business Health Options Program.

4.2.4.2.2 Regulatory trade regimes

4.2.4.2.2.1 GATS commitments

4.129. As with most OECD countries, the United States does not have any GATS commitments regarding medical and dental services and services provided by midwives, nurses, physiotherapists and paramedical personnel. Regarding health insurance services, the limitations listed in the U.S. schedule, for insurance, notably numerous sub-federal level limitations, apply also to health insurance services. These restrictions have been described in some detail in previous TPR reports.¹⁴⁰ There are no limitations specific to health insurance.¹⁴¹

4.130. The United States is one of the few WTO Members with GATS commitments on health services. Those commitments cover the direct ownership, management, and operation of hospital and other health care facilities on a "for fee" basis with the following regime: mode 1, unbound due to technical feasibility; mode 2: none for market access and a limitation on insurance portability whereby "Federal or state government reimbursement of medical expenses is limited to licensed, certified facilities in the United States or in a specific state"; mode 3, a limitation indicating that "Establishment of hospitals or other health care facilities, procurement of specific types of medical equipment, or provision of specific types of medical procedures may be subject to a needs-based quantitative limit", as well as three sub-federal limitations for the States of New York and of Michigan¹⁴² for market access and none for national treatment; and mode 4, unbound except as indicated in the horizontal commitments for market access and none for national treatment.

4.2.4.2.2.2 FTAs commitments

4.131. The commitments contained in the positive list agreement between the United States and Jordan reflects exactly the U.S. GATS commitments described above. All negative list FTAs concluded so far by the United States (CAFTA-DR, U.S.-Korea, U.S.-Australia, U.S.-Chile, U.S.-Colombia, U.S.-Singapore; U.S.-Bahrain, U.S.-Oman, U.S.-Morocco, U.S.-Peru, and U.S.-Panama) contain a reservation in the investment chapter (national treatment, MFN, prohibition of performance requirements, senior management and board of directors) and in the cross-border trade chapter (national treatment, MFN, market access and local presence).¹⁴³ This reservation covers the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care. Historically, this reservation appeared for the first time in the NAFTA, as an annex 2 reservation for non-conforming measures to the national treatment obligation in the investment chapter and to the national treatment, local presence and quantitative restrictions obligations in the cross-border

¹⁴⁰ Notably in 2006 (WT/TPR/S/160 paragraphs 86 to 92, pages 100 to 102) and in 2008 (WT/TPR/S/200, paragraph 138 to 191 pages 110 to 112).

¹⁴¹ It is worth noting that U.S. commitments for insurance are made according to the GATS Financial Services Understanding and that therefore mode 1 remains unbound for insurance services except limited exceptions (e.g. reinsurance) of which health insurance is not part. This implies that incorporation/establishment requirements, if any, do not have to be listed as limitations since the provision of services is bound only for mode 3 which implies some form of establishment, not to mention the prudential nature of such requirements.

¹⁴² Namely "In New York, corporate ownership of an operating corporation for, and limited partnerships as operators of, hospitals, nursing homes (including long term health care centres) or diagnostic and treatment centres is prohibited. If the operator has any members which are not natural persons or is a corporation whose shares of stock are owned by another corporation, a New York corporation must be established as the operator of a licenced home care services agency and a certified home health agency. In Michigan and New York Health Maintenance Organizations must be incorporated in those states".

¹⁴³ Only for the cross-border trade chapter for U.S.-Bahrain.

trade chapter. There are no other medical and paramedical, health insurance¹⁴⁴, and health and social services specific reservations contained in the FTAs.

4.2.4.2.2.3 Applied regime

4.132. The U.S. healthcare industry is largely open to foreign investment as shown by inward foreign affiliates trade statistics, i.e. on sales of subsidiaries of foreign-owned companies with inward flows being fourfold the outward flows and by the fact that seven out of the ten largest private equity deals in global healthcare in 2011 were targeting U.S. companies. This attraction prevails despite the fact, recognized by the authorities themselves¹⁴⁵, that it can be challenging for foreign firms to enter the U.S. market due to state level regulations and licensing requirements, as well as difficulties qualifying for reimbursement from third parties.

4.133. The United States is the world's leading destination for foreign healthcare workers. It hosts the largest number of foreign healthcare workers in absolute terms although foreign professionals make up a larger share of the workforce in many European countries. In 2010, demand for physicians exceeded supply by 13,700 physicians and 22% of the physicians operating in the U.S. graduated from foreign medical schools.¹⁴⁶ As a result of the healthcare reform and the additional demand it will entail, it is expected that the supply-demand gap for physicians will widen in the coming years. As a consequence, foreign caregivers are allowed to practice in the United States under specific programmes, for instance a visa-waiver program, which allows U.S. trained international medical graduates to stay in the United States if they practice in a medically-underserved area for three years. To date, 9,000 physicians have worked under this program.

4.134. The United States' 2010 submission to the Working Group on GATS rules (WPGR) in the framework of the work programme on information exchange on subsidies¹⁴⁷ notes that "the Department of Health and Human Services (HHS) is the Government's principal agency for protecting health and providing essential human services, especially for those who are least able to help themselves. HHS administers more grant dollars than all other federal agencies combined. HHS and affiliated U.S. public health service agencies oversee programs providing support, *inter alia*, to health service providers." HHS grants cover many types of healthcare activities (Table 4.14).

4.135. The health insurance market of the United States is largely open and proportionally bigger than other developed countries' markets where public social security systems are dominant, thus making it an attractive destination for the establishment of foreign-based health insurers.

Table 4.14 Subsidies granted by the Department of Health and Human Services by type, fiscal year 2014

Activity type	Number of awards by activity type	US\$ million
Research		
Scientific/health research (includes surveys)	13,842	5,075
Social science research (includes surveys)	8	8
Research Subtotal	13,850	5,084
Services		
Demonstration	557	180
Health services	2,390	1,200
Social services	1,398	3,590
Services Subtotal	4,345	4,971
Training		
Technical Assistance	9	0,2
Training/traineeship	1,505	295

¹⁴⁴ Being understood that the generic reservations on insurance services which have been described in previous TPR reports notably in 2006 (WT/TPR/S/160 paragraphs 86 to 92, pages 100 to 102) and in 2008 (WT/TPR/S/200, paragraph 138 to 191 pages 110 to 112), apply also to the health insurance subsector.

¹⁴⁵ This statement is excerpted from pages 4-16. See U.S. International Trade Commission (2013b).

¹⁴⁶ Outside the United States and Canada. See U.S. International Trade Commission (2013b).

¹⁴⁷ Document Job Serv/1/add.1, 17 August 2010, page 141.

Activity type	Number of awards by activity type	US\$ million
Training Subtotal	1,514	295
Other		
Other	2,104	1,534
Construction	11	0
KDA (Knowledge/Development/Application)	168	19
Evaluation	26	24
Fellowship/scholarship/student loans	1,197	33
Other Subtotal	3,506	1,612
Grand Total	23,215	11,963

Notes:

Research: Includes traditional research projects by individual investigators and other broadly-based traditional and other research as well as research career programmes.

Services: Includes grants to deliver health or social services, treatment and rehabilitation programmes, education and information programmes, and programmes to detect health problems.

Training: Includes research and health professions training programmes, education projects, and rural area healthcare training.

Other: Includes construction projects, grants for the planning and development of health programmes and health resources, evaluations, and health infrastructure awards – a small percentage of the total discretionary grants.

Source: Department of Health and Human Services (DHHS). Viewed at: <https://taggs.hhs.gov/Reports/GrantsByMajorActivityType.cfm>.

4.2.5 Maritime transport

4.2.5.1 Recent developments

4.136. According to the latest data available, gross output of U.S. water transportation increased 17.8% during 2007-12 while value-added (gross output less the cost of intermediate inputs) for U.S. water transportation remained stable at around US\$14.5 billion.¹⁴⁸ As of May 2013, the water transportation industry directly employed some 66,330 workers (up from 61,720 workers in 2007).¹⁴⁹

4.137. Waterborne trade in the United States amounted to 2.3 billion tonnes in 2012, 10.8% down from its peak of 2.5 billion tonnes in 2006, while the share of foreign trade increased from 60% to 61.6% over 2006-12.¹⁵⁰ In 2013, 45% of U.S. foreign trade, in terms of value (all modes, including air as well as rail and highway trade with Canada and Mexico) was moved by vessel, down from 47% in 2011.¹⁵¹ Since the 2008-09 global crisis, U.S.-foreign container trade has increased roughly 4% per year. In 2013, the U.S.-foreign container trade accounted for 18% of the total waterborne trade (metric tons), with the top five ports (Los Angeles/Long Beach, New York, Savannah, Norfolk, and Oakland) accounting for 38% of U.S. container trade.¹⁵²

4.138. The United States ranks second behind China in terms of overall containerized port traffic.¹⁵³ In 2012, 7,625 ships made 65,913 calls at U.S. ports, two-thirds of which were tankers and containers. Jones Act vessels accounted for 71% of U.S.-flag calls in 2011 (down from 79% in 2006).¹⁵⁴ The U.S. flag privately-owned merchant fleet has decreased over the years, from 282 in

¹⁴⁸ Bureau of Economic Analysis online information. U.S. International Transactions Accounts Data. Table 3: Private Services Transactions. Viewed at: www.bea.gov/iTable/print.

¹⁴⁹ Bureau of Labour Statistics online information. May 2007 and May 2013 National Industry-Specific Occupational Employment and Wage Estimates. Viewed at: <http://www.bls.gov/oes/tables.htm>.

¹⁵⁰ U.S. Army Corps of Engineers (2012).

¹⁵¹ U.S. Merchandise Trade online information. Viewed at: <http://www.census.gov/foreign-trade/Press-Release/2013pr/12/ft920/>.

¹⁵² *Journal of Commerce* (2014), "Port Import Export Reporting Service", Washington, DC. Numbers are roughly the same for both TEU and metric tons.

¹⁵³ UNCTAD (2013).

¹⁵⁴ U.S. Department of Transportation – Maritime Administration (MARAD) online information. Viewed at: http://www.marad.dot.gov/library_landing_page/data_and_statistics/Data_and_Statistics.htm. Data is for vessels above 10,000 DWT.

2000 to 179 in 2014. Similarly, the number of Jones Act vessels (those with unrestricted coastwise trading privileges, see below) decreased from 193 in 2000 to 90 in 2014, of which Jones Act tankers are down from 110 to 49 and deadweight tonnage to 3.3 million tonnes (6.3 million tonnes in 2000).¹⁵⁵ In 2011, 7,836 oceangoing vessels made 68,036 calls at U.S. ports, two-thirds of which were tankers and containers.¹⁵⁶

4.2.5.2 Institutional and legal framework

4.139. The institutional and legal framework for maritime transport has not changed over the last few years. The United States Coast Guard of the Department of Homeland Security is the primary federal agency responsible for regulating maritime transport, including regulating vessel safety and security, environmental protection and response, and the licensing of mariners. The Maritime Administration (MARAD) of the Department of Transportation is responsible for certain maritime regulations, programmes that promote the use of waterborne transportation and its integration with other segments of the transportation system, and the viability of the U.S. Merchant Marine. The independent Federal Maritime Commission (FMC) is responsible, *inter alia*, for the regulation of ocean transportation intermediaries, ocean common carriers, cruise operators, and marine terminal operators. The FMC also reviews agreements among ocean common carriers for potential antitrust immunity under the Shipping Act of 1984.

4.140. Some of the key laws on maritime transport services include the following: Passenger Vessel Services Act of 1886; Military Cargo Preferences Act of 1904; Merchant Marine Act of 1920 (Jones Act); Merchant Marine Act of 1936; Cargo Preference Act of 1954; Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998; Foreign Shipping Practices Act of 1988; and Maritime Transportation Security Act of 2003.¹⁵⁷

4.141. Cabotage of goods and passengers continues to be restricted by Section 27 of the Merchant Marine Act of 1920 (Jones Act) and the Passenger Vessel Services Act of 1886. Under the Jones Act, cabotage is reserved for ships registered, built, and maintained in the United States, owned by a domestic individual, including corporations, and three-quarters of the crew must be U.S. citizens.

4.142. Cargo preference laws require shippers to use U.S.-flag vessels to transport any U.S. Government-impelled oceanborne cargoes, such as military and agricultural/food assistance cargoes.¹⁵⁸ MARAD estimates that the cargo preference laws generate annually over 10 million revenue tons of cargo and over US\$1 billion of ocean freight revenue.

4.143. Requests for waivers of the provisions of the Jones Act and the Passenger Vessel Services Act are made to the Commissioner, U.S. Customs and Border Protection (CBP). CBP is required to consult with MARAD and, as a matter of practice, also consults with other interested agencies before a waiver is granted or denied. Waivers of the Jones Act are granted by the Secretary of the Department of Homeland Security only "in the interest of national defence"¹⁵⁹, and consequently, only in unusual cases, such as natural disasters and other national emergencies. MARAD is responsible for canvassing domestically-flagged shipping to locate suitable vessels. Additionally, MARAD has sole responsibility for the programme for small passenger vessels to apply for waivers; it grants some 75 waivers per year.¹⁶⁰

4.144. The United States has not made any commitment on maritime transport under the GATS and did not table an offer with respect to maritime transport in its services offer in the Doha Development Agenda.¹⁶¹ It maintains an MFN exemption under the GATS covering

¹⁵⁵ U.S. Department of Transportation - Maritime Administration (MARAD) online information. Viewed at: http://www.marad.dot.gov/library_landing_page/data_and_statistics/Data_and_Statistics.htm.

¹⁵⁶ U.S. Department of Transportation (2013), *2011 U.S. Water Transportation Statistical Snapshot*, Washington, DC.

¹⁵⁷ Cargo preference provisions of the Food Security Act of 1985 were repealed in 2012.

¹⁵⁸ MARAD online information. Viewed at: http://www.marad.dot.gov/ships_shipping_landing_page/cargo_preference/Cargo_Preference_Landing_Page.htm.

¹⁵⁹ MARAD online information. Viewed at: http://www.marad.dot.gov/ships_shipping_landing_page/domestic_shipping/Domestic_Shipping.htm.

¹⁶⁰ MARAD online information. Viewed at: http://www.marad.dot.gov/ships_shipping_landing_page/domestic_shipping/Domestic_Shipping.htm.

¹⁶¹ WTO documents TN/S/O/USA, 9 April 2003, and TN/S/O/USA/Rev.1, 28 June 2005.

restrictions on performance of longshore work by crews of foreign vessels owned and flagged in countries that similarly restrict U.S. crews on U.S.-flag vessels from longshore work.¹⁶²

4.145. The United States has bilateral maritime agreements in effect with Brazil (signed September 2005), China (December 2003), the Russian Federation (June 2001) and Viet Nam (March 2007). It also has an exchange of letters with Japan (November 1997) on port services, which has the effect of an agreement, and a Memorandum of Cooperation on Counter-Piracy Training and Education with the Philippines (July 2009).¹⁶³

4.146. Vessels from Cambodia, Cuba, Iran, Libya, North Korea, and Syria may not enter U.S. ports on national security grounds.

4.2.5.3 Policy actions

4.147. The United States continues to support its maritime transport sector. It finances various maritime security programmes designed to protect the U.S.-flagged fleet and shipyards, such as the Maritime Security Programme (Table 4.15). Port infrastructure projects are also eligible for support under the Transportation Investment Generating Economic Recovery Discretionary Grant Authority. The Port Development Program, run by MARAD, aims to address port congestion in the medium term, by doubling the cargo-handling capacity in every major U.S. port by 2020.¹⁶⁴

4.148. In addition, the United States gives certain preferences for using domestically-flagged vessels transporting goods: (i) the Military Cargo Preference Act of 1904 requires 100% of items intended for use by defence agencies to be carried on U.S. flag vessels; (ii) the Cargo Preference Act of 1954 requires that at least 50% of the gross tonnage of all "government-impelled cargo be transported on privately-owned, domestically-flagged commercial vessels, to the extent such vessels are available at fair and reasonable rates¹⁶⁵; and (iii) Public Resolution No.17 of 1934 requires that exports of goods that benefit from export loans or credit guarantees from the Export Import Bank, must be carried in U.S. vessels, although the vessels of a recipient country may be granted access to 50% of those cargoes, where there is no discriminatory treatment against U.S.-flag carriers.¹⁶⁶

Table 4.15 Main support programmes to US maritime transport

Programme	Beneficiaries/Mechanism
Maritime Security Programme (MSP)	U.S. flag merchant-marine-operators. Fixed payment administered on the basis of renewable one-year contracts. Annual spending of up to US\$186 million for FY2010/25 is available
Voluntary Intermodal Sealift Agreement (VISA) programme	U.S. flag merchant-marine-operators. Provides the Department of Defence with assured access to commercial intermodal capacity during time of war or national emergency
Title IX – Federal Ship Financing Programme	U.S. merchant marine and shipyards. Credit guarantee to private entities seeking to finance the construction or modernization of vessels in U.S. shipyards, and to U.S. shipyards seeking to invest in technology. In FY2010/11, some US\$821 million was approved in several projects.
Construction Reserve Fund	U.S. flag merchant marine-owners and operators. Tax deferral benefits on the sale or loss of a vessel, provided the proceeds are used to expand or modernize the U.S. merchant fleet
Capital Construction Fund	U.S. flag merchant marine-owners and operators. Tax deferral benefits on certain deposits of money or other property placed into a Capital Construction Fund

¹⁶² The Immigration and Nationality Act of 1952, as amended, prohibits non-U.S.-national crew members from performing longshore work in the United States, but provides a reciprocity exception. WTO document S/C/W/71, 24 November 1998.

¹⁶³ Waivers may be granted, subject to reciprocal treatment for U.S.-flag vessels by the recipient country. MARAD online information. Viewed at: http://www.marad.dot.gov/about_us_landing_page/international_activities/international_agreements/International_Agreements.htm.

¹⁶⁴ MARAD online information. Viewed at: <http://www.marad.dot.gov/Headlines/factsheets/PDF%20Versions/Port%20Development-FS.pdf>.

¹⁶⁵ The Act also requires that shipments from or to the Strategic Petroleum Reserve use domestically flagged tankers for at least 50% of oil transport.

¹⁶⁶ MARAD online information. Viewed at: http://www.marad.dot.gov/ships_shipping_landing_page/cargo_preference/Cargo_Preference_Landing_Page.htm [March 2010].

Programme	Beneficiaries/Mechanism
Small Shipyard Grants Programme	Shipyards that construct/repair/reconfigure vessels of at least 40 feet in length for commercial or government use and have 1,200 employees or less. Some US\$9.5 million in grants for capital and related infrastructure improvements is available

Source: MARAD online information. Viewed at: <http://www.marad.dot.gov>.

4.149. The carriage of goods for international trade by liner services has traditionally been exempt from antitrust rules, and subject to regulation. Under the Shipping Act of 1984, agreements among liner operators and marine terminal operators to discuss, fix, or regulate transportation rates, and other conditions of service, or cooperate on operational matters must be filed with, and examined by, the FMC.¹⁶⁷

4.150. Under the Foreign Shipping Practices Act of 1988 the FMC is required to monitor and investigate conditions arising from foreign government or business practices in the U.S. foreign shipping trades. The FMC is authorized to take action to address "unfavourable shipping conditions in U.S. foreign commerce and may impose penalties". The FMC continues to monitor potentially restrictive foreign shipping laws and practices.

¹⁶⁷ The Act also requires ocean carriers to publish tariff rates and charges for carriage for trade with foreign countries. The FMC also reviews the rates of government-controlled ocean carriers to ensure that the commercial carriers with whom they compete are not unfairly disadvantaged.

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5 APPENDIX TABLES

Table A1. 1 Merchandise exports and re-exports by groups of products, 2008-13

(US\$ million and %)

Description	2008	2009	2010	2011	2012	2013
Total	1,299,900	1,056,710	1,277,110	1,479,730	1,545,570	1,578,000
	(% of total exports and re-exports)					
Total primary products	20.5	19.7	21.2	23.9	23.3	23.5
Agriculture	10.8	11.3	11.2	11.4	11.1	11.1
Food	8.7	9.2	8.8	8.9	8.9	9.0
2222 Soya beans	1.2	1.6	1.5	1.2	1.6	1.4
0412 Other wheat (including spelt) and meslin, unmilled	0.8	0.5	0.5	0.7	0.5	0.7
0577 Edible nuts fresh, dried	0.2	0.3	0.3	0.3	0.4	0.5
0449 Other maize, unmilled	1.0	0.8	0.8	0.9	0.6	0.4
0989 Food preparations, n.e.s.	0.3	0.4	0.3	0.3	0.4	0.4
0123 Poultry, meat and offal	0.3	0.4	0.3	0.3	0.3	0.3
0122 Meat of swine	0.3	0.3	0.3	0.3	0.3	0.3
0813 Oil-cake, oilseed residues	0.2	0.3	0.3	0.2	0.2	0.3
0815 Vegetable residues, waste	0.1	0.1	0.2	0.2	0.2	0.3
Agricultural raw material	2.1	2.1	2.4	2.5	2.2	2.1
2631 Cotton (other than linters), not carded or combed	0.4	0.3	0.5	0.6	0.4	0.4
Mining	9.7	8.3	10.0	12.5	12.1	12.3
Ores and other minerals	2.5	2.1	2.4	2.5	2.0	1.8
2882 Other non-ferrous base metal waste and scrap, n.e.s.	0.5	0.4	0.5	0.6	0.5	0.5
Non-ferrous metals	1.3	1.1	1.2	1.3	1.2	1.1
6842 Aluminium and aluminium alloys, worked	0.4	0.4	0.3	0.4	0.4	0.4
Fuels	5.9	5.2	6.3	8.7	8.9	9.4
334 Crude oils of petroleum and bituminous minerals	4.0	3.5	4.2	6.2	6.6	7.1
3212 Other coal, whether or pulverized, not agglomerated	0.6	0.6	0.8	1.1	1.0	0.7
3432 Natural gas, in the gaseous state	0.3	0.3	0.3	0.4	0.3	0.4
3330 Crude oils of petroleum and bituminous minerals	0.2	0.2	0.1	0.1	0.2	0.3
Manufactures	74.9	68.6	68.1	65.3	65.2	64.6
Iron and steel	1.5	1.3	1.3	1.4	1.3	1.3
Chemicals	13.8	15.1	14.8	14.0	13.4	13.2
5429 Medicaments, n.e.s.	1.3	1.9	1.6	1.5	1.4	1.3
5416 Glycosides; glands, etc. and extracts; antisera/vaccines, etc.	0.9	1.4	1.1	0.8	0.8	0.8
5157 Other heterocyclic compounds; nucleic acids	0.3	0.4	0.5	0.4	0.4	0.5
5986 Organic chemical products, n.e.s.	0.4	0.5	0.5	0.4	0.4	0.4
Other semi-manufactures	5.8	5.7	5.8	5.8	5.7	5.9

Description	2008	2009	2010	2011	2012	2013
6672 Diamonds (excl. industrial, sorted) not mounted/set	1.1	0.9	1.1	1.2	1.1	1.2
6996 Articles iron or steel, n.e.s.	0.3	0.3	0.3	0.3	0.3	0.3
Machinery and transport equipment	42.8	34.7	35.2	33.9	34.4	33.8
Power generating machines	3.2	1.9	1.6	1.5	1.6	1.5
7149 Parts of engines and motors of 714.41 and 714.8	1.5	0.6	0.5	0.4	0.4	0.4
7165 Generating sets	0.3	0.3	0.3	0.2	0.3	0.2
Other non-electrical machinery	9.3	8.9	8.9	8.8	8.9	8.6
7284 Machinery and appliances for particular industries, n.e.s.	0.8	0.7	1.1	0.8	0.7	0.8
Agricultural machinery and tractors	0.7	0.6	0.6	0.6	0.7	0.6
Office machines & telecommunication equipment	10.6	10.7	10.5	9.5	9.1	8.9
7764 Electronic integrated circuits and microassemblies	3.1	2.8	2.8	2.3	2.2	2.1
7599 Parts and accessories of 751.1, 751.2, 751.9 and 752	1.2	1.2	1.1	1.0	1.0	1.0
7643 Radio or television transmission apparatus	0.5	0.6	0.6	0.6	0.6	0.7
Other electrical machines	4.1	4.3	4.3	4.0	4.1	4.1
7731 Insulated wire, cable etc.; optical fibre cables	0.5	0.5	0.6	0.6	0.6	0.6
7725 Switches, relays, fuses etc. for a voltage not exceeding 1000 V	0.6	0.6	0.6	0.6	0.6	0.6
Automotive products	8.6	6.9	7.8	8.1	8.5	8.5
7812 Motor vehicles for the transport of persons, n.e.s.	3.9	2.6	3.0	3.2	3.5	3.6
7843 Other motor vehicle parts and accessories of 722, 781 to 783	2.4	2.2	2.6	2.5	2.7	2.7
7821 Goods vehicles	1.0	0.9	1.0	1.1	1.1	1.0
Other transport equipment	7.1	2.1	2.0	1.9	2.2	2.1
Textiles	1.0	0.9	1.0	0.9	0.9	0.9
Clothing	0.3	0.4	0.4	0.4	0.4	0.4
Other consumer goods	9.6	10.5	9.7	9.0	9.1	9.2
8722 Instruments used in medical, surgical or veterinary sciences	1.1	1.4	1.3	1.2	1.2	1.2
8973 Jewellery of gold, silver or platinum metals (except watches)	0.5	0.6	0.5	0.5	0.6	0.7
Other	4.6	11.7	10.7	10.8	11.5	12.0
Gold	1.5	1.3	1.4	2.2	2.3	2.1

Source: UNSD, Comtrade database (SITC Rev.3).

Table A1. 2 Merchandise imports by groups of products, 2008-13

(US\$ million and %)

Description	2008	2009	2010	2011	2012	2013
Total	2,164,830	1,601,900	1,966,500	2,262,590	2,333,810	2,328,330
	(% of total imports)					
Total primary products	31.1	25.7	26.7	29.2	26.9	25.2
Agriculture	5.4	6.3	5.9	6.1	6.1	6.3
Food	4.4	5.4	5.0	5.0	5.0	5.3
1124 Spirits	0.3	0.3	0.3	0.3	0.3	0.3
0361 Crustaceans, frozen	0.2	0.3	0.2	0.2	0.2	0.2
1121 Wine of fresh grapes (including fortified wine)	0.2	0.3	0.2	0.2	0.2	0.2
Agricultural raw material	1.0	0.9	1.0	1.0	1.1	1.0
Mining	25.8	19.4	20.7	23.1	20.8	18.9
Ores and other minerals	0.6	0.5	0.5	0.6	0.5	0.5
Non-ferrous metals	2.0	1.5	1.8	2.0	1.7	1.7
Fuels	23.2	17.4	18.4	20.5	18.6	16.7
3330 Crude oils of petroleum and bituminous minerals	16.8	12.5	13.6	15.2	13.8	12.0
334 Crude oils of petroleum and bituminous minerals	4.2	3.4	3.5	4.2	4.0	3.8
Manufactures	65.4	70.0	69.6	67.3	69.3	70.9
Iron and steel	2.3	1.4	1.6	1.8	1.9	1.7
Chemicals	8.4	9.6	9.0	8.9	8.6	8.6
5429 Medicaments, n.e.s.	1.7	2.3	2.0	1.7	1.6	1.5
5157 Other heterocyclic compounds; nucleic acids	1.0	1.3	1.0	1.0	0.9	0.8
Other semi-manufactures	5.8	5.8	5.8	5.6	5.7	6.0
6672 Diamonds (excl. industrial, sorted) not mounted/set	0.9	0.8	0.9	1.0	0.9	1.0
Machinery and transport equipment	34.0	36.2	37.0	35.8	38.0	38.8
Power generating machines	1.6	1.8	1.4	1.5	1.6	1.6
7149 Parts of engines and motors of 714.41 and 714.8	0.5	0.7	0.5	0.5	0.6	0.6
Other non-electrical machinery	5.3	5.1	5.1	5.6	6.0	6.0
Agricultural machinery and tractors	0.3	0.3	0.3	0.3	0.3	0.3
Office machines & telecommunication equipment	12.0	14.7	14.5	13.1	13.1	13.2
7643 Radio or television transmission apparatus	1.6	2.3	2.1	2.1	2.1	2.3
7522 Data processing machines, with at least processing, input and output units	1.4	1.8	1.8	2.0	2.0	1.9
7764 Electronic integrated circuits and microassemblies	0.9	1.0	1.1	1.2	1.2	1.3
7611 Color television receivers	1.6	1.8	1.6	1.2	1.2	1.0
Other electrical machines	3.9	4.2	4.4	4.2	4.4	4.6

Description	2008	2009	2010	2011	2012	2013
7731 Insulated wire, cable etc.; optical fibre cables	0.6	0.6	0.6	0.6	0.7	0.7
Automotive products	9.2	8.3	9.6	9.4	10.7	11.2
7812 Motor vehicles for the transport of persons, n.e.s.	5.9	5.1	5.9	5.5	6.4	6.7
7843 Other motor vehicle parts and accessories of 722, 781 to 783	1.9	1.9	2.2	2.2	2.5	2.5
Other transport equipment	2.1	2.1	2.0	2.0	2.2	2.3
Textiles	1.1	1.2	1.2	1.1	1.1	1.2
Clothing	3.8	4.5	4.2	3.9	3.8	3.9
8453 Jerseys, pullovers, cardigans, etc., knitted/crocheted	0.7	0.8	0.7	0.7	0.6	0.6
8414 Trousers, bib and brace overalls, breeches and shorts	0.3	0.4	0.3	0.3	0.3	0.3
Other consumer goods	10.0	11.3	10.9	10.1	10.3	10.8
8211 Seats (excl. of 872.4), and parts	0.7	0.7	0.8	0.7	0.8	0.8
8722 Instruments used in medical, surgical or veterinary sciences	0.5	0.6	0.5	0.5	0.5	0.6
Other	3.4	4.3	3.7	3.5	3.8	3.9

Source: UNSD, Comtrade database (SITC Rev.3).

Table A1. 3 Merchandise exports and re-exports by trading partner, 2008-13

(US\$ million and %)

Description	2008	2009	2010	2011	2012	2013
Total exports and re-exports	1,299,900	1,056,710	1,277,110	1,479,730	1,545,570	1,578,000
	(% of exports and re-exports)					
America	42.3	41.9	43.0	43.7	44.7	44.9
Canada	20.1	19.4	19.4	19.0	18.9	19.0
Mexico	11.7	12.2	12.8	13.4	14.0	14.3
Brazil	2.5	2.5	2.8	2.9	2.8	2.8
Colombia	0.9	0.9	0.9	1.0	1.1	1.2
Chile	0.9	0.9	0.9	1.1	1.2	1.1
Venezuela, Bolivarian Rep. of	1.0	0.9	0.8	0.8	1.1	0.8
Panama	0.4	0.4	0.5	0.6	0.6	0.7
Argentina	0.6	0.5	0.6	0.7	0.7	0.6
Peru	0.5	0.5	0.5	0.6	0.6	0.6
Ecuador	0.3	0.4	0.4	0.4	0.4	0.5
Costa Rica	0.4	0.4	0.4	0.4	0.5	0.5
Dominican Republic	0.5	0.5	0.5	0.5	0.5	0.5
Europe	24.2	23.7	21.7	21.4	20.3	19.8
EU (28)	21.4	21.1	19.0	18.4	17.6	17.0
United Kingdom	4.1	4.3	3.8	3.8	3.5	3.0
Germany	4.2	4.1	3.8	3.3	3.1	3.0
The Netherlands	3.1	3.1	2.7	2.9	2.6	2.7
France	2.3	2.6	2.2	1.9	2.1	2.2
EFTA	2.0	1.9	1.9	1.9	1.9	2.0
Switzerland	1.7	1.7	1.6	1.7	1.7	1.7
Other Europe	0.8	0.7	0.8	1.0	0.8	0.8
Turkey	0.8	0.7	0.8	1.0	0.8	0.8
Commonwealth of Independent States (CIS) ^a	1.1	0.8	0.7	0.9	1.0	1.0
Russian Federation	0.7	0.5	0.5	0.6	0.7	0.7
Africa	2.2	2.3	2.2	2.2	2.1	2.2
South Africa	0.5	0.4	0.4	0.5	0.5	0.5
Middle East	4.4	4.2	3.8	3.9	4.5	4.7
United Arab Emirates	1.2	1.1	0.9	1.1	1.5	1.6
Saudi Arabia, Kingdom of	1.0	1.0	0.9	0.9	1.2	1.2
Israel	1.1	0.9	0.9	0.9	0.9	0.9
Asia	25.8	27.0	28.5	27.9	27.4	27.4
China	5.5	6.6	7.2	7.0	7.2	7.7
Japan	5.1	4.8	4.7	4.5	4.5	4.1
Six East Asian Traders	10.2	10.2	11.2	11.0	10.3	10.5
Hong Kong, China	1.7	2.0	2.1	2.5	2.4	2.7
Korea, Republic of	2.7	2.7	3.0	2.9	2.7	2.6
Singapore	2.2	2.1	2.3	2.1	2.0	1.9
Chinese Taipei	1.9	1.7	2.0	1.8	1.6	1.6
Malaysia	1.0	1.0	1.1	1.0	0.8	0.8
Thailand	0.7	0.7	0.7	0.7	0.7	0.7
Other Asia	5.0	5.4	5.3	5.4	5.4	5.1

Description	2008	2009	2010	2011	2012	2013
Australia	1.7	1.9	1.7	1.9	2.0	1.6
India	1.4	1.6	1.5	1.5	1.4	1.4
Indonesia	0.5	0.5	0.5	0.5	0.5	0.6
Other	0.0	0.0	0.0	0.0	0.0	0.0

- a Commonwealth of Independent States (CIS) includes Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

Source: UNSD, Comtrade database (SITC Rev.3).

Table A1. 4 Merchandise imports by trading partner, 2008-13

(US\$ million and %)

Description	2008	2009	2010	2011	2012	2013
Total imports	2,164,830	1,601,900	1,966,500	2,262,590	2,333,810	2,328,330
	(% of imports)					
America	33.5	32.4	32.9	33.7	33.6	33.7
Canada	15.7	14.2	14.2	14.1	14.0	14.5
Mexico	10.1	11.1	11.8	11.7	12.0	12.2
Venezuela, Bolivarian Rep. of	2.4	1.8	1.7	1.9	1.7	1.4
Brazil	1.5	1.3	1.3	1.4	1.4	1.2
Colombia	0.6	0.7	0.8	1.0	1.1	1.0
Costa Rica	0.2	0.4	0.5	0.5	0.5	0.5
Ecuador	0.4	0.4	0.4	0.4	0.4	0.5
Chile	0.4	0.4	0.4	0.4	0.4	0.5
Peru	0.3	0.3	0.3	0.3	0.3	0.4
Trinidad and Tobago	0.4	0.4	0.4	0.4	0.4	0.3
Argentina	0.3	0.3	0.2	0.2	0.2	0.2
Honduras	0.2	0.2	0.2	0.2	0.2	0.2
Guatemala	0.2	0.2	0.2	0.2	0.2	0.2
Dominican Republic	0.2	0.2	0.2	0.2	0.2	0.2
Europe	18.9	19.6	18.2	18.4	18.4	18.9
EU (28)	17.4	17.9	16.6	16.6	16.7	17.0
Germany	4.6	4.5	4.3	4.4	4.7	5.0
United Kingdom	2.8	3.0	2.6	2.3	2.4	2.3
France	2.1	2.2	2.0	1.8	1.8	2.0
Italy	1.7	1.7	1.5	1.6	1.6	1.7
Ireland	1.5	1.8	1.7	1.7	1.4	1.4
EFTA	1.2	1.4	1.4	1.5	1.4	1.5
Switzerland	0.8	1.0	1.0	1.1	1.1	1.2
Other Europe	0.2	0.3	0.2	0.3	0.3	0.3
Turkey	0.2	0.2	0.2	0.2	0.3	0.3
Commonwealth of Independent States (CIS) ^a	1.8	1.5	1.6	1.9	1.5	1.4
Russian Federation	1.3	1.2	1.3	1.6	1.3	1.2
Africa	5.4	4.0	4.4	4.2	2.9	2.2
Nigeria	1.8	1.2	1.6	1.5	0.8	0.5
Angola	0.9	0.6	0.6	0.6	0.4	0.4
South Africa	0.5	0.4	0.4	0.4	0.4	0.4
Middle East	5.3	3.8	3.9	4.7	5.1	4.7
Saudi Arabia, Kingdom of	2.6	1.5	1.7	2.2	2.5	2.3
Israel	1.0	1.2	1.1	1.0	1.0	1.0
Asia	35.2	38.7	38.9	37.2	38.4	39.2
China	16.5	19.3	19.5	18.4	19.0	19.8
Japan	6.6	6.1	6.3	5.9	6.4	6.1
Six East Asian Traders	7.7	8.3	8.1	7.8	7.8	7.9
Korea, Republic of	2.3	2.5	2.6	2.6	2.6	2.8
Chinese Taipei	1.7	1.8	1.9	1.9	1.7	1.7
Malaysia	1.5	1.5	1.4	1.2	1.1	1.2
Thailand	1.1	1.2	1.2	1.1	1.2	1.2
Singapore	0.7	1.0	0.9	0.9	0.9	0.8

Description	2008	2009	2010	2011	2012	2013
Hong Kong, China	0.3	0.2	0.2	0.2	0.2	0.2
Other Asia	4.4	4.9	5.0	5.0	5.2	5.5
India	1.2	1.4	1.6	1.7	1.8	1.9
Viet Nam	0.6	0.8	0.8	0.8	0.9	1.1
Indonesia	0.8	0.9	0.9	0.9	0.8	0.9
Other	0.0	0.0	0.0	0.0	0.0	0.0

a Commonwealth of Independent States (CIS) includes Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

Source: UNSD, Comtrade database (SITC Rev.3).

Table A2.1 U.S. Involvement in dispute settlement cases, 1 July 2012-30 June 2014,

Subject	Respondent/ complainant/ap pellant	Request for consultation received	Status (as at 30 June 2014)	WTO document series
Requests for consultations				
China - Certain Measures Affecting the Automobile and Automobile-Parts Industries	China/ United States	17-Sep-12	Consultations	WT/DS450
Indonesia - Importation of Horticultural Products, Animals and Animal Products	Indonesia/ United States	30-Aug-13	Consultations	WT/DS465
Indonesia - Importation of Horticultural Products, Animals and Animal Products	Indonesia/ United States	15-May-14	Consultations	WT/DS478
Panels				
United States as respondent:				
United States - Certain Methodologies and Their Application to Anti-Dumping Proceedings Involving China	United States/ China	3-Dec-13	Panel established, but not yet composed	WT/DS471
United States - Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea	United States/ Korea	29-Aug-13	Panel composed on 20 June 2014	WT/DS464
United States - Measures Affecting the Importation of Animals, Meat and Other Animal Products from Argentina	United States/ Argentina	30-Aug-12	Panel composed on 8 August 2013	WT/DS447
United States - Anti-Dumping Measures on Certain Shrimp from Viet Nam	United States/ Viet Nam	22-Feb-12	Panel composed on 12 July 2013	WT/DS429
United States - Countervailing Duty Measures on Certain Products from China	United States/China	25-May-12	Interim report issued to the parties on 28 February 2014	WT/DS437
United States - Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India	United States/ India	12-Apr-12	Final report issued to the parties on 11 April 2014	WT/DS436
United States as complainant:				
Indonesia - Importation of Horticultural Products, Animals and Animal Products	Indonesia/ United States	10-Jan-13	Panel established, but not yet composed	WT/DS455
Argentina - Measures Affecting the Importation of Goods	Argentina/ United States	21-Aug-12	Final report issued to the parties on 26 June 2014	WT/DS444
India - Measures Concerning the Importation of Certain Agricultural Products	India/ United States	6-Mar-12	Interim report issued to the parties on 23 May 2014	WT/DS430
China - Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States	China/ United States	5-July-12	Report adopted on 18 June 2014	WT/DS440
United States as a third party:				
European Union - Anti-Dumping Measures on Biodiesel from Argentina	EU/Argentina	19-Dec-13	Panel established, but not yet composed	WT/DS473
European Union - Measures on Atlanto-Scandian Herring	EU/Denmark-Faroe Islands	4-Nov-13	Panel composed on 26 February 2014	WT/DS469
Ukraine - Definitive Safeguard Measures on Certain Passenger Cars	Ukraine/Japan	30-Oct-13	Panel established, but not yet composed	WT/DS468
Australia - Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging	Australia/ Indonesia	20-Sept-13	Panel composed 5 May 2014	WT/DS467
Russian Federation - Recycling Fee on Motor Vehicles	Russia/EU	9-July-13	Panel established, but not yet composed	WT/DS462

Subject	Respondent/ complainant/ap pellant	Request for consultation received	Status (as at 30 June 2014)	WTO document series
Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear	Colombia/Panama	18-June-13	Panel composed 15 January 2014	WT/DS461
China – Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes ("HP-SSST") from the European Union	China/EU and Japan	13-June-13	Panel composed 11 September 2013	WT/DS460
Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging	Australia/Cuba	3-May-13	Panel composed 5 May 2014	WT/DS458
Peru – Additional Duty on Imports of Certain Agricultural Products	Peru/ Guatemala	12-April-13	Panel composed 19 September 2013	WT/DS457
China – Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes ("HP-SSST") from Japan	China/Japan	20-Dec-12	Panel composed 29 July 2013	WT/DS454
Argentina – Measures Relating to Trade in Goods and Services	Argentina/ Panama	12-Dec-12	Panel composed 11 November 2013	WT/DS453
European Union – Anti-Dumping Measures on Imports of Certain Fatty Alcohols from Indonesia	EU/Indonesia	27-July-12	Panel established, but not yet composed	WT/DS442
Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging	Australia/ Dominican Republic	18-July-12	Panel composed 5 May 2014	WT/DS441
Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging	Australia/ Honduras	4-April-12	Panel composed 5 May 2014	WT/DS435
Australia – Certain Measures Concerning Trademarks and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging	Australia/ Ukraine	13-March-12	Panel composed 5 May 2014	WT/DS434
European Communities – Certain Measures Prohibiting the Importation and Marketing of Seal Products	EC/Canada	25-Sept-07	Panel established, but not yet composed	WT/DS369
Appeals to the Appellate Body				
Countervailing and Anti-Dumping Measures on Certain Products from China	United States/ China	17-Sept-12	Currently under appeal	WT/DS449/AB/R
Measures related to the Exportation of Rare Earths, Tungsten and Molybdenum	China/ United States	13-March-12	Currently under appeal	WT/DS431/AB/R
Implementation (Articles 21.5 and 22.6)				
United States - Measures affecting trade in large civil aircraft	EC/ United States	6-Oct-04	Suspension of Article 22.6 arbitration on 19 January 2012, Article 21.5 panel composed on 17 April 2012	WT/DS353
European Communities and certain member States – Measures Affecting Trade in Large Civil Aircraft	EC/ United States	6-Oct-04	Suspension of Article 22.6 arbitration on 28 November 2012, Article 21.5 panel composed on 30 October 2012	WT/DS316

Subject	Respondent/ complainant/ap pellant	Request for consultation received	Status (as at 30 June 2014)	WTO document series
United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products	United States /Mexico	24-Oct-08	Article 21.5 panel composed on 27 January 2014	WT/DS381
China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States	China/ United States	15-Sept-10	Article 21.5 Panel composed on 17 March 2014	WT/DS414
United States – Measures Affecting the Production and Sale of Clove Cigarettes	United States /Indonesia	7-Apr-10	Referred to Article 22.6 arbitration on 22 August 2013	WT/DS406
United States – Certain Country of Origin Labelling (COOL) Requirements	United States /Canada and Mexico	1-Dec-08	Article 21.5 panel composed on 27 September 2013	WT/DS386 and 384

Source: Compiled by the WTO Secretariat.

Table A2.2 Selected notifications to the WTO, 1 July 2012-30 June 2014

WTO Agreement	Description	Document symbol	Date
Agreement on Agriculture			
Articles 10 and 18.2 (ES:1 and ES:2)	Export subsidies commitments: budgetary outlays and quantity reduction commitments; and notification of total exports	G/AG/N/USA/88	27/09/2012
Article 16.2 NF:1 (1)-(4)	Net-Food Importing Developing Country (NFIDC) Decision: food and other assistance; and other specific actions	G/AG/N/USA/90	22/10/2012
Article 18.2 (DS:1)	Domestic support	G/AG/N/USA/80/Rev.1 G/AG/N/USA/93 G/AG/N/USA/89/Rev.1 G/AG/N/USA/89	13/01/2014 09/01/2014 09/01/2014 01/10/2012
Article 18.2 (MA:1)	Administration of tariff and other quota commitments	G/AG/N/USA/92 G/AG/N/USA/84/Add.1	11/02/2013 08/02/2013
Article 18.3 (DS:2)	New or modified exempt domestic support measures	G/AG/N/USA/91 G/AG/N/USA/86	24/10/2012 10/09/2012
Articles 5.7 and 18.2 (MA:5)	Special safeguard provisions	G/AG/N/USA/95 G/AG/N/USA/87	15/02/2014 13/09/2012
Article 18.2 (MA:2)	Tariff rate quotas	G/AG/N/USA/94	05/02/2014
General Agreement on Trade in Services			
Article V:7(a)	Economic integration agreements: U.S.-Panama regional trade agreement	S/C/N/658 WT/REG324/N/1	30/10/2012
Agreement on the Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement)			
Article 16.4 – semi annual	Anti-dumping actions (taken within the preceding six months)	G/ADP/N/252/USA G/ADP/N/244/USA G/ADP/N/237/USA G/ADP/N/230/USA	06/03/2014 19/09/2013 13/03/2013 27/08/2012
Article 16.4 – ad hoc	Anti-dumping actions (preliminary and final)	G/ADP/N/258 G/ADP/N/257 G/ADP/N/256 G/ADP/N/255 G/ADP/N/254 G/ADP/N/251 G/ADP/N/248 G/ADP/N/247 G/ADP/N/246 G/ADP/N/245 G/ADP/N/243 G/ADP/N/242 G/ADP/N/241 G/ADP/N/240 G/ADP/N/239 G/ADP/N/238 G/ADP/N/236 G/ADP/N/235 G/ADP/N/234 G/ADP/N/233 G/ADP/N/232 G/ADP/N/231	19/06/2014 23/05/2014 11/04/2014 24/03/2014 17/02/2014 19/12/2013 14/10/2013 13/09/2013 19/08/2013 26/07/2013 17/06/2013 30/05/2013 16/04/2013 15/03/2013 18/02/2013 21/01/2013 20/12/2012 06/11/2012 16/10/2012 14/09/2012 10/08/2012 19/07/2012
Article 16.5	Competent authorities	G/ADP/N/14/Add.36 G/SCM/N/18/Add.36	14/10/2013

WTO Agreement	Description	Document symbol	Date
Article 18.5	Laws and regulations, and changes thereto, including changes in the administration of such laws	G/ADP/N/1/USA/1/Suppl.16 G/ADP/N/1/USA/1/Suppl.15 G/ADP/N/1/USA/1/Suppl.14 G/ADP/N/1/USA/1/Suppl.13 G/ADP/N/1/USA/1/Suppl.12	19/05/2014 10/10/2013 29/07/2013 22/04/2013 22/04/2013
GATT 1994			
Article XXIV:7(a) of GATT 1994 and Article V:7(a) of GATS	Free-trade areas: United States-Panama regional trade agreement	WT/REG324/N/1 S/C/N/658	30/10/2012
Article XVII:4(a) and Paragraph 1 of the Understanding on the Interpretation of Article XVII	State-trading activities	G/STR/N/14/USA/Corr.1 G/STR/N/14/USA	14/08/2012 02/08/2012
Paragraph 3(c)	Notification and statistical data	WT/L/921 WT/L/880	10/01/2014 10/01/2013
Agreement on Government Procurement			
Appendix I	Procurement thresholds	GPA/W/325/Add.1	16/12/2013
Agreement on Import Licensing			
Article 1.4(a)	Licensing procedures	G/LIC/N/1/USA/6/Add.1/Corr.1 G/LIC/N/1/USA/6/Add.2/Corr.1 G/LIC/N/1/USA/6/Add.2	20/08/2013 21/03/2013 15/03/2013
Article 7.3	Replies to the questionnaire	G/LIC/N/3/USA/10 G/LIC/N/3/USA/9	24/09/2013 25/09/2012
Article 8.2(b)	Changes in Laws/regulations and administrative arrangements	G/LIC/N/1/USA/6/Add.1/Corr.1 G/LIC/N/1/USA/6/Add.2/Corr.1 G/LIC/N/1/USA/6/Add.2	20/08/2013 21/03/2013 15/03/2013
Decision on Notification Procedures for Quantitative Restrictions			
G/L/59/Rev.1	Notification of QRs	G/MA/QR/N/USA/1	5/10/2012
Agreement on Rules of Origin			
Paragraph 4 of Annex II	Preferential rules of origin	G/RO/N/88	18/01/2013
Agreement on Subsidies and Countervailing Measures			
Article 25.1 and GATT 1994 Article XVI:1	Subsidies	G/SCM/N/253/USA	09/05/2014

WTO Agreement	Description	Document symbol	Date
Article 25.11 – ad hoc	Countervailing duty actions (preliminary and final)	G/SCM/N/273	17/06/2014
		G/SCM/N/272	19/05/2014
		G/SCM/N/271	10/04/2014
		G/SCM/N/270	14/03/2014
		G/SCM/N/269	14/02/2014
		G/SCM/N/266	19/12/2013
		G/SCM/N/264	09/10/2013
		G/SCM/N/263	12/09/2013
		G/SCM/N/262	02/08/2013
		G/SCM/N/261	10/07/2013
		G/SCM/N/258	12/06/2013
		G/SCM/N/257	16/05/2013
		G/SCM/N/256	10/04/2013
		G/SCM/N/255	15/03/2013
		G/SCM/N/254	12/02/2013
		G/SCM/N/252	22/01/2013
		G/SCM/N/249	17/12/2012
		G/SCM/N/248	13/11/2012
		G/SCM/N/246	17/09/2012
		G/SCM/N/244	17/07/2012
Article 25.11 – semi	Countervailing duty actions (taken within the preceding six months)	G/SCM/N/267/USA	10/03/2014
		G/SCM/N/259/USA	18/09/2013
		G/SCM/N/250/USA	15/03/2013
		G/SCM/N/242/USA	31/08/2012
Article 25.12	Competent authorities	G/SCM/N/18/Add.36	14/10/2013
Article 32.6	Laws/regulations and changes thereto, including changes in administration of such laws	G/SCM/N/1/USA/1/Suppl.15	10/10/2013
		G/SCM/N/1/USA/1/Suppl.14	29/07/2013
		G/SCM/N/1/USA/1/Suppl.16	19/05/2014
		G/SCM/N/1/USA/1/Suppl.13	22/04/2013
		G/SCM/N/1/USA/1/Suppl.12	22/04/2013
Agreement on Sanitary and Phytosanitary Measures			
Article 7 Annex B	Sanitary and phytosanitary regulations	Many notifications received, see: http://www.wto.org/english/tratop_e/sps_e/work_and_doc_e.htm	
Agreement on Technical Barriers to Trade			
Article 2.9	Technical regulations	Many notifications received, see: http://tbts.wto.org/	
Articles 2.9 and 5.6	Technical regulations and conformity assessment procedures	G/TBT/N/USA/699	25/04/2012
Article 3.2	Technical regulations (local government)	Many notifications received, see: http://tbts.wto.org/	

WTO Agreement	Description	Document symbol	Date
Article unspecified	Technical regulations	G/TBT/N/USA/637/Add.2/Corr.1	19/07/2013
		G/TBT/N/USA/638/Add.2/Corr.1	19/07/2013
		G/TBT/N/USA/565/Add.3	16/07/2013
		G/TBT/N/USA/637/Add.2	03/07/2013
		G/TBT/N/USA/638/Add.2	03/07/2013
		G/TBT/N/USA/637/Add.1	08/04/2013
		G/TBT/N/USA/638/Add.1	08/04/2013
		G/TBT/N/USA/625/Add.1	19/07/2012
		Agreement on Trade-Related Aspects of Intellectual Property Rights	
Article 63.2	Laws/regulations; amendment of a law/regulation	IP/N/1/USA/C/6	07/05/2013
		IP/N/1/USA/D/6	06/05/2013
		IP/N/1/USA/P/11	06/05/2013
		IP/N/1/USA/D/7	06/05/2013
		IP/N/1/USA/P/12	06/05/2013
		IP/N/1/USA/D/8	06/05/2013
		IP/N/1/USA/P/13	06/05/2013
		IP/N/1/USA/D/9	06/05/2013
		IP/N/1/USA/P/14	06/05/2013
		IP/N/1/USA/T/7	06/05/2013
		IP/N/1/USA/6	18/04/2013
		IP/N/1/USA/E/3	24/08/2012
		IP/N/1/USA/C/4	17/08/2012
		IP/N/1/USA/C/5	17/08/2012
		IP/N/1/USA/D/3	17/08/2012
		IP/N/1/USA/P/7	17/08/2012
		IP/N/1/USA/D/4	17/08/2012
		IP/N/1/USA/P/8	17/08/2012
		IP/N/1/USA/D/5	17/08/2012
		IP/N/1/USA/P/9	17/08/2012
		IP/N/1/USA/E/2	17/08/2012
		IP/N/1/USA/G/2	17/08/2012
		IP/N/1/USA/T/6	17/08/2012
		IP/N/1/USA/P/10	17/08/2012
		IP/N/1/USA/5	08/08/2012
Article 67	Contact points for technical cooperation	IP/N/7/USA/1	07/11/2012

Source: WTO documents.

Table A2.3 Eligibility coverage, U.S. unilateral trade preferences, status as of 30 June 2014

Country/Territory	AGOA	GSP	CBERA/CBPTA	Other
Afghanistan		√*		
Albania		√		
Algeria		√		
Angola	√	√*		
Antigua and Barbuda			√	
Armenia		√		
Aruba			√	
Azerbaijan		√		
Bahamas			√	
Barbados			√#	
Belize		√	√#	
Benin	√+	√*		
Bhutan		√*		
Bolivarian Plurinational State of		√		
Bosnia and Herzegovina		√		
Botswana	√+	√		
Brazil		√		
Burkina Faso	√+	√*		
Burundi	√	√*		
Cambodia		√*		
Cameroon	√+	√		
Cabo Verde	√+	√		
Central African Republic		√*		
Chad	√+	√*		
Comoros	√	√*		
Congo	√	√		
Côte d'Ivoire	√+	√		
Curaçao			√	

Country/Territory	AGOA	GSP	CBERA/CBPTA	Other
Democratic Republic of Congo		√*		
Djibouti	√	√*		
Dominica		√	√	
Ecuador		√		
Egypt		√		
Eritrea		√		
Ethiopia	√+	√*		
Fiji		√		
Gabon	√	√		
Gambia	√+	√*		
Georgia		√		
Ghana	√+	√		
Grenada		√	√	
Guinea	√	√*		
Guinea-Bissau		√*		
Guyana		√	√#	
Haiti		√*	√#	
India		√		
Indonesia		√		
Iraq		√		
Jamaica		√	√#	
Jordan		√		
Kazakhstan		√		
Kenya	√+	√		
Kiribati		√*		
Kosovo		√		
Kyrgyz Republic		√		
Lebanon		√		
Lesotho	√+	√*		
Liberia	√+	√*		

Country/Territory	AGOA	GSP	CBERA/CBPTA	Other
The Former Yugoslav Republic of Macedonia		√		
Madagascar	√	√*		
Malawi	√+	√*		
Maldives		√		
Mali	√	√*		
Mauritania	√	√*		
Mauritius	√+	√		
Moldova		√		
Mongolia		√		
Montenegro		√		
Montserrat			√	
Mozambique	√+	√*		
Namibia	√+	√		
Nepal		√*		
Netherlands Antilles			√	
Niger	√	√*		
Nigeria	√+	√		
Pakistan		√		
Papua New Guinea		√		
Paraguay		√		
Philippines		√		
Russian Federation		√		
Rwanda	√+	√*		
St. Kitts and Nevis			√	
Saint Lucia		√	√#	
Saint Vincent and the Grenadines		√	√	
Samoa		√*		
São Tome and Principe	√	√*		
Senegal	√+	√*		

Country/Territory	AGOA	GSP	CBERA/CBPTA	Other
Serbia		√		
Seychelles	√	√		
Sierra Leone	√+	√*		
Solomon Islands		√*		
Somalia		√*		
South Africa	√	√		
South Sudan	√	√*		
Sri Lanka		√		
Suriname		√		
Swaziland	√+	√		
Tanzania	√+	√*		
Thailand		√		
Timor-Leste		√*		
Togo	√	√*		
Tonga		√		
Trinidad and Tobago			√#	
Tunisia		√		
Turkey		√		
Tuvalu		√*		
Uganda	√+	√*		
Ukraine		√		
Uruguay		√		
Uzbekistan		√		
Vanuatu		√*		
Venezuela, Bolivarian Rep. of		√		
Yemen		√*		
Zambia	√+	√*		
Zimbabwe		√		
Insular possessions				√
Freely Associated States (Marshall Islands,				√

Country/Territory	AGOA	GSP	CBERA/CBPTA	Other
Federated States of Micronesia, Republic of Palau)				
West Bank and Gaza Strip (including qualified industrial zones)				✓

+ AGOA Third-country fabric provision

* GSP Least-developed beneficiary country

Includes beneficiaries of CBTPA, i.e. CBERA with expanded product coverage.

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

Table A3. 1 Summary analysis of the MFN tariff, 2014

Description	MFN			
	No. of lines	Average (%)	Range (%)	Coefficient of variation (CV)
Total	10,514	4.8	0 - 510.9	2.8
HS 01-24	1,873	8.2	0 - 510.9	3.6
HS 25-97	8,641	4.1	0 - 57.9	1.3
By WTO category				
WTO Agriculture	1,690	9.0	0 - 510.9	3.5
- Animals and products thereof	161	2.9	0 - 26.4	1.8
- Dairy products	167	26.0	0 - 510.9	1.9
- Fruit, vegetables and plants	527	5.5	0 - 131.8	2.1
- Coffee and tea	82	9.0	0 - 44	0.9
- Cereals and preparations	182	9.0	0 - 122	1.7
- Oil seeds, fats and oils and their Products	107	6.6	0 - 163.8	3.6
- Sugars and confectionary	53	10.4	0 - 72	1.1
- Beverages, spirits and tobacco	149	23.4	0 - 439.9	3.5
- Cotton	16	4.7	0 - 20.2	1.2
- Other agricultural products n.e.s.	246	1.5	0 - 57.1	2.7
WTO Non-agriculture (incl. petroleum)	8,824	4.0	0 - 57.9	1.4
- WTO Non-agriculture (excl. petroleum)	8,792	4.0	0 - 57.9	1.4
- - Fish and fishery products	331	1.4	0 - 35	2.4
- - Minerals and metals	1,547	2.4	0 - 38	1.6
- - Chemicals and photographic supplies	1,847	3.7	0 - 6.5	0.7
- - Wood, pulp, paper and furniture	525	0.7	0 - 14	2.8
- - Textiles	1,082	7.8	0 - 42.7	0.7
- - Clothing	571	11.5	0 - 32	0.7
- - Leather, rubber, footwear and travel goods	422	7.3	0 - 57.9	1.5
- - Non-electric machinery	799	1.4	0 - 9.9	1.4
- - Electric machinery	529	2.3	0 - 15	1.0
- - Transport equipment	241	2.5	0 - 25	1.9
- - Non-agriculture articles n.e.s.	898	3.1	0 - 33.7	1.2
- Petroleum	32	1.9	0 - 7	1.4
By ISIC sector^a				
Agriculture and fisheries	580	6.7	0 - 510.9	6.2
Mining	115	0.4	0 - 10.5	3.4
Manufacturing	9,818	4.8	0 - 350	2.1
By HS section				
01 Live animals & prod.	569	8.7	0 - 510.9	3.3
02 Vegetable products	558	3.9	0 - 163.8	3.0
03 Fats & oils	69	3.4	0 - 19.1	1.3
04 Prepared food etc.	677	11.9	0 - 439.9	3.4
05 Minerals	204	0.6	0 - 12.6	2.8
06 Chemical & prod.	1,714	3.5	0 - 7.2	0.8
07 Plastics & rubber	375	3.7	0 - 14	0.7
08 Hides & skins	220	4.3	0 - 20	1.1
09 Wood & articles	240	2.4	0 - 18	1.4
10 Pulp, paper etc.	275	0.0	0 - 0	n.a.
11 Textile & articles	1,592	9.0	0 - 32	0.8
12 Footwear, headgear	195	13.4	0 - 57.9	1.1
13 Articles of stone	298	5.2	0 - 38	1.2
14 Precious stones, etc.	105	3.0	0 - 13.5	1.1

Description	MFN			
	No. of lines	Average (%)	Range (%)	Coefficient of variation (CV)
15 Base metals & prod.	988	1.9	0 - 21.9	1.4
16 Machinery	1,349	1.7	0 - 15	1.2
17 Transport equipment	252	2.4	0 - 25	1.9
18 Precision equipment	512	2.9	0 - 22.2	1.1
19 Arms and amunition	33	1.7	0 - 7	1.2
20 Miscellaneous manuf	282	3.6	0 - 33.7	1.2
21 Works of art, etc.	7	0.0	0 - 0	n.a.
By stage of processing				
First stage of processing	1,101	4.3	0 - 510.9	7.0
Semi-processed products	3,444	4.2	0 - 72	1.1
Fully-processed products	5,969	5.3	0 - 350	2.3

a ISIC (Rev.2) classification, excluding electricity (1 line).

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

Table A4. 1 Main features of the Price Loss Coverage and Agricultural Risk Coverage Programmes, Agricultural Act of 2014

	Price Loss Coverage (PLC)	County Agricultural Risk Coverage (ARC)	Individual Agricultural Risk Coverage (ARC)
Type of instrument	Price deficiency payments	Commodity-revenue deficiency payments	Farm-revenue deficiency payments
Covered commodities	Wheat, corn, grain sorghum, barley, oats, rice, soybeans and other oilseeds, pulses; and peanuts	Same as for PLC	Same as for PLC
Payment trigger	When the national MY average market price of the covered commodity falls below the reference price	When the actual crop revenue for a county in the current MY falls below the county's ARC revenue guarantee for the crop concerned	When the actual crop revenue for a farm in the current MY falls below the individual ARC revenue guarantee for the covered commodities
Target price	Reference price	The commodity's reference price or the 5-marketing year Olympic average national price (x), whichever is higher for the year	The commodity's reference price or the 5-marketing year Olympic average national price (x), whichever is higher for the year
Payment yield	One time choice between CCP payment yield or updated yield (90% of average commodity yield in crop years 2008-12)	5-marketing year Olympic average county yield (y)	5-year Olympic average farm-specific yield (y)
ARC revenue target	Not applicable	86% of benchmark revenue (benchmark revenue is (x) multiplied by (y)), calculated separately for irrigated and non-irrigated crops	86% of benchmark revenue (benchmark revenue is (x) multiplied by (y))
Payment rate	Difference between the reference price and the higher of the national average market price or the commodity loan rate during the MY	Difference between the county ARC revenue target for the covered commodity and actual county revenue. Actual county revenue is average county yield in the current crop year multiplied by the higher of the average national commodity price in the current MY or the loan rate. Payment rate is capped at 10% of benchmark revenue	Difference between the individual ARC revenue target and actual revenue for individual ARC. Actual revenue for individual ARC is weighted average of crop revenues, multiplied by the higher of the average national commodity price in the current MY or the loan rate. Payment rate is capped at 10% of benchmark revenue
Payment amount	Payment rate multiplied by 85% of commodity's base acres	Payment rate multiplied by 85% of commodity's base acres	Payment rate multiplied by 65% of commodity's base acres
Base acres	Current commodity base acres or reallocated commodity base acres (i.e. farm's total current base acres, except generic base acres, allocated according to the shares planted with eligible crops in the 2009-12 crop years). Upland cotton base acres are called generic base acres.	Same as for PLC	Same as for PLC

Source: WTO Secretariat.

Table A4. 2 Commodity loan rates and Price Loss Coverage reference prices, Agricultural Act of 2014

Covered commodities	Marketing loan programme Commodity loan rates		Price Loss Coverage Reference prices	
		converted into US\$/tonne		converted into US\$/tonne
Wheat (bu.)	2.94	108.0	5.5	202.1
Maize (bu.)	1.95	76.8	3.7	145.7
Grain sorghum (bu.)	1.95	76.9	3.95	155.2
Barley (bu.)	1.85	89.6	4.95	227.4
Oats (bu.)	1.33	95.8	2.4	165.3
Rice long-grain (cwt.)	6.50	143.3	14	308.7
Rice medium-grain (cwt.)	6.50	143.3	14	308.7
Peanuts (ton)	355	391.3	535	486.9
Soybeans (bu.)	6.50	183.7	8.4	308.6
Other oilseeds (bu.)	10.09	222.5	10.15	372.9
Dry peas (cwt.)	5.40	119.1	11	242.6
Lentils (cwt.)	11.28	248.7	19.97	440.3
Small chickpeas (cwt.)	7.43	163.8	19.04	419.8
Large chickpeas (cwt.)	11.28	248.7	21.54	475.0
Graded wool (lb.)	1.15	2535.3	n.a.	n.a.
Non-graded wool (lb.)	0.40	881.9	n.a.	n.a.
Mohair (lb.)	4.20	9259.4	n.a.	n.a.
Honey (lb.)	0.69	1521.2	n.a.	n.a.
Sugar beet, refined (lb.)	0.229	531.2	n.a.	n.a.
Sugar cane, raw (lb.)	0.1875	413.4	n.a.	n.a.
Extra-long staple cotton (lb.)	0.7977	1758.6	n.a.	n.a.
Upland cotton	Simple average of the adjusted prevailing world price for the two immediately preceding MYs, but not less than US\$0.45/lb. or more than US\$0.52/lb		n.a.	n.a.

n.a. Not applicable (i.e. not a covered commodity).

Note: For the conversion factors, see US TPR (2010), Table AIV.1.

Source: Agricultural Act of 2014.

Table A4. 3 Main provisions of the Affordable Care Act

<i>Measures entering into force in 2010</i>
Measures aimed at improving consumer protection: <ul style="list-style-type: none"> - Putting information on coverage options for consumers online - Prohibiting denying coverage of children based on pre-existing conditions - Prohibiting insurance companies from rescinding coverage based on a mistake on an application - Eliminating lifetime dollar limits on insurance coverage on essential health benefits - Regulating annual dollar limits on insurance coverage - Creating an appeal system and an external review process of insurance company decisions - Establishing Consumer Assistance Programs in the State
Measures aimed at improving quality and lowering costs: <ul style="list-style-type: none"> - Providing 4 million small business health insurance tax credits of 25% to 35% of the total costs - Providing preventive care with no cost-sharing (e.g. mammograms and colonoscopies) - Creating a US\$15 billion Prevention and Public Health Fund - Increasing resources to combat fraud
<i>Measures entering into force in 2011</i>
Measures aimed at improving quality and lowering costs: <ul style="list-style-type: none"> - Offering prescription drug discounts to seniors who reach the "coverage gap": they will receive a 50% discount when buying Medicare Part D covered brand-name prescription drugs. Over the ten years 2011-20, seniors receive additional savings on brand-name and generic drugs until the coverage gap is closed in 2020 - Providing preventive care for seniors without cost-sharing (e.g. annual wellness visits and personalized prevention plans for seniors on Medicare). Effective 1 January 2011. - Establishing a new Center for Medicare and Medicaid Innovation to improve the quality of care, and reduce the rate of growth in health care costs for Medicare, Medicaid, and the Children's Health Insurance Program (CHIP) - Improving care for seniors after they leave the hospital through a Community Care Transitions Program coordinating care and connecting patients to services in their communities. - Establishing an Independent Payment Advisory Board to develop and submit proposals to Congress and the President aimed at extending the life of the Medicare Trust Fund if Trust Fund expenditure targets are not met.
Measures aimed at increasing access to affordable care: <ul style="list-style-type: none"> - Increasing access to services at home and in the community via the community first choice option which allows states to offer home and community-based services to disabled individuals through Medicaid rather than institutional care in nursing homes
Measures aimed at holding insurance companies accountable: <ul style="list-style-type: none"> - Bringing down health care premiums by requiring by law that at least 85% of all premium dollars collected by insurance companies for large employer plans are spent on health care services and health care quality improvement, and 80% for plans sold to individuals and small employers. If insurance companies do not meet these goals, because their administrative costs or profits are too high, they must provide rebates - Addressing excessive payments to big insurance companies and strengthening Medicare advantage: Medicare presently pays Medicare Advantage insurance companies over US\$1,000 more per person on average than is spent per person in Traditional Medicare. This results in increased premiums for all Medicare beneficiaries, including the 77% of beneficiaries who are not currently enrolled in a Medicare Advantage plan. The law levels the playing field by gradually eliminating this discrepancy
Measures aimed at improving quality and lowering costs: <ul style="list-style-type: none"> - Establishing a hospital Value-Based Purchasing program (VBP) in traditional Medicare. This program offers financial incentives to hospitals to improve the quality of care. Hospital performance is also required to be publicly reported - Encouraging Integrated Health Systems: the new law provides incentives for physicians to join together to form "Accountable Care Organizations". These groups allow doctors to better coordinate patient care and improve the quality, help prevent disease and illness and reduce unnecessary hospital admissions. If Accountable Care Organizations provide high quality care and reduce costs to the health care system, they can keep some of the money that they have helped save - Reducing paperwork and administrative costs by instituting a series of changes to standardize billing and requiring health plans to begin adopting and implementing rules for the secure, confidential, electronic exchange of health information - Understanding and fighting health disparities by requiring any ongoing or new federal health program to collect and report racial, ethnic and language data to help identify and reduce disparities

Measures entering into force in 2013**Measures aimed at improving quality and lowering costs:**

- Improving preventive health coverage by providing new funding to state Medicaid programs that choose to cover preventive services for patients at little or no cost
- Expanding authority to bundle payments: the law establishes a national pilot program to encourage hospitals, doctors, and other providers to work together to improve the coordination and quality of patient care. Under payment "bundling", hospitals, doctors, and providers are paid a flat rate for an episode of care rather than the current fragmented system where each service or test or bundles of items or services are billed separately to Medicare

Measures aimed at increasing access to affordable care:

- Increasing Medicaid payments for primary care doctors: as Medicaid programs and providers prepare to cover more patients in 2014, the Act requires states to pay primary care physicians no less than 100% of Medicare payment rates in 2013 and 2014 for primary care services. The increase is fully funded by the Federal Government
- Opening enrollment in the health insurance marketplace for 2014: individuals and small businesses were able in the fall of 2013 to buy affordable and qualified health benefit plans for 2014 in this new transparent and insurance marketplace

Measures entering into force in 2014**Measures aimed at establishing new consumer protections:**

- Prohibiting insurance companies from refusing to sell coverage because of an individual's pre-existing conditions or charging higher rates due to gender or health status
- Eliminating annual dollar limits on essential health benefits for all plans
- Ensuring coverage for individuals participating in clinical trials by prohibited insurers from dropping or limiting coverage in such cases with an exception that applies to network plans

Measures aimed at improving quality and lowering costs:

- Tax credits to make it easier for the middle class to afford insurance will become available for people with income between 100% and 400% of the poverty line who are not eligible for other affordable coverage. (In 2010, 400% of the poverty line amounted to approximately US\$43,000 for an individual or US\$88,000 for a family of four.) The tax credit is advanceable and refundable. These individuals may also qualify for reduced cost-sharing (co-payments, co-insurance, and deductibles)
- Fully implementing the health insurance marketplace: Starting in 2014 individuals will be able to buy directly in the Health Insurance Marketplace. The right to buy on exchanges is not limited to cases in which an employer does not offer it (though subsidies may be). Individuals and small businesses can buy affordable and qualified health benefit plans in this new marketplace. The Marketplace will offer a choice of health plans that meet certain benefits and cost standards
- Increasing the Small Business Tax Credit: the law implements the second phase of the small business tax credit for qualified small businesses and small non-profit organizations. In this phase, the credit is up to 50% of the employer's contribution to provide health insurance for employees. There is also up to a 35% credit for small non-profit organizations

Measures aimed at increasing access to affordable care:

- Increasing access to Medicaid: Americans who earn less than 133% of the poverty level (approximately US\$14,000 for an individual and US\$29,000 for a family of four) are eligible to enroll in Medicaid in States that have implemented this provision^a. States will receive 100% federal funding for the first three years to support this expanded coverage, phasing to 90% federal funding in subsequent years
- Promoting individual responsibility: under the law, most individuals who can afford it will be required to obtain basic health insurance coverage or pay a fee to help offset the costs of caring for uninsured Americans. If affordable coverage is not available to an individual, he or she will be eligible for an exemption.

Measures entering into force in 2015**Measure aimed at improving quality and lowering costs:**

- Paying physicians based on value not volume: a new provision will tie physician payments to the quality of care they provide. Physicians will see their payments modified so that those who provide higher value care will receive higher payments than those who provide lower quality care. Effective 1 January 2015

- a The Supreme Court prohibited the Federal Government from taking enforcement action against States that decline to implement this provision.

Source: U.S. Department of Health and Human Services online information. Viewed at: www.hhs.gov/healthcare/facts/timeline/timeline-text.html, summarized by the secretariat.