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**Trade Policy Review Body**

**TRADE POLICY REVIEW**

REPORT BY THE SECRETARIAT

UNITED STATES

*Revision*

This report, prepared for the 13<sup>th</sup> 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.

Any technical questions arising from this report may be addressed to Messrs. Angelo Silvy (tel: 022/739 5249), Cato Christian Adrian (tel: 022/739 5469), Michael Kolie (tel: 022/739 5931), and Xinyi Li (tel: 022/739 5579).

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## SUMMARY

1. The U.S. economy, the single largest in the world, continued to expand during the review period. Although GDP growth has been somewhat uneven on a quarterly basis since the last Trade Policy Review, real GDP continued to expand at annual rates of 2.4% and 2.6% in 2014 and 2015, respectively, before slowing down to an annual rate of around 1% in the first half of 2016. Growth in private consumption has been robust, and the unemployment rate has continued to decline from 10% in 2009 to less than 5% at present. A strengthening labour market and growth in personal income, together with falling energy prices, and low inflation, below the Federal Reserve's long-term objective of 2%, have boosted consumers' purchasing power. Gross capital formation was an engine of growth in 2014 and most of 2015, encouraged by low interest rates. However, investment contracted during the fourth quarter of 2015 and the first two quarters of 2016, partly due to inventory adjustment, declines in equipment and structures investment (both oil and non-oil), and the negative impact of lower crude oil prices on investment in the energy sector. Despite the robust economic performance, challenges remain, including dealing with a deteriorating infrastructure and rising income inequalities.

2. During the period under review, the fiscal stance turned rather neutral, as the authorities had limited recourse to fiscal policy instruments. Fiscal uncertainties were addressed through the Bipartisan Budget Act of 2015, which suspended the debt ceiling until March 2017 and avoided the risk of government shutdowns by locking in appropriations for 2016 and 2017. The current fiscal stance aims at reducing the fiscal deficit. In this respect, the President's Fiscal Year 2017 (FY17) Budget includes proposed measures to drive down future deficits, while implementing policies to accelerate growth and expand opportunities. The President's proposed policies would keep deficits below 3% of GDP while stabilizing debt and putting it on a declining path for the next decade.

3. Monetary policy was relatively accommodative during most of the review period, but the Federal Reserve initiated its "policy normalization process" (steps to raise the federal funds rate and to reduce the Federal Reserve's securities holdings) in 2015. The Federal Open Market Committee (FOMC), the Federal Reserve's policy body, raised the target range for the federal funds rate by a quarter of a percentage point in December 2015. However, the FOMC expects that economic conditions will warrant only gradual future increases in the federal funds rate.

4. The United States is the world's top importer, and the second leading exporter, of goods and services. U.S. merchandise exports are highly diversified, and are dominated by machinery, vehicles, chemicals, and refined petroleum products. Imports are as diversified as exports; their composition is led by manufactured products, which make up some 70% of the total. Machinery, transport equipment, and fuels constitute the main imported products. In 2015, the United States posted a merchandise trade deficit of US\$763 billion, slightly larger than in 2014, but 8.7% above the 2013 deficit. Both merchandise imports and exports contracted in 2015 reflecting to a large extent lower oil import prices, rising domestic production of crude oil and natural gas in the case of imports, and weak global demand and a stronger dollar in the case of exports. As in previous years, the merchandise trade deficit was partly offset by a surplus in trade in services and primary income. The United States traditionally posts a trade surplus in cross-border commercial services, with strong surpluses in areas such as financial services, transport, and charges for the use of intellectual property. The services surplus reached US\$262 billion in 2015. Canada, the European Union, China, Mexico, and Japan remain the United States' main trading partners for both goods and services. The United States remains the world's top destination for foreign direct investment, with total inflows of US\$348.4 billion in 2015. The current account continued to be in deficit during the review period; it reached US\$463 billion, or 2.6% of GDP, in 2015.

5. U.S. trade policy seeks to "promote growth, support well-paying jobs, and strengthen the middle class", as stated in the President's 2016 Trade Policy Agenda. To this end, the United States is actively engaged in negotiations within the WTO framework, as well as in regional or plurilateral settings. The United States has been a strong supporter of the Agreement on Trade Facilitation, which it has ratified, and the expanded Information Technology Agreement (ITA), which was implemented on 1 July 2016. Negotiations on the Trans-Pacific Partnership (TPP) Agreement were concluded in October 2015 and the Agreement signed in February 2016, but ratification is still pending. The United States is actively engaged in negotiations to liberalize trade further, notably in the form of the Environmental Goods Agreement (EGA) and the Trade in Services Agreement (TiSA).



6. The new Trade Promotion Authority (TPA) enacted on 29 June 2015, under the 2015 Bipartisan Congressional Trade Priority Act, provides the associated legislative procedure for new trade agreements until 1 July 2018, with a possible extension for new agreements until 1 July 2021. The 2015 TPA defines 13 trade negotiating objectives, addressing, *inter alia*, four new issues: state-owned and state-controlled enterprises (SOEs); localization barriers to trade; currency issues; and, good governance, transparency, the effective operation of local regimes and the rule of law of trading partners.

7. The United States extends unilateral preferences to developing countries, including least developed countries (LDCs), under its programmes of the Generalized System of Preferences (GSP), the African Growth and Opportunity Act (AGOA) and the Caribbean Basin Initiative (CBI). Both GSP and AGOA were reauthorized by Congress on 29 June 2015 under the Trade Preferences Extension Act of 2015. The present authorization for GSP is valid until the end of 2017, while preferences under AGOA remain authorized until 2025. No new free trade agreement has entered into force in the United States since the U.S.–Panama FTA in 2012.

8. The foreign investment regime in the United States remained unchanged during the review period. The regime is generally open and liberal, although some restrictions may apply, primarily for prudential or national security reasons. Certain transactions may be subject to a Committee on Foreign Investment in the United States (CFIUS) review on grounds of national security. The 2011 SelectUSA programme continues to be the Federal Government's primary vehicle to promote inward investment in the United States.

9. The long-standing commitment of the United States to open trade policies continued in the period under review. A number of trade facilitation measures have been implemented. In this respect, efforts have been focused on the implementation of the single-window International Trade Data System (ITDS) by 31 December 2016. In the future, traders will use the Automated Commercial Environment (ACE) to supply all information required by U.S. Customs and Border Protection (CBP) and its 47 Partner Government Agencies for the clearance of imports and exports. Other trade facilitation measures include continued work on simplified entry programmes and trusted trader programmes.

10. Overall, the legal and regulatory framework for tariffs, rules of origin, import licensing, customs valuation, and import fees and charges remained unchanged during the review period. The current tariff, implemented in January 2016, has 10,516 tariff lines at the 8-digit level. Most MFN tariffs are *ad valorem*, but specific and compound duty rates cover approximately 11% of all tariff lines. Non-*ad valorem* tariff rates are concentrated in agriculture, fuels, textiles, and footwear. Most MFN rates are identical to their bound levels and have remained virtually unchanged for 10 years or more. The simple average tariff amounted to 4.8% overall in 2016. Nearly 37% of the tariff lines face no import duty on an MFN basis, and a further 7.8% of tariff lines are subject to duty rates of 2% or less. Tariffs above 25% *ad valorem* are concentrated in agriculture (notably dairy, tobacco, and vegetable products), footwear, and textiles. An estimated 22 tariff lines corresponding to agricultural products carry import duty rates above 100%.

11. Most U.S. imports of goods receive MFN treatment. In 2015, tariff treatment under U.S. reciprocal or unilateral preference programmes was claimed for less than 20% of the import value. Although a certain opening has taken place, U.S. economic embargoes on Cuba and Iran remain in place. Sanctions against the Democratic People's Republic of Korea (DPRK) were tightened in 2016 and effectively embargo all trade with DPRK.

12. The United States continues to be an active user of anti-dumping (AD) duties. During the period 2014 to end-June 2016, the number of AD investigation initiations totalled 85. There were 269 AD orders in place as of 30 June 2016. The trading partners most affected by the measures were China, the European Union, India, Japan, the Republic of Korea, and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei). The investigations initiated during the period were mainly concentrated in the steel industry. The average duration of an AD measure in place at the end of 2015 was seven years. There were 60 countervailing duty (CVD) investigations initiated between 1 January 2014 and 30 June 2016. A total of 69 CVD orders were in place in late June 2016.

13. Standardization activities in the United States are decentralized and demand driven. Circular A-119 directs federal agencies in the elaboration of technical regulations to rely on voluntary consensus standards, rather than developing government-unique standards, unless this approach is inconsistent with law or otherwise impractical. The U.S. Office of Management and Budget (OMB) issued a revised Circular A-119 in January 2016, which takes into account regulatory developments since 1998, including the increasing accessibility and online availability of documentation, and the need to ensure the timely updating of standards.

14. Implementation of the 2011 Food Safety Modernization Act (FSMA), which aims at shifting the regulatory approach from response to prevention of food safety hazards, was a core activity of the authorities during the period under review. The legislation provides new powers to hold food companies responsible for the prevention of contamination. Key implementing regulations entered into force between September 2015 and July 2016. Most regulations include phased-in compliance dates for small and very small businesses. The Food and Drug Administration (FDA) continues to issue guidance documents to assist industry in complying with the new food safety regulations.

15. Reform of the U.S. export control system continues. The aim of the Export Control Reform (ECR) Initiative is to achieve a reallocation of resources to improve controls on the more sensitive items. Fully implemented, the new export control system should be based on a unified control list, a single licensing agency, an integrated information technology platform for licensing and enforcement, and a single enforcement coordination centre. The United States lifted an effective ban on exports of crude oil in December 2015. Following authorizations by the Department of Energy, the first major shipment of liquefied natural gas from the United States took place in February 2016.

16. In December 2015, a few months after the authority of the Export-Import Bank of the United States (EXIM Bank) temporarily lapsed, the U.S. Congress passed legislation to reauthorize it until 30 September 2019. However, due to an operational drawback, EXIM Bank is for the time being not in a position to grant medium- and long-term authorizations above US\$10 million. The reauthorization of EXIM Bank was accompanied by a mandate for the United States to initiate multilateral negotiations to end export credit financing by 2025. The operations of the Overseas Private Investment Corporation (OPIC), the U.S. Government's development finance institution, have been growing over the years. The U.S. Congress has been considering legislation under various vehicles to extend the authority of OPIC to operate on a longer-term legal basis.

17. The United States has no overarching legal framework governing support at federal and sub-federal levels. Traditionally, federal support has been in the form of grants, tax concessions, loan guarantees, and direct payments. The Small Business Administration continues to actively support small businesses and entrepreneurs, administering several programmes offering export financing to small businesses exporting or planning to export. Legislation passed in December 2015 simplified the taxation of small businesses and made certain tax cuts permanent for them.

18. The United States' anti-trust enforcement agencies have continued to be active during the period under review. The Department of Justice's Antitrust Division obtained a record US\$3.6 billion in criminal fines and penalties in FY2015, notably due to settlements with financial institutions and auto part manufacturers in the United States and elsewhere. It has also continued to prosecute collusion and fraud in the financial services industry, resulting in criminal fines of more than US\$2.5 billion for price fixing in the foreign exchange markets for U.S. dollars and euros, and manipulation of key reference interest rates (LIBOR). The Federal Trade Commission's (FTC) merger and non-merger enforcement activities in FY2015 resulted in estimated savings to U.S. consumers of US\$3.4 billion. In the merger area, in FY2015, the FTC challenged 22 proposed transactions in industries critical to consumers, such as healthcare, pharmaceuticals, hospitals, and retail. Both agencies also provide advice and assistance to governmental bodies and other institutions in their decisions affecting consumers or competition through the filing of advocacy letters.

19. The United States is a party to the WTO Agreement on Government Procurement (GPA) and played an active role in the negotiations leading to the Revised Agreement on Government Procurement. Government procurement at the federal level is decentralized, and is carried out through the various executive agencies' procurement systems. Under the Buy American Act of 1933 (BAA), the purchase of supplies and construction materials by government agencies is

limited to those defined as "domestic end-products", in accordance with a two-part test that must establish that the article is manufactured in the United States, and that the cost of domestic components exceeds 50% of the cost of all the components. The BAA does not apply to services. The Trade Agreements Act of 1979 waives the application of the BAA to the end-products of designated countries, which include the parties to the GPA, bilateral agreements that cover government procurement, Caribbean Basin Economic Recovery Act (CBERA) beneficiaries, and least developed countries. Exceptions to the BAA can also be granted if it is determined that the domestic preference is inconsistent with the public interest, in case of U.S. non-availability of a supply or material, or for reasonableness of cost. U.S. government procurement policy continues to seek to increase the participation of small businesses, including veteran-owned, women-owned, and disadvantaged small businesses. To this end, it carries out a policy of fixing set-asides when market research concludes that small businesses are available and able to perform the work or provide the products being procured by the Government.

20. The United States is an important producer and exporter of goods and services that embody knowledge and other intellectual property developments. In 2014, intellectual property (IP) was present in some 52% of U.S. goods exports and IP-intensive industries in the United States accounted for 38.2% of U.S. GDP. The United States traditionally posts a surplus in IP-related trade, as measured by the category charges for the use of IP. In 2015, net receipts were US\$85.2 billion. IP protection is a key issue for the United States and enforcement is sought through a variety of mechanisms, such as bilateral IP agreements and investment treaties, and free trade agreements. The United States also pursues IP protection through such vehicles as the annual Special 301 review and report. In the 2016 Report, 34 U.S. trading partners were listed: 11 on the Priority Watch List and 23 on the Watch List. The Notorious Markets List, published separately, identifies selected markets facilitating substantial copyright piracy and trademark counterfeiting. Investigations are also carried out through Section 337 of the Tariff Act of 1930, which declares unlawful the importation into the United States of articles that infringe a valid U.S. patent, registered trademark, registered copyright, registered mask work, or vessel hull design. Between 1 January 2013 and 23 June 2016, 144 new Section 337 investigations were instituted covering products from 31 trading partners.

21. With respect to sectoral policies, U.S. agricultural policy is increasingly focused on insurance and risk management to provide a safety net for farmers in need. The U.S. agricultural sector is among the largest in the world, and the United States is a major world exporter of many agricultural commodities. Although their share of GDP is small, agricultural activities are very important to the local economy in parts of the United States. Average tariff protection to agriculture remains higher than protection accorded to non-agricultural goods. In 2016, the average tariff on agricultural products (WTO definition) was 9.1%, compared with 4% for non-agricultural products. The 2014 Farm Act introduced a number of substantial changes to the system of support to agricultural producers: it eliminated the direct payments to crop production and introduced several modifications to other support programmes. Some features of the 2014 Farm Act are: the Price Loss Coverage (PLC) programme, which provides payments on a share of historical base acres and yields when prices fall below reference price levels for covered crops; the Agricultural Risk Coverage (ARC) programme, which provides payments on a share of historical base acres and yields when revenue at the county or farm level for covered commodities falls below county-based or individual benchmark guarantees; the Supplemental Coverage Option (SCO), a supplementary area-based insurance policy; the Stacked Income Protection Plan (STAX), an insurance plan for producers of upland cotton that can be purchased on its own or in conjunction with other crop insurance; and the Margin Protection Program for Dairy Producers (MPP-Dairy). Early data suggest that total payments under the PLC and ARC programmes are not markedly different from past expenditures under discontinued programmes.

22. The financial services industry has largely recovered from the financial crisis. The majority of financial institutions have repaid the money that they received from the Government's Troubled Asset Relief Program (TARP) during the crisis. By the first quarter of 2016, only 16 banks remained under TARP, out of the 707 that received funds. During the review period, financial services reform continued under the provisions of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) and its related regulatory rules. The Act aims at promoting financial stability and addressing "too big to fail" considerations. It established a new and comprehensive regulatory framework and extended regulation over new markets, entities, and activities. In total, the Dodd-Frank Act mandated 390 rulemaking requirements by 20 regulatory agencies, a process that is still ongoing. As of July 2016, 274 of these 390 rulemakings had

resulted in finalized rules, 36 rules had been proposed, and the remaining 80 of these statutorily mandated rules had yet to be proposed by financial services regulators.

23. The United States had a trade surplus in telecommunications, computer, and information services estimated at around US\$9 billion in 2015. Since 2014, the penetration rates of mobile telecom services, including telephony and broadband, have exceeded 100%. In February 2015, the Federal Communication Commission (FCC) adopted a new Open Internet Order, which reclassified both fixed and mobile broadband internet access services as telecommunications services. As a result, broadband internet access service providers are now subject to some of the same rules that apply to common carriers, including a prohibition on unjust or unreasonable practices or unreasonable discrimination. The Open Internet Order prohibits blocking, throttling, and paid prioritization of internet traffic.

24. The general framework for the transport sector in the United States remained largely unchanged during the period under review. The air transport industry consolidation continued, with the result that there are now four large carriers operating in the U.S. domestic passenger market; regional airlines are still actively negotiating merger deals. The United States maintains "open skies agreements" (OSAs) with nearly 120 countries; these OSAs cover issues of, *inter alia*, market access, pricing, and commercial opportunities, including code-sharing, self-handling, user charges, fair competition, and intermodal rights. Most U.S. public-use airports with commercial services are publicly owned, either by States or local governments, or by local authorities, although there are no legal or regulatory barriers to prevent airports from being privately owned. The United States offers grants for the planning and development of public-use airports through the Airport Improvement Program (AIP). The share of costs covered by grants from the AIP can be up to 93.75% of eligible costs for small primary and general aviation airports. Some Buy American provisions apply to airport infrastructure projects when they are financed under the AIP; however, discretionary waivers may be granted under certain conditions.

25. In maritime transport, restrictions on cabotage of goods and passengers remain in place. Cargo and passenger services between two points in the United States, either directly or via a foreign port, are reserved for ships that are registered and built in the United States and owned by a U.S. corporation, and on which 100% of the officers and 75% of the crew are U.S. citizens. As of 2 August 2016, 93 oceangoing, self-propelled, cargo-carrying vessels of 1,000 gross tons and above were eligible for cabotage services. Foreign-owned U.S. companies may engage in cabotage if they comply with domestic employment conditions; they may also own and operate ships flying the U.S. flag in international service. Existing legislation also continues to provide cargo preferences for U.S.-flagged vessels, such as the requirement that at least 50% of the gross tonnage of all government-generated cargo being transported by U.S.-flag vessels. However, preferences for transporting agricultural cargos under certain USDA and USAID foreign assistance programmes were revoked in 2012.

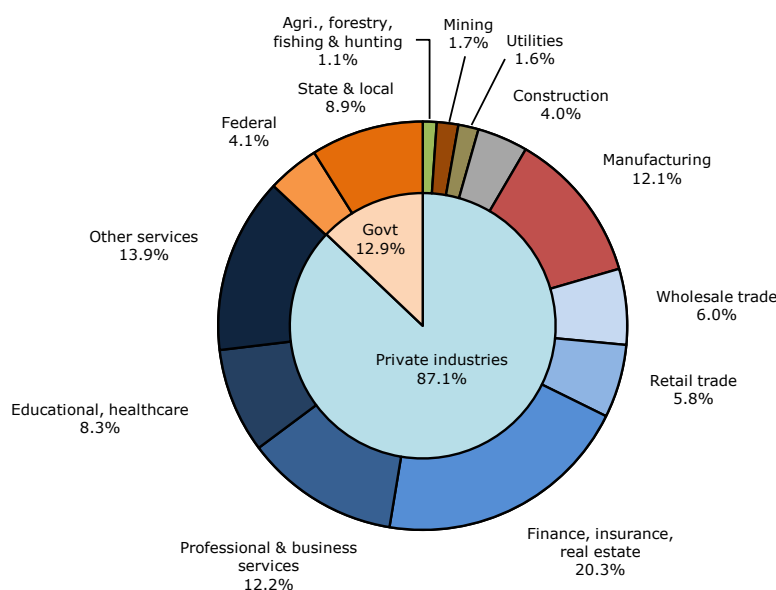
## 1 ECONOMIC ENVIRONMENT

### 1.1 Recent Economic Developments

#### 1.1.1 Output, employment, and prices

1.1. The United States remains the largest single economy in the world. Its nominal GDP stood at US\$18.4 trillion during the second quarter of 2016. GDP per capita was nearly US\$57,000 at that date, and disposable personal income was US\$42,976.<sup>1</sup> The United States is the world's top importer, and the second leading exporter, of goods and services. In addition, it is the top destination for global foreign direct investment (FDI). Its economy is dominated by the services sector (including government services), which accounts for some 80% of GDP (Chart 1.1). Manufacturing is also a significant contributor to domestic output, accounting for 12.1% of GDP in 2015, and the country is the second-largest manufacturer in the world.

**Chart 1.1 Value added, by industry, 2015**



Note: GDP: US\$17,947 billion.

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

1.2. The U.S. economy benefits from its highly developed services sector (finance, transport, and telecommunications), its productive workforce, as well as its free market and business-friendly environment. In fact, it ranked seventh out of 189 economies in the World Bank's 2016 report on ease of doing business<sup>2</sup>, and third in the World Economic Forum's global competitiveness index.<sup>3</sup>

1.3. Due to expansionary macroeconomic policy measures, mainly low interest rates and a significant stimulus package, worth over US\$800 billion, the U.S. economy has largely recovered from the depth of the 2009 recession. However, despite this improvement, challenges remain, such as deteriorating infrastructure and rising inequalities.<sup>4</sup>

1.4. Since 2014, the U.S. economy has remained on a moderate growth trajectory, as economic fundamentals continue to strengthen in general. The annual real GDP growth rate stood at 2.4%

<sup>1</sup> Bureau of Economic Analysis (BEA) online information. Viewed at: <http://www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=3&isuri=1&903=58>.

<sup>2</sup> World Bank (2016), "Economy Profile 2016: United States", *Doing Business 2016*. Viewed at: [http://www.doingbusiness.org/data/exploreeconomies/unitedstates/~/\\_media/giawb/doing%20business/documents/profiles/country/USA.pdf](http://www.doingbusiness.org/data/exploreeconomies/unitedstates/~/_media/giawb/doing%20business/documents/profiles/country/USA.pdf).

<sup>3</sup> WEF online information. Viewed at: <http://reports.weforum.org/global-competitiveness-report-2015-2016/competitiveness-rankings/>.

<sup>4</sup> IMF online information. Viewed at: <https://www.imf.org/external/np/ms/2016/062216.htm>.

in 2014 and 2.6% in 2015, but slowed down to 0.8% in the first quarter of 2016 and 1.1% in the second quarter (Table 1.1).

**Table 1.1 Main economic indicators, 2010-16**

	2010	2011	2012	2013	2014	2015	2016 Q1	2016 Q2
GDP (current US\$ billion)	14,964	15,518	16,155	16,692	17,393	18,037	18,282	18,437
Real GDP (chained 2009 US\$ billion)	14,784	15,021	15,355	15,612	15,982	16,397	16,525	16,570
Real GDP growth (%)	2.5	1.6	2.2	1.7	2.4	2.6	0.8	1.1
GDP per capita (current US\$)	48,302	49,710	51,370	52,688	54,484	56,066	56,557	56,937
<b>GDP by expenditure (as a % share)</b>								
Personal consumption expenditures	68.2	68.9	68.4	68.1	68.2	68.1	68.4	68.9
Goods	22.5	23.2	23.1	23.0	22.8	22.2	21.9	22.2
Durable goods	7.2	7.3	7.4	7.4	7.4	7.5	7.5	7.5
Non-durable goods	15.3	15.9	15.8	15.5	15.4	14.7	14.5	14.6
Services	45.7	45.7	45.3	45.1	45.4	45.9	46.4	46.7
Gross private domestic investment	14.0	14.4	15.5	16.2	16.6	16.9	16.6	16.1
Fixed investment	13.6	14.2	15.2	15.7	16.2	16.4	16.4	16.2
Non-residential	11.1	11.7	12.4	12.5	12.9	12.8	12.5	12.4
Residential	2.5	2.5	2.7	3.1	3.3	3.6	3.8	3.8
Change in private inventories	0.4	0.3	0.4	0.6	0.4	0.5	0.2	-0.1
Net exports of goods and services	-3.4	-3.7	-3.5	-2.9	-2.9	-2.9	-2.8	-2.7
Exports	12.4	13.6	13.6	13.6	13.7	12.6	11.9	12.0
Goods	8.6	9.5	9.4	9.4	9.3	8.3	7.7	7.8
Services	3.8	4.1	4.2	4.3	4.4	4.2	4.2	4.2
Imports	15.8	17.3	17.1	16.6	16.6	15.4	14.7	14.7
Goods	13.0	14.5	14.3	13.8	13.8	12.7	12.0	11.9
Services	2.8	2.8	2.8	2.8	2.8	2.7	2.7	2.7
Government consumption expenditures and gross investment	21.2	20.4	19.6	18.7	18.1	17.8	17.8	17.7
Federal	8.7	8.4	8.0	7.4	7.0	6.8	6.7	6.7
State and local	12.5	12.0	11.6	11.3	11.1	11.1	11.1	11.0
<b>GDP by expenditure (real growth rates)</b>								
Personal consumption expenditures	1.9	2.3	1.5	1.5	2.9	3.2	1.6	4.4
Goods	3.4	3.1	2.7	3.1	3.9	4.0	1.2	7.1
Durable goods	6.1	6.1	7.4	6.2	6.7	6.9	-0.6	9.9
Non-durable goods	2.2	1.8	0.6	1.7	2.6	2.6	2.1	5.7
Services	1.2	1.8	0.8	0.6	2.3	2.8	1.9	3.1
Gross private domestic investment	12.9	5.2	10.5	6.1	4.5	5.0	-3.3	-9.7
Fixed investment	1.5	6.3	9.8	5.0	5.5	4.0	-0.9	-2.5
Non-residential	2.5	7.7	9.0	3.5	6.0	2.1	-3.4	-0.9
Residential	-2.5	0.5	13.5	11.9	3.5	11.7	7.8	-7.7
Change in private inventories	..	..	..	..	..	..	..	..
Net exports of goods and services	..	..	..	..	..	..	..	..
Exports	11.9	6.9	3.4	3.5	4.3	0.1	-0.7	1.2
Goods	14.4	6.5	3.6	3.1	4.4	-0.6	0.1	1.7
Services	6.8	7.6	3.0	4.4	3.9	1.6	-2.2	0.1
Imports	12.7	5.5	2.2	1.1	4.4	4.6	-0.6	0.3
Goods	14.9	5.8	2.1	1.2	4.8	4.9	-1.3	0.0
Services	3.8	4.0	3.0	0.6	2.6	2.9	2.5	1.4
Government consumption expenditures and gross investment	0.1	-3.0	-1.9	-2.9	-0.9	1.8	1.6	-1.5
Federal	4.4	-2.7	-1.9	-5.8	-2.5	0.0	-1.5	-0.3
State and local	-2.7	-3.3	-1.9	-0.8	0.2	2.9	3.5	-2.2
<b>Federal Government revenue and expenditure (US\$ billion)</b>								
Current receipts	2,443	2,574	2,699	3,138	3,288	3,453	3,443	3,470
Current tax receipts	1,353	1,554	1,661	1,824	1,995	2,149	2,107	2,138
Contributions for government social insurance	971	904	938	1,091	1,141	1,190	1,215	1,225
Income receipts on assets	55	56	53	163	75	49	51	39
Current transfer receipts	68	67	56	71	86	73	79	80
Current surplus of government enterprises	-3	-7	-9	-11	-8	-7	-10	-12
Current expenditures	3,772	3,818	3,789	3,782	3,901	4,023	4,111	4,137
Consumption expenditures	1,004	1,006	1,008	961	956	964	969	975
Current transfer payments	2,333	2,327	2,301	2,346	2,449	2,565	2,630	2,632
Interest payments	381	426	423	416	441	438	454	472
Subsidies	54	60	58	59	56	56	58	59
Net Federal Government saving	-1,329	-1,244	-1,090	-644	-613	-570	-668	-668
Social insurance funds	-291	-271	-289	-291	-287	-305	-317	-323
Other	-1,038	-973	-801	-353	-326	-265	-351	-345
<b>Addenda:</b>								
Total receipts	2,458	2,584	2,713	3,159	3,307	3,474	3,463	3,491
Total expenditures	3,967	3,981	3,907	3,859	3,968	4,054	4,178	4,171
Net lending (+) or net borrowing (-)	-1,509	-1,397	-1,193	-700	-660	-580	-715	-680
As share of current GDP (%)	-10.1	-9.0	-7.4	-4.2	-3.8	-3.2	-3.9	-3.7
Public debt (US\$ billion) <sup>a</sup>	9,019	10,128	11,281	11,983	12,780	13,117	..	..

	2010	2011	2012	2013	2014	2015	2016 Q1	2016 Q2
As share of current GDP (% , fiscal year)	60.9	65.9	70.4	72.6	74.2	73.3	..	..
<b>Prices</b>								
Consumer price index (annual average, % change)	1.6	3.1	2.1	1.5	1.6	0.1	1.1	1.1
<b>Interest rates</b>								
Federal funds rate, effective (% , annual average)	0.18	0.10	0.14	0.11	0.09	0.13	0.36	0.37
Treasury note (% , annual average)	3.22	2.78	1.80	2.35	2.54	2.14	1.92	1.75
<b>Employment</b>								
Total employment ('000) <sup>b</sup>	134,846	136,438	138,952	141,186	143,885	146,603	..	..
Employment in manufacturing ('000) <sup>c</sup>	11,524	11,738	11,942	12,023	12,187	12,334	..	..
As share of total employment (%)	8.5	8.6	8.6	8.5	8.5	8.4	..	..
Unemployment rate (%)	9.6	8.9	8.1	7.4	6.2	5.3	4.9	4.9
Trade to GDP ratio	21.7	24.1	24.0	23.4	23.2	21.1	..	..

.. Not available.

a Fiscal year.

b Full-time and part-time employees.

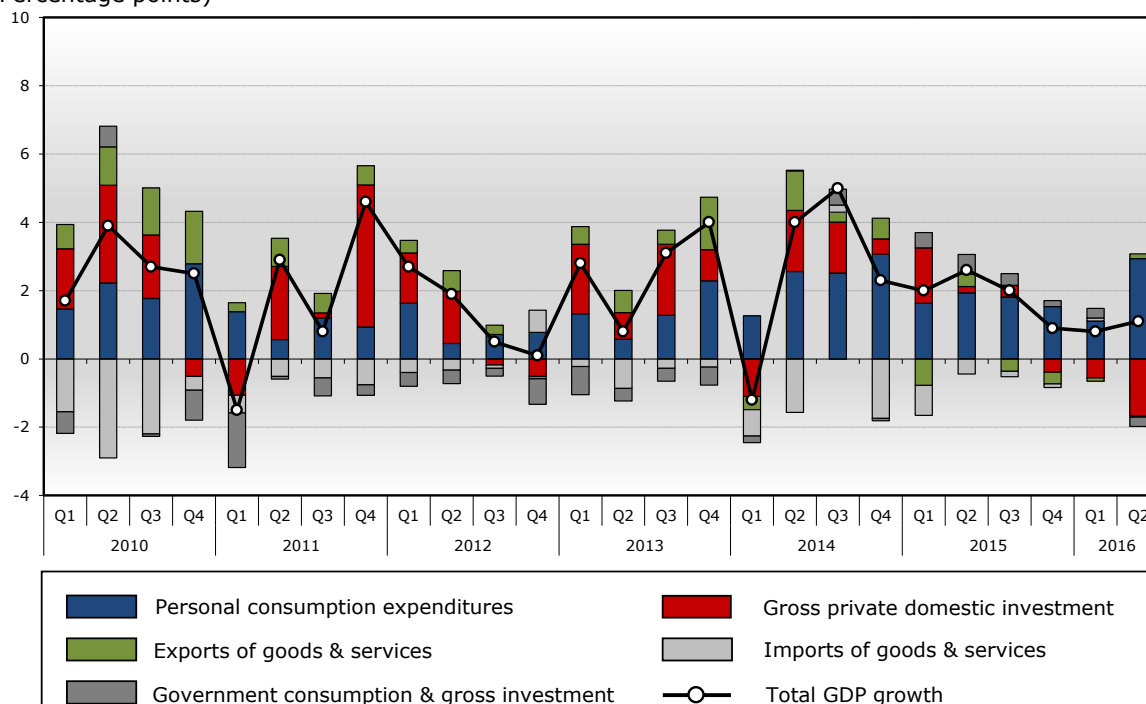
c Estimates are based on the 2002 North American Industry Classification System (NAICS).

Source: WTO Secretariat, based on Bureau of Economic Analysis online information. Viewed at: <http://www.bea.gov/>; Board of Governors of the Federal Reserve System online information. Viewed at: <http://www.federalreserve.gov/econresdata/default.htm>; and Bureau of Labor Statistics online information. Viewed at: <http://www.bls.gov/>.

1.5. GDP growth has been somewhat uneven over time. Although GDP contracted by 1.2% during the first quarter of 2014, the economy gathered momentum over the following quarters, and annualized quarterly growth rates remained positive through the second quarter of 2016. GDP has increased at an average annual rate of 2.1% since the recovery began in the second quarter of 2009. Personal consumption, which accounts for over two thirds of GDP, continued to expand faster than GDP and remained the main driver of growth (Chart 1.2). GDP growth was given a boost particularly by the increase in expenditure in durable goods, which grew by over 6% in real terms in both 2014 and 2015.

**Chart 1.2 Contribution to percent change in real GDP, 2010-16**

(Percentage points)



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

1.6. Several factors explain the steady improvement in personal consumption: increasing employment and growth in personal income, together with falling energy prices, and low inflation in general, have bolstered consumers' purchasing power. Furthermore, in 2015, households' net wealth seems to have contributed to growth in consumer spending, as prices of houses posted significant gains. Low interest rates have also played a role as households' debt service burden has declined.<sup>5</sup>

1.7. Gross private domestic investment, which represented 16.1% of GDP in 2015, also expanded in both 2014 and 2015, at 4.5% and 5.0% respectively, on a year-over-year basis. Accommodative financing conditions, mainly low interest rates, continued to be supportive of investment. However, private domestic investment contracted during the fourth quarter of 2015 and the first two quarters of 2016. The decline in investment was partly due to inventory adjustment, and declines in both equipment and structures investment (both oil and non-oil), and also reflected the continuing negative impact of lower crude oil prices on investment in the energy sector. Despite these declines, in early 2016, the Administration was expecting increased investment in the quarters ahead, due to strengthening consumer spending.

1.8. Net exports continue to make a low or negative contribution to GDP growth (on an accounting basis). In 2014, this negative contribution was of 0.15 percentage points, rising to 0.7 percentage points in 2015. This is mainly explained by weak exports of goods and services, together with faster growing imports during the review period. Subdued export growth reflects weak global demand, together with the appreciation of the U.S. dollar.

1.9. Gross national savings as a whole remained broadly stable during the period under review, reaching 18.4% of gross national income in the first quarter of 2016, while the share of gross domestic investment in gross national income reached 23%, leading to a savings-investment gap of some 4.6% of gross national income.<sup>6</sup> This gap is reflected in the deficit of the current account of the balance of payments (including statistical discrepancies).

1.10. The employment situation continues to improve. Payroll employment rose by 2.3 million over the year 2015 and 15.0 million since early 2010. The unemployment rate declined from 9.6% in 2010 to 4.9% in July 2016 (Table 1.1).<sup>7</sup> While an aging population has been pulling down labour force participation and will do so for another decade, the strength in employment growth has also been pulling new entrants and re-entrants into the labour force during the past years.<sup>8</sup>

1.11. Inflation was below the Federal Reserve's long-term objective of 2% during the period under review. Low inflation has also contributed to stronger purchasing power to a certain extent. Headline inflation, measured by the price index for personal consumption expenditures, increased by 1.5% in 2014, before dropping to 0.3% in 2015. Prices picked up in 2016, with inflation reaching an annual rate of 0.3% in the first quarter and 1.9% in the second quarter.

### 1.1.2 Fiscal policy

1.12. During the review period, the authorities have had limited recourse to fiscal policy instruments. As a consequence, federal fiscal policy has turned rather neutral. The President's Fiscal Year 2017 (FY17) Budget includes proposed measures to drive down future deficits, while implementing policies to accelerate growth and expand opportunity. The President's proposed policies would keep deficits below 3% of GDP while stabilizing debt and putting it on a declining path for the next decade.<sup>9</sup> This fiscal result, made possible by health, tax, and immigration reform

<sup>5</sup> Federal Bank of New York (2016), *Quarterly Report on Household Debt and Credit*, February. Viewed at: [https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC\\_2015Q4.pdf](https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2015Q4.pdf).

<sup>6</sup> BEA online information. Viewed at:

<http://www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=3&isuri=1&903=137>.

<sup>7</sup> The unemployment rate stood at 10% in October 2009.

<sup>8</sup> For more details on labour force participation in the United States, see: Executive Office of the President of the United States (2016), *The Long-Term Decline in Prime-Age Male Labor Force Participation*. Viewed at: [https://www.whitehouse.gov/sites/default/files/page/files/20160620\\_cea\\_primeage\\_male\\_lfp.pdf](https://www.whitehouse.gov/sites/default/files/page/files/20160620_cea_primeage_male_lfp.pdf).

<sup>9</sup> White House online information, "The President's Fiscal Year 2017 Budget". Viewed at: [https://www.whitehouse.gov/sites/default/files/omb/budget/fy2017/assets/fact\\_sheets/Investing%20in%20American%20Infrastructure.pdf](https://www.whitehouse.gov/sites/default/files/omb/budget/fy2017/assets/fact_sheets/Investing%20in%20American%20Infrastructure.pdf).



and other proposals, is expected to be achieved even while investing in innovation, infrastructure, child care, preschool, post-secondary education, training, and pro-work tax cuts.<sup>10</sup>

1.13. Fiscal policy was contractionary during the previous review period, as receipts grew more rapidly than expenditure, with the goal of reducing the deficit. A number of deficit-reduction measures were applied, including spending cuts (under the Budget Control Act of 2011), an increase in taxes on top earners, as well as the ending of the temporary payroll tax holiday instituted as part of the Tax Relief, Unemployment Reauthorization, and Job Creation Act of 2010. However, the observed drag effect of government expenditures on GDP has eased noticeably since 2014. Increased tax collection in the context of positive GDP growth was behind the faster growth of federal receipts as compared to expenditures in 2014 and 2015. As a consequence, the federal public deficit narrowed further to some 3.2% of GDP in 2015 (the lowest since 2008), from 4.2% in 2013 and 3.8% in 2014 (Table 1.1).

1.14. Despite the narrowing fiscal deficit, federal debt, in absolute value, grew by 2.6% from US\$12.8 trillion in 2014 to US\$13.1 trillion in 2015; but as percentage of GDP, it fell slightly from 74.2% to 73.3%.

1.15. Fiscal uncertainties were reduced through the adoption of a number of measures.<sup>11</sup> The Bipartisan Budget Act of 2015 suspended the debt ceiling until March 2017 and avoided the risk of government shutdown by locking in appropriations for 2016. It also raised the caps on discretionary funding by US\$50 billion in 2016 and by US\$30 billion in 2017.

1.16. The Protecting Americans from Tax Hikes (PATH) Act of 2015 (PL 114-113, 18 December 2015) includes several tax-related provisions.<sup>12</sup> It extended or made permanent over 50 separate provisions that had expired or were set to expire. The provisions made permanent include the enhanced child tax credit, the American Opportunity Tax Credit for college tuition, and the improvements introduced to the earned income tax credit (i.e. the expansion to larger families and removal of the marriage penalty). It also made the research and experimentation credit for corporations permanent.

1.17. The Fixing America's Surface Transportation Act of 2015 (PL 114-94, 4 December 2015) committed US\$305 billion to surface transportation for the next succeeding four years and provided some degree of stability to states in planning projects that are co-financed with federal resources.

1.18. As noted above, the President's Fiscal Year 2017 Budget aims to drive down future deficits.<sup>13</sup> Policies aimed at trying to reduce the deficit are likely to continue. A report by the Congressional Budget Office (CBO) analysing the President's budget request for FY2017 estimated that the federal budget deficit would decline in 2017 and 2018, but increase thereafter.<sup>14</sup> Most of that deficit reduction would be achieved by raising revenues. In a report updating the budget and economic outlook, the CBO stated that, as a percentage of output, the deficit would equal 3.2% of GDP in 2016, drop to 3.1% in 2017 and 2.6% in 2018, and then start increasing; it would

<sup>10</sup> For more on fostering innovation, see: Office of Science and Technology Policy (OSTP) online information. Viewed at: <https://www.whitehouse.gov/administration/eop/ostp/initiatives>; and OECD (2016), *Economic Survey 2016 – United States*, p. 36, Table 4. Viewed at: <http://www.oecd.org/eco/surveys/United-States-2016-overview.pdf>. For more on proposals for infrastructure investment in the FY17 Budget, see: Office of Management and Budget (OMB) online information. Viewed at: [https://www.whitehouse.gov/sites/default/files/omb/budget/fy2017/assets/fact\\_sheets/Investing%20in%20African%20Infrastructure.pdf](https://www.whitehouse.gov/sites/default/files/omb/budget/fy2017/assets/fact_sheets/Investing%20in%20African%20Infrastructure.pdf).

<sup>11</sup> IMF (2016), *United States 2016 Article IV Consultation*, Country Report No. 16/226. Viewed at: <http://www.imf.org/external/pubs/ft/scr/2016/cr16226.pdf>.

<sup>12</sup> U.S. House of Representatives online information. Viewed at: <http://docs.house.gov/billssthisweek/20151214/121515.250.xml.pdf>.

<sup>13</sup> White House online information, "The President's Fiscal Year 2017 Budget". Viewed at: [https://www.whitehouse.gov/sites/default/files/omb/budget/fy2017/assets/fact\\_sheets/Investing%20in%20African%20Infrastructure.pdf](https://www.whitehouse.gov/sites/default/files/omb/budget/fy2017/assets/fact_sheets/Investing%20in%20African%20Infrastructure.pdf).

<sup>14</sup> The CBO estimated that under the President's proposals, the deficit would total US\$529 billion in 2016, fall to US\$433 billion in 2017, fall further to US \$383 billion in 2018, and then increase in most subsequent years, eventually growing to US\$972 billion in 2026. The cumulative deficit over the 2017-26 period would total US\$6.9 trillion. See CBO (2016), *An Analysis of the President's 2017 Budget*. Viewed at: <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51383-APB.pdf>.

equal 4.6% of GDP in 2026.<sup>15</sup> According to CBO estimates, federal debt held by the public will amount to nearly 77% of GDP by the end of 2016, three percentage points higher than at the end of 2015 and its highest ratio since 1950.<sup>16</sup>

1.19. If current laws generally remain unchanged, the deficit is projected to be 2.9% of GDP in 2016 through 2018, rising to close to 5% in 2026. Debt held by the public would also rise significantly from its already high level, reaching 86% of GDP by 2026.<sup>17</sup>

### 1.1.3 Monetary policy

1.20. The Federal Reserve is responsible for setting monetary policy in the United States. Legislation specifies that, in conducting monetary policy, the Federal Reserve System and the Federal Open Market Committee (FOMC) should seek "to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates".<sup>18</sup> The Federal Reserve adjusts the key tools of monetary policy: open market operations, the discount rate, reserve requirements, and interest on reserves, in order to influence demand and supply conditions in the federal funds market and keep the federal funds rate at the target rate established by the FOMC. Unlike some other central banks, the Federal Reserve does not set a specific inflation target. However, the FOMC specifies a longer-run goal for inflation, which has currently been determined to be 2%.<sup>19</sup>

1.21. Monetary policy continued to be accommodative throughout the review period, but the first steps toward monetary tightening occurred in late 2015. Since late 2008, when the FOMC established a near-zero target range for the federal funds rate in response to the financial crisis, the Federal Reserve's monetary policy has been accommodative, with forward guidance to communicate the anticipated future path of policy. In addition, the Federal Reserve has employed unconventional monetary policy instruments, referred to as quantitative easing, aimed at providing a further stimulus to the economy by purchasing large quantities of Treasury and direct obligations issued or fully guaranteed by government sponsored enterprises. The Federal Reserve's approach to the implementation of monetary policy has evolved considerably since the financial crisis, and particularly so since late 2008. From the end of 2008 through October 2014, the Federal Reserve greatly expanded its holding of longer-term securities through open market purchases with the goal of putting downward pressure on longer-term interest rates and thus supporting economic activity and job creation by making financial conditions more accommodative.

1.22. In September 2014, the FOMC issued Policy Normalization Principles and Plans. It was decided that the FOMC would determine the timing and pace of policy normalization – meaning steps to raise the federal funds rate and other short-term interest rates to more normal levels and to reduce the Federal Reserve's securities holdings – so as to promote its statutory mandate of maximum employment and price stability. During normalization, the Federal Reserve intends to: move the federal funds rate into the target range set by the FOMC primarily by adjusting the interest rate it pays on excess reserve balances, and use an overnight reverse repurchase agreement facility and other supplementary tools as needed to help control the federal funds rate. The FOMC intends to reduce the Federal Reserve's securities holdings in a gradual and predictable manner primarily by ceasing to reinvest repayments of principal on securities. The FOMC intends that the Federal Reserve will, in the longer run, hold no more securities than necessary to implement monetary policy efficiently and effectively, and that it will hold primarily Treasury securities. At the March 2015 FOMC meeting, all participants agreed to provide additional details

<sup>15</sup> CBO (2016), *An Update to the Budget and Economic Outlook: 2016 to 2026*. Viewed at: [https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51908-2016\\_Outlook\\_Update\\_OneCol-2.pdf](https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51908-2016_Outlook_Update_OneCol-2.pdf).

<sup>16</sup> CBO (2016), *An Update to the Budget and Economic Outlook: 2016 to 2026*. Viewed at: [https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51908-2016\\_Outlook\\_Update\\_OneCol-2.pdf](https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51908-2016_Outlook_Update_OneCol-2.pdf).

<sup>17</sup> Further details available at CBO (2016), *Updated Budget Projections 2016 to 2026*. Viewed at: [https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51384-MarchBaseline\\_OneCol.pdf](https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51384-MarchBaseline_OneCol.pdf).

<sup>18</sup> Federal Reserve Board (undated), *Purposes and Functions*. Viewed at: <http://www.federalreserve.gov/pf/pf.htm>.

<sup>19</sup> Federal Reserve Board online information, *Statement on Longer-Run Goals and Monetary Policy Strategy*. Adopted effective January 24, 2012; as amended effective January 26, 2016. Viewed at: [http://www.federalreserve.gov/monetarpolicy/mpr\\_20160210\\_summary.htm](http://www.federalreserve.gov/monetarpolicy/mpr_20160210_summary.htm).

regarding the operational approach the FOMC intended to use, which included continuing to target a range for the federal funds rate that is 25 basis points wide.

1.23. The policy normalization process commenced in December 2015. The Federal Reserve decided to use overnight reverse repurchase agreements (ON RRP) as a supplementary policy tool, as necessary, to help control the federal funds rate and keep it in the target range set by the FOMC.<sup>20</sup> In December 2015, the Federal Open Market Committee (FOMC), the Federal Reserve's policy body, raised the target range for the federal funds rate by a quarter of a percentage point. This decision marked the first change in the policy rate in seven years, and it reflects the Federal Reserve's outlook that the economy will improve further. However, the FOMC expects that economic conditions will warrant only gradual increases in the federal funds rate.

#### 1.1.4 Balance of payments

1.24. The U.S. current account was in deficit during the review period. The deficit in the current account of the balance of payments declined in 2013, but resumed its increase in 2014. In 2015, it reached US\$463 billion, or 2.6% of GDP, up from US\$392 billion in 2014 (Table 1.2 and Chart 1.3). In the first half of 2016, the current account deficit narrowed to US\$252 billion.

**Table 1.2 Current and capital accounts, 2010-16**

(US\$ billion)

	2010	2011	2012	2013	2014	2015	2016 <sup>a</sup>
<b>Current account</b>							
Exports of goods and services and income receipts (credits)	2,631	2,988	3,097	3,215	3,339	3,173	1,536
Exports of goods and services	1,854	2,127	2,219	2,293	2,377	2,261	1,085
Goods	1,290	1,499	1,563	1,592	1,633	1,510	714
General merchandise	1,272	1,464	1,525	1,558	1,610	1,489	706
Non-monetary gold	18	35	37	34	23	21	8
Services	563	628	656	701	743	751	370
Primary income receipts	685	760	769	795	822	783	387
Investment income	679	754	763	788	815	776	384
Compensation of employees	6	6	6	7	7	7	4
Secondary income (current transfer) receipts <sup>b</sup>	92	101	109	127	140	129	64
Imports of goods and services and income payments (debits)	3,073	3,448	3,544	3,581	3,731	3,636	1,788
Imports of goods and services	2,348	2,676	2,756	2,755	2,867	2,762	1,335
Goods	1,939	2,240	2,304	2,294	2,385	2,273	1,087
General merchandise	1,924	2,222	2,285	2,276	2,370	2,260	1,078
Nonmonetary gold	15	18	19	18	15	13	9
Services	409	436	452	461	481	489	248
Primary income payments	507	539	553	576	598	601	310
Investment income	493	525	538	560	581	582	301
Compensation of employees	14	14	15	16	17	18	9
Secondary income (current transfer) payments <sup>b</sup>	217	234	235	250	266	274	142
<b>Capital account</b>							
Capital transfer receipts and other credits	0	0	8	0	0	0	0
Capital transfer payments and other debits	0	1	1	0	0	0	..
<b>Financial account</b>							
Net U.S. acquisition of financial assets excluding financial derivatives (net increase in assets / financial outflow (+))	963	496	178	651	823	225	354
Direct investment assets	355	440	378	395	343	349	173
Equity	343	402	322	337	341	316	181
Debt instruments	12	39	56	58	2	32	-8
Portfolio investment assets	200	85	249	481	583	154	53
Equity and investment fund shares	79	7	104	287	432	203	71
Debt securities	120	78	145	194	151	-49	-18
Other investment assets	407	-45	-454	-221	-99	-271	128
Currency and deposits	150	-89	-522	-127	-160	-194	49
Loans	251	40	68	-104	67	-75	79
Trade credit and advances	6	4	1	10	-6	-2	1
Reserve assets	2	16	4	-3	-4	-6	-1
Monetary gold	0	0	0	0	0	0	0
Special drawing rights	0	-2	0	0	0	0	0
Reserve position in the International Monetary Fund	1	18	4	-3	-4	-6	-1
Other reserve assets	1	0	0	0	0	0	0
Net U.S. incurrence of liabilities excluding financial derivatives (net increase in liabilities/financial inflow (+))	1,386	977	625	1,045	1,056	395	469
Direct investment liabilities	259	257	243	277	207	379	251
Equity	203	185	204	201	112	301	206

<sup>20</sup> Federal Reserve Board online information. Viewed at:  
<http://www.federalreserve.gov/monetarypolicy/policy-normalization.htm>.

	2010	2011	2012	2013	2014	2015	2016 <sup>a</sup>
Debt instruments	56	72	39	76	95	78	45
Portfolio investment liabilities	820	312	747	512	702	251	-22
Equity and investment fund shares	179	123	239	-63	154	-178	-152
Debt securities	641	188	508	575	548	429	130
Other investment liabilities	307	408	-365	256	147	-235	240
Currency and deposits	116	476	-246	203	60	33	52
Loans	172	-85	-130	41	74	-283	178
Trade credit and advances	19	17	12	11	14	14	11
Special drawing rights allocations	0	0	0	0	0	0	0
Financial derivatives other than reserves, net transactions <sup>c</sup>	-14	-35	7	2	-54	-25	39
<b>Statistical discrepancy<sup>d</sup></b>	5	-54	-1	-24	105	268	175
<b>Balance on current account</b>	-442	-460	-447	-366	-392	-463	-252
Balance on goods and services	-495	-549	-537	-462	-490	-500	-250
Balance on goods	-649	-741	-741	-702	-752	-763	-373
Balance on service	154	192	204	240	262	262	123
Balance on primary income	178	221	216	219	224	182	77
Balance on secondary income	-125	-133	-126	-124	-126	-145	-78
Net lending (+) or net borrowing (-) from current- and capital-account transactions <sup>e</sup>	-442	-462	-440	-367	-392	-463	-252
Net lending (+) or net borrowing (-) from financial-account transactions <sup>e</sup>	-437	-516	-441	-391	-287	-195	-76

.. Not available.

a First semester.

b Secondary income (current transfer) receipts and payments include U.S. government and private transfers, such as U.S. government grants and pensions, fines and penalties, withholding taxes, personal transfers (remittances), insurance-related transfers, and other current transfers.

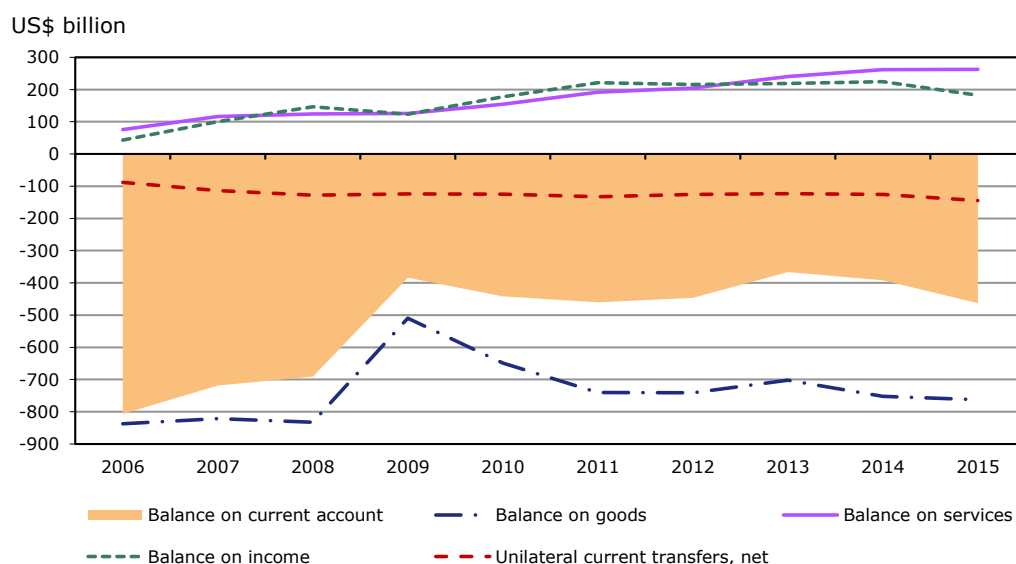
c Transactions for financial derivatives are only available as a net value equal to transactions for assets less transactions for liabilities. A positive value represents net U.S. cash payments arising from derivatives contracts, and a negative value represents net U.S. cash receipts.

d The statistical discrepancy is the difference between total debits and total credits recorded in the current, capital, and financial accounts. In the current and capital accounts, credits and debits are labelled in the table. In the financial account, an acquisition of an asset or a repayment of a liability is a debit, and an incurrence of a liability or a disposal of an asset is a credit.

e Net lending means that U.S. residents are net suppliers of funds to foreign residents, and net borrowing means the opposite. Net lending or net borrowing can be computed from current- and capital-account transactions or from financial-account transactions. The two amounts differ by the statistical discrepancy.

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

**Chart 1.3 U.S. current account and net financial flows, 2006-15**



Source: Bureau of Economic Analysis online information. Viewed at: <http://www.bea.gov>.

1.25. Both exports and imports of goods and services expanded in 2014 from the previous year, but declined in 2015 (Table 1.2). The decline in imports in 2015 reflects lower prices for oil and other commodities. Other imports were boosted by the relatively strong performance of the U.S. economy. The larger decline in exports than imports triggered an increase in the trade deficit

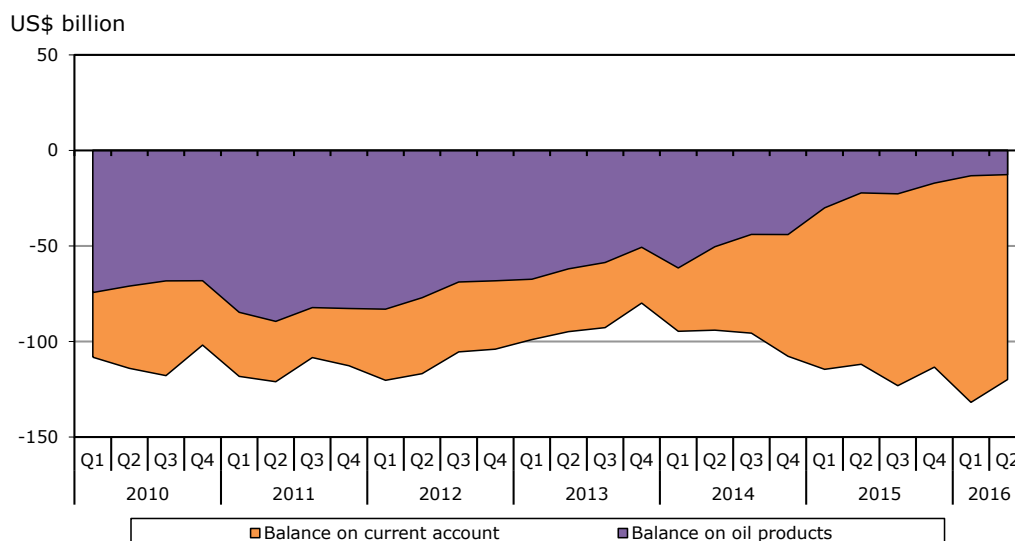
on goods in 2015, to US\$763 billion. The surplus in services increased in 2014, with exports growing faster than imports, and remained relatively stable in 2015.

1.26. The primary income balance remained in surplus in 2014 and 2015. However, the surplus declined somewhat in 2015, as income receipts fell and income payments rose slightly. The surplus largely reflects higher earnings on U.S. direct investment abroad relative to foreign earnings on direct investment in the United States. The secondary income balance was in deficit both in 2014 and 2015.

1.27. The deficit in the financial accounts declined in both 2014 and 2015 with respect to previous years. Net borrowing from financial-account transactions fell from US\$287 million in 2014 to US\$195 million in 2015. This reflects a sharp decline in both net U.S. acquisition of assets and U.S. incurrence of liabilities, although the decline in liabilities was somewhat larger.

1.28. Chart 1.3 shows the time trajectory followed by the U.S. current account balance in the last 10 years. It shows that the deficit shrank considerably between 2006 and 2009, stabilized until 2012 and 2013 (when it was about 2% of GDP), before deteriorating in 2014 and 2015, despite a reduction in the oil trade deficit (Chart 1.4). This reflects mainly an increasing merchandise trade deficit and a weakening income surplus. In addition, growth in the services trade surplus decelerated between 2014 and 2015.

**Chart 1.4 U.S. current account and oil products trade, 2010-16**



Source: Bureau of Economic Analysis online information. Viewed at: <http://www.bea.gov>.

## 1.2 Developments in Trade and Investment<sup>21</sup>

### 1.2.1 Merchandise trade

1.29. Despite the upturn in the economy, import performance has been somewhat erratic since 2012, with imports growing in 2012 and 2014 and declining in 2013 and 2015. Exports, on the other hand, grew steadily between 2012 and 2014, before declining in 2015 to below 2012 levels.

1.30. U.S. exports are highly diversified, and are dominated by machinery, vehicles, chemicals, and refined petroleum products. Except for petroleum products, whose share in total exports, according to Comtrade data, dropped from 9.6% to 7.1% between 2014 and 2015, the relative distribution of exports, remained broadly unchanged during the review period (Chart 1.5 and Table A1.1).

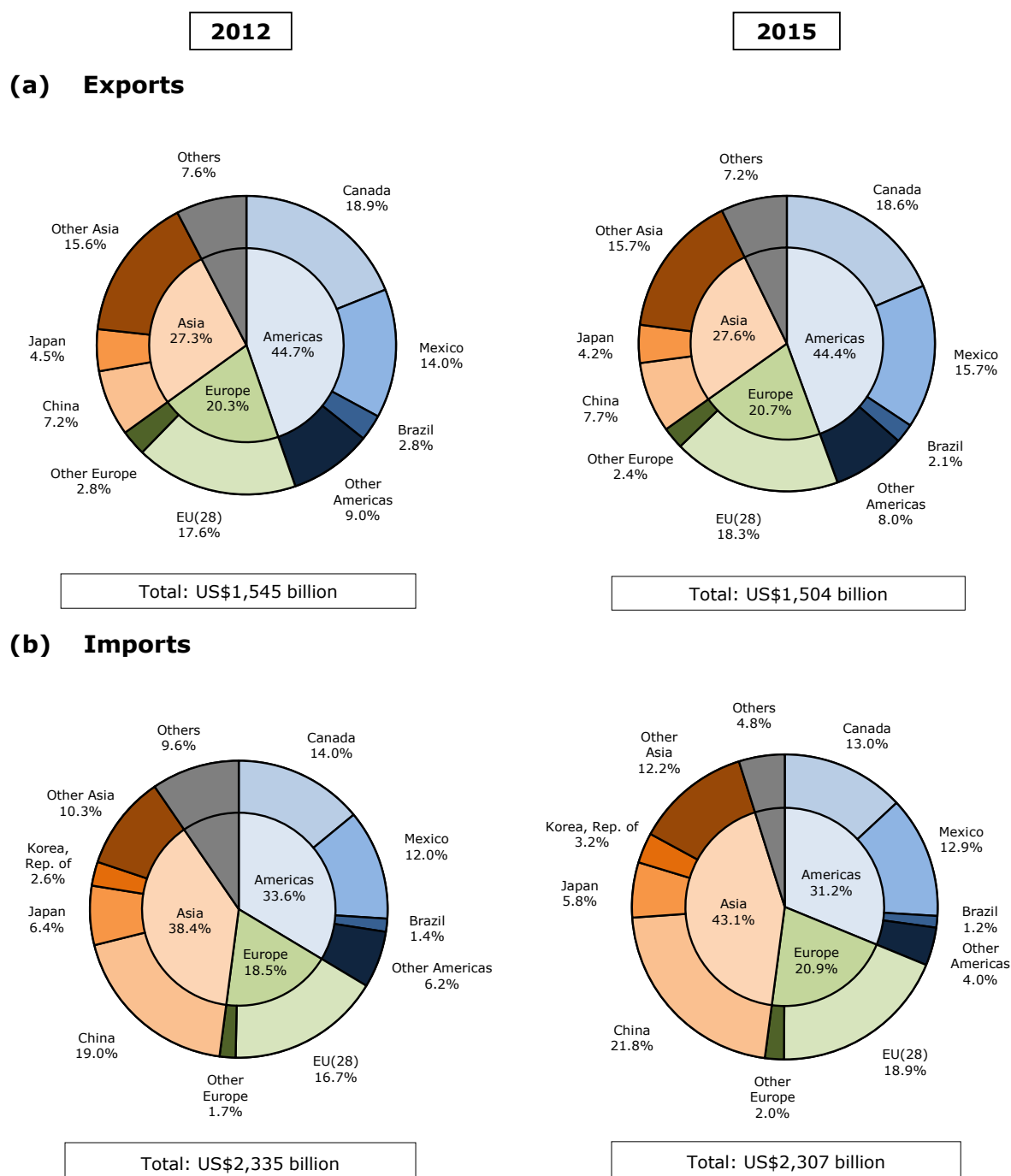
<sup>21</sup> This section uses information provided by UNSD's Comtrade database.

**Chart 1.5 Merchandise trade, by main HS Sections, 2012 and 2015**

Source: UNSD, Comtrade database.

1.31. The United States continues to export primarily to its traditional markets, led by Canada, the EU, and Mexico. Between 2012 and 2015, the share of the EU increased by 0.7 percentage points, while the combined relative market share of Mexico and Canada decreased roughly in the same range (Chart 1.6 and Table A1.3).

1.32. Imports are as diversified as exports. In addition, similarly to exports, the composition is dominated by manufactured products, which make up some 70% of the total. Machinery, transport equipment, and fuels constitute the main imported products (Chart 1.5 and Table A1.2). The relative importance of oil imports declined sharply between 2014 and 2015, a trend that started in 2012, reflecting falling global oil prices, together with substantial increases in domestic production.

**Chart 1.6 Merchandise trade, by main destinations and origins, 2012 and 2015**

Source: UNSD, Comtrade database.

1.33. China, the EU, and Canada, the largest suppliers of goods to the U.S. market, continue to consolidate their top importers status, and this trend has been steady since the previous review, concomitantly with the declining shares of the Middle East oil-producing countries (Chart 1.6 and Table A1.4).

### 1.2.2 Trade in services

1.34. The United States is the world's largest single-country cross-border exporter and importer of commercial services. Its trade surplus growth slightly weakened between 2014 and 2015. Contraction in exports of transport services, as well as charges for the use of intellectual property



has somewhat played a part in this (Table A1.5). Furthermore, faster growing services imports added to the weaker growth in the services trade surplus (Table 1.1).

1.35. Cross-border services trade categories consist mainly of transport, travel, and finance and insurance (Tables A1.5 and A1.6). The U.S. trade balance continues to be negative in transport, communication, and computer and information services.

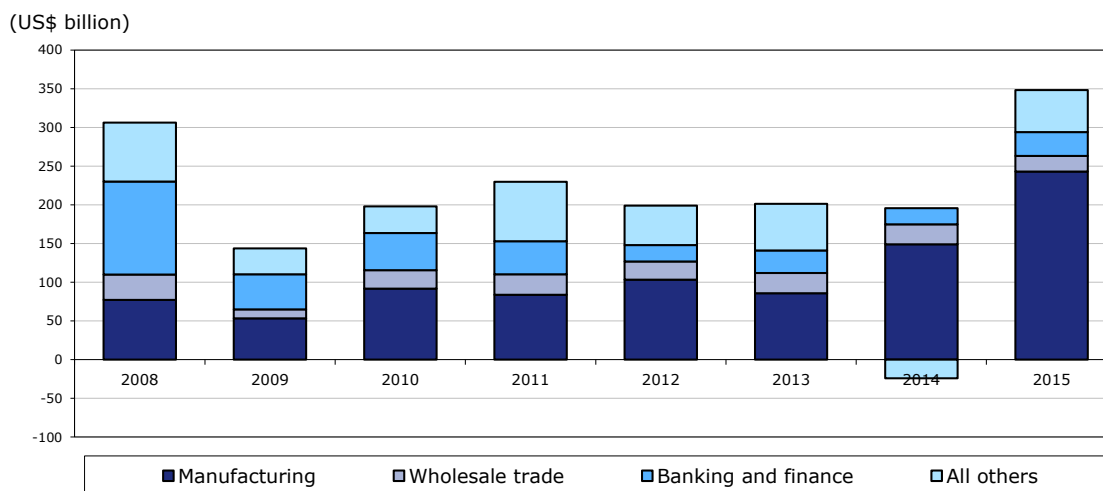
1.36. The EU is the top trade partner for U.S. commercial services (accounting for 30% of total U.S. commercial services exports in 2015, and 35% of total imports). Canada, Japan, China, Switzerland, and Mexico are also important services trade partners for the United States (Tables A1.7 and A1.8).

### 1.3 Foreign Direct Investment

1.37. The United States is the largest single destination for cumulative foreign direct investment (FDI) stock in the world, with an inbound direct investment position of US\$3.1 trillion in 2015.<sup>22</sup> Multiple factors – including a favourable business environment, a large domestic market, a prominent innovative economy, strong protection of intellectual property, and a flexible, productive and skilled workforce – attract investment to the United States. FDI includes the establishment by foreign firms of new operations, the purchase of existing operations of another company, or the provision of additional capital to existing U.S. operations.<sup>23</sup>

1.38. FDI inflow trends were mixed during the period under review, notably impacted by a single large megadeal in 2014. Inward investment flows fell between 2013 and 2014, largely due to one single divestment, by Vodafone (United Kingdom) of its stake in Verizon Wireless (United States) for US\$130 billion. However, in 2015, FDI inflows to the United States doubled, from US\$171.6 billion to US\$348.4 billion, putting the United States back on top as the top destination for new FDI.<sup>24</sup> Looking at the past decade of attraction of global FDI inflows, the United States has been the top destination in nine out of the past ten years. On a sectoral basis, manufacturing is the largest recipient of FDI in the United States (Chart 1.7).

**Chart 1.7 FDI into the United States, 2008-15**



Source: Bureau of Economic Analysis online information. Viewed at: <http://www.bea.gov>.

1.39. Collectively, the EU remains by far the largest investor into the United States, although its relative share decreased slightly between 2012 and 2015 as FDI inflows from other markets grew at a faster pace (Chart 1.8). Japan and Canada also hold large shares of FDI stock in the United States; their contributions rose during the review period.

<sup>22</sup> BEA online information. Viewed at: <http://www.bea.gov/international/di1fdibal.htm>.

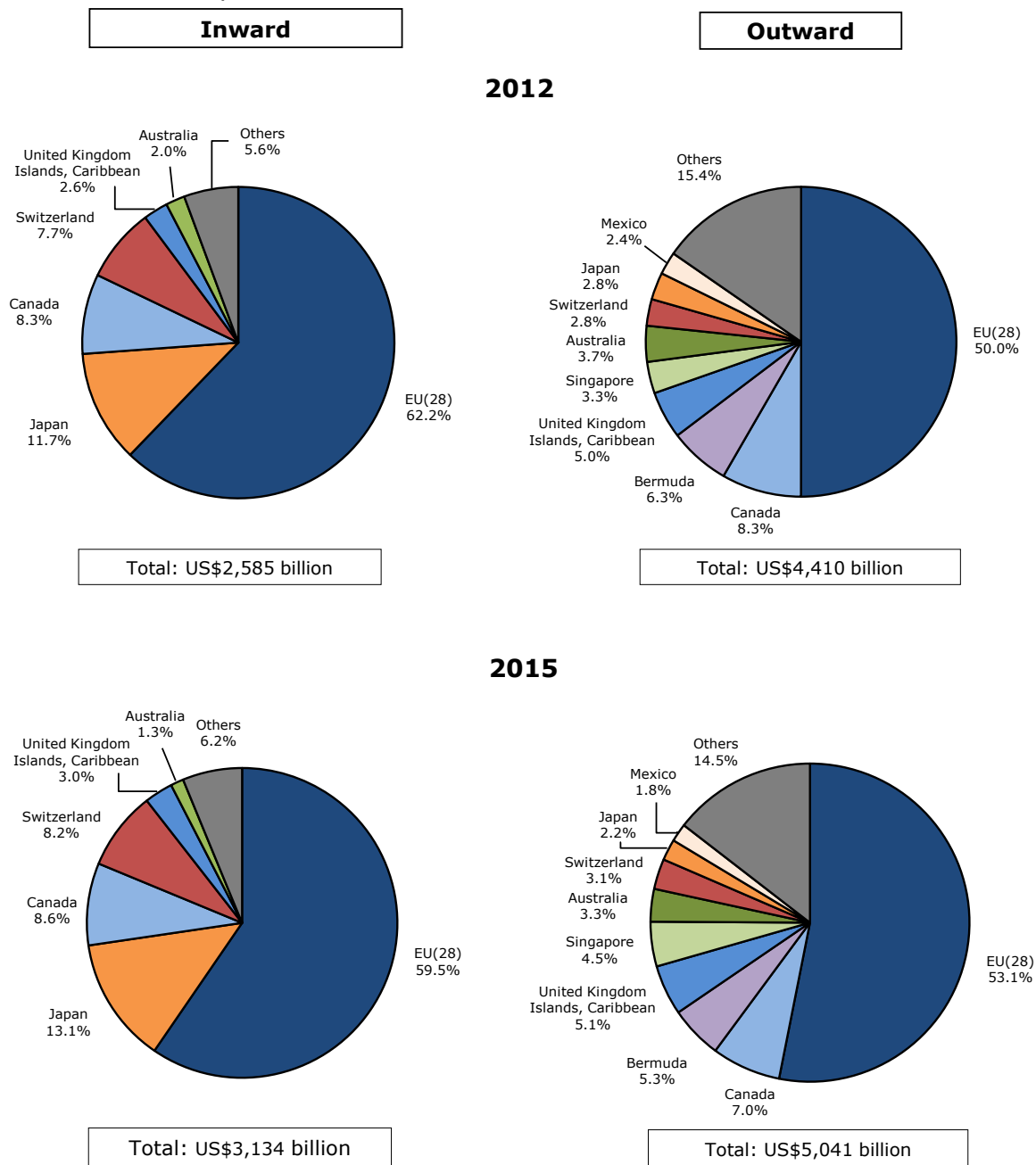
<sup>23</sup> Foreign direct investment in the United States (inward direct investment) is defined as ownership by a foreign investor of at least 10% of a U.S. business. BEA online information. Viewed at: <http://www.bea.gov/iTable/iTable.cfm?ReqID=2&step=1#reqid=2&step=1&isuri=1>.

<sup>24</sup> BEA online information. Viewed at: <http://www.bea.gov/international/di1fdibal.htm>.



**Chart 1.8 Direct investment position on a historical-cost basis, by selected partners, 2012 and 2015**

(% of total investment)



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

1.40. During the review period, the United States consolidated its position as the top global investor, as outbound direct investment grew to US\$5 trillion in 2015 up from US\$4.4 trillion in 2012. The EU remained the top destination for U.S. investment, receiving more than half of total investments abroad (Chart 1.8).<sup>25</sup>

1.41. Services supplied by U.S. affiliates established abroad, totalled US\$1.32 trillion in 2013, the last year for which information is available (Table A1.9).<sup>26</sup> The main destinations were the EU(28)

<sup>25</sup> BEA online information. Viewed at: <http://www.bea.gov/international/di1fdibal.htm>.

<sup>26</sup> Although not considered exactly FDI, services supplied by affiliates are directly related to it, since affiliates are a product of FDI.

countries, with 42.3% of the total, followed by Canada, Japan, Switzerland and Singapore. Services supplied by foreign affiliates in the United States, totalled US\$867.7 billion in 2013. The main providers were the EU(28) with 52% of the total, followed by Japan, Canada, Switzerland and Australia (Table A1.10).

#### 1.4 Outlook

1.42. Real GDP is expected to grow in 2016 and 2017 at a pace close to the current level, but would slow in 2018 to an annual rate of 2%. Supportive labour market conditions, improved business and household balance sheets, and monetary policy that is expected to remain accommodative would contribute to this moderate growth.<sup>27</sup>

1.43. Due to a number of factors, including the recent pickup in wage growth, inflation is set to increase in 2016, and is expected to rise further in 2017, before reaching a rate close to the Federal Reserve's 2% inflation goal in 2018. However, this forecast is subject to risks such as recent declines in energy prices, and an appreciating dollar.<sup>28</sup>

1.44. The IMF forecasts GDP growth rates of 2.2% and 2.5% in 2016 and 2017. This performance is expected to be supported by improvement on various fronts. These include the continued strengthening of household disposable income and balance sheets, recovering housing prices, and increasing residential investment, which are expected to contribute to household wealth gains. Among global downside risks that may affect this outlook, the IMF cites a further appreciation of the U.S. dollar, a decline in commodity prices, and a sudden rise in global risk aversion.<sup>29</sup>

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<sup>27</sup> Federal Reserve online information. Viewed at <https://www.federalreserve.gov/monetarypolicy/fomcproptabl20160316.htm>.

<sup>28</sup> Federal Reserve (2016), *Monetary Policy Report*, 10 February. Viewed at [http://www.federalreserve.gov/monetarypolicy/files/20160210\\_mprfullreport.pdf](http://www.federalreserve.gov/monetarypolicy/files/20160210_mprfullreport.pdf).

<sup>29</sup> IMF (2016), *United States 2016 Article IV Consultation*, Country Report No. 16/226. Viewed at: <http://www.imf.org/external/pubs/ft/scr/2016/cr16226.pdf>.

## 2 TRADE AND INVESTMENT REGIME

### 2.1 General Framework

2.1. There have been no major changes in the general institutional and legal framework affecting trade policy formulation and implementation in the United States since its last Trade Policy Review in 2014. Under the U.S. Constitution, Congress has the authority to regulate international trade by setting and collecting taxes, duties, imposts and excises, while the Executive branch under the President has the authority to negotiate and conclude international agreements.<sup>1</sup> Trade legislation is enacted in the same manner as other laws, i.e. through passage by both Houses of Congress and approval by the President.

2.2. In the United States, international trade agreements are generally considered congressional-executive agreements requiring approval by majority vote in each House of Congress.<sup>2</sup> To implement the international obligations arising from a trade agreement, an implementing bill for the agreement must be submitted to Congress and enacted into law. An implementing bill contains, *inter alia*, a provision approving the trade agreement, and provisions "necessary or appropriate to implement such trade agreement or agreements (...) either repealing or amending existing laws or providing new statutory authority".<sup>3</sup>

2.3. Trade Promotion Authority (TPA) is a legislative procedure enacted by Congress through which Congress defines U.S. negotiating objectives and establishes consultation and notification requirements for the President to follow during trade negotiations. Where specific conditions have been met, legislation to implement a trade agreement would be subject to agreed-upon procedures for consideration by Congress. Under these procedures, implementing legislation would not be subject to amendment, and would be guaranteed a vote in both the House of Representatives and the Senate by date certain.

2.4. The TPA granted to the Executive in 2002 expired on 1 July 2007, however it remained in effect for agreements that had been entered into before its expiration (the United States-Colombia Trade Promotion Agreement, the Free Trade Agreement between the United States of America and the Republic of Korea, and the Panama-U.S. Trade Promotion Agreement until their passage in October 2011). The Bipartisan Congressional Trade Priority Act of 2015 (Title I of Public Law (PL) 114-26), enacted on 29 June 2015, grants TPA to the Executive for trade agreements entered into before 1 July 2018. This authority may be extended to implementing bills submitted with respect to trade agreements entered into after 30 June 2018, and before 1 July 2021, if the President requests such extension and neither House of Congress adopts an extension disapproval resolution before 1 July 2018.

2.5. Under the U.S. federal structure of government, state governments have considerable independent regulatory authority. Most public procurement and some services sectors, such as banking, insurance and professional services, are regulated at the state level. States may also adopt technical regulations and sanitary and phytosanitary measures.

### 2.2 Trade Policy Objectives and Trade Policy Formulation

#### 2.2.1 Trade policy objectives

2.6. As stated in the President's 2016 Trade Policy Agenda, U.S. trade policy seeks to "promote growth, support well-paying jobs, and strengthen the middle class", with the intention to position the United States as "the world's production platform". In order to achieve these objectives, the United States is actively engaged in negotiations within the WTO framework (e.g. towards an Environmental Goods Agreement (EGA)), as well as in regional or plurilateral settings (e.g. towards the Transatlantic Trade and Investment Partnership (T-TIP) and the Trade in Services Agreement (TiSA)).

<sup>1</sup> The Constitution of the United States of America, Article I Section 8 and Article II, Section 2.

<sup>2</sup> On the other hand, a treaty requires approval by two-thirds of the Senate. A non-self-executing treaty requires implementing legislation in order to become effective in the United States.

<sup>3</sup> Smith J.M., D.T. Shedd, and B.J. Murrill (2013), *Why Certain Trade Agreements are Approved as Congressional-Executive Agreements Rather Than Treaties*, Congressional Research Service Report. Viewed at: <https://www.fas.org/sqp/crs/misc/97-896.pdf>.

2.7. The trade negotiating objectives of the United States are defined under the 2015 Trade Promotion Authority (Box 2.1). Among the specific negotiating objectives, the 2015 TPA lists four new issues, namely: state-owned and state-controlled enterprises (SOEs); localization barriers to trade; currency; and good governance, transparency, the effective operation of local regimes and the rule of law of trading partners.

### Box 2.1 Trade negotiating objectives, 2015 TPA

Thirteen trade negotiating objectives of the United States are defined in the 2015 Trade Promotion Authority:

- i. to obtain more open, equitable, and reciprocal market access;
- ii. to obtain the reduction or elimination of barriers and distortions that are directly related to trade and investment and that decrease market opportunities for U.S. exports or otherwise distort U.S. trade;
- iii. to further strengthen the system of international trade and investment disciplines and procedures, including dispute settlement;
- iv. to foster economic growth, raise living standards, enhance the competitiveness of the United States, promote full employment in the United States, and enhance the global economy;
- v. to ensure that trade and environmental policies are mutually supportive and to seek to protect and preserve the environment and enhance the international means of doing so, while optimizing the use of the world's resources;
- vi. to promote respect for worker rights and the rights of children consistent with core labour standards of the ILO (as set out in Section 111(7)) and an understanding of the relationship between trade and worker rights;
- vii. to seek provisions in trade agreements under which parties to those agreements ensure that they do not weaken or reduce the protections afforded in domestic environmental and labour laws as an encouragement for trade;
- viii. to ensure that trade agreements afford small businesses equal access to international markets, equitable trade benefits, and expanded export market opportunities, and provide for the reduction or elimination of trade and investment barriers that disproportionately impact small businesses;
- ix. to promote universal ratification of and full compliance with ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;
- x. to ensure that trade agreements reflect and facilitate the increasingly interrelated, multi-sectoral nature of trade and investment activity;
- xi. to recognize the growing significance of the Internet as a trading platform in international commerce;
- xii. to take into account other legitimate United States domestic objectives, including, but not limited to, the protection of legitimate health or safety, essential security, and consumer interests, and the law and regulations related thereto; and
- xiii. to take into account conditions relating to religious freedom of any party to negotiations for a trade agreement with the United States.

Source: WTO Secretariat, based on the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (PL 114-26, Title I, Section 102). Viewed at: <https://www.congress.gov/114/plaws/publ26/PLAW-114publ26.pdf>.

2.8. The 2015 TPA updates other specific negotiating objectives from earlier TPAs. Electronic commerce becomes digital trade in goods and services and cross-border data flows. On trade in goods, new language was added to take into account and encourage the utilization of global value chains. Regarding trade in services, the specific negotiating objective calls for liberalization through all means, including a plurilateral agreement. In the agriculture sector, the United States aims at establishing additional disciplines on the use of SPS measures and geographical indications (GIs).<sup>4</sup> The 2015 TPA also covers transparency in the use of tariff-rate quotas (TRQs).

### 2.2.2 Trade policy formulation

2.9. The mechanism for trade policy formulation in the United States remains largely unchanged. The 2015 TPA enhances transparency by expanding the scope of notification and consultation requirements for proposed negotiations.

2.10. In Congress, the House Committee on Ways and Means and the Senate Finance Committee are the leading committees with respect to the formulation of trade policies, working together with other committees that may have jurisdiction over laws affecting trade. The 2015 TPA foresees the replacement of the Congressional Oversight Group (COG) with the Congressional Advisory Groups on Negotiations (CAGs).<sup>5</sup> CAGs include a House Advisory Group on Negotiations (HAG), chaired by

<sup>4</sup> The United States considers improper use of SPS measures and GIs to be impediments to its exports.

<sup>5</sup> PL 114-26 Title I, Section 104. Viewed at: <https://www.congress.gov/114/plaws/publ26/PLAW-114publ26.pdf>. The Congressional Oversight Group (COG) was established in 2002 by the Trade Act of 2002 as a bipartisan coordinating group to oversee trade policies in Congress.

the Ways and Means Committee, and a Senate Advisory Group on Negotiations (SAG), chaired by the Finance Committee.

2.11. The Office of the United States Trade Representative (USTR) is the Executive Branch's main agency on trade policy matters. USTR is headed by the United States Trade Representative, who is the President's chief advisor, negotiator and spokesperson on trade issues.<sup>6</sup> USTR is responsible for developing and coordinating U.S. international trade, commodity, and direct investment policy, and for overseeing negotiations with other countries.<sup>7</sup>

2.12. Consultations between executive agencies on trade policy matters take place through the Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC). The TPRG and the TPSC are both administered and chaired by the USTR, and composed of 21 federal agencies and offices including the Departments of Agriculture, Commerce, Labour, State, and the Treasury.<sup>8</sup> The TPSC is the primary avenue of interagency coordination, with more than 90 subcommittees supporting its functions in specialized areas and on particular issues. Should the TPSC be unable to reach an agreement or if a policy question is considered of great significance, the TPRG (at the Deputy USTR/Under Secretary level) will take over the issue. The National Economic Council (NEC), chaired by the President, is the top tier of the interagency trade policy coordination mechanism. The NEC considers memoranda from the TPRG as well as other important or possibly controversial trade-related issues.

2.13. A trade advisory committee system channels input from U.S. public and private sector interests on trade policy and trade negotiating objectives.<sup>9</sup> Advisory committee members represent the full span of interests including: manufacturing; agriculture; digital trade; intellectual property; services; small businesses; labour; environmental, consumer, and public health organizations; and state and local government. The system includes three tiers: (i) the President's Advisory Committee for Trade Policy and Negotiations (ACTPN); (ii) five policy advisory committees covering policy issues concerning agriculture, Africa, state and local government, labour, and environment; and (iii) 22 technical and sectoral advisory committees organized by two areas (i.e. agriculture and industry) (Table A2.1). The trade advisory committees provide information and advice on U.S. negotiating objectives, the operation of trade agreements, and other matters arising in connection with the development, implementation, and administration of U.S. trade policy. Each advisory committee is required to produce a report at the conclusion of negotiations for each trade agreement, and the reports are made available to the public on the USTR website.

2.14. Workers, firms and farmers adversely affected by trade are eligible for benefits under the Trade Adjustment Assistance (TAA) Program. The TAA was reauthorized for a six-year period by the Trade Adjustment Assistance Reauthorization Act of 2015 (Title IV of PL 114-27, 29 June 2015), and entered into force in June 2015. The reauthorized TAA Program for workers was expanded, *inter alia*, to include service-sector workers and workers whose jobs were adversely affected by trade with non-FTA partners of the United States (section 3.3.2). TAA expenditures could potentially total around US\$3.2 billion from 2015 through 2021, based on 2015 expenditures which were US\$507 million for workers and US\$20 million for firms.

## 2.3 Trade Agreements and Arrangements

### 2.3.1 WTO

2.15. The United States has a steadfast commitment to the multilateral trading system, and endeavours to "continue to take a leadership role at the WTO, working to ensure that trade makes a powerful contribution in expanding the global economy".<sup>10</sup> The United States views the Nairobi

<sup>6</sup> USTR online information, "Mission of the USTR". Viewed at: <https://ustr.gov/about-us/about-ustr>.

<sup>7</sup> USTR online information, "Mission of the USTR". Viewed at: <https://ustr.gov/about-us/about-ustr>.

<sup>8</sup> USTR online information, "Executive Branch Agencies on the Trade Policy Staff Committee and the Trade Policy Review Group". Viewed at: <https://ustr.gov/about-us/executive-branch-agencies-trade-policy-staff-committee-and-trade-policy-review-group>.

<sup>9</sup> The trade advisory committee system was established by Congress under the Trade Act of 1974.

<sup>10</sup> USTR (2016), *The President's 2016 Trade Policy Agenda and 2015 Annual Report on the Trade Agreements Program*, Chapter II. Viewed at: <https://ustr.gov/sites/default/files/files/reports/2016/AP/2016%20AR%20Chapter%202.pdf>.

Ministerial Conference as a "turning point for the WTO", and, going forward, it "expects to work with other ready WTO Members to identify specific opportunities to negotiate meaningful agreements in the WTO in an effort to move beyond the Doha Development Agenda".<sup>11</sup> The United States attaches great importance to sustaining and enhancing the WTO's critical role in transparency, including monitoring.

2.16. The United States is an original Member of the WTO. It is a contracting party to the Agreement on Government Procurement (GPA), a participant in the expanded Information Technology Agreement (ITA), and a signatory to the Agreement on Trade in Civil Aircraft. The United States deposited its instrument of acceptance of the Trade Facilitation Agreement (TFA) to the WTO in January 2015.<sup>12</sup> The trade policies of the United States have been reviewed 12 times; the last TPR took place in 2014.

2.17. The United States submitted numerous notifications during the period under review, covering, *inter alia*, agriculture, trade remedies, and technical regulations. It has also provided a number of supplements and addenda, providing further information on previously notified measures (Table A2.2).

2.18. During the review period, the United States was involved in five new dispute settlement cases as a respondent, and in two new cases as a complainant, under the WTO Dispute Settlement Mechanism (Table A2.3). In addition, the United States was a third party in seven new cases.

### 2.3.2 Preferential agreements

#### 2.3.2.1 Reciprocal agreements

2.19. The United States maintains free trade agreements (FTAs) with 20 countries; all agreements (except the U.S.-Israel FTA) cover both goods and services (Table 2.1). All U.S. FTAs have been notified to and considered in the WTO Committee on Regional Trade Agreements.

**Table 2.1 Free trade agreements in force, July 2016**

RTA name	Coverage	Date of entry into force	Date of notification
US – Israel	Goods	19-Aug-85	13-Sep-85
North American Free Trade Agreement (NAFTA)	Goods & services	01-Jan-94	29-Jan-93(goods) 01-Mar-95(services)
US – Jordan	Goods & services	17-Dec-01	15-Jan-02
US – Chile	Goods & services	01-Jan-04	16-Dec-03
US – Singapore	Goods & services	01-Jan-04	17-Dec-03
US – Australia	Goods & services	01-Jan-05	22-Dec-04
US – Morocco	Goods & services	01-Jan-06	30-Dec-05
Dominican Republic - Central America – United States Free Trade Agreement (CAFTA-DR)	Goods & services	01-Mar-06	01-Mar-06 (SLV); 01-Apr-06 (HND, NIC); 01-Jul-06 (GTM); 01-Mar-07 (DOM); 01-Jan-09 (CRI)
US – Bahrain	Goods & services	01-Aug-06	08-Sep-06
US – Oman	Goods & services	01-Jan-09	30-Jan-09
US – Peru	Goods & services	01-Feb-09	03-Feb-09
US - Korea, Rep. of	Goods & services	15-Mar-12	15-Mar-12
US – Colombia	Goods & services	15-May-12	08-May-12
US – Panama	Goods & services	31-Oct-12	29-Oct-12

Source: WTO Regional Trade Agreements Information System (RTA-IS).

2.20. The United States and 11 other parties signed the Trans-Pacific Partnership (TPP) Agreement on 4 February 2016.<sup>13</sup> The TPP Agreement has 30 chapters covering, *inter alia*, market

<sup>11</sup> USTR (2016), *The President's 2016 Trade Policy Agenda and 2015 Annual Report on the Trade Agreements Program*, Chapter II. Viewed at: <https://ustr.gov/sites/default/files/2016-AR-Compiled-FINAL.pdf>.

<sup>12</sup> WTO document, WT/LET/1029, 28 January 2015; and USTR Press Release. Viewed at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/january/united-states-takes-final-step>.

<sup>13</sup> The parties to the Trans-Pacific Partnership Agreement are Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Viet Nam.



access for goods and services, rules of origin, SPS and TBT issues, investment, government procurement, intellectual property rights, labour, and the environment. Several provisions are "new" in the sense that they have not been included in other U.S. FTAs, such as provisions on state-owned enterprises (SOEs), environmental conservation, biologic drugs, regulatory coherence, capacity-building, competitiveness, and small-and-medium-sized enterprises (SMEs).

2.21. TPP provisions on trade in goods accord transition periods for tariff reductions that differ from one participant to the other. Upon entry into force, the United States is expected to provide for immediate duty-free treatment for all partners on nearly 75% of all tariff lines, with almost all tariffs for all TPP partners phased out within 10 years. The maximum transition period for the United States is 30 years (for light trucks from Japan). TPP also provides transitional safeguards that permit a party to implement measures against one or several parties during the transition period. TPP provisions on anti-dumping, countervailing duty, SPS, and TBT measures are largely aligned with WTO rules. TPP parties do not have recourse to TPP dispute settlement if they allege a violation only of the provisions of the WTO TBT Agreement that have been incorporated into the TPP.

2.22. Trade in services is liberalized according to a negative-list approach. The e-commerce chapter contains a notable development with its extensive section on cross-border transfer of information (e.g. cloud services), and specific provisions addressing issues such as data storage location, prohibitions on cross-border data flows, and the forced sharing of software codes with Governments. Trade in services through commercial presence is primarily covered in the investment chapter.

2.23. The TPP's investment chapter is similar in many aspects to the investment chapters of other FTAs recently signed by the United States. The chapter contains provisions on national and MFN treatment, the minimum standard treatment, expropriation and compensation, and transfers. The chapter broadens the scope of prohibited investment performance requirements compared with prior U.S. FTAs, including new rules on technology localization and royalty agreements. The chapter provides for investor-State dispute settlement (ISDS), and the agreement's general State-to-State dispute settlement procedures also apply. The chapter includes significant new clarifications and safeguards designed to protect the right of Governments to regulate in the public interest and to prevent abuse of the dispute settlement process.

2.24. Negotiations between the United States and the European Union (EU) on the Trans-Atlantic Trade and Investment Partnership (T-TIP) are ongoing. The President's 2016 Trade Policy Agenda sets out TPP implementation and conclusion of the T-TIP negotiations as U.S. trade policy priorities.

### **2.3.2.2 Unilateral preferences**

2.25. The United States continues to grant unilateral preferences under the Generalized System of Preferences (GSP), the African Growth and Opportunity Act (AGOA), and the Caribbean Basin Initiative (CBI). The U.S. authorities may link these unilateral preferences to adherence to criteria they consider promote sound policies and expand trade and investment with the beneficiary countries. Congress reauthorized GSP and AGOA in June 2015 under the Trade Preferences Extension Act of 2015 (PL 114-27).<sup>14</sup>

2.26. The United States also provides duty-free treatment to goods originating in U.S. insular possessions, freely associated states, and the West Bank and Gaza Strip (including qualified industrial zones). There have been no changes in these arrangements since the last TPR in 2014.

2.27. The Andean Trade Promotion and Drug Eradication Act (ATPDEA) expired on 31 July 2013.<sup>15</sup> Ecuador, which was the remaining beneficiary under the ATPDEA continues to receive preferential treatment under the GSP (see below).

<sup>14</sup> More specifically, Title I of the Act, known as the Extension of African Growth and Opportunity Act, extended the preferences for AGOA, while Title II, the Extension of Generalized System of Preferences Act, extended the GSP. See: <https://www.congress.gov/114/plaws/publ27/PLAW-114publ27.pdf>.

<sup>15</sup> U.S. International Trade Administration online information. Viewed at: <http://web.ita.doc.gov/tacqi/eamain.nsf/6e1600e39721316c852570ab0056f719/53018ab5e2d8426a852573940049684c?OpenDocument>.

### 2.3.2.2.1 Generalized system of preference (GSP)

2.28. Under the GSP programme, the United States grants duty-free treatment to certain products originating in least developed countries (LDCs) and eligible developing countries. The GSP programme was established by the Trade Act of 1974, and requires periodical reauthorization by Congress. GSP expired on 31 July 2013, and was reauthorized retroactive to the date of expiration on 29 June 2015 by PL 114-27. The authorization is valid until 31 December 2017.<sup>16</sup> GSP currently covers 4,986 tariff lines at the 8-digit level, of which 1,490 are reserved only for least developed beneficiary developing countries; there are 122 beneficiary trading partners. Imports into the United States under the GSP scheme reached US\$17.7 billion in 2015, or 0.8% of total U.S. imports.

2.29. The GSP Subcommittee of the TPSC, chaired by USTR, is responsible for the annual review of eligible goods and countries entitled to GSP treatment. The GSP statute (19 U.S.C. 2462 (b)) lays down the criteria for being a beneficiary. The list of beneficiaries is reviewed periodically. Any person may submit a petition to the GSP Subcommittee requesting modifications to the list. Under the Active GSP Country Practice Review, preferences to Bangladesh have been suspended since 3 September 2013 pending a review of workers' rights.<sup>17</sup> A beneficiary is graduated from GSP, i.e. removed from the list of U.S. beneficiaries, when the World Bank deems the recipient to be a "high income country". Three countries, i.e. Seychelles, Uruguay, and Venezuela (Bolivarian Republic of), will cease to be GSP beneficiaries from 1 January 2017 according to the income criterion.<sup>18</sup>

2.30. The GSP Subcommittee reviews and amends the list of goods eligible for GSP treatment annually on its own initiative or following petitions. Only interested parties may submit petitions to modify the GSP product list.<sup>19</sup> During the period under review, certain cotton, cotton products and travel and luggage goods made in LDCs<sup>20</sup> have been added to the preferential list.<sup>21</sup> The 2015/16 review resulted in removal from the list of fluorescent brightening agents and PET resin originating in India.<sup>22</sup>

2.31. The GSP statute includes a "competitive need limitation" (CNL) whereby a particular product from a GSP beneficiary may no longer have preferential access once imports exceed a certain level, and hence may be considered to be competitive. The GSP statutes require termination of GSP benefits for products from specified beneficiaries if those products account for 50% or more of the value of total U.S. imports of that product, or exceed a certain dollar value, which is US\$175 million for 2016.<sup>23</sup> The CNL provisions do not apply to LDCs or to beneficiaries under the AGOA (see below). The removal from GSP eligibility of imports in excess of the CNL will proceed unless a CNL waiver is granted.<sup>24</sup> A product may be reinstated for GSP eligibility, at the discretion of the President, if imports fall again below the CNL level. Four products were reinstated following the 2014/15 product review, including oilcake and other solid residues from Ukraine and insulated ignition wiring sets from Indonesia. No products were re-designated in the 2015/16 Annual Review.

<sup>16</sup> GSP, as reauthorized by the Extension of Generalized System of Preferences Act), permits retroactive extension of GSP benefits for eligible goods having entered the U.S. between 31 July 2013 and 29 July 2015. Viewed at: <https://www.congress.gov/114/plaws/publ27/PLAW-114publ27.pdf>.

<sup>17</sup> USTR online information, "Outcomes of the 2015/2016 GSP Annual Review". Viewed at: <https://ustr.gov/sites/default/files/Outcomes-2015-2016-GSP-Annual-Review.pdf>.

<sup>18</sup> Presidential Proclamation 9333, 30 September 2015.

<sup>19</sup> An interested party is any party with a significant economic interest in the subject matter of the request, or any other party representing a significant economic interest that would be materially affected by the action requested, such as a domestic producer of a like or directly competitive article, a commercial importer or retailer of an article eligible for GSP or for which GSP eligibility is requested, or a foreign government.

<sup>20</sup> AGOA beneficiaries are also accorded preferences for such travel and luggage goods.

<sup>21</sup> USTR online information, "Results of the 2014/2015 GSP Limited Product Review" and "Outcomes of the 2015/2016 GSP Annual Review". Viewed at: <https://ustr.gov/sites/default/files/Results-of-the-2014-2015-GSP-Limited-Product-Review.pdf>, and <https://ustr.gov/sites/default/files/Outcomes-2015-2016-GSP-Annual-Review.pdf>.

<sup>22</sup> USTR online information, "Outcomes of the 2015/2016 GSP Annual Review". Viewed at: <https://ustr.gov/sites/default/files/Outcomes-2015-2016-GSP-Annual-Review.pdf>.

<sup>23</sup> The dollar-value limit is increased by US\$5 million each year.

<sup>24</sup> Interested parties anticipating increased imports may submit petitions to the GSP Subcommittee for a CNL waiver to maintain GSP preferences. CNL waivers, of which there are three types (petitioned, 504(d), and *de minimis*), must be sought before imports reach the trigger level.



2.32. The rules of origin under the U.S. GSP programme remain unchanged since the last TPR. Products must contain at least 35% value added in the beneficiary countries, and imported inputs in eligible products must undergo double substantial transformation. Countries belonging to a GSP-eligible regional association may request the cumulation of value added. The U.S. GSP programme recognizes six regional associations at present, namely the Andean Group, ASEAN<sup>25</sup>, CARICOM, SAARC, SADC, and WAEMU. GSP eligible goods must satisfy a "direct import" requirement to maintain preferences.

2.33. India, Thailand, Brazil, Indonesia, and the Philippines were the leading exporters to the United States under the GSP programme in 2015. The main GSP items (by import value) were motor vehicle parts, ferroalloys, monumental or building stone, precious metal jewellery, and electric motors and generators.<sup>26</sup>

#### **2.3.2.2.2 African Growth and Opportunity Act (AGOA)**

2.34. The United States continues to provide duty-free, quota-free preferences to eligible sub-Saharan African countries under AGOA. AGOA was renewed on 29 June 2015 and is authorized until 30 September 2025.<sup>27</sup> The renewed AGOA provides additional tools to support compliance with the AGOA eligibility criteria, including by providing greater flexibility to withdraw, suspend, or limit benefits under the programme if it is determined that such action would be more effective than termination of AGOA eligibility. The renewed AGOA was also enhanced by promoting greater regional integration by expanding rule of origin and encouraging AGOA beneficiary countries to develop AGOA utilization strategies.

2.35. A country must be eligible for GSP treatment and meet other criteria laid down in the Act to be a qualified AGOA beneficiary.<sup>28</sup> AGOA requires the President to make an annual determination of which countries will be eligible for AGOA in the following year and therefore the list of AGOA beneficiaries is revised annually. During the period under review, The Gambia, South Sudan, and Swaziland were no longer AGOA eligible as of 1 January 2015<sup>29</sup>, and Burundi since 1 January 2016.<sup>30</sup> There are 38 AGOA beneficiary countries in 2016.<sup>31</sup>

2.36. AGOA preferences cover around 6,800 tariff lines, including all lines under the GSP scheme and more than 1,800 additional tariff lines. Notably, these additional lines include textile and apparel items. AGOA rules of origin are generally similar to GSP rules of origin. The textile provisions in AGOA apply specific apparel rules of origin.

2.37. In 2015, imports from Sub-Saharan African countries amounted to US\$9.3 billion under AGOA (and GSP) preferences. Non-oil imports from AGOA beneficiaries reached US\$4.1 billion, up from US\$1.4 billion in 2001. The leading AGOA exporters were South Africa, Angola, Chad, Nigeria, and Kenya.<sup>32</sup>

#### **2.3.2.2.3 Caribbean Basin Initiative (CBI)**

2.38. The United States provides duty-free treatment to eligible products from Caribbean countries through the Caribbean Basin Initiative (CBI). The CBI comprises, *inter alia*, the Caribbean Basin Economic Recovery Act (CBERA) and the Caribbean Basin Trade Partnership Act (CBTPA). CBERA covers 17 beneficiaries at present, of which eight are also beneficiaries under CBTPA.<sup>33</sup>

<sup>25</sup> The eligible members of ASEAN are Cambodia, Indonesia, the Philippines, and Thailand.

<sup>26</sup> USTR online information, "GSP by the Numbers". Viewed at: [https://ustr.gov/sites/default/files/GSP%20by%20the%20numbers\\_1.pdf](https://ustr.gov/sites/default/files/GSP%20by%20the%20numbers_1.pdf).

<sup>27</sup> AGOA was extended by the Trade Preferences Extension Act of 2015.

<sup>28</sup> Not all GSP beneficiary countries in Sub-Saharan Africa are eligible for AGOA. Examples include Sudan and Zimbabwe.

<sup>29</sup> USTR online press releases. Viewed at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2014/June/President-Obama-removes-Swaziland-reinstates-Madagascar-for-AGOA-Benefits>.

<sup>30</sup> The White House online information. Viewed at: <https://www.whitehouse.gov/the-press-office/2015/10/30/message-congress-notification-congress-agoa-program-change>.

<sup>31</sup> USTR (2016), *2016 Biennial Report on the Implementation of the African Growth and Opportunity Act*, Appendix 1. Viewed at: <https://ustr.gov/sites/default/files/2016-AGOA-Implementation-Report.pdf>.

<sup>32</sup> USTR (2016), *2016 Biennial Report on the Implementation of the African Growth and Opportunity Act*. Viewed at: <https://ustr.gov/sites/default/files/2016-AGOA-Implementation-Report.pdf>.

<sup>33</sup> CBI beneficiaries are: Antigua and Barbuda, Aruba, the Bahamas, Barbados, British Virgin Islands, Curaçao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia,

2.39. The Trade Preferences Extension Act of 2015 modified CBERA to extend trade preferences for Haiti granted under the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006, to 30 September 2025. CBERA has no expiry date. CBTPA entered into force on 1 October 2000, and is set to expire on 30 September 2020 at the latest.<sup>34</sup>

## 2.4 Investment regime

2.40. The foreign investment regime in the United States remained unchanged during the period under review. The regime is generally open and liberal, although some restrictions apply, primarily for prudential or national security reasons (Table 2.2). Restrictions on foreign ownership principally apply in specific areas such as: atomic energy operations; oil pipeline right of way; the mining of coal and certain minerals, or petroleum exploration; and certain fishing operations. The United States accords national treatment to foreign investment as a general rule; notable limitations include eligibility for public funding of research and development (R&D), emergency loans to agriculture, and loans, guarantees, and political risk insurance for investment.

**Table 2.2 Selected foreign investment restrictions, July 2015**

Industry/subject	Provision	References
Maritime	Restriction on the foreign ownership of U.S.-registered ships	46 U.S.C. 551
Aircraft	Restriction on foreign investment for U.S.-registered aircraft	49 U.S.C. 44101 49 U.S.C. 44102
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 <sup>a</sup>	30 U.S.C. 22 30 U.S.C. 24 30 U.S.C. 181 43 U.S.C. 1331
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 <sup>a</sup>	16 U.S.C. 797(e) 42 U.S.C. 2133(d)
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
Communications	Restrictions on foreign ownership of radio licenses	47 U.S.C. 310(a)
Banking	Regulations or restrictions on bank holding companies	12 U.S.C. 1841-1849
Investment Company Regulations	Restriction on securities in interstate commerce	15 U.S.C. 77jjj(a)(1)

a According to the authorities, this does not preclude foreign investors from obtaining mining licences through locally incorporated firms, and thus it does not present a *de facto* barrier.

Source: WTO Secretariat, based on Seitzinger (2013) *Foreign Investment in the United States: Major Federal Statutory Restrictions*.

2.41. The International Investment and Trade in Services Survey Act requires foreign direct investment (FDI) into the United States to be reported to the relevant authorities for analytical and statistical purposes. Direct investment is reported to the Bureau of Economic Analysis in the Department of Commerce, long-term portfolio investment is reported to the Treasury Department, and foreign acquisition of agricultural land is reported to the Department of Agriculture.

2.42. Foreign investment is generally not subject to review. However, the President may conduct national security reviews of "covered transactions" through the Committee on Foreign Investment in the United States (CFIUS). The term "covered transaction" is defined in the Defense Production Act of 1950 (known as the "Exon Florio" provision or "CFIUS statute"), as amended by the Foreign Investment and National Security Act of 2007 (FINSIA).<sup>35</sup> CFIUS is an interagency committee

Saint Vincent and the Grenadines, and Trinidad and Tobago. Viewed at: <https://ustr.gov/issue-areas/trade-development/preference-programs/caribbean-basin-initiative-cbi>.

<sup>34</sup> Alternatively, CBTPA expires on the date (if sooner than 30 September 2020) when a free trade agreement enters into force between the United States and the last remaining CBTPA beneficiary country.

<sup>35</sup> A "covered transaction" is "any merger, acquisition, or takeover (...) by or with any foreign person which could result in foreign control of any person engaged in interstate commerce in the United States" (50 U.S.C. App. 4565 (a)(3)). The CFIUS statute does not define the term "control." However, Treasury Department regulations define control as "the power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, board representation, proxy voting, a special share, contractual arrangements, formal or informal arrangements to act in concert, or other means, to determine, direct, or decide important matters affecting an entity (...)" (31 CFR §800.204). According to Treasury Department regulations, a transaction that results in a foreign

authorized to review the national security<sup>36</sup> aspects of transactions that could result in a foreign person gaining control of a U.S. business.<sup>37</sup> The CFIUS statute and accompanying regulations do not limit review to certain industries or types of activity. CFIUS has indicated that, as it does not wish to unnecessarily impede the flow of foreign investment, the statute is to be implemented "only insofar as necessary to protect the national security", and "in a manner fully consistent with the international obligations of the United States".<sup>38</sup>

2.43. The notification of a transaction to CFIUS is voluntary, though the Committee may also self-initiate reviews of non-notified transactions, generally within a three-year period following the completion of such transactions.<sup>39</sup> CFIUS may need up to 30 days to review a notified transaction. Should CFIUS require additional time to consider the transaction, it will be subject to an additional "investigation" period of up to 45 days.<sup>40</sup> By statute, CFIUS may negotiate, enter into or impose, and enforce any agreement or condition with any party to a covered transaction in order to mitigate any threat to the national security of the United States that arises as a result of the covered transaction. The President can block a transaction when he determines that the transaction threatens to impair the national security. According to the authorities, in practice, when an investment poses a national security risk, the United States addresses the risk as expeditiously as possible, including through targeted mitigation arrangements rather than prohibition whenever reasonably possible.

2.44. In 2013 and 2014 together, 244 notices were filed with CFIUS, and 99 transactions were subject to investigation (Table 2.3). The number of investigations and the share of them subject to mitigation measures increased slightly compared with the previous two-year period. No presidential decisions were required in 2013 or 2014.<sup>41</sup>

**Table 2.3 Covered transactions, Presidential decisions, and mitigation measures, 2011-14**

Year	Notices received	Investigations	Presidential decisions	Mitigation measures
2011	111	40	0	8
2012	114	45	1	8
2013	97	48	0	11
2014	147	51	0	9

Source: Committee on Foreign Investment in the United States (various years), *Annual Report to Congress*.

2.45. The manufacturing sector accounts for the largest share of CFIUS-covered transactions, reaching 47% of the transaction filings in 2014, followed by the finance, information, and other services sectors (26%).<sup>42</sup> China overtook the United Kingdom as the investor home country with the highest share of filings (19%) during 2012-14. Notices involving investors from Germany,

person holding 10% or less of the outstanding voting interest in a U.S. business and made solely for the purpose of passive investment is generally not subject to CFIUS review (31 CFR §800.302(b)). Examples of a "covered transaction" can be found in the CFIUS Regulations (viewed at: <https://www.treasury.gov/resource-center/international/foreign-investment/Documents/CFIUS-Final-Regulations-new.pdf>).

<sup>36</sup> The national security concept includes issues relating to "homeland security", such as "critical infrastructure" defined in the Foreign Investment and National Security Act of 2007.

<sup>37</sup> A detailed description of the history and operation of the Committee on Foreign Investment in the United States (CFIUS) may be found at: Jackson J.K. (2016), *The Committee on Foreign Investment in the United States (CFIUS)*, Congressional Research Service Report. Viewed at: <https://www.fas.org/sqp/crs/natsec/RL33388.pdf>.

<sup>38</sup> Jackson J.K. (2013), *The Exon-Florio National Security Test for Foreign Investment*, Congressional Research Service Report (quoting Briefing on the Dubai Ports World Ports Deal, Senate Armed Services Committee, 23 February 2006). Viewed at: <https://www.fas.org/sqp/crs/natsec/RL33312.pdf>.

<sup>39</sup> Although the filing of a notice is voluntary, firms generally provide such filings before consummating a covered transaction. See: Jackson J.K. (2016), *The Committee on Foreign Investment in the United States (CFIUS)*. Viewed at: <https://www.fas.org/sqp/crs/natsec/RL33388.pdf>.

<sup>40</sup> In addition, CFIUS must conduct an investigation if a covered transaction involves an acquisition by entities controlled by, or acting on behalf of, a foreign government. This requirement may be waived if senior-level officials determine that such a transaction will not impair national security.

<sup>41</sup> CFIUS (2016), *Annual Report to Congress for CY 2014*, Table I-2. Viewed at: <https://www.treasury.gov/resource-center/international/foreign-investment/Documents/Annual%20Report%20to%20Congress%20for%20CY2014.pdf>.

<sup>42</sup> CFIUS (2016), *Annual Report to Congress for CY 2014*, Table I-3. Viewed at: <https://www.treasury.gov/resource-center/international/foreign-investment/Documents/Annual%20Report%20to%20Congress%20for%20CY2014.pdf>.

Israel, the Netherlands, Korea (Rep. of), Switzerland, and the United Kingdom rose sharply from 2013 to 2014 (Table 2.4). According to CFIUS, transactions notified between 2012 and 2014 involving China, Japan, and the United Kingdom were distributed relatively evenly across sectors, whereas notifications involving French, German, Israeli, and Swiss investors were heavily concentrated in manufacturing.

**Table 2.4 Covered transactions, by country, 2012-14**

Country	2012	2013	2014	Total
<b>Total, of which</b>	<b>114</b>	<b>97</b>	<b>147</b>	<b>358</b>
China	23	21	24	68
UK	17	7	21	45
Canada	13	12	15	40
Japan	9	18	10	37
France	8	7	6	21
Germany	4	4	9	17
Netherlands	6	1	8	15
Switzerland	5	3	7	15
Singapore	2	3	6	11
Korea, Rep. of	2	1	7	10
Israel	4	1	5	10

Source: Committee on Foreign Investment in the United States (2014), *Annual Report to Congress*.

2.46. The United States has a system of international investment agreements built on trade and investment framework agreements (TIFAs), bilateral investment treaties (BITs), and free trade agreements with investment chapters. According to the authorities, trade and investment framework agreements (TIFAs) are generally the first step in establishing stronger trade and investment links with a country. TIFAs contain details regarding consultation procedures and cooperation between the United States and its partners on a broad range of issues, including market access, labour, and the environment. The United States currently has 55 TIFAs in force.<sup>43</sup>

2.47. BITs, which are negotiated following a model framework, have been at the core of U.S. reciprocal binding agreements on investment for many years. The current U.S. model BIT, implemented since 2012, contains provisions on national and MFN treatment, minimum standard of treatment, expropriation, transfers, and performance requirements. It also contains sections on investor-State and State-to-State dispute settlement. The United States has 41 BITs in force.<sup>44</sup>

2.48. SelectUSA is the primary programme of the U.S. Federal Government to promote inward investment in the United States. Created in 2011, SelectUSA is housed in the International Trade Administration under the Department of Commerce. The programme provides services to two stakeholders: foreign-owned firms considering investing in the United States and U.S. economic development organizations (EDOs) seeking to attract high-impact FDI. Assistance provided through SelectUSA services includes information, counselling and advisory services, ombudsman assistance, investment advocacy, outreach, and investment missions (section 3.3.1). SelectUSA informs prospective investors and U.S. EDOs about available federal government programmes, resources, and services.

<sup>43</sup> USTR online information, "Trade & Investment Framework Agreements". Viewed at: <https://ustr.gov/trade-agreements/trade-investment-framework-agreements>.

<sup>44</sup> UNCTAD online information, "Investment Policy Hub". Viewed at: <http://investmentpolicyhub.unctad.org/IIA/CountryBits/223#iiaInnerMenu>.

### 3 TRADE POLICIES AND PRACTICES BY MEASURE

#### 3.1 Measures Directly Affecting Imports

##### 3.1.1 Customs procedures and requirements

3.1. Since 1993, following the passage of the Customs Modernization Act (PL 103-182), the United States has gradually been moving from import controls as a government duty towards compliance with customs rules as a responsibility shared with traders. With increasing volumes of international trade, trade processing is shifting from the clearance of individual transactions to processing by account and industry at the pre-entry, entry, and post-entry stages.

3.2. The U.S. Customs and Border Protection (CBP), as part of the Department of Homeland Security (DHS), was created in 2003 by merging the legacy organizations of the U.S. Customs Service with other services overseeing the cross-border movement of goods and travellers.<sup>1</sup> However, even with an enlarged CBP, some 30 federal agencies continue to play a role in trade enforcement activities. Thus, the Border Interagency Executive Council (BIEC)<sup>2</sup> was established formally in February 2014 to provide strategic leadership and policy guidance as the deadline for completion of the single-window International Trade Data System (ITDS) is nearing (31 December 2016).<sup>3</sup>

3.3. The Trade Facilitation and Trade Enforcement Act of 2015 (PL 114-125) was signed into law on 24 February 2016. Among its provisions, the law requires the U.S. Treasury and the Department of Homeland Security to establish a Commercial Customs Operations Advisory Committee (COAC) to provide advice on any matter, including recommended improvements, involving the commercial operations of CBP.<sup>4</sup> Centers of Excellence and Expertise (CEEs) are to be developed throughout CBP to ensure consistent and improved enforcement of laws and regulations at all ports of entry.<sup>5</sup> The Government Accountability Office (GAO) is expected to present a report to Congress no later than 31 December 2017 on the implementation of the Automated Commercial Environment (ACE), including cost savings and potential benefits to trade enforcement.

3.4. The United States deposited its instrument of acceptance of the Protocol of Amendment of the WTO Agreement, inserting the Agreement on Trade Facilitation (TFA) into its Annex 1A, on 23 January 2015. As a developed country Member, the United States is bound by all the commitments contained in the TFA upon the entry into force of the Agreement.

##### 3.1.1.1 Trade facilitation measures

###### 3.1.1.1.1 Single window

3.5. Work towards a single-window application commenced as early as 1984 with the development of an Automated Commercial System (ACS) to track, control and process goods entering the United States. In 2001, the Automated Commercial Environment (ACE) was devised as a means to enhance border security while simultaneously facilitating trade.

3.6. In February 2014, the President's Executive Order 13659 on "Streamlining the Export/Import Process for America's Businesses" mandated the completion of the single-window International Trade Data System (ITDS) by 31 December 2016. The Executive Order also established the Border

<sup>1</sup> The CBP encompasses, for example the Air and Marine Operations Division of U.S. Immigration and Customs Enforcement, the U.S. Border Patrol, the Immigrations Inspection Program, and the U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT).

<sup>2</sup> BIEC includes executives, representatives and staff of: the Departments of Agriculture, Commerce, Defense, Health and Human Services, Interior, Justice, State, Transportation and Treasury; the National Security Council; the National Economic Council; the Office of Management and Budget; and the United States Trade Representative.

<sup>3</sup> Executive Order 13659 – Streamlining the Export/Import Process for America's Businesses, 19 February 2014.

<sup>4</sup> COAC consists of 20 appointed individuals from the private sector. Upon establishment of COAC, CBP simultaneously announced the termination of its Advisory Committee on Commercial Operations (81 FR 18865).

<sup>5</sup> CBP launched two CEE pilots in November 2010. At present, 10 CEEs are fully operational (viewed at: [http://www.cbp.gov/sites/default/files/documents/cee\\_map\\_1.pdf](http://www.cbp.gov/sites/default/files/documents/cee_map_1.pdf)).



Interagency Executive Council (BIEC) to develop policies and processes to enhance coordination among border management authorities, including those charged with customs, transportation security, health and safety, sanitary and phytosanitary controls, conservation, and trade. The senior-level members of BIEC have been overseeing agency-level work in three committees dedicated to risk management, process coordination, and external engagement.

3.7. By the end of 2016, the fully developed ITDS should allow businesses to use ACE to enter electronically all data required by CBP and its 47 Partner Government Agencies (PGAs) to determine the admissibility of import and export cargo.<sup>6</sup> The ACE portal will become the central online access point for transaction and financial data. By signing up to a periodic monthly statement function, frequent users may accumulate duties and taxes due in any given month into a single payment to be effected by the 15<sup>th</sup> working day of the following month.

3.8. Implementation of the ITDS has been proceeding in stages. The filing of electronic import or export manifest data in ACE became obligatory for all modes of transportation from 1 May 2015 (Box 3.1).<sup>7</sup> Deadlines for the operability of the various functions of ACE have been differentiated depending on the nature of the filings and the agencies involved.<sup>8</sup> The gradual expansion of the functionality of ACE has been accompanied by the decommissioning of corresponding capabilities in ACS, which is being phased out in its entirety.<sup>9</sup> The last electronic portions of the cargo release process (drawback, protest, reconciliation, and statements) should be used by all participants from 1 October 2016.

### Box 3.1 Steps in implementing ACE

Deadline	Functions
01.05.2015	Use of ACE became mandatory for all electronic manifest filings.
28.02.2016	CBP began divesting the legacy Automated Commercial System (ACS). This transition shifted technical and customer support resources away from the legacy ACS system, a necessary step to focus critical resources in support of the new system, ACE.
31.03.2016	Filers required to file in ACE electronic entry summaries for the most commonly filed entry types, AND electronic entries and entry summaries with Animal and Plant Health Inspection Service (APHIS) Lacey Act and National Highway Traffic Safety Administration (NHTSA) data. The legacy system, the Automated Commercial System (ACS), is no longer available for these specific transactions.
20.05.2016	Full transition of legacy AESDirect (export commodity filings via the portal) to ACE.
28.05.2016	Filers required to file in ACE electronic entries (cargo release) for the most commonly filed entry types, and Foreign Trade Zone entries and entry summaries. The legacy system, ACS, is no longer available for these specific transactions.
15.06.2016	Mandatory filing of ACE electronic entries and entry summaries with Food and Drug Administration (FDA) data. At this point, all electronic entries and entry summaries that do not have quota merchandise should be filed in ACE.
23.07.2016	Mandatory filing of ACE electronic entries and entry summaries for remaining entry types, specifically those entry types involving quota merchandise.
CBP expects the following mandatory transitions to ACE in 2016:	
27.08.2016	Mandatory use of ACE for protests.
01.10.2016	Mandatory use of ACE for all remaining electronic portions of the CBP cargo process: duty deferrals, statements, reconciliation, drawback and liquidation.

<sup>6</sup> In all, the U.S. authorities employ nearly 200 different forms for import and export. The principal forms are the Entry Manifest (CBP Form 7533), or alternatively the Application and Special Permit for Immediate Delivery (CBP Form 3461), both of which must be filed within 15 days of arrival at the port of entry; and the Entry Summary (CBP Form 7501), which must be filed at entry for the calculation of estimated import duties.

<sup>7</sup> Export manifests could still be filed in paper copy after 1 May 2015, but filers were encouraged to use voluntary mode-specific pilots as soon as these were functional.

<sup>8</sup> A summary of the mandatory use dates under the ACE may be found at: <http://www.cbp.gov/trade/automated/ace-mandatory-use-dates>.

<sup>9</sup> Effective 23 July 2016, ACE has become the sole CBP-authorized system for processing most electronic entry and entry summary filings (81 FR 32339).

By 31.12.2016	Mandatory use of ACE for filing electronic entries and corresponding entry summaries with data for remaining PGAs.
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Following the deployment of core trade processing capabilities in ACE in 2016, CBP will continue to enhance ACE capabilities in an operations and maintenance mode.

Source: Information provided by the authorities.

3.9. The World Customs Organization (WCO) has recommended that Governments should develop their single window environments through data harmonization and standardized processes, and has elaborated a WCO Data Model for this purpose.<sup>10</sup> The United States uses the National Information Exchange Model (NIEM) standard for the sharing of data across all levels of government. According to the U.S. authorities, NIEM is compliant with the WCO Data Model. So far, ACE has been partially aligned with the WCO Data Model and further alignment is intended as part of post-2016 ACE development activities. In the interim, CBP is working actively with the WCO on updating the WCO Data Model.

3.10. Under the Beyond the Border Action Plan, the United States and Canada have conducted a comparison of entry, release, and PGA data requirements and agreed to common advance data elements for their respective single-window systems. With Mexico, the United States has been elaborating harmonized rail manifest data elements to arrive at a single message set compatible with the filing requirements of both countries.

#### 3.1.1.1.2 ACE Cargo Release

3.11. CBP introduced in November 2011 a Simplified Entry Pilot project for imports arriving by air.<sup>11</sup> The project initially covered three airports and nine participants (filers), but was later expanded to additional airports and participants.<sup>12</sup> It offered electronic transmission of fewer data elements necessary for importation. The programme was incorporated into ACE and renamed ACE Cargo Release in 2014, supporting simplified entry processing for cargo transported by air, rail, ship and truck at selected ports of entry. By December 2014, more than 850,000 simplified entries had been filed for over 1,000 importers of record.

#### 3.1.1.1.3 Advance rulings

3.12. CBP issues binding advance rulings on how it would treat a prospective import or carrier transaction. Rulings may be requested on a variety of subjects by importers, exporters or anyone having a demonstrable interest in the matter, e.g. sureties, carriers, freight forwarders, brokers, or manufacturers. Most advance rulings concern classification issues, rules of origin, valuation, and carriers. The CBP will not issue advance rulings on hypothetical questions or on matters subject to ongoing litigation. The CBP publishes advance rulings and other binding decisions in its Customs Rulings On-line Search System (CROSS) (<http://rulings.cbp.gov/>), its weekly Customs Bulletin and Decisions (<http://www.cbp.gov/trade/rulings/bulletin-decisions>), or through pertinent Federal Register notices for certain advance rulings.

3.13. Advance ruling requests may be submitted online (eRulings) to the National Commodity Specialist Division (NCSO) of Regulations and Rulings (in New York). The eRulings template is available for requests pertaining to classification, country of origin and marking, and the applicability of a trade programme (NAFTA, AGOA, etc.), whereas requests concerning valuation or carriers must be submitted by letter. The NCSO generally issues rulings within 30 days of receipt. Requests requiring referral to Regulations and Rulings (R&R) headquarters are issued by mail,

<sup>10</sup> WCO Data Model, Single Window Data Harmonization. Viewed at: <http://www.wcoomd.org/en/topics/facilitation/activities-and-programmes/single-window/~media/E2C03EE328FC4793AF529AEE01EDAD98.ashx>.

<sup>11</sup> 76 FR 69755.

<sup>12</sup> Starting at Indianapolis, Chicago and Atlanta, the international airports of Seattle, San Francisco, Oakland, Los Angeles, Dallas/Ft. Worth, Houston, Miami, JFK, Newark and Boston were added in August 2012, and Detroit, Memphis, and Anchorage in November 2014. The nine initial participants (AN Deringer, Expeditors, FedEx Trade Networks, FH Kaysing, Janel Group of New York, Kuehne & Nagel, Inc., Livingston International, Page & Jones, Inc. and UPS) were joined by Alliance Customs Clearance Inc., Barthco International Inc. dba OHL International, CEVA Logistics, CSI Weiss-Rohlig USA Inc., Damco Customs Services, Inc., DHL Express, Inc. (USA), Future Forwarding Company, NEC Corporation of America, Scarbrough International, Ltd., Schenker, Inc., and UTC Overseas, Inc. in August 2012 (77 FR 48527).

which CBP endeavours to provide within 90 days of receipt provided all necessary information has been submitted. CBP issued 3,993 advance rulings in 2015.

#### **3.1.1.1.4 Trusted trader programmes**

##### **3.1.1.1.4.1 Customs-Trade Partnership Against Terrorism (C-TPAT)**

3.14. A voluntary public-private partnership programme focusing on cargo security, C-TPAT was established in 2001 and codified into law through the Security and Accountability for Every Port Act of 2006. C-TPAT candidates, e.g. importers, exporters, freight forwarders, manufacturers and customs brokers, submit applications online through the C-TPAT Portal (<https://ctpat.cbp.dhs.gov/>). Having completed and submitted a Company Profile<sup>13</sup>, an account is opened and the applicant's representative is requested to complete a Security Profile. The information is reviewed by a Supply Chain Security Specialist (SCSS) who determines the company's ability to meet C-TPAT minimum security requirements.<sup>14</sup> Once accepted into the programme, the SCSS will arrange an on-site validation of the security practices. Importers are classified in three levels; certified (Tier 1); certified validated (Tier 2), i.e. inspection(s) passed; and certified exceeding (Tier 3). The highest level is reserved for companies maintaining security measures above and beyond the minimum requirements of C-TPAT. Enrolment in C-TPAT does not pre-empt security examinations of imported or exported merchandise. However, the probability that non-participants will experience security-based examination of their entries is 3.5 times higher than for Tier 2 companies, and 9 times more likely than for C-TPAT Tier 3 partners.<sup>15</sup>

3.15. Supporting the WCO's Framework of Standards to Secure and Facilitate Global Trade, CBP has signed mutual recognition arrangements (MRAs) with other customs administrations with comparable fully fledged operational programmes. The process involves side-by-side comparison of programme requirements, joint validation and observation, the signing of a formal arrangement, and the development of operational procedures, principally information sharing. The arrangements are security based and do not address compliance. As of 1 December 2015, CBP had concluded ten MRAs involving the customs authorities of New Zealand, Canada, Jordan, the Republic of Korea, the EU, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), Israel, Mexico, Singapore, and the Dominican Republic; it had five ongoing mutual recognition projects (China, Peru, India, Uruguay, and Brazil), and eight technical assistance projects. The number of certified partner accounts totalled 11,461, including 4,220 U.S. importers, 450 U.S. exporters, and 1,568 foreign manufacturers. C-TPAT members account for around 54% of the total value of merchandise imported into the United States.

##### **3.1.1.1.4.2 Importer Self-Assessment Program (ISA)**

3.16. Certified C-TPAT importers, resident in the United States or Canada, with a two-year import history are eligible to join the ISA programme. Applicants submit a memorandum of understanding, agreeing to comply with ISA requirements including documented policies and procedures for the import process, a completed questionnaire, and a self-testing plan. ISA focuses on trade and customs compliance and offers benefits beyond C-TPAT such as exemption from comprehensive audits, expedited cargo release, the assignment of a national account manager, and enhanced prior disclosure. CBP Centers of Excellence and Expertise have been serving as a single point of processing for businesses enrolled in C-TPAT and ISA.

3.17. Two pilot programmes exist under the ISA: the Importer Self-Assessment-Product Safety Pilot (ISA-PS) and the Broker Importer Self-Assessment Pre-Certification (Broker ISA PC) test. Launched in 2008, ISA-PS focuses on product safety as a collaborative effort between CBP, the Consumer Product Safety Commission and importers to prevent unsafe imports. Broker ISA PC, created in 2013, targets small and medium-sized importers. Before presenting an ISA candidate to CBP, brokers evaluate the importer's ability to manage and monitor its compliance through risk-based self-testing. The Broker ISA PC pilot is still ongoing.

<sup>13</sup> CBP online information. Viewed at: <http://www.cbp.gov/border-security/ports-entry/cargo-security/c-tpat-customs-trade-partnership-against-terrorism/apply/company-profile>.

<sup>14</sup> The minimum security requirements, by type of operator, can be viewed at: <http://www.cbp.gov/border-security/ports-entry/cargo-security/c-tpat-customs-trade-partnership-against-terrorism/apply/security-criteria>.

<sup>15</sup> Examinations are at the discretion of CBP officers.



#### **3.1.1.1.4.3 Free and Secure Trade System (FAST)**

3.18. FAST is open to certified C-TPAT commercial carriers having completed certain background checks. FAST allows truck drivers who are citizens of the United States, Canada, and Mexico to use dedicated lanes at 34 border crossings with Canada and Mexico involving shorter waiting times, fewer inspections, and faster processing. Nearly 75,000 commercial drivers are enrolled in the programme nationwide.

#### **3.1.1.1.4.4 Trusted Trader Program Test**

3.19. As announced in June 2014, the Trusted Trader Program is currently in a test phase.<sup>16</sup> The ambition is to integrate the current C-TPAT and ISA processes in a holistic Trusted Trader Program combining supply chain security and trade compliance. Phase I, which tested the joint validation process, was completed in June 2016. The results are being analysed. In the meantime, CBP has launched Phase II, which will focus on testing implementation by CBP and the feasibility of incentives.

#### **3.1.1.2 Import security initiatives**

##### **3.1.1.2.1 Container Security Initiative (CSI)**

3.20. Authorized under the 2006 SAFE Port Act (PL 109-347), CSI addresses the threat to border security and global trade of potential terrorist use of maritime containers to deliver weaponry. CSI is operational at 60 ports world-wide and ensures that approximately 80% of all maritime cargo destined to the United States is pre-screened and, as deemed necessary, scanned or inspected prior to shipment. All containerized cargo determined high risk at a CSI port is scanned for illicit radiological materials using non-intrusive inspection technology or subjected to manual inspection.

##### **3.1.1.2.2 Secure Freight Initiative (SFI)**

3.21. Seeking to improve container security further, Section 232 of the 2006 SAFE Port Act provides for the SFI to test the feasibility of 100% scanning of all cargo containers destined for the United States at a minimum of three pilot ports. Moreover, the Implementing Recommendations of the 9/11 Commission Act of 2007 mandated 100% scanning (x-ray imaging and radiation) prior to lading.

3.22. SFI pilot operations were initially run at six foreign ports, but subsequently scaled back to cover only one foreign port. The other five ports reverted to CSI risk based targeting operations after an evaluation of the costs versus potential benefits of 100% scanning, logistical problems with the placement of scanners, and diplomatic concerns.<sup>17</sup> The 100% target has thus not been realized for containerized maritime freight, but the Department of Homeland Security (DHS) continues to work with foreign governments and the private sector to find solutions. The Secretary of Homeland Security used her/his authority to extend the SFI deadline in July 2012, July 2014, and July 2016. The mandate is currently extended until July 2018.

##### **3.1.1.3 Foreign Trade Zones (FTZs)**

3.23. The Foreign Trade Zones Act (19 U.S.C. 81a-81u) was passed in 1934 to attract and promote international trade and commerce. Under the Department of Commerce, the Foreign Trade Zones Board reviews and approves applications to establish, operate and maintain FTZs, while FTZ operations are activated and supervised by CBP. Most FTZs are located in or near U.S. ports of entry, industrial parks, or terminal warehouse facilities. However, FTZ subzones may be established in any designated area, including on a user's private facility. Every U.S. State has at least one FTZ, although not all designated FTZs may have users operating in them in any given year. A total of 179 FTZs were active during 2014. The approximately 2,700 firms using FTZs employed nearly 420,000 workers, and shipments into the zones were valued at nearly US\$800 billion.<sup>18</sup>

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<sup>16</sup> 79 FR 34334.

<sup>17</sup> SFI pilot operations continue at Qasim (Pakistan), having been discontinued at Puerto Cortes (Honduras), Southampton (United Kingdom), Busan (Republic of Korea), Salalah (Oman), and Hong Kong, China.

<sup>18</sup> Foreign-Trade Zones Board (2015), *76<sup>th</sup> Annual Report to the Congress of the United States*, August. Viewed at: <http://enforcement.trade.gov/ftzpage/annual-report.html>.

3.24. FTZs are legally outside the customs territory of the United States for tariff and entry purposes.<sup>19</sup> Formal customs entries for foreign goods do not need to be filed until such goods enter the U.S. customs territory for consumption, or not at all in the case of re-exports. Foreign as well as domestic goods may be brought into the zones and subjected to assembly, manufacturing, or processing or be held for storage or exhibition purposes.<sup>20</sup> Domestic goods are considered exported for the purposes of excise tax rebates and drawback once they enter an FTZ. For foreign goods subject to processing before entry into the customs territory of the United States, users may choose to pay import duty on the final product or on the original foreign materials.

3.25. The main industrial activities in U.S. FTZs are oil refining and the production of automotive goods, electronics, pharmaceuticals, and machinery/equipment. The main states using FTZs are Texas and Louisiana, each with shipments exceeding US\$100 billion per year. Direct exports from U.S. FTZ facilities totalled US\$84.6 billion in 2015.<sup>21</sup>

#### **3.1.1.4 Bonded warehouses**

3.26. Decisions to confer the status of bonded warehouse are taken by local port directors.<sup>22</sup> No fees are charged, either for facility establishment or operation, but the warehouse operator is responsible for the day-to-day oversight and safekeeping of all merchandise held in custody. The operator must maintain a custodial bond to cover the value of any cargo missing or unaccounted for. CBP officials may enter and inspect any bonded facility at any time.

3.27. Keeping imported goods in a bonded warehouse allows the owner to defer the payment of customs duties and taxes for up to five years. Five years from the date of importation, at the latest, bonded goods must enter the commerce of the United States, or be exported, destroyed, or sold at public auction. A bonded warehouse may be a building or other secured area where imported goods are stored, manipulated or subject to manufacturing operations. Imported merchandise and goods for export may be stored simultaneously at a bonded facility, but separated physically under security measures approved by the port director. There are approximately 1,500 bonded warehouses nationwide.<sup>23</sup>

#### **3.1.2 Customs valuation**

3.28. The provisions on customs valuation applied by the United States are contained in the Trade Agreements Act of 1979 (45 FR 45135). The United States notified the WTO in 1996 that the legislation it had ratified under the Tokyo Round Customs Valuation Agreement had not been changed and thus remained valid under the WTO Customs Valuation Agreement.<sup>24</sup> No changes were made to the customs valuation regulations during the period under review.

3.29. The Act stipulates transaction value as the principal and preferred method of appraisement and establishes the hierarchy of alternative valuation methods in sequential order as laid down in the Customs Valuation Agreement. Customs value excludes transportation and landed costs.

#### **3.1.3 Rules of origin**

##### **3.1.3.1 Non-preferential**

3.30. U.S. non-preferential rules of origin use the "wholly obtained" or "substantial transformation" criteria to determine the origin of an imported product. A wholly obtained product

<sup>19</sup> All other federal laws apply to goods and establishments within the zones. FTZ activities are governed by regulations issued by the FTZ Board and CBP (15 CFR Part 400 and 19 CFR Part 146). Individual FTZs are proposed, sponsored and managed by agencies at the regional or local level.

<sup>20</sup> In 2014, 64% of the shipments received at the FTZs involved domestic status merchandise, i.e. domestically-produced goods as well as foreign goods having entered U.S. customs territory before admission to an FTZ.

<sup>21</sup> In addition, some FTZ merchandise is processed at non-FTZ facilities prior to exportation.

<sup>22</sup> The authority to establish bonded warehouses is contained in 19 U.S.C. 1555 and the regulations in 19 CFR 19.

<sup>23</sup> The number of bonded warehouses tends to fluctuate, driven by economic factors as well as the decisions of warehouse operators and actions of port directors.

<sup>24</sup> WTO document G/VAL/N/1/USA/1, 1 April 1996.

is entirely grown, gathered, produced or manufactured in a particular country. The substantial transformation criterion, i.e. change in name, character or use, is applied case-by-case for goods that consist in whole or in part of materials from more than one country. The United States notified its non-preferential rules of origin to the WTO in 1995 and administrative rulings of the U.S. Customs Service in 1996.<sup>25</sup>

### 3.1.3.2 Preferential

3.31. Although NAFTA and many other FTAs concluded by the United States have incorporated a change in tariff classification ("tariff shift") method to determine the eligibility for FTA benefits, the U.S. also uses other methods, e.g. local/regional value content or technical criteria, to determine origin beyond the "wholly obtained" criterion. Each FTA has its own set of origin criteria. The variety of methods applied reflects the outcome of the negotiations, including industry preferences for particular methods, notably in textiles.

3.32. The United States notified preferential rules of origin to the WTO in 1995, and again in 2013.<sup>26</sup> Minor changes to the preferential rules of origin may be introduced from time to time (Table 3.1).

**Table 3.1 Changes to preferential rules of origin, June 2012-July 2016**

Agreement	Effective date	Citation	Change
CAFTA-DR	13 October 2012	77 FR 59241	Modification of certain textile and apparel rules of origin
NAFTA, Bahrain, Morocco	25 September 2012	77 FR 58931	Technical corrections as a result of the 2012 Harmonized Tariff Schedule (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
Korea (Rep. of)	1 January 2014	78 FR 80418	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

3.33. The United States has long-standing laws and regulations requiring articles of foreign manufacture to carry a mark or label indicating to the final consumer where the product was made. The Tariff Act of 1930 lays down the main marking provisions. In addition, NAFTA and federal and state laws contain product-specific labelling requirements or marking rules. Country of origin marking rules are distinct and separate from eligibility determinations for customs purposes.

### 3.1.3.4 Certification of origin

3.34. Importers claiming preferential tariff treatment must certify the origin of the good. Although NAFTA prescribes a specific format for the certificates of origin, most other FTAs or preferential agreements do not. The importer must present the certificate of origin or other supporting documents to justify the preferential treatment when requested by CBP.

### 3.1.4 Tariffs

3.35. The U.S. International Trade Commission (USITC) publishes the Harmonized Tariff Schedule of the United States (HTSUS) as directed by Congress in Section 1207 of the Omnibus Trade and Competitiveness Act of 1988. The USITC updates the tariff schedule regularly to reflect changes in tariff rates and other provisions. Although the HTSUS primarily provides the applicable rates of import duty, it also contains other provisions such as preferential rules of origin. The current edition of the HTSUS has been in effect since 1 January 2016, and was last updated on 1 July 2016.

<sup>25</sup> WTO documents G/RO/N/1, 9 May 1995; G/RO/N/1/Add.1, 22 June 1995; G/RO/N/6, 19 December 1995; and G/RO/N/12, 1 October 1996.

<sup>26</sup> WTO documents G/RO/N/1/Add.1, 22 June 1995; and G/RO/N/88, 18 January 2013. The 2013 notification covered the rules in the FTAs with Chile, Singapore, Australia, Morocco, Bahrain, Central America-Dominican Republic, Oman and the Republic of Korea, and the Trade Promotion Agreements with Peru, Colombia, and Panama.

### 3.1.4.1 Nomenclature

3.36. The United States implemented the HS2012 changes in early 2012, except for changes relating to photographic films in Chapter 37. The HS2012 nomenclature for photographic films has been incorporated into the HTSUS since 1 January 2015.<sup>27</sup> Nomenclature changes relating to footwear were implemented in late 2011.<sup>28</sup>

3.37. The United States uses the Harmonized System nomenclature of the WCO as the basis for its tariff schedule and classifies goods accordingly in Chapters 1 through 97. The HTSUS uses two additional chapters (98 and 99) to provide special duty treatment with or without quantitative limits for certain goods, e.g. temporary tariff remissions, commitments under FTAs, AGOA, or imports by certain non-profit institutions. Importers must report the tariff line (under Chapters 1 to 97) as well as the functional number within Chapters 98 or 99 to claim the special treatment.

### 3.1.4.2 Applied rates

3.38. The HTSUS has three tariff columns. For each tariff line, the first column provides the general (i.e. MFN) rate of import duty, followed by "special" (i.e. preferential) duty as applicable. The third column indicates the rate applicable to other countries.<sup>29</sup> The special duty treatment stems from FTAs or non-reciprocal preferences, and the preferential trading partners are indicated in each instance. Most MFN tariffs are *ad valorem*, but the United States also uses specific and compound duty rates, covering approximately 11% of all tariff lines. Non-*ad valorem* tariff rates are concentrated in the agriculture, fuels, textiles, and footwear sectors.

3.39. The current HTSUS, implemented in January 2016, has 10,516 tariff lines at the 8-digit level.<sup>30</sup> Most MFN rates are identical to their bound levels and have remained virtually unchanged for 10 years or more.<sup>31</sup> As in previous years, the simple average tariff amounted to 4.8% overall in 2016 (Table 3.2).<sup>32</sup> Nearly 37% of the tariff lines face no import duty on an MFN basis, a reflection of the United States' participation in the ITA, the Agreement on Trade in Civil Aircraft, and zero-for-zero initiatives and sectoral agreements in the Uruguay Round (Chart 3.1). A further 7.8% of the tariff lines are subject to very low duty rates (i.e. 2% or less). Tariffs above 25% *ad valorem* are concentrated in agriculture (notably dairy, tobacco, and vegetable products), footwear, and textiles (Table A3.1). An estimated 22 tariff lines carry import duty rates above 100%.<sup>33</sup> These are all agricultural products. Overall, the U.S. tariff structure has little or no tariff escalation.

**Table 3.2 Structure of the tariff schedules, selected years<sup>a</sup>**

		2007	2009	2012	2014	2016 <sup>b</sup>
1.	Total number of tariff lines	10,253	10,253	10,511	10,514	10,516
2.	Non- <i>ad valorem</i> tariffs (% of all tariff lines)	10.7	10.7	10.9	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 quotas (% of all tariff lines)	1.9	1.9	1.9	1.9	1.9
5.	Duty free tariff lines (% of all tariff lines)	36.5	36.3	37.0	36.8	36.8
6.	Dutiable lines tariff average rate (%)	7.6	7.6	7.5	7.6	7.6
7.	Simple average tariff (%)	4.8	4.8	4.7	4.8	4.8

<sup>27</sup> Proclamation 9223 of 23 December 2014. The tariff lines in question were 370296, 370297, and 370298.

<sup>28</sup> The modifications were included in the U.S. HS 2012 transposition file, submitted to the WTO in October 2012, and will be included in the certification of the 2012 nomenclature changes.

<sup>29</sup> The only countries subject to the highest rates in the third column are Cuba and the Democratic People's Republic of Korea.

<sup>30</sup> The HTSUS was updated in July 2016 to incorporate changes resulting from Presidential Proclamation 9466 (Implementing the World Trade Organization Declaration on the Expansion of Trade in Information Technology Products and For Other Purposes).

<sup>31</sup> APEC leaders agreed to cut tariffs on certain environmental goods in 2012. In the United States, the general rate of duty was reduced to 5% on six tariff lines with effect from 31 December 2015 (Proclamation 9384 of 23 December 2015).

<sup>32</sup> Minor variations in the calculated average annual tariffs can primarily be ascribed to changes in import prices, affecting the estimated *ad valorem* equivalents of specific and compound duty rates.

<sup>33</sup> Of these 22 lines, 13 lines have *ad valorem* rates of 350% (certain tobacco products) and 131.8% or 163.8% (peanuts). The remaining nine lines are estimated *ad valorem* equivalents of specific/compound duties on tobacco refuse, sour cream, certain preparations for infant use, and Swiss cheeses. The highest *ad valorem* equivalent, US\$1.646 per kg on tariff line 04015075, amounts to 510.9%.

		2007	2009	2012	2014	2016 <sup>b</sup>
8.	WTO agriculture	8.9	8.9	8.5	9.0	9.1
9.	WTO non-agriculture (incl. petroleum)	4.0	4.0	4.0	4.0	4.0
10.	Agriculture, hunting, forestry, and fishing (ISIC 1)	5.5	5.7	5.6	6.7	6.5
11.	Mining and quarrying (ISIC 2)	0.3	0.4	0.4	0.4	0.4
12.	Manufacturing (ISIC 3)	4.8	4.8	4.7	4.8	4.8
13.	First stage of processing	3.7	3.7	3.7	4.3	4.3
14.	Semi-processed products	4.2	4.2	4.2	4.2	4.2
15.	Fully processed products	5.3	5.3	5.2	5.3	5.3
16.	Domestic tariff "peaks" (% of all tariff lines) <sup>c</sup>	6.9	6.7	6.7	6.7	6.7
17.	International tariff "peaks" (% of all tariff lines) <sup>d</sup>	5.2	5.3	5.0	5.1	5.1
18.	Overall standard deviation	11.9	11.8	11.9	13.7	14.0
19.	Nuisance applied rates (% of tariff lines) <sup>e</sup>	7.1	7.2	7.7	7.8	7.8
20.	Bound tariff lines (% of all tariff lines) <sup>f</sup>	100.0	100.0	100.0	100.0	100.0

a The tariff is provided at the eight-digit level. Averages exclude in-quota rates and lines. Calculations include *ad valorem* equivalents (AVEs) for non-*ad valorem* duties that were calculated by the U.S. authorities using import price data.

b As of January 2016.

c Domestic tariff peaks are defined as those exceeding three times the overall average applied rate.

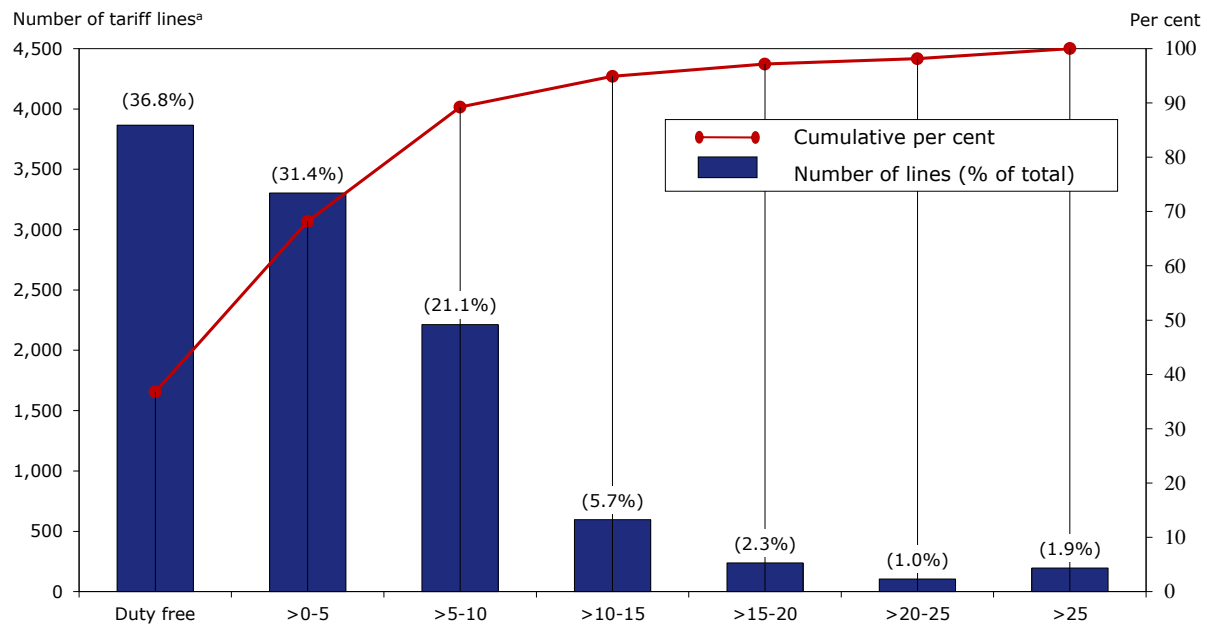
d International tariff peaks are defined as those exceeding 15%.

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 authorities and notifications.

**Chart 3.1 Frequency distribution of MFN tariff rates, 2016**



a The total number of lines is 10,516.

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

3.40. Legislation providing temporary tariff suspensions on several hundred products of importance to U.S. manufacturing enterprises expired at the end of 2012, and tariff suspensions on two other lines expired at the end of 2014. The American Manufacturing Competitiveness Act of 2016 (PL 114-159) provides a new process for the consideration of temporary tariff suspensions. Enterprises seeking tariff relief are to petition the USITC, which will examine such petitions, receive comments, and issue a report to Congress providing specified findings on the requested duty suspensions and reductions. Based on such a report, Congress will consider a miscellaneous tariff bill that could authorize tariff relief.

### 3.1.4.3 Bindings

3.41. According to the WTO tariff commitments of the United States, as contained in Schedule XX, all tariff lines in Chapters 1 through 97 are bound except for two lines pertaining to crude petroleum.<sup>34</sup> Schedule XX was last updated in 2015 following approval of the HS2007 nomenclature changes. The draft containing the modifications and rectifications was circulated in July 2015, and the modified schedule has been in effect since 30 October 2015. The United States remains under waiver to implement changes stemming from HS2012.<sup>35</sup> Preparing the implementation of HS2017, the USITC made its proposed modifications publically available in February 2015, inviting comments by 20 April 2015. The recommended changes were published in July 2015.<sup>36</sup> HS2017 is set to be implemented from 1 January 2017 provided that the required legislative day layover is completed without objection.

3.42. A number of changes to the HTSUS have not been notified to the WTO as changes to Schedule XX. Such changes include the third and fourth revisions to the pharmaceutical coverage, Chapter Notes, and the Article XXVIII renegotiation (tobacco).

3.43. The United States has bound all "other duties and charges" (ODCs) within the meaning of Article II.1(b) of the GATT in Schedule XX. Except for seven tariff lines, the ODCs are bound at zero.

### 3.1.4.4 Tariff-rate quotas

3.44. The United States maintains 44 tariff-rate quotas (TRQs). Among these, 18 TRQs concern the dairy sector, including milk, cream, butter, ice cream, and cheeses. Other commodities subject to TRQs are beef, mandarins, peanuts, sugar, chocolate, sweetened cocoa powder, olives, satsumas, animal feed, tobacco, and cotton. Driven by market conditions, fill rates may vary significantly between the TRQs and over time. Most quotas with low fill rates are administered on a first come, first served basis.<sup>37</sup>

## 3.1.5 Other charges affecting imports

### 3.1.5.1 Customs user fees

#### 3.1.5.1.1 Merchandise processing fee

3.45. Formal and informal imports are subject to a Merchandise Processing Fee (MPF). The fee amounts to 0.3464% of the customs value (not including duty, freight, or insurance charges), with minimum and maximum of US\$25 and US\$485, for formal entries. Consignments qualifying as informal entries, e.g. commercial shipments worth no more than US\$2,500 and personal shipments) are not subject to the *ad valorem* rate. Instead, flat rates are applied depending on whether the entry or release: (i) is entirely automated (US\$2); (ii) is manual, but not prepared by CBP staff (US\$6); or (iii) requires any preparation by CBP personnel (US\$9). Imports under FTAs or preferential agreements or arrangements may be exempt from the Merchandise Processing Fee.<sup>38</sup> Moreover, with the passage of the Trade Facilitation and Trade Enforcement Act of 2015, MPF is no longer applied to express and postal shipments valued at less than US\$800. The *de minimis* value provision in the Tariff Act of 1930, below which goods are generally admitted free of duty and taxes, was raised from US\$200 to US\$800 with effect from 11 March 2016.<sup>39</sup>

<sup>34</sup> According to the U.S. authorities, the two lines were never bound for reasons of national security. The current applied rates are 5.25 cents (HTS 2709.00.10) and 10.5 cents (HTS 2709.00.20) per barrel.

<sup>35</sup> WTO document WT/L/969, 2 December 2015.

<sup>36</sup> U.S. International Trade Commission (2015), *Recommended Modifications in the Harmonized Tariff Schedule to Conform with Amendments to the Harmonized System Recommended by the World Customs Organization, and to Address Other Matters*, Investigation No. 1205-11, July. Viewed at: [https://www.usitc.gov/publications/tariff\\_affairs/pub4556.pdf](https://www.usitc.gov/publications/tariff_affairs/pub4556.pdf).

<sup>37</sup> TRQ allocation methods are described in WTO document G/AG/N/USA/2/Add.3, 5 October 2001.

<sup>38</sup> CBP provides a (non-binding) overview of the application (or exemption) of the MPF to imports under free trade agreements or special trade legislation at: [http://www.cbp.gov/sites/default/files/documents/merchandise\\_pf\\_table\\_0.pdf](http://www.cbp.gov/sites/default/files/documents/merchandise_pf_table_0.pdf).

<sup>39</sup> The Trade Facilitation and Trade Enforcement Act of 2015 (HR 644), Section 901 (c) and (d).



3.46. The Trans-Pacific Partnership (TPP) Agreement provisions prohibit the use of an *ad valorem* fee for customs processing, which applies to the MPF, with a transition period for the United States. CBP has undertaken an analysis to develop a new MPF structure, and has begun sharing information with the public on the proposed new structure.<sup>40</sup>

### 3.1.5.1.2 COBRA fees

3.47. Importers were not charged inspection fees prior to the passage of COBRA – the Consolidate Omnibus Reconciliation Act of 1985 (PL 99-272). Since 7 July 1986, COBRA fees have been collected for various customs services, including the issuance of customs broker permits, the treatment of dutiable mail packages, and the processing of private vessels, commercial trucks, and passengers and cargo arriving by air, sea or rail. Fees vary by mode of arrival and may be assessed per crossing or annually with the help of transponders or decals (Table 3.3).<sup>41</sup>

**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)	
Private aircraft/vessel	19 CFR 24.22(e)	US\$27.50 (annual decal)	
Air/sea passenger	19 CFR 24.22(g)	US\$5.50 (per arrival)	Exemption for Canada, Mexico, and U.S. territories, possessions or adjacent islands
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: WTO document WT/TPR/S/307/Rev.1, 13 March 2015, based on 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](http://www.cbp.gov/sites/default/files/documents/userfee0407_3.pdf).

### 3.1.5.1.3 Harbor Maintenance Tax

3.48. CBP collects a 0.125% tax on all commercial imports arriving by vessel, admissions into foreign trade zones, domestic cargo shipped through a port, and cruise ship passengers. The tax is not collected on exports in accordance with a decision of the U.S. Supreme Court in 1998.

3.49. The proceeds are remitted to the Harbor Maintenance Trust Fund (HMTF), from which Congress appropriates amounts to maintain harbours and undertake development work through the U.S. Army Corps of Engineers. In 2015, the tax generated revenue (including earnings on investment) of approximately US\$1.5 billion. Over the years, about US\$8.6 billion has been accumulated in the HMTF. The Water Resources Reform and Development Act of 2014 (PL 113-121) establishes minimum levels of total target budget resources to be made available to the Secretary of the Army from the HMTF over a ten-year period. Starting in 2015 at a minimum of 67% (of the revenues collected in 2014), the targeted minimum percentage is set to increase annually until it reaches 100% in 2025, thereby reducing the HMTF and ensuring continued Corps work.

<sup>40</sup> CBP online information, "Merchandise Processing Fee (MPF) Analysis". Viewed at: [https://www.cbp.gov/sites/default/files/assets/documents/2016-Apr/MPF%20Briefing%20for%20External%20Stakeholders\\_April2016.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2016-Apr/MPF%20Briefing%20for%20External%20Stakeholders_April2016.pdf).

<sup>41</sup> Decals are stickers placed on private aircraft and vessels (longer than 30 feet) proving that the annual user fee has been paid. Affixed to the inside of windscreens of vehicles, transponders contain radio frequency identification chips transmitting information about the vehicle and its user fee status. The transponder is updated as the user fee is paid and may have a life span of 10 years. If the annual fee has not been paid, the transponder will continue to transmit, and a per-crossing fee will be applied.

**3.1.5.1.4 Agriculture fees**

3.50. The Animal and Plant Health Inspection Service (APHIS), part of the U.S. Department of Agriculture (USDA), collects Agriculture Quarantine Inspection (AQI) fees which it shares with CBP under an agreed allocation. In addition, fees are collected for veterinary and laboratory services (Table 3.4).

**Table 3.4 Agricultural fees, applicable from 28 December 2015**

<b>Fee</b>	<b>Legal reference</b>	<b>Reason</b>	<b>Amount of fee</b>
AQI Aircraft Clearance	Food, Agriculture and Conservation Act of 1990; also MOU	Agricultural quarantine and inspection services	US\$225.00 per arrival
AQI Commercial Cargo Vessel	Food, Agriculture and Conservation Act of 1990; also MOU	Agricultural quarantine and inspection services	US\$825.00 per arrival (cap of 15 payments per calendar year eliminated)
AQI Commercial Truck	Food, Agriculture and Conservation Act of 1990; also MOU	Agricultural quarantine and inspection services	US\$7.55 per arrival
AQI Commercial Truck with transponder (one annual payment)	Food, Agriculture and Conservation Act of 1990; also MOU	Agricultural quarantine and inspection services	US\$301.67
AQI Commercial Vessel (Cruise) Passenger	Food, Agriculture and Conservation Act of 1990; also MOU	Agricultural quarantine and inspection services	US\$1.75 per arrival
AQI International Air Passenger	Food, Agriculture and Conservation Act of 1990; also MOU	Agricultural quarantine and inspection services	US\$3.96 per arrival
AQI Loaded Rail Car	Food, Agriculture and Conservation Act of 1990; also MOU	Agricultural quarantine and inspection services	US\$2.00 per arrival
AQI Treatment	Food, Agriculture and Conservation Act of 1990; also MOU	Agricultural quarantine and inspection services	First year: US\$47.00 Second year: US\$95.00 Third year: US\$142.00 Fourth year: US\$190.00 Fifth year: US\$237.00
Avocado Import Assessment	7 CFR 1219.54	Avocado research, promotion, consumer information	US\$0.025 per pound
Beef Import Assessment	7 CFR Part 1260	Beef research, promotion, consumer information	Varies according to the product and HTS number
Blueberry Import Assessment	7 CFR 1218.52	Blueberry research, promotion, consumer information	US\$0.01984 per kg
Christmas Tree Import Assessment	7 CFR 1214.52	Christmas tree research, promotion, consumer information	US\$0.15 per Christmas tree
Cotton Import Assessment	Cotton Research and Promotion Act of 1989 7 CFR 1205	Cotton research, promotion, consumer information	Varies according to the product and HTS number
Dairy Import Assessment	7 CFR Part 1150	Dairy research, promotion, consumer information	US\$0.01327 per kg of milk solids
Honey Import Assessment	7 CFR 1212.52	Honey research, promotion, consumer information	Varies according to the product and HTS number
Mango Import Assessment	7 CFR 1206.42	Mango research, promotion, consumer information	US\$0.0075 per pound
Mushroom Import Assessment	Food, Agriculture and Conservation Act of 1990 7 CFR 1209	Mushroom research, promotion, consumer information	Varies according to the product and HTS number
Paper and Packaging Import Assessment	7 CFR 1222.52	Paper and packaging research, promotion, consumer information	US\$0.00000386 per kg
Pork Import Assessment	7 CFR Part 1230	Pork research, promotion, consumer information	Varies according to the product and HTS number



Fee	Legal reference	Reason	Amount of fee
Potato Import Assessment	Food, Agriculture and Conservation Act of 1990 7 CFR 1207	Potato research, promotion, consumer information	Varies according to the product and HTS number
Raspberry Import Assessment	7 CFR 1208.52	Raspberry research, promotion, consumer information	Varies according to the product and HTS number
Softwood Lumber Import Assessment	7 CFR 1217.52	Softwood lumber research, promotion, consumer information	US\$0.1483 per cubic metre
Veterinary Diagnostic User Fees	9 CFR 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	9 CFR 130.2 through 130.30	Costs for veterinary services	Varies by type of service
Watermelon Import Assessment	Watermelon Research and Promotion Act 7 CFR 1210	Watermelon research, promotion, consumer information	Varies according to the product and HTS number

Source: CPB online information. Viewed at: [http://www.cbp.gov/sites/default/files/documents/userfee0407\\_3.pdf](http://www.cbp.gov/sites/default/files/documents/userfee0407_3.pdf) and <https://www.aphis.usda.gov/aphis/ourfocus/business-services/user-fees/aqi-user-fees>; and information provided by the authorities.

3.51. Following a report by the Government Accountability Office (GAO) in 2013, highlighting discrepancies between fee revenue and programme costs<sup>42</sup> and concerns regarding the collection process, APHIS published a proposal to adjust existing AQI fees and add new fees in April 2014. The USDA issued its final rule in October 2015.<sup>43</sup> The new and amended AQI fees entered into force on 28 December 2015.

3.52. The new rates are based on detailed historical cost data (for 2010, 2011, and 2012) for each fee, adding projected inflation through 2017 and a 3.5% reserve on the basic costs.<sup>44</sup> The closer alignment of the fee structure to the underlying costs of the services rendered resulted in a significant decline in the charges for railcar cargo and international air passengers but also in markedly higher fees for aircraft clearance (+300%), commercial vessels (+60%), and trucking fees. The revised rules introduced an AQI fee on arriving cruise ship passengers (US\$1.75) as well as a new fee for instances where APHIS prescribes treatments for pests of quarantine significance.<sup>45</sup> In the final rule, the treatment fee is lower than originally proposed (US\$375) as overtime charges have been separated from the basic fee. The new fee is being phased in over a five-year period, thus rising from US\$47 in 2016 to US\$237 as from 28 December 2019.

### 3.1.5.2 Excise taxes

3.53. Excise taxes may be levied at the federal, state, local, or municipal level in the United States. Rates vary widely from State to State, and some goods may be subject to taxation at more than one level. They are equally applied on imports and domestic products and services. Revenue from federal excise taxes (Table 3.5) may be earmarked for specific purposes (trust funds) or held for general expenditure (general funds).

3.54. Excise taxes are projected to account for approximately 2.9% of federal government revenue in 2016.<sup>46</sup> The most important sources of revenue are the excises on motor fuels, air

<sup>42</sup> OMB Circular A-25 requires user charges to match the full cost to the Federal Government. Viewed at: [https://www.whitehouse.gov/omb/circulars\\_a025/](https://www.whitehouse.gov/omb/circulars_a025/).

<sup>43</sup> 80 FR 66748.

<sup>44</sup> The reserve account is targeted as a 90- to 150-day operating reserve to be drawn upon when a shortfall of activity would lead to programme costs exceeding the revenue collected.

<sup>45</sup> The AQI treatment fee is assessed when treatment is required and performed in the United States under the supervision of an APHIS agent. Treatment may, for example, be in the form of fumigation, dips, sprays or non-chemical treatments such as cold treatment, hot water immersion, vapour heat treatment, steam sterilization, or irradiation. The fee covers the cost of APHIS supervision only and not, for example, the services of fumigators and other treatment providers.

<sup>46</sup> Joint Committee on Taxation (2016), *Overview of the Federal Tax System as in Effect for 2016* (JCX-43-16), 10 May. Viewed at: <https://www.ict.gov/publications.html?func=startdown&id=4912>.

tickets, tobacco, and alcoholic beverages, and the annual fee on health insurance providers.<sup>47</sup> Many excises, including some of the fuel-related taxes, have a permanent legal basis, while others would expire at regular intervals unless renewed. The tax rates are generally expressed in *ad valorem* or specific (per unit) terms. Taxes on domestic and international air passengers are adjusted annually for inflation. The excise tax on crude oil for the Oil Spill Liability Trust Fund has been set at 8 cents per barrel in 2016, rising to 9 cents in calendar year 2017.

**Table 3.5 Federal excise taxes**

Fund/subject	Products
<b>Trust funds</b>	
Highway Trust Fund	Petrol, diesel, and alcohol fuels; ethanol, liquid fuel, ethanol, methanol, bio-diesel, CNG, LPG, LNG, other special fuels, highway tractors, heavy trucks, trailers, tyres for heavy vehicles, highway use by heavy vehicles
Airport and Airway Trust Fund	Domestic and international air passengers transportation, air cargo, aviation fuels <sup>a</sup>
Inland Waterways Trust Fund	Diesel fuel and other liquid fuels
Harbor Maintenance Trust Fund	Commercial cargo
Leaking Underground Storage Tank Trust Fund Excise Tax	Certain fuels; methanol and ethanol fuels produced from coal
Oil Spill Liability Trust Fund	Crude oil and imported petroleum products
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; self-insured plans
Medicare Part B Trust Fund	Annual fee on branded prescription pharmaceutical manufacturers and importers
<b>General funds</b>	
Distilled spirits, wine, and beer	Distilled spirits, wine (including champagne and hard apple cider), and beer
Tobacco	Tobacco products, cigarette papers and tubes
Communications	Local telephone service, local teletypewriter service, and telephone cards (local-only service)
Gas guzzlers	Automobiles (tax is related to vehicle fuel economy rating)
Water transportation passengers	Per passenger per covered voyage on commercial vessels
Ozone-depleting chemicals	Certain CFC and related chemicals
Foreign procurement	Specified federal procurement payments
Health care	Indoor tanning services; certain medical devices; hospital failures; and health insurance providers
Non-regular firearms	Machine guns, destructive devices, sawed off shotguns, etc.
Wagering	Tax on the amount of wager and on persons engaged or employed in business of accepting wagers
Domestic private foundation net investment income	Tax on tax-exempt and taxable foundations
Foreign private foundation net investment income	Tax on gross investment income from sources within the United States
Insurance policies issued by foreign insurers	Insurance (tax on premium paid)

a 26 U.S.C. 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: Excise taxes related to certain private foundations, excess lobbying expenses, real estate investment, "golden parachutes", or miscellaneous regulatory excise taxes are not included as they are not trade related.

Source: Joint Committee on Taxation (2015), *Present Law and Background Information on Federal Excise Taxes*, 13 July. Viewed at: <https://www.jct.gov/publications.html?func=showdown&id=4798>.

<sup>47</sup> Regarding the taxation of alcoholic beverages, reduced tax rates apply to small brewers and wineries, and an exemption applies to limited production for own consumption. A portion of the distilled spirits excise tax on rum (US\$10.50 per proof gallon) is remitted to Puerto Rico and the U.S. Virgin Islands.

3.55. For health insurance providers, the annual fee is imposed as an aggregate amount on the industry, and subsequently apportioned among the covered entities based on their respective market shares.<sup>48</sup> The same method is used for the imposition of the annual fee on branded prescription drugs. The Consolidated Appropriations Act, 2016 (PL 114-113) provides a two-year moratorium on the medical devices excise tax. Thus, the 2.3% tax is not to be levied until the end of 2017.<sup>49</sup> The Act also suspends collection of the health insurance provider fee for the 2017 calendar year. Thus, health insurance issuers are not required to pay these fees for 2017.

### 3.1.6 Import prohibitions, restrictions, and special requirements

#### 3.1.6.1 Prohibitions and restrictions

3.56. On behalf of some 40 federal agencies, the U.S. Customs and Border Protection enforces laws that may prohibit or restrict the importation of certain goods for various purposes. Importation may be prohibited outright, or allowed under certain conditions, or be subject to special requirements such as designated ports of entry or routing restrictions (Table A3.2).

3.57. United States' fisheries legislation, in particular the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) of 2006 and the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015 (which amended the High Seas Driftnet Fishing Moratorium Protection Act), provides a framework for addressing concerns regarding illegal, unreported and unregulated (IUU) fishing, bycatch of protected living marine resources, and shark conservation. Under the Moratorium Protection Act, the Secretary of Commerce, in a report to Congress, is required to identify countries whose fishing vessels have been engaged in (i) IUU fishing; (ii) bycatch of protected living marine resources where a nation has not adopted a regulatory programme to address the conservation of sharks that is comparable to that of the United States; or (iii) fishing activities on the high seas that target or incidentally catch sharks where the nation has not adopted a regulatory programme to address the conservation of sharks that is comparable to that of the United States. The identified countries are certified following a two-year consultative process. A negative certification results in the imposition of port restrictions and potential import restrictions on fish and fish products.<sup>50</sup>

3.58. In June 2014, the President established a task force to develop recommendations to enhance coordination and implement a comprehensive framework to combat IUU fishing and seafood fraud. The task force provided an action plan to implement 15 recommendations on 15 March 2015.<sup>51</sup> Two of the recommendations address the establishment of a risk-based programme to track domestic and imported seafood from point of harvest or production to entry into U.S. commerce. In February 2016, the National Oceanic and Atmospheric Administration (NOAA Fisheries) published a proposed rule for public comment, and expected to publish a final rule in September 2016. The proposed rule would establish reporting requirements (through ACE) for imports of a set of priority species, applicable to U.S. importers.<sup>52</sup> The proposed rule focuses on imports because, for the priority species selected for the programme's initial phase, equivalent information for domestic products is already being collected through existing programmes. The importer will need to keep records regarding the product's chain of custody to point of entry into

<sup>48</sup> The annual fee has been set at US\$11.3 billion for calendar years 2015 and 2016, US\$13.9 billion for 2017, and US\$14.3 billion for 2018. The fee is to be indexed to the rate of premium growth after 2018.

<sup>49</sup> Since the tax was introduced in 2012, it has been applied to manufacturers and importers of certain medical equipment for professional use, but not to retail purchases for personal use of eyeglasses, contact lenses, hearing aids, or other devices by the general public.

<sup>50</sup> The 2015 report to Congress provided positive certifications for all ten countries (Colombia, Ecuador, Ghana, Italy, Korea (Rep. of), Mexico, Panama, Spain, Tanzania, and Venezuela (Bolivarian Republic of)) included in the previous report, as having strengthened their laws or regulations, enforcement, and monitoring systems. Simultaneously, the report identified six countries (Colombia, Ecuador, Mexico, Nicaragua, Nigeria, and Portugal) with vessels engaged in IUU fishing in 2013 and 2014 and thus to be subject to consultations and certification. Viewed at: [http://www.nmfs.noaa.gov/ia/iuu/msra\\_page/2015noaareptcongress.pdf](http://www.nmfs.noaa.gov/ia/iuu/msra_page/2015noaareptcongress.pdf). The authority for preparation of the biennial report has been delegated from the Secretary of Commerce to the NOAA Assistant Administrator for Fisheries. The National Oceanic and Atmospheric Administration is scheduled to issue its next report in January 2017.

<sup>51</sup> Presidential Initiative on Combating Illegal, Unreported, and Unregulated (IUU) Fishing and Seafood Fraud. Report viewed at: [http://www.nmfs.noaa.gov/ia/iuu/noaa\\_taskforce\\_report\\_final.pdf](http://www.nmfs.noaa.gov/ia/iuu/noaa_taskforce_report_final.pdf).

<sup>52</sup> This would include information on harvest, landing, and chain of custody of product to the point of entry into U.S. commerce.

U.S. commerce and make those records available to NOAA Fisheries upon request. The rule does not institute new labelling requirements.<sup>53</sup>

### 3.1.6.2 Import licensing

3.59. Import licences, imposed under various statutes and for various purposes, are enforced by six agencies: the Departments of Agriculture, Commerce (steel), Energy (natural gas), the Interior (fish and wildlife), Justice (firearms, explosives, and drugs), and the Treasury (alcohol and tobacco), and the Nuclear Regulatory Commission. Licences are either automatic or non-automatic. The Steel Import Monitoring and Analysis System, an automatic system designed to provide statistical data five to six weeks in advance of when it would normally become available, was extended until 21 March 2017 under a decision taken in 2013.<sup>54</sup> Licensing requirements apply to all basic steel mill imports from all countries.

3.60. During the review period, the United States has provided two notifications of its import licensing regime.<sup>55</sup> The regime has largely been stable (Table A3.3). After extensive public comment, a regulation amending certain aspects of the Dairy Import Licensing Program (TRQs) was published on 27 July 2015.<sup>56</sup> The revision extends the historical licence reduction provision (§ 6.25(b) – set to expire at the beginning of the 2016 quota year) for an additional seven years, aligns the collection of fees more closely to the costs of administering the programme, and prescribes the exclusive use of electronic communication in the application, reporting and payment procedures. The Nuclear Regulatory Commission amended its import/export regulations on 10 July 2014 to conform to the export control guidelines of the Nuclear Suppliers Group and to incorporate, by reference, the document "Nuclear Security Recommendations on Physical Protection of Nuclear Material and Nuclear Facilities" of the International Atomic Energy Agency.<sup>57</sup>

### 3.1.6.3 Controls, special procedures, or diplomatic measures

3.61. The Office of Foreign Assets Control (OFAC) of the United States Treasury Department administers a number of programmes involving the blocking of assets of Specially Designated Nationals and Blocked Persons (SDNs).<sup>58</sup> Some of these programmes concern actions taken to combat trafficking in narcotics, transnational criminal organizations, cyber-related crimes, rough diamond trade controls, anti-terrorism measures, and the non-proliferation of weapons of mass destruction. Among the country-specific measures, a variety of economic, trade, and other restrictions are enforced with respect to certain countries, including Cuba, Iran, the Democratic People's Republic of Korea (DPRK), Sudan, and Syria.

3.62. On 17 December 2014, the Presidents of the United States and Cuba announced their intention to re-establish diplomatic relations between the two countries.<sup>59</sup> On the U.S. side, the announcement has been accompanied by a modification of existing measures, including authorizing certain travel and commerce, and eased restrictions on certain aspects of finance, shipping, and importation of software of Cuban origin. However, although modified, the economic, commercial and financial embargo on Cuba remains in place.

3.63. Following the Joint Comprehensive Plan of Action<sup>60</sup> reached between Iran and the United States and its partners<sup>61</sup> on 14 July 2015, which was concluded to ensure that Iran's nuclear programme is and remains exclusively peaceful, the United States took action to authorize

<sup>53</sup> Actions and Announcements: Recommendations 14 & 15. Viewed at: <http://www.iuufishing.noaa.gov/RecommendationsandActions/RECOMMENDATION1415/February2016ProposedRuleforSeafoodTraceabilityProgram.aspx>.

<sup>54</sup> 78 FR 11090.

<sup>55</sup> WTO documents G/LIC/N/3/USA/11, 3 October 2014; and G/LIC/N/3/USA/12, 9 October 2015.

<sup>56</sup> 80 FR 44251-44258.

<sup>57</sup> IAEA document INFCIRC/225/Revision 5, January 2011.

<sup>58</sup> U.S. Department of the Treasury online information. Viewed at: <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>.

<sup>59</sup> For the statement by the President of the United States, see: <https://www.whitehouse.gov/the-press-office/2014/12/17/statement-president-cuba-policy-changes>.

<sup>60</sup> U.S. Department of the Treasury online information. Viewed at: [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/implement\\_guide\\_icpoa.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/implement_guide_icpoa.pdf) (Guidance) and [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/icpoa\\_faqs.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/icpoa_faqs.pdf) (FAQs).

<sup>61</sup> The European Union, China, France, Germany, the Russian Federation, and the United Kingdom.

the importation of certain goods of Iranian origin in January 2016.<sup>62</sup> The United States Government also lifted nuclear-related "secondary sanctions", which generally are directed toward non-U.S. persons for specified conduct involving Iran that occurs entirely outside of U.S. jurisdiction and does not involve U.S. persons. The U.S. embargo on Iran remains in place.

3.64. Regarding DPRK, sanctions were tightened through passage of the North Korea Sanctions and Policy Enhancement Act of 2016 (PL 114-122). The law requires the President to impose economic sanctions on persons engaged in "sanctionable conduct", including the proliferation of weapons of mass destruction and arms-related materials, trade in luxury goods and counterfeit goods with the DPRK, human rights violations, and other illicit activities. Further, Executive Order 13722, signed on 15 March 2016, imposed a ban on exports to DPRK which, when combined with existing sanctions prohibiting imports, effectively embargos trade with DPRK.

3.65. Title IV of the Trade Act of 1974, also known as the Jackson-Vanik amendment, is still applied with respect to Azerbaijan, Belarus, Cuba, Kazakhstan, the Democratic People's Republic of Korea, Tajikistan, Turkmenistan, and Uzbekistan. Following the accessions of Tajikistan and Kazakhstan to the WTO, the U.S. Congress will need to pass legislation to allow the United States to grant permanent normal trade relations (PNTR) to these two countries.

### 3.1.7 Anti-dumping, countervailing, and safeguard measures

#### 3.1.7.1 Legislation and administration

3.66. The main U.S. legislation with respect to anti-dumping (AD) and countervailing duties (CVD) is Title VII of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979. The Trade and Tariff Act of 1984, the Omnibus Trade and Competitiveness Act of 1988, and the Uruguay Round Agreements Act of 1994 (URAA) introduced further modifications to AD and CVD legislation. The main regulations governing AD and CVD investigations (including reviews) are included in Title 19 of the Code of Federal Regulations, Parts 201, 207, and 351.<sup>63</sup>

3.67. The International Trade Administration (ITA) in the U.S. Department of Commerce (USDOC), and the United States International Trade Commission (USITC), are responsible for the administration of laws and agreements with respect to AD and CVD measures in the United States. The ITA is in charge of the determination of the existence and margin of dumping and subsidy in AD and CVD investigations, while the USITC determines material injury or threat of material injury to the domestic industry resulting from imports of the dumped or subsidized products.

3.68. In particular, ITA's Antidumping and Countervailing Duty Operations Unit (AD/CVD Operations) is responsible for enforcing U.S. AD and CVD laws. AD/CVD Operations conducts investigations in response to petitions received by the USDOC from domestic industries and/or labour unions. AD/CVD Operations also conducts subsequent proceedings known as administrative reviews in which importers' actual duty liability is assessed. The Customs Unit within AD/CVD Operations serves as the liaison with U.S. Customs and Border Protection (CBP) on matters pertaining to the collection of AD/CVD duties and issues of potential fraud associated with AD/CVD proceedings.<sup>64</sup>

3.69. The ITA's AD/CVD Petition Counseling and Analysis Unit, established in 2004, assists U.S. companies with respect to recourse to U.S. unfair trade laws. The Unit provides assistance, *inter alia*, to help interested parties understand legislation and regulations and information on how to file petitions.<sup>65</sup>

<sup>62</sup> OFAC amended the Iranian Transactions and Sanctions Regulations, 31 CFR part 560, authorizing imports of foodstuffs (within HS Chapters 2 to 23), including pistachios and caviar, and carpets (HS 97.06.00.0060 and Chapter 57).

<sup>63</sup> 19 CFR Part 351 62 Fed. Reg. 27295, 19 May 1997 (AD Duties, Final Rule); 19 CFR Part 351 63 Fed. Reg. 65347, 25 November 1998 (CV Duties, Final Rule); 19 CFR 351.222(b) 64 Fed. Reg. 29818, 3 June 1999 (Proposed Regulation Concerning the Revocation of AD Duty); 19 CFR 351.222(b) and 19 CFR 351.222(c) 64 Fed. Reg. 51236, 22 September 1999 (Amended Regulation Concerning the Revocation of AD and CV Duty Orders); 19 CFR Section 351.218 63 Fed. Reg. 13516, 20 March 1998 (Procedures for Conducting Five-Year ("Sunset") Reviews of AD CV Duty Orders); 19 CFR Parts 351 and 354 63 Fed. Reg. 24391, 4 May 1998 (AD and CV Duty Proceedings).

<sup>64</sup> USDOC online information. Viewed at: <http://trade.gov/enforcement/operations/>.

<sup>65</sup> USDOC online information. Viewed at: <http://enforcement.trade.gov/petitioncounseling/index.html>.



3.70. The USDOC initiates AD and CVD investigations, generally at the request of petitioners, based on written applications; it has the authority to self-initiate investigations, but seldom uses it. Investigation petitions must be filed simultaneously with the USDOC's ITA and the USITC. An U.S. industry petitioning for the initiation of an AD or CVD investigation must provide a reasonable basis to believe or suspect (a) that dumping and/or subsidization of a particular product is occurring; (b) that the domestic industry has suffered "material injury or threat thereof"; and (c) that there is a causal link between the two. AD and CVD on the same product may be initiated concurrently.

3.71. To initiate an investigation, the USDOC must determine that a petition has been filed by an interested party and that it has the support of the industry producing the domestic like product in the United States (industry support). To determine if the petition has industry support, it must meet two criteria: (a) the 25% test, meaning that the domestic producers or workers who support the petition must account for at least 25% of the total production of the domestic like product; and (b) the 50% test, meaning that the domestic producers or workers who support the petition must account for more than 50% of the production of the domestic like product produced by that portion of the industry expressing support for the petition. The petition must also clearly identify and define the domestic like product as well as all its producers. In addition, the petition must include information relating to the degree of industry support for it, including: (a) the total volume and value of U.S. production of the domestic like product; and (b) the volume and value of U.S. production of the domestic like product produced by the petitioner(s) and each domestic producer identified.<sup>66</sup>

3.72. A determination on whether or not to initiate an investigation is usually made within 20 days of the date of filing of the petition, as specified in Section 732(c) of the Tariff Act of 1930 and 19 CFR 351.203. Following the initiation of the investigation, the USITC makes a preliminary injury determination: if this is negative, the investigation is terminated, if it is affirmative, the ITA issues a preliminary determination of dumping or subsidization. The investigation continues, whether the ITA's preliminary determination is affirmative or negative. In the case an affirmative determination is made, provisional measures may be applied.<sup>67</sup> If the ITA's final determination finds a margin of dumping or a subsidy rate above the *de minimis* level, the USITC issues a final injury determination. If the USITC determination is affirmative, the ITA issues an order imposing AD or CVD duties, if it is negative, the investigation is terminated, no order is issued, provisional measures are lifted, and cash deposits returned, with interest.

3.73. The ITA uses two types of AD calculation methods: (i) market-economy (ME); and (ii) non-market economy (NME). In both cases, the ITA compares prices in the United States to a normal value (NV). However, the determination of the NV varies according to whether the ITA is dealing with an ME or an NME. In ME calculations, the ITA bases NV on the company's actual costs and prices in the comparison market, which can be either the home country of the respondent or another suitable third country. If the ITA does not find a suitable comparison market, it bases NV on the constructed value (CV) which is a cost-based build-up of a surrogate price. In NME AD calculations, NV is comprised of the company's factors of production valued in an appropriate surrogate country.

3.74. AD and CVD investigations may be suspended under some circumstances based on an agreement to cease exports, or to eliminate the injurious effect. In the case of AD investigations, under suspension agreements exporters accounting for substantially all of the imports of the merchandise under investigation may agree to cease exports or accept price undertakings. For non-market economies, AD suspension agreements may combine price undertakings and additional elements in order to prevent price suppression or undercutting. In CVD cases, the Government alleged to be providing the subsidy may agree to eliminate the subsidy, to completely offset the net subsidy, or to cease or limit exports of the merchandise to the United States.

<sup>66</sup> USDOC online information. Viewed at: <http://enforcement.trade.gov/petitioncounseling/pcp-howtofile.html>.

<sup>67</sup> The collection of duties is done by CBP: cash deposits equal to the preliminary margins are collected from the publication date of the preliminary determination (or earlier if the USDOC reached an affirmative critical circumstances determination); cash deposits equal to the final margins from the publication date of the final determination; cash deposits equal to the amended final margins (if need be) from the publication date of the amended final determination; and cash deposits equal to the final margins (or amended final margins) from the publication date of the AD Order. See Sections 703(d)(1)(B) and 733(d)(1)(B) of the Act and 19 CFR Section 351.205(d).

Agreements to suspend an AD investigation entered into with a WTO Member considered a market economy may only involve price undertakings. Agreements with respect to CVD investigations may also involve quantitative restrictions.

3.75. Interested parties may request administrative reviews of CVD and AD orders in effect each year, during the anniversary month of the publication of the order.<sup>68</sup> These afford interested parties an opportunity to have the USDOC review a particular company's entries, exports, or sales made during the period of review, that is, the 12 months immediately preceding the anniversary month in which the review was requested. The outcome of this review determines the actual weighted-average margin and duty assessments for that period and the future cash deposit rate. If the number of companies or products involved is so large as to make a request impracticable, the USDOC may choose to limit its review to a statistically significant sample of exporters, producers, or types of products, or to exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined. Requests for duty absorption rulings may also be made in administrative reviews, but only for those initiated two or four years after publication of the AD order.<sup>69</sup> If no review is requested for a particular 12-month period, final duties are assessed in the amount deposited for that period.

3.76. Section 751(c) of the U.S. Tariff Act of 1930, as amended by the URAA, requires that the USDOC and the USITC initiate sunset reviews no later than 30 days before the fifth anniversary of publication in the Federal Register of an AD or CVD order or suspension agreement. The sunset review must determine whether the revocation of the order would be likely to lead to the continuation or recurrence of dumping or countervailable subsidies (by USDOC) and of material injury to the domestic industry (by USITC). Initiations are automatic. The USDOC has implemented a policy of providing a one-month advance notification of sunset reviews in the Federal Register, informing interested parties of sunset reviews scheduled for initiation in the month to follow. Sunset reviews are order-specific (country- and product-specific) but may be grouped in an investigation; suspension agreements are also subject to sunset review.<sup>70</sup> In determining whether revocation of an order or termination of a suspended investigation would likely lead to continuation or recurrence of dumping, the USDOC considers the margins established in the investigation and/or reviews conducted during the sunset review period, as well as the volume of imports for the periods before and after issuance of the order or acceptance of the suspension agreement. It may also consider other economic factors if interested parties can demonstrate good cause.

3.77. In August 2010, the USDOC announced a Trade Law Enforcement Package to strengthen its administration of the U.S. trade remedy laws. A number of proposals were launched to refine the USDOC's current practice and strengthen its administration of U.S. AD and CVD laws. The proposals touch on issues related to the determination of AD duties, CVD, market economy status and non-market economies. They gave way to amended regulations or changes in practices, issued mostly between 2011 and 2013.<sup>71</sup>

<sup>68</sup> Parties that may request administrative reviews include: domestic interested parties; certain foreign governments that are defined as interested parties; most exporters and producers of merchandise covered by an order; and importers of merchandise covered by an order.

<sup>69</sup> Duty absorption occurs when the affiliated importer pays or "absorbs" the anti-dumping duties rather than adjusting prices to eliminate dumping. Although a finding of duty absorption does not affect the margin calculation in an administrative review, it makes it more difficult to obtain revocation or termination, since duty absorption will be taken into account when determining in sunset reviews the dumping margins likely to prevail if an order were to be revoked. The USDOC considers that absorption of duties is a strong indication that calculated dumping margins may not be indicative of the margins that would exist in the absence of an order. The USDOC notifies the USITC of its findings regarding duty absorption and the USITC will take those findings into account when determining in a sunset proceeding whether injury is likely to continue. See Section 751(a)(4) of the Act and 19 CFR Section 351.213(1). See also Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations, 76 Fed. Reg. 61042 (3 October 2011).

<sup>70</sup> Sunset review procedures and rules for USDOC are set out in 19 CFR Sections 351.218. Procedures specific to the USITC sunset review proceedings are set out in 19 CFR Sections 207.60-69.

<sup>71</sup> The new rules and changes in practice adopted included: The Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings (78 Fed. Reg. 65963, 4 November 2013); Final Rule: Use of Market Economy Input Prices in Nonmarket Economy Proceedings (78 Fed. Reg. 46799, 2 August 2013); Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings (78 Fed. Reg. 42678, 17 July 2013); De Facto Criteria for Establishing a

3.78. More recently, the United States made some changes and updates to the AD and CVD laws. The main changes were with respect to amendments of the Tariff Act of 1930. The Trade Preferences Extension Act of 2015 (PL 114-27) of 29 June 2015 was notified to the WTO in July 2015.<sup>72</sup> Its Title V – Improvements to Antidumping and Countervailing Duty Laws, also known as the American Trade Enforcement Effectiveness Act – provided five amendments to U.S. AD and CVD laws: (i) Section 502 amends Section 776 of the Tariff Act of 1930, to modify the provisions addressing the selection and corroboration of certain information that may be used as facts otherwise available with an adverse inference in an AD or CVD proceeding; (ii) Section 503 amends Section 771(7) of the Tariff Act of 1930 to modify the definition of "material injury" in AD and CVD proceedings; (iii) Section 504 amends Sections 771(15) and 773 of the Tariff Act of 1930, to modify the definition of "ordinary course of trade" and the provisions governing the treatment of a "particular market situation" in AD proceedings; (iv) Section 505 amends Section 773(b)(2) of the Tariff Act of 1930, to modify the treatment of distorted prices or costs in AD proceedings; and (v) Section 506 amends Section 782(a) of the Tariff Act of 1930 to modify the provision regarding accepting voluntary respondents in AD and CVD proceedings. The Act does not contain dates of application for any of these amendments.<sup>73</sup> However, the USDOC issued a notice stating that all sections of the Act, except Section 503, would be applied to determinations made on or after 6 August 2015.<sup>74</sup>

3.79. Among the changes introduced, the American Trade Enforcement Effectiveness Act expressly states that the USITC may not determine that there is no material injury or threat of material injury to an industry in the United States merely because that industry is profitable or because the performance of that industry has recently improved. It also introduced changes with respect to the concept of constructed value, by stating that, if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology. With respect to prices and costs in nonmarket economies, Section 773(c) of the Tariff Act of 1930 was amended by adding a provision that gives the investigative authority discretion to disregard price or cost values without further investigation if it has determined that broadly available export subsidies existed or particular instances of subsidization occurred with respect to those price or cost values or if those price or cost values were subject to an antidumping order.

3.80. Questions were raised in the WTO's Committees on Anti-Dumping Practices and on Subsidies and Countervailing Measures regarding some aspects of Public Law 114-27, in particular the treatment of information from "secondary sources" in new cases, and the definition of "particular market situation" and the legal implications for specific producers with regard to the calculation methodology.<sup>75</sup> The United States replied that this depended on the facts and circumstances the administering authority had before it on the administrative record.<sup>76</sup>

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Separate Rate in Antidumping Proceedings Involving Non-Market Economy Countries (78 Fed. Reg. 40430, 5 July 2013); Final Rule: Definition of Factual Information and Time Limits for Submission of Factual Information (78 Fed. Reg. 21246, 10 April 2013); Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings (77 Fed. Reg. 36481, 19 June 2012); Modification to Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders (77 Fed. Reg. 29875, 21 May 2012); Non-Market Economy Antidumping Proceedings: Notice of Policy Concerning Assessment of Antidumping Duties (76 Fed. Reg. 65694, 24 October 2011); Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations (76 Fed. Reg. 61042, 3 October 2011); Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, Announcement for change in methodology (76 Fed. Reg. 36092, 21 June 2011); Certification of Factual Information to Enforcement and Compliance During Antidumping and Countervailing Duty Proceedings, Interim Final Rule (76 Fed. Reg. 7491, 10 February 2011).

<sup>72</sup> Notified to the WTO in WTO document G/ADP/N/1/USA/1/Suppl.20 and G/SCM/N/1/USA/1/Suppl.20, 16 July 2015.

<sup>73</sup> The full text of Public Law 114-27 may be viewed at: <https://www.congress.gov/bill/114th-congress/house-bill/1295?q=%7B%22search%22%3A%5B%22antidumping%22%5D%7D&resultIndex=18>.

<sup>74</sup> See Notice of Determination for the Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015. 80 Fed. Reg. 46793 (6 August 2015), notified to the WTO in WTO document G/ADP/N/1/USA/Suppl.21, G/SCM/N/1/USA/1/Suppl.21, 13 August 2015.

<sup>75</sup> WTO document G/ADP/Q1/USA/27, G/SCM/Q1/USA/27, 9 October 2015.

<sup>76</sup> WTO document G/ADP/Q1/USA/28, G/SCM/Q1/USA/28, 29 October 2015.



3.81. The Trade Facilitation and Trade Enforcement Act of 2015 (PL 114-125), signed into law on 24 February 2016, amended the Tariff Act of 1930 regarding the application of the U.S. AD and CVD law to dumped and subsidized imports.<sup>77</sup> Title IV of the Act, Prevention of Evasion of Antidumping and Countervailing Duty Orders, known also as the Enforce and Protect Act of 2015, contains provisions to strengthen enforcement to prevent the evasion of the payment of duties.<sup>78</sup> To this end, the Act mandates the establishment of a Trade Remedy Law Enforcement Division (TRLED) within the Office of Trade of the Department of Homeland Security. The Division is entrusted with the development and administration of policies to prevent and counter evasion, and is responsible for directing enforcement and compliance assessment activities, as well as for conducting commercial risk assessment with respect to cargo destined for the United States, and for the development of policies for the application of single entry and continuous bonds for entries of covered merchandise to sufficiently protect the collection of AD and CV duties. The TRLED has already initiated implementation of Title IV of the Act, including working with CBP's Regulations and Rulings Division during the drafting phase of the implementing regulations released on 22 August 2016. The TRLED has also drafted Standard Operating Procedures for the processing of Enforce and Protect Act allegations and begun programming the CBP.gov website to accommodate the public's submissions of allegations. Additionally, the TRLED has drafted FAQs for public guidance on the procedures required for filing an allegation in proper form and will be reaching out to small businesses that may require additional assistance.

3.82. During the period under review, both the USITC and the USDOC instituted some changes in practice related to investigation procedures. The USDOC modified its regulation concerning the extension of time limits for submissions in AD and CVD proceedings. The modification clarifies that parties may request an extension of time limits before any time limit established expires. This modification also requires that a request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits.<sup>79</sup> The USDOC also decided to continue not to apply its withdrawn targeted dumping regulations in less-than-fair-value investigations and to continue to determine whether to apply an alternative comparison method as appropriate based upon the particular facts in each case.<sup>80</sup> The USDOC also modified its regulations pertaining to price adjustments in AD duty proceedings, to clarify that it does not intend to accept a price adjustment made after the time of sale unless the interested party demonstrates its entitlement to such an adjustment. The USDOC adopted in this final rule a non-exhaustive list of factors that it may consider in determining whether to accept a price adjustment made after the time of sale.<sup>81</sup>

3.83. The USITC amended its Rules of Practice and Procedure to modify rules of general application, and provisions concerning the conduct of AD and CV duty investigations and reviews. The amendments were designed to increase efficiency in the processing and reviewing of documents filed with the Commission and to reduce expenditure.<sup>82</sup> The USITC also introduced an amendment to its rules designed to facilitate the collection of information and reduce the burden on petitioning parties by changing the information they need to provide in petitions.<sup>83</sup>

### 3.1.7.2 Anti-dumping

3.84. During the period 2014 to end-June 2016, the number of AD investigation initiations totaled 85. Although the number of initiations decreased to 19 in 2014 from 39 in 2013, it increased in 2015 to 42 and there were 24 initiations up to June 2016 (Table 3.6). Of the 19 investigations initiated in 2014, 14 resulted in the imposition of definitive measures (74% of the total), and one, regarding sugar from Mexico, resulted in a suspension agreement. The other four investigations resulted in termination due to a no injury finding, but in two of them provisional measures had been imposed. As at 30 September 2016, 14 of the investigations initiated in 2015 had resulted in the imposition of definitive measures, and 3 had been terminated due to a no

<sup>77</sup> The full text of Public Law 114-25 may be viewed at: <https://www.congress.gov/bill/114th-congress/house-bill/644?q=%7B%22search%22%3A%5B%22antidumping%22%5D%7D&resultIndex=17>.

<sup>78</sup> Notified to the WTO in WTO document G/ADP/N/1/USA/1/Suppl.23 and G/SCM/N/1/USA/1/Suppl.23, 1 April 2016.

<sup>79</sup> WTO document G/ADP/N/1/USA/1/Suppl.15, G/SCM/N/1/USA/1/Suppl.15, 10 October 2013.

<sup>80</sup> WTO document G/ADP/N/1/USA/1/Suppl.16, G/SCM/N/1/USA/1/Suppl.16, 19 May 2014.

<sup>81</sup> WTO document G/ADP/N/1/USA/1/Suppl.24, 1 April 2016.

<sup>82</sup> WTO document G/ADP/N/1/USA/1/Suppl.17, G/SCM/N/1/USA/1/Suppl.17, 11 July 2014.

<sup>83</sup> WTO document G/ADP/N/1/USA/1/Suppl.22, G/SCM/N/1/USA/1/Suppl.22, 3 September 2015.

injury finding.<sup>84</sup> Between 1995 and 2015, the United States initiated 569 AD investigations, the second largest number of initiations among WTO Members.<sup>85</sup>

**Table 3.6 Anti-dumping investigations, 2013-June 2016**

	2013	2014	2015	2016 (June)
Investigation initiations, of which	39	19	42	24
Preliminary injury determinations, affirmative	39	17	40	23 <sup>a</sup>
Preliminary dumping determination, affirmative, of which	36	16	39	33 <sup>a</sup>
Provisional measure applied	35	15	39	32 <sup>a</sup>
Final dumping determinations	35	16	14	21 <sup>a</sup>
Final injury determinations, of which	21	15	9	10 <sup>a</sup>
Duty order imposed	20	14	9	10 <sup>a</sup>
Suspension agreements	1	1	0	0
Sunset review determinations	13	29	36	14
Continuation of orders	11	24	31	13
Revocations	3	6	6	1
Revocations other than from sunset reviews	0	3	2	0

a Refers to investigations started in 2015.

Source: WTO Secretariat based on U.S. Department of Commerce; USITC; and notifications.

3.85. In 2013, seven AD duty orders were issued, while in 2014, the number rose to 20, before declining to 14 in 2015. Seven new AD orders were issued in the first half of 2016.<sup>86</sup> As of 30 June 2016, final AD orders were applied to imports from 39 trading partners; the most affected was China with 102 AD orders, and Chinese Taipei and the EU with 21 each, followed by India (16), Japan (15) and the Republic of Korea (14) (Table 3.7).

**Table 3.7 Anti-dumping measures in force, by trading partner/region, 2013-June 2016**

Trading partner/region	2013	2014 <sup>b</sup>	2015 <sup>c</sup>	2016 (June)
<b>Total</b>	<b>245<sup>a</sup></b>	<b>259<sup>b</sup></b>	<b>265<sup>c</sup></b>	<b>276<sup>d</sup></b>
Argentina	1	1	1	1
Brazil	8	8	7	8
Canada	2	2	2	3
China	93	93	97	102
EU(28)	22	23	20	21
India	15	15	15	16
Indonesia	7	8	8	9
Japan	14	15	15	15
Korea, Rep. of	12	14	15	14
Malaysia	2	0	4	4
Mexico	8	11	11	11
Russian Federation	6	6	6	6
South Africa	3	3	3	3
Chinese Taipei	18	19	21	21
Thailand	6	7	7	7
Turkey	3	4	5	5
Ukraine	7	7	7	7
United Arab Emirates	2	2	2	2
Vietnam	6	8	9	9
Other America	3	3	3	3
Other Asia (including Australia)	4	7	4	6
Other Europe	3	3	3	3

a Including six suspension agreements.

b Including seven suspension agreements.

c Including seven suspension agreements.

d Including seven suspension agreements.

Source: WTO documents G/ADP/N/252/USA, 6 March 2014; G/ADP/N/265/USA, 26 February 2015; G/ADP/N/280/USA, 11 March 2016; and G/ADP/N/286/USA, 7 September 2016; U.S. Department of Commerce; and USITC online information. Viewed at: [http://www.usitc.gov/trade\\_remedy/documents/orders.xls](http://www.usitc.gov/trade_remedy/documents/orders.xls).

<sup>84</sup> For details, see Enforcement and Compliance online information. Viewed at: <http://enforcement.trade.gov/frn/index.html>, and WTO document G/ADP/N/280/USA, 11 March 2016.

<sup>85</sup> WTO online information. Viewed at: [https://www.wto.org/english/tratop\\_e/adp\\_e/AD\\_InitiationsByRepMem.pdf](https://www.wto.org/english/tratop_e/adp_e/AD_InitiationsByRepMem.pdf).

<sup>86</sup> This refers to orders issued during the year; the investigations may have been initiated the previous year. U.S. Department of Commerce online information. Viewed at: <http://enforcement.trade.gov/frn/index.html>; and USITC online information. Viewed at: [http://www.usitc.gov/trade\\_remedy/documents/orders.xls](http://www.usitc.gov/trade_remedy/documents/orders.xls).

3.86. As of 30 June 2016, there were 269 definitive AD orders were in place, up from 258 as of 31 December 2015.<sup>87</sup> At that date, 276 AD duty orders and suspension agreements were in effect, compared with 259 as of December 2014 and 265 as of December 2015.<sup>88</sup>

3.87. Of the 258 AD and 65 CVD measures in place (excluding suspension agreements) at end-2015, 217 AD and 41 CVD had been renewed after a review, that is, they had been in place for over five years. The average duration of an AD measure in place at the end of 2015 was around seven years.<sup>89</sup> At the end of 2015, 59 AD and 5 CVD measures had been in place for more than 20 years; 104 AD and 14 CVD measures had been in place for over 10 years. The longest-lasting AD measure in place dates from 1977, and is applied on pressure sensitive plastic tape from Italy; a measure on pre-stressed concrete steel wire strand from Japan dates from 1978.

3.88. During the period under review, the level of AD duties applied varied significantly. The definitive duties applied during 1 January 2013–30 June 2016, range from a low of 0.0% to a high of 407.52%; provisional duties applied over the same period also range from 0.0% to 407.52%.

3.89. During the last three years, the United States entered into two new suspension agreements: one with Mexico in 2014, concerning sugar, and another one in 2013 with Ukraine concerning certain oil country tubular goods. At end 2015, seven suspension agreements were in place, with Argentina (1), Mexico (2), the Russian Federation (2), and Ukraine (2), related to lemon juice, fresh tomatoes, sugar, carbon steel plate and uranium, and oil country tubular goods, respectively. Four of the agreements involve price undertakings, one involves export limits and the other involves export limits combined with a price undertaking.<sup>90</sup> There were 230 administrative reviews of AD duties during FY 2013-15.

3.90. There were 78 sunset reviews of AD orders during 2013-15; during the same period, there were 12 revocations, while 66 orders were continued. In general, from 2013 to 2015, there were 14 revocations resulting from 5-year sunset reviews of AD and CVD measures. Most of the revocations during that period include iron and steel products as well as chemicals; they covered 9 trading partners. During the same period, there were 93 AD and CVD orders in place for products including iron and steel products, chemicals, paper and food from 24 trading partners that had been subject to a 5-year sunset review.<sup>91</sup>

3.91. During the review period, some aspects of U.S. AD investigation procedures and findings were the subject of WTO disputes. In December 2014, the Republic of Korea requested consultations with the United States regarding AD measures on oil country tubular goods from Korea; a Panel was composed on 25 March 2015.<sup>92</sup> In March 2015, Indonesia requested consultations regarding AD and CV measures on coated paper from Indonesia.<sup>93</sup>

### 3.1.7.3 Countervailing duties

3.92. Between 2013 and 2015, the number of CVD investigation initiations totalled 60: 19 in 2013, 18 in 2014, and 23 in 2015 (Table 3.8). There were also 12 initiations in the first six months of 2016.<sup>94</sup> Of the 18 CVD investigations initiated in 2014, eight resulted in the imposition of definitive measures and one resulted in a suspension agreement on sugar with Mexico. The other nine investigations resulted in terminations due to a finding of no injury or a final negative determination. As of 30 June 2016, five of the investigations initiated in 2015 had resulted in the

<sup>87</sup> U.S. Department of Commerce online information. Viewed at: <http://enforcement.trade.gov/frn/index.html>; and USITC online information. Viewed at: [http://www.usitc.gov/trade\\_remedy/documents/orders.xls](http://www.usitc.gov/trade_remedy/documents/orders.xls).

<sup>88</sup> WTO documents G/ADP/N/265/USA, 25 February 2015; G/ADP/N/280/USA, 11 March 2016; and G/ADP/N/286/USA, 7 September 2016.

<sup>89</sup> Calculated from USITC data. Viewed at: <https://www.usitc.gov/> and [https://www.usitc.gov/trade\\_remedy/publications/opinions\\_index.htm](https://www.usitc.gov/trade_remedy/publications/opinions_index.htm) (AD/CVD orders).

<sup>90</sup> WTO document G/ADP/N/280/USA, 11 March 2016.

<sup>91</sup> USDOC online information. Viewed at: <http://ia.ita.doc.gov/sunset/>.

<sup>92</sup> WTO documents WT/DS488/1, G/L/1100, and G/ADP/D107/1, 5 January 2015; and WT/DS488/6, 14 July 2015.

<sup>93</sup> WTO document WT/DS491/1, G/L/1109, G/ADP/D108/1, and G/SCM/D106/1, 17 March 2015.

<sup>94</sup> WTO document G/SCM/N/305/USA, 26 September 2016.

imposition of definitive duties and two had been terminated due to a final negative determination.<sup>95</sup> All investigations initiated in 2015 were subject to provisional measures.<sup>96</sup>

**Table 3.8 Countervailing duty investigations and measures imposed, 2013-15**

	2013	2014	2015
Investigation initiations	19	18	23
Preliminary injury determinations, affirmative	19	16	23
Preliminary countervailing duty determinations, affirmative, of which	13	11	18
Provisional measure applied	13	10	18
Final countervailing duty determinations	14	10	5
Final injury determinations, of which	8	14	6
Duty order imposed	6	8	5
Suspension Agreement	0	1	0
Revocations	1 <sup>a</sup>	2 <sup>b</sup>	0

a Due to sunset review.

b One of which due to sunset review.

Note: Figures refer to the year in which the investigation was initiated. Some provisional or definitive duties may have been applied the following year.

Source: WTO, based on U.S. Department of Commerce, USITC, and notifications information.

3.93. Overall, there were 66 CVD orders in place and one suspension agreement with Mexico regarding sugar at end December 2015, involving 12 trading partners (China being the most affected).<sup>97</sup> Some 50% of the CVD orders in place related to steel products.<sup>98</sup> There were 69 CVD orders in place as at 30 June 2016.<sup>99</sup>

3.94. In March 2016, Canada requested consultations with the United States concerning the countervailing measures on supercalendered paper from Canada, regarding investigation procedures, the preliminary determination, the final affirmative determination, the final determination, and the duty order.<sup>100</sup>

3.95. Of the 345 AD and CV duty orders in place as of 30 June 2016, 23 were on agricultural products, 48 on chemicals and pharmaceuticals, 162 on iron and steel products, 23 on metals and minerals, 64 on miscellaneous manufactured products, 19 on plastics, rubber, stone, and glass products, 3 on textiles, and 3 on machinery and equipment.<sup>101</sup>

### 3.1.7.4 Safeguards

#### 3.1.7.4.1 Global safeguards

3.96. U.S. legislation on global safeguards is contained in Sections 201-204 of the U.S. Trade Act of 1974, as amended by the URAA. Under Section 201 of the Act, the USITC determines whether an article is being imported in such increased quantities that it is a substantial cause of serious

<sup>95</sup> U.S. Department of Commerce online information. Viewed at: <http://enforcement.trade.gov/frn/index.html>; and WTO documents G/SCM/N/298/USA, 11 March 2016, and G/SCM/N/305, 26 September 2016.

<sup>96</sup> Some of these measures were applied in the first half of 2016. WTO documents G/SCM/N/298/USA, 11 March 2016, and G/SCM/N/305, 26 September 2016.

<sup>97</sup> The trading partners affected were: Brazil (2); Canada (1); China (33); India (9); Indonesia (3); Iran (2); Italy (1); Republic of Korea (3); Mexico (1); South Africa (1); Chinese Taipei (1); Thailand (1); Turkey (5); and Viet Nam (3).

<sup>98</sup> Of the 66 orders in place in late 2015, 33 were on steel and iron products, 5 on food products, 7 on chemicals, 5 on paper, 2 on semiconductors, 1 on kitchen appliance, 2 on tires, 1 on washers and 10 others. WTO document G/SCM/N/298/USA, 11 March 2016.

<sup>99</sup> Of the 69 orders in place on 30 June 2016, 33 were on steel and iron products, 5 on food products, 9 on chemicals, 6 on paper, 2 on semiconductors, 1 on kitchen appliances, 2 on tyres, 1 on washers and 10 others. The trading partners affected were: Brazil (2); Canada (1); China (34); India (10); Indonesia (4); Iran (2); Italy (1); Republic of Korea (3); Mexico (1); South Africa (1); Chinese Taipei (1); Thailand (1); Turkey (5); and Viet Nam (3). WTO document G/SCM/N/305/USA, 26 September 2016.

<sup>100</sup> WTO documents WT/DS505/1, G/L/1144, and G/SCM/D109/1, 5 April 2016.

<sup>101</sup> U.S. Department of Commerce online information. Viewed at: <http://enforcement.trade.gov/frn/index.html>; and USITC online information. Viewed at: [http://www.usitc.gov/trade\\_remedy/documents/orders.xls](http://www.usitc.gov/trade_remedy/documents/orders.xls).

injury, or threat thereof, to the U.S. industry producing a like or directly competitive article. If the USITC makes an affirmative determination, it recommends to the President relief that would address the serious injury or threat thereof, and facilitate the adjustment of the domestic industry to import competition. The President makes the final decision on whether to provide relief and the form and amount of relief, within 60 days of receipt of an USITC report.

3.97. Under U.S. law, safeguard measures may include tariffs, quantitative restrictions, tariff quotas, import licensing and other measures as listed in Section 203 of the Trade Act of 1974. NAFTA partners are excluded from the application of safeguard measures, unless they individually account for a substantial share of total imports, and it is shown that they contribute importantly to serious injury or threat thereof.

3.98. In 2015 the United States notified to the WTO amendments to its regulations pertaining to the U.S. International Trade Commission (USITC). The amendments relate to provisions of the USITC's Rules of Practice and Procedure concerning global safeguard actions. The amendments are part of the USITC's retrospective analysis of its Rules that attempt to determine whether rules should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory programme more effective or less burdensome in achieving regulatory objectives.<sup>102</sup>

3.99. The United States has not applied any safeguard measures nor initiated any safeguard investigations during the review period; no new Section 201 cases have been initiated since 2001.

#### **3.1.7.4.2 Special safeguards**

3.100. The USITC also conducts country- or region-specific safeguard investigations (special safeguards) under legislation that implements U.S. free trade agreements, including NAFTA, CAFTA, and the FTAs with Australia, Bahrain, Chile, Morocco, and Singapore. If the USITC finds, as a result of a duty reduction under an FTA, a domestic industry that is seriously injured or threatened with serious injury by increased imports, it recommends temporary relief to the President, who makes the final decision. Relief may be in the form of a rollback of a duty reduction under the agreement or suspension of further duty reductions on the imported good. No safeguard investigations were initiated nor were measures of this type maintained during the period under review.

#### **3.1.8 Standards and other technical requirements**

3.101. Standardization activities in the United States are decentralized and demand-driven. Voluntary consensus standards (VCSs) are developed by private sector standards developing organizations (SDOs) in response to specific concerns and needs expressed by industry, government, and consumers.<sup>103</sup>

3.102. The American National Standards Institute (ANSI) is a private, non-profit organization that coordinates and administers the private-sector VCS system in the United States. ANSI is the U.S. member body to the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC), via the U.S. National Committee. American National Standards (ANS), a type of VCS, are prepared by some 245 ANSI-accredited standards developers (ASDs). These ASDs have sponsored more than 11,000 ANSs. In order to maintain their accreditation with ANSI, the ASDs must adhere to the "ANSI Essential Requirements"<sup>104</sup> ensuring due process in the preparation, approval, revision, reaffirmation and withdrawal of American National Standards. The basic requirements of the ANS process stipulate: the use of suitable media to facilitate broad participation; a process open to all directly and materially affected by the activity; a balance of interests without dominance by any single interest category, individual or organization; coordination and harmonization to resolve potential conflicts; a readily available appeals mechanism; consensus decision making; and compliance with ANSI's patent policy. The ANSI Essential Requirements embrace globally-accepted principles of standardization

<sup>102</sup> WTO document G/SG/N/1/USA/1/Suppl.1, 20 July 2015.

<sup>103</sup> American National Standards Institute online information. Viewed at: [https://www.standardsportal.org/usa\\_en/standards\\_system.aspx](https://www.standardsportal.org/usa_en/standards_system.aspx).

<sup>104</sup> ANSI online information. Viewed at: [https://share.ansi.org/shared%20documents/Standards%20Activities/American%20National%20Standards/Procedures,%20Guides,%20and%20Forms/2016\\_ANSI\\_Essential\\_Requirements.pdf](https://share.ansi.org/shared%20documents/Standards%20Activities/American%20National%20Standards/Procedures,%20Guides,%20and%20Forms/2016_ANSI_Essential_Requirements.pdf).

implemented, *inter alia*, by the International Telecommunications Union, the International Organization for Standardization, and the International Electrotechnical Commission. American National Standards may relate to products, processes, services, systems, or personnel.

3.103. At present, the basic legal framework for the preparation and adoption of standards and technical regulations in the United States includes the Trade Agreements Act of 1979, the Administrative Procedure Act of 1947 (APA), the National Technology Transfer and Advancement Act of 1995 (PL 104-113) (NTTAA), U.S. Office of Management and Budget (OMB) Circular A-119, and Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), 13609 (Promoting International Regulatory Cooperation), and 13610 (Identifying and Reducing Regulatory Burdens).

3.104. Federal law specifically prohibits any U.S. government agency from engaging in standards-related activity creating unnecessary obstacles to the foreign commerce of the United States.<sup>105</sup> Moreover, federal agencies are obliged to ensure that imported goods are treated no less favourably than like domestic products in the application of standards-related activities. The NTTAA directs federal agencies to use standards developed or adopted by voluntary consensus standards bodies as a means to carry out objectives. The NTTAA codifies existing guidance provided in Circular A-119, which directs federal agencies in the elaboration of technical regulations and in their procurement activities to rely on "voluntary consensus standards", rather than developing "government unique standards", unless this approach would be inconsistent with law or otherwise impractical. Circular A-119 also encourages federal regulatory agencies to participate in standards developing organizations (SDOs).

3.105. In January 2016, the Office of Management and Budget (OMB) issued a revised Circular A-119 which takes into account regulatory developments since the 1998 revision, including the increasingly easy access and online availability of documentation, and the timely updating of standards using the retrospective review mechanism set out in Executive Orders 13563 and 13610.<sup>106</sup> The revised Circular A-119 takes account of a final rule of the Office of the Federal Register (OFR), published on 7 November 2014, regarding access to standards and other material incorporated by reference in proposed federal regulations.<sup>107</sup> The OFR rule obliges federal agencies to: add more information regarding materials incorporated by reference in the preambles of their rulemaking documents, and notably how this material may be considered "reasonably available" to interested parties, and to provide summaries of the material to be incorporated by reference.<sup>108</sup>

3.106. The Administrative Procedure Act of 1947 (APA) provides for public participation in rulemaking by U.S. agencies through a system of notice and comment. The APA requires agencies to undertake a notice and comment process open to the public, both foreign and domestic, for all rulemakings, and to take these comments into account in the final rule. Additionally, the principles laid down in Executive Order 12866 for the planning, development, and review of federal regulations direct federal agencies to present draft regulations to the Office of Information and Regulatory Affairs (OIRA) for review prior to publication together with, *inter alia*, an assessment of the costs and benefits of the regulatory action. Regulations deemed economically significant by OIRA or by the agency itself must be accompanied by a more detailed regulatory impact analysis, including in-depth cost-benefit analysis of alternative regulatory approaches.<sup>109</sup> In addition to the

<sup>105</sup> 19 U.S.C. 2532.

<sup>106</sup> OMB Circular A-119 "Federal Participation in the Development and Use of Voluntary Consensus Standards" of 17 January 1980 was revised in October 1982, October 1993, and again in February 1998 (for consistency with the National Technology Transfer and Advancement Act of 1995). Annex A of the revised OMB Circular A-119 of 27 January 2016 reproduces the Decision of the WTO TBT Committee regarding principles for the development of international standards, guides and recommendations in relation to Articles 2, 5 and Annex 3 of the TBT Agreement (Annex 4 of WTO document G/TBT/9, 13 November 2000).

<sup>107</sup> 79 FR 66267.

<sup>108</sup> Petitions addressed to the OFR, if accepted, would have obliged federal agencies to use only standards available free of charge, or required the full reproduction of (or hyperlinks to) material incorporated by reference. However, privately developed codes and standards are copyright protected and may be sold against payment, even when incorporated into federal regulations. The OFR rule balances the "reasonable availability" of standards rule with U.S. copyright law, international trade obligations of the United States, and agencies' ability to regulate substantively under their authorizing statutes.

<sup>109</sup> Executive Order 12866 defines economically significant regulatory action as any regulatory action 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



Executive Orders and Circular A-119, the Office of Science and Technology Policy (OSTP), the Office of the United States Trade Representative (USTR) and OIRA issued in January 2012 a joint Memorandum outlining five fundamental strategic objectives for federal engagement in standards activities when addressing national priorities.<sup>110</sup>

3.107. The National Institute of Standards and Technology (NIST), within the Department of Commerce, is a non-regulatory federal agency promoting U.S. innovation and industrial competitiveness by advancing measurement science, standards, and technology. Under the National Technology Transfer and Advancement Act, NIST is responsible for working with federal agencies to coordinate public- or private-sector conformity assessment activities to eliminate unnecessary complexity and duplication.<sup>111</sup> Procedures for accreditation of conformity assessment bodies vary according to the particular standard or technical regulation. U.S. requirements generally follow the ISO Council Committee on Conformity Assessment (CASCO) standards.

3.108. NIST's Standards Coordination Office operates the TBT enquiry point and notification authority of the United States under the WTO TBT Agreement. NIST responds to information requests from other WTO Member national enquiry points and constituents, and transmits comments or queries it receives from WTO Members on U.S. notified proposed measures to the relevant U.S. regulatory agency within one or two days. The TBT enquiry point received 114 information requests in 2015 and 71 such requests in 2016 through the end of August.

3.109. The United States submitted 180 TBT notifications to the WTO in 2014 and 283 notifications in 2015 (including revised notifications, addenda, and corrigenda). The United States is the only WTO Member notifying measures at the local government level; one such notification was received in 2014, and none in 2015. However, 39 measures proposed or maintained at the State level were notified under Article 3.2 of the TBT Agreement in the first half of 2016. No specific trade concerns have been raised in the TBT Committee regarding measures taken by the United States since its last Trade Policy Review.<sup>112</sup> Furthermore, no dispute settlement proceedings were initiated against the United States with reference to the TBT Agreement during the period under review.<sup>113</sup>

3.110. Executive Order 13609 of 1 May 2012 seeks to promote international regulatory cooperation in an increasingly global economy, noting that differences in regulatory approaches between the United States and its foreign trading partners may be unnecessary and impede the ability of U.S. businesses to export and compete internationally. There is an interagency Regulatory Working Group serving, where appropriate, as a forum to discuss international regulatory cooperation activities.<sup>114</sup> The Regulatory Working Group issued guidelines on the

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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>.

<sup>110</sup> Memorandum M-12-08 "Principles for Federal Engagement in Standards Activities to Address National Priorities" of 17 January 2012. Viewed at: [www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-08\\_1.pdf](http://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-08_1.pdf). The five objectives are to (i) produce timely, effective standards and efficient conformity assessment schemes essential to address an identified need; (ii) achieve cost-efficient, timely, and effective solutions to legitimate regulatory, procurement, and policy objectives; (iii) promote standards and standardization systems that promote and sustain innovation and foster competition; (iv) enhance U.S. growth and competitiveness and ensure non-discrimination, consistent with international obligations; and (v) facilitate international trade and avoid the creation of unnecessary obstacles to trade.

<sup>111</sup> NIST "Guidance on Federal Conformity Assessment Activities" (15 CFR part 287) was issued in 2000. Viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2000-08-10/html/00-20262.htm>.

<sup>112</sup> The last specific trade concern about a measure (tyre identification and recordkeeping) maintained by the United States was raised in the TBT Committee in November 2014.

<sup>113</sup> Regarding three disputes raised against the United States and pending at the time of the 2014 Trade Policy Review, a mutually acceptable solution on implementation has been notified for DS406 (Measures Affecting the Production and Sale of Clove Cigarettes). In the "Certain Country of Origin Labelling (COOL) Requirements" cases initiated by Canada (DS384) and Mexico (DS386), both countries were granted authorization to retaliate. The United States has now repealed the COOL measure and come into compliance with the DSB's rulings and recommendations. DSU Article 22.6 and Article 21.5 proceedings are ongoing in DS381 (Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products).

<sup>114</sup> The Working Group must ensure that its activities are consistent with U.S. trade policy and guidance as formulated by USTR in consultation with bodies such as the Trade Policy Staff Committee and its subcommittees, and the Trade Policy Review Group. The Working Group is chaired by the OIRA Administrator and includes a representative from USTR. It was established by Executive Order 12866 of 30 September 1993.

applicability and implementation of Executive Order 13609 in June 2015,<sup>115</sup> highlighting the OECD and APEC as fora engaged in international regulatory cooperation activities raising issues of significant interest to multiple U.S. agencies, and the mandates of the Regulatory Cooperation Councils with Canada and Mexico to engage in sector-specific regulatory cooperation.

3.111. Excluded from the scope of Executive Order 13609 are the statutory authorities of USTR in the area of trade policy as these are pursued, *inter alia*, in APEC, the WTO TBT Committee, and through bilateral free trade agreements. Many of the bilateral FTAs of the United States include common provisions reaffirming the parties' obligations under the TBT Agreement; adherence to the principles of the Decision of the TBT Committee of 13 November 2000; mutual recognition of conformity assessment procedures; transparency; joint work on standards, technical regulations and conformity assessment procedures; and exchange of information.

3.112. The United States has concluded mutual recognition agreements (MRAs) with numerous foreign partners. In the area of testing and certification of telecommunications equipment, MRAs with Japan, Mexico, and Israel were signed in 2007, 2011, and 2012 respectively. The APEC Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (APEC-TEL MRA), signed on 8 May 1998, entitles 21 member economies to participate in the arrangement, which covers mutual acceptance of test reports (phase I) and certification of products (phase II). The United States has implemented the APEC-TEL MRA for phase I and II with Canada; Hong Kong, China; and Singapore, and phase I only with Australia, the Republic of Korea, Malaysia, Chinese Taipei, and Viet Nam. The Inter-American Mutual Recognition Agreement for Conformity Assessment of Telecommunications Equipment is not yet operational. The U.S. and EU signed a MRA in 1998 covering six sectors; the EEA-EFTA States MRA (2005) mirrors the provisions of the U.S.-EU MRA for three sectors. In addition, the United States has signed separate MRAs with the EU (2004) and EFTA States (2006) for marine safety equipment.

### 3.1.9 Sanitary and phytosanitary requirements

#### 3.1.9.1 Basic legal and institutional framework

3.113. The United States maintains numerous laws and regulations pertaining to food safety, animal health and plant health including the Federal Food, Drug and Cosmetic Act, the Federal Meat Inspection Act, the Plant Protection Act, and the Federal Insecticide, Fungicide, and Rodenticide Act. The most extensive update of U.S. food safety legislation in decades occurred in January 2011 with the promulgation of the Food and Drug Administration Food Safety Modernization Act (PL 111-353).<sup>116</sup>

3.114. Depending on the product and the type of risk, responsibilities for sanitary and phytosanitary (SPS) matters are divided among federal agencies. The International Regulations and Standards Division at the USDA Foreign Agricultural Service serves as the national enquiry point and national notification authority for the United States under the WTO SPS Agreement. The United States submitted 112 regular SPS notifications in 2014 and 86 notifications in 2015. One new specific trade concern regarding a measure proposed by the United States has been raised in the WTO Committee on Sanitary and Phytosanitary Measures during the period since the last Trade Policy Review.<sup>117</sup> In addition, three previously raised concerns continued to be discussed in the SPS Committee.<sup>118</sup>

<sup>115</sup> Guidelines of 26 June 2015. Viewed at:

[https://www.whitehouse.gov/sites/default/files/omb/inforeg/eo\\_13609/eo13609-working-group-guidelines.pdf](https://www.whitehouse.gov/sites/default/files/omb/inforeg/eo_13609/eo13609-working-group-guidelines.pdf).

<sup>116</sup> According to the FDA, the authoritative and official source of the law is the version provided by the Government Printing Office (viewed at: <http://www.gpo.gov/fdsys/pkg/PLAW-111publ353/pdf/PLAW-111publ353.pdf>). Box III.1 in WTO document WT/TPR/S/275/Rev.1, 12 February 2013, provides an overview of the principal elements of the Act.

<sup>117</sup> In March 2015, Mexico raised a concern about the proposed revision of fees for agricultural quarantine and inspection services, particularly as the revised fees would lead to markedly higher charges for agricultural goods transported to the United States by commercial truck.

<sup>118</sup> The concerns relate to U.S. measures on Siluriformes fish and fish products, including catfish (raised by China and Viet Nam), the high cost of certification for mango (India), and non-acceptance of the OIE categorization for BSE (also raised by India).



### 3.1.9.2 Food and Drug Administration (FDA)

3.115. The FDA's responsibilities include the regulation of food (except meat, poultry, catfish and processed eggs, which are regulated by USDA); food additives; dietary supplements; human and veterinary drugs; medical devices; human biologics; tobacco; and cosmetics. Implementation of the 2011 FDA Food Safety Modernization Act (FSMA), which aims at shifting the regulatory approach from response to prevention of food safety hazards, has been a core activity of the FDA in recent years. The law provides new abilities to hold food companies responsible for food safety.

3.116. The FDA published seven draft regulations to implement key elements of the FSMA for public comment between January 2013 and February 2014. The proposed regulations, addressing preventive controls for human and animal food, produce safety, foreign supplier verification programmes, accreditation of third-party auditors, protection against intentional adulteration of human food, and sanitary transportation of food, were also notified to the WTO.<sup>119</sup> The key implementing regulations were finalized between September 2015 and July 2016 (Table 3.9). Most of the regulations include phased-in compliance dates for "small" and "very small" businesses, and various exemptions or limitations on their scope (such as, for example, certain exemptions for low-risk activities performed on farms by small and very small businesses). In addition, the FDA has issued (and will continue to issue) various guidance documents that represent the Agency's current thinking to assist industry in complying with the new food safety regulations.<sup>120</sup>

**Table 3.9 Implementing regulations for the FSMA**

Title	Effective date <sup>a</sup>	Federal Register citation	WTO notification (final rule)
<b>Key regulations</b>			
Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food	15.09.2015 <sup>b</sup>	80 FR 55907	G/SPS/N/USA/2502/Add.6, 15.09.2015
Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals	16.11.2015 <sup>c</sup>	80 FR 56169	G/SPS/N/USA/2593/Add.3, 15.09.2015
Foreign Supplier Verification Programs for Importers of Food for Humans and Animals ("FSVP Rule")	26.01.2016	80 FR 74225	G/SPS/N/USA/2569/Add.3, 16.11.2015
Accreditation of Third-Party Certification Bodies to Conduct Food Safety Audits and to Issue Certifications ("Accreditation Third-Party Certification Rule")	26.01.2016	80 FR 74569	G/SPS/N/USA/2570/Add.4, 16.11.2015
Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption ("Produce Safety Rule")	26.01.2016	80 FR 74353	G/SPS/N/USA/2503/Add.6, 16.11.2015
Mitigation Strategies to Protect Food Against Intentional Adulteration ("Intentional Adulteration Rule")	26.07.2016	81 FR 34165	G/SPS/N/USA/2610/Add.2, 02.06.2016
Sanitary Transportation of Human and Animal Food ("Sanitary Transportation Rule")	06.06.2016	81 FR 20091	G/SPS/N/USA/2631/Add.2, 08.04.2016
<b>Supplementary regulations</b>			
Amendments to Registration of Food Facilities	09.12.2016	81 FR 45911	G/SPS/N/USA/691/Add.15, 18.07.2016
Record Availability Requirements: Establishment, Maintenance and Availability of Records	04.04.2014	79 FR 18799	G/SPS/N/USA/703/Add.4, 08.04.2014
Information Required in Prior Notice of Imported Food	30.05.2013	78 FR 32359	G/SPS/N/USA/690/Add.12, 03.06.2013
Criteria Used to Order Administrative Detention of Food for Human or Animal Consumption	05.02.2013	78 FR 7994	G/SPS/N/USA/704/Add.3, 08.02.2013

<sup>119</sup> WTO documents G/SPS/N/USA/2502 and 2503, 10 January 2013; G/SPS/N/USA/2569 and 2570, 30 July 2013; G/SPS/N/USA/2593, 30 October 2013; G/SPS/N/USA/2610, 13 January 2014; and G/SPS/N/USA/2631, 10 February 2014.

<sup>120</sup> A list of current FSMA guidance can be consulted at: <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm253380.htm>.

Title	Effective date <sup>a</sup>	Federal Register citation	WTO notification (final rule)
<b>Proposed rule (as at June 2016)</b>			
User Fee Program to Provide for Accreditation of Third-Party Auditors/Certification Bodies to Conduct Food Safety Audits and to Issue Certifications	n.a.	78 FR 45782	G/SPS/N/USA/2570, 30.07.2013, G/SPS/N/USA/2570/Add.2, 04.08.2015
<b>Advance notice of proposed rulemaking</b>			
Implementation of Food and Drug Administration Food Safety Modernization Act Amendments to the Reportable Food Registry Provisions of the Federal Food, Drug and Cosmetic Act	n.a.	79 FR 16698	G/SPS/N/USA/2645, 31.03.2014

n.a. Not applicable.

- a The compliance dates for the rules are phased in by size of business, as explained in the Federal Register notices for the rules. For specific compliance dates, see [www.fda.gov/FSMA](http://www.fda.gov/FSMA).
- b Effective date for amendment to part 110 in instruction 13 is 17 September 2018. Effective date for paragraph (2) of the definition of "qualified auditor" is to be determined.
- c Effective date for paragraph (2) of the definition of "qualified auditor" is to be determined.

Source: WTO Secretariat.

3.117. The final rules for preventive controls for human and animal food require U.S. and foreign facilities that must register under the Federal Food, Drug and Cosmetic Act to establish and implement hazard analysis and risk-based preventive controls. Known or reasonably foreseeable biological, chemical and physical hazards must be identified and evaluated, and potential preventive controls include process, food allergen, and sanitary controls, supply chain controls and product recall plans. The final rule for animal food also establishes (for the first time) requirements for "current good manufacturing practices" (CGMPs) in the production of safe animal food. The final rule for human food modernizes existing CGMP requirements. The final rules for preventive controls for human and animal food were published in September 2015. Compliance dates for some businesses thus began in September 2016, whereas smaller businesses have longer implementation time frames (2 to 4 years from the date of publication).<sup>121</sup>

3.118. The regulation that addresses imported food requires U.S.-based importers to have Foreign Supplier Verification Programs (FSVP) for the human food and animal food they import.<sup>122</sup> Under the FSVP Rule, importers are required to verify that their foreign suppliers produce food in ways that provide the same level of public health protection as U.S. preventive controls and produce safety regulations, and that the food is not adulterated or misbranded with respect to allergen labelling. Importers are obliged to identify and evaluate known or reasonably foreseeable hazards for each type of food, including biological, chemical, and physical hazards. A FSVP must be developed for each food and each foreign food supplier. Importers may carry out risk-based supplier verification through several means, for example, through annual on-site audits of supplier facilities, sampling and testing, or by reviewing of the supplier's relevant food safety records. The verification may be performed by an independent third party, as long as the importer reviews and assesses the relevant documentation.

3.119. The final accredited third-party certification rule allows, but does not require, accreditation bodies to seek recognition by the FDA to accredit certification bodies to issue certifications for food and facilities. Certification under this programme can be used for two purposes. First, importers will use facility certifications from foreign suppliers in helping to establish their eligibility to participate in the expedited entry programme called the Voluntary Qualified Importer Program (or VQIP).<sup>123</sup> Second, the FDA may require certification of food or facilities under this programme in specific circumstances when the FDA determines it necessary to ensure food safety. Accreditation bodies recognized by the FDA may be foreign government agencies or private entities. The

<sup>121</sup> Businesses subject to the Pasteurized Milk Ordinance must comply with the new requirements from 17 September 2018.

<sup>122</sup> Some products are exempt from FSVP, notably food subject to the FDA's seafood and juice HACCP rules and alcoholic beverages, as well as meat, poultry and egg products supervised by USDA at the time of importation.

<sup>123</sup> The Voluntary Qualified Importer Program (VQIP) will be established in a guidance document. The FDA published the draft guidance for comment in June 2015 and is working to finalize the guidance for publication.

accreditation bodies may use documentation demonstrating conformance with ISO/IEC standards to prove their eligibility to be recognized by the FDA. Accreditation bodies are expected to apply to the FDA for recognition, but the FDA may also accredit third-party certification bodies directly. Accredited third-party certification bodies are required to perform unannounced facility audits and notify possible negative findings to the FDA. The Accredited Third-Party Certification programme is not yet in operation; the FDA expects implementation as soon as possible after the publication of its final Model Accreditation Standards guidance, and its final rule on user fees.<sup>124</sup>

3.120. The Food Safety Modernization Act (FSMA) has three additional rules. First, the final produce safety rule establishes science-based minimum standards for safe growing, harvesting, packing, and holding of fruit and vegetables for human consumption on farms. In particular, the regulation establishes a risk-based approach that addresses routes of contamination including agricultural water quality and the use of biological soil amendments.

3.121. Second, the intentional adulteration rule requires each covered facility to prepare and implement a Food Defense Plan, in general to be reassessed every three years.<sup>125</sup>

3.122. Third, the purpose of the sanitary transportation rule is to prevent food from becoming unsafe during transportation activities for bulk foods and foods that require temperature control for safety. To prevent food from becoming unsafe during transport, the rule requires controls, such as segregating raw foods from other foods and non-food items in a load, and maintaining vehicles and transportation equipment in sanitary condition for their intended use. The requirements apply to shipments by motor vehicle and rail, but not to maritime and air transport.

3.123. The FDA has developed an International Comparability Assessment Tool (ICAT) to evaluate the food safety systems, including the legal framework and approaches to food industry regulation, of U.S. trading partners.<sup>126</sup> The FDA pilot tested the draft ICAT as it worked with New Zealand to conclude an arrangement in December 2012, whereby the national institutions (USFDA and the NZ Ministry for Primary Industries) recognized their food safety systems as comparable to each other. The FDA concluded a second systems recognition arrangement, with the Canadian Food Inspection Agency and the Department of Health Canada, in May 2016.<sup>127</sup> The FDA is currently engaged in similar system recognition processes with Australia and the European Commission. The systems recognition arrangements are developed by the FDA and other countries' food safety competent authorities on their domestic activities to increase regulatory cooperation and build reliance in implementing risk-based food facility inspections and follow-up to foodborne outbreaks. Systems recognition does not grant market access to the U.S. market. Importers of foods that are within the scope of these arrangements may take advantage of modified requirements of the FSVP rule that are less stringent than the standard FSVP requirements.

### **3.1.9.3 Food Safety and Inspection Service (FSIS)**

3.124. The FSIS of the U.S. Department of Agriculture is responsible for ensuring that commercial supplies, including imports, of meat, poultry and egg products are safe, wholesome, and properly labelled and packaged. Imported goods must be produced under conditions equivalent to the level of protection provided in the United States.

3.125. The FSIS maintains a list of those countries determined equivalent, which also identifies those establishments in each country certified and eligible to export meat, poultry, or egg products to the United States.<sup>128</sup> Currently, there are some 32 countries determined equivalent and actively

<sup>124</sup> User fees for accreditation bodies and certification bodies were published in July 2015.

<sup>125</sup> The rule targets large enterprises, in all some 3,400 firms operating 9,800 food facilities. Smaller companies and farms are exempted.

<sup>126</sup> ICAT has 10 core elements: regulatory foundation (including preventive controls), training/human resources, inspection programmes, programme assessment/inspection audit programme, food-related illness and outbreaks, compliance and enforcement (including verification analysis), industry and community relations, programme resources, international communications and harmonization, and laboratory support.

<sup>127</sup> FDA online information. Viewed at:

<http://www.fda.gov/Food/NewsEvents/ConstituentUpdates/ucm498611.htm>.

<sup>128</sup> 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>.

exporting meat (beef and pork), poultry, and processed egg products to the United States.<sup>129</sup> The 2008 Farm Act amended the Federal Meat Inspection Act (FMIA) to transfer food safety inspection authority for Siluriformes fish and fish products from the FDA to the FSIS. The final rule for this change in regulatory authority was published on 5 December 2015 and became effective on 1 March 2016.

3.126. The FSIS also manages the National Advisory Committee on Meat and Poultry Inspection (NACMPI) and the National Advisory Committee on Microbiological Criteria for Foods (NACMCF).

#### **3.1.9.4 Animal and Plant Health Inspection Service (APHIS)**

3.127. The broad mission of APHIS at the Department of Agriculture is to promote and protect U.S. agricultural health, including the defence against plant and animal diseases and pests. Once a disease or pest of concern is detected, APHIS will work with the affected States under emergency protocols to manage and eradicate the outbreak. To guard against imported pests and diseases, APHIS regulates imports of live plants; grain, oilseeds, and horticultural products; animals, including semen, embryos and ova; research and exhibition animals; and animal products. In cases where both APHIS and FSIS requirements apply to imported goods, APHIS has responsibility for evaluating the disease and pest risks, while the FSIS administers and enforces food safety requirements.

3.128. The Lacey Act, which combats trafficking in wildlife, fish and plants, was expanded to a broader range of plants and plant products in 2008. Lacey Act declarations (PPQ Form 505), which are mandatory for certain plants and plant products<sup>130</sup>, have been required to be filed in the Automated Commercial Environment (ACE) since 31 March 2016. However, as of June 2016 many importers did not appear ready for the full range of data to be submitted to APHIS through the new "single window" approach before the end of the year.<sup>131</sup>

#### **3.1.9.5 Environmental Protection Agency (EPA)**

3.129. EPA responsibilities cover, *inter alia*, the registration of pesticides, including herbicides and fungicides, and the establishment of tolerances (maximum residue limits – MRLs) for pesticides in food. EPA uses risk assessment to establish tolerances for each crop use of a pesticide. The list of tolerances (and exemptions) is revised annually in the Code of Federal Regulations (Chapter 40, Part 180) and daily in the electronic Code of Federal Regulations (e-CFR). As of August 2016, EPA had established approximately 277 new tolerances (permanent and temporary) since the last TPR in 2014. The tolerances are enforced by USDA for meat, poultry and certain egg products, and by the FDA for other foods.

3.130. Other federal agencies are also involved in SPS issues, notably the CBP, the Agricultural Marketing Service, the Agricultural Research Service, the National Institute of Food and Agriculture (USDA), the Centers for Disease Control and Prevention (Department of Health and Human Services), the National Marine Fisheries Service (Department of Commerce), and the Alcohol and Tobacco Tax and Trade Bureau (Department of Treasury).

### **3.2 Measures Directly Affecting Exports**

#### **3.2.1 Export procedures and requirements**

3.131. The Customs and Border Protection, along with the Department of Commerce, is responsible for the enforcement of U.S. laws, regulations, and rules relating to exports. CBP also acts on behalf of other relevant government agencies in enforcing the rules. Export data must be filed electronically prior to the departure of cargo. Advance information is required for security purposes and to assess risk prior to export. For participants in the post-departure filing programme, electronic submissions can be made up to five days after the departure of the conveyance.

<sup>129</sup> Poultry may, with some specific limitations, be imported from establishments in 11 countries. Only Canada and the Netherlands may currently export egg products to the United States.

<sup>130</sup> The list of products that must be declared may be consulted at:  
[http://www.aphis.usda.gov/plant\\_health/lacey\\_act/downloads/ImplementationSchedule.pdf](http://www.aphis.usda.gov/plant_health/lacey_act/downloads/ImplementationSchedule.pdf).

<sup>131</sup> APHIS online information. Viewed at:  
<https://www.aphis.usda.gov/stakeholders/downloads/2016/letter-gregoire-ace-readiness.pdf>.

3.132. All export data have been processed electronically since 2008. The purpose of automation is to facilitate legitimate trade and target high-risk shipments prior to departure. The Automated Export System (AES), mandatory for all shipments valued over US\$2,500, has been the interface for shipment data and export manifests processed by CBP, including for exports requiring a licence. With the gradual introduction of the single-window Automated Commercial Environment (ACE), absorption of the AES into the ACE platform began in March 2014. Capabilities have been deployed to support electronic export manifest filing, with pilot programmes announced for air, ocean, and rail modes. Initial pilots have recently begun for rail and ocean modes with export manifest data being processed in ACE. A pilot for air mode is expected to start later this year. As of July 2016, electronic export manifests for air, rail, and ocean modes of transport are being filed voluntarily by industry in a pilot stage for full implementation. However, as there is currently no regulatory requirement to file export manifests electronically, paper copies continue to be accepted. CBP has been working with other Partner Government Agencies (Agricultural Marketing Service; Alcohol, Tobacco and Firearms; Drug Enforcement Agency; Fish and Wildlife Service; National Marine Fisheries Service; Environmental Protection Agency; Directorate of Defence Trade Controls; and Alcohol and Tax and Trade Bureau) to explore ways of replacing paper export licences with electronic processes.<sup>132</sup>

3.133. Together with the U.S. Census Bureau, CBP developed AESDirect, a free internet application allowing U.S. Principal Parties in Interest<sup>133</sup> and authorized agents of Foreign Principal Parties in Interest to transmit Electronic Export Information (EEI)<sup>134</sup> to the AES. The migration of AESDirect into the ACE Secure Data Portal has been proceeding in stages. A Refactored AESDirect for electronic export commodity filings via the ACE portal was launched on 30 November 2015. As of 20 May 2016, the full transition of legacy AESDirect (export commodity filings via the portal) to ACE was completed.

### 3.2.2 Export taxes, charges, and levies

3.134. Section 9 of the United States Constitution bans the use of export taxes. General export levies or fees, to the extent that these have been applied in the past, have been found unconstitutional when examined by the courts and consequently revoked. On the other hand, fees may be charged for specific services rendered such as inspection and certification fees for agricultural exports (Section 10 of the Constitution).

### 3.2.3 Export prohibitions, restrictions, and licensing

3.135. The United States maintains restrictions, licensing requirements, additional controls and prohibitions on a variety of exports for national security and foreign policy reasons. Export measures may be based on domestic legislation, policy decisions, UN Security Council Resolutions, international agreements, or U.S. participation in non-binding arrangements such as the Wassenaar Arrangement, the Missile Technology Control Regime, the Treaty on the Non-Proliferation of Nuclear Weapons and the Exporters Committee (Zangger Committee), the Nuclear Suppliers Group, and the Australia Group. Depending on the relevant requirements, the exporter may have to identify factors such as the country of destination, end-use, and foreign buyer. The categories of items subject to export controls did not change during the review period, although there have been some modifications to the licensing process for some categories (Table 3.10).

3.136. Enforcement of U.S. export controls is shared between the Department of Homeland Security, the Department of Justice, and the Department of Commerce. The determination of criminal acts and penalties varies depending on the product and the relevant agency or law.<sup>135</sup>

<sup>132</sup> For example, Form DSP-73 is used to authorize temporary commercial export of unclassified defence articles in accordance with the Arms Export Control Act and the International Traffic in Arms Regulations.

<sup>133</sup> USPPI – the person in the United States receiving the primary benefit of the export.

<sup>134</sup> EEI is the electronic version of the Shippers Export Declaration (SED), no longer accepted in paper form.

<sup>135</sup> The Department of Commerce, Bureau of Industry and Security (BIS), maintains a list of persons and entities denied export privileges and with whom any dealings are prohibited (Denied Persons List), end-users the BIS has been unable to verify in prior transactions (Unverified List), and an Entity List, i.e. parties whose presence in a transaction may trigger a supplementary licence requirement. The Department of the Treasury, Office of Foreign Assets Control, has elaborated lists with respect to specially designated



**Table 3.10 Items subject to export restrictions, controls, licensing, or certification**

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
Dual-use items that are chiefly commercial but can also be used in conventional arms, weapons of mass destruction, terrorist activities, or human rights abuses; less sensitive military items; most commercial satellite and spacecraft items; and timber	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
Economic sanctions	Department of the Treasury, Office of Foreign Asset Control	Various laws and provisions
Food, drugs, cosmetics	Food and Drug Administration	Federal Food, Drug, and Cosmetic Act (FD&C Act)
Fish and wildlife, including endangered species	Department of the Interior	50 CFR Part 14
Meat, poultry, egg products, and Siluriformes fish and fish 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

Note: The programmes administered by the Department of Agriculture pertain to programmes applicable to domestic producers, exporters, and importers in the areas of food safety, organic certification, and marketing orders.

Source: Export.gov online information. Viewed at: <http://www.export.gov>.

3.137. Munitions and dual-use (military/civilian) goods, including services, technology and data, are the main items subject to export licensing. The Department of Commerce maintains the Commerce Control List (CCL), regulated by the Export Administration Regulations (EAR), and is responsible for dual use and certain munitions goods. The Department of State is responsible for the U.S. Munitions List (USML), identifying items controlled and regulated by the International Traffic in Arms Regulations (ITAR). Some types of items are similar to both lists, while others are unique to CCL or USML (Table 3.11). Both schemes are currently under reform (section 3.2.3.1). Harmonization efforts could include a common licence form.

3.138. Defence trade cooperation treaties with the United Kingdom (2012) and Australia (2013) exempt certain persons or entities from the requirement to obtain an export licence or export authorization for certain defence products and services under the ITAR.

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nationals, foreign sanctions evaders, sectoral sanctions identifications, the Palestinian Legislative Council, foreign financial institutions subject to Part 561, and non-SDN Iranian sanctions. The AECA Debarred List (Department of State, Directorate of Defence Trade Controls) enumerates entities and persons prohibited from participating directly or indirectly in the export of defence articles. Although the Department of State, Bureau of International Security and Non-proliferation, identifies parties sanctioned under various statutes, the Federal Register is the only complete official source for non-proliferation sanctions determinations.

**Table 3.11 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	Surface vessels of war and special naval equipment
5 Part 2	Information security	VII	Ground vehicles
6	Sensors and lasers	VIII	Aircraft and related articles
7	Navigation and avionics	IX	Military training equipment and training
8	Marine	X	Personal protective equipment
9	Aerospace and propulsion	XI	Military electronics
		XII	Fire control, range finder, optical and guidance and control equipment
		XIII	Materials and miscellaneous articles
		XIV	Toxicological agents, including chemical agents, biological agents, and associated equipment
		XV	Spacecraft and related articles
		XVI	Nuclear weapons and related articles
		XVII	Classified articles, technical data and defense services not otherwise enumerated
		XVIII	Directed energy weapons
		XIX	Gas turbine engines (GTE) and associated equipment
		XX	Submersible vessels and related articles
		XXI	Articles, technical data, and defense services not otherwise enumerated

Note: Each broad category on the CCL is subdivided into (a) systems, equipment, and components; (b) test, inspection, and production equipment; (c) material; (d) software; and (e) technology.

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.

3.139. The Natural Gas Act of 1938 (as amended) requires any person wishing to export or import natural gas (including liquefied natural gas (LNG) and compressed natural gas) to obtain authorization from the Department of Energy.<sup>136</sup> Permission is granted in the form of short-term or long term authorizations. A short-term authorization enables the holder to import or export natural gas for up to two years on a spot basis or similar short arrangements. Long-term authorizations are granted to companies having concluded tolling agreements or sales/purchase contracts of more than two years duration. Applications from/to import or export natural gas to countries with which the United States has free trade agreements (FTAs) requiring national treatment for trade in natural gas (FTA countries), and imports of LNG from any country, are deemed to be consistent with the public interest and authorization is granted without modification or delay. DOE is required to grant authorizations to applications for natural gas export to non-FTA countries, unless the Department finds that the proposed exports "will not be consistent with the public interest", or where trade is explicitly prohibited by law or policy.<sup>137</sup>

3.140. By the end of July 2016, the Department of Energy had issued final authorization of LNG exports to non-FTA countries up to the equivalent of 15.22 billion cubic feet per day (Bcf/d) of natural gas. By comparison, global LNG trade in 2015 was just over 30 Bcf/d. The first major shipment of U.S. LNG occurred in February 2016.

3.141. The Energy Policy and Conservation Act of 1975 and other statutes effectively banned most U.S. exports of crude oil.<sup>138</sup> Export licensing of crude oil has been administered by the

<sup>136</sup> Authorizations are granted by the Office of Regulation and International Engagement, Division of Natural Gas Regulation.

<sup>137</sup> DOE's authority to regulate the export of natural gas arises under Section 3 of the Natural Gas Act (NGA), 15 U.S.C. §717b. Additional information on DOE's Program Regulating Liquefied Natural Gas Export Applications can be found at: <http://energy.gov/fe/articles/does-program-regulating-liquefied-natural-gas-export-applications>.

<sup>138</sup> Exemptions have allowed exports of limited quantities to Canada and Mexico.



Department of Commerce's Bureau of Industry and Security. On 18 December 2015, legislation entered into force terminating the licensing requirement with immediate effect.<sup>139</sup> Henceforth, crude oil is classified as EAR99 whereby no licence is required.<sup>140</sup> The legislation provides for the reintroduction of export licensing requirements in certain limited circumstances, such as a national emergency declared by the President, or due to sustained material oil supply shortages. U.S. exports of crude oil increased by 9% in the first five months of 2016 over the same period in 2015.<sup>141</sup>

3.142. Country-specific embargoes or other special controls primarily affect trade with Cuba, Iraq, the Democratic People's Republic of Korea, the Russian Federation, Iran, and Syria. Measures applicable to the Democratic People's Republic of Korea were tightened in February 2016.<sup>142</sup>

### 3.2.3.1 Export Control Reform (ECR) Initiative

3.143. President Obama launched the ECR Initiative to review and reform the export control system in 2009. The review concluded that the present system was overly complicated, fragmented, and needed updating to respond to a changing economic and technological landscape. The objective of the reform is not to reduce or eliminate export controls, but rather to achieve better allocation of resources allowing improved controls on the more sensitive items. Export requirements for selected, less sensitive items have been made more flexible.

3.144. The establishment of an Export Enforcement Coordination Center (E2C2), tasked to coordinating and enhancing criminal, administrative and related export enforcement activities, was announced in 2010.<sup>143</sup> The centre began operations in March 2012. Administered by the Department of Homeland Security, E2C2 brings together representatives of eight U.S. governmental departments and 15 federal agencies. The E2C2 links federal law enforcement agencies with the intelligence community, and is the principal contact point for export licensing, public outreach, and government-wide statistical tracking.

3.145. The ECR Initiative is implemented in three phases. Phases I and II have been devoted to the reconciliation of definitions, regulations, and export control policies, including the integration of IT systems. The rationalization and merger of the two export control lists (CCL and USML) have been the focus of much work. Many of the regulatory changes have led to the migration of less sensitive items from the USML to the CCL. Of the 21 categories on the USML list (Table 3.11), the regulatory revision process had been completed for 13 of them by 1 August 2016. Since then, revisions for another two categories have taken effect, and it is expected that revisions of 18 of 21 categories will be effective by the end of calendar year 2016.<sup>144</sup> As of August 2015, Phase I of the ECR Initiative had been finalized, while Phase II was nearing completion. The conclusion of Phase III, which will require changes in legislation, should lead to a new export control system based on (i) a unified control list; (ii) a single licensing agency; (iii) an integrated information technology platform (for licensing and enforcement); and (iv) a single enforcement coordination centre.

## 3.2.4 Export support and promotion

### 3.2.4.1 Institutional structure

3.146. Several government agencies or departments have specific programmes supporting or encouraging exports. The Trade Promotion Coordinating Committee (TPCC), encompassing 20 federal agencies with export-related programmes, is the Government's main body for the coordination of export promotion and export financing activities. In the past, the TPCC issued an

<sup>139</sup> Consolidated Appropriations Act, 2016 (PL 114-113), Division O – Other Matters, Section 101 Oil Exports, Safety Valve, and Maritime Security.

<sup>140</sup> Authorization is still required for exports to embargoed or sanctioned countries or persons, including those listed in parts 744 and 746 of the EAR, and to persons denied export privileges.

<sup>141</sup> U.S. Energy Information Administration online information. Viewed at: [www.eia.gov/todayinenergy/detail.cfm?id=27532](http://www.eia.gov/todayinenergy/detail.cfm?id=27532).

<sup>142</sup> North Korea Sanctions and Policy Enhancement Act of 2016 (PL 114-122), 18 February 2016.

<sup>143</sup> Executive Order 13558, 9 November 2010.

<sup>144</sup> U.S. Department of Commerce, Bureau of Industry and Security, online information (Export Control Reform Dashboard). Viewed at: <https://www.bis.doc.gov/index.php/2012-03-30-17-54-11>.

annual National Export Strategy (NES) report, establishing priorities and reporting on the activities of the member agencies. However, no new reports have been issued since 2012, in which year the report focused on the National Export Initiative (NEI) and on reducing trade barriers for U.S. exports. A new NES report was expected to be published in September 2016.

3.147. The President's Export Council (PEC) brings together representatives of the private sector, Congress, the United States Conference of Mayors, the National Governor's Association, and officials from the Administration. The PEC presents advice and recommendations to the President (in the form of letters) on matters relating to export trade. The PEC has forwarded a total of 59 letters to the President since September 2010. At its meeting in December 2015, the Council adopted a letter outlining priorities for action in 2016. Among its recommendations, the PEC recommended the President's Administration: engage Congress to implement the Trans-Pacific Partnership as soon as possible; accelerate the pace of the TTIP and China BIT negotiations; accelerate efforts to conclude a new Safe Harbour framework with the EU; advance the negotiations for a Trade in Services Agreement and, in the WTO, an Environmental Goods Agreement; secure the entry into force of the Trade Facilitation Agreement as soon as possible with broad coverage, particularly of developing countries; establish a Small Emerging Growth Enterprise Credit Review and extension of the State Small Business Credit Initiative through 2022; implement regulations to administer the Workforce Innovation and Opportunity Act and the Trade Adjustment Assistance Reauthorization Act; and extend manufacturing-related outreach and training activities such as the Manufacturing Day and business internships for teachers and guidance counsellors. The PEC also commended the Administration for its comprehensive Export Control Reform Initiative and encouraged the continued streamlining of licensing and compliance requirements, including harmonized regulations across all agencies engaged in export control and a common licensing application form accessible via a public application portal. The PEC met via teleconference in June 2016 and adopted a letter with recommendations regarding U.S. policies towards Cuba.<sup>145</sup> The next meeting of the PEC was scheduled for 14 September 2016.

3.148. The Export Promotion Cabinet, created under the NEI, comprises 11 government agencies and 3 senior advisors or assistants to the President.<sup>146</sup> The Cabinet develops and coordinates the implementation of the NEI and coordinates export promotion matters with the TPCC.

3.149. The U.S. Trade and Development Agency (USTDA) focuses on the use of U.S. goods, services, and technology in infrastructure development projects in emerging economies. USTDA sponsors activities such as feasibility studies, pilot projects, technical assistance at a project's early stages, as well as reverse trade missions, workshops/conferences and training. The activities enable the Agency's partners to approach financial institutions to fund their priority projects. The USTDA supports projects related, *inter alia*, to the Power Africa initiative to increase electricity access in sub-Saharan Africa, the Climate Action Plan to reduce harmful carbon emissions, and value-based investments in infrastructure such as energy generation, transportation, and telecommunications. A biweekly eNewsletter (TradePosts) provides information about USTDA activities and events. According to the Agency, each dollar allocated to its programmes for priority development projects in emerging markets produces US\$74 worth of U.S. exports.<sup>147</sup>

#### **3.2.4.2 National Export Initiative (NEI) and NEI/NEXT**

3.150. The National Export Initiative was launched in 2010 as a government-wide programme to promote exports, with focus on improved access to finance, trade promotion and advocacy, a lowering of barriers, and enforcement of trade rules. The development of export programmes for small U.S. businesses was given high priority.

<sup>145</sup> The letter adopted on 8 June 2016 can be consulted at: <http://trade.gov/pec/docs/PEC-Cuba-Letter-and-Trip-Findings.pdf>.

<sup>146</sup> The officials named to the Export Promotion Cabinet are all part of the Trade Promotion Coordinating Committee, and since the beginning of the President's National Export Initiative, principals have met as a combined group of the two interagency bodies, co-chaired by the Secretary of Commerce and Deputy National Security Advisor to the President.

<sup>147</sup> USTDA programmes generated US\$11.8 billion in new exports, supporting an estimated 65,900 jobs in the U.S. economy in 2015. USTDA (2015), *Annual Report 2015*. Viewed at: <https://www.ustda.gov/sites/default/files/pdf/about/reports/annualreports/2015/0%20-%20USTDA%20FY15%20Annual%20Report.pdf>.

3.151. Applying the lessons learned from NEI to develop a tailored, more hands-on approach, the Administration announced in May 2014 a long-term strategic framework (NEI/NEXT) for continued export growth. The objectives of NEI/NEXT are to connect more U.S. businesses to global customers, streamline export-related services and processes, expand access to finance, promote exports and FDI, and to assist developing economies in improving their business environments.

3.152. The original goal of the NEI was to double U.S. goods and services exports in five years (compared with 2009) to support an additional two million jobs.<sup>148</sup> Although exports have grown significantly, the targets have not been met as the NEI encountered strong global economic headwinds and unfavourable macroeconomic factors (though the additional jobs goal was almost met at 1.9 million jobs supported by exports by 2014). The potential for increased exports is nevertheless recognized as most exporting U.S. firms sell their goods and services in only one foreign market. Moreover, among small U.S. businesses no more than 3 to 5% of them engage in goods exports.

### **3.2.4.3 Drawback regime**

3.153. The United States Code (19 U.S.C. 1313) authorizes drawback of customs duty on imported articles subsequently exported or incorporated in products that are exported or destroyed. Paid duty on unused imported merchandise, exported or destroyed under CBP supervision, may also be recovered as drawback. The drawback amounts to 99% of customs duties, certain excise taxes, as well as fees lawfully collected at importation, including the merchandise processing fee and the harbour maintenance tax. Claims for the refund of duties and taxes, addressed to one of the four CBP drawback offices,<sup>149</sup> should generally be filed within three years of exportation or destruction of the articles. According to CBP, the drawback is the most complex commercial programme it operates as it involves every aspect of CBP's business, including imports and exports.<sup>150</sup>

3.154. Section 903 of the Trade Facilitation and Trade Enforcement Act of 2015 (PL 114-125) introduced a number of changes in the duty drawback programme. The deadline for exportation or destruction of imported articles under the unused merchandise drawback programme has been extended from three to five years. Henceforth, claims for duty drawback should be accompanied by detailed lists identifying all relevant inputs by their HS 8-digit numbers. The Secretary of the Treasury is mandated to elaborate new regulations for the calculation of duty drawback by December 2017.

## **3.2.5 Export finance, insurance, guarantees**

### **3.2.5.1 The Export-Import Bank of the United States (EXIM)**

3.155. EXIM Bank is the official export credit agency of the United States, assuming credit and country risks that commercial lenders and insurers may be unwilling or unable to accept. Nonetheless, all authorized transactions must demonstrate a reasonable assurance of repayment, and comply with EXIM policies and practices as directed by statute, EXIM Bank Board decisions, and international agreements. Private-sector lenders normally act as partners in EXIM transactions.

3.156. Both an independent agency and a government corporation, EXIM Bank is financially self-sustained, having accumulated operating profits of nearly US\$7 billion over the last 20 years. Long term project finance is the most profitable business for the bank. It plays a critical role as a source of export financing for small U.S. businesses, which also benefit indirectly as sub-contractors to EXIM's larger customers. The main sectors relying on export finance through EXIM Bank have been aircraft manufacturing, general manufacturing, oil and gas, and power projects. EXIM Bank authorizations and activities are very diverse geographically, involving transactions with some 172 countries. In terms of exposure, the largest export markets at the

<sup>148</sup> Some agencies developed their own targets. For example, the Department of Agriculture aspired to reach annual agricultural exports worth US\$150 billion by FY2013, and the Department of Commerce targeted a 7% increase in the number of new markets entered by client firms.

<sup>149</sup> The drawback offices are located in Chicago, Houston, Newark, and San Francisco.

<sup>150</sup> U.S. Customs and Border Protection online information. Viewed at: [https://www.cbp.gov/sites/default/files/documents/drawback\\_refund\\_2.pdf](https://www.cbp.gov/sites/default/files/documents/drawback_refund_2.pdf).

close of fiscal year 2015 were Mexico, the Kingdom of Saudi Arabia, the United Arab Emirates, China, India, Australia, and the Republic of Korea. Certain limitations apply with respect to EXIM Bank's acceptance of commercial and political risks, detailed in the Country Limitation Schedule.<sup>151</sup> Support is legally prohibited for trade with Cuba, Iran, the Democratic People's Republic of Korea, Sudan, and Syria.

3.157. Although independent in its day-to-day operations, EXIM Bank's lending authority is established by Congress. EXIM Bank's maximum allowable financial exposure was set at US\$130 billion for 2013, and US\$140 billion until 30 June 2015. On 4 December 2015, the President signed legislation reauthorizing the Export-Import Bank of the United States until 30 September 2019.<sup>152</sup> EXIM Bank's lending authority is capped at US\$135 billion during this period.

3.158. EXIM Bank's full authority lapsed temporarily on 1 July 2015. Having operated for more than 80 years, EXIM Bank was forced to curtail all involvement in new business opportunities, reversing the steady growth of earlier years (Table 3.12). Its activities focused on monitoring and managing the existing portfolio and meeting continuing legal obligations under the EXIM Bank's charter. EXIM Bank's total financial exposure stood at US\$90.4 billion at the end of June 2016.

**Table 3.12 EXIM Bank authorizations, 2013-15**

	2013		2014		2015	
	No.	US\$ million	No.	US\$ million	No.	US\$ million
Loans	71	6,893.8	69	1,947.8	41	107.9
Long term	29	6,878.4	14	1,927.6	4	43.2
Medium term	0	0	0	0	0	0
Working capital	42	15.4	55	20.2	37	64.7
Guarantees	674	14,911.8	540	13,314.1	344	13,676.8
Long term	73	12,179.7	51	10,786.7	42	7,594.7
Medium term	68	132.5	58	149.8	41	173.0
Working capital	533	2,599.6	431	1,001.0	261	5,909.2
Credit Insurance	3,097	5,542.0	3,137	5,206.1	2,245	3,248.2
Short term	3,027	5,440.3	3,078	5,107.3	2,216	3,196.5
Medium term	70	101.7	59	98.8	29	51.7

Source: Export-Import Bank of the United States (2015), *Annual Report 2015*. Viewed at: <http://www.exim.gov/sites/default/files/reports/annual/EXIM-2015-AR.pdf>.

3.159. Despite the resumption of new authorizations, an important operational drawback remains. As outlined in its charter, EXIM Bank has a five-member Board of Directors to consider individual transactions, Bank policies, and other matters that arise. Members of the Board are appointed by the President of the United States and with the advice and consent of the U.S. Senate. While certain small- and medium-term loans can be approved by EXIM Bank staff, medium and long-term authorizations above US\$10 million require approval by the Bank's Board of Directors. At present, with three of its five seats vacant, the EXIM Bank does not have the quorum to take such decisions.

3.160. Section 55002 of PL 114-94 states that the United States is to initiate and pursue negotiations with other major exporting countries to reduce substantially, with the possible goal of eliminating (by 2025), subsidized export financing programmes and other forms of export subsidies. In addition, the law states that the United States is to initiate and pursue negotiations with countries that are not OECD members to bring those countries into a multilateral agreement establishing rules and limitations on officially supported exported credits. The Administration submitted a non-public report on its strategy on export credit negotiations to Congress in June 2016.

### 3.2.5.2 Small Business Administration (SBA) Export Loan Programs

3.161. Applicants for SBA export loans must provide export business plans, including historical data, projections, and written information supporting the likelihood of increased export sales. The

<sup>151</sup> The schedule is updated regularly, e.g. on 11 May 2016. Viewed at: <http://www.exim.gov/sites/default/files/cls/CLSMay2016.pdf>.

<sup>152</sup> Fixing America's Surface Transportation Act (PL 114-94), Division E – The Export-Import Bank Reform and Reauthorization Act of 2015 (12 U.S.C. 635), 4 December 2015.

SBA as such is not a bank. Thus, the specific terms of SBA loans are negotiated between the qualified borrower and an SBA-approved lender. No minimum borrowed amount is required to qualify as an SBA loan. In turn, the SBA guarantees the loans (up to US\$5 million) against a fee. The fee is calculated according to maturity and guaranteed amount. The guarantee fee is initially paid by the lender.

3.162. The SBA Office of International Trade administers several programmes that offer export financing for small businesses exporting or planning to export (Table 3.13). The Small Business Jobs Act of 2010 increased the attractiveness of the International Trade Loan Programme by increasing the guarantee limit from the generally applied 75% to 90% of the approved loan. Under this programme, up to US\$5 million may be borrowed to invest in fixed assets, to be held as working capital, or to refinance existing debt.<sup>153</sup> The Export Working Capital Program offers up to US\$5 million to fund export transactions from purchase order to collections. The simplest export loan product offered by the SBA is the Express Loan Program, approved within 36 hours. Providing financing up to US\$500,000, the programme allows lenders to use their own forms and procedures. Loans may not be made to businesses exporting to a prohibited foreign country, i.e. Cuba, Iran, the Democratic People's Republic of Korea, Sudan, and Syria.<sup>154</sup>

**Table 3.13 Approved applications and loan amounts under SBA Export Loan Programs, 2012-15**

Programme title	2012		2013		2014		2015	
	No.	US\$ million	No.	US\$ million	No.	US\$ million	No.	US\$ million
Export Express	185	35.1	160	30.9	124	23.5	156	28.0
Export Working Capital	159	219.6	188	295.7	185	307.4	176	307.5
International Trade Loan	61	95.8	152	251.1	193	285.4	215	394.3

Source: SBA (2015), *Summary of Performance and Financial Information – Fiscal Year 2015*. Viewed at: <https://www.sba.gov/sites/default/files/files/SBA-SPFI-Report-2015.pdf>.

### 3.2.5.3 Overseas Private Investment Corporation (OPIC)

3.163. OPIC is the U.S. Government's development finance institution. OPIC mobilizes private capital to help address critical development challenges by providing investor financing, insurance of political risk, and private equity investment funding where these services are not available on commercially viable terms. OPIC does not compete with private-sector lenders. OPIC is an entirely financially self-sustaining, independent government corporation.

3.164. OPIC is authorized to offer its services in more than 160 developing and post-conflict countries.<sup>155</sup> OPIC requires its clients to be U.S. citizens, permanent residents, or U.S. companies, otherwise the projects must show a "meaningful involvement" of the U.S. private sector, defined as a minimum 25% stake in the project or in the project company.<sup>156</sup> OPIC activities, including insurance, are not limited to particular sectors. However, OPIC is prohibited from supporting certain categories of projects, such as those having adverse environmental or social effects in the country of operation<sup>157</sup> or possible negative effects on the U.S. economy and employment. OPIC has a statutory requirement to ensure that its supported projects are established and maintained in accordance with internationally-recognized (i.e. ILO) worker rights standards.

3.165. OPIC Financing provides medium- to long-term funding through direct loans and loan guarantees, with a minimum of US\$350,000 and maximum of US\$250 million per project, primarily to cover the capital costs of a project's establishment or expansion. OPIC will not consider requests related solely to the needs for working capital or the financing of acquisitions, and OPIC does not provide trade finance. OPIC Insurance covers political-risk insurance for the loss of tangible assets, investment value, and earnings. Also, since 1987, OPIC has committed

<sup>153</sup> The International Trade Loan Program is also available to companies adversely affected by import competition.

<sup>154</sup> Export Import Bank of the United States, Country Limitation Schedule, Note 7.

<sup>155</sup> The list of authorized countries can be consulted at: <https://www.opic.gov/doing-business-us/OPIC-policies/where-we-operate>. The consideration of new financing and insurance transactions in the Russian Federation is currently suspended.

<sup>156</sup> Other forms of participation, such as franchise or long-term management contracts, may also be considered.

<sup>157</sup> OPIC – Environmental and Social Policy Statement, Appendix B. Viewed at: [https://www.opic.gov/sites/default/files/consolidated\\_esps.pdf](https://www.opic.gov/sites/default/files/consolidated_esps.pdf).



US\$4.1 billion to 62 private equity funds in emerging markets. The funds, in turn, have invested US\$5.6 billion in more than 570 companies across 65 countries.

3.166. OPIC operations have been growing over the years. At the end of September 2015, its combined total exposure stood at US\$19.93 billion, the largest portfolio in its history (Table 3.14). The authorized exposure limit of OPIC is US\$29 billion. As of June 2016, OPIC was operating under the provisions of Title VI of the Consolidated Appropriations Act, 2016 (PL 114-113). Congress was considering legislation under various vehicles that would extend the authority of OPIC to operate on a longer-term legal basis.

**Table 3.14 Overview of OPIC activities, FY2013-15**

(US\$)

	FY2013	FY2014	FY2015
<b>New commitments</b>			
Financing	3.58 billion	2.32 billion	3.84 billion
Investment funds	178 million	267 million	387 million
Insurance	171 million	380 million	160 million
Total	3.93 billion	2.96 billion	4.39 billion
U.S. exports projected	833 million	314 million	264 million
Total portfolio	18.0 billion	18.0 billion	19.93 billion
Active countries	102	101	100

Source: OPIC (several years), *Annual Reports 2013-15*. Viewed at: <https://www.opic.gov/media-events/annual-reports>; and information provided by the authorities.

### 3.3 Measures Affecting Production and Trade

#### 3.3.1 Incentives

3.167. The United States encourages private enterprise and competition based on free market economic principles. A number of policies and tools are employed to promote private-sector growth, investment, job creation, entrepreneurship, and small business development. In December 2015, legislation was passed simplifying the taxation of small businesses and making certain tax cuts permanent for them.<sup>158</sup> Investments in small businesses are exempt from capital gains tax.

3.168. The last major overhaul of the corporate income tax system took place in 1986. Discussions regarding simplification of the corporate tax code, including a lowering of the statutory tax rate (currently ranging from 15% to 35%)<sup>159</sup> together with the removal of tax "expenditures" (deductions, exemptions, deferrals, or tax credits), are ongoing. Corporate inversion and earnings stripping have been issues of particular concern.<sup>160</sup> As foreign earnings of U.S.-based corporations are taxed in the United States only once funds have been repatriated, it is estimated that U.S. firms have accumulated more than US\$2 trillion in overseas earnings held abroad.<sup>161</sup>

3.169. SelectUSA was created in 2011 as a government-wide programme to promote and facilitate business investment in the United States. To better serve its primary clients, foreign investors and U.S. economic development organizations (EDO) in all 50 states plus the federal territories, SelectUSA has expanded its suite of programmes, services, and activities. The programme has developed new data tools, such as SelectUSA Stats, a public, self-service data visualization tool which provides insights into FDI trends.<sup>162</sup> SelectUSA continues to offer products such as the states' incentives database and federal incentives database to help foreign investors

<sup>158</sup> Consolidated Appropriations Act, 2016 (PL 114-113), Division Q - Protecting Americans from Tax Hikes (PATH) Act of 2015, 18 December 2015.

<sup>159</sup> Including state taxation of corporate profits, the highest marginal tax rate for corporate income in the United States is 38.92%.

<sup>160</sup> A corporate inversion occurs when a U.S.-based corporation merges with a foreign entity and is able to change its tax residence to a foreign country as a result of the merger. An example of earnings stripping is when a company reduces its tax base in the United States through tax deductible interest payments on related-party debt from a low-tax jurisdiction.

<sup>161</sup> White House and the Department of the Treasury (2016), *The President's Framework for Business Tax Reform: An Update*, Joint Report, April. Viewed at: <https://www.treasury.gov/resource-center/tax-policy/Documents/The-Presidents-Framework-for-Business-Tax-Reform-An-Update-04-04-2016.pdf>.

<sup>162</sup> SelectUSA online information. Viewed at: <https://www.selectusa.gov/selectusa-stats>.

navigate potential relevant programmes throughout the United States. Additionally, SelectUSA offers research and counselling services that help potential investors leverage data resources such as the Cluster Mapping Tool (<https://www.clustermapping.us/>), a joint project of the Harvard Business School and the Economic Development Administration (part of the Department of Commerce), to identify regional concentrations of specific industries and potential partners. SelectUSA also organizes in-market promotional programmes for U.S. locations that wish to target markets overseas. In June 2016, a new Investment Advisory Council was established. The Council will examine selected priority issues, such as workforce development, provide guidance on the development of strategies and programmes to attract and retain foreign investment, and present its findings and recommendations directly to the Secretary of Commerce.

3.170. The Small Business Administration (SBA) has been actively supporting small businesses and entrepreneurs for more than sixty years. SBA programmes assist small businesses in nearly every sector of the economy. The SBA does not provide grants for business start-ups, although this form of support may be available from state or local authorities.<sup>163</sup> The SBA provides loans through partner financial institutions, loan guarantees, counselling, and other forms of assistance.<sup>164</sup> The SBA supported loans totalling US\$33 billion through its programmes in FY2015. In public procurement, the SBA's Office of Government Contracting works with federal departments and agencies to attain the government-wide procurement goal for small businesses, namely that a minimum of 23% of the total value of all prime contract awards in each fiscal year should go to small businesses.<sup>165</sup>

### 3.3.2 Subsidies and other government assistance

3.171. In the aftermath of the 2008 economic crisis, the U.S. government took unprecedented action to restore demand, stabilize financial markets, and put people back to work. The American Recovery and Reinvestment Act of 2009 (ARRA) was enacted in February 2009. The estimated cost of ARRA amounted to US\$831 billion over its lifetime, i.e. fiscal years 2009-19.<sup>166</sup> ARRA included a variety of measures such as tax cuts for individuals; business tax incentives; aid to states; social security spending; investment in infrastructure, health information technology, and renewable energy R&D; and tax credits for certain types of private investment. Most of the fiscal stimulus occurred during the first two years of the programme. Around 95% of the discretionary funding under ARRA had been spent by the end of 2014.

3.172. The Troubled Assets Relief Program (TARP), signed into law in October 2008 through the Emergency Economic Stabilization Act, provided funding of government purchases of assets and equity from financial institutions to provide liquidity and shore up confidence in the financial sector. Originally authorizing US\$700 billion in expenditures, TARP was subsequently scaled down to US\$475 billion. In all, some US\$433.3 billion were disbursed, including around US\$80 billion under the Automotive Industry Financing Program. TARP investment programmes were essentially wound down in December 2014 with the sale of its last major investment (Ally Financial, a major auto lender).<sup>167</sup> Total revenue from the sales of TARP assets amounted to US\$442.1 billion, approximately US\$8.8 billion more than the accumulated acquisition costs.

3.173. The United States has no overarching legal framework governing subsidies at federal and sub-federal levels. Traditionally, federal subsidies have been in the form of grants, tax concessions, loan guarantees, and direct payments. Trade Adjustment Assistance (TAA) programmes exist for firms, workers and farmers. TAA has been re-authorized regularly, most recently in June 2015.<sup>168</sup> On a cost-sharing basis, the Trade Adjustment Assistance for Firms (TAAF) programme provides professional guidance, and technical assistance for firms to develop

<sup>163</sup> Federal grants are only available for certain non-commercial organizations.

<sup>164</sup> The SBA operates 17 major programmes under the principal headings Capital, Contracting, Counseling/Technical Assistance, and Innovation.

<sup>165</sup> The Small Business Act (PL 85-536), Section 15(g). The target was met for the first time in FY2014 as subsequently reported in 2015. SBA online information. Viewed at: <https://www.sba.gov/contracting/finding-government-customers/see-agency-small-business-scorecards>.

<sup>166</sup> Congressional Budget Office (2012), *Estimated Impact of the American Recovery and Reinvestment Act on Employment and Economic Output from October 2011 through December 2011*, February. Viewed at: <https://www.cbo.gov/sites/default/files/112th-congress-2011-2012/reports/02-22-ARRA.pdf>.

<sup>167</sup> TARP housing programmes continue to operate.

<sup>168</sup> TAA Reauthorization Act of 2015 (PL114-27). The reauthorized Act includes sunset provisions (more restrictive eligibility and benefit provisions) that take effect on 1 July 2021.



recovery plans, and it co-finance the use of outside consultants. TAAF operates through 11 regional centres serving firms in the 50 states. Appropriations to the TAAF have amounted to approximately US\$16 million annually in recent years.

3.174. The Trade Adjustment Assistance for Workers provides federal assistance to workers having lost their jobs due to foreign competition, either due to relocation of production to a foreign country or because of an increase in directly competitive imports. The main TAA benefits are access to reemployment services, a weekly payment (Trade Readjustment Allowance (TRA)), a wage insurance programme for workers aged 50+ (Reemployment Trade Adjustment Assistance (RTAA)), and a health coverage tax credit. Budget expenditures on training and other reemployment services are capped at US\$450 million per year, while total expenditures on TRA and RTAA are not capped.

3.175. Like other WTO Members, the United States notifies subsidy programmes to the WTO without prejudice to their legal status regarding specificity, or being actionable (or otherwise) under the Agreement on Subsidies and Countervailing Measures. The latest subsidy notification covered fiscal years 2013 and 2014. Outside of agriculture, federal-level subsidies are overwhelmingly directed towards the energy sector (Table 3.15). In addition, a number of energy-related support measures are implemented at the sub-federal level, particularly in relation to renewable energy (Table A3.4).

**Table 3.15 Federal subsidy programmes (non-agriculture), FY2013-14**

(US\$ million)

Programmes	Type of subsidy	Expenditure	
		FY2013	FY2014
<b>Energy and fuels</b>		<b>1,852.4</b>	<b>1,981.8</b>
Energy Supply – Renewable Energy Resources	Grants, cooperative agreements, cooperative research and development agreements (CRADAs), and other forms of subsidy	725.9	735.3
Energy Conservation Programs – Transportation Sector		303.2	289.7
Energy Conservation Programs – Building Technologies Office		204.6	177.9
Energy Conservation – Advanced Manufacturing		114.3	180.5
Fossil Energy R&D		498.7	570.4
Innovative Technology Loan Guarantee Program	CRADAs and loan guarantees	0.0	22.0
Advanced Technology Vehicles Manufacturing Loan Program (ATVM)	Direct loans	5.7	6.0
<b>Other energy and fuels</b>		<b>15,480.0</b>	<b>11,084.0</b>
Expensing of Exploration and Development (E&D) Costs for Oil, Gas and other Fuels	Income tax concession	550.0	240.0
Excess of percentage over Cost Depletion for Oil, Gas and Other Fuels		530.0	660.0
Capital Gains Treatment of Royalties on Coal		90.0	100.0
Energy Efficient Appliance Credit		150.0	150.0
Second Generation Biofuel Credit		Unknown	Unknown
Credits for Investment in Advanced Coal Facilities and Advanced Gasification Facilities		180.0	200.0
Advanced Energy Property Credit		210.0	100.0
Two-year Amortization of Geological and Geophysical Expenditures		100.0	80.0
Energy Production Credit		1,670.0	2,240.0
Energy Investment Credit		1,950.0	1,870.0
Biodiesel and Renewable Diesel Credit	Income and excise tax concession and direct payments	1,620.0	1,910.0
Alternative Fuel Mixture Credit	Excise tax concession	350.0	370.0
Energy Grant in lieu of the Energy Production Credit or the Energy Investment Credit	Direct payment	8,080.0	3,164.0
<b>Fisheries</b>		<b>82.5</b>	<b>81.1</b>
Columbia River Fishery Development Program	Operating grants	14.8	14.1
Sea Grant College Program	Direct grants	57.2	67.0
Saltonstall-Kennedy Grant Program: Fisheries R&D	Competitive grants	10.5	..
Fisheries Finance Program (FFP)	Collateralized loans	0.0	0.0
<b>Lumber and timber</b>		<b>440.0</b>	<b>490.0</b>
Capital Gains Treatment of Certain Timber Income	Income tax concession	90.0	100.0
Expensing of Multi-Period Timber Growing Costs		280.0	320.0
Expensing and Seven-Year Amortization for Reforestation Expenditures		70.0	70.0

Programmes	Type of subsidy	Expenditure	
		FY2013	FY2014
<b>Medical</b>		<b>1,058.5</b>	<b>1,229.4</b>
Office of Nuclear Physics, Isotope Development and Production for Research and Applications Program	Annual Congressional appropriations	18.5	19.4
Orphan Drug Tax Credit	Income tax concession	1,040.0	1,210.0
<b>Non-fuel minerals</b>		<b>630.0</b>	<b>670.0</b>
Excess of Percentage over Cost Depletion for Non-fuel Minerals	Income tax concession	580.0	590.0
Expensing of Exploration and Development Costs for Non-Fuel Minerals		50.0	80.0
<b>Shipyards</b>		<b>9.5</b>	<b>0.0</b>
Assistance to Small Shipyards Grant Program	Grants	9.5	0.0
<b>Timepieces and jewellery</b>		<b>1.0</b>	<b>1.6</b>
Insular Possessions Watch and Jewellery Programs	Duty refunds and exemptions	1.0	1.6
<b>Regional programmes</b>		<b>1,500.0</b>	<b>1,200.0</b>
Empowerment Zones	Income tax concession	450.0	90.0
New Markets Tax Credit		950.0	1,010.0
New York Liberty Zone		100.0	100.0
<b>Total</b>		<b>21,053.9</b>	<b>16,737.9</b>

.. Not available.

Source: WTO document G/SCM/N/284/USA, 18 November 2015.

3.176. The notification also provides information on nearly 620 subsidy programmes maintained at state level. Although data on programme costs has been made available for some of these subsidy schemes, an overall estimate of sums granted or revenue foregone does not exist for sub-federal subsidy programmes.

### 3.3.3 Competition policy

3.177. The competition policy framework has remained broadly unchanged in the United States for many years. The federal competition (anti-trust) legislation consists of three core laws; the Sherman Act (1890), which outlaws monopolization and restraints of trade; the Clayton Act (1914) prohibiting mergers and acquisitions reducing competition; and the Federal Trade Commission Act (1914) prohibiting unfair competition methods, and unfair or deceptive practices. The Robinson Patman Act (1936) and the Hart-Scott-Rodino Antitrust Improvements Act (1976) amended the Clayton Act by prohibiting certain discriminatory practices and by requiring detailed filing and setting deadlines for the consummation of transactions in larger mergers and acquisitions.<sup>169</sup> In addition, most States have anti-trust legislation, often modelled on the federal laws. Furthermore, judicial decisions and administrative proceedings interpreting existing legislation are important elements in the development of U.S. competition policy.

3.178. Acts of government, including those limiting commercial activity, are exempted from federal anti-trust legislation, where authorized as a matter of state policy.<sup>170</sup> Limited immunity also applies to specific aspects of agriculture, fisheries, and insurance. In relation to international trade, the Webb-Pomerene Export Trade Act may allow associations of otherwise competing businesses to engage in the collective exports of goods provided there are no anticompetitive effects, or injury to competitors, within the United States. The Export Trading Company Act (1982) also creates a procedure whereby persons engaged in export may obtain, under certain circumstances, an export certificate of review providing, *inter alia*, for limited antitrust immunity.<sup>171</sup> The Shipping Act (1984) allows international ocean carriers to engage in pricing arrangements (liner conferences) unless these are contested by the Federal Maritime Commission.

3.179. Enforcement of federal antitrust laws is entrusted to two agencies: the Antitrust Division of the Department of Justice (DoJ) and the Federal Trade Commission (FTC). The DoJ Antitrust Division conducts criminal proceedings against wilful violations of the antitrust laws, while civil

<sup>169</sup> The size-of-transaction thresholds for filings of proposed mergers and acquisitions are adjusted annually based on the change in U.S. GDP.

<sup>170</sup> Additionally, the judicially-created "state action doctrine" exempts anticompetitive conduct by state bodies and municipalities authorized by a clearly articulated state policy or law, as well as private parties as long as they have legal authorization and are actively supervised by the state.

<sup>171</sup> Forty-seven certificate groups are reporting information to the Department of Commerce at this time (September 2016).

antitrust proceedings and regulatory guidance to businesses may be carried out by either agency. A well-established system of cooperation exists where competencies overlap between the two agencies. Enforcement actions may also be triggered by aggrieved private parties.

3.180. The FTC and the DoJ screen a large number of mergers and acquisitions in the pre-merger notification procedures pursuant to the Hart-Scott-Rodino Antitrust Improvements Act (Tables 3.16 and 3.17). The Clayton Act (Section 7) outlaws mergers and acquisitions likely to lessen competition. Enforcing these provisions, the FTC and the Attorney General may seek court orders to prevent a merger, and the FTC may issue cease and desist orders in administrative proceedings.

**Table 3.16 DoJ actions against anticompetitive practices, FY2013-15**

	FY2013	FY2014	FY2015
<b>Total investigations initiated, by primary type of conduct<sup>a</sup></b>			
Sherman §1 - Restraint of Trade <sup>b</sup>	25	31	39
Sherman §2 - Monopoly	2	0	3
Clayton §7 - Mergers	65	80	67
Others <sup>c</sup>	0	2	2
<b>Hart-Scott-Rodino (HSR) premerger notifications</b>			
Received	1,326	1,663	1,801
HSR investigations initiated	50	67	55
Number of cases filed	5	5	10
<b>Antitrust Division Cases – Court of appeals</b>			
Filed	5	10	1
Terminated	0	6	8
<b>Antitrust Division Cases – Supreme Court</b>			
Filed	0	0	1
Terminated	1	0	1
<b>Case results</b>			
Total individual fines (US\$ '000)	3,069	2,016	369
Number of individuals fined	29	24	15
Total corporate fines (US\$ '000)	272,214	1,904,714	985,706
Number of corporations fined	24	25	15
Total fines imposed (US\$ '000)	275,283	1,906,730	986,075
<b>Incarceration</b>			
Number of individuals sentenced	39	35	15
Number of individuals sentenced to incarceration time	28	21	12
Average number of days of incarceration	750	787	402

- a Statistics reflect only the primary type of conduct under investigation at the outset of the investigation; the statistics do not reflect whether a matter investigated a potential violation of an additional statute(s), or whether the primary violation changed during the pendency of the investigation. They do not include business reviews, judgment modification or termination investigations, or premerger notifications, but include investigations initiated as a result of premerger notifications.
- b This category reflects both civil and criminal investigations.
- c This category includes investigations of potential violations of Clayton §§ 3, 7A, and 8, the Robinson-Patman Act, and Title 18, among other statutes.

Source: Department of Justice online information. Viewed at: <https://www.justice.gov/atr/file/788426/download>; and supplementary information provided by the Department.

**Table 3.17 FTC actions against anticompetitive practices, FY2013-15**

	FY2013	FY2014	FY2015
Merger investigations	23	17	22
Horizontal agreements settled by FTC	4	6	4
FTC cases in court of appeals	1	1	4
FTC cases in Supreme Court	2	0	1
Investigations on unilateral conduct	15	3	10

Source: Federal Trade Commission Competition Enforcement Database. Viewed at: <https://www.ftc.gov/competition-enforcement-database>; and information provided by FTC.

3.181. The Sherman Act prohibits restrictive practices and arrangements such as price fixing, bid rigging, and agreements to divide markets. The law also applies to vertical agreements between sellers and buyers. According to the case law pursuant to Section 1 of the Sherman Act, horizontal conduct such as price fixing, bid rigging, and market allocation agreements is treated as illegal

*per se*, while a "rule of reason" standard is applied to other conduct. Sherman Act violations may be subject to criminal or civil prosecution (DoJ) or challenged by the FTC in civil proceedings under the Federal Trade Commission Act. Criminal enforcement may result in significant fines and penalties as well as prison sentences for convicted individuals.<sup>172</sup> On average, the number of persons serving time for criminal antitrust offences, and the length of the sentences, has been increasing over time.<sup>173</sup>

3.182. The FTC's merger and non-merger enforcement activities in FY2015 resulted in estimated savings to U.S. consumers of US\$3.4 billion. In 2015, the Supreme Court decided one anti-trust case and other appellate courts decided another four cases, all upholding the FTC's position. Following the Supreme Court's 2013 decision in *FTC v. Actavis* that reverse-payment pharmaceutical patent settlements are subject to antitrust scrutiny, the FTC submitted an amicus brief to the First Circuit Court of Appeals in a similar case, arguing that the Supreme Court's *Actavis* holding applies to non-monetary settlements, which the First Circuit upheld. The FTC also obtained a settlement of its 2008 lawsuit against Cephalon, Inc., which required Cephalon's parent (Teva) to disgorge and return to purchasers US\$1.2 billion it had obtained through agreements to pay four firms to refrain from selling generic versions of its drug Provigil. As part of the FTC's efforts to police anticompetitive conduct that may raise costs or reduce options for consumers, the U.S. Court of Appeals for the Eleventh Circuit upheld the FTC's determination that *McWane, Inc.* unlawfully maintained its monopoly in the domestic pipe fittings market through exclusionary conduct. In the merger area, in FY2015 the FTC challenged 22 proposed transactions in industries critical to consumers, such as healthcare, pharmaceuticals, hospitals, and retail. In healthcare, the Commission challenged transactions alleging that concentrated provider markets tend to lead to higher prices and lower quality of care for patients. For example, the FTC achieved an important victory when the Ninth Circuit of Appeals affirmed the district court's decision in *St. Luke's Health System v. St. Alphonsus Medical Center* that the acquisition had violated the antitrust laws. In the FTC's case against Sysco Corporation and US Foods, the parties abandoned the transaction after the Commission sought an injunction in federal court to prevent the acquisition from going forward. In *Staples/Office Depot*, the parties abandoned their proposed merger after the district court granted the FTC's request for a preliminary injunction.

3.183. The Antitrust Division obtained a record US\$3.6 billion in criminal fines and penalties in FY2015, notably due to settlements with financial institutions and auto part manufacturers in the United States and elsewhere. The auto part makers pleaded guilty to price fixing and bid rigging involving 20 different auto parts, and their acts have led to significant fines over a course of years. Cooperation regarding related enforcement actions is ongoing with enforcement authorities in Japan, the Republic of Korea, the European Union, Canada, and other jurisdictions. The DoJ is also continuing to prosecute collusion and fraud in the financial services industry, resulting in criminal fines of more than US\$2.5 billion for price fixing in the foreign exchange markets for U.S. dollars and euros, and manipulation of key reference interest rates (LIBOR). Another major ongoing investigation concerns a single, world-wide conspiracy to fix prices, rig bids and allocate markets for roll-on, roll-off cargo in ocean shipping between the United States and elsewhere. The investigation of the conspiracy, which affects transportation of cargo such as new and used motor vehicles as well as mining, construction, and agricultural equipment from 2000 to 2012, has so far (July 2016) resulted in agreed-upon fines exceeding US\$230 million in the United States.<sup>174</sup> The conspiracy is also under investigation in other jurisdictions.

3.184. Advice and assistance to governmental bodies and other institutions in their decisions affecting consumers or competition are important tasks for the national competition authorities. Insight and expertise are provided formally through the filing of advocacy letters, often submitted jointly by the FTC and the DoJ Antitrust Division. Noteworthy recent submissions include joint comments provided to the United States Patent and Trademark Office on its initiative to increase the quality of granted patents, updated DoJ views to the Federal Communications Commission on its Mobile Spectrum Holdings proceeding, and comments submitted by FTC staff to state legislators on proposed legislation affecting competition among local healthcare providers. In its policy

<sup>172</sup> Corporations may be fined up to US\$100 million per offence, whilst individuals risk fines of up to US\$1 million and ten years in federal prison.

<sup>173</sup> It is a widely held view in the United States that imprisonment may be a more effective deterrent against criminal antitrust behaviour than corporate fines and penalties.

<sup>174</sup> U.S. Department of Justice online information. Viewed at: <https://www.justice.gov/opa/pr/wwl-pay-989-million-fixing-prices-ocean-shipping-services-cars-and-trucks>.

advocacy, the FTC has helped define the contours of the state action doctrine for conduct by state boards whose members are private actors, which resulted in the FTC's Supreme Court victory in *North Carolina State Board of Dental Examiners v. FTC*. During FY2015, the FTC or FTC staff submitted 17 advocacy letters and amicus briefs, some jointly with DoJ, expressing concerns about efforts to provide antitrust immunity to hospitals and other healthcare providers that engage in mergers and other forms of collaboration, practices that may harm competition in the pharmaceutical industry, restrictions for automobile manufacturers to sell cars directly to consumers, and occupational licensing practices that may harm competition.<sup>175</sup>

3.185. In 2015, the FTC issued a policy statement on the use of its FTC Act Section 5 authority.<sup>176</sup> As part of its research and study agenda, the FTC held a workshop examining competition, consumer protection, and economic issues associated with the "sharing economy". A report summarizing the findings of the workshop, as well as a study focusing on competition issues related to Patent Assertion Entities are forthcoming.<sup>177</sup>

3.186. The DoJ Antitrust Division and the FTC are also actively engaged in interagency discussions and decision-making concerning competition issues in international trade and investment policy. Both agencies are typically involved in the negotiations of competition policy chapters in U.S. FTAs, including the Trans-Pacific Partnership (TPP) and the Trans-Atlantic Trade and Investment Partnership (T-TIP). The agencies also continue to participate in working groups and negotiations on regional and bilateral trade agreements.

3.187. The U.S. antitrust agencies are actively engaged in international cooperation in the area of competition policy and consumer protection. The DoJ Antitrust Division and the FTC participate in multilateral and regional frameworks such as the International Competition Network (ICN), the Competition Committee of the OECD, UNCTAD, and the APEC Competition Policy and Law Group. The agencies also rely on strong bilateral relationships with enforcement agencies in other jurisdictions. During the period under review, the DoJ and the FTC signed an antitrust memorandum of understanding with the Korea Fair Trade Commission (September 2015) and an antitrust cooperation agreement with the National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPI) of Peru (May 2016). In all, the United States has bilateral agreements with 15 jurisdictions.<sup>178</sup>

### 3.3.4 State trading, state-owned enterprises, and privatization

3.188. State enterprises engage in commercial activities on a relatively limited scale in the United States. At the level of the Federal Government, government corporations and government-sponsored enterprises (GSEs) generally fulfil public policy or governmental functions in the United States and are not intended to compete with private enterprises. Government corporations are corporations "owned or controlled by the Government of the United States".<sup>179</sup> The Federal Government owns a number of such corporations, established by Congress to perform a public purpose with a clear and transparent mandate (Table 3.18). The corporations have separate legal personality and may receive federal budgetary allocations, although they may also have independent sources of revenue.

3.189. Operating exclusively in the financial sector, GSEs are quasi-governmental, private corporations structured and regulated by the Government to enhance their ability to borrow money

<sup>175</sup> The FTC's advocacy letters and amicus briefs are available at: <https://www.ftc.gov/policy/advocacy>. DoJ comments and testimony can be found at: <https://www.justice.gov/atr/comments-and-testimony>.

<sup>176</sup> FTC online information. Viewed at: [https://www.ftc.gov/system/files/documents/public\\_statements/735201/150813section5enforcement.pdf](https://www.ftc.gov/system/files/documents/public_statements/735201/150813section5enforcement.pdf).

<sup>177</sup> FTC online information. Viewed at: <https://www.ftc.gov/news-events/events-calendar/2015/06/sharing-economy-issues-facing-platforms-participants-regulators>, and <https://www.ftc.gov/policy/studies/patent-assertion-entities-pae-study>.

<sup>178</sup> Agreements have been concluded with Australia, Brazil, Canada, Chile, China, Colombia, the EU, Germany, India, Israel, Japan, the Republic of Korea, Mexico, Peru, and the Russian Federation. Six of these agreements include a formalized system of notification and consultation in the investigation phase. Cooperation is particularly close with Canada and Mexico, due to the high level of market integration between the three countries.

<sup>179</sup> Definition provided in Title 5 of the US Code (5 U.S.C. 103). The Government Corporation Control Act (31 U.S.C. 9101-10) distinguishes between mixed-ownership government corporations and wholly-owned government corporations.



(Table 3.19). Their debt is not fully backed by the Federal Government. Freddie Mac and Fannie Mae received federal assistance as a result of the financial crisis.

**Table 3.18 Government corporations, 2015**

Government corporation	Legal reference	Area of operation
Commodity Credit Corporation	15 U.S.C. 714	Commodity credit financing
Community Development Financial Institutions Fund	12 U.S.C. 4701	Banking
Corporation for National and Community Service	42 U.S.C. 12651	National and communities services
Export-Import Bank	12 U.S.C. 635	Export financing
Federal Crop Insurance Corporation	7 U.S.C. 1501	Agricultural insurance
Federal Deposit Insurance Corporation	12 U.S.C. 1811	Bank resolution and deposit insurance
Federal Financing Bank	12 U.S.C. 2281	Financing
Federal Home Loan Banks	12 U.S.C. Ch. 11	Banking
Federal Prison Industries (UNICOR)	18 U.S.C. 4121	Prison services
Financing Corporation <sup>a</sup>	12 U.S.C. 1441	Financing
Government National Mortgage Association	12 U.S.C. 1717	Mortgagees
Government National Mortgage Association	12 U.S.C. 1717	Mortgages
International Clean Energy Foundation	42 U.S.C. 17352	Foreign assistance for greenhouse gas reduction
Millennium Challenge Corporation	22 U.S.C. 7703	Foreign assistance
National Credit Union Administration Central Liquidity Facility	12 U.S.C. 1795b	Credit Unions
National Railroad Passenger Corporation (AMTRAK)	49 U.S.C. 241	Passenger rail services
Overseas Private Investment Corporation	22 U.S.C. 2191	International investment and financing
Pension Benefit Guaranty Corporation	29 U.S.C. 1301	Pensions
Presidio Trust of San Francisco	16 U.S.C. 460bb	Park and recreation
Resolution Funding Corporation	12 U.S.C. 1441(b)	Financing and bonds for debt created by the former Resolution Trust Corporation
St. Lawrence Seaway Development Corporation	33 U.S.C. 981	Marine transport
Tennessee Valley Authority	16 U.S.C. 831	Navigation, flood control, electricity, certain manufacturing and economic development
U.S. Postal Service <sup>b</sup>	39 U.S.C. 101	Mail services
Valles Caldera Trust	16 U.S.C. 698-v4	Historical preservation

a No longer writing new business; current outstanding obligations expire by 2019.

b Only partially a government corporation.

Source: Kosar, K. (2011), *Federal Government Corporations: An Overview*, CRS Publication RL30365, 8 June. Viewed at: <http://www.fas.org/sqp/crs/misc/RL30365.pdf>; Government Corporation Control Act, 31 U.S.C. 9101; and information provided by U.S. authorities.

**Table 3.19 Government-sponsored enterprises**

(US\$ million)

GSE	Area of operation	Total assets 2015
Federal National Mortgage Association (Fannie Mae) <sup>a</sup>	Residential and multi-family mortgages	3,221,917
Federal Home Loan Mortgage Corporation (Freddie Mac) <sup>a</sup>	Residential and multi-family mortgages	1,986,050
Federal Agricultural Mortgage Corporation (Farmer Mac)	Creates a secondary market for agricultural, rural housing, and rural utility loans	15,540
Federal Home Loan Bank System	Provides funding to member banks so the banks can provide community development credit	969,267
Farm Credit System <sup>b</sup>	Guarantees payments as to principal and interest on securities issues by member banks	303,503

a In conservatorship since 6 September 2008; the U.S. Department of the Treasury entered into a Senior Preferred Stock Purchase Agreement (SPSA) to make investments in senior preferred stock to maintain positive equity. Fannie Mae has not received funds from Treasury since the first quarter of 2012.

b The Farm Credit System banks are AgFirst Farm Credit Bank, AgriBank, FCB, CoBank, ACB, and Farm Credit Bank of Texas.

Source: Financial Statements. Viewed at: [http://www.fanniemae.com/resources/file/ir/pdf/quarterly-annual-results/2016/q12016\\_release.pdf](http://www.fanniemae.com/resources/file/ir/pdf/quarterly-annual-results/2016/q12016_release.pdf); [http://www.freddiemac.com/investors/er/pdf/financial-statements\\_2015.pdf](http://www.freddiemac.com/investors/er/pdf/financial-statements_2015.pdf); <https://www.farmermac.com/wp-content/uploads/Q1-2016-Form-10-Q-Final.pdf>; [http://www.fhlb-of.com/ofweb\\_userWeb/resources/2016Q1CFR.pdf](http://www.fhlb-of.com/ofweb_userWeb/resources/2016Q1CFR.pdf); and [http://www.farmcredittfunding.com/ffcb\\_live/serve/public/pressre/finin/report.pdf?assetId=298759&uniq=1463758363724](http://www.farmcredittfunding.com/ffcb_live/serve/public/pressre/finin/report.pdf?assetId=298759&uniq=1463758363724).

3.190. In June 2016, the United States notified its state trading enterprises (STEs) pursuant to Article XVII:4(a) of the GATT 1994 and Paragraph 1 of the Understanding on the Interpretation of Article XVII, providing information on the Commodity Credit Corporation, the Isotopes Production and Distribution Program Fund, certain power administrations, and the Strategic Petroleum Reserve.<sup>180</sup>

### 3.3.5 Government procurement

#### 3.3.5.1 Overview

3.191. The United States is a party to the WTO Agreement on Government Procurement (GPA) and played an active role in the negotiations leading to the Revised Agreement on Government Procurement. GPA thresholds in U.S. dollars are revised every two years by the USTR. Annex I of Appendix I of the Agreement contains the list of central government agencies covered by the GPA.<sup>181</sup> Annexes 2 and 3 list the 37 States, and the federal and sub-federal bodies applying the GPA. The Protocol amending the Agreement on Government Procurement entered into force for the United States on 6 April 2014; U.S. threshold values as expressed in SDR are the same under the revised and the 1994 Agreements.

3.192. In December 2013, the United States proposed removing or replacing 4 entities in Annex 1 of Appendix I of the Agreement. In its submission, the United States noted that the Advisory Commission on Intergovernmental Relations no longer existed, and that the National Commission on Libraries and Information Science, the Office of the Nuclear Waste Negotiator, and the Office of Thrift Supervision had duties that were taken over by other entities, and that the proposed modification would not reduce the level of mutually agreed coverage provided under the GPA.<sup>182</sup> In April 2014, the United States submitted a notification to make minor corrections to its Appendix I, including the adoption of new formatting.<sup>183</sup> In 2016, the United States submitted a notification with respect to the electronic or paper media utilized by parties for the publication of laws, regulations, judicial decisions, administrative rulings of general application, standard contract clauses, and procedures regarding government procurement covered by the GPA.

3.193. According to the Federal Procurement Data System's "Federal Contract Actions and Dollars" report, which looks at dollars obligated against contracts awarded by U.S. Federal Government agencies, the value of federal government procurement in the United States for FY2015 was US\$439.3 billion. Procurement by the Department of Defense during the same time period was US\$274.5 billion; procurement by other agencies and entities was US\$164.8 billion.<sup>184</sup> There are no collected state or locality figures that are available that would allow for comparison to these data.

3.194. USASpending.gov, a website which provides for the public dissemination of federal contract, grant, loan, and financial assistance data as required by the Federal Funding Accountability and Transparency Act of 2006, provides information on total federal government spending, excluding tax credits and assistance for housing, rent, food, or personal expenses. For FY2015, the total government spending was approximately US\$2.8 trillion; of this, government contracts accounted for US\$439.3 billion. Procurement then made up about 15.5% of total federal government expenditures in 2015. Spending has been on a declining path; in FY2013, for instance, it was US\$463.7 billion, or about 15.9% of total federal government expenditures of that year.<sup>185</sup>

3.195. Statistics on the procurement activities of the main agencies at the federal level are contained in the United States' Federal Procurement Data System (FPDS), maintained by General Services Administration (GSA) under the direction of the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). The GSA operates multiple e-procurement systems that support collection and dissemination of information on U.S. Federal procurements to include

<sup>180</sup> WTO document G/STR/N/16/USA, 29 June 2016.

<sup>181</sup> WTO document GPA/113, 2 April 2012.

<sup>182</sup> WTO document GPA/MOD/USA/14, 4 December 2013.

<sup>183</sup> WTO document GPA/MOD/USA/15, 14 April 2014.

<sup>184</sup> Federal Procurement Data System. "Federal Contract Actions and Dollars." Viewed at: <https://www.fpds.gov> [8 August 2016].

<sup>185</sup> USASpending.gov, "Overview of Awards by FY 2008 – 2016." Accessed August 8, 2016. Viewed at: <https://www.usaspending.gov/Pages/TextView.aspx?data=OverviewOfAwardsByFiscalYearTextView>.



awards, contractor performance and integrity, and a single point-of-entry for contracting opportunities, known as Federal Business Opportunities (FedBizOpps).<sup>186</sup> In December 2015 the United States submitted to the WTO procurement statistics, with statistical information for the year 2009.<sup>187</sup> For procurement at the central level only (Federal Government), the submission reported 330,586 contract awards and actions for GPA-covered goods and services above the threshold that were made by GPA-covered entities, with a total value of US\$175.0 billion, and 6,741 construction contracts above the threshold, with a total value of US\$29.1 billion.<sup>188</sup> These numbers represent the obligations made against contracts awarded in FY2009 as well as options exercised in following years to represent the true value of opportunities. Previous statistical submissions contained higher values due to a different methodology.

### 3.3.5.2 Institutional and legal framework

3.196. Government procurement at the federal level is decentralized, and is carried out through the various executive agencies' procurement systems. The Office of Management and Budget (OMB) oversees and coordinates federal procurement, and reviews proposed regulations for compliance with policy guidance, through the Office of Federal Procurement Policy (OFPP), which provides overall direction for government-wide procurement policies.<sup>189</sup> The OFPP plays a central role in shaping the policies and practices federal agencies use to acquire goods and services; it is headed by an Administrator who is appointed by the President and confirmed by the Senate.<sup>190</sup> The OFPP Administrator issues policy letters stating principles that must be followed by the agencies; implementation takes place through the Federal Acquisition Regulation (FAR).

3.197. The GSA is responsible for supporting other federal agencies with basic functions, including procurement services and central contract vehicles. The Department of Defense uses various methods of procurement, including GSA Schedules; it has its own on-line catalogue procurement capability referred to as DOD e-Mall (<https://dod.emall.dla.mil/acct/>). There are multiple agencies such as the National Aeronautics and Space Administration, the Department of Health and Human Services, and others that have been designated by OFPP to manage government-wide acquisition contracts that leverage federal buying of common goods and services.

3.198. The main legislation with respect to government procurement remains the Buy American Act (1933), which requires the Federal Government to purchase domestic goods; and the Trade Agreements Act (TAA) of 1979, which provides authority for the President to waive discriminatory purchasing requirements (e.g. the Buy American Act), designate eligible countries, and bar procurement from non-designated countries. The United States notified to the WTO its basic procurement legislation and legislation giving effect to the GPA in 1998.<sup>191</sup> The GPA is implemented in U.S. law at the federal level primarily through the TAA, as amended. The GPA is implemented at the state level through laws and regulations in each of the 37 States participating in it.

3.199. Legislation on procurement is also contained in various other laws, in particular the Federal Property and Administrative Services Act of 1949 (FPASA), the Competition in Contracting Act of 1984 (CICA), the Federal Acquisition Streamlining Act of 1994 (FASA), the Clinger-Cohen Act of 1996, the Small Business Act of 1985, and the Services Acquisition Reform Act.

3.200. The FAR regulates federal government agencies' acquisitions of supplies and services with appropriated funds. The Department of Defense (DoD), GSA, and the National Aeronautics and Space Administration (NASA) jointly issue the FAR for use by executive agencies in acquiring goods and services. The FAR system allows executive agencies and their sub-agencies to develop their own specific internal guidelines. The FAR is updated regularly through Federal Acquisition Circulars (FACs) to reflect changes in procurement procedures, the effect of trade agreements, and other changes. Proposed regulations are published in the *Federal Register* and are open to public comments, which are considered when drafting the final rules. The FAR regulates the procurement process in detail. Heads of major purchasing entities, i.e. the Secretary of Defense, the

<sup>186</sup> The website's address is: <https://www.fbo.gov/?s=main&mode=list&tab=list>.

<sup>187</sup> WTO document GPA/104/Add.8, 7 December 2015.

<sup>188</sup> WTO document GPA/104/Add.8, 7 December 2015.

<sup>189</sup> OFPP online information. Viewed at: <http://www.whitehouse.gov/omb/procurement/index.html>.

<sup>190</sup> OFPP online information. Viewed at: [https://www.whitehouse.gov/omb/procurement\\_default](https://www.whitehouse.gov/omb/procurement_default).

<sup>191</sup> WTO document GPA/23, 15 July 1998.

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 OMB, specifically the Administrator of the OFPP and the Office of Information and Regulatory Affairs.

3.201. Rules and regulations with respect to government procurement are also contained in agency supplements to the Federal Acquisition Regulation and include the General Services Acquisition Manual (GSAM), which consolidates GSA agency acquisition rules and guidance. The GSAM incorporates the General Services Administration Acquisition Regulation (GSAAR) as well as internal agency acquisition policy.

3.202. Federal government agencies are required (with some exceptions) to publish in FedBizOpps notices of proposed procurement for contracts in excess of US\$25,000 at least 15 days before a request for bids. Prospective suppliers have at least 30 days from that date to submit bids. In the case of procurement of commercial items and for procurement valued at or below US\$100,000, shorter timeframes may be established and simplified procedures applied. When procurement falls within the scope of the GPA or a free trade agreement, a period of not less than 40 days must generally be granted. State governments covered by the GPA are required to publish invitations to tender in their own state publications and must conform to GPA deadlines. In addition to notices of proposed procurement, some states use notices of planned procurement.

3.203. The CICA mandates that procurement take place through full and open competitive procedures. Executive agencies must solicit sealed bids, unless the procurement is urgent, and awards must be generally made on the basis of price, although there are some exceptions to this principle. The CICA provides for simplified procedures for small purchases. The FASA establishes a threshold, the Simplified Acquisition Threshold (SAT), which provides simplified procedures in cases of new acquisitions valued below the SAT, which is currently set at US\$150,000. It also exempts purchases valued below the micro-purchase threshold, currently set at US\$3,500, from Buy American Act requirements and allows them to be made without obtaining competitive quotations if the contracting officer determines that the purchase price is reasonable.<sup>192</sup>

3.204. Federal government agencies may maintain non-exhaustive lists of suppliers, provided they justify in writing the need for such a list. The GSA maintains Indefinite Delivery, Indefinite Quantity contracts with approved suppliers, known as the Federal Supply Schedules or Multiple Award Schedules (MAS), which include both national and foreign suppliers from parties to the GPA or other international agreements. Interested suppliers can apply for inclusion on the Schedules at any time. The list of Federal Supply Schedule Contractors is available publicly on "GSAAdvantage!." Only authorized users may purchase directly from the Federal Supply Schedules. Authorized users are outlined in GSA Order 4800.2I.<sup>193</sup>

3.205. Apart from the non-exhaustive lists of suppliers, Federal agencies, as well as states and other sub-federal bodies may maintain lists of qualified suppliers for their (selective) procurement; several of the 37 states covered by the GPA use such lists when tendering for certain types of procurement. Lists of qualified or registered suppliers are made public.

3.206. Contractors are required to register online in the System for Award Management (SAM), an official website of the U.S. government that consolidated the Central Contracting Registration (CCR) as the primary vendor database for the U.S. Federal Government in 2012.<sup>194</sup> In July 2016, some 403,432 government vendors were registered, of which 8,118 were foreign firms (i.e. a firm that is not located in the United States or its territories and has foreign ownership). In 2014, the FAR was amended to require the use of Commercial and Government Entity (CAGE) codes,

<sup>192</sup> The threshold adjustment process is governed by statute 41 U.S.C. 1908, which requires mandatory review and adjustment of certain statutory acquisition-related thresholds for inflation using the Consumer Price Index (CPI).

<sup>193</sup> For more information on how to become a Schedule holder, see: [www.gsa.gov/schedules](http://www.gsa.gov/schedules).

<sup>194</sup> The System for Award Management (SAM) combines federal procurement systems and the Catalog of Federal Domestic Assistance into one new system. This consolidation is being done in phases. The first phase of SAM includes the functionality from the following systems: Central Contractor Registration (CCR); Federal Agency Registration (Fedreg); Online Representations and Certifications Application; and Excluded Parties List System (EPLS). System for Award Management online information. Viewed at: <https://www.sam.gov/portal/SAM/#1>.

including North Atlantic Treaty Organization (NATO) CAGE (NCAGE) codes for foreign entities, for awards valued at greater than the micro-purchase threshold.

3.207. Procurement at the sub-federal level is governed by state or other sub-federal government laws and procurement regulations. Where procurement is funded with federal money, states must comply with certain federal statutory requirements. Local governments have their own procurement agencies, as well as their own procurement policies.

3.208. Efforts to increase transparency in U.S. federal procurement includes introduction of changes to ensure that the unique identifier used in federal procurement (the Procurement Instrument Identifier (PIID)) is both unique and uniform across the Federal Government, capturing information on parents or predecessors of bidders, and requirements to make public expenditures under federal contracts in addition to existing obligations. These requirements are being implemented through regulatory, process, and information technology changes and will be completed by 2018.

### 3.3.5.3 Market access conditions

3.209. U.S. policy with respect to market access for government procurement continues to be based on reciprocity. That is, access is granted based on participation in specific trade agreements, including the GPA. Domestic purchasing requirements are maintained for procurement not covered by the GPA, the WTO plurilateral Agreement on Trade in Civil Aircraft, or preferential trade agreements. The Trade Agreements Act of 1979 generally prohibits federal agencies from purchasing goods and services from countries that are not a party to the GPA or other trade agreements that cover government procurement (non-designated countries).

3.210. Revised GPA and FTA thresholds in U.S. dollars for the period starting on 1 January 2016 and ending on 31 December 2017 were published in the Federal Register at 80 FR 77694, on 15 December 2015.<sup>195</sup> For the GPA, they were set at US\$191,000 for goods and services included in Annex 1; and US\$7,358,000 for construction services (Table 3.20).<sup>196</sup>

**Table 3.20 Central government thresholds for the application of trade agreements, 2016-17**

(US\$)

Trade agreement	Supply contract equal or exceeding	Service contracts	Construction contracts
WTO GPA	191,000	191,000	7,358,000
Australia FTA	77,533	77,533	7,358,000
Bahrain FTA	191,000	191,000	10,079,365
CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	77,533	77,533	7,358,000
Chile FTA	77,533	77,533	7,358,000
Colombia FTA	77,533	77,533	7,358,000
Korea, Rep. of FTA	100,000	100,000	7,358,000
Morocco FTA	191,000	191,000	7,358,000
NAFTA			
Canada	25,000	77,533	10,079,365
Mexico	77,533	77,533	10,079,365
Oman FTA	191,000	191,000	10,079,365
Panama FTA	191,000	191,000	7,358,000
Peru FTA	191,000	191,000	7,358,000
Singapore FTA	77,533	77,533	7,358,000
Israel FTA	50,000	-	-

Source: Acquisition Central online information. Viewed at: [http://www.acquisition.gov/far/html/Subpart%2025\\_4.html](http://www.acquisition.gov/far/html/Subpart%2025_4.html); and <https://www.regulations.gov/document?D=FAR-2016-0001-0001>.

3.211. Under the Buy American Act of 1933 (BAA), the purchase of supplies and construction materials by government agencies is limited to those defined as "domestic end-products", in accordance with a two-part test that must establish that the article is manufactured in the United

<sup>195</sup> The regulation may be viewed at: <https://www.regulations.gov/document?D=FAR-2016-0001-0001>.

<sup>196</sup> Notified in WTO document GPA/W/336/Add.2, 6 January 2016.

States, and that the cost of domestic components exceeds 50% of the cost of all the components. The BAA does not apply to services. As a way of monitoring enforcement of the BAA, the Independent Agencies Appropriations Act of 2006 (PL No. 109-115) requires the head of each Federal agency to submit a report to Congress relating to acquisitions of articles, materials, or supplies manufactured outside the United States. Federal domestic preference requirements are also sometimes included in annual appropriation and authorization bills.

3.212. The Trade Agreements Act of 1979 gives authorization to the President to grant waivers from the Buy American Act and other procurement restrictions; this authority has been delegated to the USTR. The Trade Agreements Act of 1979 waives the application of the BAA to the end-products of designated countries, which include the parties to the GPA, bilateral agreements that cover government procurement, CBERA beneficiaries, and least developed countries. For CBERA and least developed countries, the thresholds are those of the GPA. For the other trading partners that are beneficiaries of a preferential agreement, the thresholds are as shown in Table 3.20. Eligible products are granted non-discriminatory treatment.

3.213. Apart from the waiver faculty provided by the Trade Agreements Act, exceptions to the BAA can be granted if it is determined that the domestic preference is inconsistent with the public interest, in case of U.S. non-availability of a supply or material, or for reasonableness of cost. Public interest determinations may be made on individual procurements or as a blanket for a set of procurements. In case of U.S. non-availability of a supply or material, the FAR contains a list of articles that have been determined to be non-available (FAR 25.104) which must go through public notice and comment every five years. Additionally, such non-availability determinations may be made on an individual basis. The cost of the domestic offer has been interpreted as being unreasonable if the cost of the foreign (non-eligible) product, inclusive of import duty and a 6% added margin, is below the lowest domestic offer when this offer is from a large business concern. If the lowest domestic offer is from a small business concern, the added margin considered is 12%. For purchases by the Department of Defense the price difference must be at least 50%. The provisions of the BAA are also waived for civil aircraft and related articles that meet the substantial transformation test of the Act and originate in parties to the WTO Agreement on Trade in Civil Aircraft.

3.214. Under the Balance of Payment Program the Department of Defense applies provisions similar to those required under the BAA to contracts over US\$150,000 for end-products for use outside the United States.<sup>197</sup> For eligible goods (i.e. those covered by the United States under the WTO GPA or an FTA), the Department of Defense waives the restrictions of the BAA/Balance of Payments Program. For other goods, the Department of Defense waives the restrictions for equipment produced in a "qualifying country" (with which there is a reciprocal procurement agreement or memorandum of understanding).<sup>198</sup>

3.215. In certain cases imported supplies for use in government contracts may be exempted from customs duties. These goods are listed in sub-chapters VIII and X of Chapter 98 of the U.S. tariff schedule. Other supplies may also be granted duty-free entry; if this is the case, the contract price must be reduced by the amount of duty that would be payable if the supplies did not enter duty free. Supplies (excluding equipment) for government-operated vessels or aircraft may be imported duty free.<sup>199</sup>

3.216. Each U.S. State has its own procurement access conditions. As noted, 37 States participate in the GPA; among those that do not, some restrict foreign participation in biddings, others offer preferences to in-state suppliers, or apply domestic purchase requirements. Some states (e.g. New Jersey) do not grant specific state preferences, but may grant them on a reciprocity basis, depending on what the state of origin of the out-of-state bidder grants. Others grant in-state preferences only when there is a tie in the bid, or for some specific products. A few states, including New Hampshire, North Carolina, Oklahoma, Rhode Island, Vermont and Wisconsin do not grant any form of preference.

<sup>197</sup> DFAR Subpart 225.75. Viewed at: <http://farsite.hill.af.mil/vfdfara.htm>.

<sup>198</sup> Australia, Belgium, Canada, Denmark, Egypt, France, Germany, Greece, Israel, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom. Products from Austria and Finland could also be exempted, on a purchase-by-purchase basis.

<sup>199</sup> FAR Subpart 25.9. Viewed at: <http://www.arnet.gov/far/current/pdf/FAR.book.pdf>.

3.217. In late 2010, the United States passed Public Law 111-347, Title III of which creates a federal excise tax of 2% to be applied to government purchases of goods and services from foreign entities not party to an international procurement agreement, entered on or after 2 January 2011. On 18 August 2016, the Internal Revenue Service issued the final regulations implementing the Title.<sup>200</sup> The final regulations define the term international procurement agreement as the WTO GPA and any free trade agreement to which the United States is a party that includes government procurement obligations that provide appropriate competitive government procurement opportunities to U.S. goods, services, and suppliers. For the purposes of this definition, a party to an agreement is a signatory to the agreement and does not include a country that is merely an observer with respect to the agreement. The legislation requires Public Law 111-347 to be applied in a manner consistent with United States' obligations under international agreements. The reference to "international agreements" includes income tax treaties to which the United States is a party (57 agreements with 66 countries). Payments for purchases under the simplified acquisition procedures that do not exceed the simplified acquisition threshold of US\$150,000 or less are exempted from the tax, as are emergency acquisitions and certain foreign humanitarian assistance contracts. Also, countries that are a party to an income tax treaty with the United States are exempt. The new regulations will establish procedures for collecting and paying the tax, but interim tax collection procedures have been in effect since enactment of Public Law 111-347 Section 5000C in 2010.

3.218. A new reciprocity approach to sub-federal procurement was adopted by the United States in three FTAs (Colombia, Panama, and Peru). Based on this policy, government procurements of eight U.S. states and Puerto Rico was covered in the FTAs signed with Colombia, Panama, and Peru.

### 3.3.5.4 Set-asides and preferences

3.219. U.S. procurement policy seeks to increase the participation of small businesses, veteran-owned small businesses, small disadvantaged business (SDBs), HUB Zone businesses, and women-owned small businesses. To this end, the U.S. government carries out a policy of fixing set-asides when market research concludes that small businesses are available and able to perform the work or provide the products being procured by the Government.<sup>201</sup>

3.220. The Federal Government has specified annual prime contracting goals for designated small businesses. The Small Business Act (PL 85-536) required, in principle, that each contract with an anticipated value greater than US\$2,500 but less than US\$100,000 be reserved exclusively for small business concerns. These thresholds were later revised, and currently every federal government purchase with an anticipated value above the micro-purchase threshold of US\$3,500, and up to the simplified acquisition threshold (SAT) of US\$150,000, is required to be automatically and exclusively set-aside for small businesses. In this case, there must be at least two or more (Rule of Two) responsible small business concerns that are competitive in terms of market prices, quality, and delivery for an automatic set-aside to occur. Contract opportunities above US\$150,000 must also be set aside if the Rule of Two is met. Moreover, contract opportunities over US\$700,000 or US\$1.5 million for construction awarded to Other-than-Small-Businesses (OTSBs), must include small business subcontracting plans to the extent there are subcontracting opportunities. 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.<sup>202</sup>

3.221. Subcontracting plans must include one or more businesses that fall under the Small Business Administration (SBA) main programmes to promote the ability of small businesses to compete for federal procurement contracts.<sup>203</sup> These are: the Women-Owned Small Business (WOSB) Federal Contract programmes; the 8(a) Business Development Program; the Historically

<sup>200</sup> Federal Register 81 FR 55133. Viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2016-08-18/pdf/2016-19452.pdf>.

<sup>201</sup> Small Business Administration online information. Viewed at: <https://www.sba.gov/contracting/government-contracting-programs/what-small-business-set-aside>.

<sup>202</sup> Definition of small business. Viewed at: [http://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf).

<sup>203</sup> Small Business Administration online information. Viewed at: <https://www.sba.gov/contracting/government-contracting-programs/what-small-business-set-aside>.



Underutilized Business Zones (HUBZone) Program; the Small Disadvantaged Business Program; and the Service-Disabled Veteran-Owned Small Business Concerns (SDVOSBC) Program.

3.222. The current, government-wide procurement goal stipulates that at least 23% of all federal government contracting dollars should be awarded to small businesses. In addition, targeted sub-goals are established for the following small business categories: women owned small business: 5%; small disadvantaged business: 5%; service-disabled veteran-owned small business: 3%; and HUBZone: 3%. These goals are not in addition to the 23% but rather are counted as part of the overall goal. In fiscal year 2015, the overall small-business procurement goal was met, as 25.7% of the value of all contracts was procured from them. In the case of the targeted subgroups, the goals were met for the women owned small business (5.1%); small disadvantaged business (10.1%); and service-disabled veteran-owned small business (3.9%), but procurement from HUBZones was below the goal (1.8%).<sup>204</sup>

3.223. To benefit from set-asides, some contracting rules and limitations apply. The main one is the non-manufacturer rule. If a small business prime contractor does not itself manufacture the products or materials that it provides to the Government under a set-aside contract for supplies, it must supply the product of a small business, unless the SBA has granted a waiver or the contract is a small business set-aside under US\$150,000. The SBA may issue waivers to the non-manufacturer rule if it determines that there are an insufficient number of small businesses with the required manufacturing capabilities.

3.224. There are also subcontracting limitations: under set-aside award conditions, small businesses are required to perform minimum levels of work when they receive a federal contract. These subcontracting limitations apply to contract set-asides for small businesses when the contract amount exceeds US\$150,000 and to all other set-aside or sole-source contracts under the 8(a), HUBZone, SDVOSB or WOSB programmes. In the case of service contracts, the small business prime contractor must provide at least 50% of the contract cost for personnel; for supply contracts, the prime contractor must perform work for at least 50% of the cost of manufacturing the supplies, not including the cost of materials, unless the concern qualifies as a non-manufacturer. Finally, the small business prime contractor must perform at least 15% of the cost of the contract with its own employees, not including the cost of materials, for general construction contracts, and at least 25% in the case of specialty construction contracts. Under the HUBZone, SDVOSB or WOSB programmes the small business prime contractor can utilize similarly situated subcontractors to meet these performance requirements.

3.225. Eligibility conditions vary according to the programme. To enjoy the benefits of the HUBZone Program, the business must be a small business by SBA standards; it must be at least 51% owned and controlled by U.S. citizens, or a Community Development Corporation, an agricultural cooperative, or an Native American tribe; at least 35% of its employees must reside in a HUBZone; and its principal office must be located within a "Historically Underutilized Business Zone", which includes lands considered "Indian Country" and military facilities closed by the Base Realignment and Closure Act. HUBZone benefits include a 10% price evaluation preference in full and open contract competitions, as well as subcontracting opportunities.

3.226. The WOSB Program was established in 2001 through Public Law 106-554, which created a women's procurement programme to assist the Government in meeting its 5% women-owned small business (WOSB) contracting goal. The WOSB Federal Contract Program allows Contracting Officers (COs) to set aside contracts for WOSBs under certain conditions. As of December 2015, it also allows COs to grant contracts to WOSBs under sole-source authority in specific circumstances.<sup>205</sup> In March 2016, eligible industries were revised and expanded to 113; 36 new industries were added to the programme, six industries were removed from the programme, and 27 industries had their designation changed. To benefit from the programme, the business must be at least 51% unconditionally and directly owned by women who are U.S. citizens; a woman

<sup>204</sup> Federal Procurement Data System (2016), *FY 2015 Small Business Goaling Report*. Viewed at: [https://www.fpds.gov/downloads/top\\_requests/FPDSNG\\_SB\\_Goaling\\_FY\\_2015.pdf](https://www.fpds.gov/downloads/top_requests/FPDSNG_SB_Goaling_FY_2015.pdf).

<sup>205</sup> Contracting officers may grant set-asides on their sole authority if: the contract (including options) is valued at US\$6.5 million or less for manufacturing contracts or US\$4 million or less for all other contracts; the contract is awarded to the WOSB at a fair and reasonable price; and if there is a reasonable expectation that there is only one WOSB/EDWOSB that can perform. Small Business Administration online information. Viewed at: [http://www.sba.gov/sites/default/files/files/2016\\_WOSB\\_Federal\\_Contract\\_Program\\_Module\\_1\\_-\\_Program\\_Overview\\_FINAL.pptx](http://www.sba.gov/sites/default/files/files/2016_WOSB_Federal_Contract_Program_Module_1_-_Program_Overview_FINAL.pptx).

must manage the day-to-day operations, hold the highest officer position and make the long-term decisions for the business. Additionally, personal net worth (assets minus liabilities) must be less than US\$750,000, the adjusted gross income average over three years must be US\$350,000 (with certain exclusions), and the fair market value of all assets must be US\$6 million or less.

3.227. The 8(a) Business Development Program is a business assistance programme for small disadvantaged businesses. To qualify, firms must be at least 51% owned and controlled by socially and economically disadvantaged individuals; firms may form joint ventures and teams to bid on contracts. Participants can receive sole-source contracts, up to a ceiling of US\$4 million for goods and services and US\$6.5 million for manufacturing, but are also encouraged to participate in competitive acquisitions. The limit on the total dollar value of sole-source contracts that an individual participant can receive while in the programme is US\$100 million. Participation in this programme by an individual small disadvantaged business is limited to nine years.

3.228. The Small Disadvantaged Businesses Program was established in October 2008. It is similar to the 8(a) Business Development Program, but requirements are less stringent. Small businesses can self-represent their status as a small disadvantaged business (SDB) by registering in the System for Award Management. To qualify: the firm must be 51% or more owned and controlled by one or more disadvantaged persons; the disadvantaged person or persons must be socially disadvantaged and economically disadvantaged; the firm must be small, according to SBA's size standards.<sup>206</sup>

3.229. The Veterans Benefits Act of 2003 established the Service-Disabled Veteran-Owned Small Business Concerns (SDVOSBC) Program, a procurement programme that allows federal contracting officers to restrict competition to SDVOSBCs and award a sole-source or set-aside contract where certain criteria are met. Sole-source contracts may be awarded if: the CO does not have a reasonable expectation that at least two responsible SDVOSBCs will submit offers; the anticipated award price of the contract, including options, will not exceed US\$5 million for manufacturing requirements and US\$3 million for all other requirements; and the award can be made at a fair market price. If the requirement is at or below the simplified acquisition threshold, the CO may set aside the requirement for consideration among SDVOSBCs using simplified acquisition procedures or may award a sole-source contract to a SDVOSBC.

3.230. In July 2016, DoD, GSA, and NASA issued a final rule amending the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration, which provide for a government-wide policy on small business subcontracting (48 CFR Parts 1, 2, 15, 19, and 52). The changes are aimed at facilitating the participation of small businesses in the procurement process.<sup>207</sup> The SBA also issued a final rule (13 CFR Part 121) in January 2016 that adjusted monetary small business size standards, increasing them by 8.73% (except the US\$750,000 receipts-based size standard for agricultural enterprises established by the Small Business Act). The final rule also increased by the same rate the size standards for Sales of Government Property (Other Than Manufacturing) and Stockpile Purchases.<sup>208</sup>

3.231. There are also set-asides for procurement from prison labour. In July 2016, DoD, GSA, and NASA issued a final rule amending the FAR to increase the blanket waiver threshold for small dollar-value purchases from Federal Prison Industries (FPI) by federal agencies, from US\$3,000 to US\$3,500.<sup>209</sup>

### 3.3.5.5 Bidding procedures

3.232. FAR Parts 8, 13, 14 and 15 contain the main regulations regarding bidding procedures. They are of two basic types: sealed bidding and contracting by negotiation. Sealed bidding, the most-used method, 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 meeting all the contract requirements. In cases where the Government needs to gather more information from suppliers before the sealed bidding process is initiated, a two-step sealed bidding

<sup>206</sup> Small Business Administration online information. Viewed at: <https://www.sba.gov/contracting/government-contracting-programs/small-disadvantaged-businesses>.

<sup>207</sup> For further information, see: [https://www.regulations.gov/document?D=FAR\\_FRDOC\\_0001-1176](https://www.regulations.gov/document?D=FAR_FRDOC_0001-1176).

<sup>208</sup> For further information, see: <https://www.regulations.gov/document?D=SBA-2014-0009-0015>.

<sup>209</sup> For further information, see: [https://www.regulations.gov/document?D=FAR\\_FRDOC\\_0001-1174](https://www.regulations.gov/document?D=FAR_FRDOC_0001-1174).



process is used. 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.

3.233. In general terms, all contracts exceeding US\$25,000 must be published in [www.fedbizopps.gov](http://www.fedbizopps.gov) 15 days before solicitations begin. Government agencies are required to allow for a 30-day response time, or a 40-day response time for procurements covered under an international trade agreement. Contracts may also be publicized through paid advertisements, if considered necessary.

3.234. Part 8 of the FAR mandates that agencies 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.<sup>210</sup> Required sources take priority over all other sources, including the programmes authorized by the Small Business Act. As noted above, a simplified acquisition procedure (Part 13 of the FAR) is used for purchases below US\$150,000, and there are normally set asides for the 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. 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.

3.235. Bid protests (before awards) may be taken to the Government Accountability Office (GAO) or the U.S. Court of Federal Claims (COFC). They are governed by federal statutes including the Competition in Contracting Act of 1984 and the Federal Courts Improvement Act of 1982. 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 2015, 2,639 bid protest cases were filed with GAO and 13 bid protests were filed with the COFC. 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. In 2015, 50 contract dispute cases were filed with the COFC and 12 were appealed to the U.S. Court of Appeals for the Federal Circuit.

3.236. GSA offers an on-line shopping service called "GSA Advantage!" through which eligible users may place orders against Schedules. Eligible users may also use GSA Advantage! to place orders through GSA's Global Supply System, a GSA wholesale supply source. Users may access GSA Advantage! through the GSA Federal Supply Service home page (<http://www.gsa.gov/fas>) or the GSA Federal Supply Schedule home page (<http://www.gsa.gov/schedules>). GSA Advantage! enables eligible users to search specific information, review delivery options, place orders directly with Schedule contractors and pay for orders using the government-wide commercial purchase card. GSA Advantage! has an electronic Request for Quotation system (RFQ), E-Buy, which allows users to post requirements, obtain quotes, and issue orders electronically.

### **3.3.6 Intellectual property rights**

#### **3.3.6.1 Overview**

3.237. Intellectual property (IP) and innovation are of critical importance to the enhanced productivity and growth of the U.S. economy. The United States is an important producer and

<sup>210</sup> In accordance with FAR Part 8 agencies shall satisfy requirements for supplies and services from or through the sources and publications listed below in descending order of priority: (1) supplies: (i) inventories of the requiring agency; (ii) excess from other agencies; (iii) Federal Prison Industries, Inc.; (iv) supplies which are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled; (v) wholesale supply sources, such as stock programmes of the GSA; and (2) services: services that are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled.

exporter of goods and services that embody knowledge and other intellectual developments. IP is present in a large share of U.S. goods exports (some 52% in 2014) and IP-intensive industries in the United States account for 38.2% of U.S. GDP in 2014.<sup>211</sup> The United States traditionally posts a balance-of-payments surplus in IP-related trade, as measured by the category charges for the use of intellectual property. In 2015, net receipts were US\$85.2 billion, with receipts totalling US\$124.7 billion and payments reaching US\$39.5 billion.<sup>212</sup>

3.238. The Administration considers intellectual property a critical source of economic growth and high-quality jobs for the United States. In the Special 301 Report of the USTR, it has been noted that the authorities work to protect U.S. innovation and creativity with all the tools of U.S. trade policy, because fostering innovation and creativity is essential to U.S. prosperity, competitiveness, and the support of an estimated 40 million U.S. jobs that directly or indirectly rely on IP-intensive industries.<sup>213</sup>

3.239. At the request of the U.S. Senate Committee on Finance, the U.S. International Trade Commission (USITC) undertook an investigation (The Digital Trade in the U.S. and Global Economies, Part 2, launched in August 2014) to better understand the role of digital trade in the United States and in other economies. The report showed that digital trade contributes to economic output by improving productivity and reducing trade costs. Digital trade's combined effects of increased productivity and lower trade costs were estimated to have increased U.S. real GDP by between US\$517.1 and US\$710.7 billion (3.4-4.8%), and U.S. aggregate employment by up to 2.4 million full-time equivalents (up to 1.8%).<sup>214</sup>

3.240. Enacted in 1980, the Bayh-Dole and Stevenson Wydler Acts<sup>215</sup> apply to the funding of research and development in the United States. Bayh-Dole allows universities, non-profit institutions, and small businesses to obtain patents arising from research funded by the Federal Government. The Stevenson-Wydler Act requires the establishment of an Office of Research and Technology Applications within each federal laboratory and agency. The offices generally work to transfer technology, including the licensing of intellectual property developed by the U.S. Government at its laboratories. Government expenditures on research and development tend to fluctuate, but exceeded US\$130 billion in 2014 and 2015 across all federal research and development programmes. Preliminary estimates for 2016 (obligations and outlays) indicate a spending level of around US\$140 billion. The Department of Defense receives approximately 50% of the funding. Other important recipients are the National Institutes of Health (US\$32 billion), the National Aeronautics and Space Administration (US\$12 billion), and the National Science Foundation (US\$6 billion).<sup>216</sup>

### 3.3.6.2 General regulatory framework

3.241. The United States is a member of the World Intellectual Property Organization (WIPO), and participates in a large number of international conventions and treaties related to intellectual property rights (IPRs).<sup>217</sup>

3.242. The United States has notified to the WTO its laws and regulations on trade-related aspects of IPRs. Updates of legislation addressing IPRs, including amendments presented in a consolidated text, have been notified subsequently.<sup>218</sup> The most recent updates were made in 2013 (Table 3.21), among which is the Act to Implement the Provisions of the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, which entered

<sup>211</sup> USPTO (2016), *Intellectual Property and the U.S. Economy: 2016 Update*, September. Viewed at: <https://www.uspto.gov/sites/default/files/documents/IPandtheUSEconomySept2016.pdf>.

<sup>212</sup> BEA online information. Viewed at: <http://www.bea.gov/iTable/iTable.cfm?ReqID=62&step=1#reqid=62&step=6&isuri=1&6210=1&6200=2>.

<sup>213</sup> USTR (2016), *2016 Special 301 Report*, April. Viewed at: <https://ustr.gov/sites/default/files/USTR-2016-Special-301-Report.pdf>.

<sup>214</sup> USITC (2014), *Digital Trade in the U.S. and Global Economies*. Viewed at: <https://www.usitc.gov/publications/332/pub4485.pdf>.

<sup>215</sup> The Patent and Trademark Law Amendments Act (PL 96-517) and the Stevenson-Wydler Technology Innovation Act of 1980 (PL 96-480).

<sup>216</sup> National Science Foundation online information. Viewed at: [https://ncesdata.nsf.gov/fedfunds/2014/html/FFS2014\\_DST\\_003.html](https://ncesdata.nsf.gov/fedfunds/2014/html/FFS2014_DST_003.html).

<sup>217</sup> WIPO online information. Viewed at: <http://www.wipo.org>.

<sup>218</sup> WTO document IP/N/1/USA/6, 18 April 2013.

into force for the United States on 13 May 2015, and of the Patent Law Treaty, which entered into force for the United States on 18 December 2012<sup>219</sup>; and the text of the Consolidated Patent Laws, which entered into force on 1 August 2012.<sup>220</sup> On 17 December 2005, the United States accepted the Protocol Amending the TRIPS Agreement adopted by the General Council on 6 December 2005 (WT/L/641).

**Table 3.21 Most recent changes in intellectual property laws and regulations**

Title	WTO document	Date of enactment	Date of entry into force
Consolidated Copyright Regulations	IP/N/1/USA/C/6	3.1.2013	3.1.2013
Consolidated Patent Laws	IP/N/1/USA/D/6-IP/N/1/USA/P/11	1.8.2012	1.8.2012
Consolidated Patent Rules	IP/N/1/USA/D/7-IP/N/1/USA/P/12	1.8.2012	1.8.2012
Patent Law Treaties Implementation Act of 2012	IP/N/1/USA/D/8-IP/N/1/USA/P/13	18.12.2012	18.12.2012 13.05.2015 (industrial designs)
Changes to Implement Micro Entity Status for Paying Patent Fees	IP/N/1/USA/D/9-IP/N/1/USA/P/14	19.12.2012	13.3.2013
An Act to Amend The Trademark Act of 1946 to Correct an Error in the Provisions Relating to Remedies for Dilution	IP/N/1/USA/T/7	5.10.2012	5.10.2012

Source: WTO notifications.

3.243. Among other legislative changes during the review period, the Defend Trade Secrets Act was signed into law in 2016, amending the Economic Espionage Act to create a private civil cause of action for trade secret misappropriation. The STELA Reauthorization Act of 2014, signed into law in December 2014, extends until 31 December 2019 the statutory licence under which satellite carriers retransmit distant television broadcast stations to viewers who are unable to receive signals for such stations in their local market.

3.244. Intellectual property protection is a key issue for the United States; the promotion of increased IPR protection and enforcement is sought through a variety of mechanisms. For instance, the United States has addressed IPR subject matters in the context of bilateral IP agreements and memoranda of understanding, bilateral investment treaties, and trade and investment framework agreements. IPR issues have also been included in U.S. free trade agreements in force or pending approval or implementation, such as the Trans-Pacific Partnership (TPP) Agreement which includes standards for IPR protection and enforcement (see below). The United States also pursues enhanced standards of IP protection through its engagement with countries seeking accession to the WTO. Other key areas of work for the promotion of IPRs include: bilateral and regional engagement through such vehicles as the annual "Special 301" review and report (see below) and IP dialogues with trading partners; multilateral engagement on IP issues through the WTO and other organizations; implementation of trade policy in support of U.S. innovations; and providing interagency trade policy leadership.<sup>221</sup>

3.245. Table 3.22 provides a snapshot of IPR protection in the United States as of mid-2016.

**Table 3.22 Summary of intellectual property protection in the United States, June 2016**

Form	Main legislation	Coverage	Duration
Copyright and related rights	Copyright Law of the United States, Title 17 of the U.S. Code (the STELA Reauthorization Act of 2014 (PL 113 200) signed into law on 4 December 2014, amended 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 invention (process, machine, manufacture or composition of matter, or improvements thereof) that is new, useful, and non-obvious	20 years from filing date

<sup>219</sup> WTO document IP/N/1/USA/D/8, IP/N/1/USA/P/13, 6 May 2013.

<sup>220</sup> WTO document IP/N/1/USA/D/6, IP/N/1/USA/P/11, 6 May 2013.

<sup>221</sup> USTR online information. Viewed at: <https://ustr.gov/issue-areas/intellectual-property>.

Form	Main legislation	Coverage	Duration
Industrial designs	Patent Law of the United States, as incorporated in Title 35 of the U.S. Code	Any new, original and ornamental design for an article of manufacture	For applications filed before 13 May 2015, 14 years from the date of grant. For applications filed on or after 13 May 2015, 15 years from the 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 reproduced by seed or tuber-propagated that have not previously been sold for purposes of exploitation of the variety: in the United States, for more than 1 year prior to the date of filing; or in any area outside of the United States, for 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)
Trade secrets	Economic Espionage Act of 1996 and state laws (Defend Trade Secrets Act, Public Law 114-153, 2016 amended the Economic Espionage Act)	Any information, including a formula, pattern, compilation, programme 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. PL 114-153 amended the federal criminal code to create a private civil cause of action for trade secret misappropriation	Indefinite

Source: WIPO; U.S. Department of Commerce; and notifications to the WTO.

3.246. In October 2015, the United States updated the TRIPS Council on its implementation of Article 66.2 of the TRIPS Agreement, noting that a major avenue for technology transfer from the United States is the U.S. university system, where foreign students are educated and then take advantage of their training through private and public employment in their home countries. Since many U.S. universities are established as not-for-profit (tax-exempt) entities, education is subsidized by the U.S. taxpayer through tax revenues. In addition, the private endowments that assist financially many foreign students to attend U.S. universities were built with tax exempt donations.<sup>222</sup>

3.247. The Trans-Pacific Partnership (TPP) Agreement, for which the United States completed negotiations in 2015<sup>223</sup>, would require, once implemented, a strong and balanced protection of intellectual property rights with mechanisms to effectively enforce IPRs, consistent with U.S. law,

<sup>222</sup> WTO document IP/C/W/611/Add.5, 2 October 2015 and IP/C/W/611/Add.5/Rev.1, 29 October 2015.

<sup>223</sup> USTR online information. Viewed at: <https://ustr.gov/trade-agreements/free-trade-agreements>.

including civil and administrative procedures and remedies, border measures, and criminal enforcement. It includes: commitments to combat counterfeiting, piracy and other infringement; obligations to facilitate legitimate digital trade, including creative content; and provisions to promote development of, and access to, innovative and generic medicines. The TPP is also the first trade agreement to require parties to adopt or maintain criminal procedures and penalties for trade secret theft, including cyber theft.<sup>224</sup>

### 3.3.6.3 Patents

3.248. The USPTO Office of Policy and International Affairs leads agency efforts to formulate and execute U.S. domestic and international policy regarding protection and enforcement of intellectual property rights. This includes promoting the development of intellectual property systems, nationally and internationally, and advocating improved and more effective means of obtaining and enforcing intellectual property rights of U.S. nationals domestically and internationally. Recent cooperative projects to improve the efficiency and quality of patent examination include the Patent Prosecution Highway, the Global Patent Search Network, the Cooperative Patent Classification system, and the Global Dossier Initiative. The USPTO Office of International Patent Cooperation (OIPC), established in 2014, is responsible for implementing the technical aspects of these cooperative projects.<sup>225</sup>

3.249. In its overall Strategic Plan for 2014-18, the Department of Commerce 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.<sup>226</sup> The USPTO's own Strategic Plan for 2014-18 sets out three goals for this period: optimizing patent quality and timeliness; optimizing trademark quality and timeliness; and providing domestic and global leadership to improve IP policy, protection, and enforcement.<sup>227</sup>

3.250. The USPTO received 589,410 patent applications in 2015.<sup>228</sup> During the period under review, the number of patents granted by the USPTO remained stable, but increased with respect to previous years. In 2015, the USPTO granted a total of 298,407 utility patents, slightly down from 300,677 in 2014, but up from 277,835 in 2013 and 253,155 in 2012. The share of patents of foreign origin issued by the USPTO has been rising over the past few years; they represented 52% of total applications in FY2015.<sup>229</sup>

3.251. The USPTO has continued dealing with the concerns identified in previous years, mainly the long pendency period for patent applications and the need to improve their quality applications. In this respect, it designed a Strategic Performance Framework to strengthen the capacity of the USPTO by focusing on a specific set of goals and the steps the USPTO must take to reach them, which include to provide timely examination of patent applications, reducing the average time from filing until an examiner's initial determination on patentability to 10 months and average total pendency (average time from filing until the application is issued as a patent or abandoned) to 20 months. During the period under review, the pendency time continued to decrease. In FY2015, the pendency time was 26.6 months, down from 27.4 months for FY2014 and 29.1 months for FY2013.<sup>230</sup>

<sup>224</sup> Office of the U.S. Intellectual Property Enforcement Coordinator (2016), *Annual Report for Fiscal Year 2015*. Viewed at: <https://www.whitehouse.gov/sites/default/files/omb/IPEC/fy2015ipeannualreportchairmangoodlatteletter.pdf>.

<sup>225</sup> USPTO online information. Viewed at: <http://www.uspto.gov/about/offices/patents/ipc.jsp>; and information provided by the authorities.

<sup>226</sup> Department of Commerce (2013), *America is Open for Business, Strategic Plan for Fiscal Years 2014-2018*. Viewed at: [https://www.commerce.gov/sites/commerce.gov/files/media/files/2014/doc\\_fy2014-2018\\_strategic\\_plan.pdf](https://www.commerce.gov/sites/commerce.gov/files/media/files/2014/doc_fy2014-2018_strategic_plan.pdf).

<sup>227</sup> USPTO (2014), *Strategic Plan 2014-2018*. Viewed at: <http://www.uspto.gov/about/stratplan/>.

<sup>228</sup> USPTO online information. Viewed at: [http://www.uspto.gov/web/offices/ac/ido/oeip/taf/us\\_stat.htm](http://www.uspto.gov/web/offices/ac/ido/oeip/taf/us_stat.htm).

<sup>229</sup> USPTO online information. Viewed at: [http://www.uspto.gov/web/offices/ac/ido/oeip/taf/us\\_stat.htm](http://www.uspto.gov/web/offices/ac/ido/oeip/taf/us_stat.htm).

<sup>230</sup> USPTO (2016), *United States Patent and Trademark Office Performance and Accountability Report for FY2015*. Viewed at: <http://www.uspto.gov/sites/default/files/documents/USPTOFY15PAR.pdf>.



3.252. The Deputy Commissioner for Patent Quality is responsible for optimizing the quality of patent products, processes and services. This office provides support and services to improve quality by: prioritizing improvement initiatives in alignment with the Strategic Plan, continually pursuing process improvements and monitoring those improvements to facilitate the replication of best practices, providing training for continuous improvement at all levels of patent examination and IT infrastructure, and routinely evaluating and reporting quality in all products and services and providing detailed feedback for improvement. This Office is comprised of the Office of Quality Management and staff focused on developing and implementing the Enhanced Patent Quality Initiative, which aims at strengthening work products, processes, services, and the measurement of patent quality at all stages of the patent process.<sup>231</sup>

3.253. As was mentioned in the previous review, the Leahy-Smith America Invents Act (AIA), signed into law in 2011<sup>232</sup>, introduced one of the most significant reforms to the U.S. patent law in recent years and required the enactment of significant regulatory and administrative changes to give effect to these reforms. These entailed: transitioning the United States to a first-inventor-to-file system; providing an enhanced grace period for inventors to safeguard patent rights against disclosures made one year or less before the effective filing date; modifying the definition of prior art to include non-printed disclosures, including oral disclosures, made available to the public anywhere in the world; providing prior art effect to U.S. patent applications as of their foreign priority dates; eliminating the requirement for inventors to set forth the best mode to carry out the invention as a defence in infringement actions or in post-grant review; and providing a 75% discount for patent fees to all applicants that qualify as micro entities.<sup>233</sup>

3.254. The USPTO identified AIA implementation as helping "the United States 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 the prosecution process, and cost reduction for applicants around the world.<sup>234</sup>

3.255. In June 2013, the Administration announced a series of initiatives to build on the AIA reforms.<sup>235</sup> These included: (a) a proposed rule on transparency to ensure that records of patent ownership are accurate and up to date; and (b) making use of crowdsourcing techniques and resources, so as to expand ways for identifying prior art relevant to determining the novelty of claimed inventions.<sup>236</sup> In February 2014, the Administration announced three new executive actions to encourage innovation and further strengthen the quality and accessibility of the patent system: (a) Crowdsourcing Prior Art, to help patent examiners, holders, and applicants find relevant "prior art": the USPTO conducted consultations with the public on its third-party pre-issuance submission procedures and implemented refinements based on feedback received; (b) Expansion of the USPTO's Patent Examiner Technical Training Program: the USPTO has enhanced its technical training programme to make scientists and engineers available to examiners for the purposes of educating them on the latest state-of-the-art technology, advancements, and emerging trends in their fields; and (c) Pro Bono and Pro Se Assistance: to increase the accessibility of the patent system, the USPTO will dedicate educational and practical resources to assist inventors who lack legal representation, appoint a full-time Pro Bono Coordinator, and help expand the existing America Invents Act pro bono programme to cover all 50 states.<sup>237</sup> The USPTO has appointed a Pro Bono programme coordinator and all 50 states have now launched a regional programme.

<sup>231</sup> USPTO online information. Viewed at: <http://www.uspto.gov/about-us/organizational-offices/office-commissioner-patents/office-deputy-commissioner-patent-19>.

<sup>232</sup> Public Law 112-29. Viewed at: <http://www.gpo.gov/fdsys/pkg/PLAW-112publ29/content-detail.html>.

<sup>233</sup> USPTO online information "Global Impacts of the AIA". Viewed at: <http://www.uspto.gov/patent/laws-and-regulations/america-invents-act-aia/global-impacts-aia>.

<sup>234</sup> USPTO online information "Global Impacts of the AIA". Viewed at: [www.uspto.gov/aia\\_implementation/global\\_impacts.jsp](http://www.uspto.gov/aia_implementation/global_impacts.jsp).

<sup>235</sup> White House Press Release, 4 June 2013. Viewed at: [www.whitehouse.gov/the-press-office/2013/06/04/fact-sheet-white-house-task-force-high-tech-patent-issues](http://www.whitehouse.gov/the-press-office/2013/06/04/fact-sheet-white-house-task-force-high-tech-patent-issues).

<sup>236</sup> USPTO online information "USPTO-led Executive Actions on High-Tech Patent Issues". Viewed at: [http://www.uspto.gov/patents/init\\_events/executive\\_actions.jsp](http://www.uspto.gov/patents/init_events/executive_actions.jsp).

<sup>237</sup> White House Press Release, 20 February 2014. Viewed at: <https://www.whitehouse.gov/the-press-office/2014/02/20/fact-sheet-executive-actions-answering-president-s-call-strengthen-our-p>.



### 3.3.6.4 Industrial designs

3.256. The Patent Law Treaties Implementation Act of 2012 established the legal basis to implement the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs (the Hague Agreement), which entered into force for the United States on 13 May 2015. This enabled the United States to join the WIPO-administered system. As of 13 May 2015, U.S. applicants can file international design applications through the USPTO as an office of indirect filing, and applicants filing international design applications can designate the United States for design protection. In addition, U.S. design patents resulting from applications filed on or after 13 May 2015 will have a 15-year term of protection from issuance.<sup>238</sup>

### 3.3.6.5 Trademarks and geographical indications

#### 3.3.6.5.1 Trademarks

3.257. Other than through federal registration, trademark protection in the United States arises from the actual use of the mark under state laws and federal unfair competition laws. Federal registration of a mark is not required to establish rights to the mark, or to use it, but it grants the holder additional rights, such as the legal presumption of ownership, validity, and the entitlement to use the mark in connection with the goods or services identified in the registration. In the case of domestically filed applications, a trademark must be used commercially before an application for federal registration is issued. For applications filed by foreign nationals pursuant to the Paris Convention and the Madrid Protocol, use is not required for registration, but is required to maintain the registration. The Trademark Dilution Revision Act of 2006 (PL 109-312) revised and clarified the 1995 Federal Trademark Dilution Act, entitling an owner of a famous mark to an injunction against the use of a mark or trade name in a manner that is likely to cause dilution by blurring or tarnishment, as well as to oppose applications or cancel registrations that are likely to cause dilution with the famous mark.

3.258. Federal trademark registration applications must be filed with the USPTO. Pursuant to the Madrid Protocol, a trademark owner with an application filed with, or a registration issued by, the USPTO and who is a national of, has a domicile in, or has an industrial or commercial establishment in the United States may also file an international application with the USPTO. Holders of international registrations based on U.S. applications or registrations may request extensions of protection in other Madrid Protocol member States.

3.259. Trademark registrations totalled 282,091 in FY2015, out of 503,889 trademark applications. Earned revenue for trademark applications increased from US\$140.4 million in FY2014 to US\$145.1 million in FY2015. There were 40,864 trademarks registered to residents of foreign countries in FY2015, and the average pendency time for FY2015 was 10.1 months.<sup>239</sup> Trademark application filings increased by 10.7% in FY2015, more than double the rate of increase for FY2014 (4.9%). This represents an acceleration of a trend that began in FY2013. The trademark renewal rate was 29.5% in FY2015.<sup>240</sup>

3.260. The Administration noted that an important part of the USPTO's mission is to optimize trademark quality and timeliness. The Trademark Electronic Application System (TEAS) allows for easy electronic filing by applicants. A new reduced trademark application filing fee option, TEAS Reduced Fee (TEAS RF), has been available since 17 January 2015. This new filing option promotes electronic communication and application processing while giving applicants more flexibility in identifying their goods and services. With the TEAS RF option, applicants pay a reduced fee if they agree to two-way electronic communication throughout the process. First and

<sup>238</sup> USPTO information online. Viewed at: <http://www.uspto.gov/patent/initiatives/hague-agreement-concerning-international-registration-industrial-designs>.

<sup>239</sup> USPTO (2016), *Performance and Accountability Report FY2015*. Viewed at: <http://www.uspto.gov/sites/default/files/documents/USPTOFY15PAR.pdf>.

<sup>240</sup> USPTO (2016), *Trademark Public Advisory Committee Annual Report 2015*. Viewed at: [http://www.uspto.gov/sites/default/files/documents/TPAC\\_Annual\\_Report\\_2015.pdf](http://www.uspto.gov/sites/default/files/documents/TPAC_Annual_Report_2015.pdf).

final action compliance rates, which measure trademark quality, exceed 96%. The number of trademark applications processed completely electronically increased to 82.2% in 2015.<sup>241</sup>

### 3.3.6.5.2 Geographical indications

3.261. The United States offers protection for geographical indications (GIs) for all classes of goods and services through its trademark system.<sup>242</sup> The United States, together with other countries, has submitted a proposal to other WTO Members for a multilateral system for notification and registration of GIs for wines and spirits in the context of Article 23.4 of the TRIPS Agreement.<sup>243</sup>

### 3.3.6.6 Trade secret protection

3.262. Trade secrets are protected through the Economic Espionage Act (EEA) of 1996 and state laws. The EEA was amended by the Theft of Trade Secrets Clarification Act of 2012, which 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*. The EEA was amended more recently by the Defend Trade Secrets Act (DTSA), Public Law 114-153, 2016, effective 11 May 2016 (see below). The DTSA added a federal civil cause of action for trade secret misappropriation (see below). Prior to the enactment of the DTSA, civil enforcement of trade secret protection was addressed through state law. The Uniform Trade Secrets Act (UTSA) is a model civil trade secrets law drafted by the National Conference of Commissioners on Uniform State Laws. The UTSA has been adopted by almost all of states, with some variations from the original. States that have not adopted the UTSA protect trade secrets either by statute, common law or a combination. The DTSA does not pre-empt state trade secrets law.

3.263. In February 2013, the Administration issued a Strategy on Mitigating the Theft of U.S. Trade Secrets. This 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. The Strategy notes that "trade secret theft threatens American businesses, undermines national security, and places the security of the U.S. economy in jeopardy"<sup>244</sup> and proposes 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.

3.264. The Strategy also led to some changes in legislation, mainly to allow civil enforcement of trade secret protection at the Federal level. Traditionally, civil enforcement had been principally addressed through state law, while federal law, e.g. the Economic Espionage Act was for criminal enforcement of violations of trade secrets. The DTSA, which introduced an amendment to the Economic Espionage Act by amending the Federal Criminal Code to create a private civil cause of action for trade secret misappropriation, authorizes a trade secret owner to file a civil action in a U.S. district court seeking relief for trade secret misappropriation related to a product or service in interstate or foreign commerce. It establishes remedies, such as an injunction and damages. A trade secret owner may apply for, and a court may grant, a seizure order to prevent dissemination of the trade secret if the court makes specific findings, including that an immediate and irreparable injury will occur if seizure is not ordered. A court must take custody of the seized materials and hold a seizure hearing within seven days. Any party harmed by the order may move to dissolve or modify the order and may also seek relief against the applicant of the seizure order for wrongful or excessive seizure. This Law also increases the maximum penalty for trade secret theft to

<sup>241</sup> USPTO (2016), *Performance and Accountability Report FY2015*. Viewed at: <http://www.uspto.gov/sites/default/files/documents/USPTOFY15PAR.pdf>.

<sup>242</sup> USPTO online information. Viewed at: <http://www.uspto.gov>.

<sup>243</sup> WTO documents IP/C/W/386, 8 November 2002 and TN/IP/W/7/Rev.1, 20 June 2003.

<sup>244</sup> Executive Office of the President of the United States (2013), *Administration Strategy on Mitigating the Theft of U.S. Trade Secrets*. Viewed at: [https://www.whitehouse.gov/sites/default/files/omb/IPEC/admin\\_strategy\\_on\\_mitigating\\_the\\_theft\\_of\\_u.s.\\_trade\\_secrets.pdf](https://www.whitehouse.gov/sites/default/files/omb/IPEC/admin_strategy_on_mitigating_the_theft_of_u.s._trade_secrets.pdf).

US\$5 million or three times the value of the stolen trade secret. It adds economic espionage and trade secret theft to the list of offences that constitute racketeering activity.<sup>245</sup>

3.265. In January 2015, the USPTO held a public symposium on issues relevant to the protection of trade secrets. Topics discussed included, losses due to trade secret theft and challenges to protecting trade secrets, the intersection of patent and trade secret protection, issues in civil litigation, trade secret protection in foreign jurisdictions, and proposed responses to the threat of trade secret theft in the United States.<sup>246</sup>

### 3.3.6.7 Copyright

3.266. Copyright is a form of protection provided by the laws of the United States (Title 17 of U.S. Code) to the authors of "original works of authorship". Eligible subject matter includes several categories of works such as: literary works (including computer software); musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sounds recording; and architectural works.<sup>247</sup> Automatic protection is granted to copyrighted works of WTO Members as well as members of other international copyright agreements to which the United States is a party.

3.267. The U.S. Copyright Office administers the Copyright Act, and the duties of the Office and the Register of Copyrights are prescribed in, and governed by, the Copyright Act and related chapter of Title 17 of the U.S. Code.<sup>248</sup> For example, the Office: examines copyright claims and documents; registers copyright claims; administers deposit requirements; records transfers, assignments, licences and other transactions; and administers regulations, practices and programmes that explain the provisions of the law. Registration is not required for protection, although in addition to establishing a public record of the copyright claim, there are additional benefits that accrue with timely registration. The Copyright Office registered 476,298 claims to copyright in Fiscal Year 2014<sup>249</sup>, and 443,812 claims in Fiscal Year 2015. Copyright owners who have registered their copyright with the Copyright Office may also choose to record their registration with U.S. Customs and Border Protection (CBP) for protection against the importation of infringing copies. In December 2014, the Office released an updated version of its Compendium of U.S. Copyright Office Practices, a technical manual on registration practices that services as a guidebook for authors, copyright licensees, practitioners, scholars, the courts, and the general public.<sup>250</sup> In April 2015, the U.S. House of Representatives' Committee on the Judiciary completed its series of hearings to review the current state of U.S. copyright laws.

3.268. The United States is a party to the Geneva Phonograms Convention and the WIPO Performances and Phonograms Treaty, but not to the Rome Convention.

3.269. The Department of Commerce Internet Policy Task Force (IPTF or Task Force), created in 2010, is responsible for reviewing the nexus between privacy policy, copyright, global free flow of information, cybersecurity, and innovation in the internet economy.<sup>251</sup> One of its goals has been to support modernization of copyright policy by striking an appropriate balance between "the meaningful protection of IP and preserving the dynamic innovation and growth that have made the Internet and digital technology so important to our economy and society". In July 2013, it issued a Green Paper on Copyright Policy recommending adjustments to the public performance right for sound recordings by extending the right to cover broadcasting, as well as assessing and improving enforcement tools to combat online infringement. The report called for legislation to adopt the same range of penalties for criminal streaming of copyrighted works as exists for criminal

<sup>245</sup> Defend Trade Secret Act 2016. Viewed at: <https://www.congress.gov/bill/114th-congress/senate-bill/1890?q=%7B%22search%22%3A%5B%22trade+secret%22%5D%7D&resultIndex=1>.

<sup>246</sup> USPTO online information. Viewed at: <http://www.uspto.gov/about-us/organizational-offices/office-policy-and-international-affairs/uspto-trade-secret-symposium>.

<sup>247</sup> 17 U.S.C. Section 102.

<sup>248</sup> See 17 U.S.C. Sections 701, 702.

<sup>249</sup> U.S. Copyright Office (2014), *Fiscal 2014 Annual Report*. Viewed at: <http://www.copyright.gov/reports/annual/2014/ar2014.pdf>.

<sup>250</sup> U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices, Third Edition*. Viewed at: <http://www.copyright.gov/comp3/comp-index.html>.

<sup>251</sup> USPTO (2013), *Copyright Policy, Creativity, and Innovation in the Digital Economy*, July. Viewed at: <http://www.uspto.gov/news/publications/copyrightgreenpaper.pdf>.

reproduction and distribution. In January 2016, as a follow up to the Green Paper, IPTF issued the White Paper on Remixes, First Sale, and Statutory Damages, which made recommendations for legislation to provide both more guidance and greater flexibility to courts in awarding statutory damages.

3.270. The U.S. Copyright Office also advises Congress on national and international issues relating to copyright, and undertakes studies on U.S. copyright law at the request of Congress and also under its own initiative.<sup>252</sup> Recent reports prepared for Congress have included: (a) a report of the making available right in the United States (February 2016)<sup>253</sup>; (b) a report on orphan works and mass digitization (June 2015)<sup>254</sup>; and (c) a report on copyright and the music marketplace (February 2015).<sup>255</sup>

3.271. With respect to new legislation on copyright approved during the review period, in July 2014, the U.S. Congress passed the Unlocking Consumer Choice and Wireless Competition Act,<sup>256</sup> 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. In addition, the U.S. Copyright Office completed its sixth triennial rulemaking proceeding under Section 1201 of Title 17 of the U.S. Code. The primary responsibility of the Register and the Librarian of Congress in the rulemaking proceeding is to assess whether the implementation of access controls impairs the ability of individuals to make non-infringing uses of copyrighted works within the meaning of Section 1201(a)(1). The Register of Copyrights forwarded her Recommendation to the Librarian of Congress, who adopted the recommendations and issued the Final Rule which resulted in regulations adopting limited exemptions from the general prohibition against the circumvention of copyright protection systems for access controls.<sup>257</sup>

3.272. The Copyright Act provides for several types of statutory licences. Generally, interested parties are given the opportunity to negotiate the terms of the licence; a rate will be set by the authorities only if they fail to agree. The Copyright Royalty and Distribution Reform Act of 2004 and the amendments contained in the Copyright Royalty Judges Program Technical Corrections Act of 2006 replaced the Copyright Arbitration Royalty Panels with Copyright Royalty Judges (CRJs). 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. The statutory licensing authority for such satellite retransmissions was scheduled to expire on 31 December 2014. The STELA Reauthorization Act of 2014 (PL 113-200), signed into law on 4 December 2014, amended Title 17 to extend until 31 December 2019 the statutory licence under which satellite carriers retransmit distant television broadcast stations to viewers who are unable to receive signals for such stations in their local market.<sup>258</sup>

### 3.3.6.8 IP enforcement

3.273. Protection and enforcement of IPRs is a national priority, and U.S. law enforcement stands at the forefront of these efforts.<sup>259</sup>

3.274. The Office of the United States Trade Representative (USTR) conducts annual reviews of the state of IPR protection and enforcement in U.S. trading partners around the world, known as

<sup>252</sup> 17 U.S.C. Section 701(b).

<sup>253</sup> U.S. Copyright Office (2016), *The Making Available Right in the United States*, February. Viewed at: [http://www.copyright.gov/docs/making\\_available/making-available-right.pdf](http://www.copyright.gov/docs/making_available/making-available-right.pdf).

<sup>254</sup> U.S. Copyright Office (2015), *Orphan Works and Mass Digitization*. Viewed at: <http://www.copyright.gov/orphan/reports/orphan-works2015.pdf>.

<sup>255</sup> U.S. Copyright Office (2015), *Copyright and the Music Marketplace*. Viewed at: <http://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf>.

<sup>256</sup> Unlocking Consumer Choice and Wireless Competition Act, S. 517, 113<sup>th</sup> Congress (2014).

<sup>257</sup> All documentation, including notices of inquiry, public comments, related materials, hearing transcripts, the Register's Recommendation, the letter from the National Telecommunications and Information Administration, the Final Rule, and regulations, as well as frequency asked questions about the rulemaking, are posted on the U.S. Copyright Office website, and may be viewed at: <http://www.copyright.gov/1201/>.

<sup>258</sup> U.S. Copyright Office information online. Viewed at: <http://www.copyright.gov/title17/>.

<sup>259</sup> For a detailed description of the Administration's efforts, programmes, cost and results of industrial property enforcement, see: USPTO (2016), *Performance and Accountability Report FY2015*. Viewed at: <http://www.uspto.gov/sites/default/files/documents/USPTOFY15PAR.pdf>.

the Special 301 Report.<sup>260</sup> In 2016, 73 trading partners were reviewed. In the 2016 Report, the USTR listed 34 trading partners, placing 11 of them on the Priority Watch List and 23 on the Watch List.<sup>261</sup>

3.275. In the 2016 Special 301 Report, the USTR highlighted serious and ongoing concerns with respect to the environment for IPR protection and enforcement in a number of countries. The Report also identified a wide range of concerns, including: (a) the deterioration in IPR protection, enforcement, and market access for persons relying on IPR in a number of trading partners; (b) reported inadequacies in trade secret protection as well as an increasing incidence of trade secret misappropriation; (c) troubling "indigenous innovation" policies that may unfairly disadvantage U.S. rights holders; (d) continuing online copyright piracy and trademark counterfeiting; and (e) reportedly non-transparent and potentially discriminatory measures, including measures that could impede market access for U.S. entities that rely upon IPR protection.<sup>262</sup>

3.276. The Notorious Markets List identifies selected markets, including those on the Internet, that exemplify the global problem of marketplaces engaged in facilitating substantial copyright piracy and trademark counterfeiting. The Notorious Markets List, previously included in the annual Special 301 Report, has been published separately each year since 2010. The 2015 Out-of-Cycle Review of Notorious Markets published in December 2015, highlighted 21 online markets, based in 14 trading partners. The 2015 Notorious Market List also identified physical markets in nine countries.

3.277. Section 337 of the Tariff Act of 1930, declares unlawful "unfair methods of competition and unfair acts in the importation and sale of products in the United States, the threat or effect of which is to destroy or substantially injure a domestic industry, prevent the establishment of such an industry, or restrain or monopolize trade and commerce in the United States." Section 337 also declares unlawful the importation into the United States, sale for importation or the sale after importation within the United States of articles that infringe a valid U.S. patent, registered trademark, registered copyright, registered mask work, or vessel hull design. The injury requirement does not apply to Section 337 investigations alleging these causes of action. Section 337 investigations are instituted by the United States International Trade Commission (USITC); administrative law judges make an initial determination of whether there is an infringement/contravention of the law, which is then subject to review by the USITC. If the USITC determines that Section 337 has been violated, it may issue exclusion orders, cease and desist orders, or both, after considering the effect of the orders on four statutory public interest factors. Exclusion orders direct the CBP either to bar entry into the United States of infringing goods from whatever source (general exclusion orders) or to bar entry of imports from specifically identified entities (limited exclusion orders). The President may disapprove a USITC order within 60 days. Between 1 January 2013 and 23 June 2016, 144 new Section 337 investigations were instituted.<sup>263</sup> Investigations covered products from 31 trading partners. In the same period the USITC issued 32 exclusion orders, of which 23 were limited exclusion orders, and 9 were general exclusions, together with cease and desist orders. As of 1 July 2016, there were 91 outstanding exclusion orders in effect, affecting imports of a range of products, including smart phones, network devices, tablets, televisions, integrated circuits, memory chips, cast-iron stoves, cube puzzles, various footwear products, nut jewellery, soft drinks and energy drinks, agriculture vehicles, crawler cranes and excavators, cigarettes, light-emitting diodes, sucralose, railway wheels, rubber resins, stainless steel, various printing cartridges, biometric devices, sleep apnoea devices, and outdoor grills.

3.278. The Stop Counterfeiting in Manufactured Goods Act of 2006 (PL 109-181) amended the federal criminal code to revise provisions prohibiting trafficking in counterfeit goods and services to include trafficking in labels or similar packaging of any type or nature bearing a counterfeit mark

<sup>260</sup> The report is prepared pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988, the Uruguay Round Agreements Act, and the Trade Facilitation and Trade Enforcement Act of 2015 (19 U.S.C. §2242).

<sup>261</sup> USTR (2016), *2016 Special 301 Report*, April. Viewed at: <https://ustr.gov/sites/default/files/USTR-2016-Special-301-Report.pdf>.

<sup>262</sup> Office of the U.S. Intellectual Property Enforcement Coordinator (2016), *Annual Report for Fiscal Year 2015*. Viewed at: <https://www.whitehouse.gov/sites/default/files/omb/IPEC/fy2015ipeannualreportchairmangoodlatteletter.pdf>.

<sup>263</sup> USITC online information. Viewed at: <https://pubapps2.usitc.gov/337external/>.



and that are intended to be used on or in connection with the goods or services for which the genuine mark is registered. The Act subjects to forfeiture any article that bears or consists of a counterfeit mark and any property used to violate the prohibition against counterfeit marks.

3.279. In its annual report, the U.S. Customs and Border Protection (CBP) noted that the total number of products seized containing IPR infringements increased nearly 25% in FY2015. There were 28,865 seizures of shipments, an increase from 23,140 in FY2014. Apparel and accessories along with watches and jewellery were the top two product categories for number of IPR violative shipments seized.<sup>264</sup>

3.280. Every year, the Office of the U.S. Intellectual Property Enforcement Coordinator (IPEC), under Section 304 of the PRO IP Act of 2008 (15 U.S.C. § 8114), launches an annual report focusing on the IP enforcement activities of the Federal Government. The FY2015 Annual Report addresses the implementation of the "2013 Joint Strategic Plan on Intellectual Property Enforcement", providing a detailed description of the efforts the Federal departments and agencies have undertaken in furtherance of the 26 action items enumerated in the 2013 Joint Strategic Plan.<sup>265</sup> The IPEC and the Interagency Intellectual Property Enforcement Advisory Committee are working on a new three-year strategic plan for 2016-2019, which is to be presented to the President and Congress in the coming months. On 1 September 2015, IPEC's Office issued a Federal Register Notice asking interested parties to provide their ideas on advancing the National IP enforcement agenda and related policy priorities.

3.281. The FY2015 Section 304 Report noted that to improve efficiency, law enforcement is working through improved coordination amongst the IP enforcement agencies. For example, CBP has created an operational network among CBP's trade targeting assets to improve communications, coordinate actions, and standardize procedures for more effective tactical trade targeting. CBP's Centers of Excellence and Expertise (CEEs) are developing industry-specific expertise to better identify infringement. For example, in 2015, CBP's Pharmaceutical and Electronics CEEs conducted special IPR enforcement operations targeting counterfeits in these sectors. The Department of Justice's (DOJ) Bureau of Justice Assistance (BJA) has provided grants to state and local authorities to increase IP enforcement and coordination with Federal officials. Through FY2014, those receiving programme grants have seized over US\$351 million worth of infringing goods and proceeds. Additionally, between 1 July 2014 and 30 June 2015, grant recipients arrested 545 individuals for violation of IP laws, served 175 state and local search warrants in IP cases, and disrupted or dismantled 474 piracy/counterfeiting organizations.<sup>266</sup>

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<sup>264</sup> U.S. Customs and Border Protection online information. Viewed at: <https://www.cbp.gov/newsroom/national-media-release/2016-04-15-000000/cbp-ice-report-more-1-billion-intellectual>.

<sup>265</sup> Office of the U.S. Intellectual Property Enforcement Coordinator (2016), *Annual Report for Fiscal Year 2015*. Viewed at: <https://www.whitehouse.gov/sites/default/files/omb/IPEC/fy2015ipecanualreportchairmangoodlatteletter.pdf>.

<sup>266</sup> Office of the U.S. Intellectual Property Enforcement Coordinator (2016), *Annual Report for Fiscal Year 2015*. Viewed at: <https://www.whitehouse.gov/sites/default/files/omb/IPEC/fy2015ipecanualreportchairmangoodlatteletter.pdf>.



## 4 TRADE POLICIES BY SECTOR

### 4.1 Agriculture

#### 4.1.1 Main features

4.1. Value-added in agriculture, together with other primary activities (forestry, fisheries and hunting), account for little more than 1% of U.S. GDP (Chart 1.1) and employs less than 2% of the workforce.<sup>1</sup> Nonetheless, the U.S. agricultural sector is among the largest in the world, and the United States is a major world exporter of many agricultural commodities. The United States is a net exporter of food. Agricultural activities are very important to the local economy in parts of the United States.

4.2. According to the 2012 Census of Agriculture, the United States had 2.1 million farms generating a market value of goods sold (including government payments) of US\$402.6 billion in that year.<sup>2</sup> Crops – first and foremost maize, soybeans, hay (including alfalfa), and wheat – make up roughly half of the production value (Table 4.1). Animal production is dominated by cattle (beef and dairy), milk, poultry, and eggs. The United States is the world's largest producer of soybeans, maize, beef, chicken, and turkey, and ranks third in the world in the production of pig meat and cotton. Market developments in the United States thus have a considerable influence on the world market prices for many commodities.

**Table 4.1 Value of U.S. production, 2008-15**

(US\$ billion and %)

	2008	2009	2010	2011	2012	2013	2014	2015	% of total <sup>a</sup>
<b>Total</b>	<b>318.3</b>	<b>284.5</b>	<b>334.9</b>	<b>379.5</b>	<b>396.6</b>	<b>394.3</b>	<b>405.2</b>	<b>382.5<sup>b</sup></b>	
Maize for grain	49.1	46.6	64.5	76.7	74.2	61.9	53.0	49.0	12.8
Soybeans for beans	29.5	32.2	37.6	38.5	43.7	43.6	39.5	34.5	9.0
Hay	18.6	14.7	14.6	18.1	18.6	19.8	19.1	16.8	4.4
Wheat	16.7	10.6	12.6	14.3	17.4	14.6	11.9	10.2	2.7
Cotton	3.0	3.8	7.3	7.0	6.3	5.2	5.1	3.9	1.0
Milk	35.0	24.5	31.5	39.7	37.2	40.5	49.6	35.9	9.4
Cattle and calves	35.6	31.9	36.9	45.1	48.1	48.5	59.9	59.9	15.6
Poultry and eggs	36.0	31.6	34.7	35.3	38.2	44.4	48.4	48.0	12.6
Hogs	14.4	12.5	16.0	20.0	20.3	21.7	24.2	19.3	5.0
Crops total (excl. horticulture)	168.4	158.6	191.1	211.4	223.9	210.2	192.9	..	47.6

.. Not available.

a Percentage of total for the year 2015, except for crops total (excl. horticulture) where the percentage is for the year 2014.

b Provisional data.

Source: USDA National Agricultural Statistics Service Online. Viewed at: <https://quickstats.nass.usda.gov/#A18C7854-5C8F-360C-9973-AFC9D13A0EFA>; USDA National Agricultural Statistics Service online information, "Poultry - Production and Value", different bulletins. Viewed at: <http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1130>; and OECD Stats, Agriculture Policy Indicators, 2016 Monitoring and Evaluation: Reference Tables.

4.3. The United States exports significant portions of its agricultural production, particularly of soybeans, maize, wheat, cotton, and chicken. The United States is accordingly one of the world's largest exporters of these commodities. However, as other producers around the world have been expanding their production faster than the United States, its shares in world trade have been declining steadily for the main exported commodities with the exception of beef (Table 4.2). As for beef, the United States is also a major importer of bovine meat (Table 4.3).

<sup>1</sup> While value-added in agriculture was US\$196 billion in 2015, gross output was considerably higher, having reached some US\$454 billion in that year. Foreign direct investment (FDI) stock in agriculture industries in the United States totalled US\$4.1 billion in 2015, significantly less than 1% of all FDI in the United States. United States outbound FDI stock in agricultural sectors abroad at the end of the same year totalled US\$4.7 billion, less than 0.1% of overall U.S. FDI abroad.

<sup>2</sup> The number of farms had fallen by 100,000 compared with the previous census in 2007. USDA National Agricultural Statistics Service (2014), *2012 Census of Agriculture*. Viewed at: [https://www.agcensus.usda.gov/Publications/2012/Full\\_Report/Volume\\_1\\_Chapter\\_1\\_US/usv1.pdf](https://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1_Chapter_1_US/usv1.pdf).

**Table 4.2 U.S. and world production and trade of selected commodities, 2008/09-2015/16**

('000 tonnes, unless otherwise indicated)

	Marketing year	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
<b>Maize</b>									
Production	United States	305,911	331,921	315,618	312,789	273,192	351,272	361,091	345,486
	% of world	38.2	40.2	37.8	35.2	31.4	35.5	35.6	36.0
Exports	United States	46,965	50,270	46,508	39,096	18,545	48,783	47,359	41,912
	% of world	55.8	52.0	50.9	33.4	19.5	37.2	33.5	40.9
<b>Wheat</b>									
Production	United States	68,363	60,117	58,868	54,244	61,298	58,105	55,147	55,840
	% of world	10.0	8.8	9.1	7.8	9.3	8.1	7.6	7.6
Exports	United States	27,635	23,931	35,147	28,608	27,544	32,001	23,249	21,092
	% of world	19.2	17.5	26.5	18.1	20.0	19.3	14.3	12.4
<b>Cotton (thousand 480 lb. bales)</b>									
Production	United States	12,825	12,183	18,102	15,573	17,314	12,909	16,319	12,870
	% of world	11.8	11.8	15.4	12.2	14.0	10.7	13.7	13.3
Exports	United States	13,261	12,037	14,376	11,714	13,026	10,530	11,246	9,500
	% of world	43.8	33.8	41.3	25.5	28.0	25.7	31.7	26.3
<b>Soybean, oilseed</b>									
Production	United States	80,749	91,470	90,663	84,291	82,791	91,389	106,878	106,934
	% of world	38.1	35.1	34.3	35.1	30.8	32.3	33.4	33.4
Exports	United States	34,817	40,798	40,959	37,186	36,129	44,574	50,169	46,402
	% of world	45.1	44.6	44.7	40.3	35.8	39.6	39.8	35.1
	<b>Calendar year</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
<b>Beef and veal</b>									
Production	United States	12,163	11,891	12,046	11,983	11,848	11,751	11,076	10,815
	% of world	20.7	20.4	20.6	20.6	20.2	19.8	18.5	18.5
Exports	United States	905	878	1,043	1,263	1,112	1,174	1,167	1,028
	% of world	11.9	11.8	13.4	15.6	13.7	12.9	11.7	10.8
<b>Poultry meat</b>									
Production	United States	16,561	15,935	16,563	16,694	16,621	16,976	17,306	17,971
	% of world	22.7	21.5	21.1	20.5	19.9	20.1	20.0	20.3
Exports	United States	3,157	3,093	3,067	3,165	3,299	3,332	3,312	2,866
	% of world	37.7	36.6	34.5	33.1	32.7	32.4	31.6	27.9

Source: USDA Foreign Agricultural Service, Production, Supply and Distribution database. Viewed at: <http://apps.fas.usda.gov/psdonline/psdQuery.aspx>.

**Table 4.3 U.S. exports and imports of selected products, 2012-15<sup>a</sup>**

		2012	2013	2014	2015
<b>Total exports</b>		<b>US\$ million</b>	<b>149,170</b>	<b>152,126</b>	<b>158,607</b>
1201 Soybeans	US\$ million	24,807	21,606	23,907	18,963
	'000 tonnes	43,660	39,401	40,224	48,231
1005 Maize	US\$ million	9,697	6,871	11,141	8,670
	'000 tonnes	31,480	24,080	35,770	44,655
0802 Other nuts, fresh or dried	US\$ million	6,071	7,110	7,515	7,655
	'000 tonnes	1,130	1,132	1,064	1,057
1001 Wheat and meslin	US\$ million	8,189	10,525	7,781	5,577
	'000 tonnes	25,823	33,118	24,487	21,048
2106 Food preparations not elsewhere specified	US\$ million	4,832	5,485	5,653	5,454
	'000 tonnes	823	881	872	846
0201 + 0202 <sup>b</sup> Meat of bovine animals fresh and frozen	US\$ million	4,658	5,247	6,047	5,174
	'000 tonnes	777	818	816	720
0203 <sup>b</sup> Meat of swine	US\$ million	4,838	4,433	4,875	4,019
	'000 tonnes	1,646	1,490	1,477	1,507
2304 Oil-cake and solid residues, from extraction of soybean oil	US\$ million	3,474	3,999	4,216	3,898
	'000 tonnes	6,747	7,539	7,815	9,345
5201 Cotton	US\$ million	6,227	5,593	4,398	3,898
	'000 tonnes	2,753	2,791	2,168	2,401
2303 Residues of starch manufacture and similar residues, beet-pulp, bagasse and other waste of sugar manufacture	US\$ million	3,007	4,012	3,993	3,751
	'000 tonnes	9,760	12,104	12,234	14,602
0207 <sup>b</sup> Meat and edible offal poultry	US\$ million	5,022	4,985	4,935	3,473
	'000 tonnes	3,931	3,869	3,870	3,182
2309 Preparations of a kind used in animal feeding	US\$ million	2,724	2,935	2,842	2,664
	'000 tonnes	2,027	2,042	1,540	1,821
<b>Total imports</b>		<b>US\$ million</b>	<b>113,238</b>	<b>115,566</b>	<b>123,024</b>
2208 Spirits, liqueurs and other spirituous beverages	US\$ million	6,662	7,078	7,219	7,415
	'000 tonnes	634	646	1,137	620
0201 + 0202 <sup>b</sup> Meat of bovine animals fresh and frozen	US\$ million	3,487	3,550	5,441	6,405
	'000 tonnes	715	717	957	1,079
0901 Coffee	US\$ million	6,751	5,461	6,013	6,029
	'000 tonnes	1,446	1,493	1,525	1,538

			2012	2013	2014	2015
2204	Wine of fresh grapes	US\$ million	5,309	5,494	5,597	5,622
		'000 tonnes	1,168	1,097	1,644	1,102
2203	Beer made from malt	US\$ million	3,917	3,907	4,347	4,745
		'000 tonnes	3,252	3,231	4,426	3,666
1905	Bread, pastry, cakes, biscuits and other bakers' wares	US\$ million	3,352	3,519	3,688	4,041
		'000 tonnes	980	1,019	1,059	1,190
0804	Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh or dried	US\$ million	1,987	2,335	2,880	3,011
		'000 tonnes	1,833	2,017	2,203	2,359
0709	Other vegetables, fresh or chilled	US\$ million	2,398	2,787	2,839	2,876
		'000 tonnes	1,842	1,903	2,041	2,026
2202	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages, not including fruit or vegetable juices of heading 20.09	US\$ million	2,161	2,348	2,511	2,869
		'000 tonnes	1,536	1,571	2,415	1,841
2008	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved	US\$ million	2,431	2,533	2,570	2,868
		'000 tonnes	1,298	1,399	1,348	1,474

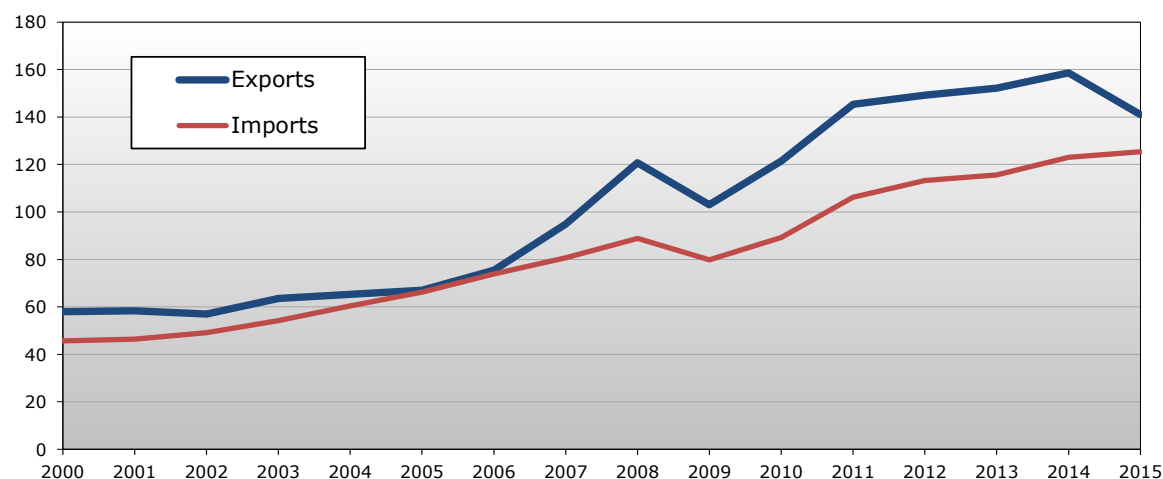
- a Trade volumes in this table are derived from the UNSD Comtrade database and differ from those in Table 4.2, which are taken from USDA Foreign Agriculture Service, Productions, Supply, and Distribution database.
- b HS headings 0201 (meat of bovine animals, fresh and chilled) and 0202 (meat of bovine animals, frozen) have been added together so that trade in meat of bovine animals is comparable to HS headings 0203 (meat of swine) and 0207 (meat and edible offal of poultry), which both include fresh, chilled, and frozen meat under the same HS heading.

Source: UNSD Comtrade database.

4.4. Except in 2005-06, when imports matched exports, the United States has been a significant net exporter of agricultural products over the last ten years (Chart 4.1). The net trade surplus fell from around US\$35 billion per year over 2012-2014 to less than US\$16 billion in 2015, primarily as a result of lower commodity prices for traditional U.S. exports such as soybeans, maize, and cotton.

**Chart 4.1 U.S. exports and imports of agricultural products, 2000-15**

(US\$ billion)



Source: UNSD Comtrade database.

#### 4.1.2 The 2014 Farm Act

##### 4.1.2.1 Overview

4.5. The Agricultural Act of 2014 (PL 113-79), henceforth referred to as the 2014 Farm Act, was signed into law on 7 February 2014. The Act authorizes nutrition and agriculture programmes in the United States until 30 September 2018.<sup>3</sup> According to estimates made by the Congressional Budget Office in early 2014, projected expenditures under the Act amount to US\$489 billion

<sup>3</sup> Some provisions remain in force after 2018.

during 2014-2018, of which nearly 80% concern the funding of domestic nutrition assistance programmes, the largest component of which is the Supplemental Nutrition Assistance Program (SNAP).

4.6. The 2014 Farm Act introduced major changes to the system of support to agricultural producers.<sup>4</sup> Direct payments, a cornerstone of U.S. policy towards crop production since 1996, were eliminated. The Counter-Cyclical Payments (CCP) Program and the Average Crop Revenue Election (ACRE) Program were also terminated. Furthermore, the Act: replaced market price support for dairy products with a margin protection programme for dairy farmers; modified and refunded disaster aid programmes for livestock producers; and sought to rationalize conservation programmes.<sup>5</sup> Federal crop insurance programmes have been expanded.

4.7. Principal new features of the 2014 Farm Act are: the Price Loss Coverage (PLC) programme, which provides payments on a share of historical base acres and yields when commodity prices fall below reference price levels for covered crops; the Agricultural Risk Coverage (ARC) programme, which provides payments on a share of historical base acres and yields when revenue at the county or farm level for covered commodities falls below a county-based or individual benchmark guarantee for covered commodities; the Supplemental Coverage Option (SCO), an area-based insurance policy requiring, and taking on the characteristics, of the underlying policy; the Stacked Income Protection Plan (STAX), a subsidized supplemental insurance plan for producers of upland cotton; and the Margin Protection Program for Dairy Producers (MPP-Dairy). In addition, a number of programmes established under earlier legislation have been continued unaltered or in modified form (Table 4.4).

**Table 4.4 The 2014 Farm Act, main programmes**

	Programme title	Essential elements
<b>Commodity programmes</b> Producers with base acres choose between PLC or county-based ARC for each covered commodity or farm-based ARC for all covered commodities on the farm	Price Loss Coverage (PLC)	New <ul style="list-style-type: none"> <li>• Payments coupled to current prices but decoupled from production</li> <li>• Payments are tied to historical base acres and historical yields without requirement to produce; land owners had the option of updating yields and reallocating, but not increasing, base acres</li> </ul>
	Agriculture Risk Coverage (ARC)	New <ul style="list-style-type: none"> <li>• Payments based on difference between actual revenue and the benchmark revenue guarantee at the county or farm level</li> <li>• Choice between revenue guarantee at county level (county ARC) for each covered commodity or farm-level (individual ARC) revenue guarantee based on all covered commodities on the farm</li> <li>• Payments are coupled to current prices but decoupled from production</li> <li>• Payments are tied to historical base acres; land owners had the option of reallocating, but not increasing, base acres</li> </ul>
	Marketing Loan Program	Maintained <ul style="list-style-type: none"> <li>• Coupled to current prices and production</li> <li>• Loan rates unchanged, except for potential downward adjustment of upland cotton loan rate</li> </ul>
<b>Crop insurance</b>	Federal Crop Insurance Program (permanently authorized)	Maintained; new subsidized insurance programmes: <ul style="list-style-type: none"> <li>• Supplemental Coverage Option (SCO)</li> <li>• Stacked Income Protection Plan for producers of upland cotton (STAX)</li> </ul>

<sup>4</sup> The Agricultural Adjustment Act (1938), the Agriculture Act (1949), and the Commodity Credit Corporation Charter Act (1948) constitute the permanent legal framework for commodity programmes and farm income support in the United States. However, most current programmes are funded under multi-year legislation approved by Congress that amends or suspends permanent law provisions. The forerunner of the 2014 Farm Act, i.e. the Food, Conservation and Energy Act of 2008, was extended through 2013 by the American Taxpayer Relief Act of 2012.

<sup>5</sup> The acreage cap for the Conservation Reserve Program, which compensates farmers for cropland put in retirement, has been reduced.

	Programme title	Essential elements
<b>Disaster assistance</b>	Non-Insured Crop Disaster Assistance Program (NAP)	Maintained
	Livestock Indemnity Program (LIP)	Restored retroactively
	Livestock Forage Disaster Program (LFP)	Restored retroactively
	Emergency Livestock Assistance Program (ELAP)	Restored retroactively
	Tree Assistance Program (TAP)	Restored retroactively
<b>Export credit guarantees</b>	Export Credit Guarantee Program (GSM-102)	Maintained; amendments include: <ul style="list-style-type: none"> <li>• Maximum tenor reduced to 24 months</li> <li>• Flexibility given to the U.S. Secretary of Agriculture to adapt the programme pursuant to the 2014 Memorandum of Understanding Related to the Cotton Dispute (WTO/DS267) between the United States and Brazil</li> </ul>
<b>Sugar</b>	Sugar Program	Maintained (unchanged); <ul style="list-style-type: none"> <li>• includes price support and supply control measures</li> </ul>
<b>Dairy</b>	Margin Protection Program for Dairy Producers	New <ul style="list-style-type: none"> <li>• Subsidized insurance of milk margins (US\$4-8/cwt)</li> <li>• Payments are made when milk margin declines below (insured) level of US\$4-8/cwt</li> <li>• Decoupled from actual production</li> </ul>
	Dairy Product Donation Program	New <ul style="list-style-type: none"> <li>• CCC dairy product purchase programme for distribution to low-income people in times of low margins (US\$4/cwt or below)</li> <li>• Time-limited market support purchases at prevailing market prices</li> </ul>
	Federal Milk Marketing Orders	Maintained (unchanged)

Source: WTO document WT/TPR/S/307/Rev.1, 13 March 2015; and information provided by the authorities.

#### 4.1.2.2 Price Loss Coverage (PLC)

4.8. PLC covers historical base (made up of historical area and yield) of maize, soybeans, wheat, other feed grains, other oilseeds, peanuts, pulses, and rice. For each covered commodity on a farm, PLC payments are made on 85% of historical base when current average market year price falls below the reference price. Producers made a one-time choice for the life of the 2014 Farm Act of whether to elect PLC for historical base of each covered commodity on their farm. PLC is decoupled from current production as it is based on historical base. However, land owners had a one-time option to reallocate, but not to increase, their base acres for their farm using average planted acreage during 2009-12. They also had a choice between retaining the payment yield under the earlier CCP programme and updating it to 90% of the average commodity yield in crop years 2008-12.<sup>6</sup>

4.9. PLC payments are linked to current prices as they are triggered when the national average market price during the marketing year or the national average loan rate, whichever is higher, falls short of reference prices (per bushel or pound) established in the 2014 Farm Act for the covered crops (Table A4.1). The payment to the farmer equals the difference between the national average market price/loan rate and the reference price multiplied by the eligible base. According to the USDA Farm Service Agency, payments under PLC had totalled US\$776.2 million by 20 May 2016 on base acres of long grain rice (US\$399.5 million), peanuts (US\$321.5 million), and canola (US\$55.2 million).<sup>7</sup>

<sup>6</sup> Many CCP yields date back to the 1980s. USDA Farm Service Agency data indicates that farmers opting for updated yields increased their yield by approximately 30% for maize, soybeans, and wheat, and significantly more for some pulses and oilseed crops. USDA Farm Service Agency online information. Viewed at: [http://www.fsa.usda.gov/programs-and-services/arcplc\\_program/index](http://www.fsa.usda.gov/programs-and-services/arcplc_program/index).

<sup>7</sup> Nearly 90,000 farms received PLC payments. USDA Farm Service Agency online information. Viewed at: <http://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/arcplc/pdf/ARCPLCPaymentsasMay202016.pdf>.

#### 4.1.2.3 Agricultural Risk Coverage (ARC)

4.10. Producers could choose between electing PLC or ARC for their base for each of the covered commodities. ARC is a revenue-based income support programme tied to county-level benchmark revenue guarantees. Farmers could instead choose a revenue guarantee determined at the farm level (individual ARC or ARC-IC) but choosing ARC-IC automatically included all covered commodities on the farm. Under the ARC-IC option a revenue guarantee is established based on all covered commodities for the farm while the ARC at the county level (ARC-CO) is established on a commodity-by-commodity basis. A farmer could thus choose the ARC-CO revenue guarantee for some crops and PLC for others, but cannot switch back and forth between the two programmes.<sup>8</sup>

4.11. ARC-CO sets benchmark revenues for each of the covered commodities, which is 86% of the five-year average of national market price times the five-year average county yield. When actual county revenue falls below the county benchmark guarantee, farmers in that county with eligible base receive a payment of up to 10% of the difference.<sup>9</sup> The revenue calculations for ARC-CO are based on current prices and current county yields, not farm-level yields, and payments are limited to 85% of the enrolled historical base. The benchmark revenue for ARC-IC is based on a farm's five-year average planted acres and yields of all covered commodities on the farm. Payments are made when the actual revenue from all covered commodities on the farm falls below the benchmark guarantee, but the payment rate is limited to 65% of the historical base of covered commodities on the farm. For both PLC and ARC, landowners were allowed to reallocate, but not increase, their base acres according to planted acres in 2009-12.<sup>10</sup>

4.12. Data collected by the USDA Farm Service Agency indicates that ARC-CO was elected for 60% or more of base acres of maize, soybeans, oats, and chickpeas, while PLC was elected for 60% or more of base acres of barley, canola, crambe, flaxseed, safflower, sesame, sorghum, rice, and peanuts.<sup>11</sup> For base acres of other covered commodities, elections were split between the two programmes. By 20 May 2016 some 919,000 farms had received ARC-CO payments totalling US\$4.44 billion, primarily for historical base of maize (US\$3.7 billion), wheat (US\$349 million), and soybeans (US\$317 million). Although decisions may vary significantly across states, the nationwide results indicate that producers chose ARC-CO for soybean base acres (97%), maize base acres (93%), and wheat base acres (56%). Very few farmers chose ARC-IC. Overall, the reallocation of base acres resulted in significantly higher historical base for maize (12.8 million acres) and soybeans (4.7 million acres), and a decline in wheat base of nearly 9.9 million acres.

#### 4.1.2.4 Marketing loan programme

4.13. The USDA Commodity Credit Corporation (CCC) provides marketing assistance loans to eligible producers of the covered commodities.<sup>12</sup> Marketing loans allow producers to delay sales from normal harvest time (or shearing, for wool) until market conditions are favourable. The loans may be redeemed by repayment (of the loan principal plus interest and other charges) or by delivery of the commodity pledged as collateral to the CCC. Under certain circumstances, e.g. if market prices fall below the loan rate, a lower repayment rate may be accepted resulting in a marketing loan gain (MLG).<sup>13</sup> Alternatively, producers who do not wish to take out a loan on a harvested commodity may elect to receive a loan deficiency payment (LDP) instead of the marketing loan gain. As with all U.S. commodity and crop insurance programmes, farmers must comply with conservation and wetland protection requirements and report all crop acreage planted

<sup>8</sup> According to the 2014 Farm Act, if farm output is shared between several owners/producers and these fail to reach a unanimous decision whether to enrol in ARC or PLC, the Secretary of Agriculture could decide not to make any payments to the farm for the crop year 2014, and consider the farm to have chosen PLC through crop year 2018.

<sup>9</sup> The ARC payment rate is capped at 10% of the benchmark revenue.

<sup>10</sup> Table A4.1 in WTO document WT/TPR/S/275/Rev.1, 12 February 2013 provides a comparative overview of the main features of the PLC, ARC-CI and ARC-CO schemes.

<sup>11</sup> More than 90% of the farms growing rice (long and medium grain) and peanuts have opted for PLC. Relative to the PLC payments of US\$776.2 million, accumulated payments for the same crops under ARC-CO amounted to less than US\$500,000 by 20 May 2016.

<sup>12</sup> The interest rate is set at the CCC cost of borrowing from the U.S. Treasury, plus one percentage point, at the time the loan is made.

<sup>13</sup> A marketing loan gain (MLG) is recorded when the loan is repaid at less than the principal.



to be eligible for LDP or marketing loans; gross income and payment limitations also apply.<sup>14</sup> Marketing loan support is fully coupled to current prices and current production.

4.14. The statutory marketing loan rates are fixed for crop years 2014-18 in the 2014 Farm Act, generally at the same levels as in crop years 2010-13. Loan rates have been set well below current market prices and current production costs in recent years, and the marketing loan programme is thus designed to provide income support at times of low commodity prices. In its agriculture support notifications, the United States reports benefits under the marketing loan programme (i.e. LDPs, MLGs and forfeitures) as non-exempt direct payments in supporting table DS:7. Having peaked at US\$6.5 billion in 2005-06, marketing loan benefits have been modest in recent years, and amounted to less than US\$36 million in marketing year 2013.

#### 4.1.2.5 Crop insurance

4.15. Federal multi-peril insurance was first offered to wheat farmers in 1938. The Federal Crop Insurance Corporation (FCIC) sold yield insurance products through its own network and independent insurance agents for only a limited number of crops in specific areas until 1980. The 1980 Crop Insurance Act mandated substantially increased coverage (crops and geographic area), and that the FCIC should use the private sector to the maximum extent possible to sell and service crop insurance. Subsequently, the 1994 Crop Insurance Reform Act and the 2000 Agricultural Risk Protection Act have led to a broad range of insurance products on offer, including revenue or yield-based plans, and whole-farm products. Today, the federal crop insurance programme allows participants to insure against losses on some 130 crops, including the five major crops (maize, cotton, grain/sorghum, soybeans, and wheat), minor crops, and specialty crops (fruit, vegetables, nursery crops, and tree nuts). Premium rates and other contract provisions are determined by the USDA Risk Management Agency (RMA), but sold to farmers by private insurance companies and private insurance agents.<sup>15</sup>

4.16. In general, farmers may choose between catastrophic coverage, insuring 50% of the normal yield and 55% of the estimated market price of the crop, and additional ("buy-up") coverage (50%-85% of normal yield and up to 100% of the estimated market price of the crop). The Federal Government pays the entire premium for catastrophic coverage, while participants pay an annual US\$300 administrative fee for each crop insured in each county. Buy-up plans are also subsidized, although the level varies according to the type of plan and coverage selected. Since early 2015, eligible participants have also had the possibility to shift a portion of a farm's coverage from an individual plan to an area plan under the Supplemental Coverage Option (SCO). As its name suggests, SCO is supplemental, meaning that it requires the producer to have an underlying policy. SCO then takes on the characteristics of the underlying policy. Thus, if the underlying policy is a yield policy, the SCO will generate a guarantee for yields, and if the underlying policy is revenue-based, it will generate a guarantee for revenues. SCO is an area-based policy, so (like ARC) if the revenues/yields of the operator do not correlate well with the county, the producer may not receive payments when individual losses occur and vice versa. Nevertheless, the first 14% of the loss (actual versus expected revenue) is always borne by the participant. SCO may be combined with PLC, but not with ARC. The Federal Government subsidizes 65% of the insurance premium for SCO.

4.17. The growth in crop insurance has been significant since 1996, both in terms of acreage insured (60% increase since 1998) and average coverage level selected (58% in 1996, 75% in 2014). Over the same period, the insured liability has risen from US\$35 billion to US\$110 billion, i.e. an increase of more than 300%.<sup>16</sup> The federal crop insurance programme is

<sup>14</sup> Persons or legal entities are not eligible for MLGs and LDPs when their average adjusted gross incomes exceed US\$900,000 per crop year, but remain eligible for marketing loans repaid at principal plus interest. Accumulated payments for PLC, ARC, MLGs, and LDPs may not exceed US\$125,000 per person or legal entity per year. A separate and additional US\$125,000 annual payment limit applies to peanut farming.

<sup>15</sup> In practice, premium rates and other conditions are proposed by RMA or third parties, and reviewed by independent experts on behalf of the FCIC board. The FCIC board approves or rejects the proposed rates. The RMA manages the FCIC.

<sup>16</sup> The increase in insured liability also reflects the effect of rising commodity prices since 2006. Zulauf C. and D. Orden (2015), "U.S. Crop Insurance Since 1996", *farmdoc daily* (5):129, Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign, 16 July. Viewed at: <http://farmdocdaily.illinois.edu/pdf/fdd160715.pdf>.

now considered the largest agricultural insurance programme in the world.<sup>17</sup> However, the U.S. experience has shown that farmers have been reluctant to take on insurance unless it is subsidized. The share of premiums paid by farms has declined from 74% in the early 1990s to 38% in recent years.<sup>18</sup> The annual costs of crop insurance for the Federal Government averaged US\$8.2 billion from 2008 to 2014 (Table 4.5). The key components of the cost structure are the subsidized insurance premiums and reimbursements to private insurers for their administrative and operating expenses in delivering the products. Private insurance companies operate under a Standard Reinsurance Agreement (SRA) with the Federal Government.<sup>19</sup> The SRA, which is renegotiated periodically, allows the Government and private insurers to share the results of insurance underwriting.<sup>20</sup> Depending on the claims situation in any given year, the arrangement may thus produce an underwriting loss (or gain) to the Government.<sup>21</sup>

**Table 4.5 Crop insurance fiscal costs, by crop year, 2008-14**

(US\$ billion)

	Premiums			Indemnities		Loss ratio	A&O costs	Govt. underwriting (gains)/losses	Total Govt. cost
	Farmer	Subsidy	Total	Total	Net				
2008	4.2	5.7	9.9	8.7	4.5	0.88	2.0	-0.1	7.7
2009	3.5	5.4	9.0	5.2	1.7	0.58	1.6	-1.5	5.7
2010	2.9	4.7	7.6	4.3	1.4	0.56	1.4	-1.5	4.7
2011	4.5	7.5	12.0	10.9	6.3	0.91	1.4	0.5	9.5
2012	4.2	7.0	11.1	17.5	13.3	1.57	1.4	5.0	13.5
2013	4.5	7.3	11.8	12.1	7.6	1.02	1.4	0.8	9.7
2014	4.0	6.2	10.1	7.5	3.5	0.74	1.4	-0.8	6.9
<b>Total</b>	<b>27.8</b>	<b>43.8</b>	<b>71.6</b>	<b>66.1</b>	<b>38.3</b>	<b>0.92</b>	<b>10.5</b>	<b>2.4</b>	<b>57.7</b>

Source: Zulauf C. and D. Orden (2015), "U.S. Crop Insurance Fiscal Costs and WTO Notifications under Current Rules", *farmdocDaily* (5):139, Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign. Viewed at: <http://farmdocdaily.illinois.edu/pdf/fdd300715.pdf>; and data taken from USDA-RMA.

4.18. The U.S. Government Accountability Office (GAO) published reports in 2012 and 2013, arguing that federal costs could be cut through a reduction in the premium subsidies to all farmers and/or caps on individual premium subsidies.<sup>22</sup> Moreover, the GAO released a study in March 2015, concluding that a reduction in premium subsidies for the highest income participants could lead to significant savings while leaving 99% of the participants unaffected.<sup>23</sup> Earlier studies have argued that the crop insurance programme is inefficient compared with other forms of government support, such as decoupled payments.<sup>24</sup>

<sup>17</sup> Glauber J.W. (2015), *Agricultural Insurance and the World Trade Organization*, IFPRI Discussion Paper 01473. Viewed at: <http://ebrary.ifpri.org/utils/getfile/collection/p15738coll2/id/129733/filename/129944.pdf>.

<sup>18</sup> Zulauf C. and D. Orden (2015), "U.S. Crop Insurance Since 1996", *farmdocDaily* (5):129, Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign, 16 July. Viewed at: <http://farmdocdaily.illinois.edu/pdf/fdd160715.pdf>.

<sup>19</sup> The SRA establishes the business terms for the insurance industry on a state-by-state basis.

<sup>20</sup> The current SRA came into effect in 2011 and remains in place through the 2017 reinsurance year. The 2014 Farm Act requires any renegotiated SRA to be budget neutral.

<sup>21</sup> Although the Government recorded an underwriting gain in four of the seven years from 2008 to 2014, losses from the 2012 drought resulted in an accumulated loss of US\$2.4 billion over the period, or around US\$340 million per year. By comparison, the insurance companies had an accumulated underwriting gain of US\$8.3 billion during 2008-14, or nearly US\$1.2 billion (average) per year.

<sup>22</sup> GAO (2012), *Crop Insurance: Savings Would Result from Program Changes and Greater Use of Data Mining*, GAO-12-256, 13 March. Viewed at: <http://www.gao.gov/assets/590/589305.pdf>; and GAO (2013), *2013 Annual Report: Actions Needed to Reduce Fragmentation, Overlap, and Duplication and Achieve Other Financial Benefits*, GAO-13-279SP, 9 April. Viewed at: <http://www.gao.gov/assets/660/653604.pdf>.

<sup>23</sup> GAO (2015), *Crop Insurance, Reducing Subsidies for Highest Income Participants Could Save Federal Dollars with Minimal Effect on the Program*, GAO-15-356, 18 March. Viewed at: <http://gao.gov/assets/670/669062.pdf>. The GAO estimates that elimination of premium subsidies to high income participants, i.e. those with incomes exceeding limits applied under certain farm and conservation programmes, would have saved the Federal Government some US\$290 million over a five-year period (2009 through 2013).

<sup>24</sup> Babcock B.A. and C.E. Hart (2006), "Crop Insurance: A Good Deal for Taxpayers?", *Iowa Ag Review*, 12(3):1-10. Viewed at: [http://www.card.iastate.edu/iowa\\_ag\\_review/summer\\_06/IAR.pdf](http://www.card.iastate.edu/iowa_ag_review/summer_06/IAR.pdf); Smith V.H. and J.W. Glauber (2012), "Agricultural Insurance in Developed Countries: Where Have We Been and Where Are We

#### 4.1.2.6 Cotton

4.19. The 2014 Farm Act does not authorize historical acreage planted with upland cotton to be enrolled in PLC or ARC. Instead, a new Stacked Income Protection Plan (STAX) provides coverage for losses of up to 20% of the expected county revenue. STAX may be purchased on its own or in conjunction with other crop insurance (companion policy).<sup>25</sup> Indemnities are triggered under STAX when area revenue falls below 90% of the expected level and may increase to cover a maximum of 30% of the expected revenue or the maximum loss level under the companion policy. In addition, the grower may increase (or decrease) the effective coverage under STAX by choosing a multiplier (protection factor) that may range from 80% to 120%. The premium subsidy rate, i.e. the share paid by the Federal Government, is 80%. Nevertheless, cotton farmers have been reluctant to sign up to STAX.

4.20. Although upland cotton is excluded from the ARC and PLC, former upland cotton base became "generic acres" under the ARC and PLC programmes, and growers with generic acres have the option to plant those acres to other crops that are eligible for ARC and PLC. Thus far, some 2.2 million generic acres planted to covered commodities have received ARC and PLC payments totalling US\$149.3 million (by 20 May 2016), primarily for peanuts (US\$87.6 million), maize (US\$39.8 million), and long grain rice (US\$14 million).

#### 4.1.2.7 Sugar

4.21. The United States is the world's sixth largest producer and fifth-largest consumer of sugar. Producers of sugar from sugarcane and sugar beet (known as processors) qualify for marketing loans, which are administered in combination with a domestic market allotment mechanism.<sup>26</sup> Unlike other commodity marketing loans, sugar marketing loans are granted to processors who, in turn, pay growers of sugarcane and sugar beets at a rate proportional to the loan.<sup>27</sup> At the end of the 9-month loan term, borrowers may repay the loan in full by selling the sugar to the domestic market or, if prices are too low, forfeit the sugar collateral to USDA to satisfy the loan. U.S. sugar prices have been above world market levels since the early 1980s.

4.22. The purpose of the market allotment mechanism for sugar is to manage supplies such that the price of sugar remains above the level that would cause forfeitures. Allotments are based on production history and established at state-level for the sugarcane sector and processor-level for the beet sugar sector. The overall allotments equal at least 85% of estimated domestic demand for human consumption. Excess sugar may not be sold in the market for human consumption and must thus be stored at the owner's expense. Depending on market conditions, USDA may adjust allotments upwards in the course of the marketing year to release more sugar into the market. In addition, excess supply situations are mitigated by the Feedstock Flexibility Program (FFP) that helps divert sugar from human consumption towards the production of ethanol.<sup>28</sup>

4.23. On average, the United States imports roughly 3 million short tons of raw and refined sugar (raw value) per year. The main suppliers are Brazil (18%), the Dominican Republic (17%), and Australia (10%). Imports are regulated through the annual WTO tariff-rate quota of 1,117,200 metric tons of raw sugar and 22,000 metric tons of refined sugar.<sup>29</sup> Above-quota

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Going?", *Applied Economic Perspectives and Policies*, 34(3): 360-390. Viewed at:

<http://aep.oxfordjournals.org/content/early/2012/08/29/aep.pps029.full.pdf+html>; and Goodwin B.K. and V.H. Smith (2012), "What Harm Is Done by Subsidizing Crop Insurance?", *American Journal of Agricultural Economics*, 95(2): 489-497. Viewed at: <http://ajae.oxfordjournals.org/content/95/2/489.full.pdf+html>.

<sup>25</sup> Examples of such policies are Yield Protection, Revenue Protection, Revenue Protection with the Harvest Price Exclusion, and any Area Risk Protection insurance policy.

<sup>26</sup> More U.S. sugar is derived from beet than from cane. In the 2015-16 crop year, the cash receipts for growers of sugar beet amounted to US\$2.956 billion, versus US\$1.075 billion for sugarcane farming. The 2014 Farm Act establishes marketing loan rates of 18.75 cents per pound for raw sugar and 24.09 cents per pound for refined beet sugar. USDA Economic Research Service online information. Viewed at: <http://www.ers.usda.gov/topics/crops/sugar-sweeteners/background.aspx> and <http://www.ers.usda.gov/topics/crops/sugar-sweeteners/policy.aspx>.

<sup>27</sup> USDA has the authority to establish minimum payments to producers.

<sup>28</sup> The FFP was introduced through the Food, Conservation and Energy Act of 2008 and is continued under the 2014 Farm Act.

<sup>29</sup> USDA may increase the TRQs on 1 April each year should a shortage be expected.

imports are normally neither practical nor economical due to relatively high MFN tariffs.<sup>30</sup> The Dominican Republic-Central American Free Trade Agreement (DR-CAFTA) includes increased sugar market access for these countries in the United States. FTAs with Colombia, Chile, Morocco, Panama, and Peru also contain provisions to increase sugar market access in the United States.<sup>31</sup> Moreover, the North American Free Trade Agreement (NAFTA) has allowed for duty-free and quota-free imports of sugar from Mexico since 1 January 2008. However, Mexican sugar exports are currently limited under a 2015 suspension agreement following the initiation of U.S. anti-dumping and countervailing duty proceedings in 2014.

4.24. Outside of the TRQ system, two re-export programmes allow duty-free imports of sugar. The Refined Sugar Re-Export Program provides processors a licence to import raw sugar for refining and subsequent export or sale to licensed manufacturers of sugar-containing products. Participating manufacturers under the Sugar-Containing Products Re-Export Program may trade with participating sugar processors to obtain refined sugar to be incorporated into products destined for U.S. export markets. Finally, the Polyhydric Alcohol Program allows participating U.S. manufacturers to purchase sugar at world market prices from licensed refiners or their agents as long as the output (polyhydric alcohols) is not used as sugar substitutes in human food production.

#### 4.1.2.8 Dairy sector

4.25. The 2014 Farm Act eliminated the Dairy Product Price Support Program, deficiency payments for dairy producers (the Milk Income Loss Contract (MILC) Program), and dairy export subsidies (Dairy Export Incentive Program). Instead, it introduced a margin protection for milk producers (MPP-Dairy) and a Dairy Product Donation Program, which authorizes the Commodity Credit Corporation (CCC) to purchase dairy products at prevailing market prices when milk margins are depressed. The purchased quantities are subsequently distributed to low income households.

4.26. MPP-Dairy insures milk farmers against falling margins, calculated as the difference between the national "all-milk" price and average feed costs.<sup>32</sup> The production margin is calculated for consecutive two-month periods (January/February, March/April, etc.). If the margin remains below insured levels (US\$4-US\$8 per hundredweight) for any of these two-month periods, enrolled producers receive a payment based on their chosen coverage. Dairy producers enrol in MPP-Dairy by establishing the production history of the dairy operation and the extent of margin protection selected. The historical production level equals the highest annual milk sales in any of the calendar years 2011, 2012, and 2013 for established producers. Special provisions apply for intergenerational transfers and for new dairy operations. The USDA may adjust individual historical production levels to reflect increases in overall national milk production in future years. Apart from that, no change in production history is allowed.

4.27. Apart from the payment of an annual administrative fee (US\$100) to the FSA, participating producers are guaranteed a US\$4 margin (per cwt of milk) for 90% of the historical production volume at no additional cost. However, milk producers may opt for higher margin protection with the payment of an annual premium (Table 4.6). In that case, the participant must also select the coverage percentage (25%-90% of historical production) for the higher margin.<sup>33</sup> MPP-Dairy requires a higher premium for additional protection of larger production volumes (Table 4.6), but does not cap compensation payments or limit eligibility according to farm size. However, payments under MPP-Dairy may be subject to sequestration pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985. The Congressional Budget Office of the United States has estimated the annual cost of MPP-Dairy to be in the order of US\$30-190 million per year. Premiums and fees

<sup>30</sup> The estimated average MFN tariff for sugar and confectionary is currently 10.8% (Table A3.1), ranging from free to 65.6% (*ad valorem* equivalent).

<sup>31</sup> USTR online information. Viewed at: <https://ustr.gov/issue-areas/agriculture/sugar>.

<sup>32</sup> The National Agricultural Statistics Service reports the average price of milk marketed in the United States. The average feed cost for the production of one hundredweight (cwt) of milk is derived from the sum of (i) 1.0728 times the price of maize (per bushel); (ii) 0.00735 times the price of soybean meal (per ton); and (iii) 0.0137 times the price of alfalfa hay (per ton).

<sup>33</sup> For example, if a producer selected the US\$7 margin for 50% of historical production (3 million lbs=30,000 cwt), the premium paid for one year would be US\$0.217x30,000x0.5=US\$3,255. If the actual margin were US\$5 during one two-month period, the payment received would be US\$[(7-5)x30,000x(2:12)x0.5]=US\$5,000.

collected for the 2015 calendar year under MPP-Dairy amounted to US\$70.8 million, while payments were less than US\$700,000.

**Table 4.6 MPP Dairy, premium payments**

(US\$)

Coverage level (margin) per cwt.	Tier 1 – Premium for 2016-18 Covered production history < 4 million lbs.	Tier 2 – Premium for 2014-18 Covered production history > 4 million lbs.
4.00	None	None
4.50	0.010	0.020
5.00	0.025	0.040
5.50	0.040	0.100
6.00	0.055	0.155
6.50	0.090	0.290
7.00	0.217	0.830
7.50	0.300	1.060
8.00	0.475	1.360

Source: USDA Farm Service Agency (2016), 2014 Farm Bill Fact Sheet, Margin Protection Program for Dairy (MPP-Dairy), June. Viewed at: [http://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/2016/2016\\_MPP-Dairy\\_Fact\\_Sheet.pdf](http://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/2016/2016_MPP-Dairy_Fact_Sheet.pdf).

4.28. The Dairy Product Donation Program (DPDP) is administered by the FSA and the Food and Nutrition Service (FNS) and funded by the Commodity Credit Corporation. DPDP purchases are triggered if the FSA determines that the national production margin has fallen below US\$4 (per cwt) for two consecutive months. The purchased goods are donated to public and private non-profit organizations that provide nutrition assistance to low-income households. FSA and FNS determine the type and quantity of dairy products to be acquired in consultation with the non-profit organizations and eligible state and local agencies. Products are purchased for immediate distribution and may not be stored or resold in commercial markets. DPDP purchases are terminated when the national production margin returns to US\$4 or more, or after a period of a maximum of three months.<sup>34</sup> The DPDP is authorized until the end of 2018. No purchases have been made under the DPDP until now as margins have not dropped below US\$4 per cwt.

4.29. Federal Milk Marketing Orders provide classified pricing and price pooling. The system, which dates back to the 1930s, has been maintained without change. The 2014 Farm Act also extends the Dairy Forward Pricing Program, the Dairy Indemnity Program, and the Dairy Promotion and Research Program through 2018. The promotion and research programme authorizes the collection of a levy equal to US\$0.15 per cwt on domestically-produced milk and US\$0.075 per cwt (milk equivalent) on imported dairy products.<sup>35</sup>

#### 4.1.2.9 Other programmes

4.30. The Supplemental Nutrition Assistance Program (SNAP) is the dominant programme, in terms of expenditures, under the 2014 Farm Act (Title IV), accounting for US\$756.4 billion or nearly 80% of all projected outlays over FY2014-FY2023. Although the basic eligibility criteria have been maintained, changes in the calculation of benefits are designed to reduce the annual spending on SNAP by around US\$800 million. At present, around 22 million households representing some 45 million individuals participate in SNAP.<sup>36</sup> The average monthly benefit is about US\$125 per person.

4.31. Although with somewhat reduced funding for conservation measures, Title II of the 2014 Farm Act retains the three main programmes (the Conservation Reserve Program, the Environmental Quality Incentives Program, and the Conservation Stewardship Program). Other smaller programmes have been maintained through the new Agricultural Conservation Easement Program, designed to protect wetlands and preserve agricultural land from commercial and residential development. The new Regional Conservation Partnership Program is also the result of consolidation and coordination efforts.

<sup>34</sup> Purchases may also be suspended during the three-month period if the national production margin is depressed, but the domestic price of cheddar cheese or non-fat dry milk exceed the world market price for cheddar cheese or skim milk powder by certain percentages.

<sup>35</sup> Farmers and importers may receive a credit against the levy if they contribute to quality programmes, authorized by federal or state laws, conducting dairy product promotion, research, or nutrition education.

<sup>36</sup> USDA Food and Nutrition Service online information. Viewed at: <http://www.fns.usda.gov/sites/default/files/pd/34SNAPmonthly.pdf>.



4.32. The 2014 Farm Act (Title IX) maintains the Biomass Crop Assistance Program with a mandatory funding level of US\$25 million per year. The Rural Energy for America Program, which encourages installations of renewable energy systems and energy efficiency, is also maintained but with lower funding. US\$30 million per year is earmarked for the Farmers Market and Local Food Promotion Program.

4.33. The reauthorized Noninsured Crop Disaster Assistance Program (NAP) provides financial assistance in case of natural disaster damage to crops for which crop insurance is not available. The basic coverage is the same as the catastrophic coverage level for insured crops, but the current farm bill authorizes "buy-up" coverage for up to 65% of historical yields at 100% of the average market price.<sup>37</sup> Crops intended for grazing are not eligible for additional coverage. Producers with an annual adjusted gross income over US\$900,000 may not enroll in NAP, and NAP payments are limited to US\$125,000 per participant per crop year.

### 4.1.3 Trade measures

#### 4.1.3.1 Imports

4.34. The average U.S. import tariff on agricultural products (as defined by the WTO) is currently 9.1% (Table 3.2), a slight increase from 2014 (9.0%), and 2012 (8.5%). The average applied MFN rate exceeds 10% for three product categories only: dairy (27.6%), beverages, spirits and tobacco (22.9%), and sugar and confectionary (10.8%). As there has been no change in the underlying tariff policy, the variations in the calculated duty are accounted for by the easing of commodity prices which automatically increase the *ad valorem* equivalents of specific and compound duties. Compared with two years ago, average import duties are now higher on dairy products, cotton, and sugar and confectionary, but lower on cereals, beverages, and tobacco. U.S. agricultural import duties are low compared with many other countries, and applied on a customs value that excludes transportation and landed costs.

4.35. The United States notifies the Committee on Agriculture regularly about the administration of its WTO tariff quota commitments, covering 44 product categories (or around 200 tariff lines at present). The main product categories are beef, cheese and other dairy products, sugar and sugar-containing products, tobacco, and cotton. The sugar TRQs are allocated to around 40 exporting countries, rather than to importers, on the basis of historical supply data. As a market allocation mechanism applies to domestic production of sugar (section 4.1.2.7), the import TRQ regime may be adjusted to take account of changes in U.S. market conditions.<sup>38</sup> Fill rates vary considerably among the commodities subject to TRQs.<sup>39</sup> Certain modifications in the TRQ regime for dairy products were announced in July 2015.<sup>40</sup>

4.36. The United States has reserved the right to apply the Special Agricultural Safeguard (SSG) on imports from other WTO Members on 189 tariff lines, mostly dairy, sugar/sugar-containing products, and cotton. The SSGs may be price- or volume-based. In October 2015, the United States imposed volume-based agricultural safeguards on butter, applying a volume-based safeguard for the first time since 2003. By contrast, price-based SSGs are invoked automatically when the declared import price for an out-of-quota item is below a pre-established price range. The United States applied price-based SSGs on 53 tariff lines in 2013 and on 44 lines in 2014.<sup>41</sup> Applied automatically on a shipment-by-shipment basis, many SSGs affect small volumes of goods.

<sup>37</sup> A premium is assessed for the additional coverage. All NAP participants pay a service fee per year of US\$250 per crop/commodity, capped at US\$750 per administrative county and at US\$1,875 for producers with farming interests in multiple counties.

<sup>38</sup> The most recent notification, detailing the country-specific sugar TRQs to be applied in FY2016, has been circulated in WTO document G/AG/N/USA/106, 25 April 2016. Additional quota allocations were notified in WTO document G/AG/N/USA/106/Add.1, 27 April 2016.

<sup>39</sup> The United States has reported data for TRQ imports in 2013 (crop year or calendar year) in WTO document G/AG/N/USA/102, 20 May 2015.

<sup>40</sup> 80 FR 44251. Fees have been aligned more closely with administrative costs and electronic means are now the only manner of communication. The final rule extends the suspension of the "historical licence reduction provision" (§6.25(b)), i.e. the transfer of under-utilized licences to the lottery category, for an additional seven years.

<sup>41</sup> WTO document G/AG/N/USA/104, 21 January 2016.



#### 4.1.3.2 Exports

4.37. The Foreign Agricultural Service (FAS) of USDA administers the Export Credit Guarantee Program (GSM-102) on behalf of the Commodity Credit Corporation (CCC). Under GSM-102, CCC guarantees U.S. private sector financing to approved foreign financial institutions, primarily in developing countries, for imports of U.S. food and agricultural commodities. The guarantee typically covers 98% of the principal and a portion of the interest payments. The maximum credit term is 18 months, but may vary from country-to-country.<sup>42</sup> Commodities eligible for loan guarantees are bulk products (grains and oilseeds), intermediate goods (e.g. hides, flour and paper products), and high-value processed consumer products such as frozen foods, meat, beer, and wine. Registered guarantees per 31 July 2016 totalled more than US\$1.6 billion, principally for exports of soybeans, including yellow corn (US\$636 million), soybeans (US\$325 million), soybean meal (US\$264 million), wheat (US\$171 million), and rice (US\$67 million).

4.38. The 2014 Farm Act reauthorized four export promotion programmes administered by the USDA FAS, namely the Market Access Program (MAP), the Foreign Market Development Program, the Emerging Markets Program, and the Technical Assistance for Specialty Crops Program. MAP is the most important program in terms of funding (US\$186.4 million in FY2016, after 6.8% sequestration), and requires that the participating agricultural trade associations, cooperatives, and state regional trade groups provide at least a 10% contribution to generic marketing. A 50/50 cost-sharing is required for the promotion of branded products.

#### 4.1.3.3 Food aid

4.39. The United States provides 2-3 million tonnes of agricultural commodities in international food aid and food assistance every year (Table 4.7). The corresponding monetary value, some US\$2-2.5 billion, represents more than 6% of total U.S. foreign aid.<sup>43</sup> The international food aid programmes are currently based on three main permanent authorizations; (i) the Food for Peace Act (PL 480)<sup>44</sup>, (ii) the Food for Progress Act of 1985; and (iii) the McGovern-Dole International Food for Education and Child Nutrition Program.<sup>45</sup> Most disbursements are authorized under Title II of the Food for Peace Act (FFPA), which is administered by USAID. The agency has been also using its authority under the Foreign Assistance Act of 1961 to provide cash-based food assistance under an Emergency Food Security Program (EFSP) since 2010. The 2014 Farm Act includes a Local & Regional Procurement Projects programme, administered by USDA, which is also cash-based.

**Table 4.7 Deliveries of food aid from the United States, 2008-12**

(Tonnes)

	2008	2009	2010	2011	2012
Direct transfer	3,066,794	3,110,056	3,046,766	2,030,209	1,958,265
Local purchase	80,916	111,672	776,660	254,173	99,952
Triangular purchase	63,985	52,962	59,424	27,381	27,505

Source: WFP Food Aid Information System database. Viewed at: <http://www.wfp.org/fais/>.

4.40. Although the growth of the EFSP (in particular), whose outlays reached US\$577.6 million in FY2013, is pushing up the share of cash-based food assistance, most U.S. food aid is still provided in kind. FFPA Title II, the dominant programme, regulates U.S. donations of agricultural commodities to international organizations (such as the World Food Programme) and non-governmental organizations in response to emergency and non-emergency food needs. U.S. laws establish a number of conditions for in-kind food aid. Notably, all donations must be sourced in the United States, and preferably (at least 50%) shipped on U.S.-flag vessels. Moreover, 20%-30% of FFPA-funded aid (minimum US\$350 million per year) must be

<sup>42</sup> The 2014 Farm Act reduced the maximum loan guarantee term from three years to two years.

<sup>43</sup> Schnepf R. (2015), *U.S. International Food Aid Programs: Background and Issues*, Congressional Research Service, 1 April. Viewed at: <https://www.fas.org/sfp/crs/misc/R41072.pdf>.

<sup>44</sup> The President of the United States renamed the Agricultural Trade Development and Assistance Act of 1954 (PL 83-480) the "Food for Peace Act" in 1961. Congress recognized the name change in its 2008 farm bill (PL 110-246).

<sup>45</sup> The first international food aid programme of the United States was authorized under Section 416(b) of the Agricultural Act of 1949. The programme remains in effect, but is reliant on surplus inventories of the Commodity Credit Corporation. Government-owned grain stocks were depleted in 2006, and the programme has been inactive since then.

non-emergency food aid, of which minimum 75% should be processed, fortified, or bagged. At least 50% of bagged food transfers should be whole-grain commodities bagged in the United States. Non-governmental recipients are also required to subject at least 15% of U.S. non-emergency food donations to monetization, i.e. the sale of donated food in recipient-country markets to generate cash for development programmes.

4.41. In recent years, the Administration and members of Congress have tabled several proposals to enhance the efficiency and reduce the costs of U.S. food aid and food assistance addressing, for example, cash versus in-kind, U.S.-only purchasing provisions, shipping charges, and monetization. However, most of these proposals have not advanced in Congress.

#### 4.1.4 Levels of support

4.42. The OECD notes that the United States has reduced its producer support and border protection substantially since 1986-88. However, most of the reduction can be ascribed to higher commodity prices since 2002, as many support measures are linked to market prices.<sup>46</sup> Nevertheless, the OECD's Producer Support Estimate (PSE) for the United States of around US\$40 billion in 2014 (Table 4.8), or roughly 10% of gross farm receipts, is about half the percentage level of all OECD countries.

**Table 4.8 Total producer support estimate and single commodity transfer values for selected commodities, 2008-15**

	2008	2009	2010	2011	2012	2013	2014	2015 <sup>a</sup>
<b>Producer support estimate</b>								
US\$ million	29,954	31,535	30,774	32,684	35,993	29,020	43,572	38,785
PSE as % gross farm receipts	8.6	10.1	8.6	8.0	8.5	6.9	10.0	9.4
<b>Single commodity transfers</b>								
<b>Wheat</b>								
US\$ million	940	1,610	802	1,140	1,117	1,318	921	812
SCT as % gross farm receipts	5.2	13.0	6.1	7.3	6.0	8.2	7.1	7.3
<b>Maize</b>								
US\$ million	2,147	2,167	1,771	2,894	2,846	2,998	2,209	2,259
SCT as % gross farm receipts	4.2	4.5	2.7	3.6	3.7	4.6	4.0	4.4
<b>Soybeans</b>								
US\$ million	1,483	1,198	1,076	1,597	1,536	1,540	1,397	1,308
SCT as % gross farm receipts	4.8	3.6	2.8	4.0	3.4	3.4	3.4	3.6
<b>Cotton</b>								
US\$ million	1,313	252	339	813	591	529	908	836
SCT as % gross farm receipts	30.1	6.2	4.4	10.4	8.6	9.4	15.2	17.2
<b>Milk</b>								
US\$ million	8	2,947	4,581	2,637	5,125	2,296	6,646	5,356
SCT as % gross farm receipts	0.0	11.9	14.5	6.7	13.7	5.7	13.5	15.0
<b>Beef and veal</b>								
US\$ million	0	0	0	0	0	230	3,289	1,841
SCT as % gross farm receipts	0.0	0.0	0.0	0.0	0.0	0.4	5.3	3.2
<b>Refined sugar</b>								
US\$ million	718	557	1,157	990	656	193	684	1,114
SCT as % gross farm receipts	33.6	21.3	35.0	29.0	17.6	7.6	27.1	44.2

a Provisional data.

Source: OECD Stats.

4.43. Among the main commodities tracked by the OECD, the highest single commodity transfers (as a percentage of gross farm receipts) are provided to sugar, milk, and cotton. In principle, the OECD views positively the increasing U.S. policy focus on insurance and risk management to provide a safety net for farmers in need. However, the OECD also states that the 2014 Farm Act may have transferred some of the risks normally incurred by farmers to the public budget.

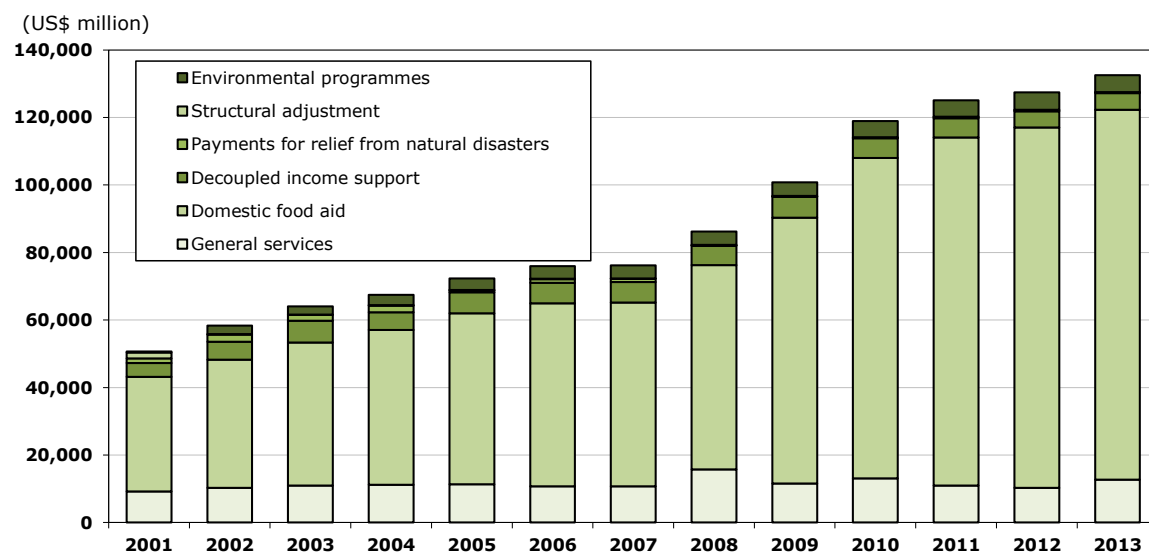
4.44. At the WTO, the United States provides information on support to agriculture to the Committee on Subsidies and Countervailing Measures as well as to the Committee on Agriculture. The most recent notifications cover the period up to FY2014 and the 2013 marketing year,

<sup>46</sup> OECD (2016), *Agricultural Policy Monitoring and Evaluation 2016*. Viewed at: [http://www.oecd-ilibrary.org/content/book/agr\\_pol-2016-en](http://www.oecd-ilibrary.org/content/book/agr_pol-2016-en).

respectively, and thus do not capture the most recent policy changes implemented through the 2014 Farm Act. The level of payments under discontinued programmes, such as direct payments to agricultural producers and ACRE, of just under US\$5 billion per year in FY2013 and FY2014 nonetheless do not appear markedly different from payments effected under the new PLC and ARC programmes (sections 4.1.2.2 and 4.1.2.3).

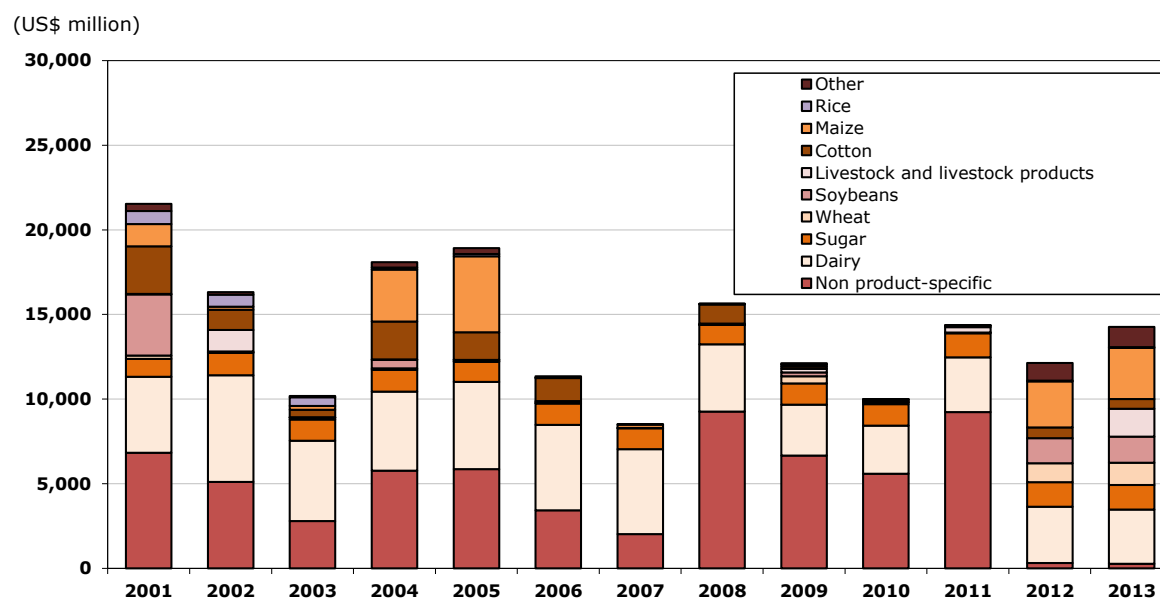
4.45. The U.S. notifications to the Committee on Agriculture classify support according to the definitions of the Agreement on Agriculture. The reported assistance primarily falls in the Green Box category (Charts 4.2 and 4.3) due to the extensive coverage of domestic food aid programmes, accounting for US\$109.6 billion of total green box outlays of US\$132.5 billion in the 2013 marketing year.<sup>47</sup>

**Chart 4.2 Green Box support in the United States, 2001-13**



Source: WTO notifications.

**Chart 4.3 Amber Box support in the United States, 2001-13**



Source: WTO notifications.

<sup>47</sup> In 2013, Supplemental Nutrition Assistance Program (SNAP) payments were the dominant source of food aid at US\$82.5 billion, followed by child nutrition programmes (US\$19.3 billion), and the Special Supplemental Nutrition Program for Women, Infants, and Children (US\$6.6 billion). WTO document G/AG/N/USA/108, 25 May 2016.

4.46. For the 2013 marketing year, the United States has notified total support under the Amber Box (including *de minimis* subsidies) of US\$14 billion, and US\$6.9 billion when *de minimis* support is excluded. The relatively high levels of support to the dairy and sugar sector reflect the market price support programmes in place at the time as well as methodological factors in the support calculations.

## 4.2 Services

### 4.2.1 Financial services

#### 4.2.1.1 General overview

4.47. The U.S. financial services sector share of GDP was 7.1% in 2015: banking activities generated some 2.8% of GDP; insurance, 2.6%; securities trading activities, 1.4%; and funds, trusts, and other financial vehicles, 0.2%.<sup>48</sup> The financial sector in the United States employed 5.8 million people in 2014, accounting for some 4.4% of total employment.<sup>49</sup> The United States runs a substantial trade surplus in financial services. In 2015, exports of financial services, excluding insurance, amounted to US\$102.5 billion; exports of insurance and pension services reached US\$17.1 billion.<sup>50</sup> Also in 2015, imports of financial services amounted to US\$25.2 billion, while imports of insurance and pension services amounted to US\$47.8 billion.<sup>51</sup> Sales of financial services, including insurance, to foreign persons by U.S. multinational corporations' affiliates abroad amounted to US\$220.9 billion in 2013, while sales of financial services to U.S. persons by foreign multinational corporations amounted to US\$176.1 billion in the same year.<sup>52</sup>

4.48. The U.S. financial services industry (finance and insurance) plays a central role in the country's economic performance, including export financing, and it is highly important to the stability of the global financial system, in terms of, *inter alia*, direct exposure and price correlation with other key financial markets across the world. For example, U.S. global systemically important banks (G-SIBs) account for 22% of total G-SIB assets<sup>53</sup>; the three U.S. global systemically important insurers (G-SIIs) account for a third of total G-SII assets; and the U.S. derivatives market accounts for one third of the world market. The United States has highly developed capital markets. The combined market capitalization of the NASDAQ OMX and NYSE Euronext is nearly US\$16 trillion.

4.49. The financial services industry in the United States has largely recovered from the 2008 economic and financial crisis. The majority of financial institutions have repaid the money received from the Government's Troubled Asset Relief Program (TARP) during the crisis. By the first quarter of 2016, 16 banks remained under TARP, out of the 707 that received funds and 261 banks and credit unions had fully repaid their entire principal with interest. Thirty-two institutions were in bankruptcy or receivership. As of 31 December 2015, the Treasury had recovered US\$226.7 billion from the Capital Purchase Program (CPP) through repayments, dividends, interest, and other income, compared to the US\$204.9 billion initially invested under

<sup>48</sup> BEA online information, "Industry Data 2016". Viewed at: [http://www.bea.gov/industry/xls/io-annual/GDPbyInd\\_VA\\_1947-2015.xlsx](http://www.bea.gov/industry/xls/io-annual/GDPbyInd_VA_1947-2015.xlsx).

<sup>49</sup> BEA online information, "Industry Data 2016". Viewed at <http://www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=3&isuri=1&903=197>. Some 2.5 million people were employed in banking; 2.4 million in insurance; 858,000 in securities; and 6,000 in funds, trusts and other financial activities.

<sup>50</sup> Trade in insurance services is calculated as the sum of premium income (adjusted for normal losses), investment income, and income from auxiliary services.

<sup>51</sup> BEA online information. Viewed at: <http://www.bea.gov/iTable/iTable.cfm?ReqID=62&step=1#reqid=62&step=6&isuri=1&6221=0&6220=1,2&6210=1&6200=51&6224=8&6223=8&6222=0&6230=1>.

<sup>52</sup> BEA online information. Viewed at: <http://www.bea.gov/iTable/iTable.cfm?ReqID=62&step=1#> and <http://www.bea.gov/iTable/iTable.cfm?ReqID=62&step=1#reqid=62&step=6&isuri=1&6210=4&6200=237>.

<sup>53</sup> A G-SIB is referred to as a bank whose distress or disorderly failure, because of its size, complexity and systemic interconnectedness, would cause significant disruption to the global financial system and economic activity.

the programme.<sup>54</sup> The Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corp (Freddie Mac) have been under supervision since 2008.

4.50. There were 1,792 "large" commercial banks in the United States as at 31 March 2016, each with consolidated assets of US\$300 million or more. The total consolidated assets of these banks at the same date amounted to US\$14.5 trillion, representing 81% of GDP; of these assets US\$13.1 trillion or 90.2% of the total were domestic assets.<sup>55</sup> At the same date, total banking system assets were US\$15.73 trillion.<sup>56</sup> Also as at 31 March 2016, foreign banks from 55 countries and territories operated 457 institutions in the United States: there were 46 federal branches, 141 State branches, 32 agencies and 127 representative offices of foreign banks, as well as other types of foreign entities, including four Edge corporations.<sup>57</sup> The assets of these institutions reached some US\$2.45 trillion on 31 March 2016, accounting for approximately 15.6% of the total assets of the U.S. commercial banking system.<sup>58</sup>

4.51. The U.S. insurance market is the world's largest, with gross insurance premiums of US\$1.32 trillion in 2015, up 3.6% from the previous year, and representing 29% of the world market, of which US\$552.5 billion were in life and health insurance, and US\$763.8 billion were in property and casualty insurance. The United States is ninth in the world with respect to insurance premiums per capita, with US\$4,096 per head in 2015; it is 15<sup>th</sup> with respect to premiums as a percentage of GDP (7.4% in 2015).<sup>59</sup> As at September 2015, there were 1,031 life and health (L/H) insurance entities, 2,718 property and casualty P/C insurance entities, and 1,060 health insurance entities licensed in the United States.<sup>60</sup>

4.52. The United States has the largest securities markets in the world.<sup>61</sup> The New York Stock Exchange (NYSE) is the world's largest capital market with more than 2,400 companies listed, and an average daily trade volume of US\$123 billion.<sup>62</sup> It had a market capitalization of US\$19.3 trillion as at June 2016.<sup>63</sup> As at 31 May 2016, there were 501 listed non-U.S. issuers from 46 countries.<sup>64</sup> The NASDAQ is the second largest stock exchange in the world with an average daily share volume of 1.1 billion in U.S. equities.<sup>65</sup>

#### 4.2.1.2 Legislative and regulatory framework

4.53. The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (PL 111-203, H.R. 4173) (the Dodd-Frank Act), is the main piece of financial regulatory legislation introduced since the 2008 financial crisis. The Act, which entered into force on 21 July 2010, aims at promoting financial stability, addressing "too big to fail" considerations, protecting taxpayers, and

<sup>54</sup> U.S. Department of Treasury online information. Viewed at: <https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/bank-investment-programs/cap/Pages/payments.aspx>.

<sup>55</sup> Federal Reserve Statistical Release, "Large Commercial Banks", 30 June 2016. Viewed at: <http://www.federalreserve.gov/releases/lbr/current/>.

<sup>56</sup> Federal Reserve online information. Viewed at: <https://www.federalreserve.gov/releases/h8/current/default.htm>.

<sup>57</sup> Federal Reserve online information, "Structure Data for the U.S. Offices of Foreign Banking Organizations", 31 March 2016. Viewed at: <https://www.federalreserve.gov/releases/iba/201603/bycntry.htm>. 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.

<sup>58</sup> Federal Reserve online information. Viewed at: <https://www.federalreserve.gov/econresdata/releases/assetliab/current.htm>.

<sup>59</sup> Swiss Re (2016), *World Insurance in 2015: Steady Growth Amid Regional Disparities*, Sigma No. 3/2016. Viewed at: [http://media.swissre.com/documents/sigma\\_3\\_2016\\_en.pdf](http://media.swissre.com/documents/sigma_3_2016_en.pdf).

<sup>60</sup> Federal Insurance Office (2015), *Annual Report on the Insurance Industry (September 2015)*. Viewed at: [https://www.treasury.gov/initiatives/fio/reports-and-notices/Documents/2015%20FIO%20Annual%20Report\\_Final.pdf](https://www.treasury.gov/initiatives/fio/reports-and-notices/Documents/2015%20FIO%20Annual%20Report_Final.pdf).

<sup>61</sup> In April 2007, the NYSE merged with the European stock exchange Euronext, based in Paris, and formed NYSE Euronext, which at that moment operated as the world's largest exchange group. In 2008, the American Stock Exchange (AMEX) joined the NYSE to be renamed in 2012 NYSE MKT. In 2013, the Intercontinental Exchange (ICE) acquired NYSE Euronext to create the premier financial markets operator.

<sup>62</sup> NYSE online information. Viewed at: <https://www.nyse.com/make-the-move/international-listings>.

<sup>63</sup> NYSE online information. Viewed at: [http://www.nyxdata.com/nyxdata/asp/factbook/viewer\\_edition.asp?mode=tables&key=333&category=5](http://www.nyxdata.com/nyxdata/asp/factbook/viewer_edition.asp?mode=tables&key=333&category=5).

<sup>64</sup> NYSE online information. Viewed at: <https://www.nyse.com/publicdocs/nyse/data/CurListofAllStocks.pdf>.

<sup>65</sup> NASDAQ online information. Viewed at: <http://www.nasdaqtrader.com/trader.aspx?id=marketshare>.

shielding consumers from abusive financial services practices. The Act established a new and comprehensive regulatory framework and extended regulation over new markets, entities, and activities. In total, the Dodd-Frank Act mandated 390 rulemaking requirements by 20 regulatory agencies, a process that is still ongoing. As of July 2016, 274 of these 390 rulemakings had resulted in finalized rules, 36 rules had been proposed, and the remaining 80 of these statutorily mandated rules had yet to be proposed by financial services regulators.

4.54. Section 173 of the Dodd-Frank Act (Access to United States Financial Market by Foreign Institutions) introduced modifications to Sections 7(d)(3) and 7(e)(1) of the International Banking Act of 1978 and to Section 15 of the Securities Exchange Act of 1934 (see below). The Dodd-Frank Act also introduced important changes in the U.S. financial services regulatory structure: it eliminated the Office of Thrift Supervision, and transferred its functions to the Federal Reserve, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC). The Act also established a Financial Stability Oversight Council (FSOC) to: (i) identify risks to the financial stability of the United States that could arise from material financial distress, failure or ongoing activities of large, interconnected bank holding companies or nonbank financial companies; (ii) promote market discipline; and (iii) respond to emerging threats to the stability of the U.S. financial system. The FSOC consists of 10 voting and five non-voting members.<sup>66</sup> As Table 4.9 shows, four federal agencies have prudential authority to examine banks, thrifts, and credit unions, two agencies oversee markets for financial contracts (securities and derivatives), and two agencies either regulate an activity regardless of the institution or provide prudential regulation to non-banks.

**Table 4.9 Federal financial regulators and organizations**

Prudential bank regulators	Securities and derivatives regulators	Other regulators of financial activities	Coordinating forum
Office of the Comptroller of the Currency (OCC)	Securities and Exchange Commission (SEC)	Federal Housing Finance Agency (FHFA)	Financial Stability Oversight Council (FSOC)
Federal Deposit Insurance Corporation (FDIC)	Commodity Futures Trading Commission (CFTC)	Consumer Financial Protection Bureau (CFPB)	Federal Financial Institutions Examinations Council (FFIEC)
National Credit Union Administration (NCUA)			President's Working Group on Capital Markets (PWG)
Federal Reserve Board (FRB, or the Fed)			

Source: CRS document R43087, 30 January 2015. Viewed at: <https://www.fas.org/sgp/crs/misc/R43087.pdf>.

4.55. The Dodd Frank Act also introduced a framework for the orderly resolution of a large, complex, and systemically important financial institution. The largest bank holding companies and designated non-bank financial companies are required to submit resolution plans to the Federal Reserve and the FDIC.

4.56. The FSOC functions as a coordinating forum in charge of facilitating communication and coordination among member agencies. In fact, in its task of monitoring and addressing overall risks to financial stability, the FSOC is authorized to facilitate regulatory coordination among the member agencies regarding domestic financial services policy development, rulemaking, examinations, reporting requirements, and enforcement actions, so as to reduce gaps and weaknesses within the regulatory structure. It is also authorized to: (i) facilitate the sharing of data and information among the member agencies; (ii) designate nonbank financial companies for consolidated supervision; (iii) designate systemic financial market utilities and systemic payment, clearing, or settlement activities, requiring them to meet prescribed risk management standards and heightened oversight by the Federal Reserve, the SEC, or the CFTC; (iv) recommend stricter standards for the largest, most interconnected firms, and make recommendations to the primary financial regulatory agencies for new or heightened regulatory standards; and (v) break up firms that pose a "grave threat" to financial stability.<sup>67</sup>

<sup>66</sup> The voting members are the Secretary of the Treasury, who serves as the Chairperson of the Council; the Chairman of the Board of Governors of the Federal Reserve System; the Comptroller of the Currency; the Director of the Bureau of Consumer Financial Protection; the Chairman of the Securities and Exchange Commission; the Chairperson of the Federal Deposit Insurance Corporation; the Chairperson of the Commodity Futures Trading Commission; the Director of the Federal Housing Finance Agency; the Chairman of the National Credit Union Administration; and an independent member with insurance expertise.

<sup>67</sup> U.S. Department of the Treasury online information. Viewed at: <https://www.treasury.gov/initiatives/fsoc/about/Pages/default.aspx>.



4.57. The Dodd-Frank Act also established the Consumer Financial Protection Bureau (CFPB) (an independent bureau of the Federal Reserve System), mandated to regulate the offering and provision of consumer financial products and services under federal consumer financial protection laws. The CFPB supervises insured depository institutions and credit unions with assets greater than US\$10 billion to ensure compliance with federal consumer financial protection laws and regulations, and may take appropriate enforcement action to address violations (Table 4.10).

**Table 4.10 Federal financial regulators and entities supervised**

<b>Regulatory agency</b>	<b>Institutions regulated</b>	<b>Emergency/systemic risk powers</b>	<b>Other notable authority</b>
Federal Reserve (the Fed)	Bank holding companies and certain subsidiaries, financial holding companies, securities holding companies, savings and loan holding companies, and any firm designated as systemically significant by the FSOC; state banks that are members of the Federal Reserve System, U.S. branches of foreign banks, and foreign branches of U.S. banks; payment, clearing, and settlement systems designated as systemically significant by the FSOC, unless regulated by SEC or CFTC	Lender of last resort to member banks (through discount window lending); in "unusual circumstances", the Fed may extend credit beyond member banks, to provide liquidity to the financial system, but not to aid failing financial firms. The Fed may impose restrictions or requirements on certain firms that pose a grave threat to financial stability (requires concurrence of two thirds of the FSOC)	Numerous market-level regulatory authorities, such as checking services, lending markets, and other banking-related activities
Office of the Comptroller of the Currency (OCC)	National banks, federally chartered savings associations, and federal branches and agencies of foreign banks		
Federal Deposit Insurance Corporation (FDIC)	Federally insured depository institutions, including state banks and thrifts that are not members of the Federal Reserve System	Resolution authority for failed insured depository institutions under the FDI Act and certain non-bank financial companies under Title II of the Dodd-Frank Act	Operates a deposit insurance fund for federally and state chartered banks and thrift
National Credit Union Administration (NCUA)	Federally chartered or insured credit unions	Serves as a liquidity lender to credit unions experiencing liquidity shortfalls through the Central Liquidity Facility	Operates a deposit insurance fund for credit unions, known as the National Credit Union Share Insurance Fund (NCUSIF)
Securities and Exchange Commission (SEC)	Securities exchanges, brokers, and dealers; clearing agencies; mutual funds; investment advisers (including hedge funds with assets over US\$150 million); nationally recognized rating organizations; security-based swap (SBS) dealers, major SBS participants and execution facilities; corporations selling securities to the public must register and make financial disclosures	May unilaterally close markets or suspend trading strategies for limited period	Authorized to set financial accounting standards which all publicly traded firms must use
Commodity Futures Trading Commission (CFTC)	Futures exchanges, brokers, commodity pool operators, and commodity trading advisors; swap dealers, major swap participants, and swap execution facilities	May suspend trading, order liquidation of positions during market emergencies	
Federal Housing Finance Agency (FHFA)	Fannie Mae, Freddie Mac, and the Federal Home Loan Banks	Acting as conservator (since Sept. 2008) for Fannie Mae and Freddie Mac	

Regulatory agency	Institutions regulated	Emergency/systemic risk powers	Other notable authority
Consumer Financial Protection Bureau (CFPB)	Non-bank mortgage-related firms, private student lenders, payday lenders, and larger "consumer financial entities" to be determined by the Bureau; consumer businesses of banks with over US\$10 billion in assets		Writes rules to carry out the federal consumer financial protection laws

Source: Information provided by the authorities.

4.58. The Dodd-Frank Act established the Treasury's Federal Insurance Office (FIO) and vested it with the authority to monitor all aspects of the insurance sector, and to represent the United States on prudential aspects of international insurance matters. In addition, the FIO serves as an advisory member of the FSOC, and advises the Treasury Secretary on important national and international insurance matters.<sup>68</sup> In the case of derivatives reform, the Dodd-Frank Act granted the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) authority to regulate over-the-counter (OTC) derivatives, including the clearing, reporting, and trading of certain products and the entities that buy and sell them. The Act mandated that certain OTC derivatives be traded on regulated exchanges or trading platforms and required that banks that were insured depository institutions spin-off their riskiest derivatives trading operations into affiliates.

4.59. Section 619 of the Dodd-Frank Act, known as the "Volcker Rule", prohibits banking entities from engaging in proprietary trading of any security, derivatives, and certain other financial instruments for a banking entity's own account, subject to certain exceptions to the definition of proprietary trading and permitted activity exemptions.<sup>69</sup> In addition, it prohibits banking entities from acquiring or retaining any equity, partnership, or other ownership interest in or from sponsoring a hedge fund or private equity fund (covered fund), subject to certain exceptions to the definitions of covered fund and certain permitted activity exemptions.<sup>70</sup> The Volcker Rule regulations were approved on 10 December 2013, by four federal agencies (the Board of Governors of the Federal Reserve System, the FDIC, the OCC, and the SEC). Revised final regulations were approved on 1 January 2014. The rules in most cases went into effect on 1 April 2014, with banks' full compliance required by 21 July 2015. The Dodd-Frank Act grants the Federal Reserve authority to extend the Volcker Rule's conformance period for "legacy covered funds" for up to three years, pursuant to three sequential one-year blanket extensions. The Federal Reserve granted the final of these three-year-long extensions on 7 July 2016, which moves the general legacy covered funds conformance deadline to 21 July 2017.

4.60. Regarding international arrangements, the Basel III Accord was agreed upon in September 2010 by global bank regulators, including those of the United States. Among other provisions, it has led large internationally active banks to hold significantly more and higher quality capital, as well as build stronger liquidity reserves. The Fed supported these standards and required large banks to implement new rules by 2019. In September 2014, U.S. banking regulators finalized rules to implement the Liquidity Coverage Ratio in the United States, creating for the first time a standardized minimum liquidity requirement for large, internationally active banking organizations. These institutions will be required to hold minimum amounts of high-quality, liquid assets such as central bank reserves and government and corporate debt that can be converted quickly and easily into cash. The minimum liquidity requirements for systemically

<sup>68</sup> Department of the Treasury online information. Viewed at: <https://www.treasury.gov/about/organizational-structure/offices/Pages/Federal-Insurance.aspx>.

<sup>69</sup> The definition of "banking entities" includes insured depository institutions, bank holding companies, and their subsidiaries or affiliates. It also includes foreign banks that maintain branches or agencies in the United States or that own U.S. banks or commercial lending companies in the United States. The exemptions to the ban on proprietary trading include trading transactions in government securities; and transactions in connection with underwriting or market-making, on behalf of customers by an insurance company solely for the general account of the company. Additionally, certain risk-mitigating hedging is allowed under the Act, as well as proprietary trading occurring solely outside of the United States and conducted by a banking entity not directly or indirectly controlled by a banking entity organized under U.S. federal or state laws.

<sup>70</sup> Despite the general prohibition, a banking entity may make a "*de minimis*" investment in a fund it advises, to provide the fund sufficient initial equity to attract unaffiliated investors. This investment may not exceed 3% of total ownership interest of the fund within one year of the date of its establishment and the aggregate of all of the interests of the banking entity in all such funds may not exceed 3% of its Tier 1 capital.

important, non-bank financial companies designated by the FSOC will be established at a later date.<sup>71</sup>

4.61. In July 2013, the Federal Reserve Board finalized a rule to implement Basel III capital rules in the United States, a package of regulatory reforms designed to help ensure that banks maintain strong capital positions that will enable them to continue lending to creditworthy households and businesses even after unforeseen losses and during severe economic downturns.<sup>72</sup> This final rule increases both the quantity and quality of capital held by U.S. banking organizations. It sets a new minimum ratio of common equity tier 1 capital to risk-weighted assets of 4.5% and a common equity tier 1 capital conservation buffer of 2.5% of risk-weighted assets that will apply to all supervised financial institutions. The rule also raises the minimum ratio of tier 1 capital to risk-weighted assets from 4% to 6% and includes a minimum leverage ratio of 4% for all banking organizations, as well as a ratio of total capital to risk-weighted assets (total capital ratio) of 8%. In September 2016 the Federal Reserve Board issued a final rule, allowing implementation of a counter-cyclical capital buffer, to range from 0% to 2.5% of risk-weighted assets, when authorities determine credit growth is resulting in unacceptable systemic risk. The final rules came out on 16 September 2016, and came into effect on 14 October 2016, to be implemented through 2019.<sup>73</sup> These rules do not apply to branches.

4.62. For large, internationally active banking organizations, the final rule includes a new minimum supplementary leverage ratio that takes into account a broader set of exposures, including off-balance sheet exposures. The final rule contains provisions that emphasize the importance of the quality of common equity tier 1 capital and implements strict eligibility criteria for regulatory capital instruments. The final rule also improves the methodology for calculating risk-weighted assets to enhance risk sensitivity.<sup>74</sup>

4.63. Under Section 113 of the Dodd-Frank Act, the FSOC may determine that a U.S. or a foreign non-bank financial company is a systemically important financial institution (SIFI) that should be subject to supervision by the Board of Governors of the Federal Reserve System and to prudential standards with respect to financial activities if the company's material financial distress or the nature or mix of its activities could pose a threat to the financial stability of the United States. The FSOC reconsiders its designations annually; it issued a final rule and interpretative guidance regarding the application of Section 113 requirements on 3 April 2012.<sup>75</sup> In an effort to increase transparency, the FSOC issued on 4 February 2015 supplemental procedures relating to nonbank financial company determinations.<sup>76</sup> Section 165 of the Act also subjects bank holding companies (U.S. and foreign) with more than US\$50 billion in assets to enhanced supervision and prudential standards. A company will be subject to additional review if it meets both the US\$50 billion size threshold and any one of the other thresholds (US\$30 billion in gross notional credit default swaps outstanding for which a company is the reference entity; US\$3.5 billion of derivative liabilities; US\$20 billion in total debt outstanding; 15 to 1 leverage ratio of total consolidated assets to total equity; and 10% short-term debt ratio of total debt outstanding with a maturity of less than 12 months to total consolidated assets).

<sup>71</sup> Federal Reserve online information. Viewed at:

<http://www.federalreserve.gov/newsevents/press/bcreg/20131024a.htm>.

<sup>72</sup> Board of Governors of the Federal Reserve System online information. Viewed at:

<http://www.federalreserve.gov/bankinfo/basel/default.htm>.

<sup>73</sup> Federal Reserve online information. Viewed at:

<https://www.federalregister.gov/documents/2016/09/16/2016-21970/regulatory-capital-rules-the-federal-reserve-boards-framework-for-implementing-the-us-basel-iii>.

<sup>74</sup> Federal Register Vol. 78, No. 198, 11 October 2013. Viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2013-10-11/pdf/2013-21653.pdf>.

<sup>75</sup> FSOC online information, "Final Rule and Interpretive Guidance on the Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies". Viewed at:

<http://www.treasury.gov/initiatives/fsoc/Documents/Nonbank%20Designations%20-%20Final%20Rule%20and%20Guidance.pdf>. The FSOC must consider six categories in evaluating whether a non-bank financial company should be subject to enhanced supervision: size, interconnectedness, substitutability, leverage, liquidity risk and maturity mismatch, and existing regulatory scrutiny. The first three relate to the potential impact of a company's financial distress on the broader economy; and the others relate to the vulnerability of a company to financial distress.

<sup>76</sup> FSOC online information, "Supplemental Procedures Relating to Nonbank Financial Company Determinations." Viewed at:

<https://www.treasury.gov/initiatives/fsoc/designations/Documents/Supplemental%20Procedures%20Related%20to%20Nonbank%20Financial%20Company%20Determinations%20-%20February%202015.pdf>.

#### 4.2.1.3 Consolidated financial sector regulation

4.64. The main law regulating the consolidated financial sector is the Gramm-Leach-Bliley Act (Financial Services Modernization) of 1999 (GLBA). Under the GLBA, domestic and foreign banks are allowed to affiliate with entities that engage in other activities that are financial in nature or incidental or complementary to a financial activity, provided certain capital and managerial standards are met. A U.S. bank may affiliate with other financial services companies by setting up a bank holding company (BHC) under the Bank Holding Company Act of 1956 (BHCA) unless they have U.S. non-branch assets of US\$50 billion or more.<sup>77</sup> The GLBA amended the BHCA to allow foreign banks to seek an exemption to the BHCA requirement that certain banks set up holding companies. Instead of setting up as a BHC, a foreign banking organization may elect to become a financial holding company, or FHC. Such FHCs may control banking, securities, or insurance firms, and may engage in additional activities that are financial in nature, with some exceptions, subject to prior approval by the Federal Reserve in consultation with the Secretary of the Treasury.<sup>78</sup> The BHCA does not permit BHCs and FHCs to own non-financial corporations other than through FHC-authorized merchant banking activities. Securities and insurance companies can become FHCs by acquiring a bank, provided they meet certain criteria. In July 2016, 511 bank holding companies were being treated as FHCs, including 48 foreign banks.<sup>79</sup>

4.65. The Federal Reserve supervises and regulates large consolidated banking institutions that include BHCs, FHCs, and foreign branches and agencies of foreign banks. The Financial Stability Oversight Council (FSOC) provides comprehensive monitoring of the stability of the U.S. financial system. As it carries out its statutory mission, established by the Dodd-Frank Act, to identify financial stability risks, promote market discipline, and respond to emerging threats, the FSOC and its member agencies continuously monitor potential risks to financial stability in the banking sector. The FSOC may determine that certain financial companies should be subject to supervision by the Federal Reserve and make recommendations concerning prudential standards that should apply to those companies, but the FSOC does not regulate or supervise any market participant. The activities of subsidiaries of FHCs are regulated by the appropriate regulator: the Office of the Comptroller of the Currency (OCC) in the case of national banks; a state banking agency and the Federal Reserve or Federal Deposit Insurance Corporation (FDIC) in the case of state-chartered banks; the Securities and Exchange Commission (SEC) in the case of securities firms; and a state insurance commission in the case of insurance companies.

4.66. During the review period, the Federal Reserve continued to implement a Bank Holding Company Rating System, in place since 1 January 2005 under which each inspected BHC is assigned a composite rating based on an evaluation of the BHC's managerial and financial condition and an assessment of future potential risk to its subsidiary depository institutions. The composite component and subcomponent ratings are assigned to BHCs on the basis of a numeric scale, from 5 (lowest) to 1 (highest).<sup>80</sup> This composite rating is the basis to classify a BHC or FHC as "well managed".

#### 4.2.1.4 Banking services

4.67. Banking sector supervision in the United States is the responsibility of a number of federal and state regulators. The Federal Reserve Board (FRB), the OCC, the FDIC, and the state regulators all play a role in supervising the operations of foreign banks in the United States. The OCC charters, regulates, and supervises all national banks and federally-chartered savings associations and also supervises the federal branches and agencies of foreign banks, as well as the international activities of U.S. national banks. The FDIC insures deposits and is the primary federal regulator for state-chartered institutions that are not members of the Federal Reserve System.

<sup>77</sup> Federal Reserve Press Release, 18 February 2014. Viewed at: <https://www.federalreserve.gov/newsevents/press/bcreg/20140218a.htm>.

<sup>78</sup> The exceptions are insurance underwriting, merchant banking, insurance company portfolio investments, and real estate development and investment. A U.S. bank that meets specified prudential standards may establish financial subsidiaries to engage in certain financial activities. The aggregate assets of all financial subsidiaries must not exceed 45% of the parent bank's assets or US\$50 billion, whichever is less.

<sup>79</sup> Federal Reserve online information. Viewed at: <https://www.federalreserve.gov/bankinfo/fhc.htm> <http://www.federalreserve.gov/generalinfo/fhc/>.

<sup>80</sup> Board of Governors of the Federal Reserve System (2015), *BHC Supervision Manual*, January. Viewed at: <https://www.federalreserve.gov/boarddocs/supmanual/bhc/4000p2.pdf>.

State regulators are organized in the Conference of State Bank Supervisors (CSBS).<sup>81</sup> The banking regulators are members of the FSOC, as are other financial service regulators and representatives.

4.68. The United States maintains a general policy of national treatment towards the U.S. branches, agencies, securities affiliates, and other operations of foreign banks. U.S. bank subsidiaries of foreign banks are treated in the same manner as domestically-owned banks, while branches of foreign banks are granted similar powers (excluding acceptance of retail deposits unless grandfathered) and are subject to supervision similar to domestic banks. Agencies of foreign banks, however, may not accept deposits from U.S. citizens or residents.

4.69. The United States made GATS commitments in market access and national treatment for all subsectors included in the Annex on Financial Services, and in line with the Understanding on Commitments in Financial Services.<sup>82</sup> Although geographic and other limitations are applied to foreign banks and foreign-owned bank subsidiaries generally on a national treatment basis, the U.S. GATS Schedule has reserved against national treatment for some measures. For example, foreign banks cannot be members of the Federal Reserve System, although foreign-owned U.S. bank subsidiaries are not subject to this limitation. Also, foreign ownership of Edge corporations is limited to foreign banks and U.S. subsidiaries of foreign banks, while domestic non-bank firms may own such corporations.

4.70. The United States maintains standard maximum deposit insurance through the Federal Deposit Insurance Corporation (FDIC). The amount in 2016 is US\$250,000 per depositor, per insured bank, for each account ownership category.<sup>83</sup>

4.71. Foreign banks may establish a commercial presence in the U.S. market either by establishing federal or state-licensed branches and agencies, or representative offices, or by establishing or acquiring a national or state subsidiary bank. In order to accept or maintain domestic retail deposits of less than an amount equal to the standard maximum deposit insurance amount (currently US\$250,000), a foreign bank must establish an insured banking subsidiary, except in the case of a foreign bank branch which was already engaged in insured deposit-taking activities before or on 19 December 1991. Branches of foreign banks are generally not required to commit organizational capital at the federal level and in some States that allow branches, although federal branches and agencies are required to establish and maintain a capital equivalency deposit.

4.72. The International Banking Act of 1978 (IBA), governs the operations of foreign banks in the United States. The IBA provides for the granting of national treatment to foreign banks and offers them the option of establishing federally-licensed branches and agencies in addition to state-licensed offices. Section 173 of the Dodd-Frank Act (Access to United States financial market by foreign institutions) introduced modifications to Sections 7(d)(3) and 7(e)(1) of the IBA and to Section 15 of the Securities Exchange Act of 1934 (see below). The amended IBA now explicitly requires the Board of Governors of the Federal Reserve System, when considering an application for establishment of a U.S. office of a foreign bank that presents a risk to the stability of the U.S. financial system, to consider whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such risk. The new amendments also allow the Board to order the termination of the activities of U.S. offices of such foreign banks in the absence of these criteria.

4.73. U.S. law permits interstate branching, whether by merger or by the *de novo* establishment of branches, subject to relevant restrictions. Domestic banks, including those owned by a foreign bank, may enter into an interstate merge subject to certain requirements. Interstate expansion by a foreign bank through the establishment of branches by merger with another foreign bank that has branches located outside the home state of the initial foreign bank is allowed as long as it is permitted under 12 U.S.C. 36(g), which applies to the interstate branching of national banks.<sup>84</sup> All

<sup>81</sup> CSBS online information. Viewed at: <https://www.csbs.org>.

<sup>82</sup> WTO document GATS/EL/90/Suppl.3, 26 February 1998.

<sup>83</sup> FDIC online information. Viewed at: <https://www.fdic.gov/deposit/deposits/>.

<sup>84</sup> Under 12 U.S.C. 36(g), in general, the Comptroller of the Currency may approve an application by a national bank to establish and operate a *de novo* branch in a State (other than the bank's home State) in which the bank does not maintain a branch if the law of the State in which the branch is located, or is to be located, would permit establishment of the branch, if the national bank were a State bank chartered by such State; and if the application by a national bank to establish and operate a *de novo* branch in a host State is



states have introduced legislation to give effect to the branching by merger provisions of the Riegle-Neal Interstate Banking and Branching Act (RNIBBA) of 1994. Also, certain size limitations are applied on a non-discriminatory basis: the merged bank may not control more than 10% of the total deposits of insured depository institutions in the United States, and limits on the total deposits of the merged bank within a state apply as well. The Dodd-Frank Act clarified the remaining limitations in this area.

4.74. Initial entry into the U.S. market through the establishment or acquisition of a nationally chartered bank subsidiary by a foreign person is permitted in all states but there are commercial presence limitations which vary according to the state. Initial entry or expansion by a foreign person (but not a domestic person) through acquisition or establishment of a state-chartered commercial bank subsidiary is prohibited or limited in 22 states. There are some other limitations at the state level: for example, branch licences for foreign banks are not available in four states.<sup>85</sup> Representative offices of foreign banks are not permitted in 12 states, and are subject to limitations in Oklahoma, while some states require the incorporation of representative offices.<sup>86</sup> Some states also place limitations on the acquisition by a foreign person of savings banks or loan associations (Tennessee and Washington).

4.75. Banks are subject to lending limit regulations that restrict the total amount of loans and credits that a bank may extend to a single borrower. For example, a national bank generally must limit its total outstanding loans and credits to any single borrower to no more than 15% of the bank's total capital and surplus. Some state banking regulations also contain similar lending limits applicable to state-chartered banks.

4.76. The GLBA, as amended, provides that "well capitalized" and "well managed" standards comparable to those applied to U.S. bank holding companies and banks, be applied to foreign banks operating a branch or agency in the United States, and any holding companies of those foreign banks. Foreign banks are deemed well managed based on similar assessments of their U.S. operations, along with other criteria. For foreign banks whose home country supervisors have adopted risk-based capital standards consistent with the Basel Accord, the "well capitalized" standard is based on specified capital ratios and whether the foreign bank's capital is comparable to a U.S. bank owned by a FHC. Other foreign banks are assessed under the comparable capital standard. Bank transactions with affiliates are subject to some statutory restrictions.<sup>87</sup>

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

4.78. In June 2016, 33 U.S.-based bank holding companies passed "stress tests" to measure the performance of banks' regulatory capital in a hypothetical highly distressed economic scenario, marked by falling economic output and share prices, along with soaring joblessness and inflation. This is the sixth round of stress tests led by the Federal Reserve since 2009, and the fourth round under rules required by the Dodd-Frank Act. The 33 firms tested represent more than 80% of domestic banking assets.<sup>88</sup>

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subject to the same requirements and conditions to which an application for an interstate merger transaction is subject.

<sup>85</sup> Georgia, Louisiana, Missouri, and Oklahoma.

<sup>86</sup> Representative offices of foreign banks are not permitted in Arizona; Arkansas; Kansas; Montana; North Dakota; Rhode Island; South Carolina; South Dakota; Tennessee; Virginia; Wisconsin; and Wyoming.

<sup>87</sup> The restrictions are contained in sections 23A and 23B of the Federal Reserve Act, and implemented through FRB's Regulation W. Section 23A limits a Federal Reserve System member bank's covered transactions with any single affiliate to no more than 10% of the bank's capital stock and surplus, and transactions with all affiliates combined to no more than 20%. Section 23B requires that certain transactions between a bank and its affiliates occur on market terms.

<sup>88</sup> Board of Governors of the Federal Reserve System (2016), *Dodd-Frank Act Stress Test 2016: Supervisory Stress Test Methodology and Results*. Viewed at: <https://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160623a1.pdf>.



#### 4.2.1.5 Insurance services

4.79. As per the McCarran-Ferguson Act of 1945 (U.S. Code Title 15, Chapter 20), U.S. regulation of the insurance services sector takes place primarily at the state level, as insurance is exempt from Federal antitrust statutes to the extent that it is regulated by the states. The GLB Act confirms the power of the states to regulate insurance activities, and specifies 13 areas of state insurance regulation that may not be pre-empted by federal law. Although it does not have regulatory powers, the Treasury's Federal Insurance Office (FIO) monitors the insurance sector, and represents the United States on prudential aspects of international insurance matters. The insurance sector is also subject to the general oversight of the FSOC.

4.80. Insurance companies, agents, and brokers must be licensed under the law of the state in which the risk they intend to insure is located, and are authorized to offer insurance services only in the state in which they are licensed. In addition, in most states, insurers must obtain approval from state regulators for their premium rates. There are differences in licensing requirements across states and by line of insurance, although the trend in recent years has been to adopt a more uniform approach (see below).

4.81. Establishment conditions vary across states. In general terms, the U.S. direct insurance market is open to foreign direct investment through acquisition of an insurance company licensed in a given state. In most states, market access for foreign companies can also be done by incorporation in a State as a subsidiary of a foreign insurance company; the exceptions are Minnesota, Mississippi, and Tennessee. Foreign companies enter the market as a licensed branch in 37 states and the District of Columbia. If this form of incorporation is chosen, operations in principle are limited to writing premiums based on the capital deposited in each state where the company intends to do business. However, in practice this requirement is often waived, particularly if the applicant has a qualifying deposit in another State.

4.82. Foreign investors in the insurance sector are liable for the full amount of their U.S. assets, and not just for their assets in a particular State. Although insurers must be licensed in a state to conduct insurance business within and across its borders, some residency requirement exceptions exist, which vary from state to state. For instance, several states exempt certain large industrial placements, MAT (marine, aviation, or transport insurance) or "surplus lines" insurance from residency requirements.<sup>89</sup>

4.83. Under certain specific conditions and with some exceptions, foreign reinsurers may write insurance in the United States even when not licensed in a particular State. When they conduct cross-border reinsurance businesses with U.S. companies, foreign reinsurers are required to make a trust account deposit in the United States for the whole of the operation equivalent, or to submit a letter of credit for collateral.

4.84. In-state residency requirements apply in most states to brokers and suppliers of other services auxiliary to insurance.

4.85. A federal tax on gross premium income is charged at a rate of 1% on all life insurance and on reinsurance, and at 4%, on non-life insurance premiums covering U.S. risks paid to companies not incorporated under U.S. law, or under the laws of countries with which the United States has double taxation treaties. A national treatment exception for this measure was listed in the U.S. GATS Schedule.

4.86. As noted above, the trend in recent years has been to reinforce interstate coordination. State regulators coordinate positions through their participation in bodies such as the National Conference of Insurance Legislators (NCOIL) and the National Association of Insurance Commissioners (NAIC). The NCOIL is an organization of state legislators that has as its main area of public policy concern insurance legislation and regulation.<sup>90</sup> All states are NCOIL members. The purpose of the NCOIL is "to help legislators make informed decisions on insurance issues that

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<sup>89</sup> Surplus line insurance policies are those that protect against a financial risk that is too high for regular insurance. They can be purchased from an insurer not licensed in the insured's state, but licensed in the state where it is based. They are also sold through insurance agents, who must have a surplus lines license to sell a surplus lines policy.

<sup>90</sup> NCOIL online information. Viewed at: <http://www.ncoil.org/>.

affect their constituents and to declare opposition to Federal encroachment of state authority to oversee the business of insurance, as authorized under the McCarran-Ferguson Act of 1945". In that sense, the NCOIL is an opponent of Congressional initiatives that may pre-empt state laws.<sup>91</sup> The NCOIL promotes an interface among state legislators and aims at contributing to the improvement the quality of insurance regulation.

4.87. The NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories, and provides a forum for the development of uniform policy when appropriate.<sup>92</sup> Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. The NAIC represents the collective views of state regulators domestically and internationally and its mission is to assist state insurance regulators, individually and collectively, in achieving fundamental insurance regulatory goals. NAIC members form the national system of state-based insurance regulation in the United States.

4.88. The NAIC plays a substantial role in the across-state standardization of regulatory requirements through the development of model laws. To this end, the NAIC adopted the Producer Licensing Model Act (PLMA) in 2000, which serves as the primary vehicle for states to achieve reciprocity, and to take major steps toward reaching uniformity. The PLMA provides for streamlined administrative licensing requirements, reciprocity for surplus lines and limited lines producers, and creates uniform standards for key areas of producer licensing. The PLMA also creates a uniform application process for both resident and non-resident applications and establishes uniform definitions for the six major lines of insurance (life, accident and health, property, casualty, variable life and variable annuity, and personal lines).

4.89. In December 2002, the NAIC adopted the Uniform Resident Licensing Standards to harmonize licensing procedures. Currently, 54 (out of 56) jurisdictions process resident and non-resident licences electronically. Also, the majority of states have changed from using varying applications to using the NAIC Uniform Application for both individuals and business entities and 47 jurisdictions have been certified as reciprocal under the 2002 reciprocity standard. More recently, the NAIC has established an enhanced "NAIC Reciprocity Standard", which has been adopted by 40 jurisdictions.

4.90. The NAIC has also participated in other uniformity initiatives, such as the System for Electronic Rate and Form Filing, (SERFF); all 50 states, the District of Columbia, Puerto Rico and over 3,400 insurance companies, third-party filers, rating organizations and other companies accept SERFF filings.

4.91. To promote harmonization of legislation and procedures across states, in 2002 the NAIC developed a state-based system, the Interstate Insurance Product Regulation Compact, which aims at developing uniform standards and a central clearinghouse to provide prompt review and regulatory approval for life insurance products.<sup>93</sup> The Compact, which has been adopted by 40 states and Puerto Rico to date, employs a set of uniform standards and established in 2006 a multi-state public entity, the Interstate Insurance Product Regulation Commission (IIPRC). The IIPRC provides the states with a vehicle to develop uniform national product standards in life and long-term care insurance products, establish a central point of filing for these insurance products, and review product filings and make regulatory decisions according to uniform standards.

4.92. The NAIC Market Actions Working Group (MAWG) is the national forum to identify and address issues of multistate concern and for states to coordinate multistate regulatory actions, including market conduct examinations. The goal is to improve market oversight through better interstate coordination.

4.93. The GLB Act introduced uniformity or reciprocity requirements for agents and brokers among the states, requiring states to enact uniform laws and regulations or a system of reciprocal licensing by 12 November 2002, failing which a National Association of Registered Agents and Brokers (NARAB) would be created, triggering federal pre-emption of state licensing laws. As a

<sup>91</sup> NCOIL online information. Viewed at: <http://ncoil.org/history-purpose/>.

<sup>92</sup> NAIC online information. Viewed at: [http://www.naic.org/index\\_about.htm](http://www.naic.org/index_about.htm).

<sup>93</sup> An interstate compact is a contract between states that allows them to cooperate on multi-state or national issues while retaining state control. Interstate compacts are mentioned in the U.S. Constitution.

response, all states except New Mexico, plus Guam, passed the Producer Licensing Model Act (PLMA) or other licensing laws. Through NAIC's Uniform Treatment/Licensing Reciprocity project, participating states agree to license non-resident producers that are in good standing in their resident states, without imposing additional restrictions or qualifications not required of resident producers.

4.94. Under the Terrorism Risk Insurance Act of 2002 (TRIA), the U.S. Government pays 85% of the insured losses of an insurer resulting from acts of terrorism, subject to prior payment of a deductible (20% of the prior year's earned premiums in commercial lines). The Government's share of industry losses is capped at an annual aggregate maximum of US\$100 billion. Also, the Government does not share in any losses if industry-wide insured losses do not first exceed US\$100 million. The programme was initially introduced for a three-year period, from 22 November 2002 to 31 December 2005; it was subsequently extended to 31 December 2007 by the Terrorism Insurance Extension Act of 2005, and was extended again until 31 December 2014 by the Terrorism Risk Insurance Program Reauthorization Act of 2007. Companies licensed in a U.S. state may benefit from the provisions of the Act, as well as non-licensed companies that are an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or have been approved for the purpose of offering property and casualty insurance by a federal agency in connection with maritime, energy, or aviation activities. Participating insurers are required to make terrorism insurance available to policyholders. Insurers pay no premiums for TRIA reinsurance; instead, federal payments are later collected through surcharges assessed on all commercial policyholders.

4.95. On 12 January 2015, the Terrorism Risk Insurance Program Reauthorization Act of 2015 (Reauthorization Act) was signed into law (Public Law 114-1). In addition to reauthorizing TRIA until 31 December 2020, the Reauthorization Act included several reforms to the Terrorism Risk Insurance Program. In February 2015, the Federal Insurance Office (FIO) published Interim Guidance Concerning the Terrorism Risk Insurance Program. In April 2015, the FIO created the Advisory Committee on Risk-Sharing Mechanisms, to provide advice and recommendations to the Treasury Department with respect to the creation and development of nongovernmental, private market risk-sharing mechanisms for protection against losses arising from acts of terrorism.

4.96. During the period under review, the U.S. insurance industry continued to report consecutive years of a moderately good financial performance, despite relatively low investment yields that reflect low interest rates. Life insurance sector premiums rebounded in 2014 after a small decline in 2013. Property and casualty (P&C) sector premiums continued to grow in 2014, reaching a record-high level of total volume. All in all, the sector was profitable in 2014, but net income and return on average equity were below 2013 levels. However, taking into account retained earnings, the insurance business capital and surplus reached a record-high level at the end of 2014.<sup>94</sup>

4.97. The life insurance market remains noticeably concentrated in the United States, with the top ten firms accounting for about 54.5% of the US\$590.6 billion total premiums in 2014. The largest provider of life insurance is Metropolitan Life with 16.1% out of the total, followed by Prudential of America Group with 7.6% (Table 4.11). All of these top life insurers, with the exception of Aegon US Holding Group (Netherlands) and Jackson National (United Kingdom), are domestically owned.

**Table 4.11 Top 10 life insurers, 2014**

(US\$ million and %)

Insurer	Direct premiums written
<b>National total (US\$ million)</b>	<b>590,582</b>
	(% of total)
Metropolitan Life Group	16.1
Prudential of America Group	7.6
New York Life Group	4.8
Jackson National Group	4.5
Aegon US Holding Group	4.3
Lincoln National Group	4.1
American International Group	3.9
Principal Financial Group	3.2

<sup>94</sup> Federal Insurance Office (2015), *Annual Report on the Insurance Industry (September 2015)*. Viewed at: [https://www.treasury.gov/initiatives/fio/reports-and-notice/2015%20FIO%20Annual%20Report\\_Final.pdf](https://www.treasury.gov/initiatives/fio/reports-and-notice/2015%20FIO%20Annual%20Report_Final.pdf).

Insurer	Direct premiums written
Manulife Financial Corp.	3.1
Massachusetts Mutual Life Insurance Co	2.9
Total 10	54.5

Source: FIO (2015), *Annual Report on the Insurance Industry (September 2015)*. Viewed at: [https://www.treasury.gov/initiatives/fio/reports-and-notice/2015%20FIO%20Annual%20Report\\_Final.pdf](https://www.treasury.gov/initiatives/fio/reports-and-notice/2015%20FIO%20Annual%20Report_Final.pdf).

4.98. The accident and health insurance group is also quite concentrated: the top ten companies combined account for 71.3% of the US\$166.1 billion total direct premiums. Four companies: UnitedHealth Group Inc. (26.1%), Aetna Inc. (13.9%), Aflac Inc. (8.8%) and Cigna Corp (8.1%), account for 56.9% of premiums.<sup>95</sup> The non-life market is less concentrated, with the 10 largest companies capturing 45.4% of premiums. This is a result of the divestiture of numerous units of American International Group (AIG) – previously the largest firm – in the wake of the financial crisis. To date, major insurers include State Farm, Liberty Mutual, and Allstate (Table 4.12).

**Table 4.12 Top 10 P&C insurers, 2014**

(US\$ million and %)

Insurer	Direct premiums written
<b>National total (US\$ million)</b>	<b>569,059</b>
	(% of total)
State Farm Group	10.3
Liberty Mutual Group	5.2
Allstate Insurance Group	5.1
Berkshire Hathaway Group	4.7
Travelers Companies Inc. Group	4.0
Nationwide Corp Group	3.4
Progressive Group	3.3
American International Group	3.3
Farmers Insurance Group	3.3
USAA Group	2.8
Total 10	45.4

Source: FIO (2015), *Annual Report on the Insurance Industry (September 2015)*. Viewed at: [https://www.treasury.gov/initiatives/fio/reports-and-notice/2015%20FIO%20Annual%20Report\\_Final.pdf](https://www.treasury.gov/initiatives/fio/reports-and-notice/2015%20FIO%20Annual%20Report_Final.pdf).

4.99. In the aftermath of the financial crisis, the Financial Stability Board (FSB) and the International Association of Insurance Supervisors (IAIS) developed a process to assess insurers' systemic risk, and to recommend policy measures designed to prevent failures in the sector. Through this process, the FSB identifies insurers that it believes could become insolvent and fail in a disorderly manner, and have a negative impact on the stability of the global financial system. In July 2013, the FSB identified a list of nine multinational insurance groups it considers to be global systemically important insurers (G-SIIs), including three based in the United States (AIG, Metlife, and Prudential Financial).<sup>96</sup> The G-SII list is updated annually, based on information provided by the IAIS and published by the FSB each November. The FSB and IAIS have developed a framework of policy measures to be applied to G-SIIs, including enhanced supervision, effective resolution, and higher loss absorbency. In 2014, there were no changes to the list and the FSB decided to postpone a decision on the G-SII status of reinsurers, pending further development of the methodology. The FSB published the new G-SII list in November 2015. The list is again composed of a total of nine insurers; not all are the same insurers as in the previous years. The FSB's G-SII list is advisory.

4.100. In the context of a prolonged period of low interest rates, the industry has continued to consolidate, with many firms exiting the market, and a few firms failing. According to a recent assessment by the IMF, in an effort to diversify their sources of yield, some insurers have recently undertaken investments with a higher risk with the goal of higher yield, such as investing more in private equity, hedge funds, longer duration and lower-rated corporate bonds, and real

<sup>95</sup> Federal Insurance Office (2015), *Annual Report on the Insurance Industry (September 2015)*. Viewed at: [https://www.treasury.gov/initiatives/fio/reports-and-notice/2015%20FIO%20Annual%20Report\\_Final.pdf](https://www.treasury.gov/initiatives/fio/reports-and-notice/2015%20FIO%20Annual%20Report_Final.pdf).

<sup>96</sup> NAIC online information, "Global Systemically Important Insurers (G-SIIs)", 15 June 2016. Viewed at: [http://www.naic.org/cipr\\_topics/topic\\_global\\_sys\\_insurers.htm](http://www.naic.org/cipr_topics/topic_global_sys_insurers.htm).

estate-related assets. Large life insurance groups in particular have expanded non-traditional business, provide complex guarantees, and remain exposed to macroeconomic risks.<sup>97</sup>

#### 4.2.1.6 Securities services

4.101. The U.S. securities markets are the largest in the world. They are governed by the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Sarbanes-Oxley Act of 2002, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and the Jumpstart Our Business Startups Act of 2012.<sup>98</sup>

4.102. The Securities Act of 1933 requires that investors receive financial and other significant information concerning securities being offered for public sale and prohibits deceit, misrepresentations and other fraud in the sale of securities. The Act mandates that securities sold in the United States be registered, but there are exemptions from the registration requirement, which include: private offerings to a limited number of persons or institutions; offerings of limited size; intrastate offerings; and securities of municipal, State, and Federal governments. Foreign issuers can opt to use different registration and periodic reporting forms than those used by domestic users.

4.103. The Securities Exchange Act of 1934<sup>99</sup> created the Securities and Exchange Commission (SEC) granting it broad authority over all aspects of the securities industry.<sup>100</sup> This includes the power to register, regulate, and oversee brokerage firms, transfer agents, and clearing agencies as well as securities self-regulatory organizations (SROs). The Act identifies and prohibits certain types of conduct in the markets and provides the SEC with disciplinary powers over regulated entities and persons associated with them. The Act also empowers the SEC to require periodic reporting of information by companies with publicly traded securities. Companies with more than US\$10 million in assets whose securities are held by more than 500 owners must file annual and other periodic reports.<sup>101</sup> The Financial Services Regulatory Relief Act of 2006 amended the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940 by exempting savings associations from the same investment adviser and broker-dealer registration requirements as banks. Further amendments to the Securities Exchange Act of 1934 were introduced by the Dodd-Frank Act (see below).

4.104. The Trust Indenture Act of 1939 applies to debt securities such as bonds, debentures, and notes that are offered for public sale. Such securities may be registered under the Securities Act, but may not be offered for sale to the public unless a formal agreement between the issuer of bonds and the bondholder, known as the trust indenture, conforms to the standards of this Act. The Investment Company Act of 1940 regulates the organization of companies, including mutual funds, that engage primarily in investing, reinvesting, and trading in securities, and whose own securities are offered to the investing public. The Act requires these companies to disclose their financial condition and investment policies to investors when stock is initially sold and, subsequently, on a regular basis, but does not permit the SEC to directly supervise the investment decisions or activities of these companies or judge the merits of their investments.

4.105. The Investment Advisers Act of 1940 regulates investment advisers. With certain exceptions, this Act requires that firms or sole practitioners compensated for advising others about

<sup>97</sup> IMF (2015), *United States: Financial Sector Assessment Program*, Country Report No. 15/170, July. Viewed at: <http://www.imf.org/external/pubs/ft/scr/2015/cr15170.pdf>.

<sup>98</sup> United States Securities and Exchange Commission online information. Viewed at: <https://www.sec.gov/about/laws.shtml>.

<sup>99</sup> The Securities Exchange Act of 1934 was amended by Public Law 94-29, to remove barriers to competition, to foster the development of a national securities market system and a national clearance and settlement system, to make uniform the SEC's authority over self-regulatory organizations, and to provide for the regulation of brokers, dealers and banks trading in municipal securities, among other purposes.

<sup>100</sup> The major securities market participants include: the securities exchanges; securities firms; self-regulatory organizations (SROs) including the Financial Industry Regulatory Authority (FINRA), the Municipal Securities Rulemaking Board (MSRB), clearing agencies that help facilitate trade settlement; transfer agents (parties that maintain records of securities owners); securities information processors; and credit rating agencies. SEC online information. Viewed at: <https://www.sec.gov/about/whatwedo.shtml>.

<sup>101</sup> These reports are available to the public through the SEC's EDGAR database at: <https://www.sec.gov/edgar/searchedgar/webusers.htm>.



securities investments register with the SEC and conform to regulations designed to protect investors. Since the Act was amended in 1996 and 2010, only advisers who have at least US\$100 million of assets under management or advise a registered investment company must register with the SEC. Foreign banks are required to register under the Investment Advisers Act of 1940 to engage in securities advisory and investment management services in the United States, while domestic banks are exempt from registration. The United States took a national treatment reservation in the GATS in this regard.<sup>102</sup> The registration requirement involves record maintenance, inspections, submission of reports and payment of a fee.

4.106. Foreign-owned dealers of U.S. government securities are granted national treatment, under the Primary Dealers Act of 1988, as long as U.S. firms operating in the government debt markets of the foreign country are accorded "the same competitive opportunities" as domestic companies operating in those markets. The United States took an MFN exemption in its GATS Schedule for participation in issues of government-debt securities.<sup>103</sup>

4.107. The Commodity Exchange Act and the Commodity Futures Modernization Act of 2000 grant the Commodity Futures Trading Commission (CFTC), created by the CFTC Act of 1974, regulatory authority over futures trading in the United States. Persons offering or selling foreign exchange-traded futures and option products to persons located in the United States must register with the CFTC or obtain an exemption. CFTC Regulation 30.10 allows the CFTC to provide such exemption if the firm's home-country regulator demonstrates that it provides a comparable system of regulation and enters into an information-sharing agreement with the CFTC. Currently, 17 self-regulatory and regulatory organizations have been granted order exemption under CFTC Regulation 30.10, in 12 trading partners.<sup>104</sup>

4.108. The Sarbanes-Oxley Act of 2002 mandated a number of reforms to increase corporate responsibility, enhance financial disclosures and combat corporate and accounting fraud, and created the Public Company Accounting Oversight Board (PCAOB), to oversee the activities of the auditing profession.

4.109. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 set out to reshape the U.S. regulatory system in a number of areas including consumer protection, trading restrictions, credit ratings, regulation of financial products, corporate governance and disclosure, and transparency.

4.110. Section 173 of the Dodd-Frank Act (Access to United States financial market by foreign institutions) introduced modifications to Section 15 of the Securities Exchange Act of 1934. Under these modifications the SEC now may, when considering an application of a foreign person, or an affiliate of a foreign person to register as a United States broker or dealer, consider whether, for a foreign person, or an affiliate of a foreign person that presents a risk to the stability of the United States financial system, such person's home country has adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such risk. The SEC is also explicitly authorized to rescind the authorization of such foreign brokers or dealers if the home country authority has not taken the steps required.

4.111. Section 403 of the Dodd-Frank Act introduced a new regime for private fund advisers, that eliminated the "private adviser exemption" contained in section 203(b)(3) of the Investment Advisers Act of 1940. The final rules implementing this provision were released by the SEC on 22 June 2011, and advisers subject to the rules were required to register with the SEC by 30 March 2012. Registration entails significant regulatory and compliance obligations. Under the revised Act, exemptions from the Advisers Act registration requirements now apply, among other entities, to: (i) advisers solely to venture capital funds; (ii) advisers solely to private funds with less than US\$150 million in assets under management in the United States; and (iii) certain foreign advisers without a place of business in the United States, having less than 15 clients and

<sup>102</sup> WTO I-TIP services database.

<sup>103</sup> WTO I-TIP services database.

<sup>104</sup> They are: Australia, Brazil, Canada, France, Germany, Japan, the Republic of Korea, Malaysia, Singapore, Spain, Chinese Taipei, and the United Kingdom. CFTC online information. Viewed at: <http://sirt.cftc.gov/sirt/sirt.aspx?Topic=ForeignPart30Exemptions&implicit=true&status=Order+Issued+Grants&CustomColumnDisplay=TTTTTTT>.



investors in the United States in private funds and less than US\$25 million in aggregate assets under management attributable to clients.<sup>105</sup>

4.112. Section 932 of the Dodd-Frank Act amended the Securities Exchange Act of 1934 to require each nationally recognized statistical rating organization (NRSRO) to establish, enforce, and document an effective internal control structure governing policies, procedures, and methodologies for determining credit ratings.

4.113. Title VII of the Dodd-Frank Act established a comprehensive regulatory framework for swaps and security-based swaps. It requires swap dealers and major swap participants to register with the CFTC and security-based swap dealers and major security-based swap participants to register with the SEC. It also requires certain swaps and security-based swaps transactions to be executed on an exchange and cleared through a central counterparty to reduce systemic risk. In addition, companies that use swaps are now subject to new regulatory, business, and operational requirements.

4.114. The Jumpstart Our Business Startups (JOBS) Act of 2012 aims to help businesses raise funds in public capital markets by lessening regulatory requirements. The JOBS Act is designed to facilitate capital formation and help innovative, emerging growth companies access the capital they need to grow and create jobs. The Act also allows for an exemption for up to five years from the Sarbanes-Oxley Act Section 404's requirement to obtain an annual verification report from a registered public accounting firm.<sup>106</sup>

## 4.2.2 Telecommunications

4.115. The telecommunications market in the United States is the largest in the world by revenue (US\$569 billion in 2013, up from US\$526 billion in 2011).<sup>107</sup> The United States ranks 15<sup>th</sup> out of 167 countries in the latest Information and Communications Technology (ICT) Development Index compiled by the International Telecommunications Union (ITU).<sup>108</sup> In 2013, the United States invested US\$34 billion in mobile infrastructure.<sup>109</sup> By end-2015, the United States had a trade surplus in telecommunications, computer, and information services estimated at around US\$9 billion.<sup>110</sup>

4.116. During 2011 to 2015, mobile phone subscriptions continued to increase, reaching 382 million and a penetration rate of 117.6% in 2015. However, fixed-line subscribers continued to decrease, from 45.5 subscriptions per 100 inhabitants in 2011 to 37.5 subscriptions per 100 inhabitants in 2015. The use of Internet is also on the rise: fixed-broadband subscriptions per 100 inhabitants increased from 28 in 2011 to 31.5 in 2015, and wireless-broadband subscriptions per 100 inhabitants have exceeded 100 since 2014. Overall, 74.6% of individuals had Internet access in 2015 (Table 4.13).

**Table 4.13 Selected telecommunications indicators, 2011-15**

	2011	2012	2013	2014	2015
Fixed telephone subscriptions (million)	143	139	133	128	122
Fixed telephone subscriptions per 100 inhabitants	45.5	43.7	41.6	39.8	37.5
Mobile-cellular telephone subscriptions (million)	297	305	311	356	382
Mobile-cellular telephone per 100 inhabitants	94.4	96.0	97.1	110.2	117.6
Internet users (%)	69.7	74.7	71.4	73.0	74.6
Fixed-broadband subscriptions (million)	88	93	96	98	103
Fixed-broadband subscriptions per 100 inhabitants	28.0	29.1	30.0	30.3	31.5

<sup>105</sup> SEC online information. Viewed at: <http://www.sec.gov/about/laws/ica40.pdf>.

<sup>106</sup> NYSE online information. Viewed at: [https://www.nyse.com/publicdocs/nyse/listing/Keynote\\_speech\\_axis\\_2016.pdf](https://www.nyse.com/publicdocs/nyse/listing/Keynote_speech_axis_2016.pdf).

<sup>107</sup> OECD (2015), *Digital Economy Outlook 2015*. Viewed at: <http://www.oecd.org/sti/oecd-digital-economy-outlook-2015-9789264232440-en.htm>.

<sup>108</sup> The ICT Development Index comprises 11 indicators covering ICT access, use, and skills. ITU online information. Viewed at: <http://www.itu.int/net4/ITU-D/idi/2015/>.

<sup>109</sup> OECD (2015), *Digital Economy Outlook 2015*. Viewed at: <http://www.oecd.org/sti/oecd-digital-economy-outlook-2015-9789264232440-en.htm>.

<sup>110</sup> BEA online information, "U.S. International Transactions Accounts Data, Table 1.2, U.S. International Transactions, Expanded Detail". Viewed at: <http://www.bea.gov/iTable/iTable.cfm?reqid=62&step=1#reqid=62&step=6&isuri=1&6210=1&6200=2>.

	2011	2012	2013	2014	2015
Wireless broadband total subscriptions (million)	242.2	270.9	298.1	334.2	..
Wireless broadband total subscriptions per 100 inhabitants	77.6	86.1	94.1	104.7	..

.. Not available.

Source: ITU online information. Viewed at: [www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx](http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx); and OECD Telecommunications and Internet Statistics. Viewed at: [http://www.oecd-ilibrary.org/science-and-technology/data/oecd-telecommunications-and-internet-statistics\\_tel\\_int-data-en](http://www.oecd-ilibrary.org/science-and-technology/data/oecd-telecommunications-and-internet-statistics_tel_int-data-en).

4.117. The legal and institutional framework of the telecommunications sector has not changed since the last Review of the United States. The Communications Act of 1934, as amended by the Telecommunications Act of 1996, is the main law governing the sector. Interstate telecommunications providers, wireless companies, interconnected VoIP providers, internet service providers (ISPs)<sup>111</sup>, radio and TV broadcasters, cable providers, and satellite companies are all primarily regulated by the Federal Communications Commission (FCC).<sup>112</sup> The National Telecommunications and Information Administration (NTIA) under the Department of Commerce is the principal advisor to the President on telecommunications and information policy issues. The International Communication and Information Policy (CIP) Office under the Department of State, as well as the United States Trade Representative (USTR), play an active role in developing and coordinating trade policy relating to telecommunications in international fora including in the negotiation of bilateral and multilateral agreements.

4.118. Wireline providers, as well as submarine cable landing licensees, are not generally subject to any foreign ownership restrictions beyond the FCC's general obligations and qualifications for ownership for such providers. The provision of broadband internet access service is not subject to any foreign ownership restrictions. There are, however, restrictions for some other services: foreign ownership without prior FCC approval is limited, under Section 310 of the Communications Act of 1934<sup>113</sup>, to 20% direct investment and 25% indirect investment for common carrier wireless licensees.<sup>114</sup> Under the Communications Act of 1934, the FCC must conduct a public interest analysis when evaluating applications to receive authorization to exceed the 25% foreign-ownership benchmark.<sup>115</sup> Since the inception of the WTO, no foreign applicant has ever been denied a common carrier wireless licence under the FCC's public interest analysis. During the review period, the policy stance in this respect has been modified. In 2013, the FCC revisited its prior *de facto* policy against streamlined treatment of applications involving more than 25% foreign ownership, and indicated that it may grant approval for foreign ownership greater than 25% in a streamlined manner, depending on the circumstances.<sup>116</sup>

4.119. The FCC maintains several regulatory safeguards to deter conduct by a foreign carrier that could result in harm to competition in the U.S. telecommunications market. These safeguards include the "no special concessions" rule, the benchmark settlement rates policy, and dominant

<sup>111</sup> Internet service providers may be telephone companies, cable companies, or other types of providers.

<sup>112</sup> Traditional intrastate wireline telecommunications providers are primarily regulated by a public utility commission (PUC) in each State, and some PUCs also lightly regulate wireless companies and/or interconnected Voice over Internet Protocol (VoIP) providers. Cable operators are licensed and regulated by cable franchising authorities at the local or state level.

<sup>113</sup> Under Section 310 of the Communications Act of 1934, common carrier radio licenses cannot be granted to or held by non-U.S. citizens, corporations not organized under the laws of the United States, or foreign governments. Nor can licenses be granted to U.S. corporations of which more than 20% of the capital stock is owned of record or voted by any of these entities. However, licenses may be granted to companies set up in the United States that are controlled by holding companies set up in the United States and in which foreign individuals, corporations, or Governments own of record or vote more than 25% of the capital stock, unless the FCC finds that such ownership is inconsistent with the public interest.

<sup>114</sup> Non-common carrier wireless licensees, including most satellite licensees, are not subject to foreign ownership restrictions.

<sup>115</sup> The public interest analysis conducted to review an application by a supplier from a WTO Member relies on an "open entry" standard, whereby the FCC starts from a presumption (subject to rebuttal) that foreign entry does not threaten competition in the U.S. telecommunications market. It also involves a consideration of policy concerns raised by federal government agencies in relation to national security, law enforcement, foreign policy, or trade policy issues. This FCC public interest analysis is not a CFIUS review that is focused on national security concerns (section 2.4).

<sup>116</sup> FCC Second Report and Order (In the Matter of Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as amended), FCC13-50. Viewed at: [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-13-50A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-13-50A1.pdf).

carrier requirements. The no special concessions rule prohibits U.S. international carriers from agreeing to enter into exclusive arrangements with foreign carriers that have sufficient market power to affect competition adversely in the U.S. market. The Foreign Participation Order adopted a presumption that carriers with less than 50% market share in the foreign market lack such market power.

4.120. On 26 February 2015, the FCC adopted a new Open Internet Order (commonly referred as the "FCC net neutrality decision") which became effective on 12 June 2015.<sup>117</sup> Under the Open Internet Order, the FCC reclassified fixed and mobile broadband internet access service as a telecommunications service under Title II of the Communication Act.<sup>118</sup> As a result, providers of broadband internet access service are now subject to some of the same rules that apply to common carriers, including a prohibition on unjust or unreasonable practices or unreasonable discrimination.<sup>119</sup> The new rules apply to both fixed and mobile broadband service, with an aim to ensure that consumers and businesses have access to a fast, fair, and open Internet. The FCC has noted that this approach recognizes advances in technology and the growing significance of mobile broadband Internet access in recent years and that, therefore, these rules will protect consumers without regard to the means of their access to the Internet, i.e. through a desktop computer or a mobile device.<sup>120</sup>

4.121. The new Open Internet Order imposes three "bright-line" rules that prohibit blocking, throttling, and paid prioritization.<sup>121</sup> Specifically, the new rules provide:

- **No Blocking:** a service provider "shall not block lawful content, applications, services, or non-harmful devices", subject to reasonable network management.<sup>122</sup>
- **No Throttling:** a service provider "shall not impair or degrade lawful Internet traffic on the basis of Internet content, application, or service, or use of a non-harmful device", subject to reasonable network management.
- **No Paid Prioritization:** a service provider "shall not engage in paid prioritization. Paid prioritization refers to the management of a broadband provider's network to directly or indirectly favour some traffic over other traffic, including through the use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either (a) in exchange for consideration (monetary or otherwise) from a third party, or (b) to benefit an affiliated entity."<sup>123</sup>

4.122. In addition, the new Open Internet Order establishes a "no unreasonable interference/disadvantage" standard for conduct falling outside the three bright-line rules. Under this standard, a broadband internet access service provider "shall not unreasonably interfere with or unreasonably disadvantage end users' ability to select, access, and use broadband Internet access service or the lawful Internet content, applications, services, or devices of their choice, or edge providers' ability to make lawful content, applications, services, or devices available to end users. Reasonable network management shall not be considered a violation of this rule. The

<sup>117</sup> FCC Open Internet Order (2015). Viewed at: [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-15-24A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-24A1.pdf). See also FCC news release, "FCC adopts strong, sustainable rules to protect open internet". Viewed at: [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-332260A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-332260A1.pdf).

<sup>118</sup> FCC Open Internet Order (2015), paras. 41-50.

<sup>119</sup> FCC Open Internet Order (2015), paras. 283-284. See also FCC news release. Viewed at: [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-332260A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-332260A1.pdf).

<sup>120</sup> FCC online information, "Open Internet". Viewed at: <https://www.fcc.gov/general/open-internet>. See also FCC News Release. Viewed at: [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-332260A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-332260A1.pdf).

<sup>121</sup> FCC Open Internet Order (2015), paras. 15, 16, and 18.

<sup>122</sup> A network management practice is a practice that has a primarily technical network management justification, but does not include other business practices. A network management practice is reasonable if it is primarily used for and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service. See the FCC Open Internet Order para. 32.

<sup>123</sup> Unlike the no-blocking and no-throttling rules, there is no "reasonable network management" exception to the paid prioritization rule because paid prioritization is inherently a business practice rather than a management practice. See FCC Open Internet Order, para. 18, footnote 18.

general conduct standard will allow the FCC to address practices not covered by the three bright-line rules on a case by case basis.<sup>124</sup>

4.123. In general, common carriers have a duty to interconnect with each other, either directly or through other carriers' facilities.<sup>125</sup> Interconnection agreements may be regulated at both the state and Federal levels.<sup>126</sup> As part of the Order, the FCC did not apply specific open Internet regulations to broadband providers' interconnection activities.<sup>127</sup> However, the FCC does have the authority to address interconnection issues on a case-by-case basis where such conduct is not just and reasonable or is unreasonably discriminatory.<sup>128</sup>

4.124. The new Open Internet Order does not apply to enterprise services, virtual private network services, hosting, or data storage services.<sup>129</sup>

4.125. As elaborated in the previous Reviews, the United States has made commitments on basic telecommunications under the GATS and made an MFN exemption to allow for "differential treatment of countries due to application of reciprocity measures or through international agreements guaranteeing market access or national treatment" for direct-to-home (DTH) service, direct broadcast satellite (DBS) television services, and digital audio services (DARS).<sup>130</sup>

4.126. The United States has also made both regulatory and market access commitments on telecommunications in its free trade agreements (FTAs). In the telecommunications chapters of its FTAs, rules were agreed with regard to access to telecommunication networks, the provision of enhanced or value-added services, and the adoption of telecommunications standards. In the recently concluded Trans-Pacific Partnership (TPP) negotiations, a new section on international mobile roaming was included. This is to facilitate the use of alternatives to roaming by prohibiting operators from blocking voice over Internet protocol (VoIP) services, or disabling Wi-Fi service, and to ensure that any bilateral arrangements to lower roaming rates are opened up to suppliers from other TPP countries.<sup>131</sup> In the TPP text, as in other FTAs, disputes can be brought to telecommunications regulators not only by operators, but also any enterprises using telecommunications services.<sup>132</sup>

## 4.2.3 Transport

4.127. The general framework for the transport sector in the United States remained largely unchanged during the period under review. The Department of Transportation (DOT) is the major regulator for this sector, whereas the Department of Homeland Security has jurisdiction in the sector concerning security issues.

4.128. The United States maintains a number of preferences accorded to its domestic carriers in maritime transport and aviation transport. There are some assistance funds provided for the transport sector that are also linked to industrial policies in other, related, areas (e.g. ship building).

### 4.2.3.1 Air transport and airports

#### 4.2.3.1.1 Air transport

4.129. The legal and institutional framework for air transport remained largely unchanged during the period under review. The Office of the Assistant Secretary for Aviation and International Affairs

<sup>124</sup> The FCC News Release, "FCC adopts strong, sustainable rules to protect open internet". Viewed at: [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-332260A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-332260A1.pdf).

<sup>125</sup> 47 U.S.C. 251. Viewed at: <https://www.law.cornell.edu/uscode/text/47/251>. See also the definition of "telecommunications carrier" and "telecommunications service" in 47 U.S.C. 153 for the requirement that the service must be offered to the public. Viewed at: <https://www.law.cornell.edu/uscode/text/47/153>.

<sup>126</sup> 47 U.S.C. 252. Viewed at: <https://www.law.cornell.edu/uscode/text/47/252>.

<sup>127</sup> FCC Open Internet Order (2015), para. 513.

<sup>128</sup> FCC Open Internet Order (2015), para. 513.

<sup>129</sup> FCC Open Internet Order (2015), para. 26.

<sup>130</sup> WTO document WT/TPR/S/307/Rev.1, 13 March 2015.

<sup>131</sup> Article 13.6 of the TPP Agreement.

<sup>132</sup> Article 13.21 of the TPP Agreement.

under the DOT is responsible for policy formulation with regard to air transport. The Federal Aviation Administration (FAA), under the DOT, has the authority over safety issues, and is responsible for regulating U.S. commercial space aviation, and for monitoring U.S. and foreign air carriers operating in U.S. territory. The Air Traffic Organization (ATO) under the FAA provides air navigation services in the airspace of the United States and large portions of the Atlantic and Pacific Oceans and the Gulf of Mexico.<sup>133</sup> The Transportation Security Administration under the Department of Homeland Security is responsible for air transport security in the United States, including regulating and monitoring the implementation of security standards at U.S. airports and of U.S. aircraft operators and foreign air carriers' operations to, from, and within the United States.

4.130. The airline industry consolidation, begun in 2001, continued during the period under review. On 17 October 2015, US Airways merged with American Airlines (the name American Airlines was kept after the merger) and became the world's largest carrier, in terms of revenue, passengers flown, and fleet size. After a decade of mergers in the industry, four large carriers, namely American Airlines, Delta Air Lines, Southwest Airlines, and United Airlines, have emerged and operate 82% of the scheduled seat capacity in the domestic market in 2016. Scheduled passenger airlines reported an after-tax net profit of US\$3.1 billion in the first quarter of 2016, down from US\$7.7 billion in the fourth quarter of 2015 and virtually unchanged from US\$3.1 billion in the first quarter of 2015.<sup>134</sup>

4.131. Air freight is mostly used for perishable and/or high value goods. In 2013, total freight transported by air stood at US\$1.17 trillion in value terms, of which international trade via air freight accounted for 89% (at US\$1.03 trillion). The authorities estimate that the total value of air freight will reach US\$5.04 trillion in 2040.<sup>135</sup> FedEx and UPS are the world's two largest air cargo carriers.

4.132. Cabotage restrictions in the United States remain in place, i.e. domestic air services can be provided only by U.S. carriers, which are still required to be controlled by U.S. citizens. Non-U.S. citizens may not hold more than 25% of the voting interest of any airline providing domestic services. In addition, the airline's president and at least two thirds of the Board of Directors and other managing officers must be U.S. citizens. The DOT may, on a case-by-case, allow total foreign equity investment (voting and non-voting) above the 25% threshold provided that actual control remains in the hands of U.S. citizens and an open skies agreement exists between the United States and the country of origin of the foreign investor. In fact, the DOT has allowed foreign citizens to own up to 49% of an airline's stock by using non-voting shares above 25%. Crews engaged in domestic air passenger and freight service must be U.S. nationals or U.S. residents.

4.133. Anyone wishing to provide air transport services as a U.S. air carrier must obtain two separate authorizations from the DOT: an "economic" authority from the Office of the Secretary of Transportation, and a "safety" authority from the FAA. The DOT has statutory authority to preserve competition. The DOT considers competition issues as one of many factors when allocating limited air services rights. In addition, any authority granted by the Secretary of Transportation is conditional on the operator satisfying international safety and security requirements.

4.134. Under the Fly America Act (49 U.S.C. 40118), any government-financed transportation, of passengers or cargo, must be provided by U.S. air carriers (or a U.S. carrier code-share on a foreign airline). In FY2015, the Federal Government awarded an estimated US\$520 million of business to U.S. airlines under the Fly America Act. Nonetheless, this restriction may be waived where the United States has entered into bilateral or multilateral agreements that allow the provision of such services by foreign air carriers. Currently, five bilateral agreements (outside code-shares), those with Australia, the European Union, Japan, the Kingdom of Saudi Arabia

<sup>133</sup> Federal Aviation Administration (FAA) online information, "Air Traffic Organization". Viewed at: [http://www.faa.gov/about/office\\_org/headquarters\\_offices/ato/](http://www.faa.gov/about/office_org/headquarters_offices/ato/).

<sup>134</sup> Bureau of Transportation Statistics online information, "Airline Financial Data". Viewed at: [http://www.rita.dot.gov/bts/sites/rita.dot.gov/bts/files/subject\\_areas/airline\\_information/index.html](http://www.rita.dot.gov/bts/sites/rita.dot.gov/bts/files/subject_areas/airline_information/index.html).

<sup>135</sup> Bureau of Transportation Statistics (2015), *Freight Facts and Figures 2015*. Viewed at: [http://www.rita.dot.gov/bts/sites/rita.dot.gov/bts/files/FF%26F\\_complete.pdf](http://www.rita.dot.gov/bts/sites/rita.dot.gov/bts/files/FF%26F_complete.pdf).



(cargo only) and Switzerland, allow federally funded transportation services for travel and cargo movements to use foreign carriers under certain circumstances.<sup>136</sup>

4.135. The DOT also manages programmes that provide subsidies for services to certain small communities, including the Essential Air Service (EAS) Program and the Small Community Air Service Development Program (SCASDP). EAS is a programme to guarantee at least a minimum level of scheduled air services to small communities that generally were served by certificated air carriers before deregulation in 1978. This is generally accomplished by subsidizing two round-trips a day with 30- to 50-seat aircraft, or additional frequencies with aircraft with 9 or fewer seats, usually to a large or medium-hub airport outside of Alaska, and varying service levels from one per month to daily service within Alaska. The subsidy is provided directly to air carriers; EAS serves a limited universe of eligible communities, in particular those that were receiving subsidized EAS between 30 September 2010 and 30 September 2011. Communities are subject to various eligibility criteria, including subsidy caps and other requirements.<sup>137</sup> An Alternative Essential Air Service Program also exists to give more flexibility to communities to craft their own air service.<sup>138</sup> SCASDP has a broader eligibility scope than EAS and provides a grant applicant the opportunity to self-identify its air service deficiencies and propose an appropriate solution. No limits are set on the amount of individual awards. In Fiscal Year 2016, SCASDP offered a total of US\$5.15 million in grants to nine local communities.

#### 4.2.3.1.2 Airports

4.136. Most U.S. public-use airports with commercial services are publicly owned, either by states or local governments, or local authorities.<sup>139</sup> There are no legal or regulatory barriers to prevent airports from being privately owned. However, general legal complexities at the federal, state, and local levels, plus restrictions on the use of revenues have meant that there has been little incentive for private sector ownership of airports.<sup>140</sup> The United States offers grants for the planning and development of public-use airports included in the National Plan of Integrated Airport Systems (NPIAS)<sup>141</sup> through the Airport Improvement Program (AIP).<sup>142</sup> Improvement projects relate to runways, taxiways, ramps, lighting, signage, weather stations, land acquisition, and some areas of planning. The share of costs covered by grants from the AIP is dependent on the type of work and the size of the airport: it can be up to 93.75% of eligible costs<sup>143</sup> for small primary and general aviation airports. In FY2016, a total of US\$3.35 billion was authorized for the AIP in the Federal Aviation Administration Reauthorization Act of 2016.<sup>144</sup>

<sup>136</sup> The rights to foreign airlines concerning U.S. Government procured transportation under the "Open Skies Agreements" do not apply to transportation obtained or funded by the Secretary of Defense or the Secretary of a military department, i.e. they do not apply to Department of Defense (DoD) Uniformed Services, or DoD civilian employees unless their travel is funded by a non-DoD agency. For details, see State Department online information, "Open Skies Agreement", viewed at: <http://www.state.gov/e/eb/tra/ata/index.htm>.

<sup>137</sup> Subsidy caps include a cap of US\$200 per passenger for points located within 210 miles of the nearest large or medium hub outside of Alaska and Hawaii, or US\$1,000 per passenger regardless of distance to the nearest small or medium hub. There is a requirement that a community enplane a minimum of 10 passengers per day for those points within 175 miles of the nearest large or medium hub. Communities within 40 miles of the nearest small hub must negotiate a cost share with the DOT.

<sup>138</sup> U.S. Department of Transportation online information, "Alternate Essential Air Service". Viewed at: <https://cms.dot.gov/office-policy/aviation-policy/alternate-essential-air-service>.

<sup>139</sup> Tang R.Y. (2016), *Airport Privatization: Issues and Options for Congress*, Congressional Research Services Report. Viewed at: <https://www.fas.org/sqp/crs/misc/R43545.pdf>.

<sup>140</sup> For example, a federally-funded airport may not use proceeds from sales of the airport for non-airport purposes, i.e. the airport revenue must be used for the capital and operating costs of the airport.

<sup>141</sup> There are nearly 3,400 airports covered in the National Plan of Integrated Airport System (NPIAS). Viewed at: [http://www.faa.gov/airports/planning\\_capacity/npias/](http://www.faa.gov/airports/planning_capacity/npias/).

<sup>142</sup> The Airport Improvement Program (AIP) was established by the Airport and Airway Improvement Act of 1982 (49 U.S.C. 471). The AIP is funded through taxes on passenger ticket sales and on aviation fuel.

<sup>143</sup> In extremely limited cases, 95% of eligible cost may be covered by the AIP.

<sup>144</sup> U.S. Senate Committee on Commerce, Science, and Transportation (2016), *Federal Aviation Reauthorization Section-by-Section Analysis*. Viewed at: [http://www.commerce.senate.gov/public/\\_cache/files/ae9d5486-e1fa-4456-97f4-c993b7997742/EC864F25A5CC519BA632299E860F6D29.faa-section-by-section-handout.pdf](http://www.commerce.senate.gov/public/_cache/files/ae9d5486-e1fa-4456-97f4-c993b7997742/EC864F25A5CC519BA632299E860F6D29.faa-section-by-section-handout.pdf).



4.137. Some Buy American provisions apply to airport infrastructure projects when they are financed under the AIP.<sup>145</sup> The Buy American Preferences under 49 U.S.C. §50101 require that all steel and manufactured goods used in AIP-funded projects be produced in the United States. However, under 49 U.S.C. 50101, the FAA may grant a discretionary waiver when 60% domestic content is reached.<sup>146</sup>

4.138. Congress established the Airport Privatization Pilot Program (APPP) in 1997 through the Federal Aviation Reauthorization Act of 1996 (49 U.S.C. 47134, PL 104-264), with the aim of increasing private participation, especially private capital investment, in airport operations and development. The APPP permits airport sponsors to be exempted from certain federal requirements such as repayment of federal grants, return of property acquired with federal assistance, and the use of proceeds from the sale or lease of airport to be used exclusively for airport purposes. The number of airports participating in the APPP increased from five to ten in 2012 through the FAA Modernization and Reform Act of 2012 (PL 112-95); only one large hub commercial airport may participate in the programme and that airport may only be leased but not sold; one of the participating airports must be a general aviation airport.<sup>147</sup> The APPP has had very limited success in increasing the number of privately-run airports.<sup>148</sup> As of July 2016, among the ten participating airports, only two had been privatized, namely the Luis Muñoz Marín International Airport (San Juan, Puerto Rico) and the Stewart International Airport (Newburgh, NY).<sup>149</sup> As of end-August 2016, FAA approval for Hendry County Airglades Airport (Clewiston, FL) was pending, due to Hendry County and the private operator not having completed the environment assessment needed for Hendry County's submission of its final application for the APPP.<sup>150</sup>

4.139. The operation and the management of airports may be fully carried out by the airport's owners or partly or wholly by a third party through outsourcing and management contracts. Operations that are frequently outsourced are cleaning and janitorial services, airport landscaping, shuttle bus operations, and terminal concessions. Some airports contract out specific facilities or responsibilities such as parking and terminal operation, airfield signage, and aircraft refuelling. In a few cases, a private management company has been contracted to manage an entire airport for a specific term. With respect to security services, its providers are subject to regulations by the Transportation Security Administration under the Department of Homeland Security.

4.140. The United States has GATS commitments with respect to aircraft repairs and maintenance, and has scheduled MFN exemptions with regard to the sale and marketing of air transport services and the operation and regulation of computer reservation system (CRS) services.

4.141. The United States maintains bilateral air service agreements with most countries in the world.<sup>151</sup> With nearly 120 countries, the United States has negotiated liberal commitments under "open skies" agreements (OSAs) as defined by the DOT<sup>152</sup>; these "open skies" agreements cover, among other issues, market access, pricing, and commercial opportunities including code-sharing, self-handling, user charges, fair competition, and intermodal rights.

4.142. The United States is a contracting party to the WTO Plurilateral Agreement on Civil Aircraft. Thus, national treatment is granted to acquisition of civil aircraft and related articles originating from other parties to the Agreement.

<sup>145</sup> Department of Transportation online information, "Buy America". Viewed at: <https://www.transportation.gov/highlights/buyamerica>. See also FAA online information, "AIP Buy American Preference Requirements", viewed at: [http://www.faa.gov/airports/aip/buy\\_american/](http://www.faa.gov/airports/aip/buy_american/).

<sup>146</sup> When procuring a facility or equipment, the cost of components and subcomponents produced in the United States must be more than 60% of the cost of all components, and final assembly must be in the United States.

<sup>147</sup> Only general aviation airports can be sold under the Airport Privatization Pilot Program (APPP).

<sup>148</sup> Tang R.Y. (2016), *Airport Privatization: Issues and Options for Congress*, Congressional Research Services Report. Viewed at: <https://www.fas.org/sqp/crs/misc/R43545.pdf>.

<sup>149</sup> Stewart International Airport was the first privatized commercial airport under the APPP in 2000 by National Express Group, but in 2007 the Port Authority of New York and New Jersey purchased the lease, thus it was reverted back to public operation.

<sup>150</sup> Federal Aviation Administration online information, "Airport Privatization Pilot Program". Viewed at: [http://www.faa.gov/airports/airport\\_compliance/privatization/](http://www.faa.gov/airports/airport_compliance/privatization/).

<sup>151</sup> U.S. Department of State online information, "Air Transport Agreements". Viewed at: <http://www.state.gov/e/eb/rls/othr/ata/index.htm>.

<sup>152</sup> An "open skies" agreement is defined by DOT Order 92-8-13.

#### 4.2.3.2 Maritime transport, port services, and shipbuilding

##### 4.2.3.2.1 Maritime transport

4.143. Waterborne trade in the United States amounted to 1.94 billion short tons (1.75 billion metric tonnes) in 2015. International waterborne trade totalled 1.37 billion short tons, while domestic waterborne trade totalled 565 million short tons.<sup>153</sup> The size of the U.S.-flag privately-owned fleet has continued to decline over the years: as of early August 2016, there were a total of 171 privately-owned vessels with a 7.9 million deadweight tons, down from 282 vessels with a 12 million deadweight tons in 2000.<sup>154</sup>

4.144. The legal and institutional framework for maritime transport has remained largely unchanged during the period under review. The Maritime Administration (MARAD) under the Department of Transportation is responsible for developing maritime regulations and 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) regulates ocean-borne liner transport, including ocean transportation intermediaries, and oversees the collective activities of shipping lines which are not subject to U.S. anti-trust laws for both U.S. and foreign operators of liner shipping services with fixed-schedules. The U.S. Coast Guard under the Department of Homeland Security is responsible for regulating maritime transport, including vessel safety and security, environmental protection, and licensing mariners.

4.145. Under the laws on documentation of vessels in 46 U.S.C. 121 and the coastwise laws in 46 U.S.C. 551, restrictions on cabotage of goods and passengers remain in place. Under the coastwise laws (such as the Jones Act and the Passenger Vessel Service Act of 1886), cargo and passenger services between two points in the United States, either directly or via a foreign port, are reserved for ships that are registered and built in the United States and owned by a U.S. corporation, and on which 100% of the officers and 75% of the crew are U.S. citizens.<sup>155</sup> As of 2 August 2016, 93 vessels were eligible as Jones Act vessels.<sup>156</sup> The Jones Act does not prevent foreign companies from establishing shipping companies in the United States as long as they meet the requirements with respect to U.S. employees. Foreign-owned U.S. companies may also own and operate ships flying the U.S. flag in international service.

4.146. Requests for waivers of the provisions of the coastwise laws are made to the Commissioner of the U.S. Customs and Border Protection (CBP). With the exception of waivers requested by the Secretary of Defense, 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 Homeland Security only "in the interest of national defense", and consequently, only in "extremely rare" cases. One such waiver was granted in the wake of Hurricane Sandy. Under the Defense Authorization Act of 2013, MARAD is required to publish Jones Act vessel availability determinations not later than 48 hours after the determination is made.

4.147. MARAD is responsible for canvassing domestically flagged shipping to locate suitable vessels carrying preference cargoes in international trade. Additionally, MARAD has sole responsibility for the programme for small passenger vessels waivers; it grants approximately 75 waivers each year.<sup>157</sup> To benefit from the programme, the vessel must be at least three years old, and must carry passengers, but not more than 12 passengers. Activities such as carriage of cargo, commercial fishing, towing, dredging and salvage do not qualify for this programme. The vessel must be owned by a U.S. citizen.

<sup>153</sup> Institute for Water Resources (2016), *Preliminary Waterborne Commerce Statistics For Calendar Year 2015*, 1 September. Viewed at: <http://www.navigationdatacenter.us/wcsc/pdf/Prelim-wcsc2015.pdf>.

<sup>154</sup> United States Maritime Administration (MARAD) online information, "MARAD Open Data Portal". Viewed at: <http://www.marad.dot.gov/resources/data-statistics/>. All the numbers referring to vessels in this section only reflects oceangoing, self-propelled, cargo-carrying vessels of 1,000 gross tons and above.

<sup>155</sup> Under 46 U.S.C. 8103(b)(B) not more than 25% of the total number of unlicensed seamen on the vessel may be aliens lawfully admitted to the United States for permanent residence.

<sup>156</sup> MARAD online information, "MARAD Open Data Portal". Viewed at: <http://www.marad.dot.gov/resources/data-statistics/>.

<sup>157</sup> MARAD online information, "Small Passenger Vessel Waiver Program". Viewed at: <http://www.marad.dot.gov/ships-and-shipping/domestic-shipping/>.

4.148. Preferences accorded to U.S.-flag vessels for transporting agricultural cargoes under certain USDA and USAID foreign assistance programmes were revoked in 2012.<sup>158</sup> Existing legislation continues to provide cargo preferences for domestically flagged vessels<sup>159</sup>:

- 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.-flag 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. Waivers may be granted, subject to reciprocal treatment for U.S.-flag vessels by the recipient country.
- The Cargo Preference Act of 1954 requires that at least 50% of the gross tonnage of all government-generated cargo be transported on privately-owned, domestically-flagged commercial vessels to the extent such vessels are available at fair and reasonable rates. The Act also requires that shipments from or to the Strategic Petroleum Reserve use domestically flagged tankers for at least 50% of oil transport.

4.149. In addition, the Cargo Preference Act of 1904 requires all items procured for or owned by U.S. military departments and defence agencies to be carried exclusively on U.S.-flagged vessels. The United States also administers two maritime transport programmes related to national defense: the Maritime Security Program (MSP) and the Voluntary Intermodal Sealift Agreement (VISA) programme.

4.150. The Maritime Security Program (MSP), created by the Maritime Security Act of 1996, supports the U.S.-flag merchant marine by providing a fixed payment to U.S.-flag vessel operators. The Maritime Security Act of 1996 required that the Secretary of Transportation, in consultation with the Secretary of Defense, establish a fleet of commercially viable, militarily useful, privately-owned vessels to meet national defense and other security requirements. The program was originally established for Fiscal Years (FY) 1996 through 2005. In November 2003, the President signed the National Defense Authorization Act (NDAA) for FY 2004, which contained the Maritime Security Act of 2003 reauthorizing the MSP for FY 2006 through FY 2015 and increasing the size of the Maritime Security Fleet receiving stipend payments to 60 vessels. In January 2013, the President signed the NDAA of 2013 (PL 112-239) extending the current MSP to FY 2016 through FY 2025. Section 3508 of the NDAA authorized the Secretary of Transportation to extend existing MSP operating agreements through 30 September 2025.<sup>160</sup> Section 3504 of the National Defense Authorization Act for Fiscal Year 2016 (PL 114-92) and Division O, Title 1, Section 101(e) of the Consolidated Appropriations Act, 2016 (PL 114-113) revised the annual Maritime Security Program payment schedule for fiscal years 2016 through 2021. The authorized funding for FY2016 is US\$3.5 million per programme vessel; it was US\$3.1 million per fiscal year during FY2012-15. The authorized funding for FY2017 is almost US\$5 million per programme vessel, while the authorized funding for FY2018-2020 is US\$5 million per fiscal year.

4.151. The Voluntary Intermodal Sealift Agreement (VISA) programme, introduced in January 1997 and sponsored by MARAD, provides the Department of Defense (DoD) with assured access to commercial intermodal capacity during time of war or national emergency. Intermodal capacity includes dry cargo ships, equipment, terminal facilities and intermodal management services. The VISA program is authorized under the Maritime Administration's authorities under the Defense Production Act of 1950, and the Maritime Security Act of 2003. It provides for a time-phased activation of commercial intermodal equipment to coincide with DOD requirements while minimizing disruption to U.S. commercial operations.<sup>161</sup> As of 2 August 2016, there were 56 vessels in the VISA programme. MSP participants' vessel capacity makes up 82% of the VISA

<sup>158</sup> The Food Security Act of 1985 requires that 75% of agricultural cargoes under certain USDA and USAID foreign assistance programmes be carried on domestically flagged vessels. This provision was repealed in 2012 under the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), Pub. L. 112-141.

<sup>159</sup> Maritime Administration (MARAD) online information, "Cargo Preference". Viewed at: <http://www.marad.dot.gov/ships-and-shipping/cargo-preference/>.

<sup>160</sup> MARAD online information, "Maritime Security Program". Viewed at: <http://www.marad.dot.gov/search/maritime+security+program/>.

<sup>161</sup> MARAD online information, "VISA Program". Viewed at: <http://www.marad.dot.gov/search/VISA+program/>.

capacity.<sup>162</sup> VISA participants receive priority consideration for award of DoD peacetime ocean freight contracts.

4.152. U.S. and foreign operators of liner shipping services and marine terminal operators in the United States benefit from exemptions to antitrust laws, including the Sherman and Clayton Acts, with respect to their operations in U.S. foreign ocean-borne trade. Under the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act (OSRA) of 1998, agreements among liner operators and marine terminal operators (MTOs) 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.

4.153. The Shipping Act of 1984 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 their rates and contracts are not unreasonably low. Without permission from the FMC, government-controlled carriers may not change rates within 30 days of publication. The FMC also maintains an electronic system containing service contracts between ocean common carriers and shippers, which are required by law to be filed with the FMC. Parties to the service contracts may agree to keep the terms confidential from the public.

4.154. Under the Foreign Shipping Practices Act (FSPA) of 1988 the FMC is required to investigate and take action in response to conditions arising from foreign government measures or business practices in the U.S. foreign shipping trades that adversely affect U.S. carriers but do not apply to foreign carriers in the United States. Section 19 of the Merchant Marine Act of 1920 authorizes the FMC to investigate and take action to address "unfavourable shipping conditions in U.S. foreign commerce and may impose penalties". No action was taken during the period under review.

4.155. The United States did not make any commitment on maritime transport under the GATS. It maintains an MFN exemption under the GATS covering 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.

4.156. The United States has bilateral agreements with Brazil, China, Japan, Korea (Republic of), the Philippines, the Russian Federation, and Viet Nam.<sup>163</sup>

#### **4.2.3.2.2 Port services**

4.157. There are more than 300 ports in the United States. Ports may be operated by a state, a county, a municipality, a private corporation, or a combination. Many ports are complex entities, involving facilities for several modes of transportation: water, rail, road, or even air. Ports are a vitally important part of the nationwide Marine Transportation System, which also includes inland and coastal waterways and intermodal connectors. The top 50 ports account for roughly 85% of total U.S. waterborne cargo tonnage. Vessel calls to U.S. ports represent some 3% of world vessel calls. The volume of traffic into U.S. west coast ports has been increasing over the past decade with the exception of 2015, and those ports have experienced abnormally high congestion. During this same period, cost pressures have increased leading to large containership sizes in an effort to achieve better economies of scale. The arrival of relatively larger ships at both west and east coast ports in the United States has stretched the capacity of some ports.

4.158. U.S. port services are available on a non-discriminatory basis. The United States does not grant preferential treatment with respect to the use of port and harbour facilities. The United States maintains an MFN exemption covering 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. The Immigration and Nationality Act of 1952, as amended, prohibits non-U.S.-national crewmembers from performing longshore work in the United States, but provides a reciprocity exception.

4.159. Commercial vessels arriving in the United States from a foreign port are required to transmit electronically, in advance, information on passengers, crew, and cargo as mandated by

<sup>162</sup> This is based on the number of vessels, not on tonnage.

<sup>163</sup> MARAD online information, "International Agreement". Viewed at: <http://www.marad.dot.gov/about-us/international-activities/international-agreements/>.

Title I of the Maritime Transportation Security Act of 2002 (PL 107-295). The Maritime Transportation Security Act of 2004 amended federal shipping law to grant U.S. district courts jurisdiction to restrain violations of certain port security requirements, and authorized the Secretary of Transportation to refuse or revoke port clearance to any owner, agent, master, officer, or person in charge of a vessel that is liable for a penalty or fine for violation of such requirements.

4.160. The problem of port congestion has been a growing issue over the past few years. To address this concern, MARAD established the Office of Port Infrastructure Development and Congestion Mitigation, to assist with port, terminal, waterway, and transportation network development issues. These have included: coordinating and managing port infrastructure projects for a variety of entities, including state, local, and territorial authorities; coordinating and directing studies, surveys, and investigations of port and inter-modal facilities, including recommending improvements in their operation and new locations and types of facilities and equipment that make the entire transportation system more efficient and productive; informing and advising organizations and individuals in the analysis of inter-modal economics; and providing technical advice on ports to foreign countries. Through its StrongPorts Program, MARAD also provides expertise on port financing and port infrastructure, and has assisted major ports in the recent redevelopment plans.

#### **4.2.3.2.3 Shipbuilding and ship repairs**

4.161. Under the coastwise laws, only U.S.-built ships qualify for domestic service; the United States was granted an exemption from GATT rules for measures prohibiting the use, sale, or lease of foreign-built or foreign-reconstructed vessels in commercial applications between points in national waters or the waters of an exclusive economic zone. There are no restrictions on foreign investment in U.S. shipyards or ship-repair facilities, but floating drydocks are eligible for loan guarantees under the Federal Ship Financing Program only if owned by U.S. citizens.<sup>164</sup>

4.162. Under the Federal Ship Financing Program established pursuant to Title XI of the Merchant Marine Act, 1936, as amended, MARAD provides financial assistance to ship-owners and U.S. shipyards. The aim is to promote the growth and modernization of the U.S. merchant marine and U.S. shipyards. The programme, authorized pursuant to 46 U.S.C. Chapter 537, provides U.S. Government guaranteed debt issued by: (i) U.S. or foreign ship-owners for the purpose of financing or refinancing either U.S. flag vessels or eligible export vessels constructed, reconstructed or reconditioned in U.S. shipyards; and (ii) U.S. shipyards for the purpose of financing advanced shipbuilding technology and modern shipbuilding technology of a privately-owned, general shipyard facility located in the United States. Under the Federal Credit Reform Act of 1990, appropriations to cover the estimated costs of a project must be obtained prior to the issuance of any letter of commitments for debt guarantees. By offering long-term debt repayment guarantees, the Program encourages ship-owners to obtain new vessels from U.S. shipyards cost effectively.<sup>165</sup> Since the obligations are guaranteed by the U.S. Government, the repayment term allowed is longer and the interest rates lower than those available from the commercial lending market.<sup>166</sup>

4.163. The programme consists of federal government guarantees of private-sector financing or refinancing obligations for ship construction or reconstruction of U.S. and foreign-owned vessels in U.S. shipyards. The guarantee is based on the "actual cost" of the vessels or the technology used in shipbuilding, which generally includes the cost of construction, reconstruction, or reconditioning of the vessel, together with construction period interest and the guarantee fee. The guarantees are up to 87.5% of the value of the project, for up to 25 years depending on the type of project. In FY2016, one new application for a project totalling US\$415 million was approved, representing US\$363 million in guarantees. As of end-July 2016, Title XI guarantees totalling US\$1.55 billion were outstanding, and applications totalling US\$244 million are under review.

4.164. Under the Capital Construction Fund (CCF) and Construction Reserve Fund (CRF), U.S. citizens owning or leasing vessels may obtain tax benefits for the construction, reconstruction, or acquisition of vessels. CCF vessels must be built in the United States and

<sup>164</sup> See 46 U.S.C. 53701 and 46 U.S.C. 53706.

<sup>165</sup> The programme also allows vessels to be built in U.S. shipyards for foreign ship-owners.

<sup>166</sup> MARAD online information, "Federal Ship Financing Program (Title XI)". Viewed at: <http://www.marad.dot.gov/ships-and-shipping/federal-ship-financing-title-xi-program-homepage/>.

documented under the laws of the United States for operation in the nation's foreign, Great Lakes, short-sea shipping or non-contiguous domestic trade or its fisheries. Participants must meet U.S. citizenship requirements. The CCF provides tax-deferral benefits to vessel operators in the foreign or domestic trade of the United States and U.S. fisheries. The stated purpose of the CCF is to make up for the competitive disadvantage operators of U.S.-flag vessels face in the construction and replacement of their vessels relative to foreign-flag operators whose vessels are registered in countries that do not tax shipping income. The CRF is a financial assistance scheme that provides tax-deferral benefits to U.S.-flag operators with respect to gains attributable to the sale or loss of a vessel, provided the proceeds are used to expand or modernize the U.S. merchant fleet.

4.165. Under the Manufacturing Extension Program, Section 8062 of PL 108-87 U.S. naval shipyards are eligible to participate in any manufacturing extension programme financed by funds appropriated by any Act.

4.166. As at mid-2016, there were 124 shipyards and ship-repair facilities in the United States. The order book was estimated at US\$46 billion. U.S.-flag vessels repaired in most foreign countries face a 50% *ad valorem* duty<sup>167</sup>, assessed on the cost of equipment and non-emergency repairs in foreign countries, although exemptions apply under certain circumstances. U.S.-owned foreign-flag vessels are not subject to any duty.

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<sup>167</sup> There are exemptions applied to certain countries in accordance with the bilateral agreements between the United States and the respective countries.



## 5 APPENDIX TABLES

Table A1. 1 Merchandise exports, by HS Sections and main chapters, 2012-15

(US\$ million and %)

Description	2012	2013	2014	2015
<b>Total exports</b>	<b>1,544,930</b>	<b>1,577,590</b>	<b>1,619,740</b>	<b>1,503,870</b>
	(% of total exports)			
1 - Live animals; animal products	1.8	1.9	1.9	1.7
02 - Meat and edible meat offal	1.0	1.0	1.1	0.9
03 - Fish and crustaceans, molluscs and other aquatic invertebrates	0.3	0.3	0.3	0.3
04 - Dairy produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included	0.3	0.4	0.4	0.3
2 - Vegetable products	4.6	4.4	4.6	4.3
12 - Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder	1.9	1.7	1.8	1.6
10 - Cereals	1.3	1.3	1.4	1.3
08 - Edible fruit and nuts; peel of citrus fruit or melons	0.9	0.9	0.9	1.0
07 - Edible vegetables and certain roots and tubers	0.3	0.3	0.3	0.3
3 - Animal or vegetable fats and oils; prepared edible fats	0.3	0.2	0.2	0.2
4 - Prepared foodstuffs; beverages, spirits and vinegar; tobacco	2.6	2.8	2.8	3.0
23 - Residues and waste from the food industries; prepared animal fodder	0.6	0.7	0.7	0.7
21 - Miscellaneous edible preparations	0.5	0.5	0.5	0.5
22 - Beverages, spirits and vinegar	0.4	0.4	0.5	0.5
5 - Mineral products	9.5	10.1	10.3	7.7
27 - Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes	8.9	9.4	9.6	7.1
6 - Products of the chemical or allied industries	10.5	10.4	10.2	10.8
30 - Pharmaceutical products	2.6	2.5	2.7	3.1
29 - Organic chemicals	3.0	3.0	2.6	2.6
38 - Miscellaneous chemical products	1.6	1.7	1.7	1.7
7 - Plastics and articles thereof; rubber and articles thereof	4.8	4.8	4.8	4.9
39 - Plastics and articles thereof	3.8	3.9	3.9	4.0
8 - Raw hides and skins, leather, furskins and articles thereof; travel goods, handbags; articles of animal gut	0.3	0.4	0.4	0.4
9 - Wood and articles of wood; wood charcoal; cork and articles of cork	0.5	0.6	0.6	0.6
10 - Pulp of wood or of other fibrous cellulosic material; paper and paperboard and articles thereof	2.1	2.0	1.9	2.0
48 - Paper and paperboard; articles of paper pulp, of paper or of paperboard	1.1	1.1	1.1	1.1
11 - Textiles and textile articles	1.7	1.7	1.6	1.7
12 - Footwear, headgear, umbrellas; prepared feathers and articles; artificial flowers	0.1	0.1	0.1	0.1
13 - Articles of stone, plaster, cement, etc.; ceramic products; glass and glassware	0.7	0.7	0.7	0.8
14 - Natural or cultured pearls, precious or semi-precious stones, precious metals	4.7	4.5	4.0	3.9
15 - Base metals and articles of base metal	5.3	5.0	4.9	4.6
73 - Articles of iron or steel	1.4	1.4	1.4	1.3
72 - Iron and steel	1.5	1.2	1.1	1.0
76 - Aluminium and articles thereof	0.8	0.8	0.8	0.8
16 - Machinery and mechanical appliances; electrical equipment; television image and sound recorders	24.4	24.0	24.2	25.0
84 - Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof	13.9	13.5	13.6	13.7

Description		2012	2013	2014	2015
85 - Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles		10.5	10.5	10.6	11.3
17 - Vehicles, aircraft, vessels and associated transport equipment		15.9	16.2	16.6	17.7
87 - Vehicles other than railway or tramway rolling-stock, and parts and accessories thereof		8.6	8.5	8.4	8.5
18 - Optical, photographic, precision, medical or surgical instruments; clocks and watches; musical instruments		5.5	5.5	5.4	5.7
90 - Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof		5.4	5.3	5.2	5.5
19 - Arms and ammunition		0.3	0.3	0.3	0.3
20 - Miscellaneous manufactured articles		1.2	1.2	1.2	1.3
21 - Works of art, collectors' pieces and antiques		0.5	0.5	0.6	0.7
Other		2.6	2.7	2.7	2.8

Source: UNSD, Comtrade database.

**Table A1. 2 Merchandise imports, by HS Sections and main HS chapters, 2012-15**

(US\$ million and %)

Description	2012	2013	2014	2015
<b>Total imports</b>	<b>2,334,680</b>	<b>2,326,590</b>	<b>2,410,860</b>	<b>2,306,820</b>
	(% of total imports)			
1 - Live animals; animal products	1.1	1.1	1.3	1.4
03 - Fish and crustaceans, molluscs and other aquatic invertebrates	0.6	0.6	0.7	0.7
2 - Vegetable products	1.8	1.8	1.8	1.9
08 - Edible fruit and nuts; peel of citrus fruit or melons	0.5	0.5	0.6	0.7
3 - Animal or vegetable fats and oils; prepared edible fats	0.3	0.3	0.3	0.3
4 - Prepared foodstuffs; beverages, spirits and vinegar; tobacco	2.4	2.4	2.4	2.6
22 - Beverages, spirits and vinegar	0.9	0.9	0.9	1.0
5 - Mineral products	18.9	17.0	15.2	9.0
27 - Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes	18.5	16.7	14.9	8.7
6 - Products of the chemical or allied industries	7.6	7.6	7.8	8.6
30 - Pharmaceutical products	2.8	2.7	3.0	3.7
29 - Organic chemicals	2.3	2.3	2.3	2.3
7 - Plastics and articles thereof; rubber and articles thereof	3.2	3.2	3.3	3.4
39 - Plastics and articles thereof	1.9	2.0	2.1	2.2
40 - Rubber and articles thereof	1.3	1.2	1.2	1.2
8 - Raw hides and skins, leather, fur skins and articles thereof; travel goods, handbags; articles of animal gut	0.6	0.6	0.6	0.7
42 - Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silk- worm gut)	0.5	0.6	0.6	0.6
9 - Wood and articles of wood; wood charcoal; cork and articles of cork	0.6	0.7	0.8	0.8
44 - Wood and articles of wood; wood charcoal	0.6	0.7	0.7	0.8
10 - Pulp of wood or of other fibrous cellulosic material; paper and paperboard and articles thereof	1.1	1.1	1.1	1.1
48 - Paper and paperboard; articles of paper pulp, of paper or of paperboard	0.7	0.7	0.8	0.8
11 - Textiles and textile articles	4.6	4.8	4.8	5.2
61 - Articles of apparel and clothing accessories, knitted or crocheted	1.8	1.9	1.9	2.1
62 - Articles of apparel and clothing accessories, not knitted or crocheted	1.6	1.7	1.6	1.8
63 - Other made up textile articles; sets; worn clothing and worn textile articles; rags	0.5	0.6	0.6	0.6
12 - Footwear, headgear, umbrellas; prepared feathers and articles; artificial flowers	1.3	1.3	1.3	1.5
64 - Footwear, gaiters and the like; parts of such articles	1.1	1.1	1.1	1.2
13 - Articles of stone, plaster, cement, etc.; ceramic products; glass and glassware	0.8	0.8	0.9	1.0
14 - Natural or cultured pearls, precious or semi-precious stones, precious metals	2.7	2.8	2.7	2.5
15 - Base metals and articles of base metal	5.3	5.1	5.5	5.3
73 - Articles of iron or steel	1.7	1.6	1.6	1.7
72 - Iron and steel	1.3	1.1	1.5	1.2
76 - Aluminium and articles thereof	0.7	0.7	0.7	0.8
16 - Machinery and mechanical appliances; electrical equipment; television image and sound recorders	26.2	26.4	27.0	28.7
85 - Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles	12.7	13.0	13.3	14.4

Description		2012	2013	2014	2015
	84 - Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof	13.5	13.4	13.7	14.3
	17 - Vehicles, aircraft, vessels and associated transport equipment	11.7	12.3	12.6	14.1
	87 - Vehicles other than railway or tramway rolling- stock, and parts and accessories thereof	10.5	10.9	11.0	12.3
	88 - Aircraft, spacecraft, and parts thereof	1.0	1.3	1.4	1.5
	18 - Optical, photographic, precision, medical or surgical instruments; clocks and watches; musical instruments	3.3	3.4	3.4	3.7
	90 - Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof	3.0	3.1	3.2	3.4
	19 - Arms and ammunition	0.1	0.2	0.1	0.1
	20 - Miscellaneous manufactured articles	3.4	3.6	3.7	4.2
	94 - Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated name- plates and the like; prefabricated buildings	2.0	2.2	2.3	2.7
	95 - Toys, games and sports requisites; parts and accessories thereof	1.2	1.2	1.2	1.4
	21 - Works of art, collectors' pieces and antiques	0.3	0.4	0.4	0.5
	Other	2.9	3.0	3.1	3.5

Source: UNSD, Comtrade database.

**Table A1. 3 Merchandise exports, by trading partner, 2012-15**

(US\$ million and %)

Description	2012	2013	2014	2015
<b>Total exports</b>	<b>1,544,930</b>	<b>1,577,590</b>	<b>1,619,740</b>	<b>1,503,870</b>
	(% of total exports)			
<b>Americas</b>	<b>44.7</b>	<b>45.0</b>	<b>45.4</b>	<b>44.4</b>
Other America	44.7	45.0	45.4	44.4
Canada	18.9	19.1	19.3	18.6
Mexico	14.0	14.3	14.8	15.7
Brazil	2.8	2.8	2.6	2.1
Colombia	1.1	1.2	1.2	1.1
Chile	1.2	1.1	1.0	1.0
Argentina	0.7	0.7	0.7	0.6
Peru	0.6	0.6	0.6	0.6
Venezuela, Bolivarian Republic of	1.1	0.8	0.7	0.6
Panama	0.6	0.7	0.6	0.5
Dominican Republic	0.5	0.5	0.5	0.5
<b>Europe</b>	<b>20.3</b>	<b>19.7</b>	<b>19.6</b>	<b>20.7</b>
EU(28)	17.6	16.9	17.2	18.3
United Kingdom	3.6	3.0	3.3	3.7
Germany	3.1	3.0	3.0	3.3
Netherlands	2.6	2.7	2.7	2.7
Belgium	1.9	2.0	2.1	2.3
France	2.1	2.1	2.0	2.1
EFTA	2.0	2.0	1.7	1.7
Switzerland	1.7	1.7	1.4	1.5
Other Europe	0.8	0.8	0.7	0.7
Turkey	0.8	0.8	0.7	0.6
<b>Commonwealth of Independent States (CIS)</b>	<b>1.0</b>	<b>1.0</b>	<b>1.0</b>	<b>0.6</b>
Russian Federation	0.7	0.7	0.7	0.5
Ukraine	0.1	0.1	0.1	0.1
<b>Africa</b>	<b>2.1</b>	<b>2.2</b>	<b>2.3</b>	<b>1.8</b>
South Africa	0.5	0.5	0.4	0.4
Egypt	0.4	0.3	0.4	0.3
Nigeria	0.3	0.4	0.4	0.2
<b>Middle East</b>	<b>4.5</b>	<b>4.6</b>	<b>4.6</b>	<b>4.8</b>
United Arab Emirates	1.5	1.5	1.4	1.5
Saudi Arabia, Kingdom of	1.2	1.2	1.2	1.3
Israel	0.9	0.9	0.9	0.9
<b>Asia</b>	<b>27.3</b>	<b>27.4</b>	<b>27.1</b>	<b>27.6</b>
China	7.2	7.7	7.6	7.7
Japan	4.5	4.1	4.1	4.2
Other Asia	15.6	15.5	15.3	15.7
Korea, Republic of	2.7	2.6	2.7	2.9
Hong Kong, China	2.4	2.7	2.5	2.5
Singapore	2.0	1.9	1.9	1.9
Chinese Taipei	1.6	1.6	1.6	1.7
Australia	2.0	1.7	1.6	1.7
India	1.4	1.4	1.3	1.4
<b>Other</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Source: UNSD, Comtrade database.

**Table A1. 4 Merchandise imports, by trading partner, 2012-15**

(US\$ million and %)

<b>Description</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
<b>Total imports</b>	<b>2,334,680</b>	<b>2,326,590</b>	<b>2,410,860</b>	<b>2,306,820</b>
	(% of total imports)			
<b>Americas</b>	<b>33.6</b>	<b>33.7</b>	<b>33.5</b>	<b>31.2</b>
Other America	33.6	33.7	33.5	31.2
Canada	14.0	14.5	14.7	13.0
Mexico	12.0	12.2	12.3	12.9
Brazil	1.4	1.2	1.3	1.2
Venezuela, Bolivarian Republic of	1.7	1.4	1.3	0.7
Colombia	1.1	1.0	0.8	0.6
Chile	0.4	0.5	0.4	0.4
Ecuador	0.4	0.5	0.5	0.3
<b>Europe</b>	<b>18.5</b>	<b>18.8</b>	<b>19.6</b>	<b>20.9</b>
EU(28)	16.7	17.0	17.7	18.9
Germany	4.8	5.0	5.2	5.5
United Kingdom	2.4	2.3	2.3	2.5
France	1.8	2.0	2.0	2.1
Italy	1.6	1.7	1.8	2.0
Ireland	1.4	1.4	1.4	1.7
EFTA	1.4	1.5	1.6	1.6
Switzerland	1.1	1.2	1.3	1.4
Other Europe	0.3	0.3	0.4	0.4
Turkey	0.3	0.3	0.3	0.4
<b>Commonwealth of Independent States (CIS)</b>	<b>1.5</b>	<b>1.4</b>	<b>1.2</b>	<b>0.9</b>
Russian Federation	1.3	1.2	1.0	0.8
<b>Africa</b>	<b>2.9</b>	<b>2.2</b>	<b>1.5</b>	<b>1.1</b>
South Africa	0.4	0.4	0.4	0.3
Algeria	0.4	0.2	0.2	0.2
<b>Middle East</b>	<b>5.1</b>	<b>4.7</b>	<b>4.4</b>	<b>2.8</b>
Israel	1.0	1.0	1.0	1.1
Saudi Arabia, Kingdom of	2.5	2.3	2.0	1.0
Kuwait, the State of	0.6	0.6	0.5	0.2
<b>Asia</b>	<b>38.4</b>	<b>39.2</b>	<b>39.8</b>	<b>43.1</b>
China	19.0	19.7	20.2	21.8
Japan	6.4	6.1	5.7	5.8
Other Asia	12.9	13.3	14.0	15.4
Korea, Republic of	2.6	2.8	3.0	3.2
India	1.8	1.9	1.9	2.0
Chinese Taipei	1.7	1.7	1.7	1.8
Viet Nam	0.9	1.1	1.3	1.7
Malaysia	1.1	1.2	1.3	1.5
Thailand	1.2	1.2	1.2	1.3
Indonesia	0.8	0.8	0.8	0.9
Singapore	0.9	0.8	0.7	0.8
<b>Other</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Source: UNSD, Comtrade database.



**Table A1. 5 Commercial services exports, by type, 2012-15**

(US\$ million)

<b>Services supply through modes 1, 2, and 4</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
<b>Total commercial services</b>	656,411	687,894	710,565	750,860
Maintenance and repair services	17,186	18,648	22,389	24,035
Transportation, of which	83,944	87,415	90,031	87,222
Sea transport	17,012	17,322	18,152	18,044
Air transport	62,078	65,523	67,498	64,672
Other transport	4,854	4,570	4,381	4,505
Travel	161,632	172,901	177,241	204,523
Insurance services	16,790	17,058	17,417	17,142
Financial services	76,692	84,091	87,290	102,460
Charges for the use of intellectual property n.i.e., of which	124,440	127,927	130,362	124,663
Industrial processes	42,962	44,904	48,723	45,898
Computer software	40,493	42,464	39,514	36,752
Trade marks	16,243	15,944	16,883	20,582
Audio-visual and related products	18,715	18,410	19,414	21,308
Telecommunications, computer and information services, of which	32,510	35,035	35,885	35,894
Telecommunications services	13,749	14,471	13,550	12,645
Computer services	12,554	13,779	15,310	15,951
Information services	6,207	6,784	7,025	7,299
Other business services, of which	120,382	121,873	129,514	134,647
Research and development services	27,680	29,258	33,192	34,527
Professional and management consulting services	53,542	55,649	59,487	64,912
Technical, trade-related and other business services	39,160	36,965	36,834	35,210
Government goods and services, n.i.e.	22,835	22,946	20,438	20,271

Source: WTO Statistics Database and U.S. Bureau of Economic Analysis (September 2016).

**Table A1. 6 Commercial services imports, by type, 2012-15**

(US\$ million)

<b>Services supply through modes 1, 2, and 4</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
<b>Total commercial services</b>	452,013	463,700	477,428	488,656
Maintenance and repair services	8,015	7,486	7,468	8,996
Transportation	84,985	90,634	94,219	97,049
Sea transport	33,162	36,264	36,254	37,295
Air transport	47,458	50,104	53,697	55,851
Other transport	4,365	4,266	4,268	3,904
Travel	100,338	104,107	110,787	112,871
Insurance services	55,513	53,420	50,096	47,773
Financial services	16,703	18,519	19,503	25,162
Charges for the use of intellectual property n.i.e., of which	38,661	38,999	42,124	39,494
Industrial processes	22,140	22,508	23,783	20,868
Computer software	6,570	6,481	6,773	6,772
Trade marks	4,220	4,440	..	3,767
Audio-visual and related products	5,472	5,253	7,643	7,954
Telecommunications, computer, and information services, of which	32,779	33,812	33,314	36,440
Telecommunications services	7,169	7,348	6,656	6,241
Computer services	23,865	24,438	24,386	27,785
Other business services, of which	87,157	92,389	95,753	99,355
Research and development services	28,552	30,978	33,048	32,021
Professional and management consulting services	33,212	34,462	38,163	40,436
Technical, trade-related and other business services	25,394	25,949	24,542	26,896
Government goods and services, n.i.e.	27,861	25,334	24,163	21,515

.. Not available.

Source: WTO Statistics Database and U.S. Bureau of Economic Analysis (September 2016).

**Table A1. 7 U.S. commercial services exports (modes 1, 2, and 4), by destination, 2012-14**

(US\$ million)

	2012	2013	2014
<b>World</b>	633,576	664,948	690,127
EU(28) <sup>a</sup>	197,934	204,329	217,877
Canada	61,576	62,376	61,069
Japan	46,133	45,986	46,081
China	32,751	36,974	42,062
Mexico	27,798	29,403	29,618
Switzerland	27,416	27,472	28,835
Brazil	24,880	26,507	28,026
Korea, Republic of	17,938	20,699	20,429
Australia	18,687	19,210	19,047
India	12,091	13,286	14,766
Chinese Taipei	11,303	11,362	12,256
Singapore	13,167	11,364	11,686
Bermuda	9,736	10,678	10,781
Hong Kong, China	6,472	9,003	9,998
Saudi Arabia, Kingdom of	6,987	7,672	7,820
Argentina	6,221	6,641	6,688
Venezuela, Bolivarian Rep. of	6,392	7,080	6,185
Israel	3,810	4,427	4,775
Norway	3,756	3,995	4,162
Chile	3,555	3,563	3,776
All others	94,973	102,921	104,190

a Data for 2012 refer to EU(27).

Source: Bureau of Economic Analysis through OECD.

**Table A1. 8 U.S. commercial services imports (modes 1, 2, and 4), by origin, 2012-14**

(US\$ million)

	2012	2013	2014
<b>World</b>	424,152	438,366	453,265
EU(28) <sup>a</sup>	147,191	153,847	159,675
Canada	30,793	30,446	29,781
Japan	24,535	27,463	28,275
Bermuda	27,645	26,803	24,754
Switzerland	21,554	22,258	21,676
India	18,717	19,327	20,743
Mexico	15,313	17,161	19,368
China	12,967	14,051	14,311
Brazil	7,435	7,563	8,383
Korea, Republic of	8,132	8,309	7,972
Hong Kong, China	6,995	7,116	7,571
Chinese Taipei	6,916	7,000	7,297
Australia	6,651	6,678	6,578
Singapore	5,405	5,388	5,808
Israel	5,116	4,975	5,543
Philippines	3,911	3,867	4,335
Thailand	2,304	2,611	2,739
Norway	2,297	2,622	2,722
Malaysia	1,427	1,410	1,774
South Africa	1,737	1,667	1,705
All others	1,885	1,745	1,660

a Data for 2012 refer to EU(27).

Source: Bureau of Economic Analysis through OECD.

**Table A1. 9 Services supplied by U.S. affiliates established abroad (outward FATS), by economy of affiliate, through mode 3, 2010-13**

		2013		Annual percentage change		
		Value	Share	2010-13	2012	2013
	<b>World</b>	<b>1,320,875</b>	<b>100.0</b>	<b>5</b>	<b>3</b>	<b>3</b>
1	EU(28)	558,724	42.3	3	1	1
2	Canada	127,589	9.7	3	1	0
3	Japan	71,568	5.4	1	2	-7
4	Switzerland	64,214	4.9	1	-1	6
5	Singapore	59,522	4.5	13	9	9
6	Australia	52,580	4.0	5	0	4
7	Mexico	43,393	3.3	8	8	7
8	China	43,257	3.3	14	14	9
9	Brazil	39,594	3.0	10	2	3
10	Hong Kong, China	33,770	2.6	3	0	3
11	India	21,301	1.6	14	5	25
12	British Virgin Islands	16,264	1.2	18	4	43
13	Bermuda	15,065	1.1	1	17	-8
14	Korea, Republic of	12,571	1.0	5	0	3
15	Chile	11,521	0.9	11	15	0
	Above 15	1,170,933	88.6	-	-	-

Source: Bureau of Economic Analysis.

**Table A1. 10 Services supplied by foreign affiliates in the United States (inward FATS), by economy of affiliate, through mode 3, 2010-13**

		2013		Annual percentage change		
		Value	Share	2010-13	2012	2013
	<b>World</b>	<b>867,683</b>	<b>100.0</b>	<b>8</b>	<b>4</b>	<b>8</b>
1	EU(28)	451,530	52.0	5	4	4
2	Japan	146,509	16.9	16	7	36
3	Canada	84,394	9.7	6	1	3
4	Switzerland	52,024	6.0	-2	-11	-1
5	Australia	22,865	2.6	20	15	4
6	Bermuda	17,602	2.0	19	26	3
7	Korea, Republic of	16,121	1.9	16	9	16
8	India	11,850	1.4	17	11	8
9	Singapore	8,331	1.0	12	-4	-1
10	Mexico	7,503	0.9	19	15	13
11	British Virgin Islands	4,464	0.5	19	42	4
12	China	4,437	0.5	59	222	-1
13	Hong Kong, China	4,214	0.5	9	-4	4
14	United Arab Emirates	2,848	0.3	6	-7	5
15	Saudi Arabia, Kingdom of	2,451	0.3	..	..	52
	Above 15	837,143	96.5	-	-	-

.. Not available.

Source: Bureau of Economic Analysis.

**Table A2. 1 The Trade Advisory Committee System**

Type and name	Maximum or approximate number of members <sup>a</sup>	Appointments by	Subject
<b>President's Advisory Committee</b>			
Trade Policy and Negotiations (ACTPN)	45	President	Examines U.S. trade policy and agreements
<b>Policy advisory committees</b>			
Intergovernmental Policy Advisory Committee (IGPAC)	35	USTR	Representation of States and non-federal government entities
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
<b>Technical advisory committees</b>			
<b>Agricultural Technical Advisory Committees (ATACs):</b>			
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
<b>Industry Trade Advisory Committees (ITACs):</b>			
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
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 There is no limit on the number of participants in APAC and the ATACs. 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>.

**Table A2. 2 Selected U.S. notifications to the WTO, September 2014-July 2016**

WTO Agreement	Description	Document symbol	Date
<b>Agreement on Agriculture</b>			
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/107 G/AG/N/USA/99	23/05/2016 05/11/2014
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/105/Rev.1 G/AG/N/USA/98 G/AG/N/USA/97	03/06/2016 31/10/2014 15/09/2014
Article 18.2 (DS:1)	Domestic support	G/AG/N/USA/108 G/AG/N/USA/100	25/05/2016 08/12/2014
Article 18.2 (MA:1)	Administration of tariff and other quota commitments	G/AG/N/USA/106 G/AG/N/USA/101	25/04/2016 28/04/2014
Articles 5.7 and 18.2 (MA:4)	Special safeguard provisions	G/AG/N/USA/103	07/10/2015
Article 18.2 (MA:5)	Tariff rate quotas	G/AG/N/USA/104	21/01/2016
<b>General Agreement on Trade in Services</b>			
WT/L/847	Services LDC waiver	S/C/N/825	04/09/2015
<b>Agreement on the Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement)</b>			
Article 16.4 – semi annual	Anti-dumping actions (taken within the preceding six months)	G/ADP/N/280/USA/Corr.1 G/ADP/N/280/USA G/ADP/N/272/USA G/ADP/N/265/USA G/ADP/N/259/USA	06/04/2016 11/03/2016 14/09/2015 26/02/2015 05/09/2014
Article 16.4 – ad hoc	Anti-dumping actions (preliminary and final)	G/ADP/N/287 G/ADP/N/285 G/ADP/N/284 G/ADP/N/283 G/ADP/N/282 G/ADP/N/281 G/ADP/N/279 G/ADP/N/278 G/ADP/N/277 G/ADP/N/276 G/ADP/N/275 G/ADP/N/274 G/ADP/N/273 G/ADP/N/271 G/ADP/N/270 G/ADP/N/269 G/ADP/N/268 G/ADP/N/267 G/ADP/N/266 G/ADP/N/264 G/ADP/N/263 G/ADP/N/262	23/06/2016 31/05/2016 19/04/2016 24/03/2016 23/02/2016 21/01/2016 18/01/2016 25/11/2015 15/10/2015 16/09/2015 31/08/2015 24/07/2015 22/06/2015 29/05/2015 16/04/2015 01/04/2015 20/02/2015 22/01/2015 18/12/2014 21/11/2014 15/10/2014 23/09/2014
Article 16.5	Competent authorities	G/ADP/N/14/Add.41	22/04/2016
Article 18.5	Laws and regulations, and changes thereto, including changes in the administration of such laws	G/ADP/N/1/USA/1/Suppl.24 G/ADP/N/1/USA/1/Suppl.23 G/ADP/N/1/USA/1/Suppl.22 G/ADP/N/1/USA/1/Suppl.21 G/ADP/N/1/USA/1/Suppl.20 G/ADP/N/1/USA/1/Suppl.19 G/ADP/N/1/USA/1/Suppl.18	01/04/2016 01/04/2016 03/09/2015 13/08/2015 16/07/2015 30/06/2015 27/11/2014
<b>GATT 1994</b>			
Article XVII:4(a) and Paragraph 1 of the Understanding on the Interpretation of Article XVII	State-trading activities	G/STR/N/16/USA	29/06/2016
Paragraph 3(c)	Notification and statistical data	WT/L/983 WT/L/948	18/01/2016 22/12/2014
<b>Agreement on Government Procurement</b>			
Appendix I	Procurement thresholds	GPA/W/336/Add.2	06/01/2016
Article XXII:8	Work Programme on Exclusions and Restrictions	GPA/WPS/EXCS/2	22/10/2014

WTO Agreement	Description	Document symbol	Date
Article XXII:8	Response to SME Questionnaire	GPA/WPS/SME/20 GPA/WPS/SME/11	15/06/2016 29/10/2015
<b>Agreement on Import Licensing</b>			
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(2)	Replies to the questionnaire	G/LIC/N/3/USA/12 G/LIC/N/3/USA/11	09/10/2015 03/10/2014
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
<b>Decision on Notification Procedures for Quantitative Restrictions</b>			
G/L/59/Rev.1	Notification of QRs	G/MA/QR/N/USA/2	09/10/2014
<b>Agreement on Rules of Origin</b>			
Paragraph 4 of Annex II	Preferential rules of origin	G/RO/N/88	18/01/2013
<b>Agreement on Subsidies and Countervailing Measures</b>			
Article 25.1 and GATT 1994 Article XVI:1	Subsidies	G/SCM/N/284/USA	18/11/2015
Article 25.11 – ad hoc	Countervailing duty actions (preliminary and final)	G/SCM/N/306 G/SCM/N/304 G/SCM/N/303 G/SCM/N/302 G/SCM/N/301 G/SCM/N/300 G/SCM/N/297 G/SCM/N/296 G/SCM/N/295 G/SCM/N/294 G/SCM/N/293 G/SCM/N/292 G/SCM/N/291 G/SCM/N/288 G/SCM/N/287 G/SCM/N/286 G/SCM/N/285 G/SCM/N/283 G/SCM/N/282 G/SCM/N/280 G/SCM/N/279 G/SCM/N/278	20/06/2016 24/05/2016 13/04/2016 16/03/2016 25/02/2016 19/01/2016 22/12/2015 19/11/2015 09/10/2015 18/09/2015 03/09/2015 23/07/2015 22/06/2015 29/05/2015 16/04/2015 20/03/2015 23/02/2015 21/01/2015 19/12/2014 17/11/2014 15/10/2014 18/09/2014
Article 25.11 – semi-annual	Countervailing duty actions (taken within the preceding six months)	G/SCM/N/298/USA G/SCM/N/289/USA G/SCM/N/281/USA G/SCM/N/274/USA	11/03/2016 18/09/2015 10/03/2015 05/09/2014
Article 25.12	Competent authorities	G/SCM/N/18/Add.41	22/04/2016
Article 32.6	Laws/regulations and changes thereto, including changes in administration of such laws	G/SCM/N/1/USA/1/Suppl.23 G/SCM/N/1/USA/1/Suppl.22 G/SCM/N/1/USA/1/Suppl.21 G/SCM/N/1/USA/1/Suppl.20 G/SCM/N/1/USA/1/Suppl.19 G/SCM/N/1/USA/1/Suppl.18	01/04/2016 03/09/2015 13/08/2015 16/04/2015 30/06/2015 27/11/2014
<b>Agreement on Sanitary and Phytosanitary Measures</b>			
Article 7 Annex B	Sanitary and phytosanitary regulations	Several notifications (series G/SPS/N/USA/)	
<b>Agreement on Technical Barriers to Trade</b>			
Article 2.9	Technical regulations	Several notifications (series G/TBT/N/USA/)	



WTO Agreement	Description	Document symbol	Date
Articles 2.9 and 5.6	Technical regulations and conformity assessment procedures	G/TBT/N/USA/1143	15/06/2016
		G/TBT/N/USA/1141	15/06/2016
		G/TBT/N/USA/1137	03/06/2016
		G/TBT/N/USA/1127	12/05/2016
		G/TBT/N/USA/1126	12/05/2016
		G/TBT/N/USA/1115	28/04/2016
		G/TBT/N/USA/1112	27/04/2016
		G/TBT/N/USA/1102	19/04/2016
		G/TBT/N/USA/1093	29/03/2016
		G/TBT/N/USA/1089	24/03/2016
		G/TBT/N/USA/1076	19/02/2016
		G/TBT/N/USA/1075	19/02/2016
		G/TBT/N/USA/1071	18/02/2016
		G/TBT/N/USA/1067	27/01/2016
		G/TBT/N/USA/1032	01/10/2015
		G/TBT/N/USA/989	23/04/2015
		G/TBT/N/USA/976	23/03/2015
		G/TBT/N/USA/953	23/03/2015
		G/TBT/N/USA/921	19/09/2014
Article 3.2	Technical regulations (local government)	Many notifications received, see: <a href="http://tbtims.wto.org/">http://tbtims.wto.org/</a>	
Article unspecified	Technical regulations	G/TBT/N/USA/1159	27/06/2016
		G/TBT/N/USA/1142	15/06/2016
		G/TBT/N/USA/1138	13/06/2016
		G/TBT/N/USA/1125	12/05/2016
		G/TBT/N/USA/1119	04/05/2016
		G/TBT/N/USA/1099	11/04/2016
		G/TBT/N/USA/1095	31/03/2016
		G/TBT/N/USA/1053	01/12/2015
		G/TBT/N/USA/1036	12/10/2015
		G/TBT/N/USA/1024	13/08/2015
		G/TBT/N/USA/1013	23/07/2015
		G/TBT/N/USA/1004	01/07/2015
		G/TBT/N/USA/992	19/05/2015
		G/TBT/N/USA/969	04/03/2015
		G/TBT/N/USA/968	03/03/2015
		G/TBT/N/USA/925	02/10/2014

Source: WTO Secretariat.

**Table A2. 3 Dispute settlement cases involving the United States, July 2016**

Subject	Respondent/ complainant/appellant	Request for consultation received	Status (as at 15 July 2016)	WTO document series
<b>Requests for consultations</b>				
United States - Conditional Tax Incentives for Large Civil Aircraft	United States/ European Union	19-Dec-14	Panel report expected to be circulated in November 2016	WT/DS487
China — Measures Related to Demonstration Bases and common Service Platforms Programmes	China/United States	11-Feb-15	On 14 April 2016, China and the United States informed the DSB that they had reached an agreement in relation to this dispute in the form of a Memorandum of Understanding	WT/DS489
China — Tax Measures Concerning Certain Domestically Produced Aircraft	China/United States	8-Dec-15	Consultations	WT/DS501
United States — Measures Concerning Non-Immigrant Visas	United States/India	3-Mar-16	Consultations	WT/DS503
United States — Countervailing Measures on Supercalendered Paper	United States/Canada	30-Mar-16	Panel established 21 July 2016	WT/DS505
<b>Panels</b>				
<b>United States as respondent</b>				
United States — Anti-Dumping and Countervailing Measures on Certain Coated Paper	United States/Indonesia	13-Mar15	Panel composed on 4 February 2016	WT/DS491
United States — Anti-Dumping Measures on Certain Oil Country Tubular Goods	United States/Korea (Rep. of)	22-Dec-14	Panel composed on 13 July 2015	WT/DS488
United States — Certain Methodologies and Their Application to Anti-Dumping Proceedings involving China	United States/China	3-Dec-13	Panel report expected to be circulated in October 2016	WT/DS471
United States — Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea (Rep. of)	United States/Korea (Rep. of)	29-Aug-13	Appellate Body Report expected to be circulated in September 2016	WT/DS464
United States — Measures Affecting the Importation of Animals, Meat and Other Animal Products from Argentina	United States/Argentina	30-Aug-12	Report adopted, with recommendation to bring measure into conformity on 31 August 2015	WT/DS447
United States — Anti-Dumping Measures on Certain Shrimp from Viet Nam	United States/Viet Nam	22-Feb-12	On 18 July 2016, Viet Nam and the United States notified the DSB that they had reached a mutually agreed solution	WT/DS429
United States — Countervailing Duty Measures on Certain Products from China	United States/China	25-May-12	Implementation notified on 21 December 2015. Article 21.5 panel established on 21 July 2016	WT/DS437
United States — Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India	United States/India	12-Apr-12	Implementation notified on 22 April 2016	WT/DS436
<b>United States as complainant</b>				
Indonesia — Importation of Horticultural Products, Animals and Animal Products	Indonesia/United States	10-Jan-13	Panel established, but not yet composed	WT/DS455

Subject	Respondent/ complainant/appellant	Request for consultation received	Status (as at 15 July 2016)	WTO document series
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	8-May-14	Panel report issued in August 2016	WT/DS478
Argentina — Measures Affecting the Importation of Goods	Argentina/United States	21-Aug-12	Report adopted, with recommendation to bring measure into conformity on 26 January 2015	WT/DS444
India — Measures Concerning the Importation of Certain Agricultural Products	India/United States	6-Mar-12	Matter referred to arbitration under Article 22.6	WT/DS430
<b>Appeals to the Appellate Body</b>				
United States — Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea (Rep. of)	United States/Korea (Rep. of)	29-Aug-13	Appellate Body Report expected to be circulated in September 2016	WT/DS464
Countervailing and Anti-Dumping Measures on Certain Products from China	United States/China	17-Sept-12	Report adopted, with recommendation to bring measure into conformity on 22 July 2014	WT/DS449/AB/R
Measures related to the Exportation of Rare Earths, Tungsten and Molybdenum	China/United States	13-March-12	Implementation notified on 20 May 2015	WT/DS431/AB/R
<b>Implementation (Articles 21.5 and 22.6)</b>				
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	Panel report expected to be circulated in September 2016	WT/DS316
United States — Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products	United States/Mexico	24-Oct-08	Article 22.6 arbitrator appointed on 2 May 2016  Recourse by the U.S. to Article 21.5, panel composed on 27 May 2016  Second recourse by Mexico to Article 21.5, panel composed on 11 July 2016	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	Implementation notified on 10 April 2015	WT/DS414
United States — Measures Affecting the Production and Sale of Clove Cigarettes	United States/Indonesia	7-Apr-10	On 3 October 2014, Indonesia and the United States notified the DSB that they had reached a mutually agreed solution	WT/DS406
United States — Certain Country of Origin Labelling (COOL) Requirements	United States/Canada and Mexico	1-Dec-08	Implementation notified on 21 December 2015	WT/DS386 and 384

Source: WTO Secretariat.

**Table A3. 1 Summary analysis of United States MFN tariff, 2016**

Description	MFN				Final bound average <sup>a</sup> (%)
	No. of lines	Average (%)	Range (%)	Coefficient of variation (CV)	
<b>Total</b>	<b>10,516</b>	<b>4.8</b>	<b>0 - 510.9</b>	<b>2.9</b>	<b>4.8</b>
HS 01-24	1,873	8.3	0 - 510.9	3.7	8.3
HS 25-97	8,643	4.1	0 - 57.9	1.3	4.1
<b>By WTO category</b>					
WTO agriculture	1,690	9.1	0 - 510.9	3.5	9.1
Animals and products thereof	161	3.0	0 - 26.4	1.8	3.0
Dairy products	167	27.6	0 - 510.9	1.9	27.6
Fruit, vegetables, and plants	527	5.4	0 - 131.8	2.1	5.4
Coffee and tea	82	8.9	0 - 55.1	1.0	8.9
Cereals and preparations	182	8.3	0 - 122.0	1.9	8.3
Oil seeds, fats and oils and their products	107	6.8	0 - 163.8	3.5	6.8
Sugars and confectionary	53	10.8	0 - 65.6	1.2	10.8
Beverages, spirits, and tobacco	149	22.9	0 - 439.9	3.5	22.9
Cotton	16	6.2	0 - 24.4	1.3	6.2
Other agricultural products, n.e.s.	246	1.6	0 - 53.0	2.7	1.6
WTO non-agriculture (incl. petroleum)	8,826	4.0	0 - 57.9	1.4	4.0
WTO non-agriculture (excl. petroleum)	8,794	4.0	0 - 57.9	1.4	4.0
Fish and fishery products	331	1.5	0 - 35	2.4	1.5
Minerals and metals	1,547	2.5	0 - 38	1.6	2.5
Chemicals and photographic supplies	1,847	3.7	0 - 6.5	0.7	3.7
Wood, pulp, paper, and furniture	544	1.0	0 - 16	2.6	1.0
Textiles	1,082	7.8	0 - 42.3	0.7	7.8
Clothing	571	11.6	0 - 32	0.7	11.6
Leather, rubber, footwear, and travel goods	424	7.4	0 - 57.9	1.5	7.3
Non-electric machinery	799	1.4	0 - 9.9	1.4	1.4
Electric machinery	530	2.2	0 - 15	1.0	2.3
Transport equipment	241	2.5	0 - 25	1.9	2.5
Non-agriculture articles, n.e.s.	878	3.0	0 - 33.4	1.2	3.0
Petroleum	32	1.9	0 - 7	1.3	2.0
<b>By ISIC sector<sup>b</sup></b>					
Agriculture and fisheries	580	6.5	0 - 510.9	6.3	6.5
Mining	115	0.4	0 - 10.5	3.2	0.4
Manufacturing	9,820	4.8	0 - 350	2.2	4.8
<b>By HS Section</b>					
01. Live animals & products	569	9.2	0 - 510.9	3.4	9.2
02. Vegetable products	558	3.9	0 - 163.8	3.0	3.9
03. Fats & oils	69	3.7	0 - 20.9	1.3	3.7
04. Prepared food etc.	677	11.6	0 - 439.9	3.5	11.6
05. Minerals	204	0.6	0 - 12.6	2.7	0.6
06. Chemical & products	1,714	3.5	0 - 12.9	0.8	3.5
07. Plastics & rubber	375	3.7	0 - 14	0.7	3.7
08. Hides & skins	220	4.3	0 - 20	1.1	4.3
09. Wood & articles	240	2.4	0 - 18	1.4	2.4
10. Pulp, paper etc.	275	0.0	0 - 0	n.a.	0.0
11. Textile & articles	1,592	9.0	0 - 32	0.8	9.0
12. Footwear, headgear	197	13.4	0 - 57.9	1.1	13.3
13. Articles of stone	298	5.2	0 - 38	1.2	5.2
14. Precious stones, etc.	105	3.0	0 - 13.5	1.1	3.1
15. Base metals & products	988	1.9	0 - 22.4	1.4	1.9
16. Machinery	1,349	1.7	0 - 15	1.2	1.7
17. Transport equipment	252	2.4	0 - 25	1.9	2.4
18. Precision equipment	512	2.9	0 - 19.9	1.1	2.9
19. Arms and ammunition	33	1.9	0 - 12.7	1.4	1.9
20. Miscellaneous manufactured articles	282	3.6	0 - 33.4	1.2	3.6
21. Works of art, etc.	7	0.0	0 - 0	n.a.	0.0
<b>By stage of processing</b>					
First stage of processing	1,101	4.3	0 - 510.9	7.1	4.3
Semi-processed products	3,445	4.2	0 - 65.6	1.1	4.2
Fully-processed products	5,970	5.3	0 - 350	2.4	5.3

n.a. Not applicable.

a The bound tariff is in the HS12 nomenclature and is not yet certified; the number of tariff lines in the bound tariff is also different from the applied MFN tariff.

b ISIC (Rev.2) classification, excluding electricity (1 line).

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

**Table A3. 2 Prohibitions, restrictions or other special requirements**

<b>Product</b>	<b>Prohibition, restriction, or requirement</b>
Art materials	Conform to the provisions of the Labeling of Hazardous Art Materials Act
Bicycles and bicycle helmets	Bicycles to meet regulations issued under the Federal Hazardous Substances Act and helmets must meet CPSC's Safety Standard
Biological drugs	Domestic as well as foreign manufacturers of such products must obtain a U.S. licence 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. licence for such manufacturing issued by the Secretary of the Department of Health and Human Services
Cheese, milk, and dairy products	Subject to requirements of the Food and Drug Administration and the Department of Agriculture
Cigarette lighters and multi-purpose lighters	Compliance with the child-resistant safety standard
Commercial and industrial equipment	Energy performance standards to be met
Counterfeit articles	Articles bearing facsimiles or replicas of coins or securities of the United States or of any foreign country cannot be imported
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
Fireworks	Labelling requirements and technical specifications to be met
Flammable fabrics	Conform to applicable flammability standard under the Flammable Fabrics Act
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
Foods, drugs, cosmetics, and medical devices	Subject to the requirements of the Public Health Security and Bio-Terrorism Preparedness and Response Act of 2002
Fruits, vegetables, and nuts	Import requirements relating to grade, size, quality, and maturity
Fur	Must be tagged, labelled, or otherwise clearly marked with specific information
Gold and silver	Articles made of gold or alloys thereof are prohibited from importation into the United States if the gold content is one half carat divergence below the indicated fineness
Hazardous substances	Substances must be shipped to the United States in packages suitable for household use
Household appliances	Energy standards to be met, and labelled to indicate expected energy consumption or efficiency
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
Lead in paint	Banned if they contain more than 0.06% lead by weight of the dried plant film
Livestock and animals	Inspection and quarantine requirements of the Animal and Plant Health Inspection Service (APHIS)
Matches, fireworks, knives	Certain matches, fireworks, and knives are prohibited
Meat, poultry, egg products, and (since 1 March 2016) Siluriformes fish and fish products	Subject to USDA regulations and must be inspected by the Food Safety and Inspection Service (FSIS)
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
Obscene, immoral, or seditious matter and lottery tickets	Certain books, writings, advertisements, circulars, or pictures containing these are prohibited
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
Products of convict or forced labour	Merchandise produced, mined, or manufactured, wholly or in part by means of the use of convict labour, forced labour, or indentured labour under penal sanctions is prohibited from importation
Radiation- and sonic radiation-producing products	Compliance with a radiation performance standard
Radio frequency devices	Subject to radiation performance standards
Refrigerants	The EPA regulates the importation of ozone-depleting substances

Product	Prohibition, restriction, or requirement
Seeds	Provisions of the Federal Seed Act of 1939 and regulations of the Agricultural Marketing Service govern the importation into the United States
Textile products	Must be stamped, tagged, labelled, or otherwise marked with the specific information
Toxic substances	Imports will not be released from CBP custody unless proper certification is presented to CBP indicating that the import "complies with" or "is not subject to" TSCA requirements
Toys and children's articles	Compliance with applicable regulations issued under the Federal Hazardous Substances Act
Wood packing materials	Import regulations require wood packing material to be treated and marked
Wool	Must be tagged, labelled, or otherwise clearly marked with specific information

Source: WTO document WT/TPR/S/307/Rev.1, 13 March 2015, summarizing CBP online information. Viewed at: <https://www.cbp.gov/sites/default/files/documents/Importing%20into%20the%20U.S.pdf> (document last revised in 2006).



**Table A3. 3 Products subject to import licensing**

Category	Products	Agency	Purpose	Legal reference	Other info
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 CFR, 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
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 U.S.C. Sections 822, 823, 826, 953, 957 and 958	Importation only by approved, registered importers
Dairy products	Certain dairy products	Department of Agriculture	An administrative tool that governs importations 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>
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
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 U.S.C. Chapter 40; 27 CFR Part 555	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 defence articles	Defence 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

Category	Products	Agency	Purpose	Legal reference	Other info
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
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
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 defense 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
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, the Endangered Species Act, and Title 7 CFR Parts 300-399	Persons, firms, and institutions resident in the United States may apply for a permit
Steel	All basic steel mill products	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
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
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

Source: WTO document WT/TPR/S/307/Rev.1, 13 March 2015, based on WTO document G/LIC/N/3/USA/10, 24 September 2013.

**Table A3. 4 Selected sub-federal subsidy schemes for "greener" energy**

State	Authority	Form of subsidy	Objective	Recipients	Description
AZ	Dept. of Revenue	Solar liquid fuel tax credit	Promote use of solar energy	Taxpayers involved in increased research and development activities with regard to solar liquid fuel	For taxable years beginning from and after 31 December 2010 through 31 December 2021, a credit is allowed for increased research and development activity related to solar liquid fuel. The amounts vary
AZ	State Energy Office	Biofuel Conversion Program (grants)	Encourage the use of biofuels in Arizona	Companies engaged in the conversion of existing and installation of new storage and dispensing equipment for biofuels	Grants are equal to the lesser of US\$75,000 or the conversion cost per site. Unused credits may be carried forward for up to three years <sup>a</sup>
AR	Dept. of Finance and Administration	Wind energy income tax exemption	Stimulate job creation and investment	Manufacturers of wind energy equipment and/or components	Exemptions up to 25 years are based upon various calculations which result in the number of years the income tax exemption is granted to the qualified windmill blade or windmill component manufacturer
AR	Agriculture Dept.	Alternative Fuels Development Program (grants)	Increase the availability of alternative fuels	Alternative fuels producers, feedstock processors and distributors	Grants for the construction, modification, alteration, or retrofitting of feedstock processing facilities in Arkansas. Grants not in excess of US\$3 million or 50% of the project cost, whichever is less to a feedstock processor in any fiscal year. Distribution grants not in excess of \$300,000 or 50% of the project cost, whichever is less, to any alternative fuel distributor per year
CA	Section 25678 of the California Public Resources Code	Biomass fuel incentive (grant)	Promote liquid fuels fermented from biomass and biomass-derived resources	Producers of liquid fuels fermented in California from biomass and biomass derived resources	A US\$0.40/gallon production incentive
CA	Bill 8651.8 of the California Revenue and Taxation Code	Ethanol tax credit	Encourage the use of alternative fuels	Fuels consisting of at least 85% ethanol or methanol	Reduces the excise tax to one half the normal rate for each gallon of ethanol or methanol used
HI	§235-110.3, HRS	Ethanol Production Incentive (tax credit)	Encourage ethanol production	Ethanol facilities in production before 1 January 2017	Incentive equal to 30% of nameplate capacity or facilities producing between 500,000 and 15 million gallons per year. The facility must produce at least 75% of its nameplate capacity to be eligible for tax credit in that year. The tax credit, up to eight years, only available to first 40 million gallons of ethanol produced per year
IL	Dept. of Commerce and Economic Opportunity	Biofuels Research, Development & Demonstration Program (grants)	Promote R&D and demonstration projects related to the production of ethanol and biodiesel fuels	"Units of state and local government, associations, public and private schools, colleges and universities, research organizations, not-for-profit organizations, private companies and individuals"	For facilities construction grants, recipient must build new biofuels production facility with a capacity of at least 30 million gallons/year, or expand/modify existing facility by at least 30 million gallons/year. Maximum grant award for the construction of a new biofuels production facility is US\$5.5 million. Total grant award cannot exceed 10% of total construction costs of the facility, or US\$0.10/gallon of the new production. The Biofuels Business Planning Grants programme provides planning grants of up to US\$25,000. For demonstration projects, the maximum grant award that may be requested for each eligible project category is US\$225,000. The grant term shall be determined on a project by project basis, not to exceed a two-year time period
IL	Dept. of Commerce and Economic Opportunity Renewable Energy Resources Program	Biogas and Biomass to Energy Grant Program (grants)	Encourage the use of biogas and biomass for on-site energy generation	Targets projects designed to use biogas or biomass as a source of fuel to produce electricity with combined heat and power through gasification, co-firing or anaerobic digestion technologies	Incentives up to 50% of the total project cost. The maximum award for biogas or biomass to energy feasibility studies is US\$2,500. The maximum grant amount for biogas to energy systems is US\$225,000 and the maximum grant for biomass to energy systems is US\$500,000

State	Authority	Form of subsidy	Objective	Recipients	Description
IL	Dept. of Commerce and Economic Opportunity	Renewable Energy Resources Biogas and Biomass to Energy Grant Program (grant)	Foster investment in and the development and use of renewable energy resources	Projects focused on increasing the utilization of renewable energy and support renewable energy technologies	Maximum grant of US\$2,500 for project costs associated with biogas and biomass equipment, studies. The maximum grant for biogas to energy systems is US\$225,000. The maximum for amount for biomass to energy systems is US\$500,000
IL	Dept. of Commerce and Economic Opportunity	Renewable Fuels Development Program (grant)	Constructing, modifying, altering or retrofitting a renewable fuels plant	Plants with a production capacity of 30 million gallons	Grants of up to US\$15 million annually
IL	Dept. of Commerce and Economic Opportunity	Renewable Energy Resources Development of Wind Energy Project (grant)	Foster investment in and the development and use of renewable energy resources	Primary recipients: utility scale wind projects (at least 5 MW nameplate capacity)	Maximum grant of US\$25,000 per project. Depending on applicants, one or multiple smaller projects may be selected for support
IL	Established in June of 2003 by Public Act 93-15	Renewable Fuels Development Program (grant)	Promote and encourage the production and use of renewable fuels	Construction of new biofuels production facilities with a capacity of at least 30 million gallons per year	Maximum grant award of US\$5.5 million per facility
IA	Iowa Energy Center Code 476.46	Alternative Fuel Loan Program Alternative Energy Revolving Loan Program	Encourage alternative energy projects	Fuel production facilities	0% interest loans for up to half the cost of biomass or alternative fuels related to fuel production projects, up to a maximum of US\$250,000 per facility. The remainder of the loans are made by participating lenders at a negotiated interest rate
IA	Sections 476C, 476.48, 422.11J, 422.33 (16), 422.60 (8), 432.12E, 423.4 (4), 437A.17B, Code of Iowa	Renewable energy tax credit	Promote the growth of renewable energy	Producers or purchasers of energy from an eligible renewable energy facility approved by the Iowa Utilities Board	A power-purchase agreement is signed between the purchaser and producer which sets forth which party will receive the tax credit. Renewable Energy Tax Credits equal to US\$0.015/kWh of electricity, or US\$4.50 per million British thermal units of heat for a commercial purpose, or US\$4.50 per million British thermal units of methane gas or other biogas used to generate electricity, or US\$1.44 per 1,000 standard cubic feet of hydrogen fuel generated by and purchased from an eligible renewable energy facility. The credit may be claimed against corporate income, individual income, franchise, insurance premium, sales and use, and replacement taxes
IA	Sections 476B, 422.11J, 422.33 (16), 422.60 (8), 423.4 (4), Code of Iowa	Wind energy production tax credit	Promote the growth of renewable energy	Qualified facilities	A "qualified facility," defined as a facility that produces electricity from wind that is located in Iowa, was originally placed in service on or after 1 July 2005, but before 1 July 2012, and is approved by the local board of supervisors and the Iowa Utilities Board. Credit is equal to US\$0.01/kWh of electricity sold or generated for on-site consumption. Credits are available for a ten-year period from the initial in-service date of the facility
KY	Economic Development Finance Authority	Incentives (tax rebate and other tax incentives) for Energy Independence Act (IEIA)	Encourage projects that are likely to increase energy independence	Gasification, alternative energy or renewable energy facilities including natural gas	Capital investment min. US\$25 mill. for alternative fuel facility using biomass, or investment of min. US\$100 mill. for alternative fuel facility with coal as primary feedstock. Capital investment of min. US\$1 mill. required for renewable power facility meeting minimum electric output standards based upon power source. Negotiated incentives cannot exceed 50% of the capital expenditures. The program provides reimbursement of sales and use taxes paid on tangible personal property; an income tax credit; and, wage assessment incentives up to 4% of gross wages of each employee whose job was created as part of the project

State	Authority	Form of subsidy	Objective	Recipients	Description
KY	Kentucky Cabinet for Economic Development	Alternative Fuel and Renewable Energy Fund (seed stage capital - grants and investments)	The development and commercialization of alternative fuel and renewable energy products, processes, and services	Kentucky-based companies using the funds for business development activities	Grants of up to US\$30,000 and investments up to US\$750,000
KY	Economic Development Finance Authority	Biodiesel fuel tax credit (State income tax credit)	Promote the production and use of biodiesel	Producers or blenders of biodiesel fuel or blended biodiesel fuel	A state income tax credit is allowed for producers or blenders of biodiesel fuel or blended biodiesel fuel with a blend of at least 2%. Biodiesel or blended biodiesel producers receive a US\$1 credit per gallon produced or blended. Unused credits cannot be carried forward
LA	Dept. of Natural Resources	Alternative fuel vehicle (AFV) incentives (tax credit)	Support the purchase of alternative fuel vehicles	Consumers purchasing alternative fuel vehicles, alternative fuel refuelling equipment, or performing AFV conversions	State income tax credit for 50% of the incremental cost of purchasing a factory-equipped AFV, 50% of the cost for converting a vehicle to alternative fuels, and 50% of the cost for alternative fuel refuelling equipment. For the purchase of an original equipment manufacturer AFV, if the taxpayer is unable to determine the incremental cost of the vehicle relating to the use of alternative fuel, a credit of the lesser of 10% of the cost of the vehicle or US\$3,000 may be claimed
ME	Maine Revised Statutes Title 36 Section 5219-X	Biofuels production incentive (tax credit)	Increase the production of biofuels	Producers of biofuels for use in motor vehicles	State income tax credit of US\$0.05/gallon for the commercial production of biofuels for use in motor vehicles or otherwise used as a substitute for liquid fuels
MD	Renewable Fuels Promotion Act of 2005	Biofuels production credits (tax credit)	Promote ethanol and biodiesel production	Ethanol and biodiesel producers. Ethanol and biodiesel producers may apply to the Renewable Fuels Incentive Board for ethanol and biodiesel production credits	To be eligible for the credits, the producer must first apply to the Board in order to receive certification as a producer. Ethanol production credits are as follows: a) US\$0.20/gallon of ethanol produced from small grains, and b) US\$0.05/gallon of ethanol produced from other agricultural products. The Board may not certify ethanol production credits for more than a total of 15 million gallons per calendar year, of which at least 10 million gallons must be produced from small grains. Biodiesel production credits are as follows: a) US\$0.20/gallon of biodiesel produced from soybean oil (the soybean oil must be produced in a facility or through expanded capacity of a facility that began operating after 31 December 2004), and b) US\$0.05/gallon for biodiesel produced from other feedstocks (including soybean oil produced in a facility that began operating on or before 31 December 2004)
MD	Energy Administration	Clean energy incentive income tax credit	Promote the use of certain renewable energy sources or waste materials to produce electricity	Businesses using certain renewable energy sources or waste materials to produce electricity sold to unrelated person	Credit is US\$0.0085/kWh of electricity produced at a Maryland facility using qualified energy resources during the five-year period after the facility is originally placed in service. Use of primarily qualified energy resources including any solid, non-hazardous, cellulosic waste material segregated from other waste materials and derived from: forest-related resources, including mill residues (except sawdust and wood shavings), forest thinning, slash, or brush, but excluding old-growth timber; waste pallets, crates, and dunnage, landscape or right-of-way trimmings; agricultural sources (orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues)
MD	Dept. of Business and Economic Development	Maryland cellulosic ethanol R&D tax credit	Promote R&D in cellulosic ethanol technology	Businesses that incur qualified cellulosic ethanol technology research and development expenses in Maryland	The amount of the income tax credit is 10% of the "qualified research and development expenses" paid or incurred by an individual or business during the previous tax year for investment in cellulosic ethanol technology with a limit of US\$250,000
MA	Green Jobs Act of 2008	Massachusetts Clean Energy Center - Commonwealth Hydropower (grants)	Increase the output of the Commonwealth's hydropower assets	Projects that can demonstrate a high likelihood of qualifying for the Massachusetts Renewable Energy Portfolio Standard	Grants are capped at the lesser of US\$600,000 or 50% of actual costs, or US\$1/incremental kWh/year. Grants for feasibility studies are capped at the lesser of US\$40,000 or 80% of actual costs

State	Authority	Form of subsidy	Objective	Recipients	Description
MA	Green Jobs Act of 2008	Massachusetts Clean Energy Center - Commonwealth Commercial Wind (grants and loans)	Encouraging development of responsibly sited commercial electric generating facilities employing wind energy technologies.	Landowners and new wind project developers for land-based projects greater than 2 MW that cannot be net metered	The wind project must have three turbines or more. Applicants can include private and public entities such as federal, state and local governments. Funding for site assessments, wind resource assessments, feasibility studies and development activities including interconnection. Benefits include up to US\$55,000 in grants per project for feasibility studies. Up to US\$250,000 in unsecured loans bearing interest at the prime rate plus 2% for development activities. A cost share is required
MA	Green Jobs Act of 2008	Massachusetts Clean Energy Center - Commonwealth Wind Community Scale Initiative (grants)	Encourage wind projects	Projects proposed by any residential, commercial, industrial, institutional or public entity in Massachusetts	Project nameplate capacity must be greater than or equal to 100 kW, and project's utility meter to be grid connected. At least 50% of the renewable energy produced to be used behind the meter or assigned through the net metering provisions of the Green Communities Act based on annual production and usage estimate. Grants vary based on size and other characteristics of the wind project. Non-public entities have a 20% cost share requirement associated with the grant
MA	Green Jobs Act of 2008	Massachusetts Clean Energy Center - Investments in Job Creation (financing)	Encourage growth capital investments that support the expansion of a clean energy company's operations in Massachusetts	Clean energy companies that demonstrate significant job creation and economic development in the Commonwealth	The investment structure and amount depends on the applicant's growth trajectory and geography
MA	Green Jobs Act of 2008	Massachusetts Clean Energy Center - Investments in the Advancement of Technology (financing)	Promote venture capital equity investments in promising early-stage Massachusetts clean energy companies	Early-stage clean energy companies contributing to the advancement of one or more listed clean energy or energy efficient technologies	Clean energy companies developing and commercializing technologies contributing to advancement of various clean energy or energy efficient technologies. Listed clean energy or energy efficient technologies include solar photovoltaic, solar thermal, wind power, geothermal, biofuels and hydrogen. Seed venture investments up to US\$500,000 in the form of a suitable equity instrument, depending on the applicant's circumstance
MA	Green Jobs Act of 2008	Massachusetts Clean Energy Center - Catalyst Program (grants)	Support demonstration of commercial viability of clean energy technologies	A principal investigator with technology disclosed to a host institution located in Massachusetts	The aim is not to perfect technology but its development to a point where features can attract additional commercialization funding. Maximum award is US\$40,000
MA	Massachusetts Clean Energy Center	The Commonwealth Solar II Rebate Program II (rebates)	Rebates for homeowners and businesses in Massachusetts installing solar photovoltaics (PV)	Various commercial, industrial, non-profit and government entities	Rebates granted through non-competitive application process for the installation by professional, licensed contractors. For all systems, rebates calculated by multiplying per watt incentive (base incentive plus adders) times nameplate capacity of system, up to 5 kW; non-residential projects eligible only if total capacity under 10 kW. Benefits are: (1) Residential: up to US\$8,500 per/yr (with all extra incentives except for the disaster relief incentive); (2) commercial: US\$4,250 (per host customer). The per watt incentives are capped at 5KW per project, and are measured by energy production capacity and not actual production



State	Authority	Form of subsidy	Objective	Recipients	Description
MI	Dept. of Treasury	Michigan NextEnergy Authority (MNEA) (tax incentives)	Promote the development of alternative energy technologies and to provide tax incentives for business activities and property related to the research, development, and manufacturing of those technologies	Taxpayers engaged in R&D or manufacturing of alternative energy technology and certified as eligible by the MNEA	Taxpayers engaged in R&D or manufacturing of alternative energy technology and certified as eligible by the MNEA may claim a non-refundable credit against their single business tax liability. Personal property that is certified by the MNEA as Alternative Energy Personal Property (AEP) is exempt from the collection of personal property taxes. An Alternative Energy Zone (AEZ) has been created within Wayne State University's Research and Technology Park in Detroit to promote the research, development, and manufacturing of Alternative Energy Technologies. Businesses engaged in one of those qualifying activities and located within the AEZ will enjoy the full range of Renaissance Zone tax benefits. Alternative energy technology companies located in the AEZ may also be eligible for a refundable payroll credit on their SBT <sup>9</sup>
MI	Michigan Economic Development Corporation	Centres of Energy Excellence Program (grants)	Promote the development, acceleration and sustainability of energy sectors	For profit companies showing they promote new and developing industry sectors in the energy field in the state	New and developing industry sectors where state has a competitive advantage and barriers exist to the commercialization of technology within the new and developing industry sector. US\$30 million in total has been authorized from the 21 <sup>st</sup> Century Jobs Trust Fund. Grants are provided to match federal funding of up to 50% of the total project costs
MI	Michigan Economic Development Corporation	Renewable energy renaissance zones (tax exemption)	Assist in the development of a strong renewable energy industry	Zones located anywhere in Michigan	Companies must maintain a renewable energy facility. Companies located in a renaissance zone do not pay Michigan business tax, state education tax, personal and real property taxes and local income tax
MI	Michigan Compiled Laws 207.552 and 207.803	Alternative fuel development property tax exemption (tax exemption)	Certain property tax exemptions apply to industrial property used for, <i>inter alia</i> , high-technology activities or creation or synthesis of biodiesel fuel	High-technology activities include those related to advanced vehicle technologies	Advanced vehicle technologies include electric, hybrid, or alternative fuel vehicles and their components. The amount varies. Industrial facility exemption certificate for the property to be obtained from the State Tax Commission
MS	Mississippi Development Authority/ Dept. of Revenue	Clean Energy Initiative Incentive Program (tax exemption)	Encourage clean energy component manufacturers to locate or expand in Mississippi	Companies manufacturing systems or components used in generation of renewable or alternative energy	Companies must invest at least US\$50 million, and create at least 250 jobs in the state. 10-year exemption from income and franchise tax and a sales and use tax exemption from the beginning of the project until three months after the start of commercial production
MO	Dept. of Agriculture/Dept. of Revenue	Missouri Qualified Fuel Ethanol Producer Fund (grant)	Promote in-state, cooperatively owned biofuels production to increase home-grown production of ethanol and biofuels	Producers at least 51% owned by agricultural producers	The agricultural producers must be actively engaged in agricultural production for commercial purposes in the state. Ethanol incentives include a payment of US\$0.20/gallon for the first 12.5 million and US\$0.05/gallon for the next 12.5 million gallons
MT	Montana Code Annotated 15-6-138	Ethanol facility tax exemption	Support ethanol production	Manufacturers of ethanol	All manufacturing machinery, fixtures, equipment, and tools used for the production of ethanol from grain during the construction on an ethanol manufacturing facility and for 10 years after initial production of ethanol from the facility are exempt from taxation
NE	Dept. of Revenue	Ethanol tax credit	Support ethanol producers	Ethanol producers	Credit is \$0.18/gallon

State	Authority	Form of subsidy	Objective	Recipients	Description
NJ	New Jersey Economic Development Authority/ Board of Public Utilities	Edison Innovation Clean Energy Manufacturing Fund (CEMF) (mixed financing)	Encourage the manufacturing of energy efficient and renewable energy products in New Jersey	Manufacturer of Class I renewable energy or energy efficiency systems, products or technologies	Funding under two separate components: (a) Project Assessment and Design Grant: up to US\$300,000, not to exceed 10% of total CEMF project funds requested, as a grant to assist with the manufacturing site identification, procurement, design, and permits. 20% available up front as seed funds at closing; (b) Project Construction and Operation Loan: up to US\$3 million as a ten-year, 2% interest loan with repayments to start at beginning of 4 <sup>th</sup> year, to support site improvements, equipment purchases, and facility construction/completion. One-third of loan (up to US\$1 million) may convert to a performance grant if company specific business and tech milestones are met during first 3 years. Maximum half the funds advanced prior to commercial production
NJ	New Jersey Economic Development Authority	Edison Innovation Green Growth Fund (mixed)	Advance newly discovered energy efficient, renewable energy or supply chain products assisting Class I renewable energy or energy efficient technologies to become competitive	Technology companies with Class I renewable energy or energy efficiency products or systems	Class I renewable energy or energy efficient technologies to become competitive with traditional sources of electric generation. Products or systems that have achieved "proof of concept" and successful independent beta results, have begun generating commercial revenues, and will receive 1:1 match funding by time of loan closing. Loans up to US\$2 million with a performance grant component
NM	Economic Development Dept./ Taxation and Revenue Dept.	Alternative energy product manufacturers tax credit	Support manufacturers of electric or hybrid vehicles; fuel cell, renewable energy, and IGCC systems; and carbon sequestration equipment	Alternative energy companies	Manufacturers of electric or hybrid vehicles, fuel cell systems, renewable energy systems, integrated gasification combined cycle systems (IGCC) systems, and carbon sequestration equipment may receive for a tax credit of up to 5% of their capital expenses
NM	Economic Development Dept./ Taxation and Revenue Dept.	Renewable energy production tax credit	Support renewable energy production	Renewable energy companies	Each renewable energy generator of one megawatt or more may earn an income tax credit (personal or corporate) of US\$0.027 (on average) per kWh for the first 400,000 MWh of electricity produced for ten consecutive years, beginning with the first year of production. This credit is fully refundable
NY	Tax Law Section 28	Biofuels production credit (tax credit)	Credit providing manufacturers of qualified biofuel products a refundable tax credit	Manufacturers of qualified biofuel products (primarily ethanol and bio-diesel).	The refundable tax credit amounts to US\$0.15 per gallon of biofuel produced at plant, after first 40,000 gallons/year has been presented to the market. Credit cap of US\$2.5 mill. per taxpayer per taxable year (up to four consecutive taxable years) per biofuel plant
NY	New York State Energy R&D Authority	Energy Products Center (loans)	Promote more efficient and clean supplies of energy	Businesses involved with a technology, product, or service generating new supplies of energy more efficiently and cleanly	Up to US\$500,000 of project costs, with 50% co-funding. Project funding is budgeted in advance by programme topic and specific in each "Program Opportunity Notice". The programme money is allocated among the chosen projects. New York State lenders provide loans with an interest rate of 4.5%. The average cost of a project being funded is up to US\$200,000
NC	N.C.§105-275(45)	Article 3B Renewable Energy & Waste Reduction Tax Credits	Encourage sustainable development through renewable energy and waste reduction projects	Renewable energy installation; biodiesel & alternative fuel production; alternative fuel infrastructure; recycling facility	Tax credits of 25-35% of project cost per installation
NC	Dept. of Revenue	Credit for biodiesel producers (tax credit)	Encourage biodiesel production	Biodiesel industry	Credit may not exceed US\$500,000 <sup>c</sup>

State	Authority	Form of subsidy	Objective	Recipients	Description
ND	Tax Dept.	Biodiesel or green diesel tax credits	Encourage biodiesel or green diesel production	Biodiesel or green diesel producers, suppliers and sellers	Income tax credit equal to 10%/year for five years of costs to establish, adapt, or retrofit a facility to produce or blend at least 2% biodiesel or green diesel fuel. Any credit in excess of current year's liability may be carried forward five taxable years; cumulative credit limited to US\$250,000 for all taxable years. From 31.12.2004, a licensed fuel supplier blending at least 5% biodiesel or green diesel fuel is allowed an income tax credit of 5 cents per gallon of fuel. Excess credit may be carried forward five taxable years. From 31.12.2004, a seller of biodiesel or green diesel fuel having at least a 2% blend is allowed an income tax credit equal to 10% per year for 5 years of the seller's direct costs to adapt or add equipment to their facility to enable them to sell the biodiesel or green diesel blend
ND	Bank of North Dakota	Biofuels Partnership in Assisting Community Expansion (PACE) (interest rate subsidy)	Encourage biofuels production	Ethanol and biodiesel producers with production facility located in North Dakota	Additional criteria must be satisfied: The facility must make agriculturally derived denatured ethanol, or biodegradable, combustible liquid fuel from vegetable oil or animal fat; the fuel must be suited for blending with petroleum product for use in internal combustion engines; ownership: agricultural producers holding at least 10% interest in the facility and residents of North Dakota owning at least 50%. Biofuels PACE was established to buy down the interest rate on loans to biodiesel and ethanol production facilities, and livestock operations. Interest buy down of 5% below the note rate
ND	Dept. of Commerce	Ethanol Incentive Program (grants)	Encourage ethanol production	Ethanol producers	The incentive calculation factors in the difference between baseline prices for ethanol and corn and quarterly average North Dakota prices for ethanol and corn. Producers may apply for incentives on a quarterly basis by providing proof of the number of gallons of ethanol produced. Total cumulative incentive to all eligible producers capped at US\$1.6 million in any year. No producer may receive incentive payments exceeding US\$10 million over the life of their production facility
OH	Development Services Agency	Advanced Energy Fund (loan)	Utilize energy efficient measures and technologies, reduce energy usage, reduce fossil fuel emissions and create/retain jobs	Projects located in Ohio in the service territories of one of the four participating electric distribution companies	The four participating companies are: American Electric Power, Duke Energy, Dayton Power and Light and First Energy. Eligible entities apply through the Energy Loan Fund. Amounts under this programme are based on entity type: (1) manufacturers & small businesses: loan up to 80% of total project costs; and (2) public entities: loan up to 90% of total project costs. Typical loan amounts range from US\$50,000-US\$5 million
OK	Tax Commission	Alternative energy sources tax credits	Encourage alternative, zero-emission electricity generation from renewable resources including wind, solar, geothermal and water	Producers of electricity utilizing alternative, zero-emission fuel and small wind turbine manufacturers	Producers may receive a tax credit of 50 one-hundredths of one cent per kWh of electricity generated by facilities placed in operation between 01.01.2007 and before 01.01.2016. The tax credits will be for a period of 10 years and may be transferrable. For facilities placed in operation before 01.01.2007, producers may receive a tax credit of 25 one-hundredths of one cent per kilowatt-hour of electricity generated between 01.01.2007 and before 01.01.2012. Small wind turbine manufacturers may earn a credit of US\$25 per square foot of rotor swept area starting in 2003. Credits are freely transferable and may be carried forward 10 years. Senate Bill 498 modifies an <i>ad valorem</i> tax exemption for manufacturing by wind companies; SB 501 sets five-year step-down for zero emission tax credits and US\$6 million annual cap state wide
PA	Act 178	Alternative fuels incentive grants	Create new markets for biofuels	Renewable fuel producers	Reimbursement of up to US\$0.05/gallon of renewable fuels produced in a calendar year up to 12,500,000 gallons total

State	Authority	Form of subsidy	Objective	Recipients	Description
PA	Dept. of Community and Economic Development/ Dept. of Environmental Protection	Solar Energy Program (grants and loans)	Promote the use of alternative solar energy	Solar energy equipment manufacturers and operators of solar energy generators	Loans for component manufacturers of solar energy generation equipment up to US\$35,000 for every new job created within three years after loan approval. Loans for solar energy generation or distribution projects not to exceed US\$5 mill. or US\$2.25 per watt, whichever is less. Grants for component manufacturers of solar energy generation equipment up to US\$5,000 for every new job created by the business within three years after approval of the grant. Grants for solar energy generation or distribution projects, solar research and development facilities, and solar thermal projects not to exceed US\$1 mill. or US\$2.25 per watt, whichever is less. Grants for planning and feasibility studies not to exceed 50% of the total cost of the planning project or US\$175,000, whichever is less
PA	Dept. of Community and Economic Development/ Dept. of Environmental Protection	Alternative Clean Energy Program (grants and loans)	Utilization, development and construction of alternative and clean energy projects; and energy efficiency and energy conservation projects	Manufacturers of alternative and/or clean energy generation equipment and operators of alternative and/or clean energy generation projects	Loans for manufacturers of alternative and/or clean energy generation equipment or components shall not exceed US\$40,000 for every new job created within three years after approval of the loan. Loans for any alternative energy production or clean energy project shall not exceed US\$5 million or 50% of the total project cost, whichever is less. Grants for manufacturers of alternative and/or clean energy generation equipment or components shall not exceed US\$10,000 for every job projected to be created by the business within three years after approval of the grant. Grants for any alternative energy production or clean energy project shall not exceed US\$2 million or 30 percent of the total project cost, whichever is less
PR	Dept. of Economic Development and Commerce	Green Energy Incentives Act of Puerto Rico (Act No. 82-2010) (tax credits and exemptions)	Encourage the creation of a new, strong and robust renewable energy industry	Businesses engaged in production and commercial sale of green energy for consumption in Puerto Rico	The recipient may be owner and direct operator of the production unit or owner of a production unit operated by another person. This programme provides (1) a 4% fixed rate on income derived from production of green energy, (2) 90% exemption on municipal and state real and personal property taxes, (3) 60% exemption on municipal licences, excises and other municipal taxes, and (4) various tax credits for job creation
SC	Energy Office	Renewable fuels processing facilities tax credits	Provide credit	Commercial facilities that process certain renewable fuels, including ethanol and biodiesel	Commercial facilities placed in service after 2006. This programme provides a credit against income tax equal to 25% of the cost of constructing and equipping the facility, to be taken in 7 equal annual instalments <sup>d</sup>
SC	Energy Office	Renewable fuels distribution facilities tax credits	Provide a credit	Commercial facilities that distribute or dispense certain renewable fuels, including ethanol and biodiesel	The commercial facilities must have been placed in service after 2006. Credit against income tax equal to 25% of the cost of purchasing, constructing and installing property that is used directly and exclusively for distributing, dispensing or storing renewable fuel, to be taken in three equal annual instalments <sup>d</sup>
SC	Energy Office	Tax credit for renewable energy systems manufacturers	Promote the production of renewable energy systems	Manufacturers of renewable energy systems	Recipients must invest US\$500 mill. and meet certain job and wage thresholds. Income tax credit equal to 10% of qualifying expenditures. Credits cannot exceed US\$500,000 for any taxable year or US\$5 mill. total <sup>a</sup>
SD	Dept. of Revenue	Alternative annual tax on wind farm property (tax incentives)	Promote alternative energy sources	Companies owning or holding under lease, or otherwise, real or personal property used, or intended for use, as a wind farm producing power	The tax liability is based on generative capacity of wind farm. These taxes are in lieu of all taxes levied by the state, counties, municipalities, school districts, or other political subdivisions of the state on the personal and real property of the company used or intended for use as a wind farm, but are not in lieu of the retail sales and service tax or other taxes

State	Authority	Form of subsidy	Objective	Recipients	Description
TN	Dept. of Revenue	Carbon charge tax credit	Promote "green energy" job creation and capital investment	Certified green energy supply chain manufacturers and any campus affiliates	Any manufacturer having made a required capital investment above US\$250 mill. during the investment period to construct, expand, or remodel a facility certified to be engaged in manufacturing a product necessary for the production of green energy. The certification is carried out by the Commissioner of Revenue, Commissioner of Economic and Community Development and Commissioner of the Tennessee Economic Development Council in their sole discretion. A certified green energy supply chain manufacturer is allowed a carbon charge credit, against the sum total of franchise and excise tax liability, equal to any carbon tax levied by the Tennessee Valley Authority on a certified supply chain manufacturer's energy bill. Credit must be used to offset a certified green energy supply chain manufacturer's Tennessee franchise and excise tax liability. Any credit that cannot be used during a fiscal year may be refunded to the taxpayer as a cash overpayment
TN	Dept. of Revenue	Green energy tax credit	Promote "green energy" job creation and capital investment within the state	Certified green energy supply chain manufacturers	Any manufacturer having made a required capital investment above US\$250 mill. during the investment period to construct, expand, or remodel a facility certified to be engaged in manufacturing a product necessary for the production of green energy. Certification carried out by the Commissioner of Revenue, Commissioner of ECD and Commissioner of TDEC, in their sole discretion. The Green Energy Tax Credit equals the amount by which the charge for electricity sold to the certified green energy supply chain manufacturer exceeds the charge that would have been made for such total delivered electricity if the maximum certified rate had been applied during the applicable tax year. The Maximum Certified Rate is a rate expressed as a price per kWh established by private letter ruling by the Commissioner of Revenue, subject to approval by the Commissioners of ECD and Finance & Administration
TX	TX Tax Code Sec 162.001, 162.204	Ethanol and biodiesel tax exemption	Exemption from fuel tax on diesel fuel blended with ethanol or biodiesel	Diesel suppliers and distributors	The exemption is only for the portion of ethanol or biodiesel that is blended into the diesel fuel otherwise subject to fuel tax of US\$0.20/gallon
TX	Energy Conservation Office	Wind and solar energy tax exemptions and deductions	Wind and Solar Energy Tax Exemptions and Deductions Tax Code Section 171.056	Manufacturers, sellers, or installers of solar energy devices	Section 171.056 extends a franchise tax exemption to manufacturers, sellers, or installers of solar energy devices. The state also permits a corporate deduction from the state's franchise tax for renewable energy sources. Business owners may deduct the cost of the system from the company's taxable capital or deduct 10% from the company's income. Wind energy qualifies under the term, solar energy, for the exemption and deduction under Sections 171.056 and 171.107. Franchise tax amounts are exempted or deducted in varying amounts
UT	Tax Commission	Sales and Use Tax Exemption (59-12-104(55))	Attract businesses and investment	Renewable energy production facilities	Leases or purchases of machinery or equipment with an economic life of five or more years that will be used to create or expand the operations of a renewable energy production facility are exempt from sales and use tax
UT	Tax Commission	Sales and Use Tax Exemption (59-12-104(56))	Attract businesses and investment	Waste energy production facilities	Leases or purchases of machinery or equipment that has an economic life of five or more years that will be used to create or expand the operations of a waste energy production facility are exempt from sales and use tax
UT	Tax Commission	Sales and Use Tax Exemption (59-12-104(57))	Attract businesses and investment	Facilities that produces energy from biomass fuel	Leases or purchases of machinery or equipment with an economic life of five or more years that will be used to create or expand the operations of a facility that produces energy from biomass fuel are exempt from sales and use tax

State	Authority	Form of subsidy	Objective	Recipients	Description
VA	Dept. of Taxation	Green Jobs Tax Credit	Taxpayer allowed a US\$500 credit against Virginia personal or corporate income tax for each new green job created within the Commonwealth by the taxpayer for taxable years before 1 January 2018	A "green job" means employment in industries relating to the field of renewable, alternative energies,	"Green jobs" include the manufacture and operation of products used to generate electricity and other forms of energy from alternative sources that include hydrogen and fuel cell technology, landfill gas, geothermal heating systems, solar heating systems, hydropower systems, wind systems, and biomass and biofuel systems. Using the Bureau of Labour Statistics Green Jobs Definition, the tax credit applies to jobs in businesses producing goods or services benefitting the environment or conserving natural resources and/or jobs involving workers' duties making the production processes more environmentally friendly or using fewer natural resources. US\$500 credit available to all qualifying jobs paying at least US\$50,000, first allowed for the taxable year in which the job has been filled at least one year and for each of the four succeeding taxable years, provided the job is continuously filled. Each taxpayer may claim the credit for up to 350 green jobs <sup>a</sup>
WA	HB2939 (2006)	Biofuels Production Incentive (Energy Freedom Fund) (loans and grants)	Advancing Washington's move towards energy independence.	Public R&D institutions in partnership with private producers	Low-interest loans and grants for R&D of new and renewable energy sources, including infrastructure, facilities, technologies and R&D. Since the inception of the programme, a total of US\$18 million in grants and low-interest loans has been provided to local public-private partnerships
WA	Dept. of Revenue	Biofuels property and leasehold tax exemption	Manufacturing of biodiesel, biodiesel feedstock or alcohol fuel	Biofuel manufacturers	Property and leasehold tax exemption on investments in buildings, equipment and labour. This programme provides exemption from the property tax for six assessment years following the date on which the facility or addition to an existing facility becomes operational
WA	Dept. of Revenue	B&O tax credit for biodiesel sellers and distributors	Provide a B&O tax credit for retailer sellers and distributors of biodiesel fuels.	Retail sellers and distributors of biodiesel fuels	The amount varies
WA	Dept. of Revenue	Retail and sales use tax exemption for biodiesel sales	Facilitate the retail sale of biodiesel blend or E85 motor fuel	Retail sale of biodiesel blends	The programme provides a retail sales and use tax exemption for machinery and equipment which is used directly to facilitate the retail sale of biodiesel blend or E85 motor fuel. The amount varies
WI	DATCP	Woody biomass harvesting and processing tax credit	Equipment investment used to harvest or process woody biomass for fuel	Eligible recipients are those that meet the equipment investment requirements	This programme provides a tax credit up to 10% of the amount paid in the taxable year for equipment used primarily to harvest or process woody biomass that is used as fuel or component of fuel

a Until end of 2015.

b The personal property tax exemption applies to taxes levied after 31 December 2002, and before 1 January 2013.

c The credits last until the end of 2013, with a five-year carry forward.

d Credit is repealed for facilities placed in service after 2019.

e This programme sunsets on 31 December 2017.

Note: Arizona (AZ); Arkansas (AR); California (CA); Hawaii (HI); Illinois (IL); Iowa (IA); Kentucky (KY); Louisiana (LA); Maine (ME); Maryland (MD); Massachusetts (MA); Michigan (MI); Mississippi (MS); Missouri (MO); Montana (MT); Nebraska (NE); New Jersey (NJ); New Mexico (NM); New York (NY); North Carolina (NC); North Dakota (ND); Ohio (OH); Oklahoma (OK); Pennsylvania (PA); Puerto Rico (PR); South Carolina (SC); South Dakota (SD); Tennessee (TN); Texas (TX); Utah (UT); Virginia (VA); Washington (WA); Wisconsin (WI).

Source: WTO document G/SCM/N/284/USA, 18 November 2015.



**Table A4. 1 Commodity loan rates and Price Loss Coverage reference prices, 2014 Farm Act**

Covered commodities	Marketing loan programme		Price Loss Coverage	
	Commodity loan rates		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.)	1.95	89.6	4.95	227.4
Oats (bu.)	1.39	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.)	5.00	183.7	8.4	308.6
Other oilseeds (cwt.)	10.09	222.5	20.15	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	2,535.3	n.a.	n.a.
Non-graded wool (lb.)	0.40	881.9	n.a.	n.a.
Mohair (lb.)	4.20	9,259.4	n.a.	n.a.
Honey (lb.)	0.69	1,521.2	n.a.	n.a.
Sugar beet, refined (lb.)	0.2409	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	1,758.6	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. The loan rate for the 2015 crop year was US\$0.52/lb.		n.a.	n.a.

n.a. Not applicable (i.e. not a covered commodity).

Note: For the conversion factors, see WTO document WT/TPR/S/235/Rev.1, 29 October 2010, Table AIV.1.

Source: WTO document WT/TPR/S/307/Rev.1, 13 March 2015, based on the 2014 Farm Act.