CHAPTER 2: Administration of U.S. Trade Laws and Regulations

This chapter surveys activities related to the administration of U.S. trade laws and regulations during 2003. Concerns covers the following: import relief laws; unfair trade laws; certain other trade provisions, including the U.S. Generalized System of Preferences (GSP), the African Growth and Opportunity Act, the Andean Trade Preference Act (ATPA) and the Andean Trade Promotion and Drug Eradication Act, (ATPDEA) and the Caribbean Basin Economic Recovery Act (CBERA) and the Caribbean Basin Trade Partnership Act (CBTPA); section 232 of the Trade Expansion Act of 1962 on impairment of national security; and programs affecting textile and apparel imports.

Import Relief Laws

The United States has enacted several laws that implement safeguard provisions in international trade agreements, as well as a trade adjustment assistance program. The U.S. global action safeguard law, which is based on Article XIX of GATT 1994 and the WTO Agreement on Safeguards, is set forth in sections 201–204 of the Trade Act of 1974, as amended.[1] U.S. bilateral action safeguard laws include section 406 of the Trade Act of 1974 (market disruption from imports from Communist countries),[2] sections 421–422 of the Trade Act of 1974 (market disruption, trade diversion, China),[3] and sections 301–312 of the North American Free Trade Agreement (NAFTA) Implementation Act.[4] The trade adjustment assistance provisions are set forth starting with section 221 of the Trade Act of 1974.[5]

Safeguard Actions

At the end of 2003, no U.S. safeguard measures were in effect and no petitions were pending before the U.S. International Trade Commission (USITC or Commission), although one USITC China safeguard recommendation was pending before the President. During 2003, the President terminated or allowed to expire all three U.S. global safeguard measures in place at the beginning of the year (certain steel

[1] 19 U.S.C. 2251 et seq.
[2] 19 U.S.C. 2436.
[3] 19 U.S.C. 2451, 2451a.
[4] 19 U.S.C. 3351 et seq.
[5] 19 U.S.C. 2271 et seq.

products, steel wire rod, and steel line pipe[6]); no new U.S. safeguard measures were applied during the year under these statutes. During the year, the USITC conducted a midcourse review investigation with respect to the U.S. global safeguard measure on certain steel products,[7] and completed three investigations under the U.S. China safeguard law. The USITC made affirmative determinations and remedy recommendations to the President in two of the China safeguard investigations (steel wire garment hangers[8] and ductile iron waterworks fittings[9]), and made a negative determination in the third (brake drums and rotors[10]). The President decided not to apply a safeguard measure in the steel wire garment hangers case,[11] and the recommendation in the ductile iron waterworks fittings case was pending before the President at year end.[12]

The President terminated the U.S. global safeguard measure on certain steel products in December 2003.[13] The measure, in the form of increased tariffs and tariff rate quotas, was initially applied in March 2002, and was liberalized in March 2003. The President terminated the measure following receipt of the September 2003 USITC monitoring report and after seeking information from the U.S. Secretary of Commerce and U.S. Secretary of Labor, having determined that the effectiveness of the actions taken had been impaired by changed circumstances.[14] A U.S. licensing program on imports of such steel products established under the original proclamation remained in effect, pending establishment of a replacement program.[15] Earlier in the year, in July 2003, a WTO panel found that the U.S. measure was inconsistent in certain

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[6] The safeguard measures on certain steel products were terminated by the President on December 4, 2003, and the measures on steel wire rod and steel line pipe were allowed to expire on Mar. 1, 2003.

[7] USITC, Steel: Monitoring Developments in the Domestic Industry, investigation No. TA-204-0, USITC publication No. 3632, Sept. 2003.

[8] USITC, Certain Steel Wire Garment Hangers from China, investigation No. TA-421-2, USITC publication No. 3575, Feb. 2003.

[9] USITC, Certain Ductile Iron Waterworks Fittings from China, investigation No. TA-421-4, USITC publication No. 3657, Dec. 2003.

[10] USITC, Certain Brake Drums and Rotors from China, investigation No. TA-421-3, USITC publication No. 3622, Aug. 2003.

[11] See Memorandum for the Secretary of Commerce, the Secretary of Labor, and the United States Trade Representative, April 25, 2004, downloaded from *www.whitehouse.gov/news/releases/2003/04/20030425-8.html.*

[12] The President subsequently decided not to apply a measure. See Memorandum for the United States Trade Representative, March 3, 2004, downloaded from *www.whitehouse.gov/news/releases/2004/03/20040303-12*. A fifth petition was filed under the statute in January 2004 with respect to uncovered innerspring (mattress) units from China. The USITC made a negative determination in that case in March 2004. See USITC, Uncovered Innerspring Units from China, investigation No. TA-421-5, USITC publication No. 3676, Mar. 2004.

[13] See Proclamation 7741 of December 4, 2003, 68 FR 68483, Dec. 8, 2003. The 14 steel products covered by the measures included carbon and alloy steel (1) slabs, (2) plate, (3) hot-rolled steel, (4) cold-rolled steel, (5) coated steel, (6) tin mill products, (7) hot bar, (8) cold bar, (9) rebar, (10) welded tubular products other than OCTG, and (11) fittings; and stainless steel (12) bar, (13) rod, and (14) wire. The President did not apply the measures to imports from Canada, Israel, Jordan, or Mexico, with which the United States has free trade agreements, or to imports from most developing countries. See Proclamation 7529 of March 5, 2002, 67 FR 10553, Mar. 7, 2002.

[14] Proclamation 7741 of December 4, 2003, 68 FR 68483, Dec. 8, 2003.

[15] Ibid.

respects with U.S. obligations under the WTO Agreement on Safeguards.[16] The United States appealed certain findings of the panel and in November 2003 the WTO Appellate Body ruled that the U.S. measure was inconsistent in certain respects with U.S. obligations under the Safeguards Agreement.[17]

Adjustment Assistance

The Trade Adjustment Assistance (TAA) program, set forth in section 221 of the Trade Act of 1974, authorizes the U.S. Secretary of Commerce and the U.S. Secretary of Labor to provide trade adjustment assistance to firms and workers who are adversely affected by increased imports. On August 6, 2002, the President signed into law the Trade Adjustment Assistance Reform Act of 2002 (TAA Reform Act), which reauthorizes the TAA program through fiscal year 2007, and amends and adds provisions to the TAA program. The TAA Reform Act made the following changes:

- Repealed NAFTA-TAA, consolidating the program into TAA (workers certified for NAFTA-TAA under petitions received before November 4, 2002, however, will continue to receive NAFTA-TAA services for as long as their eligibility lasts);
- Expanded eligibility to more worker groups, increased existing benefits available, and provided tax credits for health insurance coverage assistance;
- Increased timeliness for benefit receipt, training, and rapid response assistance;
- Legislated specific waiver provisions;
- Established the Alternative Trade Adjustment Assistance program for older workers beginning August 6, 2003; and
- Established the Trade Adjustment Assistance for Farmers program (TAA for Farmers).[18]

These changes went into effect in fiscal year 2003. Table 2-1 provides a more detailed comparison of the prior and current TAA programs.

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[16] United States – Definitive Safeguard Measures on Imports of Certain Steel Products, WT/DS248/R, WT/DS249/R, WT/DS251/R, WT/DS252/R, WT/DS253/R, WT/DS254/R, WT/DS258/R, and WT/DS259/R, July 11, 2003.

[17] United States – Definitive Safeguard Measures on Imports of Certain Steel Products, AB-2003-3, WT/DS248/AB/R, WT/DS249/AB/R, WT/DS251/AB/R, WT/DS252/AB/R, WT/DS253/AB/R, WT/DS254/AB/R, WT/DS258/AB/R, and WT/DS259/AB/R, Nov. 10, 2003.

[18] U.S. Department of Labor, "Trade Adjustment Assistance Reform Act of 2002," found at Internet address *http://www.doleta.gov/tradeact/2002act_index.cfm,* retrieved Jan. 20, 2004.

Table 2-1
Trade Adjustment Assistance, comparison of prior and current programs

Topic	Prior TAA	Current TAA
Program consolidation	Established two separate programs	Consolidates into one TAA program; repeals NAFTA/TAA
Parties who may file	Parties which may file: • A group of three workers • A company official • A duly authorized representative of the worker	Parties which may file: • A group of three workers • A company official • A duly authorized representative of the worker • One-stop operators and partners • State Workforce Agencies • State dislocated worker units
Location where parties file	Required filing at: • TAA: Department of Labor • NAFTA-TAA: State	Requires simultaneous filing with State dislocated worker unit and Department of Labor
Determination period	Determined petition as follows: • TAA: 60 days from institution • NAFTA-TAA: 40 days from receipt	Determines petitions 40 days from receipt
Eligibility: primary workers	• TAA & NAFTA-TAA: Covered workers affected by a decrease in sales or production and layoffs • NAFTA-TAA: Covered workers affected by imports of like products from, or shift in production to, Canada or Mexico	Covers as previous, plus where: • Workers' firm has shifted production of like articles to certain countries • Increased imports
Eligibility: secondary workers–suppliers	Not covered, but was under Workforce Investment Act	Expands to secondary workers that directly supply primary firms and either: • Component is at least 20 percent of production, or • Loss of business with the primary firm must contribute importantly to job loss
Eligibility: secondary workers–downstream producers	Not covered	Expands to secondary workers that finish or assemble articles produced by primary firms where primary firm certified due to imports from, or shifts in production to, Canada or Mexico
Training: enrollment period	• TAA: No deadlines • NAFTA-TAA: Required enrollment within 16 weeks of separation or 6 weeks of certification	Requires enrollment within 16 weeks of separation or 8 weeks of certification, and adds 45 days for extenuating circumstances with approval
Training: requirement waivers	Allowed waivers under broad and loosely construed criteria	Allows waivers under 6 specific conditions
Training: on the job training	Reimbursed company if worker is employed for at least 6 months after completion of course; does not authorize customized training	Authorizes both on the job training and customized training with no requirements
Job search allowances	Reimbursed 90 percent of costs up to $800	Reimburses 90 percent of costs up to $1,250
Relocation allowance	Stipend up to $800	Stipend up to $1,250
Income support	Provided up to 78 weeks	Provides up to 140 weeks, 130 if worker is in remedial training
Income support: training breaks	Provided continuous support if break was less than 14 days	Provides continuous support if break is less than 30 days
Wage supplement	Not provided	Alternative Trade Adjustment Assistance: Allows workers over 50 to supplement decrease in income
Health care provisions	Not provided	Creates 65 percent health insurance tax credit
Funds available	Provided $110 million	Provides $220 million
Adjustment Assistance for Firms	Established program, run by Department of Commerce	Adds funding of $16 million to extend program through 2007
Adjustment Assistance for Farmers	Not provided	Authorized a new program, run by the U.S. Department of Agriculture. Entitles certified farmers to training under TAA
Performance management and accountability	Required administratively	The U.S. Department of Labor will place greater emphasis on performance reporting and outcomes

Source: U.S. Department of Labor, Employee & Training Administration, "Trade Act of 2002 Workshop," pp. 113-118, found at Internet address *http://www.doleta.gov/tradeact/wpd/2002act_training.pdf*, retrieved Jan. 20, 2004.

The TAA system of readjustment allowances to individual workers is administered by the U.S. Department of Labor through its Employment and Training Administration in the form of monetary benefits for direct trade readjustment allowances and service benefits that include allocations for job search, relocation, transportation subsidies, and training. TAA for Farmers, administered by the U.S. Department of Agriculture, provides technical assistance and cash benefits to eligible producers. Industrywide technical consultation, provided through programs sponsored by the U.S. Department of Commerce, is designed to restore the economic viability of U.S. industries adversely affected by import competition.[19]

Assistance to Workers

The U.S. Department of Labor instituted 3,561 investigations during FY 2003 (October 1, 2002 through September 30, 2003) on the basis of petitions filed for TAA. Petitioners for TAA represented a broad spectrum of manufacturing industries, including circuit boards, textiles, and paper. The FY 2003 figure represents an increase from the 2,404 TAA petitions instituted in FY 2002. The results of the TAA investigations completed in FY 2003, including those in progress from the previous fiscal year, are shown in table 2-2.

The number of completed TAA cases, including partial certifications and denied, terminated, or withdrawn petitions, increased from 2,806 cases in FY 2002 to 3,583 cases in FY 2003. As shown in table 2-2, 196,112 workers were certified in FY 2003, a decrease from the number certified in FY 2002. For workers to be certified as eligible to apply for TAA, the Secretary of Labor must determine that workers in a firm have become, or are threatened to become, totally or partially separated; that the firm's sales or production have decreased absolutely; and that increases in like or directly competitive imported products contributed importantly to the total or partial separation and to the decline in the firm's sales or production. Workers certified for TAA are provided with a certification of eligibility and may apply for TAA benefits at the nearest office of the State Employment Security Agency.

The Department of Labor awarded $222.1 million in TAA funding to assist workers certified as eligible to receive services under the TAA program. Table 2-3 presents data on benefits and services provided under the TAA program. State allocations for FY 2003 increased to $347.2 million from $253.4 million in FY 2002. In addition, there was an increase in the number of workers receiving such benefits to 44,135 new recipients in FY2003 from 37,426 new recipients in FY2002.[20]

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[19] Sections 251-264 of the Trade Act of 1974.

[20] Because of the merging of the NAFTA-TAA program into the TAA program, as well as the substantial changes included in the TAA Reform Act, FY 2003 data are not comparable to data provided in previous issues of this report. Consequently, table categories have been modified from previous report tables, and historical data are not provided in this year's report.

Table 2-2
Results of petitions filed under the trade adjustment assistance program, FY 2002 and FY 2003

Item	Number of investigations or petitions FY 2002	Number of investigations or petitions FY 2003	Number of Workers FY 2002	Number of Workers FY 2003
Completed certifications	1,634	1,874	233,162	196,112
Partial certifications	11	4	1,868	241
Petitions denied	981	1,211	94,603	82,758
Petitions terminated or withdrawn	180	494	9,065	24,438
Total	2,806	3,583	338,698	303,549

Source: Preliminary (as of March 2004) data maintained by the U.S. Department of Labor, Employment and Training Administration, Division of Trade Adjustment Assistance.

Table 2-3
Benefits and services provided under the trade adjustment assistance program, FY 2002 and FY 2003

Item	Estimated number of participants FY 2002	Estimated number of participants FY 2003
	Trade readjustment allowance benefits	
Number of new recipients	37,426	44,135
Total allocations (million dollars)	253	347
	Training, job search, and relocation services	
Number entering training	37,163	43,206
Number receiving a job search allowance .	271	409
Number receiving a relocation allowance . .	388	713

Source: Preliminary (as of March 2004) data maintained by the U.S. Department of Labor, Employment and Training Administration, Division of Trade Adjustment Assistance.

Trade Adjustment Assistance to Farmers[21]

The TAA Reform Act of 2002 established a new program, the TAA for Farmers, administered by the U.S. Department of Agriculture. Under the TAA for Farmers, the Department of Agriculture provides technical assistance and cash benefits to eligible producers of raw agricultural commodities when the Administrator, Foreign Agricultural Service (FAS), determines that increased imports have contributed importantly to a specific price decline over five preceding marketing years. The TAA Reform Act authorizes an appropriation of not more than $90 million for each fiscal year 2003 through 2007 to carry out the program. The TAA for Farmers covers farmers, ranchers, fish farmers, and fishermen competing with imported aquaculture products, but does not cover the forest products industry.[22] The TAA for Farmers criteria state "Producer prices during the most recent marketing year must be less than or equal to 80 percent of the national average price during the previous 5 marketing

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[21] Information obtained from the Coordinator, Trade Adjustment Assistance for Farmers, Foreign Agriculture Service, U.S. Department of Agriculture.

[22] Department of Agriculture, "Trade Adjustment Assistance for Farmers," found at Internet address *http://www.fas.usda.gov/itp/taa/taaindex.htm*, retrieved Jan. 20, 2004; and Department of Agriculture, "Trade Adjustment Assistance for Farmers: Trade Act of 2002: FAQ's," found at Internet address *http://www.fas.usda.gov/itp/taa/taafaq.htm*, retrieved Jan. 20, 2004. For detailed information on regarding the TAA for Farmers, see the above referenced websites.

years [and] FAS must make a determination that increases in imports of like or competitive products "contributed importantly' to the decline in prices."[23]

Provided producers satisfy certain criteria, the program provides payments and technical assistance, which may include technical publications, group seminars and presentations, and one-on-one meetings. Cash benefits per unit of production are one-half the difference between the most recent marketing year's price and 80 percent of the previous 5-year average price. To be eligible for benefits, producers must provide production records and certify that they have: met with the Extension Service; not received cash benefits under any other provisions of the Trade Act of 1974; experienced a decline in net farm income for the most recent tax year; and did not have an average Adjusted Gross Income for the 3 preceding years that exceeded $2.5 million. Cash payments are limited to a maximum of $10,000 in a fiscal year. In FY 2003, no cash payments were made under the program.

Assistance to Firms and Industries[24]

The U.S. Department of Commerce's Economic Development Administration (EDA) certified 207 firms as eligible to apply for trade adjustment assistance during FY 2003. This figure represents an increase from the 170 firms certified in the previous fiscal year. To be certified as eligible to apply for trade adjustment assistance, a firm must show that increased imports of articles like, or directly competitive with, those produced by the firm contributed significantly to declines in its sales, production, or both, and to the separation, or threat of separation, of a significant portion of the firm's workers.

Following certification, a firm must prepare an adjustment proposal before it may receive technical assistance to implement its economic recovery strategy. In FY 2003, EDA approved adjustment strategies for 162 firms, an increase from 141 in FY 2002.

The EDA administers its technical assistance programs through a nationwide network of 12 Trade Adjustment Assistance Centers (TAACs). The TAACs are nonprofit, nongovernmental organizations established to help firms qualify for, and receive assistance in, adjusting to import competition. Technical services are provided to certified firms through TAAC staff and independent consultants under contract with TAACs. Typical technical services include assistance in marketing (e.g., the design of new brochures and websites), identifying appropriate management information system hardware and software, and developing and completing quality assurance programs. The funding for the TAACs from the TAA appropriation for FY 2003 totaled $10.4 million, slightly less than the previous fiscal year.

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[23] Ibid. Department of Agriculture, "Trade Adjustment Assistance for Farmers: Trade Act of 2002: FAQ's."

[24] Information obtained from the Planning and Development Assistance Division, Economic Development Administration, U.S. Department of Commerce.

Section 301 Investigations

Section 301 of the Trade Act of 1974 (the Trade Act) is the principal U.S. statute for addressing unfair foreign practices affecting U.S. exports of goods or services.[25] Section 301 may be used to enforce U.S. rights under bilateral and multilateral trade agreements and also may be used to respond to unreasonable, unjustifiable, or discriminatory foreign government practices that burden or restrict U.S. commerce. Interested persons may petition the office of the United States Trade Representatives (USTR) to investigate a foreign government policy or practice, or USTR may self-initiate an investigation.

If the investigation involves a trade agreement and consultations do not result in a settlement, section 303 of the Trade Act requires USTR to use the dispute settlement procedures that are available under the subject agreement. If the matter is not resolved by the conclusion of the investigation, section 304 of the Trade Act requires USTR to determine whether the practices in question deny U.S. rights under a trade agreement; whether they are unjustifiable, unreasonable, or discriminatory; and whether they burden or restrict U.S. commerce. If the practices are determined to violate a trade agreement or to be unjustifiable, USTR must take action. If the practices are determined to be unreasonable or discriminatory, and to burden or restrict U.S. commerce, USTR must determine whether action is appropriate and, if so, what action to take. The time period for making these determinations varies according to the type of practices alleged.

Active Cases in 2003

In 2003, the active cases under section 301 concerned the EU's meat hormone directive and intellectual property protection in Ukraine. In the meat hormone case, the United States successfully challenged in the WTO an EU law that banned imports of meat from animals that had been treated with certain hormones. The EU law effectively banned imports of U.S. beef and beef products. The WTO panel and the Appellate Body found that the ban violated the EU's WTO obligations because the EU law was not based on objective scientific evidence. The EU did not comply with the WTO ruling, so the United States sought and received authorization from the WTO to withdraw concessions on a commensurate amount of trade. Accordingly, in July 1999, the United States imposed additional 100 percent ad valorem duties on about $117 million in imports from the EU. The additional duties have remained in effect since that time and the bilateral trade dispute remains unresolved.

USTR identified Ukraine as a priority foreign country under the special 301 provisions in 2001 due to its denial of adequate and effective protection of intellectual property

[25] Sections 301–309 of the Trade Act of 1974, as amended (19 U.S.C. 2411–2419).

rights (IPR) and initiated a 301 investigation.[26] Specifically, USTR found that Ukraine failed to address a significant level of optical media piracy that has caused substantial damage to U.S. rights-holders and disrupted markets throughout the region, and also found that Ukraine to have failed to fulfill commitments it made in the June 2000 U.S.-Ukraine Joint Action Plan to Combat Optical Media Piracy in Ukraine. In a parallel proceeding, USTR suspended Ukraine's eligibility for the GSP program due to inadequate and ineffective protection of IPR.[27] When bilateral consultations failed to result in an agreement that satisfactorily addressed optical media piracy, USTR issued a preliminary retaliation list under section 301.[28] In December 2001, USTR announced that the United States would impose 100 percent ad valorem duties on $75 million in imports from Ukraine.[29] Bilateral consultations continued, but the suspension of GSP benefits and the additional duties remained in effect during 2003.

Some other active 301 investigations[30] are the subject of ongoing WTO dispute settlement proceedings. Table 2-4 contains a listing of active 301 cases.

Table 2-4
Active 301 cases in 2003

Docket No.	Summary and actions occuring during course of investigation
Docket No. 301-62a	**European Union and the Meat Hormone Directive** In 1987, the President announced his intention to impose prohibitive duties on certain imports from the European Union in response to the adoption and implementation of the Meat Hormone Directive, which banned imports of meat produced from animals treated with growth hormones. Following a long series of bilateral consultations during the ensuing years, USTR eventually resorted to the WTO dispute settlement process. In 1997, the WTO found that the EU's ban was inconsistent with its WTO obligations. In 1999, when the EU had not implemented the WTO recommendations, the United States requested and received authorization from the WTO to retaliate against imports from the European Union. The increased duties remained in effect during 2003.
Docket No. 301-121	**Ukraine and the Protection of Intellectual Property Rights** In 2001, the USTR identified Ukraine as a priority foreign country under the "special 301" provisions of the section 301 law due to its denial of adequate and effective protection of intellectual property rights (IPR). In a parallel proceeding, USTR suspended Ukraine's eligibility for the Generalized System of Preferences due to inadequate and ineffective protection of IPR. When ongoing bilateral consultations did not result in an agreement that satisfactorily addressed the optical media piracy situation in Ukraine, USTR issued a preliminary retaliation list under section 301. In December 2001, the USTR announced that the United States would impose prohibitive duties on certain imports from Ukraine. The suspension of GSP benefits and the additional duties remained in effect during 2003.

Source: Compiled by USITC staff. from: USTR, Press Release 99-44, May 14, 1999, and 64 *Federal Register* 28860, May 27, 1999. USTR, Press Release 00-05, Jan. 27, 2000, and USTR, Press Release 00-14, Feb. 28, 2000. The full text of the report of the WTO dispute settlement panel is available on the WTO's website at *www.wto.org*. USTR, Press Release 01-86, Oct. 22, 2001.

[26] USTR, press release 01-15, Mar. 13, 2001; and 66 FR 18346, Apr. 6, 2001.

[27] 66 FR 16515, Mar. 26, 2001; USTR, press release 01-61, Aug. 7, 2001; and 66 FR 42246, Aug. 10, 2001.

[28] USTR, press release 01-61, Aug. 7, 2001; and 66 FR 42246, Aug. 10, 2001.

[29] USTR, press release 01-115, Dec. 20, 2001; 67 FR 120, Jan. 2, 2002; and USTR, press release 02-10, Jan. 23, 2002.

[30] USTR, 2004 Trade Policy Agenda and 2003 Annual Report, p. 30.

Special 301

The special 301 law requires that the USTR each year identify countries that deny adequate and effective protection of IPR or that deny fair and equitable market access for U.S. persons who rely on intellectual property protection.[31] The USTR is to identify only those foreign countries (1) that have the most egregious acts, policies, or practices; (2) whose acts, policies, or practices have the greatest adverse impact on the relevant U.S. products; and (3) that are not entering into good faith negotiations or making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection of intellectual property rights.[32] A country may be found to be denying adequate and effective IPR protection even if it is in full compliance with its obligations under the WTO TRIPs Agreement.[33] In addition, the special 301 law directs USTR to identify so-called priority foreign countries.

In the annual special 301 review process, USTR has adopted a policy of naming countries to the so-called watch list or the priority watch list if the countries' IPR laws and practices do not provide adequate and effective IPR protection, but the deficiencies do not warrant identification of the countries as priority foreign countries.[34] The priority watch list is for countries with significant IPR problems that warrant close monitoring and bilateral consultation. A country that is identified on the priority watch list may make progress and be downgraded to the watch list or removed from any listing; alternatively, a country that fails to make progress may be elevated from the watch list to the priority watch list or from the priority watch list to the list of priority foreign countries.

In the 2003 special 301 review, USTR devoted special attention to counterfeiting and piracy, with particular emphasis on the unauthorized production of optical media (e.g., CDs, VCDs, DVDs, and CD-ROMs). In addition, USTR focused on Internet piracy, implementation of the TRIPs Agreement by developing country WTO Members, full implementation of TRIPs by new WTO Members at the time of their accession, and ensuring that ministries of foreign governments use only authorized software.

In the 2003 review, USTR identified 50 countries that deny adequate and effective IPR protection.[35] As noted above, USTR maintained Ukraine's designation as a priority foreign country and sanctions remained in effect. Eleven countries were placed on the priority watch list and 36 countries were placed on the watch list. In addition, USTR noted that China and Paraguay continue to be subject to ongoing monitoring to ensure that each country complies with previous commitments made under a bilateral IPR agreement. USTR also announced that an out-of-cycle review would be conducted of the IPR regimes in Korea, and that it will review any progress made in Bolivia, Ecuador,

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[31] Section 182 of the Trade Act of 1974, (19 U.S.C. 2242).

[32] Section 182(b)(1) of the Trade Act of 1974 (19 U.S.C. 2242 (b)(1)).

[33] Section 182(d)(4) of the Trade Act of 1974,(19 U.S.C. 2242(d)(4)).

[34] USTR, 2003 Annual Report, Mar. 2004, p. 215.

[35] USTR, press release 03-28, May 1, 2003; and 68 FR 24785, May 8, 2003. See also USTR, 2003 Special 301 Report, found at *http://www.ustr.gov/reports/2003/special301.htm,* retrieved Mar. 24, 2004.

Peru, and Venezuela. Finally, USTR reiterated in the 2003 special 301 review that, in promoting intellectual property protection, the United States is committed to working with countries to develop workable programs to prevent and treat HIV/AIDS, malaria, tuberculosis, and other epidemics within the framework of the WTO TRIPs Agreement.[36]

Antidumping Investigations

The U.S. antidumping law is contained in Title VII of the Tariff Act of 1930.[37] The antidumping law provides relief in the form of additional duties to offset margins of dumping. Antidumping duties are imposed when (1) the U.S. Department of Commerce (the Administering Authority) has determined that imports are being, or are likely to be, sold at less than fair value (LTFV) in the United States, and (2) the Commission has determined that a U.S. industry is materially injured or threatened with material injury or that the establishment of an industry in the United States is materially retarded by reason of such imports. Most investigations are conducted on the basis of a petition filed with Commerce and the Commission by or on behalf of a U.S. industry.

In general, imports are considered to be sold at LTFV when the U.S. price (i.e., the purchase price or the exporter's sales price, as adjusted) is less than the foreign market value, which is usually the home-market price or, in certain cases, the price in a third country, or a constructed value, calculated as set out by statute.[38] The antidumping duty equals the difference between the U.S. price and the foreign-market value. The duty specified in an antidumping order reflects the dumping margin found by Commerce during its period of investigation. This rate of duty will be applied to subsequent imports if Commerce does not receive a request for annual reviews. If a request is received, Commerce will calculate the antidumping duties for that year for each entry.

Commerce and the Commission each conduct preliminary and final antidumping investigations in making their separate determinations.[39] The Commission instituted

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[36] USTR, 2003 Special 301 Report, p. 6. See also USTR, press release 02-56, June 24, 2002, and USTR, press release 02-119, Dec. 20, 2002. For a related statement of principles, see USTR Background Paper, TRIPs and Health Emergencies, press release 01-97, Nov. 10, 2001.

[37] 19 U.S.C. 1673 et seq.

[38] 19 U.S.C. 1677b; 19 CFR part 353, subpart D.

[39] Upon the filing of a petition, the Commission has 45 days to make a determination of whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports of the merchandise subject to the investigation. This is known as the preliminary phase of the investigation. If this determination is affirmative, Commerce continues its investigation and makes preliminary and final determinations concerning whether the imported merchandise is being, or is likely to be, sold at LTFV. If Commerce reaches a final affirmative dumping determination, the Commission has 45 days to make its final injury determination. If the Commission's reasonable indication or preliminary phase determination is negative, both the Commission and Commerce terminate further investigation.

45 new antidumping investigations during 2003 and completed 31 investigations.[40] Antidumping duties were imposed as a result of affirmative determinations in 15 of those completed investigations, on products from 7 different countries. The antidumping duty orders issued in 2003 are shown in table 2-5 (in alphabetical order by country).

Table 2-5
Antidumping duty orders that became effective during 2003

Country	Product	Range of duty
		Percent
Canada	Hard red spring wheat	8.86
China	Barium carbonate	34.44-81.30
China	Ferrovanadium	12.97-66.71
China	Lawn and garden steel fence posts	6.60-15.61
China	Malleable iron pipe fittings	7.35-111.36
China	Non-malleable cast iron pipe fittings	6.34-75.50
China	Polyvinyl alcohol	6.91-97.86
China	Refined brown aluminum oxide	135.18
China	Saccharin	249.39-329.94
Japan	Ceramic station post insulators	105.80
Japan	Polyvinyl alcohol	76.78-144.16
Korea	Polyvinyl alcohol	32.08-38.74
Russia	Silicon metal	56.11-79.42
South Africa	Ferrovanadium	116.00
Vietnam	Frozen fish fillets	36.84-63.88

Source: Compiled by the Commission from *Federal Register* notices.

Details on all antidumping investigations active at the Commission during 2003 are presented in table A-1 and a list of all outstanding antidumping duty orders, including suspension agreements,[41] in effect as of the end of the year is presented in table A-2.

Countervailing Duty Investigations

The U.S. countervailing duty law is also set forth in title VII of the Tariff Act of 1930. It provides for the levying of additional duties to offset certain foreign subsidies on products imported into the United States.[42] In general, procedures for such

[40] Data reported here and in the following two sections ("Countervailing Duty Investigations and Reviews of Outstanding Antidumping and Countervailing Duty Orders/Suspension Agreements") reflect the total number of investigations. In other Commission reports these data are grouped by product because if there are simultaneous investigations of the same product from multiple countries, the same investigative team and all of the parties participate in a single grouped proceeding, and the Commission generally produces one report and issues one opinion containing its separate determinations for each country investigation.

[41] An antidumping investigation may be suspended if exporters accounting for substantially all of the imports of the merchandise under investigation agree either to eliminate the dumping or to cease exports of the merchandise to the United States within 6 months. In extraordinary circumstances, an investigation may be suspended if exporters agree to revise prices to eliminate completely the injurious effect of exports of the subject merchandise to the United States. See 19 U.S.C. 1673c.

[42] A subsidy is defined as a bounty or grant bestowed directly or indirectly by any country, dependency, colony, province, or other political subdivision on the manufacture, production, or export of products. See 19 U.S.C. 1677(5) and 1677-1(a).

investigations are similar to those under the antidumping law. Petitions are filed with Commerce (the Administering Authority) and with the Commission. Before a countervailing duty order can be issued, Commerce must find a countervailable subsidy and the Commission must make an affirmative determination of material injury, threat of material injury, or material retardation by reason of the subsidized imports.

The Commission instituted six new countervailing duty investigations during 2003 and completed seven investigations. Countervailing duties were imposed as a result of affirmative determinations in two of those completed investigations on products from two different countries. The countervailing duty orders issued in 2003 are shown in table 2-6 (in alphabetical order by country). Details on all countervailing duty investigations active at the Commission during 2003 are presented in table A-3 and a list of all outstanding countervailing duty orders, including suspension agreements,[43] in effect as of the end of the year is presented in table A-4.

Table 2-6
Countervailing duty orders that became effective during 2003

Country	Product	Range of duty
		Percent
Canada	Hard red spring wheat	5.29
Korea	DRAMs and DRAM modules	44.29

Source: Compiled by the Commission from *Federal Register* notices.

Reviews of Outstanding Antidumping and Countervailing Duty Orders/Suspension Agreements

Section 751 of the Tariff Act of 1930 requires[44] Commerce, if requested, to conduct annual reviews of outstanding antidumping and countervailing duty orders to determine the amount of any net subsidy or dumping margin and to determine compliance with suspension agreements. Section 751 also authorizes Commerce and the Commission, as appropriate, to review certain outstanding determinations and agreements after receiving information or a petition that shows changed circumstances. In these circumstances, the party seeking revocation or modification of an antidumping or countervailing duty order or suspension agreement has the burden of persuading Commerce and the Commission that circumstances have changed

[43] A countervailing duty investigation may be suspended if the government of the subsidizing country or exporters accounting for substantially all of the imports of the merchandise under investigation agree to eliminate the subsidy, to completely offset the net subsidy, or to cease exports of the merchandise to the United States within 6 months. In extraordinary circumstances, an investigation may be suspended if the government of the subsidizing country or exporters agree to eliminate completely the injurious effect of exports of the subject merchandise to the United States. A suspended investigation is generally reinstituted if subsidization recurs. See 19 U.S.C. 1671c.

[44] 19 U.S.C. 1675.

sufficiently to warrant review and revocation. Based on either of these reviews, Commerce may revoke a countervailing duty or antidumping order in whole or in part or terminate or resume a suspended investigation. The Commission conducted no changed circumstances investigations during 2003.

The Uruguay Round Agreements Act amended section 751 of the Tariff Act of 1930 to require both Commerce and the Commission to conduct sunset reviews of all outstanding orders and suspension agreements 5 years after their publication to determine whether revocation of an order or suspension agreement would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy and material injury.[45] During 2003, Commerce and the Commission instituted 12 sunset reviews of existing antidumping and countervailing duty orders[46] and the Commission completed 6 reviews, resulting in 5 antidumping orders or suspension agreements being continued for 5 additional years. Table A-5 shows completed reviews of antidumping orders or suspension agreements in 2003.[47]

Section 337 Investigations

Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), authorizes the Commission, on the basis of a complaint or on its own initiative, to conduct investigations with respect to certain practices in import trade. Section 337 declares unlawful the importation into the United States, the sale for importation, or the sale within the United States after importation of articles that infringe a valid and enforceable U.S. patent, registered trademark, registered copyright, or registered mask work, for which a domestic industry exists or is in the process of being established.[48]

If the Commission determines that a violation exists, it can issue an order excluding the subject imports from entry into the United States, or order the violating parties to cease

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[45] 19 U.S.C. 1675c.

[46] One of these reviews was subsequently terminated and the outstanding order/suspension agreement revoked because a domestic industry did not request that it be continued. The revoked antidumping duty order was on fresh Atlantic salmon from Chile.

[47] For detailed information on reviews instituted, as well as Commission action in all reviews, see the Commission's Internet website section entitled "Five-year "Sunset" Reviews" at *http://www.usitc.gov/webinv.htm.*

[48] Also unlawful under section 337 are other unfair methods of competition and unfair acts in the importation of articles into the United States, or in the sale of imported articles, the threat or effect of which is to destroy or substantially injure a domestic industry, to prevent the establishment of an industry, or to restrain or monopolize trade and commerce in the United States. Examples of these other unfair acts are misappropriation of trade secrets, common law trademark infringement, trade to dress infringement, false advertising, and false designation of origin. Unfair practices that involve the importation of dumped or subsidized merchandise must be pursued under antidumping or countervailing duty provisions, not under section 337.

and desist from engaging in the unlawful practices.[49] The President may disapprove a Commission order within 60 days of its issuance for "policy reasons."

During 2003, there were 37 active section 337 investigations and ancillary proceedings, 19 of which were instituted in 2003. Of these 19, 18 were new section 337 investigations and one was a new ancillary proceeding. Further, with respect to the 19 institutions in 2003, 15 involved allegations of patent infringement and four involved allegations of trademark and / or trade dress infringement. Six investigations were terminated on the basis of settlement agreements and two investigations were terminated based on consent orders. The Commission completed a total of 18 investigations and ancillary proceedings under section 337 in 2003, including one combined enforcement and advisory opinion proceeding relating to a previously concluded investigation.

As in recent years, the section 337 caseload was highlighted by investigations involving complex technologies, particularly in the computer and telecommunications fields. Significant among these were investigations involving high-speed wireless local area network systems; hardware and software systems for storing, managing, and protecting collections of data; recordable and rewritable compact discs; various memory chips and related integrated circuit devices; and processes for semiconductor fabrication. Several other investigations involved sophisticated technologies relating to items such as antibiotics, machines used for manufacturing microelectronic devices, apparatus used to convey and sort packages, and bearings used in industrial applications. Other section 337 investigations active during the year concerned video game systems, disposable cameras, alkaline batteries, home vacuum packaging machines, insect traps, and electrical safety devices used as wall outlets in bathrooms and kitchens.

Three exclusion orders and four cease-and-desist orders were issued during 2003. Several investigations were terminated by the Commission without determining whether section 337 had been violated. Generally, these terminations were based on settlement agreements, consent orders, or withdrawal of complaints. At the close of 2003, 19 were section 337 investigations and related proceedings were pending at the Commission. Commission activities involving section 337 actions in 2003 are presented in appendix table A-6.

As of December 31, 2003, a total of 51 outstanding exclusion orders based on violations of section 337 were in effect, of which 25 involve unexpired patents. Appendix table A-7 lists the investigations in which these exclusion orders were issued.

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[49] Section 337 proceedings at the Commission are conducted in part before an administrative law judge in accordance with the Administrative Procedure Act, 5 U.S.C. 551 et seq. The administrative law judge conducts an evidentiary hearing and makes an initial determination, which is transmitted to the Commission. The Commission may adopt the determination by deciding not to review it, or it may choose to review it. If the Commission finds a violation, it must determine the appropriate remedy, the amount of any bond to be collected while its determination is under review by the President, and whether public interest considerations preclude the issuance of a remedy.

Tariff Preference Programs

Generalized System of Preferences

The U.S. Generalized System of Preferences (GSP) program authorizes the President to grant duty-free access to the U.S. market for certain products that are imported from designated developing countries and territories. The program is authorized by Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461 et seq.). It has been enhanced to allow duty-free treatment for certain products when imported only from countries designated as least-developed beneficiary developing countries (LDBDC). Further, Public Law 106-200, enacted May 18, 2000, in Title I (African Growth and Opportunity Act) (AGOA) amended Title V to authorize the President to provide duty-free treatment for certain articles when imported from countries designated as beneficiary sub-Saharan African countries through September 30, 2008. The GSP program expired on September 30, 2001. However, it was extended retroactively from October 1, 2001 through December 31, 2006 by legislation (Public Law 107-210) signed by the President on August 6, 2002. By offering unilateral tariff preferences, the GSP program reflects the U.S. commitment to three broad goals: (1) to promote economic development in developing and transitioning economies through increased trade, rather than foreign aid; (2) to reinforce U.S. trade policy objectives by encouraging beneficiaries to open their markets, to comply more fully with international trading rules, and to assume greater responsibility for the international trading system; and (3) to help maintain U.S. international competitiveness by lowering costs for U.S. business and lowering prices for American consumers.

Under the program the President designates countries as “beneficiary developing countries.” The President cannot designate certain developed countries named in the statute and also may not designate countries that, inter alia, afford preferential treatment to the products of a developed country, other than the United States, that has, or is likely to have, a significant adverse effect on U.S. commerce or countries that do not afford adequate protection to intellectual property rights or afford internationally recognized worker rights to their workers.[50] The President also designates the articles that are eligible for duty-free treatment, but may not designate articles that he determines to be “import-sensitive” in the context of the GSP. Certain articles (for example, footwear, textiles, and apparel) are designated by statute as “import-sensitive” by statute and thus not eligible for duty-free treatment under the GSP program.[51] The statute also provides for graduation of countries from the program when they become “high-income” countries and for removal of eligibility of articles, or articles from certain countries, under certain conditions.

[50] 19 U.S.C. 2462(b).
[51] 19 U.S.C. 2463.

In Proclamation 7637 of January 10, 2003 (68 FR 1951), the President proclaimed certain modifications of the duty-free treatment under the GSP. The modifications provided for (1) the designation of Afghanistan as a GSP and LDBDC beneficiary country; (2) the withdrawal of the application of duty-free treatment under the GSP accorded to a certain article from Chile; and (3)duty-free treatment for a certain article when imported from any beneficiary sub-Saharan African country. In Proclamation 7689 of June 30, 2003 (68 FR 39795), the President proclaimed certain modifications to the GSP implementing decisions made in regard to the 2001 Special Three Country Review and 2002 Annual GSP Review. The modifications provided for (1) the granting of de minimis waivers for certain articles and restoration to preferential treatment of certain eligible articles from certain beneficiary countries; (2) the exclusion of specified articles from certain beneficiary countries from eligibility for preferential treatment under GSP where shipments exceeded the competitive need limits for calendar year 2002; (3) the granting of waivers of the competitive need limits for 12 Harmonized Tariff Schedule of the United States (HTS) subheadings for certain countries; and (4) designate certain articles as eligible articles under the GSP only for least-developed beneficiary developing countries.[52]

Each year (unless otherwise specified in a Federal Register notice), USTR conducts a review process in which products can be added to, or removed from, the GSP program or in which a beneficiary's compliance with the eligibility requirements can be reviewed. On April 13, 2001, USTR in a Federal Register notice (66 FR 19278) announced the invitation for the submission of petitions on a 2001 Annual GSP Product and Country Eligibility Practices Review, but stated that if the GSP program expired on September 30, 2001, then the 2001 GSP Annual Review would be conducted on a schedule to be announced if and when the program was reauthorized. On November 1, 2002, USTR in a Federal Register notice (67 FR 69699) announced the initiation of the 2002 Annual GSP Product and Country Practices Review and also the date by which petitions for modifications of the GSP were to be submitted, that petitions submitted for the 2001 GSP Annual Review would be merged to the extent practicable with the 2002 GSP Annual Review, and that the notification of the petitions have been

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[52] "(2) Competitive need limitation.—

(A) Basis for withdrawal of duty-free treatment.—

(i) In general.– Except as provided in clause (ii) and subject to subsection (d), whenever the President determines that a beneficiary developing country has exported (directly or indirectly) to the United States during any calendar year beginning after December 31. 1995–

(I) a quantity of an eligible article having an appraised value in excess of the applicable amount for the calendar year, or

(II) a quantity of an eligible article equal to or exceeding 50 percent of the appraised value of total imports of that article into the United States during any calendar year, the President shall, not later than July 1 of the next calendar year, terminate the duty-free treatment for that article from that beneficiary developing country

. (ii) Annual adjustment of applicable amount.– For purposes of applying clause (I), the applicable amount is–

(I) for 1996, $75,000,000, and

(II) for each calendar year thereafter, an amount equal to the applicable amount in effect for the preceding calendar year plus $5,000,000."

accepted, and other relevant dates, including the review schedule, would be issued in a subsequent Federal Register notice. On March 11, 2003, USTR in a Federal Register notice (68 FR 11607) announced the combined product petitions from both 2001 and 2002 that were accepted for review in the 2002 GSP Annual review. The USTR requested in a letter that the Commission provide advice concerning possible modifications to the GSP for the products in the 2002 Annual GSP Review.

Several other actions were taken by USTR under the GSP in 2003. On July 3, 2003, USTR in a Federal Register notice (68 FR 40012) announced the results of the 2002 Annual Products Review, 2001 Special Three Country Review, GSP-AGOA 2001 Review, and previously deferred product decisions. On July 16, 2003, USTR in a Federal Register notice (68 FR 42156) announced the extension of the deadline for the submissions of petitions for the 2003 Annual GSP Product and Country Eligibility Practices Review to September 3, 2003. Also on July 16, 2003, USTR in a Federal Register notice (68 FR 42157) announced the initiation of a review to consider the designation of Algeria as a beneficiary developing country under the GSP and the solicitation of public comments. And on September 3, 2003, USTR in a Federal Register notice (68 FR 52437) announced the 2001 and 2002 country practice petitions that were accepted for review and set forth the schedule for comment and public hearings on accepted petitions and on other ongoing country practice reviews.

There were $21.3 billion in duty-free imports entered under the GSP program in 2003, accounting for more than 11.9 percent of total U.S. imports from GSP beneficiaries and 1.7 percent of total U.S. imports (table 2-7). Angola was the leading GSP beneficiary in 2003, followed by Thailand, India, Brazil, and Indonesia (table 2-8). Appendix table A-8 shows the top 20 GSP products or product categories in 2003, and table A-9 shows the overall sectoral distribution of GSP benefits.

African Growth and Opportunity Act

The Trade and Development Act of 2000 provides expanded trade benefits for 48 eligible sub-Saharan African (SSA) countries under Title I, the African Growth and Opportunity Act (AGOA).[53] AGOA amends the GSP program, described above, and authorizes the President to provide duty-free and quota-free treatment for certain products imported from SSA, if it is determined that these products are not import-sensitive in the context of imports from these countries. Although the GSP (including LDBDC) in 2003 covers about 5,300 items, AGOA (including GSP) applies to more than 5,500 items. AGOA also exempts SSA beneficiaries from GSP competitive need limits. The legislation provides for the graduation of countries from the program when they become high-income countries and for the removal of eligibility of items, or items from certain countries, under certain conditions. The provisions are scheduled to remain in effect until September 30, 2008. Section 3108 of

[53] Trade and Development Act of 2000, Public Law 106-200, Title I, May 18, 2000, 114 Stat. 252.

Table 2-7
U.S. imports for consumption from GSP beneficiaries and the world, 2003

(Million dollars)

Item	All GSP beneficiaries	World
Total	177,848	1,245,113
Total GSP-eligible products	30,898	563,994
Total GSP (non-LDBDC) eligible	26,004	274,022
GSP-LDBDC eligible	4,895	289,972
Total of Duty Free	21,276	21,276
Duty-free under non-LDBDC GSP	16,510	16,510
Duty-free under GSP-LDBDC	4,766	4,766
Total of GSP eligible products not benefitting from GSP duty-free treatment	9,622	542,718
GSP Program exclusions	4,528	4,528
All other	5,095	538,190
Noneligible products imports	146,950	681,118

Note.—Customs-value basis; excludes imports from the Virgin Islands.

Includes imports from all beneficiary countries for the articles that are designated as eligible articles under GSP. Non-LDBDC eligible products are those for which a rate of duty of "Free" appears in the Special rate column of the Harmonized Tariff Schedule of the United States (HTS) followed by the symbols "A" or "A*" in parentheses (the symbol "A" indicates that all beneficiary countries are eligible for duty-free treatment with respect to all articles provided for in the designated provisions and the symbol "A*" indicates that certain beneficiary countries, specified in general note 4(d) of the HTS, are not eligible for duty-free treatment with respect to any article provided for in the designated provision). Least-developed beneficiary developing countries (LDBDC) eligible products are those for which a rate of duty of "Free" appears in the Special rate column of the Harmonized Tariff Schedule of the United States (HTS) followed by the symbol "A+" in parentheses (the symbol "A+" indicates that all least-developed beneficiary developing countries (LDBDC) (and only LDBDCs) are eligible for duty-free treatment with respect to all articles provided for in the designated provisions). For a variety of reasons, all imports from beneficiary countries under HTS provisions that appear to be eligible for GSP treatment do not always and necessarily receive duty-free entry under the GSP. Such eligible imports may not receive duty-free treatment under GSP for at least five types of reasons: (1) the imports fail to claim GSP benefits affirmatively; (2) the goods are from a GSP beneficiary that lost GSP benefits on that product for exceeding the so-called competitive need limits; (3) the goods are from a GSP beneficiary country that lost GSP benefits on that product because of a petition to remove that country from GSP for that product or because of some other action by the President or USTR; (4) the GSP beneficiary country may claim duty-free treatment under some other program or provision of the HTS; and (5) the good fails to meet the rule of origin or direct shipment requirement of the GSP statute.

Source: Compiled from official statistics of the U.S. Department of Commerce.

the Trade Act of 2002 included many enhancements to the original AGOA provisions[54] and expanded preferential access for apparel imports from SSA beneficiaries.[55]

AGOA requires the President to take into account specific criteria before an SSA country may be designated for AGOA benefits. Those criteria include an annual review to determine whether they are making continued progress toward establishing a market-based economy, the rule of law and political pluralism, free trade, and

[54] The modifications collectively are referred to as AGOA II. In this report, the term AGOA refers to both the original and the enhanced AGOA provisions.

[55] AGOA textile and apparel benefits are described in more detail later in this chapter.

Table 2-8
U.S. imports for consumption and imports under GSP from leading beneficiaries and total, 2003

(Million dollars)

Rank	Beneficiary	Total Imports	GSP eligible	Duty Free
1	Angola	4,005	3,937	3,883
2	Thailand	15,071	3,500	2,702
3	India	13,025	3,238	2,646
4	Brazil	17,547	3,892	2,490
5	Indonesia	9,449	1,935	1,347
6	Philippines	10,046	1,268	894
7	Eq. Guinea	864	774	764
8	Turkey	3,776	848	723
9	South Africa	4,888	723	670
10	Venezuela	14,322	628	619
11	Chile	3,979	1,125	524
12	Argentina	3,081	582	451
13	Russia	8,261	495	430
14	Hungary	2,697	775	405
15	Poland	1,323	592	374
	Subtotal	112,332	24,312	18,921
	Total, all other	1,132,780	6,587	2,355
	Total	1,245,113	30,898	21,276

Note.—Figures do not include Virgin Island imports.

Source: Compiled from official statistics of the U.S. Department of Commerce.

economic policies that will reduce poverty and protect workers rights.[56] Additionally, a country (1) cannot engage in activities that undermine U.S. national security or foreign policy interests, (2) may not be involved in gross violations of internationally recognized human rights, (3) cannot provide support for acts of international terrorism, and (4) must have implemented commitments to eliminate the worst forms of child labor.

All 48 SSA countries are potentially eligible for AGOA benefits. A total of 35 SSA countries had been designated by the President as eligible for AGOA benefits—excluding AGOA textile and apparel benefits—as of December 31, 2001.[57] Côte d'Ivoire was designated as the 36th eligible country on May 16, 2002. On December 31, 2002, the President designated 38 countries as AGOA-eligible under the annual review, adding The Gambia and the Democratic Republic of Congo to the

[56] USTR, 2003 Comprehensive Report on U.S. Trade and Investment Policy Toward Sub-Saharan Africa and Implementation of the African Growth and Opportunity Act: The Third of Eight Annual Reports, May 2003, found at *http://www.agoa.gov/resources/annual_3.pdf*, retrieved July 3, 2003.

[57] The 35 countries were: Benin, Botswana, Cameroon, Cape Verde, Central African Republic, Chad, Republic of the Congo, Djibouti, Eritrea, Ethiopia, Gabon, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, São Tomè and Principe, Senegal, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, Uganda, and Zambia.

list of 36 countries already designated as eligible.[58] Of the 38 SSA countries designated as eligible for AGOA benefits, 24 have met the additional requirements to qualify for the AGOA textile and apparel trade benefits as of May 1, 2004.[59] In addition, all but two of the 24 countries (Mauritius and South Africa) are eligible for lesser-developed beneficiary country (LDBC) benefits, allowing producers in these countries to use third-country fabric—fabrics other than of U.S. or SSA origin—in qualifying apparel.[60]

On December 30, 2003, President Bush approved the continued designation of 36 sub-Saharan countries as eligible for tariff preferences under AGOA.[61] The President further determined that Angola should be designated as an AGOA beneficiary country. Two countries, Eritrea and the Central African Republic, did not meet the AGOA eligibility requirements and were removed from the list of eligible countries.[62] Twenty-four beneficiary countries were further designated to be eligible for the apparel benefits under AGOA, benefits that are not automatic.[63]

In 2003, U.S. exports to SSA reached $6.7 billion. This represented a 13.1-percent increase from 2002. The leading U.S. export markets in SSA were South Africa (40 percent of U.S. exports to SSA), Nigeria (15 percent), Angola (7 percent), Ethiopia (6 percent), Equatorial Guinea (5 percent), and Ghana (5 percent). Major export items included oil and gas exploration machinery, wheat and meslin, aircraft and parts, motor vehicles, computer parts and accessories, and worn clothing. U.S. exports to Ethiopia, Equatorial Guinea, and Eritrea increased by 578, 212, or 203 percent, respectively. U.S. imports from SSA during 2003 reached $25.5 billion, about 2 percent of U.S. merchandise imports worldwide, an increase of 40 percent from the $18.2 billion reached during 2002. The leading SSA import sources were Nigeria (40 percent), South Africa (19 percent), Angola (16 percent), and Gabon (8 percent).

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[58] White House, "Statement by the Deputy Press Secretary," found at *http://www.whitehouse.gov/news/releases/2003/01/20030104-1.html,* retrieved Jan. 16, 2003.

[59] The 19 countries are: Botswana, Cameroon, Cape Verde, Ethiopia, Ghana, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Senegal, South Africa, Swaziland, Tanzania, Uganda, and Zambia. Six countries-Cameroon, Cape Verde, Ghana, Mozambique, Senegal, and Tanzania became eligible for textile and apparel benefits under AGOA in 2002. Botswana and Namibia do not meet the definition of "lesser developed" countries, but were added to the list by the Trade Act of 2002. Rwanda, Mali, Niger and Cote d'Ivoire qualified for such benefits in 2003. Benin and Sierra Leone qualified for such benefits in early 2004.

[60] AGOA textile and apparel benefits are described in more detail later in this chapter.

[61] The 36 countries are Benin, Botswana, Cameroon, Cape Verde, Chad, Republic of the Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Ethiopia, Gabon, The Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, São Tomé and Príncipe, Senegal, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, Uganda, and Zambia.

[62] The White House, "To Take Certain Actions Under the African Growth and Opportunity Act, and for Other Purposes," found at *http://www.agoa.gov.*

[63] The 24 SSA countries are Benin, Botswana, Cameroon, Cape Verde, Côte d'Ivoire, Ethiopia, Ghana, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritius, Mozambique, Namibia, Niger, Rwanda, Senegal, Sierra Leone, South Africa, Swaziland, Tanzania, Uganda, and Zambia.

AGOA helped spur increases in imports from sub-Saharan Africa. In 2003, AGOA imports (including GSP) totaled nearly $18 billion, accounting for more than two-thirds of total U.S. imports from the region.[64] The top three import items from the SSA region under AGOA were crude petroleum oil, and passenger motor vehicles. Although energy-related products continued to dominate U.S. imports from SSA, imports of apparel, as well as transportation equipment have increased significantly due to AGOA. Non-petroleum AGOA imports totaled $2.9 billion in 2003, an increase of 32 percent from 2002. Leading non-petroleum import items under AGOA are presented in table A-10.[65] The top seven AGOA beneficiaries in 2003 were in terms of non-petroleum imports Nigeria, South Africa, Angola, Gabon, Côte d'Ivoire, Congo (ROC), and Lesotho. AGOA imports from Namibia, Congo (ROC), and Nigeria increased by 2,623,220; and 73 percent, respectively (table A-11).

Andean Trade Preference Act

In 2003, articles from Bolivia, Colombia, Ecuador, and Peru entering the United States free of duty under the Andean Trade Preference Act (ATPA) accounted for 50 percent of the total U.S. imports from those countries. ATPA was enacted in 1991 to promote broad-based economic development and viable economic alternatives to coca cultivation and cocaine production by offering Andean products broader access to the U.S. market.[66] ATPA expired on December 4, 2001, but was renewed retroactively to the expiration date on August 6, 2002, under the Andean Trade Promotion and Drug Eradication Act (ATPDEA), part of the Trade Act of 2002.[67] ATPA, as amended by the ATPDEA, is scheduled to expire on December 31, 2006, the targeted effective date of the Free Trade Agreement of the Americas (FTAA).

A wide range of Andean products are eligible for duty-free entry under ATPA. ATPDEA amended ATPA to provide duty-free treatment for certain products previously excluded from ATPA, including certain textiles and apparel, footwear, petroleum and petroleum derivatives, watches and watch parts assembled from parts originating in countries not eligible for normal trade relations (NTR) rates of duty, and certain tuna packaged in foil or other flexible airtight packages (not cans). In addition, certain products previously eligible for reduced-duty treatment are now eligible for duty-free entry under ATPA, including certain handbags, luggage, flat goods (such as wallets, change purses, and eyeglass cases), work gloves, and leather wearing apparel. Products that continue to be excluded from ATPA preferential treatment include textile and apparel articles not otherwise eligible for preferential treatment under ATPDEA, and certain agricultural products. Provisions related to textiles and apparel are

[64] For additional information on AGOA see Selamawit Legesse and Laurie-Ann Agama, "Trade Under AGOA Continues to Expand," USITC, International Economic Review, USITC publication 3675, Jan.-Feb. 2004.

[65] For more information about U.S. trade and investment with sub-Saharan Africa, see USITC, U.S. Trade and Investment with Sub-Saharan Africa, Inv. No. 332-415, publication 3650, Dec. 2003.

[66] For a more detailed description of ATPA, including country and product eligibility, see USITC, The Impact of the Andean Trade Preference Act, Ninth Report 2002, publication 3637, Sept. 2003.

[67] Pub. L. 107-210, Title XXXI.

discussed in more detail later in this chapter. With the exception of tuna in foil or flexible airtight packages, ATPDEA did not grant new benefits to agricultural products. Thus, canned tuna, rum and tafia, and above-quota imports of certain agricultural products subject to tariff rate quotas (primarily sugar, beef, and dairy products), continue to be excluded from the program.

The four ATPA beneficiaries are not automatically eligible for ATPDEA preferences. ATPDEA authorizes the President to designate any ATPA beneficiary as an ATPDEA beneficiary provided that the President determines that the country has satisfied certain requirements, including the provision of protection of intellectual property rights and internationally recognized worker rights. On October 31, 2002, the President designated all four ATPA beneficiaries as ATPDEA beneficiaries.[68]

U.S. imports from ATPA countries increased 21 percent to $11.6 billion in 2003 from $9.6 billion in 2002 (table 2-9). U.S. imports under ATPA in 2003 were valued at $5.8 billion, of which 72 percent, or $4.2 billion, were imports under ATPDEA. U.S. imports under the original ATPA (ATPA excluding ATPDEA) accounted for the remaining 28 percent, or $1.6 billion. It is difficult to compare U.S. imports under ATPA in 2003 with such imports in 2002 for two major reasons: (1) the ATPA program was not in effect for over 7 months of 2002 and (2) with the implementation of ATPDEA on October 31, 2002, the year 2003 marked the first year in which full-year ATPDEA data were available. Thus, U.S. imports under ATPA, including U.S. imports under ATPA from each of the beneficiary countries (appendix table A-12) and of all leading products (appendix table A-13) increased substantially in 2003 compared with 2002.

Table 2-9
U.S. imports for consumption from ATPA countries, 2001-03

Item	2001	2002	2003
Total imports from ATPA countries (1,000 dollars)	9,568,661	9,611,482	11,639,464
Total under ATPA (1,000 dollars)	1,674,607	1,000,816	5,836,032
Imports under ATPDEA	0	217,774	4,211,384
Total under ATPA, excluding ATPDEA (1,000 dollars)	1,674,607	783,042	1,624,648
Total under ATPA as a percent of total	18	10	50

Source: Compiled from official statistics of the U.S. Department of Commerce.

Colombia remained the largest source of U.S. imports under ATPA in 2003. However, Ecuador displaced Peru as the second largest source of imports under ATPA in 2003 primarily as a result of the eligibility of petroleum products under ATPDEA. Of the top 20 U.S. imports under ATPA, four of the items were petroleum products, which accounted for 58 percent of imports under ATPA in 2003. Other leading imports among the top five included copper cathodes, which ranked third, and fresh cut roses, which ranked fifth.

[68] "Presidential Proclamation 7616—To Implement the Andean Trade Promotion and Drug Eradication Act," 67 FR 67283-67291, Oct. 31, 2002.

Caribbean Basin Economic Recovery Act

In 2003, articles from 24 countries and territories in the Caribbean Basin and Central America entering the United States free of duty or at reduced duties under the Caribbean Basin Economic Recovery Act (CBERA) accounted for 43 percent of total U.S. imports from those countries.[69] CBERA has been operative since January 1, 1984. The act, as amended, has no statutory expiration date.[70] CBERA is the trade-related component of the Caribbean Basin Initiative (CBI).[71] President Reagan launched CBI in 1982 to promote export-led economic growth and economic diversification in these countries.[72]

The United States-Caribbean Basin Trade Partnership Act (CBTPA), enacted on May 18, 2000, expanded the coverage of preferential tariff treatment for several articles previously excluded under the original CBERA. Notably, the list of newly qualifying articles included certain apparel, the assembly of which is an important Caribbean industry.[73] The CBTPA extended NAFTA-equivalent treatment (rates of duty equivalent to those accorded to goods of Mexico, under the same rules of origin applicable under NAFTA) to a number of other products previously excluded from CBERA, including certain tuna, petroleum products, certain footwear, and some watches and watch parts.[74]

Table 2-10 shows U.S. imports under the expanded CBERA during 2001-2003 – the first 3-year period it has been in effect. During 2001, the first full year of the expanded

Table 2-10
U.S. imports for consumption from CBERA countries, 2001-03

Item	2001	2002	2003
Total imports from CBERA countries (1,000 dollars)	20,678,868	21,254,828	24,499,559
Total under CBTPA (1000 dollars)	5,592,870	7,078,010	7,462,064
Total under CBERA excluding CAPTA (1,000 dollars)	2,706,287	2,918,396	2,965,205
Total under CBERA includes CBTPA (1,000 dollars)	8,299,157	9,996,406	10,429,629
Percent of total under CBERA includes CBTPA	40	47	43

Source: Compiled from official statistics of the U.S. Department of Commerce.

[69] The 24 countries designated for CBERA benefits are listed in table A-15.

[70] See Public Law 98-67, Title II, 97 Stat. 384, 19 U.S.C. 2701 et seq. Relatively minor amendments were made to CBERA by Public Laws 98-573, 99-514, 99-570, and 100-418. CBERA was significantly expanded by the Caribbean Basin Economic Recovery Expansion Act of 1990, Public Law 101-382, Title II, 104 Stat. 629, 19 U.S.C. 2101 note.

[71] For a more detailed description of the CBERA, including country and product eligibility, see USITC, Caribbean Basin Economic Recovery Act: Impact on the United States, Fourteenth Report, 1998, USITC publication 3234, Sept. 1999.

[72] President "Address Before the Permanent Council of the Organization of American States," Weekly Compilation of Presidential Documents, Mar. 1, 1982, #217-223.

[73] For CBTPA provisions related to textiles and apparel, see "Textile and Apparel Related Legislation" later in this chapter.

[74] Only watches assembled from parts orginating in countries that are not eligible for NTR tariff treatment were ineligible for duty-free treatment under CBERA.

CBERA,[75] imports under the program tripled from the prior year to $8.3 billion. Imports continued to grow to $10.0 billion in 2002, and increased again to $10.4 billion in 2003.

Appendix table A-14 shows the leading 25 imports entering under CBERA in 2003. Apparel products dominated the list. Fifteen products were knitted and not knitted apparel, three products were petroleum derivatives, and the remaining seven products were original CBERA items that had qualified for benefits under the program before the advent of CBTPA. They included methanol, cigars, fresh fruit, raw sugar, and automatic circuit breakers. Appendix tables A-14 and A-15 show imports under the program by country.

U.S. Textile and Apparel Trade Program

Uruguay Round Agreement on Textiles and Clothing

The Agreement on Textiles and Clothing (ATC) came into force with the WTO Uruguay Round Agreements in 1995 and called for the gradual elimination of quotas established by the United States, Canada, Norway, and the European Union (EU) under the 1974 Multifiber Arrangement (MFA). The ATC requires countries to eliminate quotas and otherwise "integrate" textiles and apparel into the General Agreement on Tariffs and Trade (GATT) in four stages over a 10-year transition period ending on January 1, 2005.[76] As shown in table 2-11, the major importing countries integrated a total of 51 percent of their textile and apparel trade in the first three stages (based on their 1990 import volumes), and are scheduled to integrate the remainder on January 1, 2005.[77] For quotas that were not eliminated in one of the first three stages of integration, the ATC required the importing countries to increase the base annual growth rates applicable to each such quota, specified in the bilateral MFA agreements in place in 1994, by 16 percent in 1995, another 25 percent in 1998, and another 27 percent in 2002 (the "growth-on-growth" provision).[78]

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[75] Imports under CBERA as enhanced by CBTPA had already begun to enter the United States in December 2000.

[76] The ATC integration process requires importing countries to bring textile and apparel articles under GATT discipline, eliminate any quotas on such articles, and not establish new quotas on the integrated articles, except as provided under normal GATT rules.

[77] Trade groups in the United States, and 35 other countries have signed the "Istanbul Declaration" calling for an extension of the quotas beyond January 1, 2005, partly because of concern over China's growing share of world textile markets. See American Manufacturing Trade Action Coalition (AMTAC), "Istanbul Declaration," found at *http://www.amtacdc.com,* retrieved May 7, 2004.

[78] The quota growth rates vary by country and article, but ranged from less than 1 percent to as high as 6 percent or 7 percent. Assuming a 6-percent base rate for a major supplier, the annual quota growth rate would be 6.96 percent (6 multiplied by 1.16) during 1995-97, 8.7 percent during 1998-2001, and 11.05 percent during 2002-04.

Table 2-11
Agreement on textiles and clothing: Stages, share of integrated trade, and increase in quota growth rates

Stage	Share of integrated trade	Increase in quota growth rate[1]
1 (January 1, 1995 - December 31,1997)	16	16
2 (January 1, 1998 - December 31, 2001)	17	25
3 (January 1, 2002 - December 31, 2004)	18	27
4 (January 1, 2005 - Full integration)	49	([2])

[1] The acceleration of quota growth was advanced by one stage for "small suppliers" (supplying countries accounting for 1.2 percent or less of an importing country's total quotas as of December 31, 1991).
[2] Not applicable.

Source: Agreement on Textiles and Clothing, Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations.

The ATC required importing countries to integrate articles from each of four groups of products (tops and yarns, fabrics, made-up textile articles, and apparel); however, it provided flexibility in the share that each group represented in each stage of integration. The United States, Canada, and the EU have deferred integration of the most sensitive articles until the end of the 10-year transition period.[79]

Under the U.S. integration schedule, none of the articles integrated in the first stage was under quota, and most of the articles integrated in the second and third stages either were not under quota or had low quota usage (table 2-11). As such, apparel articles scheduled to be integrated at the end of the transition period represented 87 percent of U.S. apparel imports by quantity in 2002.[80]

U.S. Quota Activity

The United States in 2003 had quotas on textiles and apparel from 46 countries, which accounted for 79 percent of U.S. imports of such goods by value (table 2-12). As required by the ATC, the United States is scheduled to eliminate all its remaining quotas on such goods from 38 WTO members on January 1, 2005.[81] On January 1, 2005, the United States will eliminate all such remaining quotas for those WTO members. Quotas for Mexico were eliminated January 1, 2004 as required under the North American Free Trade Agreement (NAFTA), and for Singapore on Jan. 1, 2004, as required under the new U.S.-Singapore Free Trade Agreement (see below for more detail). The United States imposed a ban on imports from Burma (a WTO country that

[79] The United States deferred integration of the most sensitive textile and apparel articles until the end of the 10-year transition period, as required by the U.S. Statement of Administrative Action accompanying the Uruguay Round implementing legislation. See U.S. House of Representatives, "Statement of Administrative Action," The Uruguay Round Trade Agreements, Texts of Agreements Implementing Bill, Supporting Statements, Message from the President of the United States, Sept. 27, 1994, House Doc. 103-316, vol. 1, p. 115.
[80] Apparel accounted for 79 percent of the total value of U.S. textile and apparel imports covered by the former MFA in 2002 and 2003 (based on official statistics of the U.S. Department of Commerce).
[81] The 38 WTO countries include Nepal, which became the 147th member of the WTO on Apr. 23, 2004.

Table 2-12
Textiles and apparel: U.S. imports from trading partners with which the United States had quotas in 2003

(Million dollars)

Country	Imports
WTO members subject to the ATC:	
Bahrain	188
Bangladesh	1,939
Brazil	406
Bulgaria	181
Burma[1]	237
China	11,609
Colombia	539
Costa Rica	594
Czech Republic	23
Dominican Republic	2,128
Egypt	535
El Salvador	1,758
Fiji	80
Guatemala	1,773
Hong Kong	3,818
Hungary	54
India	3,212
Indonesia	2,376
Jamaica	105
Korea, Republic of	2,568
Kuwait	35
Macau	1,282
Macedonia	42
Malaysia	738
Nepal[2]	155
Oman	132
Pakistan	2,215
Philippines	2,040
Poland	65
Qatar	85
Romania	114
Singapore[3]	271
Slovak Republic	12
Sri Lanka	1,493
Taiwan	2,185
Thailand	2,072
Turkey	1,744
United Arab Emirates	279
Uruguay	14
Non-WTO countries subject to section 204 of the Agricultural Act of 1956:	
Belarus	39
Cambodia	1,251
Laos	4
Russia	495
Ukraine	64
Vietnam	2,484
WTO Member subject to the North American Free Trade Agreement:	
Mexico[4]	7,941

[1] The United States banned imports of all products from Burma in August 2003.

[2] Nepal became the 147th Member of the WTO on April 23, 2004.

[3] The United States eliminated quota restrictions on textile and apparel imports from Singapore on January 1, 2004, as required under the United States-Singapore Free Trade Agreement.

[4] The United States eliminated all remaining quota restrictions on textile and apparel imports from Mexico on January 1, 2004, as required under the North American Free Trade Agreement.

Source: Import data compiled from official statistics of the U.S. Department of Commerce, Office of Textiles and Apparel.

had been subject to import quotas) effective August 28, 2003.[82] Six countries covered by U.S. textile and apparel quotas are not WTO members and, therefore, will not be eligible for ATC quota liberalization until they join the WTO.[83] One of these countries (Cambodia) was approved for WTO membership in 2003; however, the process of ratification in the Cambodian Parliament is still pending.[84] Another non-WTO quota country (Vietnam) is seeking to join the WTO.[85]

China

China became eligible for ATC benefits upon its WTO accession on December 11, 2001. The WTO Accession Agreement of China enabled the country to "catch up" immediately with the ATC integration schedule of other WTO countries. However, China's WTO Accession Agreement permits the United States and other WTO countries to impose safeguard measures, or quotas, on imports of GATT-integrated textile and apparel articles from China through the end of 2008. This "textile safeguard" provision allows WTO countries that believe imports of Chinese textiles and apparel are, due to market disruption, threatening to impede the orderly development of trade in these goods, to request consultations with China with a view to easing or avoiding such market disruption. Upon receipt of such a request, the textile safeguard provision requires China to hold its shipments to a level no greater than 7.5 percent (6 percent for wool goods) above the amount entered during the first 12 months of the most recent 14 months preceding the request for consultations.

On December 24, 2003, the United States requested consultations with China under the textile safeguard provision for three groups of cotton and manmade-fiber products already integrated into the GATT: knit fabrics (category 222), brassieres and other body-supporting garments (349/649), and dressing gowns and robes (350/650).[86] The two countries could not agree on quota levels for these goods within 90 days of the request for consultations, or by March 24, 2004. Thus, the United States will continue the quotas until the end of the 12-month period, until December 23, 2004.

Cambodia and Vietnam

The United States and Cambodia signed a Memorandum of Understanding on December 31, 2001, which extended their bilateral agreement for an additional three

[82] U.S. Department of Homeland Security, Bureau of Customs and Border Protection, "U.S. Trade Embargo Against Burma," public notice, Sept. 10, 2003, found at *http://www.cbp.gov,* retrieved Dec. 15, 2003.

[83] The non-WTO countries are subject to quotas imposed by the President under section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854), which authorizes the President to enter into agreements with foreign governments to limit the export of textiles and apparel to the United States, and the importation of such goods into the United States, and to issue regulations to carry out such agreements.

[84] World Trade organization, "WTO Membership Rises to 147," *WTO News*, April 23, 2004, found at *http://www.wto.org,* retrieved May 7, 2004.

[85] Ibid.

[86] Information on the safeguard actions is available in three notices of the Committee for the Implementation of Textile Agreements (CITA), published in the Federal Register of Dec. 29, 2003 (68 FR 74944-74949).

years, through December 31, 2004, and provided for an increase in the quota of up to 18 percent, compared with 14 percent in the 1999 agreement for full compliance with international labor standards. As such, the United States increased Cambodia's quotas by 12 percent for 2003 and by 14 percent for 2004, in addition to the normal quota increases of 6 percent granted to most products. According to the U.S. Embassy in Cambodia, the country was granted a 14-percent quota increase in 2004 "in recognition of Cambodia's efforts and accomplishments in respecting worker rights in the garment sector in 2003," but it is "concerned about certain persistent and widespread problems, including correct payment of wages, involuntary and excessive overtime and anti-union discrimination."[87]

U.S. imports of textiles and apparel from Vietnam came under quota for the first time effective May 1, 2003.[88] Imports of such goods from Vietnam have greatly expanded since the United States granted the country normal-trade-relations (NTR) status in December 2001, rising from $49 million in 2001 to $2.5 billion in 2003 (NTR status means that imports of goods from Vietnam are now subject to much lower rates of duty). According to a trade report, the United States is the major market for Vietnam's textile and apparel exports, accounting for two-thirds, or $2.4 billion, of Vietnam's total exports of $3.7 billion in 2003.[89]

Quota Availability in 2004

The "flexibility provisions" in U.S. bilateral textile agreements permit exporting countries, under certain conditions, to transfer unused portions of quotas between products and between years.[90] U.S. apparel importers and retailers have expressed concern about the availability of quotas for key products in 2004, because exporting countries will not be able to "carry forward" or borrow quota from 2005. Since there are no quotas in 2005 against which to borrow. Moreover, although the United States increased quota levels for 2004 as required under the ATC "growth-on-growth" provision, many of the quotas not available in 2004 are lower than they otherwise would be because of the use of carryforward in 2003, when exporting

[87] U.S. Embassy, Phnom Penh, "U.S.-Cambodia Bilateral Textile Agreement Quota Bonus Decision for 2004," press report, Dec. 3, 2003, found at *http://usembassy.state.gov/cambodia/wwwh0060.html,* retrieved Feb. 4, 2004.

[88] The bilateral textile agreement with Vietnam was initialed on April 25, 2003, and signed on July 17, 2003. See Federal Register notices of CITA, "Establishment of Import Limits for Certain . . . Textile Products Produced or Manufactured in the Socialist Republic of Vietnam," May 16, 2003 (68 FR 26575), and "Establishment of an Export Visa Arrangement for Certain . . . Textile Products Produced or Manufactured in Vietnam," July 30, 2003 (68 FR 44748).

[89] Information was attributed to BharatTextile.com in World Trade\Interactive, (a publication of Sandler, Travis & Rosenberg, P.A., Washington, DC), "Vietnam Raises Quota Fees for Shipments to U.S.," Feb. 17, 2004.

[90] The flexibility provisions for unused portions of quotas include carryover (from the prior year to the current year within the same product category), carryforward (from the subsequent year to the current year within the same product category), and swing (from one product category to another product category within the same year).

countries borrowed against their 2004 quotas.[91] The United States reportedly rejected requestsfrom U.S. apparel importers and retailers to increase apparel quotas in 2004 in order to make up for the loss of carryforward.[92] Carryforward also is not available for non-WTO countries whose bilateral textile agreements expire at the end of 2004, including Cambodia, Laos, Russia, Ukraine, and Vietnam, unless their agreements are extended beyond 2004.

Tariff Rate Disputes

Egypt

The United States requested WTO Dispute Settlement Understanding consultations with Egypt on December 23, 2003, stating that Egypt applied specific import duties on a number of textile and apparel articles that exceeded its bound rates of duty.[93] In the official communication to the Government of Egypt and to the WTO Dispute Settlement Body, the United States stated that when Egypt removed its prohibition on imports of apparel and made-up textile products by January 1, 2002, it had agreed to bind its import duties on apparel classified under HS chapters 61 and 62 at a rate of 46 percent ad valorem for 2003, 43 percent for 2004, and 40 percent thereafter. According to the communication, on December 31, 2001, Egypt implemented duties that were specific to each piece of clothing, rather than ad valorem rates, resulting in ad valorem duty equivalents ranging from 141 percent to 51,296 percent. On January 21, 2004, Egypt issued a decree that established an ad valorem rate on apparel of 40 percent in place of the specific duty rates. Egypt also reduced its duties on textiles, from 30 percent to 12 percent ad valorem for yarns, from 54 percent to 22 percent for fabrics, and from a per piece duty levy to 35 percent for home textiles.[94]

Free Trade Agreements with Chile and Singapore

On January 1, 2004, the United States implemented separate free trade agreements (FTAs) with Chile and Singapore, which together accounted for less than 0.5 percent of

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[91] A trade report stated that for cotton knit shirts (categories 338/339), the 2004 quota for China is 2.4 percent lower than the 2003 quota, even though its allowable annual quota growth rate is 0.6 percent, while the quota for Bangladesh is 5.5 percent higher, even though its allowable annual quota growth rate is 12.9 percent. See Global Trade Advisor, "Carryforward for 2004," issued by IBERC (a division of Sandler, Travis & Rosenberg, P.A., Washington, DC), Jan. 16, 2004, p. 2.

[92] "U.S. Rejects Importer Calls to Increase 2004 Apparel Quotas," Inside US Trade, Jan. 23, 2004.

[93] WTO, Request for Consultations by the United States, "Egypt - Measures Affecting Imports of Textile and Apparel Products," WT/DS305/1, Jan. 6, 2004, found at *http://docsonline.wto.org.*

[94] Information on Egyptian tariffs is from U.S. Commercial Service, International Market Insight, Feb. 4, 2004, found at *http://www.buyusa.info.net,* retrieved Feb. 27, 2004, and from Egypt's Ministry of Foreign Trade, "Egypt's . . . Tariffs," found at *http://www.economy.gov.eg/english/ftrade/index.stm,* retrieved Feb. 3, 2004.

total U.S. textile and apparel imports in 2003.[95] Both FTAs provide for the immediate elimination of duties and quotas on textiles and apparel that meet the rules of origin specified in the FTAs ("originating goods").[96] The rules of origin for textiles and apparel in both FTAs were modeled after those in NAFTA, and require that imports of most articles from the FTA partner be assembled from inputs made either in the respective partner country there or in the United States, generally from the yarn stage forward. Under this "yarn forward" rule, only the fibers may be from third countries.[97] A "fiber forward" origin rule applies to a limited number of products (mainly yarns and knit fabrics), which must be made in an FTA party from the fiber stage forward. Both FTAs contain a de minimis foreign content rule, in which up to 7 percent of the total weight of the originating good can consist of fibers or yarns that are not made in the United States or the FTA partner, except for elastomeric yarns, which must be made in an FTA party.

Both FTAs contain tariff preference levels (TPLs) that provide duty preferences for specified quantities of certain "non-originating goods" (i.e., goods that do not meet the FTA rules of origin because they are made of yarns and fabrics from countries other than the United States and the FTA partner). The two TPLs in the Chile FTA grant duty-free treatment to (1) 2 million square meter equivalents (SMEs) of non-originating cotton and man-made-fiber apparel for the first 10 years and 1 million SMEs thereafter, and (2) 1 million SMEs of non-originating cotton and man-made-fiber fabrics.[98] will be reduced in equal increments over a 5-year period, reaching zero in 2008. The Singapore TPL covering non-originating cotton and manmade-fiber apparel, will expire after 8 years. The TPL quantity of 25 million SMEs in 2004 will be reduced by 3.125 million SMEs each year thereafter, reaching zero in 2012.[99]

The FTAs with Chile and Singapore set forth provisions for cooperation to prevent prevention of circumvention with obligations on the governments of these countries to monitor trade and ensure compliance. If an FTA party believes that the other is not in compliance with the terms of the FTA with respect to textiles and apparel, it can request consultations (e.g., the United States can apply quotas to goods made in the FTA partner or revoke preferential benefits for particular firms or products).[100]

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[95] For further information on the FTAs with Singapore and Chile, see chapter 4 of this report. Chile is a very small supplier of textiles and apparel to the United States, with shipments totaling $12 million in 2003, while imports of such goods from Singapore have fallen by half since the early 1990s to $271 million.

[96] The United States had applied import quotas on textiles and apparel from Singapore, but not Chile.

[97] In general, the manufacturing progression in the textile sector is: (1) fibers are made into yarns, (2) yarns are made into fabrics, (3) fabrics are cut into components, and (4) cut components are sewn into apparel and other finished goods.

[98] Once imports reach the levels established under the TPLs, they will be subject to the higher NTR rates of duty.

[99] "Singapore Free Trade Agreement"; found at *http://www.usitc.gov,* retrieved May 15, 2004.

[100] The duties under the TPL are reduced to zero over a 5-year period.

Proposed Free Trade Agreements

The United States has concluded negotiations for several other free trade agreements with countries that are either major suppliers of textiles and apparel to the U.S. market or for which textiles and apparel represent a significant portion of their exports. The United States concluded negotiations for the Central America Free Trade Agreement (CAFTA) with El Salvador, Guatemala, Honduras, and Nicaragua on December 17, 2003, and with Costa Rica on January 25, 2004. In addition, the United States completed FTA negotiations with the Dominican Republic on March 15, 2004, and will integrate that agreement into the CAFTA.[101] The CAFTA countries, including the Dominican Republic, accounted for 12 percent of U.S. imports of textiles and apparel by value in 2003, and these products accounted for 39 percent of that region's exports to the United States in 2003 (table 2-13). The United States also concluded negotiations on FTAs with Australia (February 8, 2004) and Morocco (March 2, 2004).[102]

Table 2-13
U.S. imports of textiles and apparel from countries in FTA negotiations with the United States and their share of total U.S. imports from these countries, 2003, and the share of these countries' total exports accounted for by textiles and apparel, 2002

Country or region	U.S. Imports, 2003	Share of the value of U.S. imports accounted for by textiles and apparel	Share of total value of country or region's exports accounted for by textiles and apparel, 2002
	Million dollars	*Percentage share*	
CAFTA countries[1]	7,167	9.2	36.5
Dominican Republic[1]	2,128	2.7	48.0
Morocco[1]	77	0.1	34.8
Bahrain	188	0.2	12.7
Australia[1]	234	0.3	1.2
SACU countries	836	1.1	3.0
Andean countries	1,107	1.4	5.6
Panama	5	0.1	7.3
Thailand	2,072	2.7	8.2

[1] The United States has concluded FTA negotiations with the specified country or countries, although these FTAs have not yet been entered into effect.

Source: U.S. import data compiled from official statistics of the U.S. Department of Commerce; country and regional export data based on official statistics of the United Nations. Export data represent world imports from the selected countries or regions in 2002.

[101] USTR press release, "U.S. & Dominican Republic Conclude Trade Talks Integrating the Dominican Republic into the Central America Free Trade Agreement," Mar. 15, 2004, retrieved Mar. 16, 2004, found at *http://www.ustr.gov.*

[102] USTR press releases, "U.S. and Australia Complete Free Trade Agreement," Feb. 8, 2004, and "U.S. and Morocco Conclude Free Trade Agreement," Mar. 2, 2004, found at *http://www.ustr.gov,* retrieved Mar. 3, 2004.

The United States has ongoing FTA negotiations with Bahrain and with the South African Customs Union (SACU), which comprises Botswana, Lesotho, Namibia, South Africa, and Swaziland. U.S. textile and apparel imports from SACU countries totaled $836 million in 2003, representing an increase of 82 percent from 2001, the first full year of AGOA benefits for eligible countries in sub-Saharan Africa. The United States also has announced its intention to negotiate FTAs with the Andean countries (Bolivia, Colombia, Ecuador, and Peru), Thailand, and Panama.[103] The Andean countries, like the SACU countries and Panama, already benefit from U.S. trade preferences, as discussed below.

Trade Preference Programs

The United States provides preferential market access for imports of textiles and apparel under the United States-Caribbean Basin Trade Partnership Act (CBTPA) and the African Growth and Opportunity Act (AGOA), which were implemented in October 2000, and the Andean Trade Promotion and Drug Eradication Act (ATPDEA), implemented in October 2002.[104] Under these programs, the United States provides duty-free and quota-free access to the U.S. market for apparel made in beneficiary countries from U.S. yarns and fabrics. The programs also grant duty-free benefits to specified quantities of apparel made of "regional fabrics." Under the CBTPA regional fabric provision, the trade benefits are limited to knit apparel made in eligible beneficiary countries from fabrics knitted in the region of U.S. yarns. The ATPDEA provides unlimited duty-free treatment to apparel made in beneficiary countries from regional fabrics in chief value of llama, alpaca, or vicuña, and grants duty-free benefits to specified quantities of other knit or woven garments made of U.S. or regional yarns. The AGOA also grants duty-free benefits to specified quantities of knit and woven apparel made in beneficiary countries from regional fabrics of U.S. or regional yarns. However, AGOA also allows apparel made in lesser-developed beneficiary countries from third-country (e.g., Asian) fabrics to enter free of duty under this regional fabric "cap." This third-country fabric provision is currently set to expire on September 30, 2004. As shown in table 2-14, duty-free imports under these U.S. trade programs accounted for most U.S. textile and apparel imports from the beneficiary countries in 2003.

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[103] USTR press releases, "USTR Notifies Congress of Intent to Initiate Free Trade Talks with Andean Countries," Nov. 18, 2003; "USTR Notifies Congress of Intent to Initiate Free Trade Talks with Thailand," Feb. 12, 2004; and "USTR Notifies Congress of Intent to Initiate Free Trade Talks with Panama," Nov. 18, 2004, found at *http://www.ustr.gov.*

[104] The Trade Act of 2002, contained a number of significant enhancements of AGOA and the CBTPA. For further information on these changes, see USITC, The Year in Trade: OTAP, 54th Report, USITC publication 3630, Aug. 2003, pp. 2-33 and 2-34-2-36.

Table 2-14
Textiles and apparel: U.S. imports from Caribbean Basin, Sub-Saharan African, and Andean countries, total and duty-free imports under special U.S. trade programs, 2003[1]

Item	Caribbean Basin	Sub-Saharan Africa	Andean region
Duty-free imports under special trade programs:			
Articles of U.S. fabrics (*million dollars*)	5,356.4	7.2	55.2
Articles of regional fabrics (*million dollars*)	740.1	242.9	693.3
Articles of third-country fabrics (*million dollars*)	151.3	947.0	8.0
Total (*million dollars*)	6,247.8	1,197.1	756.5
Total imports of textiles and apparel (*million dollars*)	9,676.3	1,527.3	1,107.4
Share of duty-free imports to total imports (*percent*)	65[2]	78	68

[1] The special trade programs include the CBTPA for the Caribbean Basin countries, the AGOA for sub-Saharan African countries, and the ATPDEA for the Andean countries.

[2] Excludes apparel imports from Caribbean Basin countries of $1,064.3 million in 2003 that were eligible for a partial duty exemption under heading 9802.00.80 of the Harmonized Tariff Schedule of the United States (HTS). Under this provision, U.S. importers receive a partial duty exemption for articles assembled abroad in whole or in part of U.S. components. In general, the duty is assessed only on the value added abroad (mainly the cost of sewing the garment parts together and the value of non-fabrics and fasteners). The fabrics for making the garment parts can be either U.S. or foreign origin as long as the fabric is cut to shape in the United States, exported ready for assembly, and not advanced in value abroad except by assembly and incidental operations.

Source: Compiled from official statistics of the U.S. Department of Commerce, found at *http://otexa.ita.doc.gov*.

U.S. Textile and Apparel Trade in 2003

U.S. imports of textiles and apparel in 2003 grew 10 percent over the 2002 level to 42.2 billion square meter equivalents (SMEs) (valued at $77.4 billion). The growth mainly reflected a substantial increase in imports from China, whose shipments rose 67 percent, or 3.3 billion SMEs, to 8.3 billion SMEs ($11.6 billion). China's shipments had increased 125 percent in 2002, the first full year that it became eligible for ATC quota liberalization, enabling the country to surpass NAFTA signatories Mexico and Canada as the largest foreign supplier. The share of total U.S. textile and apparel imports accounted for by China rose to 19.6 percent in 2003 from 13.0 percent in 2002. The increase in China's shipments was concentrated in goods for which quotas were eliminated, namely textile luggage, up by 55 percent, or 372 million SMEs; babies' garments, up by 105 percent, or 198 million SMEs; and robes and dressing gowns of cotton and manmade fibers, up 51 percent, or 85 million SMEs.

U.S. textile and apparel imports from Vietnam continued to grow substantially in 2003, rising by 131 percent over the 2002 level, or 469 million SMEs to 827 million SMEs ($2.5 billion). Vietnam emerged as a significant supplier of apparel only since December 2001, when the United States granted NTR status to the country (see earlier discussion). In 2003, Vietnam was the eighth-largest volume supplier of apparel, which accounts for almost all of its shipments of textiles and apparel in terms of value.

U.S. textile and apparel imports from Mexico and Canada, the largest volume suppliers after China, declined by 9 percent and 2 percent, respectively, in 2003.

Imports of textiles and apparel from Mexico in 2003 of 3.9 billion SMEs ($7.9 billion) were equivalent to less than one-half of the volume of imports from China. U.S. textile and apparel imports from Mexico peaked in 2000 at 4.7 million SMEs. The decline in imports from Mexico since 2000 is partly attributable, at least initially, to NAFTA restrictions on the use of duty drawback, which went into effect in 2001.[105] Duty drawback had permitted the refund of duties paid on certain imported apparel components that did not have to originate in a NAFTA country, including non-visible interlinings and other trim. Among other major suppliers, increases occurred in imports from Pakistan, Korea, the EU, and India, while declines occurred in imports from Taiwan, Indonesia, Bangladesh, Thailand, Turkey, Hong Kong, the Philippines, and Sri Lanka.

U.S. textile and apparel imports from countries benefitting from preferential market access rose in 2003, including those from the Caribbean Basin, sub-Saharan Africa, and the Andean region. Imports rose by 6 percent from Caribbean Basin countries, to 4.0 billion SMEs; 37 percent from sub-Saharan Africa, to 418 million SMEs; and 28 percent from Andean countries, to 247 million SMEs.

[105] Stephen Lamar, Senior Vice President, American Apparel & Footwear Association, Arlington, VA, interview by Commission staff, Feb. 10, 2004.