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Introduction

It is an honor to appear before you today to provide some comments on the very important topic of trade enforcement. I do so this morning in my personal capacity, so the views I express are my own and not necessarily those of either the U.S. International Trade Commission, where I served as a commissioner for the past eight years, or those of the Office of the United States Trade Representative, where I served as General Counsel and Chief Textile Negotiator.

In my view, the question of whether the U.S. has in place an effective and appropriate trade enforcement regime must be looked at from both sides of coin—whether we are doing a good job of enforcing our trade remedy laws against unfairly traded imports entering the U.S. market and whether we are doing all we can to enforce our rights under agreements opening foreign markets to U.S. goods, agriculture and services.

Effective Enforcement of Our Trade Remedy Laws?

From a policy perspective, the central question with respect to imports is whether we are making it possible for those who are entitled to relief under our trade remedy laws to obtain that relief in a timely and effective manner and at a reasonable cost. I believe the overall answer to that question is yes—for now—but there are a growing number of problems in the administration of our trade remedy laws that need to be taken into account if we are to have a sound trade enforcement regime for the 21st century.

A. Antidumping

The most commonly used trade remedy, by far, is the antidumping law—which provides for relief from imports that are sold in the U.S. market for prices below the price at which the same goods are sold in their own home market. Of the primary trade remedy laws—antidumping, countervailing duty, safeguards and intellectual property cases—antidumping cases accounted for 67 percent of the total. Since the year 2000, there have been 88 antidumping cases initiated. However, of late, the number of cases filed has dropped off precipitously, from an average of more than 13 new cases a year to only five in 2006 and one new case in the first five months of 2007.[1]

B. Countervailing Duty Cases

Countervailing duty cases involve imports whose production or export was subsidized in part by the foreign government of the country in which the goods are produced. Historically, there are many fewer countervailing duty cases filed than antidumping cases. Since 2000, there have been a total of 23 CVD cases filed, for an average of three new cases per year.[2] The major development in this area is the recent decision by the Department of Commerce to reverse long-standing precedent and permit countervailing duty cases for goods coming from China, a non-market economy country.[3] It is too early to tell whether this initial affirmative determination will open the flood gates to many

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Error! Main Document Only. Year	Number of AD petitions filed	$ volume of imports subject to AD investigations
2000	12	1436483
2001	19	9,508,896
2002	15	1,509,691
2003	19	4,393,986
2004	10	1,559,220
2005	7	1,026,737
2006	5	754,587
2007 (1Q)	1	8,181

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Year	Number of CVD petitions filed	$ volume of imports subject to CVD investigations
2000	5	$415,043
2001	6	7,217,325
2002	3	753,234
2003	5	19,249
2004	2	534,953
2005	1	25,725
2006	1	Confidential
2007 (1Q)	0	0

3 The U.S. policy of not applying the countervailing duty laws to non-market economies (NMEs) was formally established when the Federal Circuit Court of Appeals upheld a decision by the DOC not to apply the CVD laws to imports of carbon steel wire rod from Czechoslovakia and Poland, Georgetown Steel Corp vs. United States, 801 F. 2d 1308 (Fed. Cir. 1986). The rationale articulated by the court in 1986 was that subsidies are actions that distort or subvert the market process and that in the Soviet-style planned economies of the 1980s, there was no market process to distort and therefore subsidies had no meaning in such an economy. On March 29, 2007, the DOC reached an affirmative determination in a countervailing duty investigation involving coated free sheet paper from China, and in so doing, the DOC noted that because of the substantial differences in the economies at issue in Georgetown Steel and China's economy today, the Department's policy from the 1980s is "inapposite" and "does not bar the application of the CVD laws to imports from China." DOC Memorandum, Coated Free Sheet Paper from China, March 29, 2007.

CVD cases on goods from China or whether this precedent will be extended to other non-market economies such as Vietnam. Like antidumping cases, the number of CVD cases filed has dropped significantly since 2000.

C. Significant Drop Off in the Number of Cases Being Filed

Why the large drop off? In my view, it stems from a number of things, starting with the structural changes in a number of the key industries that have historically been the largest users of the trade remedy laws, most notably the steel industry. Because the filing of an antidumping or countervailing duty case requires that the petitioners have to account for at least 25% of all U.S. production of the product at issue and that at least 50% of those expressing a position on whether a case should proceed must be in favor of it, the cases have tended to be filed by industries that are largely U.S. owned and dominated by firms that produce most or all of their products in the U.S. Much of that has changed in recent years, with almost every industry being made up of at least a few foreign-owned companies along with many other companies who both produce in the U.S. and import similar products from abroad. For these companies and industries, the decision on whether to file a trade remedy case is no longer so clear cut.

Take the steel industry for example. Historically, the steel companies in the U.S. were responsible for filing more than half of all antidumping and countervailing duty cases initiated in the U.S. For many years, the U.S. steel industry consisted of a wide variety of U.S. based firms who produced most or all of their steel in the U.S. Today, the largest steel company in the U.S. is foreign-based and foreign-owned Mittal Steel, who bought up much of Bethlehem, Republic and LTV. Many of the other major U.S. steel producers have also consolidated here in the U.S. and have invested in production facilities or joint ventures overseas. It is not clear whether this new steel industry will have as much interest in filing trade remedy cases as the industry of old.

Second, a number of the largest cases of late have involved imports from China—including cases on wooden bedroom furniture, shrimp, color television receivers, plastic retail bags, and folding gift boxes.[4] In many of these cases, the leading foreign producers or importers ended up with dumping margins of 0% or at least low margins (less than 5%), leaving many U.S. producers to question whether it was worth the time and expense to bring a case if the end result was very small, if any, additional duties being placed on future imports.

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Product from China	Date of Order	Lowest Dumping Margin	Volume of Imports ($1,000
Wooden bedroom furniture	01-04-05	0%	$957,948
Warmwater shrimp	02-01-05	0%	$295,300
Color television receivers	06-03-04	5.22%	$271,110
Plastic retail carrier bags	08-09-04	0%	$125,718
Folding gift boxes	01-08-02	1.67%	$4,451

Thirdly, winning a case involves proving that the U.S. industry has been injured because of a significant volume of imports at prices that are low enough to push down or suppress price increases. However, right now, prices for many U.S. manufactured goods are at high levels, making it difficult for the U.S. industry to demonstrate the requisite injury by reason of the imports.

Finally, there have been a number of significant problems with the enforcement of outstanding antidumping and countervailing duty order, particularly with respect to so-called new shippers. The Department of Commerce is finding increasing numbers of companies who are declaring themselves to be new shippers that should not have any duties assessed on them because they have not been found to have been dumping, but a number of these new shippers turn out to be the same companies that were previously dumping, just operating under a different name. The prospect of winning a trade remedy case only to see imports continue to come in with no additional duties under a new company name has supposedly deterred a number of industries from filing trade remedy cases. New rules and procedures have recently been adopted to address the abuses of new shipper claims. It is too early to tell whether these changes will sufficiently address the problem.

D. Significant Uncertainty Created by WTO and U.S. Court Decisions on Trade Remedies

A number of decisions by the U.S. courts and the WTO dispute settlement system are forcing changes in practice or creating a good deal of uncertainty at the U.S. trade agencies--the Department of Commerce (DOC) and the U.S. International Trade Commission (ITC)-- and among the trade bar.

One of these key court decisions was handed down the U.S. Court of Appeals for the Federal Circuit (*Bratsk Aluminum Smelter v. United States*, 444 F. 3d 1369) in April of 2006. In that case the Federal Circuit vacated a decision by the ITC that had been affirmed by the Court of International Trade. The ITC had determined that imports of silicon metal from Russia, which were the largest single source of silicon metal imports into the United States and were generally the lowest priced imports in the market, were injuring the U.S. silicon industry. The Federal Circuit overturned the ITC's decision because it found that the ITC had not determined whether non-subject imports —meaning imports form countries other than Russia that were not the subject of this investigation--would simply replace the Russian imports with no beneficial effect on the U.S. industry. The court stated that in any case involving a "commodity product" in which "price-competitive non-subject imports are a significant factor in the market," the ITC must first determine whether non-subject imports would replace the subject imports "without any beneficial effect on domestic producers" and if so, the ITC must render a negative determination.

Because, depending on how the definitions of "commodity product" and "significant factor" are applied, the vast majority of cases could be found to meet the threshold criteria laid out by the Court, the *Bratsk* decision has the potential to affect the majority of the antidumping and countervailing duty cases. In light of the far reaching implications of the decision and the strong view at the ITC that the case was wrongly decided, the ITC, for the first time in its history, recommended that the Solicitor General of the U.S. seek Supreme Court review of the decision. The Solicitor General elected not to bring the issue to the Supreme Court at this time, so the precedent stands.

The ITC's concerns with this case stem from the fact that it appears to be based on an erroneous understanding of both the purpose of the trade remedy laws and the manner in which those laws are applied. For example, the Federal Circuit asserts that the ITC must determine whether non-subject imports will fill the "void" created by the "elimination" of subject imports from the U.S. market once antidumping or countervailing duties are placed on subject imports. However, the Court fails to understand that the purpose of imposing AD or CVD duties is not to eliminate imports from the market. Nor is the result of putting AD or CVD duties in imports necessarily the exit of those imports from the market. Very commonly, the imports continue to enter the U.S. market; they simply pay the additional duties. The fact that the U.S. has collected hundreds of millions of dollars in such antidumping and countervailing duties pursuant to the Continued Dumping and Subsidy Offset Act, also known as the "Byrd amendment", is a clear indication that imports are not necessarily "eliminated" from the market and there is no clear "void" for non-subject imports to fill.

Similarly, the Court presumes that the ITC is supposed to make a negative decision if it cannot show that an order will be effective in addressing the injury suffered by the domestic industry. However, the law establishes no such test for assessing the "effectiveness" of an order in an original investigation. In fact, as apparent from the sunset review provisions, the statute clearly contemplates that industries may continue to suffer material injury even with orders in place.

The Court also requires the ITC to determine how non-subject imports will perform should an order be put in place, but the ITC does not have the non-subject producers or importers before it as parties, nor would the statute permit non-subject producers to become parties to the investigation, even if they wanted to be. Therefore, the ITC is left by the *Bratsk* decision with the task of determining the potential volume of imports and the prices of those imports from producers all over the world. Asking such producers to fill out a questionnaire providing the ITC with sensitive data about their production, capacity and prices in markets around the world is not likely to produce many responses.

Similarly, recent WTO decisions relating to the methodology by which the Department of Commerce calculates dumping margins, most particularly the Department's use of so-called zeroing, has been ruled a violation of our obligations under the WTO Antidumping Agreement. As a result, the Department has had to amend its methodology, raising concerns among many in the U.S. industry about what margins are likely to be in the future.

Other WTO decisions have found a number of long-standing DOC practices to be violations of our obligations under the WTO Agreements as well, including the method by which the DOC calculates the "all others" dumping margins[5] and the DOC methodology to determine whether and when the sale of a previously state-owned facility wipes out any subsidies that were granted to that facility when it was owned by the government.[6]

E. Concerns with Agriculture

The problems I have spoken about are true for all goods that are imported, but the increasing volume of imports of agricultural products raises additional questions about whether the antidumping laws can be made to work effectively to address problems with dumped imports of agricultural products.

One of the first problems that arises in the realm of agricultural cases is who is bringing the case. Most often, the producers in the industry that are feeling most aggrieved by low-priced imports are the farmers, yet the goods being imported are often processed or semi-processed products. While U.S. law has been amended to permit the ITC to include growers and farmers to both file a case and be included in the ITC's decision of who to look at in determining whether injury has occurred, the WTO has issued a very strong repudiation of these provisions of U.S. law, making it clear that the ITC can only include as members of the domestic industry those producers making a product at the same stage of processing as the imports themselves. For example, in a case involving lamb meat imports from Australia and New Zealand[7], the WTO Appellate Body ruled that even though the growers and feeders of lambs produced 88% of the value of the lamb meat, they could not be included in the case or looked at in making an injury determination because they produced live lambs, not lamb meat. However, the greatest injury was being suffered by the growers and the feeders, while the packers and the breakers were processing both U.S. and imported lamb and would in all likelihood never have filed a case, leaving the growers and feeders with no effective access to the process.

Similarly, the trade remedy laws call on the ITC to determine whether imports are underselling the U.S. product and have caused price suppression or depression. These determinations are usually made by comparing closely matched products on a quarterly basis. In agriculture, however, if products are traded on the major commodity exchanges, any price differences between imports and U.S. product would be extremely fleeting, as prices would be matched or cleared on a daily or hourly basis. Similarly, if

[5] *US-Hot-Rolled Steel* –Appellate Body Report, *United States-Antidumping Measures on Certain Hot-Rolled Steel from Japan,* WT/DS184/AB/R, adopted 23 August 2001.

[6] *United States-Countervailing Measures Concerning Certain Products from the European Communities,* WT/DS212/AB/R, adopted 8 January 2003

[7] It should be noted that the *Lamb Meat from Australia and New Zealand* case was a safeguards case, not an antidumping case. The U.S. statutory provisions that give the Commission the authority and the standards to include farmers and producers of raw agriculture products as part of the industry producing the processed product are found in the trade remedy statutes rather than in the safeguards law. However, given the willingness of panels and the Appellate Body to rely on precedents from safeguards cases in antidumping and countervailing duty cases, it is quite likely that any antidumping or countervailing duty cases that include growers or farmers as part of the domestic industry producing processed agriculture products would be similarly found to violate our WTO obligations.

any of the exchanges include significant volumes of trading in futures and those futures are affected by production levels and prices in countries around the world, it is extremely difficult for the ITC to make the requisite finding that it is imports from the subject countries that have caused the price declines rather than the effect of non-subject imports in the futures markets.

Moreover, for any agriculture cases involving products with significant growing or "boom and bust" cycles, such as cattle or pork, correlating the injury with changes in import volumes and prices is much more difficult as it will rarely be clear that it is the imports rather than the growth cycle that led to price changes. Nor is it clear how to separate out changes in any government programs that provide support to the farmers or that support the price of the products from injury that must be linked to imports.

F. Imports that Violate Intellectual Property Rights

Among the other actions that the United States can take against unfairly traded imports are actions to bar the importation of goods that violate U.S. patents, copyrights or trademarks, pursuant to Section 337 of the Tariff Act of 1930. In these cases, the ITC make a determination of whether the complainant has a valid patent or other right and whether the imports infringe on that patent. If so, the ITC makes a remedy recommendation, which can include a general exclusion order on any future imports, regardless of the source. The Commission's remedy is subject to final approval by the President, but in general, ITC relief orders are only seldom disapproved. The cases are then subject to review by the U.S. Court of Appeals for the Federal Circuit.

In recent years, the volume of these Section 337 cases has gone up dramatically, from 16 new cases filed in 2002, to 29 new cases in 2005 and 40 new cases in 2006. Many practitioners have stated that Section 337 is the preferred method for the enforcement of certain intellectual property rights because the cases are handled much more quickly than in district courts, the ITC has more specialized expertise in hearing patent cases, the ITC's affirmance record at the Federal Circuit is better than the district courts' and the remedy of an exclusion order is more readily enforceable.

The problem in this area stems from the strain on the resources at the ITC to hear the burgeoning number of cases, most of which involve ever-increasingly sophisticated technologies with many more patent claims to be construed within each case. It will be increasingly difficult for the ITC to stick to its intended goals for finishing cases within a 12-15 month time frame given the large volume and the difficulties within the U.S. personnel system of attracting and retaining Administrative Law Judges that have the expertise to preside over the initial trial of these complex cases.

G. Safeguards—Global Safeguards (Section 201) and China Safeguards (Section 421)

If we move on to the one area of trade remedy law that does not involve allegations of unfair trade—safeguards—we also see significant clouds on the horizon. Safeguard cases are typically filed by a U.S. industry that believes it has been seriously injured by a surge in imports. These cases are quite different from antidumping or countervailing duty cases because relief is not automatic if the ITC makes an affirmative determination. The President has the discretion under the statute to impose any relief or no relief as he deems appropriate in those cases.

The United States has imposed safeguard relief 6 times since the WTO came into existence in 1996, including for the huge 2001 investigation of a broad range of steel imports. In 4 of those cases, including the large steel case, the safeguard remedy imposed by the U.S. has been challenged in the WTO and has been found to have violated the WTO Safeguards Agreement. And we are not alone. Every country in the world that has had their safeguard measures challenged has been found to have violated the WTO Safeguards Agreement. To date, in those instances in which the WTO has ruled that U.S. actions have violated our WTO commitments, the safeguard remedies have been removed. As a result, safeguard remedies have remained in place for much less time than planned for.

The WTO Appellate Body has interpreted the WTO agreements to include additional requirements not found in U.S. safeguards law. One such additional requirement is that it must be "unforeseen developments" that caused imports to increase. Another requirement is the so-called "parallelism" obligation; this means that if the United States excludes imports from NAFTA countries or other FTA partners from safeguards relief, it must exclude those imports from its injury determination as well. The Appellate Body has also imposed requirements to "separate and distinguish" the effects of imports versus other factors in a way that has proved impossible to meet. Because these types of requirements will likely apply to every safeguard measure imposed by the United States, it appears that, under current U.S. law, no safeguard measure would pass muster at the WTO.

The second type of safeguards is the China specific safeguard actions that are provided for under Section 421. Like global safeguard investigations, section 421 investigations provide for investigations and determinations of injury by the ITC. If the determination is affirmative, the ITC recommends relief to the President. The President is to impose relief unless he finds that relief is "not in the national economic interest of the United States." The ITC has rendered 4 affirmative determinations under section 421, the most recent in October 2005. In each case the President has declined to grant import relief. In explaining his denial of relief in each case, the President has cited negative effects on downstream U.S. consumers of the imported products, as well as the possibility that the relief would be ineffective because imports from China would be replaced by imports from other countries. Because these reasons would likely apply to many if not most imported products, it is not clear that any more industries will find it worthwhile to file a section 421 petition with the ITC.

Finally, it needs to be understood that all of these trade remedies are available only for imports of goods. Yet today, services represent more than 83% of U.S. private sector GDP and U.S. imports of private services are projected to have exceeded $307 billion (16.5% of total imports) in 2006. None of the trade remedies noted above would be applicable or available to provide relief should U.S. service industries believe that they are being harmed by the growing amount of services imports.

Enforcement of our Rights to Export and Obtain Market Access

The other side of the trade enforcement coin is doing all we can to enforce our right to export our products and services, given the many rights to access foreign markets that we have under multilateral and bilateral trade agreements, along with the need to enforce protections of our intellectual property rights.

In this area, the principal enforcement tools the U.S. has are: 1) the dispute settlement mechanisms provided for in the WTO and in our various free trade agreements, 2) Section 301 of the Trade Act of 1974, 3) Special 301 for intellectual property matters, and 4) the trade policy review mechanism of the WTO.

A. WTO Dispute Settlement Cases

At the time that the Uruguay Round was completed, one of the key changes from the old GATT system was the move to a binding dispute settlement system that no longer permitted the losing party to block the adoption of the final panel report. As a result, the United States began filing a number of cases as a complainant to try to secure market access rights or enforcement of intellectual property rights that the U.S. believed it was entitled to under various WTO agreements. During the first six years of the WTO (1995-2000), the U.S. initiated 60 such cases, covering a wide variety of products (everything from alcoholic beverages to autos to bananas to apparel and leather products) a number of intellectual property rights, as well as a number of services. Of those cases, 41 of them did not result in the establishment of a formal panel, either because a mutually agreed upon solution was reached or because the consultations provided the needed answers to questions or concerns or because the United States decided not to pursue the matter beyond the initial consultation phase. The remaining 19 cases went through the dispute settlement process with the U.S. prevailing in 16 of the cases and losing in three of them.

Use of the WTO dispute settlement system dropped considerably in the next five years (2001-2005), with only 15 complaints being filed by the U.S. Of those 15, six of them did not go through the dispute settlement process because mutually agreed solutions were reached or the U.S. did not pursue the matter beyond the consultation phase. Nine of the cases went through the dispute settlement process with the U.S. prevailing in all of those cases that have been fully decided.[8]

[8] In the case involving the U.S. challenge to Canada's practices regarding exports of wheat and imports of grain, the U.S. did not prevail on the issue of whether the Canadian Wheat Board's activities in promoting the export of Canadian wheat violated Article XVII of the GATT, but did prevail in its claims regarding regulatory practices that discriminate against imported grain. Canada ultimately amended its Transportation Act and Grain Act to come into compliance with the Appellate Body report.

Since 2005, the U.S. has initiated seven matters, two of which are pending before panels of the WTO and five of which are in the beginning consultation phase.

In total, the U.S. has initiated 82 such complaints since the WTO dispute settlement system came into being. At the same time, the U.S. has been the subject of 97 complaints against its practices by a wide variety of our trading partners.

Overall, the dispute settlement system appears to have been both used more often and more successful at resolving disputes during the 1995-2000 time frame. Whenever the U.S. has been able to arrive at mutually agreed upon solutions through the dispute settlement process, those solutions have generally been viewed as providing the U.S. with better market access or a stronger resolution of the problem than those cases that have gone through the full dispute settlement process, particularly those in which the U.S. is left with only the right to retaliate against imports (e.g., the EU-beef hormones case).

B. Section 301

Section 301 was enacted in 1974 in order to give the President the power to take action against countries in response to complaints by private companies wanting better access to foreign markets. At the time, the GATT dispute settlement system was not binding and there was considerable frustration with the inability to obtain results when the U.S. believed its rights or benefits under the GATT were not being upheld. The initial 301 system was set up to allow private parties to bring an action to USTR for investigation.

With the enactment of the Uruguay Round Agreements and the change to a binding dispute settlement system in the WTO, the need for Section 301 was altered. Now, Section 301 provides the legal authority for the President to raise tariffs or take other action should the U.S. need to retaliate against a country that has not complied with an adverse WTO dispute settlement ruling. At the same time, Section 301 continues to function as a mechanism by which private parties can request an investigation by USTR of trade practices or policies that are "unreasonable or discriminatory and burden or restrict U.S. commerce."

In general, Section 301 calls for mandatory action by USTR if there has been a determination (preferably by the WTO or an FTA dispute settlement system) that a country's acts or policies violate a trade agreement. Section 301 gives the USTR the discretion to take action if USTR determines that an act, policy or practice is unreasonable or discriminatory and burdens or restricts U.S. commerce. Section 301 actions may be initiated by petition by any interested person or self-initiated by USTR. Typically USTR has self-initiated cases if it believes it will need legal authority to implement retaliation measures as a result of a WTO dispute settlement determination. With respect to acting on petitions, USTR has the discretion to determine whether actions under section 301 would be effective in addressing the act, policy or practice that is being complained about.

All together, there have been 121 section 301 actions initiated since the law was first enacted in 1974, with the majority of those actions (90 of them) occurring before 1993. Between 1993 and 2000, 30 section 301 actions were initiated. No new section 301 investigations have been initiated since March 2001 and all five of the petitions for section 301 investigations that have been filed since January 1, 2001 have been turned down by USTR on the grounds that action under section 301 would not be effective in addressing the act or policy that was the subject of the petition.[9]

C. Special 301

Special 301 was enacted in 1988 and requires USTR to identify those foreign countries that deny adequate and effective protection of intellectual property rights. In so doing, USTR identifies those countries that are "priority foreign countries" under Special 301, with priority foreign countries being those countries who have the most onerous or egregious acts, policies or practices with the greatest adverse impact on the relevant U.S. products and that are not entering into good faith negotiations or making significant progress to provide adequate and effective IPR protection. USTR is required to initiate a section 301 investigation for any country that has been designated a "priority foreign country." As a matter of administrative practice, USTR has also established a "priority watch list" of those countries that meet some, but not all, of the criteria for being a "priority foreign country" and a "watch list" of those countries that warrant special attention because they maintain IP practices that are of concern.

USTR conducts an annual special 301 review and has been active in placing countries on its priority watch list and watch list. In its most recent report (2006), USTR noted that is have placed 13 countries on its Priority Watch List (China, Russia, Argentina, Belize, Brazil, Egypt, India, Indonesia, Israel, Lebanon, Turkey, Ukraine and Venezuela) and 34 countries on its Watch List.

Since March of 2001 when Ukraine was named a Priority Foreign Country, no other country that has been designated as a Priority Foreign Country. As a result, Ukraine was the subject of an on-going Section 301 investigation. In January 2006, following six years of consultations and negotiations to improve Ukraine's protection of intellectual property rights, particularly copyrights on CDs and DVDs, Ukraine was moved from the Priority Foreign Country list to the Priority Watch List.

Despite the requirement for continued Special 301 reports and the movement of countries on and off of the Priority Watch List and Watch list, violations of IPR throughout the world appear to be on the rise with substantial concerns expressed about generally lax enforcement of intellectual property rights.

D. Trade Policy Review Mechanism

[9] One petition was filed in 2004 complaining about labor practices in China, two petitions were filed in 2004 complaining about China's currency controls, one petition was filed in 2005 regarding China's currency, and one petition was filed in 2006 complaining about China's denial of certain workers rights. In all five cases, USTR exercised its discretion not to initiate an investigation.

A final tool that could be used to at least assess potential violations of rights under trade agreements is the Trade Policy Review Mechanism established by the WTO. Under this mechanism, all WTO members have their trade policies thoroughly reviewed by the WTO's Trade Policy Review Body. At the conclusion of these reviews, a detailed report is issued that describes the country's trade policies and practices, the trade policy making institutions within that country and the macroeconomic policies that affect a given country's trade relationships. The review mechanism at a minimum provides significant information that could form the basis for a dispute if the review reveals policies that may violate the country's WTO obligations. The review mechanism also provides the opportunity to question other countries about their trade practices and to use the review process as a way to encourage countries to make adjustments to their policies.

The four WTO members with the largest share of world trade (EU, U.S., Japan and China) are subject to reviews every two years; the next 16 largest trading countries are subject to reviews every four years and all other countries are reviewed every six years.

Conclusion

On both sides of the issue—enforcement of trade remedies against unfairly traded imports or import surges and enforcement of rights for access to foreign markets and the protection of intellectual rights—our trade enforcement regimes are facing major challenges. Our basic laws and tools for trade enforcement have not been substantially changed since the Uruguay Round Agreements Act in 1994. Since then, numerous court cases and WTO rulings, shifts in trade patterns, particularly the rise of China and India, the growth of trade in services and the need for better enforcement of intellectual property rights have all placed constraints and pressures on the trade enforcement system. At the same time that we have seen an explosive growth in trade, we have seen a significant decline in the number of trade cases initiated by the United States. A sound trade enforcement regime for the 21st century must make adjustments for the changes that have occurred to our trading system in the last decade while at the same time ensuring that we fully utilize the tools that we already have available to us.