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### WTO Trade Policy Review: USA\*

*Note: This text provides brief description of the conditions foreign business will encounter in trade with USA. It is based on a WTO Trade Policy Review for USA, issued mid June 2008. Readers wishing for deeper analysis should turn to the original Trade Policy Review available on the WTO website. ([www.wto.org/english/tratop\\_e/tp\\_r\\_e/tp300\\_e.htm](http://www.wto.org/english/tratop_e/tp_r_e/tp300_e.htm))*

*Trade Policy Reviews are an exercise, mandated in the WTO agreements, in which member countries' trade and related policies are examined and evaluated at regular intervals.*

#### • SUMMARY OBSERVATIONS

The openness and transparency of the U.S. trade regime have been key contributing factors to the efficiency that characterizes the U.S. economy as a whole. Since its last Review in 2006, the United States has taken further steps to liberalize its trade regime, although mostly on a preferential basis. Ongoing efforts to incorporate additional security considerations into U.S. trade and investment policies have been advised to be pursued within the framework of the risk-based approach that seems to have served the United States well.

#### • ECONOMIC ENVIRONMENT

After a prolonged period of expansion, the short-run growth prospects of the U.S. economy deteriorated appreciably from late 2007. In late 2007, GDP growth slowed down considerably reflecting the negative effects of the housing downturn and credit turmoil. These problems have triggered a vigorous monetary policy response by the Federal Reserve that has significantly lowered short-term interest rates. Although inflation remained relatively subdued during the period under review, an upward tendency became perceptible in late 2007, mainly a consequence of higher oil and food prices. Thus, in early 2008 policymakers faced the dual challenge of restoring growth while curbing rising inflationary pressures.

The federal fiscal deficit contracted steadily between 2004 and 2007, to some 1.2% of GDP in FY2007. However, as a result of the economic slowdown in late 2007 and the fiscal measures adopted to address it, the deficit

is likely to increase in 2008. In the longer run, further reform in the fiscal area is likely to be needed to ensure fiscal sustainability, particularly with respect to entitlement programmes.

During the period under review, both U.S. imports and exports continued to expand, on average, faster than GDP. As a share of GDP, the deficit in the U.S. current account of the balance of payments fell from just over 6% in 2005 and 2006 to some 5.3% in 2007. The willingness of foreigners to invest in the United States has been vital in generating the large inflows of external capital required to finance the current account deficit. However, the sustainability of the deficit cannot be taken for granted, and as such carries certain downside risks including an increase in protectionist sentiment.

#### • TRADE AND INVESTMENT POLICY FRAMEWORK

The United States considers that the expansion of international trade is vital to its national security and economic growth. Support for the multilateral trading system is at the core of U.S. trade policy. While the United States considers that a comprehensive multilateral agreement offers the best chance to create expanded trade and development opportunities around the world, it believes that bilateral and regional trade liberalization can also provide significant benefits. Consistent with this, the United States has continued to enter into free-trade agreements (FTAs). In early 2008, it had FTAs with 14 countries. FTAs with another six countries had been completed but were not yet in force. The United States grants unilateral preferences to developing countries under several schemes, which may be conditional on adherence to criteria that the U.S. authorities consider promote sound policies and allow beneficiaries to expand trade and investment.

Trade promotion authority, which the Administration views as an important tool for achieving U.S. trade objectives, expired on 1 July 2007. In May 2007, the Administration and congressional leaders agreed to a trade policy "template", which has been described as providing a "clear and reasonable path forward" for congressional consideration of pending FTAs, and as "open[ing] the way for bipartisan work on Trade Promotion Authority". The template contains provisions on labour, environment, intel-

\* Extracted from WTO Secretariat Report on Trade Policy Review of USA

lectual property, investment, government procurement, and port security.

The United States has long maintained a policy of national treatment of foreign direct investment, subject to sector-specific considerations, prudential concerns, and national security. In 2007 Congress amended the process by which the Executive reviews the national security implications of certain foreign direct investments. It is critical to ensure that these changes do not undermine predictability for foreign investors.

#### • MARKET ACCESS FOR GOODS

The United States accords MFN tariff treatment to all WTO Members except Cuba. All except two tariff lines are bound, generally at low rates, which lends predictability to the U.S. trade regime. The simple average applied MFN tariff was 4.8% in 2007, virtually the same as in 2004 (4.9%). The applied MFN rate for agriculture (WTO definition) fell from 9.7% in 2004 to 8.9% in 2007, reflecting the rise in commodity prices and the resulting decline in the ad valorem equivalent rates. At 4%, the 2007 average applied MFN rate for non-agricultural products remained unchanged. Around 2% of all lines are subject to tariff quotas; high out-of-quota tariffs are one of the forms of import protection for certain agricultural products.

In addition to tariffs, imports are subject to ad valorem harbour maintenance and merchandise processing fees; the second is not applied on imports from some preferential partners. A customs bond must be posted for each importation of merchandise into the United States. Initial production volumes of small domestic wine and beer producers benefit from either a reduced federal excise tax rate or an excise tax credit. This benefit is not available for imported products.

Security considerations have continued to drive significant changes relating to customs procedures. The SAFE Port Act of 2006 codified and expanded existing cargo and supply-chain security programmes, and established additional filing requirements for importers. Under the Act, from mid 2012, all containers must be scanned prior to being loaded on a U.S.-bound vessel. However, the Act recognizes that this requirement could have a significant impact on trade, and offers the possibility of delaying the implementation for specific ports.

Non-tariff import restrictions are maintained largely for non-commercial purposes. This includes a ban on imports of marine mammal products, shrimp, and tuna from countries found not to be in compliance with U.S. environmental provisions.

Anti-dumping (AD) measures remain a key trade policy instrument for the United States. At end 2007, the United States maintained some 232 AD measures, down from 274 reported in its last Review, affecting imports from 39 trading partners. Applied AD duties can be substantial, up to 280%, and thus significantly affect U.S. domestic prices. As most AD measures are imposed on intermediate goods like steel and chemical products, they increase costs for downstream producers and consumers. Although temporary, the average "length" on an AD measure is 11 years. The percentage of U.S. imports directly affected by AD measures in force has been small, some 0.3% of merchandise imports over 1980-2005.

There have been no major changes at the federal level since the last Review of the United States in the institutional framework governing the development of technical regulations, conformity assessment procedures, or sanitary and phytosanitary measures. During the review period, the United States notified, for the first time since the creation of the WTO, technical regulations and conformity assessment procedures proposed by sub-federal agencies. A new approval process for first-time imports of fruits and vegetables subject to designated phytosanitary measures became effective in August 2007. It replaces the approval process based on the promulgation of regulation, which is otherwise applicable to all first-time imports of plants, animals, and their products. The new process is expected to accelerate import approval times, which can be as long as three years.

#### • EXPORT MEASURES

Export taxes are barred under the U.S. Constitution. However, the United States maintains export restrictions and controls for national security or foreign policy purposes, or to address shortages of scarce materials. Two WTO Members, Cuba and Myanmar, are subject to economic sanctions.

The United States provides insurance and export financing

through its official export credit agency. In addition, a duty drawback programme is in place. In May 2006, the United States repealed the "grandfathering" provisions that allowed U.S. firms to exclude certain "foreign trade" income from their taxable income for certain transactions, after the WTO had found them to be prohibited subsidies.

#### • OTHER MEASURES AFFECTING TRADE

Apart from export assistance, domestic producers benefit from federal and sub-federal tax exemptions, financial outlays, and credit programmes. In its latest notification to the WTO ([http://docsonline.wto.org/GEN\\_viewerwindow.asp?http://docsonline.wto.org:80/DDFDocuments/t/G/SCM/N123USA.doc](http://docsonline.wto.org/GEN_viewerwindow.asp?http://docsonline.wto.org:80/DDFDocuments/t/G/SCM/N123USA.doc)), covering fiscal years 2003 and 2004, the United States lists around 430 programmes providing subsidies, of which 42 at the federal level and the rest at the sub-federal level. Agriculture and energy are by far the largest recipients of notified federal support. U.S. domestic support, although not targeted at trade, may affect global markets as the United States is among the world's largest producers and consumers of numerous products.

The United States uses competition policy to promote efficiency and enhance consumer welfare. Federal anti-trust legislation covers all sectors and interstate and foreign commerce, subject to some exceptions. Competition policy enforcement has continued to focus on the activities of international cartels, anti-competitive mergers and non-merger enforcement. A review of competition policy procedures presented to Congress in 2007 recommended, among other things, simplifying and unifying merger clearing procedures and harmonizing the work of state and federal antitrust agencies, particularly with respect to mergers.

U.S. policy with respect to market access for government procurement is to grant national treatment based on the principle of reciprocity. The United States participates in the WTO plurilateral Agreement on Government Procurement (GPA). For procurement not covered by the GPA or other international agreements, the United States maintains a number of domestic purchasing requirements, such as those under the Buy American Act. U.S. procurement policy also seeks to increase the participation of small and other businesses through set-aside programmes. In some states, sub-federal regulations grant preferences to local suppliers, and impose local-content requirements under

certain conditions.

The United States is an important producer and exporter of goods and services that embody knowledge and other intellectual developments. The United States employs a variety of mechanisms to promote increased IPR protection and enforcement, including through its engagement in WTO activities and negotiations, FTAs, bilateral intellectual property agreements and bilateral investment treaties.

#### • SECTORAL POLICIES

The United States is one of the world's largest producers, exporters, and importers of agricultural products. As measured by the OECD, overall support to agriculture, including through border measures and government payments, accounted for 11% of gross farm receipts in 2006, down five percentage points from 2004. This decline largely reflects higher commodity prices. Certain commodities, including sugar and milk, continue to receive high levels of assistance. Moreover, payments under some commodity programmes (e.g., marketing assistance loans) provide incentives for resource use that may be inconsistent with market signals and may affect trade when supported output finds its way into world markets. Certain aspects of domestic support programmes were challenged under multilateral rules during the period under review.

The United States is a major producer and consumer of minerals and energy. U.S. energy policy places emphasis on domestic energy production and the provision of tax and other incentives for the supply of alternative and renewable fuels. Assistance for domestic ethanol production includes tax incentives and import duties; these measures could have a significant impact on global production patterns. The Energy Policy Act of 2005 contains provisions to address shortcomings in the regulatory framework governing electricity markets. In computing fuel economy standards, NAFTA-produced automobiles are treated differently from other vehicles.

The United States is the world's leading producer of manufactured goods. Manufacturing tariffs are generally low, but high tariffs have sheltered a few industries, such as textiles, clothing, and footwear and leather, from international competition.

The U.S. telecommunications market is open to foreign participation and is highly competitive. During the period under review, certain unbundling requirements were eliminated to level the regulatory playing field between broadband internet access providers. A comprehensive intercarrier compensation reform plan is under consideration. The United States maintains several media ownership restrictions, with the objective of promoting competition, diversity, and "localism" in media production. The relaxation of one of these restrictions was approved in late 2007, and rules have been adopted to facilitate entry into the video services market.

During the period under review, there have been no major changes in U.S. legislation with respect to financial services. However, the sector has been considerably affected by the sub-prime mortgage turmoil, suggesting the need for improvements in financial supervision. In this respect, changes to existing regulations are under consideration to restrict certain mortgage practices, and to consolidate and strengthen supervision.

Initial entry into the U.S. market through the establishment or acquisition of a nationally chartered bank subsidiary by a foreign person is permitted in all states. U.S. bank subsidiaries of foreign banks are granted national treatment. However, foreign-owned banks, unlike domestic banks, are required to establish an insured banking subsidiary to accept or maintain domestic retail deposits of less than US\$100,000. Branches and agencies of foreign banks have similar powers to banks but agencies may not accept deposits from U.S. citizens or residents. At the state level, there are limitations to the acquisition or establishment of a state-chartered bank, and for the establishment of branches or agencies.

Regulation of insurance services is primarily at the state level. Insurance companies, agents, and brokers must be licensed under the law of the State in which the risk they intend to insure is located, but U.S. states have taken steps to facilitate multi-state operations. Foreigners may acquire an insurance company licensed in all states, incorporate subsidiaries in 47 states, or operate as branches in 36 states and the District of Columbia. A federal tax on insurance policies covering U.S. risks is imposed at a rate of 1% of gross premiums on all reinsurance but at 4% of gross premiums with respect to non-life insurance when the insurer is not subject to U.S. net income tax on the premiums.

No significant policy or legislative changes have taken place with respect to maritime transport since 2006. The Jones Act reserves cargo service between two points in the United States for ships that are registered and built in the United States and owned by a U.S. corporation, and on which 75% of the employees are U.S. citizens. Domestic passenger services are subject to similar requirements. However, waivers may be granted and foreign companies may establish shipping companies in the United States under certain conditions. In contrast, the U.S. international maritime transport market is generally open to foreign competition although some cargo preferences are in place.

The profitability of U.S. airlines has improved, and by end 2007 all major U.S. airlines had emerged from bankruptcy protection. Foreign ownership in U.S. carriers is limited by statute to 25% of the voting shares. The provision of domestic air services is permitted only by U.S. carriers. The Fly America Act generally requires government-financed transportation to be on U.S.-flag air carriers, but foreign participation is possible under international agreements. The United States has bilateral aviation agreements with 97 countries, of which 79 are open skies agreements. The U.S.-EU Air Transport Agreement, provisionally applied since 30 March 2008, introduced a number of significant liberalization measures. All public-use U.S. airports with commercial services are currently owned by state or local governments. A law was passed in 1996 establishing an Airport Privatization Pilot Program; one airport participated but subsequently returned to public ownership.

There have there no major changes in professional services regulation in the past few years. States have responsibility for the regulation, licensing, and oversight of the professions practiced within their jurisdictions. The absence of a national regulatory regime creates different market access conditions among the states. Foreign market access in some states is affected by local presence, domicile, nationality, or legal form of entry requirements.