

EUROPEAN UNION

TRADE SUMMARY

U.S. goods exports in 2013 were \$262.3 billion, down 1.3 percent from the previous year. Corresponding U.S. imports from the European Union (EU) were \$387.3 billion, up 1.5 percent. The U.S. goods trade deficit with the EU was \$125.1 billion in 2013, up \$9.1 billion from 2012. European Union countries, together, would rank as the second largest export market for the United States in 2013.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to the EU were \$199.2 billion in 2012 (latest data available), and U.S. imports were \$143.2 billion. Sales of services in the EU by majority U.S.-owned affiliates were \$554.7 billion in 2011 (latest data available), while sales of services in the United States by majority EU-owned firms were \$409.9 billion.

The stock of U.S. foreign direct investment (FDI) in the EU was \$2.2 trillion in 2012 (latest data available), up from \$2.0 trillion in 2010. U.S. FDI in the EU is primarily concentrated in the nonbank holding companies, finance/insurance, and manufacturing sectors.

Overview

The United States and the 28 Member States of the EU share the largest and most complex economic relationship in the world. The enormous volume of trade and investment is a key pillar of prosperity both in the United States and Europe.

Transatlantic trade flows (goods and services trade plus earnings and payments on investment) averaged \$4.3 billion each day of 2013. The total stock of transatlantic investment was nearly \$3.9 trillion in 2012. Countries around the world benefit significantly from the prosperity resulting from this transatlantic economy.

Despite the broadly successful character of the U.S.-EU trade and investment relationship, U.S. exporters and investors face chronic barriers to entering, maintaining, or expanding their presence in certain sectors of the EU market. Some of the most significant barriers, which have persisted despite repeated efforts at resolution through bilateral consultations or WTO dispute settlement procedures, have been highlighted in this report for many years. Many are highlighted again in this year's report.

To further strengthen the transatlantic trade and investment relationship, President Obama announced on February 13, 2013 his intention to pursue comprehensive trade and investment negotiations with the EU. On June 17, 2013, the President joined with EU Leaders to launch negotiations on the Transatlantic Trade and Investment Partnership (T-TIP) agreement. These negotiations build upon the work and recommendations of the U.S.-EU High Level Working Group for Jobs and Growth, which was co-chaired by the U.S. Trade Representative and the European Commission Trade Directorate, and which recommended a comprehensive trade and investment agreement. Three negotiating rounds took place in 2013, and both sides have agreed to pursue an ambitious schedule of negotiations in 2014.

MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

WTO Information Technology Agreement

In September 2010, the WTO Dispute Settlement Body (DSB) adopted the final report of the panel considering the U.S. claim that the EU violated its tariff commitments under the WTO Information

Technology Agreement (ITA) by imposing duties as high as 14 percent on flat panel computer monitors, multifunction printers, and certain cable, satellite, and other set-top boxes. For all three product categories at issue, the panel concluded that the EU tariffs were inconsistent with its obligations. The United States and the EU agreed to a period of nine months and nine days for the EU to comply with the recommendations and rulings of the DSB, ending on June 30, 2011. The EU has taken the legislative steps necessary to come into compliance with the DSB's recommendations and rulings, but the United States is continuing to closely monitor implementation by Member State customs authorities to ensure that products covered by the ITA are accorded duty-free treatment. With EU compliance, the United States expects that U.S. producers of high technology products will continue to be able to export those products to Europe duty free, as required under the ITA.

Pharmaceutical Products

The U.S. pharmaceutical industry has expressed concerns regarding some EU and Member State policies affecting market access for pharmaceutical products, including nontransparent procedures and a lack of meaningful stakeholder input into policies related to pricing and reimbursement, including therapeutic reference pricing and other price controls. The United States is following with interest EU deliberations on steps to increase the availability of pharmaceutical product information to consumers as a means of promoting consumer awareness and access to medicines and is also following the current discussions on the review of the EU Transparency Directive. Pharmaceutical firms have also expressed concern regarding recent and possible future changes to European Medicines Agency (EMA) policy, and possible related changes to EU law, regarding disclosures of clinical trial data, including confidential commercial information submitted to EMA by pharmaceutical firms seeking marketing authorization. The United States continues to engage with the EU and individual Member States on these matters. In recent years, the U.S. pharmaceutical industry has raised concerns about pharmaceutical market access and government pricing and reimbursement systems in Austria, Belgium, the Czech Republic, Finland, France, Hungary, Lithuania, the Netherlands, Poland, Portugal, Romania, Spain, and the United Kingdom. Additional detail on some of these countries' measures follows.

Member State Measures

Austria: In 2011, the government of Austria, public health insurers, and the pharmaceutical industry agreed to a "Frame Contract for Reimbursement of Pharmaceuticals," valid until the end of 2015. U.S. companies have voiced concern that, despite the new contract, they are forced to accept significant price reductions to compete with generic pharmaceuticals. In addition, U.S. companies have expressed concern regarding reimbursement rules for follow-on products that are biosimilar to a biological pharmaceutical product.

Belgium: U.S. pharmaceutical companies have expressed concern about the lack of adequate transparency in the development and implementation of government cost-containment measures in Belgium. In 2012, the government proposed to implement an International Price Referencing System for on-patent medicines. The Ministry of Social Affairs, Public Health and Social Integration modified the proposal to ensure that pharmaceutical companies would not be treated differently with respect to budgetary cuts than any other group within the medical sector. The Belgian government agreed not to increase the sales tax on pharmaceuticals and to speed up the approval process for new medicines. The prices set for pharmaceutical prices for 2013 and 2014 are expected to remain stable. However, representatives from U.S. pharmaceutical companies have expressed concern that following the elections in May 2014, the price referencing system is likely to be reviewed and that challenges driven by federal budget negotiations, similar to those faced in 2012, may resurface for the 2015 and 2016 fiscal years.

Czech Republic: U.S. pharmaceutical companies have expressed concern about the Czech Republic's system for determining pricing and reimbursement levels for pharmaceutical products, as well as new legislation that went into effect in December 2011 requiring electronic auctions on pharmaceuticals and medical devices and equipment. The government has not fully implemented this legislation, using auctions only on a limited basis beginning in 2013. The United States has encouraged the Czech government to ensure that its current pricing and reimbursement system does not unfairly limit the access of innovative pharmaceutical products to the Czech market.

Finland: U.S. innovative pharmaceutical companies have reported that the Finnish Pharmaceutical Pricing Board has delayed reimbursement for their products, which has in turn reduced market access for those products. The U.S. pharmaceutical industry has also reported that the Pricing Board has also pressured U.S. companies to lower the prices of their innovative medicines in line with generic drugs of the same therapeutic class. The pharmaceutical companies have indicated that the Board's practices are hindering their ability to recoup their research and development costs. As a consequence of the Pricing Board's practices, U.S. pharmaceutical companies report that they have stopped most clinical trials and research in Finland.

France: France's "Sunshine Act" reform bill, called the Loi Bertrand on Improving Drug and Health Product Safety was introduced in December 2011 to provide stricter disclosure and drug monitoring rules and to create the National Agency for Health Products Safety. This regulatory authority can conduct post-authorization studies in cases of reported adverse reactions to a drug. This authority is also responsible for reviewing all pharmaceutical advertising. With respect to conflicts-of-interest issues, the law further requires manufacturers to make public agreements with healthcare authorities. The pharmaceutical industry largely supported the reform, with the exception of the industry tax and the two-year ban on visits by industry sales representatives to individual doctors. Implementation of the law has been slow, but the implementation decree was finally published in May 22, 2013. The provision of the law banning visits by industry sales representatives to doctors in hospitals was declared illegal by the Constitutional Council and has not been implemented.

Hungary: Pharmaceutical manufacturers have expressed several concerns about Hungary's pharmaceutical policies, including its volume and pricing restrictions, high sector-specific taxes, and delays in reimbursement approvals. The pharmaceutical industry has also identified negative impacts of Hungary's "blind-bidding" system, which provides preferential treatment to those medicines with the lowest price, without sufficient differentiation of innovative products. Several pharmaceutical companies have also reported concerns regarding new tax obligations introduced in August 2012 for pharmaceutical companies marketing innovative products. Hungary has taken some positive steps to address these concerns, including adoption of amendments to the Hungarian Act 95 of 2005 Medical Products for Human Use (also known as the Medicines Act) in June 2013, which empowers the National Institute of Pharmacy with investigative tools and powers to impose fines, conduct dawn raids, and conduct searches of premises and seize goods. The Hungarian government has also signed a series of strategic agreements with pharmaceutical companies. While these agreements have few concrete commitments, the pharmaceutical industry has generally been supportive of the government's efforts in this regard.

Italy: U.S. innovative companies have expressed concern about Italy's cost containment and other measures that negatively impact the Italian pharmaceutical market. Pharmaceutical companies are required to pay money back to the Italian government when government spending on pharmaceuticals exceeds the budgeted amount. Furthermore, availability of innovative drugs approved by the European Medicine Agency is significantly delayed by the fragmented healthcare administration system. Concerns also exist regarding the ability of pharmaceutical companies to fully exercise their patent rights for the complete patent term. The United States has encouraged the Italian government to open a dialogue with U.S. industry to address these issues. In October 2012, the Italian government approved a law providing

for more expeditious marketing approval for innovative drugs. The new law also states that generic medicines can be included in the approved reimbursable drug list only after the patent expiration of the original innovative medicine. However, concerns remain regarding the price reimbursement renegotiation system.

Lithuania: The United States continues to engage with the government of Lithuania regarding pharmaceutical market access issues. Discussions between the Health Ministry and pharmaceutical industry representatives have made little progress to add innovative drugs to the government's reimbursement list. Pharmaceutical industry representatives remain concerned about the lack of transparency in the reimbursement process and about pricing for innovative drugs.

Poland: U.S. pharmaceutical companies report that transparency and meaningful engagement between industry and the Ministry of Health in general and in the development and implementation of cost-containment measures affecting pharmaceutical reimbursement and pricing policies has improved. The Ministry of Health meets monthly with industry representatives and consults with industry about proposed legislative changes and changes in policy (the government of Poland has not consulted industry in the past on such issues). The Ministry of Health now publishes every two months lists of pharmaceuticals the national health system will reimburse. Prior to 2012, the Ministry did not update and release these lists on a regular basis. The law governing reimbursement by the national health system, which entered into force in January 2012, applies therapeutic reference pricing, a methodology which pools both patented and off-patent pharmaceutical/generic products into just 300 so-called "limit" groups based on therapeutic categories. By assuming that all products used to treat the same condition are interchangeable, this practice erodes the incentives to invest in the development of innovative medicines and may undermine the availability of such medicines. The pharmaceutical industry has also expressed concerns regarding possible reimbursement rules for biosimilars.

Portugal: The U.S. pharmaceutical industry reports that there continues to be a lack of transparency in the development and implementation of government cost-containment measures. Portuguese Law No. 52/2011, in effect since January 2012, requires that pharmaceutical patent holders submit cases, including evidence, to arbitration within 30 days of notice of intent by a generic drug manufacturer to distribute the generic product. The law does not provide for injunctive relief, but instead requires the party found to have infringed the patent in question to reimburse the patent holders for any resulting losses. While the arbitration system has proven to be faster than the normal court system, it remains costly and industry questions the quality of the legal decisions rendered.

Romania: Innovative pharmaceutical products face several significant challenges in Romania due to the fact that the government has not updated the lists of pharmaceuticals that are eligible for reimbursement under the national health system (the reimbursement lists) since 2008, despite repeated requests. This severely undermines the ability of U.S. pharmaceutical companies to introduce newer drugs in Romania because the National Health Insurance House will not pay reimbursement for drugs that are not included on the reimbursement list. As of December 2013, there are approximately 170 innovative drugs waiting for the Romanian government's approval for inclusion in an updated reimbursement list. In contrast, generic drugs have benefited from accelerated, quasi-automatic inclusion on the reimbursement lists. In March 2013, a protocol was signed between the Ministry of Health and the Romanian Association of Innovative Drugs Producers (ARPIM), which established a July 1, 2013 target for updating the reimbursement list. However, Romania has postponed this target date several times and the update to the reimbursement list and pricing legislation remains delayed.

Spain: U.S. pharmaceutical companies remain concerned that Spain's pricing and reimbursement system is unpredictable and lacks transparency. U.S. companies reported that Spanish government reforms enacted during 2010 and 2011 diluted the value of their patents and created a disincentive to innovation

and new investment. The reforms, aimed at reducing the national health system budget, require, in general, that the prescription of medicine must be by active ingredient, rather than by brand, and that pharmacies must dispense the lowest cost drugs available. The Spanish government approved a comprehensive health care reform package on April 20, 2012, which further reduced industry revenues by requiring prescription of generic drugs, even if innovative drugs are the same price, and lowering the reference prices on certain drugs. The reforms also subjected patented drugs with no generic competitors to reference pricing after 10 years of obtaining the first marketing authorization in the EU. The United States is working with the Spanish government on these issues.

Uranium

The United States is concerned that nontransparent EU policies may restrict the import into the EU of enriched uranium, the material from which nuclear power reactor fuel is fabricated. Since 1994, the EU has maintained quantitative restrictions on imports of enriched uranium in accordance with the terms of the Corfu Declaration, a joint European Council and European Commission policy statement that has never been made public or notified to the WTO. The Corfu Declaration appears to limit the acquisition of non-EU sources of supply of enriched uranium. The United States has raised concerns about the nontransparent nature of the Corfu Declaration and its application.

MARKET ACCESS FOR AGRICULTURAL AND FOOD PRODUCTS

Bananas

In December 2009, the United States and the EU initialed an agreement designed to lead to a settlement of the longstanding dispute over the EU's discriminatory bananas trading regime. In the agreement, the EU agreed not to reintroduce measures that discriminate among foreign banana distributors and to maintain a nondiscriminatory, tariff-only regime for the importation of bananas. The U.S.-EU agreement complements a parallel agreement, the Geneva Agreement on Trade in Bananas (GATB), between the EU and several Latin American banana-supplying countries, which provides for staged EU tariff cuts to bring the EU into compliance with its WTO obligations. The United States and the Latin American countries signed their respective agreements with the EU in June 2010.

The agreements marked the beginning of a process that, when completed, will culminate with the settling of all of the various banana disputes and claims against the EU in the WTO. The GATB entered into force on May 1, 2012, and certification by the WTO of the EU's new tariffs on bananas was completed on October 27, 2012. On November 8, 2012, the EU and the Latin American signatories to the GATB announced that they had settled their disputes and claims related to bananas. On January 24, 2013, the U.S.-EU bananas agreement entered into force. The final step called for in the U.S.-EU agreement is settlement of the United States' bananas dispute with the EU, provided certain conditions are met.

Husked Rice Agreement

The United States has ongoing concerns regarding the operation of the U.S.-EU husked rice agreement, which has been in effect since 2005. Under the terms of this bilateral agreement, negotiated as a result of the EU's decision to modify the tariff concessions agreed to in the Uruguay Round, the applied tariff for husked rice imports from the United States is determined by the total quantity of husked rice (excluding basmati) imported by the EU, and is adjusted every six months. Discussions on this subject with the European Commission have focused on the annual increase in the import reference volume and the longer-term operation of the tariff adjustment mechanism set out in the agreement. The United States has sought a significant increase in the import reference quantity in the husked rice agreement. The longer-

term U.S. objective is the elimination of EU tariffs on brown rice and other U.S. agricultural products under the T-TIP agreement.

Meursing Table Tariff Codes

Many processed food products, such as confectionary products, baked goods, and miscellaneous food preparations, are subject to a special tariff code system in the EU. Under this system, often referred to as the Meursing table, the EU charges a tariff on each imported product based on the product's content of milk protein, milk fat, starch, and sugar. As a result, products that the United States and other countries might consider equivalent for tariff classification purposes sometimes receive different rates of duty in the EU depending on the particular mix of ingredients in each product. The difficulty of calculating Meursing duties imposes an unnecessary administrative burden on, and creates uncertainty for, exporters, especially those seeking to ship new products to the EU.

Subsidies for Fruit

The EU Common Market Organization (CMO) for fruit and vegetables came into effect on January 1, 2008. Implementing rules, covering fresh and processed products, are designed to encourage the development of producer organizations (POs) as the main vehicle for crisis management and market promotion. The CMO makes payments to POs for dozens of products, including peaches, citrus fruits, and olives. In 2013, after the end of a five-year transitional period, EU support for this sector was fully decoupled from production decisions. However, hidden subsidies remain an ongoing concern for U.S. producers. In their view, the decoupled Single Farm Payments are funded by the European Commission and paid to the Member States, then channeled through POs to producers. The United States continues to monitor and review EU assistance in this sector, evaluating potential trade-distorting effects.

EU Enlargement

In December 2006, the United States entered into negotiations with the EU, within the framework of the GATT 1994 provisions relating to the expansion of customs unions, regarding compensation for certain tariff increases related to Romania's and Bulgaria's EU accession on January 1, 2007. Upon accession to the EU, Romania and Bulgaria were required to change their tariff schedules to conform to the EU's common external tariff schedule, which resulted in increased tariffs on the importation of certain, mainly agricultural, products. Under GATT Articles XXIV:6 and XXVIII, the United States is entitled to compensation from the EU to offset these tariff increases. In late 2011, the United States concluded negotiation of a bilateral compensation agreement with the EU covering several agricultural products, and the two sides signed the agreement in 2012. The agreement establishes or increases EU tariff-rate quotas allocated to the United States for several agricultural products. The United States and the EU brought the agreement into force on July 1, 2013.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In 2013, the European Commission continued implementation of its 2011 intellectual property rights (IPR) strategy that includes initiatives on enforcement and copyright, as well as a renewed effort to adopt an EU-wide patent regime. Although patent filing costs have decreased in the EU, patent filing and maintenance fees in the EU and its Member States remain significantly higher than in other countries, including the United States. The IPR strategy also included launching a study into extending geographical indication (GI) protection for products other than agricultural products and food stuffs, which are currently eligible for GI protection in the EU.

The United States continues to have serious concerns with the EU's system for the protection of GIs, including with respect to its negative impact on the protection of trademark and market access for U.S. products that use generic names. The EU adopted its current GI regulation for food products, Council Regulation (EC) 510/06, in response to WTO DSB findings in a case brought by the United States (and a related case brought by Australia) that the EU GI system impermissibly discriminated against non-EU products and persons. The DSB also agreed with the United States that the EU could not create broad exceptions to trademark rights guaranteed by the TRIPS Agreement. The United States continues to have concerns about this regulation and intends to monitor carefully both its implementation and current initiatives to modify it. These concerns also extend to Council Regulation (EC) 479/08, which relates to wines, and to Commission Regulation (EC) 607/09, which relates, *inter alia*, to GIs and traditional terms of wine sector products. The United States is carefully monitoring the implementation of each of these regulations.

With respect to copyright protection, the European Commission decided in December 2012 to initiate a two-part copyright program, set out in the Commission Communication entitled "Content in the Digital Single Market." Under the first part of that program, the Commission launched a stakeholder dialogue, known as "Licenses for Europe," to address key copyright issues in the EU. The stakeholder dialogue was divided into four working groups: cross-border access and portability of services, user generated content and micro-licensing, audiovisual heritage, and text and data mining. In November 2013, stakeholders agreed to a series of pledges, contained in "Ten Pledges to Bring More Content Online." The second part of the program involves completing the Commission's review of the EU copyright legislation framework with a view to a decision by the spring of 2014 on whether to table legislative reform proposals. As part of this review, the Commission launched a public consultation to gather input from all stakeholders on the review of the EU copyright rules between December 5, 2013 and February 5, 2014. The United States welcomes the inclusion of U.S. stakeholders in these Commission-led processes and urges that any outcomes of this program fully reflect the value of copyright industries to the EU, transatlantic, and global economies and continue to promote strong copyright protection and enforcement internally and internationally.

Member State Measures

While there have been improvements in some Member States, the United States continues to have concerns about IPR protection and enforcement in several Member States. The United States actively engages with the relevant authorities in these countries and will continue to monitor the adequacy and effectiveness of IPR protection and enforcement, including through the annual Special 301 review process.

Austria: Austria was not listed in the 2013 Special 301 Report. U.S. copyright holders report, however, that while legal protections are strong in principle, procedural obstacles continue to limit efforts to effectively combat online piracy.

Bulgaria: Bulgaria was added to the Watch List in the 2013 Special 301 Report. U.S. industry reports continued concerns about IPR enforcement, including with respect to piracy over the Internet. Stakeholders have also highlighted the need for Bulgaria to enhance the effectiveness of its patent and trademark enforcement system, including with respect to prosecutions and to address bad-faith trademark registration at the Bulgarian Patent Office. For example, U.S. exporters of distilled spirits have expressed concerns regarding trademark infringement and limited enforcement against locally-produced counterfeit products. Bulgaria has an established process for administrative rulings and appeals in cases of patent and trademark infringement, although significant concerns remain regarding the decisions issued in those adjudicatory proceedings.

Czech Republic: The Czech Republic was not listed in the 2013 Special 301 Report. The Czech Republic has made considerable progress in IPR enforcement in the approximately 50 open air markets that line the country's borders with Germany and Austria. This success in physical markets has pushed more activity into the online realm, where digital lockers containing pirated content remain a problem. Nevertheless, when IPR holders have gone to the courts, there have been positive results. There have been instances where rights holders have won sizable (for the Czech justice system) monetary settlements against online sites for allowing illegal downloads of copyrighted material.

Finland: Finland remained on the Watch List in the 2013 Special 301 Report. The key concern cited in the report was the lack of product patent protection for certain pharmaceutical products and a regulatory framework that denied adequate protection for some process patents filed before 1995 and those that were pending in 1996. Affected products include top-selling U.S. pharmaceutical products currently on the Finnish market.

Greece: Greece remained on the Watch List in the 2013 Special 301 Report. The United States acknowledges some improvements in IPR protection and enforcement in Greece, including actions taken against piracy over the Internet. However, inadequate IPR protection continues to pose barriers to U.S. exports and investment. Key issues cited in the 2013 Special 301 Report include widespread copyright piracy and weak and inconsistent IPR enforcement.

Hungary: Hungary was not listed in the 2013 Special 301 Report. Hungary and the United States have had an established bilateral Intellectual Property Agreement for over a decade. In 2010, Hungary was removed from the Special 301 Watch List. In 2012, Hungary joined the Patent Prosecution Highway (PPH) program, signing a Memorandum of Understanding with the United States. The PPH program is a process that allows a patent ruling in one country to begin a fast track process in another country for the same patent.

Italy: Italy remained on the Watch List in the 2013 Special 301 Report. Italy's listing in the Report was primarily due to ongoing concerns regarding piracy over the Internet. Notably, on December 12, 2013, the Italian Communications Regulatory Authority adopted regulations regarding piracy over the Internet, which are scheduled to enter into effect on March 31, 2014. The United States is reviewing those regulations.

Latvia: Latvia was not listed in the 2013 Special 301 Report. In recent years, Latvia has taken steps to improve IPR protection and enforcement in its market, including amendments to its intellectual property criminal statutes that have simplified certain aspects of infringement cases and may result in more successful prosecutions of IPR violations. Yet, concerns remain with respect to Latvian law, including regarding the ability to secure deterrent penalties under the Copyright Law, and the lack of provisions in the Public Procurement Law requiring use by government authorities of legitimate software. On enforcement, police and prosecutors actively pursue IPR cases, but a lack of resources and severe backlogs in police forensics labs hamper their efforts. While the Latvian judicial climate is improving with the publication of judgments online and a reduction in the backlog of pending cases, there are still significant challenges, including lengthy proceedings and high evidentiary burdens.

Malta: Malta was not listed in the 2013 Special 301 Report. Although industry reports indicate that Malta's civil regime for copyright is generally adequate, industry believes that Malta's criminal law is insufficient, including with respect to inadequate deterrence of IPR infringement. While the relevant provisions of the Maltese Criminal Code are generally viewed as satisfactory in the context of trademarks and designs, the Criminal Code provisions governing other intellectual property rights remain largely un-enforced and should be updated to reflect technological advances.

Poland: Poland was not listed in the 2013 Special 301 Report. Over the past three years, the government has implemented a national IPR strategy, entitled “Program for the Protection of Copyright and Related Rights 2011-2013,” which adopted EU IPR protection strategies. The government plans to announce a new program for 2014-2016 in early 2014. The Polish government organizes monthly stakeholder workshops on copyright law and related issues. On October 24, 2013, the government published a report on the implementation of Poland’s 1994 copyright law and related rights, which recommended several reforms including with respect to improvements of the Ministry of Culture and National Heritage’s copyright committee. The report also recommends that the government establish a separate court division to handle IPR cases, and that copyright management organizations include in their reports detailed information on who is charged and how residuals are distributed for a particular work.

Portugal: Portugal was not listed in the 2013 Special 301 Report. Portugal regularly conducts inspections for illegal goods at street fairs, markets, and festivals. However, it does not have adequate mechanisms to effectively deter piracy over the Internet. Court cases involving IPR often take years to resolve and rarely result in convictions. Furthermore, courts rarely order an injunction against the activity in question while a case is pending. Portugal has two judges dedicated to IPR matters who have reportedly not received specialized training.

Romania: Romania remained on the Watch List in the 2013 Special 301 Report. While counterfeit physical goods, infringing optical discs, and street piracy continued to decline in 2013, piracy over the Internet, especially peer-to-peer downloading, remains a serious concern. IPR enforcement also remains inadequate, with serious questions arising regarding Romania’s commitments to such enforcement, reflected in reduced cooperation among enforcement authorities, a decline in the number of enforcement actions and a lack of meaningful sanctions. Other enforcement concerns include the 2010 changes to the Penal Code, which provide for trial court adjudication of IPR cases, where the judges and prosecutors have substantially less IPR expertise, higher rates of turnover, judicial inefficiency, and only limited use of deterrent sentences. In particular, enforcement efforts have not adequately addressed piracy over the Internet in Romania.

Spain: Spain was not listed in the 2013 Special 301 Report. Spain was removed from the Watch List in the 2012 Special 301 Report in recognition of efforts with respect to IPR protection and enforcement, including the December 2011 adoption of regulations implementing provisions of the Sustainable Economy Law (commonly known as the Ley Sinde), a law to combat copyright piracy over the Internet. However, concerns remain regarding the Spanish government’s efforts to combat online piracy, including its implementation of the Ley Sinde and the impact the 2006 Prosecutor General’s Circular that appears to decriminalize illegal peer-to-peer file sharing of infringing materials, further perpetuating the ongoing perception by the public and judges that unauthorized Internet downloads are not an illicit activity. In 2013, the government of Spain initiated a series of legislative reform initiatives with respect to IPR, but progress has been slow. The Ministry of Culture’s 2012-2015 Strategic Plan sets objectives and strategies to guide Spain’s cultural policy over the next four years including strengthening the legal framework for the protection of rights derived from intellectual property. In 2014, the United States will continue to carefully monitor the implementation of the Ley Sinde provisions, as well as the reform of Spain’s IP, criminal, and civil procedure laws.

Sweden: Sweden was not listed in the 2013 Special 301 Report. Sweden continues to grapple with widespread piracy on the Internet, but government enforcement efforts have begun to show positive results. Following the entry into force in April 2009 of legislation implementing the EU Enforcement Directive, several major pirate websites left Sweden. Nonetheless, Sweden still hosts some large online pirate sites, several of which are listed in USTR’s Notorious Markets List. Legal sales over the Internet have increased in recent years, in part because of Swedish enforcement efforts.

SERVICES BARRIERS

Telecommunications

EU Member States' WTO commitments covering telecommunications services and EU legislation have encouraged liberalization and competition in the telecommunications sectors in EU Member States since the late 1990s. All EU Member States made WTO commitments to provide market access and national treatment for voice telephony and data services. The EU's 2002 Common Regulatory Framework for Electronic Communications Networks and Services (Framework Directive) imposed additional liberalization and harmonization requirements on Member States. Implementation of these requirements has been uneven across Member States, however, and significant problems remain in many markets, including with the provisioning and pricing of unbundled local loops, line sharing, co-location, and the provisioning of leased lines.

In 2009, the Commission amended EU telecommunications legislation, including the Framework Directive, with a third telecommunications package with the aim of harmonizing Europe's telecommunications markets. Perhaps the most significant change was the creation of the Body of European Regulators for Electronic Communications (BEREC). Increased Member State coordination, a larger role for the Commission, and the creation of BEREC were intended to help ensure fair competition and more consistency in the regulation of telecommunications markets within the EU. The deadline to transpose the revised directives into national law was May 25, 2011. All EU member states have now completed the transposition.

The European Commission is undertaking infringement procedures for incorrect transposition of the revised directives against two Member States, Belgium and the Netherlands, a process that could see the Commission referring both Member States to the EU Court of Justice.

Building upon the 2009 regulatory framework, in September 2013, the Commission presented its draft for a regulation "Laying down measures to complete the European single market for electronic communications and to achieve a Connected Continent." The proposal includes new rules on net neutrality, network investments, and roaming. In light of the tardiness and complexity of the proposal, as well as the spring 2014 European Parliament elections and the transition to a new Commission in the fall, it is likely that the Commission will withdraw the proposal and reformulate it for later consideration.

EU institutions are also discussing proposals on data protection, which could restrict international data flows, and are reviewing the Data Retention Directive. In addition, the Commission has launched a European Radio Spectrum Policy Program to improve radio spectrum management in Europe.

Member State Measures

France: France has implemented all relevant EU Telecommunications Directives. The government holds a 27 percent share in global telecommunications company Orange (formerly France Telecom), and the company has 37 percent of the French mobile market.

In July 2013, France's Constitutional Council revoked legal provisions governing the powers of the regulator, Autorite de Regulation des Communications Electroniques et des Postes (Arcep), stripping it of its authority to enforce sanctions. ARCEP asked Skype to register as a provider of electronic communications service. After Skype did not do so, ARCEP referred the matter to the French government.

Germany: Despite increased competition in some sectors of Germany's telecommunications market, Deutsche Telekom (DT) retains a dominant position in a number of key market segments, including local loop and broadband connections. DT's competitors continue to call for more effective regulation of the competitive environment. At the end of 2013, Germany's Monopolies Commission published a report recommending that the government sell its direct and indirect stake in Deutsche Telekom.

Hungary: The cellular service market in Hungary is nearly 100 percent controlled by Germany's T-Mobile, Britain's Vodafone, and Norway's Telenor. While some sector-specific taxes on mobile providers expired in 2012, taxes on phone calls and text messages continue – part of a Hungarian government trend of applying sector-specific taxes in sectors that are largely controlled by foreign firms. The European Commission initiated infringement proceedings on the taxes, but the EU Court of Justice ultimately ruled against the European Commission and the infringement proceedings were dropped.

Italy: Telecom Italia (TI), the former state-owned monopoly operator, is the largest telecommunications provider in Italy. Spain's Telefonica, holds a 46 percent stake in Telco, the holding company that owns 22.4 percent of TI. Telefonica has an option to take a controlling stake in Telco, but possible antitrust obstacles have prevented this from happening thus far. TI sources tell us that newly appointed top management has put the plan on hold but not cancelled it. In the meantime, they are strengthening the functional separation between pure services and infrastructure operations.

TI's overall domestic market share is decreasing with respect to its competitors. Its share of the fixed-line market declined to approximately 63.4 percent in the third quarter of 2013 (down from 65.3 percent in the third quarter of 2012). Similarly, TI's share of the Italian retail broadband market was 49.7 percent in the third quarter of 2013 (compared to 51.7 percent in the third quarter of 2012). TI's market share for mobile subscribers was 34.2 percent in the third quarter of 2013 (it was 34.7 percent in the third quarter of 2012). Telecom Italia's chief executive has outlined a three-year plan that includes asset sales and increased investment in the Italian market.

Television Broadcasting and Audiovisual Services

The 2007 EU Directive on Audiovisual Media Services (AVMS) amended and extended the scope of the Television without Frontiers Directive (which covered traditional broadcasting, whether delivered by terrestrial, cable, or satellite means) to also cover audiovisual media services provided on-demand, including via the Internet. EU Member State content quotas for broadcasting remain in place. On-demand services are subject to somewhat less restrictive provisions than traditional broadcasting under the AVMS Directive, which does not set any strict content quota, but still requires Member States to ensure that on-demand services encourage production of, and access to, EU works. This could be interpreted to refer to the financial contribution made by such services to the production and rights acquisition of EU works or to the prominence of EU works in the catalogues of video on-demand services.

Member State Measures

Several EU Member States maintain measures that hinder the free flow of some programming or film exhibitions. A summary of some of the more significant restrictive national practices follows.

France: France continues to apply the EU Broadcast Directive in a restrictive manner. France's implementing legislation, which was approved by the European Commission in 1992, requires that 60 percent of programming be EU and 40 percent French language. These requirements exceed those of the Broadcast Directive. Moreover, these quotas apply to both the regular and prime time programming slots, and the definition of prime time differs from network to network. The prime time restrictions pose a

significant barrier to U.S. programs in the French market. Internet, cable, and satellite networks are permitted to broadcast as little as 50 percent EU content (the AVMS Directive minimum) and 30 percent to 35 percent French-language product, but, in exchange, channels and services are required to increase their investment in the production of French-language product. In addition, radio broadcast quotas that have been in effect since 1996 specify that 40 percent of songs on almost all French private and public radio stations must be in French.

Beyond broadcasting quotas, cinemas must reserve five weeks per quarter for the exhibition of French feature films. This requirement is reduced to four weeks per quarter for theaters that include a French short subject film during six weeks of the preceding quarter. Operators of multiplexes may not screen any one film with more than two prints, or through staggered and interlocking projection techniques, in such a way as to account for more than 30 percent of the multiplex's weekly shows. Theatrically released feature films are not allowed to be advertised on television. France also maintains a four-month waiting period between the date a movie exits the cinema and the date when it can be shown on video-on-demand.

Italy: Broadcasting Law DL 44, which implements EU regulations, reserves 50 percent of the programming time (excluding sports, news, game shows, and advertisements) for EU works. Ten percent of transmissions (and 20 percent for state broadcaster RAI) must be reserved for EU works produced during the preceding 5 years. Within this quota, an undefined percentage of time must be reserved for Italian movies.

Poland: Broadcasters in Poland must devote at least 33 percent of their broadcasting time each quarter to programming that was originally produced in the Polish language.

Spain: For every three days that a film from a non-EU country is screened, in its original language or dubbed into one of Spain's languages, one EU film must be shown. This ratio is reduced to four to one if the cinema screens a film in an official language of Spain and keeps showing the film in that language throughout the day. In addition, broadcasters and providers of other audiovisual media services must annually invest 5 percent of their revenues in the production of EU and Spanish films and audiovisual programs. In 2010, the government revised the audiovisual law and imposed restrictions on non-EU ownership (limited to no more than 25 percent share) and leasing of AV licenses, which have negatively impacted U.S. investors. Following the 2010 amendment, several U.S. investors signed agreements with Spanish AV license holders to provide content for free-to-air television channels, but a Supreme Court decision in November 2012 annulled the digital terrestrial television broadcasting licenses of these Spanish firms, asserting that the government had not followed the proper public tender process in allocating the licenses in 2010, putting U.S. investments at risk. In March 2013, the cabinet authorized the channels to continue broadcasting until the end of the year, but the Spanish government intends to subsequently reallocate the spectrum to 4G mobile technology. The U.S. Embassy has raised the concerns of U.S. investors with the Spanish government.

Legal Services

Austria, Cyprus, Greece, Hungary, Lithuania, Malta, and Slovakia require EU nationality for full admission to the bar, which is necessary for the practice of EU and Member State law. Belgium and Finland require EU nationality for legal representation services. In many cases, non-EU lawyers holding authorization to practice law in one Member State face more burdensome procedures to obtain authorization in another Member State than would a similarly situated lawyer holding EU citizenship.

Member State Measures

Bulgaria: The Bulgarian Bar Act allows law firms registered in the EU to practice in Bulgaria under their original name after they register with the local bar association. However, at least one of the partners has to be registered both in Bulgaria and in another EU Member State if the local partnership is to use an internationally recognized name.

Czech Republic: In contrast to EU-based law firms, U.S. law firms cannot establish Czech branches to practice law (*i.e.*, operate directly through their home legal entities). Attorneys from U.S. law firms admitted as foreign lawyers, together with Czech lawyers, may establish local partnerships.

Hungary: U.S. lawyers may provide legal services only under a “cooperation agreement” in partnership with a Hungarian law firm and can only provide information to their clients on U.S. or international law.

Portugal: Portuguese law requires that practicing lawyers be members of the Portuguese Bar Association. The Portuguese Bar Association requires that members graduate from a Portuguese or Brazilian law school. U.S. citizens with a law degree may apply as legal trainees if the law degree is recognized by a Portuguese law school and if the U.S. citizen has a valid Portuguese residence authorization. The successful completion of legal internship and the mandatory Bar Association exams are required for a U.S. citizen to practice law in Portugal.

Accounting and Auditing Services

Member State Measures

Portugal: Portuguese law requires that practicing accountants and auditors be accredited by one of two Portuguese accounting associations, which require legal residency. Portuguese language ability and citizenship of a country with a reciprocal agreement or EU citizenship are prerequisites for membership in the associations.

EU Enlargement

Upon each of the three most recent rounds of EU enlargement, the EU has submitted notifications to WTO Members concerning the modification of existing commitments under the GATS by the newly acceded members of the EU. In accordance with GATS Article XXI, the EU was required to enter into negotiations with any other WTO member that indicated that it was affected by the modification of existing commitments. In connection with the largest of these rounds of enlargement, the expansion to 25 members in 2004, the United States and EU successfully negotiated a compensation package, which was agreed on August 7, 2006. To date, however, the European Commission has failed to secure the approval of all EU Member States, which is necessary to implement the agreement. USTR will continue to monitor this process to ensure the agreement is implemented as soon as possible.

INVESTMENT BARRIERS

Foreign investors in the EU are accorded national treatment in most sectors and, with few exceptions, EU law requires that any company established under the laws of one Member State must receive national treatment in all other Member States, regardless of the company’s ultimate ownership. As discussed below, however, EU law does impose some restrictions on U.S. and other foreign investments and, in many instances, individual Member State policies and practices have had a more significant impact on U.S. investment than EU-level policies.

Prior to the adoption of the Lisbon Treaty in December 2009, the European Commission shared competence with Member States on foreign investment issues. Member States negotiated their own bilateral investment treaties (BITs) and generally retained responsibility for their foreign investment regimes, while the EU negotiated investment-related market access provisions in EU economic agreements. Article 207 of the Lisbon Treaty brings foreign direct investment (FDI) under the umbrella of Europe's common commercial policy, making it the exclusive competence of the EU. FDI is not defined in the Treaty, however, leaving many practical implications of the Treaty for EU external investment policy unclear.

Member State Measures

Bulgaria: Weak corporate governance remains a problem in Bulgaria. Although legislative protection for minority shareholders has been improved through insolvency rules in Bulgaria's Commercial Code and changes to its Law on Public Offering of Securities, enforcement of these statutory provisions remains inadequate.

Cyprus: Cypriot law imposes significant restrictions on the foreign ownership of real property. Non-EU residents may purchase no more than two independent housing units (apartments or houses), or one housing unit and a small shop or office. Exceptions can be made for projects requiring larger plots of land, but are difficult to obtain and rarely granted. Only citizens of EU Member States have the right to register as construction contractors in Cyprus, and non-EU entities are not allowed to own a majority stake in a local construction company. Non-EU natural persons or legal entities may bid on specific construction projects, but only after obtaining a special license from the Cypriot Council of Ministers.

France: Pursuant to a November 2004 law that streamlined the French Monetary and Financial Code, the State Council defined a number of sensitive sectors in which prior approval would be required before foreign acquisition of a controlling equity stake is permitted. A December 2005 government decree (Decree 2005-1739) lists the 11 business sectors in which the French government will monitor, and can potentially restrict, foreign ownership through a system of "prior authorization." In 2013, France's Minister of Industrial Recovery announced the desire of the government to take new measures to protect French companies against hostile takeover bids, including measures to protect against creeping takeovers, to develop long-term shareholder equity, and to soften conditions governing the issuance of so-called "poison pills." The measures are part of a bill called "Proposal Aimed at Reconquering the Real Economy." The National Assembly passed the bill, but a Senate Commission is still examining the draft legislation.

The government of France has expressed concern over the acquisition of "strategic" companies, whose stock prices fell steeply in the wake of the financial crisis. Near the end of 2008, then-President Sarkozy announced the establishment of a strategic investment fund (Fonds Stratégique d'Investissement – FSI) to assume a stake in companies with "key technologies." The fund would be run as a "strategic priority" by the Caisse des Dépôts et Consignations (CDC), a state-sponsored financial institution and France's largest institutional investor, under parliamentary supervision. In July 2013, the creation of the Public Investment Bank (Banque Publique d'Investissement – BPI) merged *Bpifrance Financement* (previously Oséo) and *Bpifrance Investissement* (regrouping CDC Entreprises, FSI and FSI Régions) to officially become one entity with the role of supporting the French economy by gathering resources in a single institution. The government has also asked the CDC to work as a domestic buffer against foreign takeovers by increasing its stake in French companies. The government is also able to become directly involved in mergers and acquisitions by using its "golden share" in state-owned firms to protect perceived national interests.

Greece: All purchases of land in border areas and on certain islands require approval from the Ministry of Defense. The definition of “border area” is broader for non-EU purchasers of land and obtaining approval for purchase is more burdensome. Greek authorities consider local content and export performance criteria when evaluating applications for tax and investment incentives, although such criteria are not prerequisites for approving investments.

Parliament has passed numerous laws recently aimed at fostering growth, reducing bureaucratic hurdles for investors, and attracting foreign investment. The laws primarily provide for investment incentives, the establishment of a “one-stop shop” for those interested in making major investments, and simplification of the process for setting up new businesses. Greece has also lowered the corporate tax rate from 40 percent to 26 percent in 2013, and Prime Minister Samaras stated his intention to reduce the tax further to 15 percent.

Hungary: Since 2010, the Fidesz government has used its two-thirds majority in parliament to replace the constitution and pass several hundred laws – including many “cardinal” laws that require a two-thirds majority to repeal. U.S. investors have expressed concern about the impact of the volume and pace of these legislative changes on Hungary’s investment climate, as well as concern that future governments may be unable to change laws that require a two-thirds majority to repeal or amend. Additionally, some companies claim that recent “crisis taxes” target certain industries and sectors over others, adding to the uncertainty about whether the government views these sectors favorably or whether other sectors may be targeted next.

Lithuania: U.S. citizens and foreign investors have reported difficulties obtaining and renewing residency permits, with decisions by the Migration Office on the issuance of permits taking up to six months. Non-Lithuanians are generally not able to buy agricultural or forestry land. As part of its EU accession agreement, Lithuania is required to eliminate this restriction in 2014. Notwithstanding this EU agreement, a social movement called Zemes Vardu (“in the name of land”) has reportedly collected enough signatures to hold a national referendum on banning sale of land to non-Lithuanians.

Romania: Uncertainty and a lack of predictability in legal and regulatory systems pose a continuing impediment to foreign investment in Romania. Tax laws change frequently and many companies experience long delays in receiving VAT refunds to which they are legally entitled. Deadlines stipulated by law for the processing and payment of refunds are often not respected. Companies have reported frequent instances in which the government has issued legal decrees or regulations affecting the business climate without following required transparency and public consultation procedures. Tort cases often require lengthy and expensive procedures, and judicial rulings are reportedly often inconsistent.

GOVERNMENT PROCUREMENT

The EU is a signatory to the WTO Government Procurement Agreement (GPA). U.S. suppliers participate in EU Member States’ government procurement tenders, but the lack of quality EU statistics that takes into account the country of origin of winning bids makes it difficult to assess the level of U.S. and non-EU participation.

The current EU Utilities Directive (2004/17) covers purchases in the water, transportation, energy, and postal services sectors. This Directive requires open, competitive bidding procedures, but discriminates against bids with less than 50 percent EU content for tenders that are not covered by an international or reciprocal bilateral agreement. The EU content requirement applies to foreign suppliers of goods and services in the following sectors: water (production, transport, and distribution of drinking water); energy (gas and heat); urban transport (urban railway, automated systems, tramway, bus, trolley bus, and cable); and postal services.

In 2014, the European Parliament is set to approve three legislative proposals on public procurement including: (1) a revised Public Procurement Directive for general sectors; (2) a revised Public Procurement Directive for the utilities sectors; and (3) a new EU Public Procurement Directive on concessions contracts. A fourth proposal, aimed at regulating access of third-country goods and services to the EU public procurement market (relative to the access provided to EU goods and services in third-country public procurement markets), is still being debated in the European Parliament and in the EU Member States. U.S. access to the EU's non-GPA covered procurement could be affected under this new Regulation.

Member State Measures

Bulgaria: The public procurement process in Bulgaria is not always transparent, and industry reports that it is frequently discriminatory and unfair. There are persistent complaints that tenders are narrowly defined and that they appear tailored to a specific company. One company has recently reported that a procurement for equipment included over 550 mandatory specifications, which in practice excluded all companies except for one to bid on the tender. U.S. companies also complain that they face difficulties having their certification documents accepted to qualify as bidders on public procurement projects. The latter include extremely tight deadlines and requests for documentation that are not necessary in any other country, and they are very difficult to obtain on short notice.

Czech Republic: In 2012, the Czech government adopted a major public procurement reform bill which addressed some transparency and corruption concerns. The legislation also lowered the threshold for the application of procurement rules to CZK 1 million (\$50,000). But in 2013, President Zeman signed an amendment to the law that in 2014 will restore the original, CZK 3 million (\$150,000) threshold for construction contracts. The law will continue to require more than one bidder for all procurements and publication of tender specifications. The law also requires bidders to disclose more of their ownership structure in the bidding process. However, it maintains loopholes that could permit bidders to subcontract to anonymously held companies. Prior to the collapse of the previous center-right government in June, the Ministry of Justice and the Ministry of Finance were working on related legislation requiring full identification of ownership for all recipients of public tenders. The Ministry of Regional Development was separately developing guidelines to make the process clearer for bidders and for state institutions that issue tenders.

France: The French government continues to maintain ownership shares in several major defense contractors (EADS, now Airbus – 12 percent of voting rights after the sale of 2.1 percent stake; Safran – 27.02 percent; and Thalès – 27 percent of indirect share ownership). It is generally difficult for non-EU firms to participate in French defense procurement, and even when the competition is among EU suppliers, French companies are often selected as prime contractors.

Greece: Greece imposes onerous qualification requirements on companies seeking to bid on public procurement tenders. Companies must submit documentation from competent authorities indicating that they have paid taxes, have not been in bankruptcy, and have paid in full their social security obligations for their employees. All managing directors and board members of companies that want to participate in procurements must submit certifications from competent authorities that they have not engaged in fraud, money laundering, criminal activity, or similar activities. It is difficult for U.S. firms to comply with these requirements, because there are no competent authorities in the United States that issue these types of certifications.

The U.S. Embassy in Athens and the Greek Ministry of Development reached an agreement in late 2008 that would allow U.S. companies to submit sworn, notarized, and translated statements from corporate

officers, along with an official statement from the U.S. Embassy in Athens stating that no U.S. federal authority issues the documents otherwise required under Greek procurement law. Despite this agreement, the potential remains for considerable confusion among Greek authorities as to how U.S. firms may comply with these requirements. However, to date, there are no cases known to the U.S. Government where this process has had a negative impact on procurement tender.

Additionally, U.S. industry has complained that procurements in Greece are not always transparent and that some tenders, such as for medical equipment to be installed in hospitals, contain technical specifications that favor specific Greek suppliers. The U.S. Government is continuing to engage with the Greek government on this issue. Greece also continues to require offsets as a condition for the awarding of defense contracts.

On May 2013, the Greek government passed Public Law 4155 establishing the National System of Electronic Public Contracts (ESIDIS). The system envisages that public sector entities will electronically administer the entire public procurement process (*i.e.*, the publication of tenders, submission of offers, conduct of the contract, monitoring the execution of the contract, online orders, invoicing, and payments). Central government procurements have been processed electronically since July 1, 2013. The government's goal is to expand the electronic procedure to the entire public sector by October 1, 2015. The system aims to simplify and accelerate the public sector's procurement system through increased transparency and cost effectiveness.

Hungary: Inadequate transparency in public procurement continues to be a significant problem in Hungary. In January 2012 a new Public Procurement Act came into force with the government claiming that it would speed procurement and improve transparency. The new procurement law is criticized by transparency watchdogs because state enterprises and ministries can conduct procurement without a public announcement for the purchase of goods or services up to HUF 25 million (\$112,000) or for construction valued at less than HUF 150 million (\$675,000). Transparency watchdogs have also noted that larger contracts that would have required a public bid are now broken up into smaller contracts that fall under the thresholds. Hungarian companies, state-owned enterprises, or companies close to the government still appear to have an advantage over other players in public tenders.

Italy: Italy's public procurement practice is often criticized for a lack of transparency, which has created obstacles for some U.S. bidders. Laws implemented in the mid-1990s reduced corruption, but industry asserts that it still exists, especially at the local level. In 2012, the Italian parliament approved an anticorruption bill which, among other things, introduces greater transparency and more stringent procedures in the public procurement process. Over 2013, some implementing regulations were introduced to increase transparency, including measures regulating the conduct of civil servants. However, it is still too early to gauge the effectiveness of these regulations, and Italian press has reported on alleged corruption involving the abuse of emergency procurement laws. To increase transparency, the Italian government has also started publishing information online about the use of public funds, including data on procurement.

Lithuania: The public procurement process in Lithuania is not always transparent. There are persistent complaints that some tenders are so narrowly defined that they appear tailored to a specific company. The government has made procurement reform a top priority and is starting to improve transparency by implementing online public procurement of its central purchasing body, the central project management agency. In 2013, the government adopted legislation requiring all public procurement to occur through a centralized online portal by 2014 and all contracts to be published by 2015. Since 2003, the Lithuanian government has often required offset agreements as a condition for the award of contracts for procurement of military equipment.

Portugal: U.S. firms report that the Portuguese government tends to favor EU firms, even when bids from U.S. firms are technically superior or lower in price. U.S. firms also report that they are more successful when bidding as part of consortia or as part of joint ventures with Portuguese or other EU firms.

Romania: Romania requires offsets as a condition for the awarding of defense contracts. Romania revised its public procurement law in 2013, exempting certain state owned enterprises from the public procurement law and allowing them to use nontransparent procedures for their procurements. In an effort to enhance absorption of EU funds, the government has simplified the procurement procedures for private sector beneficiaries of EU funds.

Slovenia: U.S. firms continue to express concern that the public procurement process in Slovenia is nontransparent. Other complaints include short timeframes for bid preparation, lack of clarity in tendering documentation, and opacity in the bid evaluation process. One complaint involves the quasi-judicial National Revision Commission (NRC), which reviews all disputed public procurement cases. The NRC has extraordinary powers to review, amend, and cancel tenders, and its decisions are not subject to judicial appeal. There also are concerns that the NRC favors EU, and especially Slovenian, firms under its ambiguous “national interest” standard, regardless of cost or doubts about a firm’s ability to deliver and service its products.

SUBSIDIES

Government Support for Airbus

Over many years, the governments of Belgium, France, Germany, Spain, and the United Kingdom have provided subsidies to their Airbus-affiliated companies to aid in the development, production, and marketing of Airbus’s large civil aircraft. These governments have financed between 33 percent and 100 percent of the development costs of all Airbus aircraft models (launch aid) and have provided other forms of support, including equity infusions, debt forgiveness, debt rollovers, research and development funding, and marketing assistance, in addition to political and economic pressure on purchasing governments. The EU’s aeronautics research programs are driven significantly by a policy intended to enhance the international competitiveness of the EU civil aeronautics industry. EU governments have spent hundreds of millions of euros to create infrastructure for Airbus programs, including €751 million spent by the city of Hamburg to drain the wetlands that Airbus is currently using as an assembly site for the A380 “superjumbo” aircraft. French authorities also spent €182 million to create the AeroConstellation site, which contains additional facilities for the A380. The Airbus A380, the beneficiary of more than \$5 billion in subsidies, is the most heavily subsidized aircraft in history. Some EU governments have also made legally binding commitments of launch aid for the new Airbus A350 aircraft, even though Airbus has barely begun to repay the financing it has received for the A380.

Airbus SAS, the successor to the original Airbus consortium, is owned by the Airbus Group, which is now the second largest aerospace company in the world. This entity was previously known as the European Aeronautic, Defense, and Space Company (EADS). The name change accompanies a reorganization of the company’s ownership structure, resulting in the governments of Germany and France each owning up to 12 percent of the shares, Spain approximately 4 percent, and the remaining approximately 72 percent of shares trading on open markets. The reorganization also ended these governments’ rights to veto strategic decisions and to appoint directors to the Airbus board. Instead, the governments only have the right to veto board members appointed by the company. The Airbus Group accounted for more than half of worldwide deliveries of new large civil aircraft over the last few years, and is a mature company that should face the same commercial risks as its global competitors.

In October 2004, following unsuccessful U.S.-initiated efforts to negotiate a new U.S.-EU agreement that would end subsidies for the development and production of large civil aircraft, the United States exercised its right to terminate the 1992 U.S.-EU Bilateral Agreement on Large Civil Aircraft. The United States also commenced WTO consultations, which failed to resolve the U.S. concerns. A renewed effort to negotiate a solution ended without success in April 2005.

On May 31, 2005, the United States requested establishment of a WTO panel to address its concern that EU subsidies were inconsistent with the WTO Agreement on Subsidies and Countervailing Measures. The WTO established the panel on July 20, 2005. In 2010, the dispute settlement panel found in favor of the United States on the central claims, and the Appellate Body upheld the finding of WTO inconsistency in 2011. On December 1, 2011, the EU submitted a notification to the WTO asserting that it had taken appropriate steps to bring its measures into conformity with its WTO obligations. On December 9, 2011, the United States requested consultations with the EU to address its concern that the EU had failed to bring its Airbus subsidies into conformity with WTO rules. That dispute is currently before a WTO panel, which has indicated that it expects to complete its work by the end of 2014.

During this period, the ongoing WTO dispute did not cut the flow of money to Airbus. In 2009, EADS's total European government (UK, France, Germany, Spain) refundable advances outstanding amounted to €3.3 billion, of which €3.6 billion was for the A380, €1.2 billion for long-range wide body aircraft, and €0.2 billion for Eurocopter.

In September 2009, the UK government announced it would lend plane maker Airbus £340 million (\$540 million) in launch aid to develop its new wide-body aircraft, the A350XWB. The loan for the A350XWB model comes partly from the UK government's £750 million (\$1.2 billion) Strategic Investment Fund. The launch aid is intended to safeguard 1,200 jobs at Airbus's plants in Filton, near Bristol, and Broughton in north Wales. It also secures Britain's share of the work on the Airbus aircraft and a further 5,000 jobs at Airbus suppliers. Airbus's sites in the UK specialize in wing manufacturing, but also make landing gear and fuel integration systems. France, Germany, and Spain have announced similar funding for Airbus.

Government Support for Airbus Suppliers

Member State Measures

Belgium: The federal government of Belgium, in coordination with Belgium's three regional governments, subsidizes Belgian manufacturers that supply parts to Airbus. In the fall of 2006, the EU Commissioner for Competition concluded that Belgium's €195 million support program exceeded the allowable level of support under EU regulations. The Belgian federal government in June 2007 subsequently reduced its support fund to €150 million, but simultaneously, the Flemish regional government set up a €50 million start-up fund for the aviation sector in Flanders. It is unclear how much assistance already paid to the companies for the A350 program, if any, has been reimbursed. The Belgian commitment to the A380 superjumbo was €195 million, not all of which was disbursed. Belgium claims that its A380 support was structured in accordance with the 1992 bilateral agreement and covers nonrecurring costs.

In the spring of 2009, the Commission once again notified the Belgian government that its 2008-2013 program of federal aid to the aeronautical sector was illegal. However, in May 2010, after being provided with supplemental information from the government, the Commission ruled that the program, for €178 million, was compatible with article 87(3)c of the EC Treaty. Industrial research or experimental development projects linked to the A350 and A380 were cited as examples of projects that could benefit from the program.

France: In addition to the launch aid that the French government provided for the development of the A380 and A350 aircraft, France provides assistance in the form of reimbursable advances for the development by French manufacturers of products such as planes, aircraft engines, helicopters, and onboard equipment. In February 2013, the government confirmed €1.4 billion in reimbursable advances for the A350 over the 2009-2017 period and a similar scheme for the helicopter X6 to be built by Eurocopter. At the same time, the government announced the implementation of tax and financial assistance for airline companies to restore their competitiveness. The government's 2013 budget included €143 million in reimbursable advances, and €136 million is expected in the 2014 budget. French appropriations for new programs included €1 million in support of research and development in the civil aviation sector in 2013. In 2014, such support is expected to decrease by 3.7 percent to €88 million.

In July 2008, Airbus, the parastatal Caisse des Dépôts et Consignations, and the Safran Group announced the launch of the Aerofund II equity fund, capitalized with €75 million destined for the French aeronautical sector. The equity fund's objective is to support the development of the small and medium sized subcontractors that supply the aeronautical sector. In March 2009, the state's Strategic Investment Fund (FSI) and Aerofunds I and II purchased a nearly 20 percent stake in Daher, a French company, for €80 million, to help that private aerospace group accelerate its development and seize strategic opportunities. Since its creation in 2008, Aerofund II has made investments in about ten companies, including helping to finance Mecachrome's purchase of Mecahers, and Prosnic's acquisition of Industro. The Fund also helped finance the sale of Esterel Technologies to the U.S. group Ansys in 2012. In 2013, Airbus, the Caisse des Dépôts et Consignations Entreprises, Safran group, EADS and Eurocopter set up Aerofund III, an investment fund designed to raise €150 million for the French aeronautical sector. The goal of the investment fund, run by ACE Management, is to prolong Aerofund II with a target of raising a total of €300 million.

Germany: In 2013, the German Ministry of Economics and Technology suspended the payment of a tranche of a loan to Airbus for the A350 because Airbus announced job cuts. Press reports indicate that the loan totals €1.1 billion and the outstanding amount equals €600 million. A ministry spokesperson said that loans are only possible with concrete commitments by Airbus to German locations. In addition, Airbus continues to receive funds from the 2012-2015 aeronautics research program for a number of projects. The coalition agreement of the new German government pledges further support for the aeronautics program.

Spain: In 2012, the Spanish government granted EADS/Airbus €17.7 million in subsidies, representing 0.6 percent of all public subsidies to companies. In mid-2013, Spain's State Industrial Holding Company informed the National Securities Market Commission, that it planned to reduce its stake in Airbus from 4.2 percent to 3.84 percent. The decision to reduce its stake occurred after corporate restructuring at Airbus was approved by shareholders on March 27, 2013.

Government Support for Aircraft Engines

Member State Measures

United Kingdom: In February 2001, the UK government announced its intention to provide up to £250 million to Rolls-Royce to support development of the Trent 600 and 900, two additional engine models for large civil aircraft. The UK government characterized this engine development aid as an "investment" that would provide a "real rate of return" from future sales of the engines. The European Commission announced its approval of a £250 million "reimbursable advance" without opening a formal investigation into whether the advance constituted illegal state aid under EU law. According to a Commission statement, the "advance will be reimbursed by Rolls-Royce to the UK government in case of success of

the program, based on a levy on engine deliveries and maintenance and support activity.” Detailed terms of the approved launch aid were not made public. To date, none of the launch aid for the Trent 600 and 900 models has been repaid.

Propulsion is another area considered important to the future of the UK aerospace industry, and the Department for Business, Innovation, and Skills (BIS) has extended support to Rolls-Royce for the development of environmentally friendly engine technologies. This funding is directed through established research funding channels, though the government has provided occasional direct support to Rolls-Royce over the past five years.

The UK also provides repayable funds, known as Repayable Launch Investment (RLI), towards the design and development of civil aerospace projects in the UK. In 2011-2012 the UK RLI expenditure totaled £75 million (\$120 million). BIS forecasts current commitments from 2012-2013 to 2014-2015 to be £160 million (\$256 million) with a further £200 million (\$320 million) forecasted beyond this period. Since 1997, the UK has invested nearly £1 billion (\$1.6 billion) in RLI projects. Some projects that have received funding under the scheme include:

- £114 million (\$182 million) to Bombardier Aerospace (Shorts) in Belfast towards the design and development of CSeries composite wing (July 2008);
- £60 million (\$96 million) to GKN for the design and development of A350XWB trailing edge and rear spar composite wing components (September 2008); and
- £340 million (\$544 million) to Airbus towards the development of the A350XWB (August 2009).

France: In 2005, the French government-owned engine manufacturer, Snecma SA, merged with Sagem, a technology and communications firm, to form the Safran Group. The government supported the Safran SaM146 propulsive engine program, a turbofan engine produced by the PowerJet joint venture between Snecma of France and NPO Saturn of Russia, with a reimbursable advance of €140 million. In 2009, Safran received new reimbursable advances of €69 million.

Other Civil Aircraft

In July 2008, Bombardier Aerospace announced an investment of £519.4 million in Northern Ireland to support the design and manufacture of the wings for its 110 seat to 130 seat CSeries family of aircraft. In an agreement with BIS, the Northern Ireland Executive has offered assistance to the investment of £155 million. This includes a maximum of £130 million (Northern Ireland’s contribution of £78 million of repayable Launch Investment assistance for the CSeries and up to £25 million Selective Financial Assistance).

CUSTOMS ADMINISTRATION

Notwithstanding the existence of customs laws that govern all EU Member States, the EU does not administer its laws through a single customs administration. Rather, there is a separate agency responsible for the administration of EU customs law in each of the EU’s 28 Member States. No EU institutions or procedures successfully ensure that EU rules on classification, valuation, origin, and customs procedures are applied uniformly throughout the 28 Member States of the EU. Moreover, no EU rules require the customs agency in one Member State to follow the decisions of the customs agency in another Member State with respect to materially identical issues.

On some questions, where the customs agencies in different Member States administer EU law differently, the matter may be referred to the Customs Code Committee (Committee). The Committee is an entity established by the Community Customs Code to assist the European Commission. The

Committee consists of representatives of the Member States and is chaired by a representative of the Commission. While a stated goal for the Committee is to help reconcile differences among Member State practices and thereby help to achieve uniformity of administration, in practice its success in this regard has been limited.

Not only are the Committee and other EU-level institutions ineffective tools for achieving the uniform administration and application of EU customs law, the EU also lacks tribunals or procedures for the prompt review and EU-wide correction of administrative actions relating to customs matters. Instead, review is provided separately by each Member State's tribunals, and rules regarding these reviews vary from Member State to Member State. Thus, a trader encountering non-uniform administration of EU customs law in multiple Member States must bring a separate appeal in each Member State whose agency rendered an adverse decision.

Ultimately, a question of interpretation of EU law may be referred to the European Court of Justice (ECJ). The judgments of the ECJ have effect throughout the EU. However, referral of questions to the ECJ generally is discretionary, and ECJ proceedings can take years. Thus, obtaining corrections with EU-wide effect for administrative actions relating to customs matters is a cumbersome and frequently time-consuming process.

The United States has raised each of the preceding concerns with the EU in various fora, including the WTO Dispute Settlement Body. The concerns have taken on new prominence in light of the expansion of the EU and the Trans-Atlantic Trade and Investment Partnership negotiations.

The European Commission has expressed its intent to modernize and simplify customs rules and processes. The Commission issued the Union Modernized Community Customs Code (UMCC) in November 2013, and sent it to the European Council and the European Parliament for co-decision under the ordinary legislative procedure. The Commission expects the UMCC to enter into effect in 2016. The United States will monitor its implementation closely, focusing on its impact on uniform administration of EU customs law.

ELECTRONIC COMMERCE

U.S. businesses and the U.S. Government continue to monitor potential problems related to data privacy regulation and legal liability for companies doing business over the Internet in the EU.

The EU Data Protection Directive (1995/46) allows the transmission of data obtained from persons in EU Member States to third countries only if those countries are deemed by the Commission to provide an adequate level of protection by reason of their domestic law or their international commitments (Article 25(6)). The Commission has thus far recognized Switzerland, Canada, Argentina, Guernsey, the Isle of Man, Jersey, the Faroe Islands, Andorra, New Zealand, Uruguay, and Israel as providing an adequate level of protection. The United States does not yet benefit from a blanket adequacy finding, but the Commission has recognized a series of specific and limited programs and agreements as providing adequacy. The most all-encompassing of these is the U.S.-EU Safe Harbor Framework, but others include the U.S.-EU Agreement on the Transfer of Air Passenger Name Records to the U.S. Bureau of Customs and Border Protection.

The Safe Harbor Framework provides U.S. companies with a simple, streamlined means of complying with the EU rules. It is the result of an agreement that allows U.S. companies that commit to a series of data protection principles (based on the EU Data Protection Directive) and that publicly state their commitment by "self-certifying" on a dedicated website (<http://www.export.gov/safeharbor>) to continue to receive personal data from the EU. The U.S. Department of Commerce, which administers the

Framework, reviews every Safe Harbor self-certification and annual re-certification submission to ensure that these include all of the elements required by the Framework. When an organization's Safe Harbor submission falls short the U.S. Department of Commerce contacts the organization to explain what is lacking and what steps must be taken before the organization's initial self-certification or re-certification may be finalized. Signing up to the Safe Harbor Framework is voluntary, but the rules are binding on signatories. A failure to fulfill commitments under the Safe Harbor Framework is punishable either as an unfair or deceptive practice under Section Five of the U.S. Federal Trade Commission Act or, for air carriers and ticket agents, under a concurrent U.S. Department of Transportation statute.

On November 27, 2013, following press disclosures on U.S. intelligence activities, the Commission issued a report on the Safe Harbor Framework, which makes thirteen recommendations to improve the Framework, and an accompanying policy communication on "Rebuilding Trust" in transatlantic data flows calls for the Commission to engage with the United States "as a matter of urgency" to discuss the recommendations identified. The "Rebuilding Trust" document calls for these changes to be made by the summer of 2014, when the Commission will review the functioning of Safe Harbor Framework again. The U.S. Department of Commerce is engaging with the Commission and other stakeholders to discuss the recommendations presented. The U.S. Government actively supports Safe Harbor and will work to ensure that it remains available to support transatlantic data flows which are vital to both the U.S. and EU economies and continues to serve all stakeholders well.

Outside of the programs and agreements that explicitly enjoy an adequacy finding, U.S. companies may receive or transfer employee and customer information from the EU only under one of the exceptions to the EU Data Protection Directive's adequacy requirements, if they develop binding corporate rules to allow global intra-company transfers and gain EU data protection authorities' approval of them, which fewer than 50 companies have done at this time. These requirements can be burdensome for many U.S. industries that rely on data exchange between the United States and the EU.

In recent years, a number of U.S. companies have faced obstacles to winning contracts with EU governments and private sector customers because of public fears in the EU that any personal data held by these companies may be collected by U.S. law enforcement and intelligence agencies. Since mid-2011, EU media reports have suggested that U.S. laws, such as the Patriot Act, offer the U.S. Government *carte blanche* to obtain private data of EU citizens when stored by U.S. cloud computing service providers. Following the 2013 intelligence disclosures, U.S. companies have reported they have had greater difficulty winning contracts due to concerns over U.S. Government access to the data they hold. The United States is seeking to correct misconceptions about U.S. law and practice and to engage with EU stakeholders on how personal data is protected in the United States.

The European Commission is currently reviewing the EU Data Protection Directive as part of a broader review of the EU legislative framework for data protection, encompassing both commercial and judicial/law enforcement uses of data. In January 2012, the Commission issued its legislative proposals for a commercial data privacy regulation (directly applicable law for the Member States) and a law enforcement directive (which would need to be transposed into national law), initiating legislative deliberations by the Member States and the European Parliament. In October 2013, the lead committee in the European Parliament approved a package of amendments to the data privacy regulation and directive. However, progress in discussions on the regulation and the directive among the Member States remains slow. Many observers predict that the data privacy reforms will not be enacted before fall 2014, at the earliest. Given the importance of this issue to the business models of many U.S. companies, the United States is closely monitoring the development of this revised framework legislation to ensure that it does not adversely impact transatlantic trade and investment.

Member State Measures

France: Since 2011, sales of electronic books (e-books) by foreign merchants have been subject to a French law that sets a fixed price that French retailers may charge for a particular book. The French Parliament passed a law on October 3, 2013 making it illegal for online stores to offer both free delivery on books and a 5 percent discount on book prices. Since taking office in May 2012, the Hollande administration has undertaken a review of digital economic policy that may result in proposals in 2015 to levy taxes on Internet platforms that distribute AV content and on Internet-capable devices such as smart phones, laptops, and tablets. The government of France, which has the support of a consortium of domestic media and telecommunications companies in this effort, is seeking new funding for France's information technology infrastructure and cultural industries.