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LIST OF FREQUENTLY USED ACRONYMS

AD	Antidumping
AGOA	African Growth and Opportunity Act
APEC	Asia Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
ATC	Agreement on Textiles and Clothing
ATPA	Andean Trade Preferences Act
ATPDEA	Andean Trade Promotion & Drug Eradication Act
BIA	Built-In Agenda
BIT	Bilateral Investment Treaty
BOP	Balance of Payments
CACM	Central American Common Market
CAFTA	Central American Free Trade Area
CARICOM	Caribbean Common Market
CBERA	Caribbean Basin Economic Recovery Act
CBI	Caribbean Basin Initiative
CFTA	Canada Free Trade Agreement
CITEL	Telecommunications division of the OAS
COMESA	Common Market for Eastern & Southern Africa
CTE	Committee on Trade and the Environment
CTG	Council for Trade in Goods
CVD	Countervailing Duty
DDA	Doha Development Agenda
DSB	Dispute Settlement Body
EAI	Enterprise for ASEAN Initiative
DSU	Dispute Settlement Understanding
EU	European Union
EFTA	European Free Trade Association
FTAA	Free Trade Area of the Americas
FOIA	Freedom of Information Act
GATT	General Agreement on Tariffs and Trade
GATS	General Agreements on Trade in Services
GDP	Gross Domestic Product
GEC	Global Electronic Commerce
GSP	Generalized System of Preferences
GPA	Government Procurement Agreement
IFI	International Financial Institution
IPR	Intellectual Property Rights
ITA	Information Technology Agreement
LDBDC	Least Developed Beneficiary Developing Country
MAI	Multilateral Agreement on Investment
MEFTA	Middle East Free Trade Area
MERCOSUL/MERCOSUR	Southern Common Market
MFA	Multifiber Arrangement
MFN	Most Favored Nation

MOSS	Market-Oriented, Sector-Selective
MOU	Memorandum of Understanding
MRA	Mutual Recognition Agreement
NAFTA	North American Free Trade Agreement
NEC	National Economic Council
NIS	Newly Independent States
NSC	National Security Council
NTR	Normal Trade Relations
OAS	Organization of American States
OECD	Organization for Economic Cooperation and Development
OPIC	Overseas Private Investment Corporation
PNTR	Permanent Normal Trade Relations
ROU	Record of Understanding
SACU	Southern African Customs Union
SADC	Southern African Development Community
SPS	Sanitary and Phytosanitary Measures
SRM	Specified Risk Material
TAA	Trade Adjustment Assistance
TABD	Trans-Atlantic Business Dialogue
TACD	Trans-Atlantic Consumer Dialogue
TAEVD	Trans-Atlantic Environment Dialogue
TALD	Trans-Atlantic Labor Dialogue
TBT	Technical Barriers to Trade
TEP	Transatlantic Economic Partnership
TIFA	Trade & Investment Framework Agreement
TPRG	Trade Policy Review Group
TPSC	Trade Policy Staff Committee
TRIMS	Trade Related Investment Measures
TRIPS	Trade Related Intellectual Property Rights
UAE	United Arab Emirates
UNCTAD	United Nations Conference on Trade & Development
URAA	Uruguay Round Agreements Act
USDA	U.S. Department of Agriculture
USITC	U.S. International Trade Commission
USTR	United States Trade Representative
VRA	Voluntary Restraint Agreement
WAEMU	West African Economic & Monetary Union
WTO	World Trade Organization

FOREWORD

The 2007 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the twenty-second in an annual series that surveys significant foreign barriers to U.S. exports.

In accordance with section 181 of the Trade Act of 1974 (the 1974 Trade Act), as amended by section 303 of the Trade and Tariff Act of 1984 (the 1984 Trade Act), section 1304 of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Trade Act), section 311 of the Uruguay Round Trade Agreements Act (1994 Trade Act), and section 1202 of the Internet Tax Freedom Act, the Office of the U.S. Trade Representative is required to submit to the President, the Senate Finance Committee, and appropriate committees in the House of Representatives, an annual report on significant foreign trade barriers.

The statute requires an inventory of the most important foreign barriers affecting U.S. exports of goods and services, foreign direct investment by U.S. persons, and protection of intellectual property rights. Such an inventory facilitates negotiations aimed at reducing or eliminating these barriers. The report also provides a valuable tool in enforcing U.S. trade laws, with the goal of expanding global trade, which benefits all nations, and U.S. producers and consumers in particular.

The report provides, where feasible, quantitative estimates of the impact of these foreign practices on the value of U.S. exports. Information is also included on some of the actions taken to eliminate foreign trade barriers. Opening markets for American goods and services either through negotiating trade agreements or through results-oriented enforcement actions is this Administration's top trade priority. This report is an important tool for identifying such trade barriers.

SCOPE AND COVERAGE

This report is based upon information compiled within USTR, the U.S. Departments of Commerce and Agriculture, and other U.S. Government agencies, and supplemented with information provided in response to a notice in the *Federal Register,* and by members of the private sector trade advisory committees and U.S. Embassies abroad.

Trade barriers elude fixed definitions, but may be broadly defined as government laws, regulations, policies, or practices that either protect domestic products from foreign competition or artificially stimulate exports of particular domestic products. This report classifies foreign trade barriers into ten different categories. These categories cover government-imposed measures and policies that restrict, prevent, or impede the international exchange of goods and services. They include:

- Import policies (e.g., tariffs and other import charges, quantitative restrictions, import licensing, customs barriers);
- Standards, testing, labeling and certification (including unnecessarily restrictive application of sanitary and phytosanitary standards and environmental measures, and refusal to accept U.S. manufacturers' self-certification of conformance to foreign product standards);
- Government procurement (e.g., buy national policies and closed bidding);

- Export subsidies (e.g., export financing on preferential terms and agricultural export subsidies that displace U.S. exports in third country markets);

- Lack of intellectual property protection (e.g., inadequate patent, copyright, and trademark regimes);

- Services barriers (e.g., limits on the range of financial services offered by foreign financial institutions,[i] regulation of international data flows, and restrictions on the use of foreign data processing);

- Investment barriers (e.g., limitations on foreign equity participation and on access to foreign government-funded research and development (R&D) programs, local content and export performance requirements, and restrictions on transferring earnings and capital);

- Anticompetitive practices with trade effects tolerated by foreign governments (including anticompetitive activities of both state-owned and private firms that apply to services or to goods and that restrict the sale of U.S. products to any firm, not just to foreign firms that perpetuate the practices);

- Trade restrictions affecting electronic commerce (e.g., tariff and nontariff measures, burdensome and discriminatory regulations and standards, and discriminatory taxation); and

- Other barriers (barriers that encompass more than one category, e.g., bribery and corruption,[2] or that affect a single sector).

The NTE covers significant barriers, whether they are consistent or inconsistent with international trading rules. Many barriers to U.S. exports are consistent with existing international trade agreements. Tariffs, for example, are an accepted method of protection under the General Agreement on Tariffs and Trade (GATT). Even a very high tariff does not violate international rules unless a country has made a bound commitment not to exceed a specified rate. On the other hand, where measures are not consistent with international rules, they are actionable under U.S. trade law and through the World Trade Organization (WTO).

This report discusses the largest export markets for the United States, including: 58 nations, the European Union, Taiwan, Hong Kong, the Southern African Customs Union and one regional body. Some countries were excluded from this report due primarily to the relatively small size of their markets or the absence of major trade complaints from representatives of U.S. goods and services sectors. However, the omission of particular countries and barriers does not imply that they are not of concern to the United States. Based on an assessment of the evolving nature of U.S. trade and investment relationships in the various regions of the world, Ethiopia and Jordan have been added to the report. Ethiopia was added because it is one of sub-Saharan Africa's largest and fastest growing markets for U.S. goods and services. U.S.-Jordan economic cooperation, including the U.S.-Jordan Free Trade Agreement, has fostered a steady expansion of bilateral trade and investment. Jordan's addition to the National Trade Estimate Report is intended to assist U.S. firms in understanding the conditions of access to this increasingly important market. Also, on January 1, 2007, Bulgaria and Romania joined the European Union (EU). Therefore, beginning with the 2007 NTE, we have deleted separate sections on each of those countries and have incorporated each into the EU section of the report.

The merchandise trade data contained in the NTE report are based on total U.S. exports, free alongside (f.a.s.)[3] value, and general U.S. imports, customs value, as reported by the Bureau of the Census, Department of Commerce. (NOTE: These data are ranked according to size of export market in the Appendix). The services data are from the October 2006 issue of the Survey of Current Business (collected from the Bureau of Economic Analysis, Department of Commerce). The direct investment data are from the September 2006 issue of the Survey of Current Business (collected from the Bureau of Economic Analysis, Department of Commerce).

TRADE IMPACT ESTIMATES AND FOREIGN BARRIERS

Wherever possible, this report presents estimates of the impact on U.S. exports of specific foreign trade barriers or other trade distorting practices. Also, where consultations related to specific foreign practices were proceeding at the time this report was published, estimates were excluded, in order to avoid prejudice to those consultations.

The estimates included in this report constitute an attempt to assess quantitatively the potential effect of removing certain foreign trade barriers on particular U.S. exports. However, the estimates cannot be used to determine the total effect upon U.S. exports to either the country in which a barrier has been identified or to the world in general. In other words, the estimates contained in this report cannot be aggregated in order to derive a total estimate of gain in U.S. exports to a given country or the world.

Trade barriers or other trade distorting practices affect U.S. exports to another country because these measures effectively impose costs on such exports that are not imposed on goods produced domestically in the importing country. In theory, estimating the impact of a foreign trade measure upon U.S. exports of goods requires knowledge of the (extra) cost the measure imposes upon them, as well as knowledge of market conditions in the United States, in the country imposing the measure, and in third countries. In practice, such information often is not available.

Where sufficient data exist, an approximate impact of tariffs upon U.S. exports can be derived by obtaining estimates of supply and demand price elasticities in the importing country and in the United States. Typically, the U.S. share of imports is assumed to be constant. When no calculated price elasticities are available, reasonable postulated values are used. The resulting estimate of lost U.S. exports is approximate, depends upon the assumed elasticities, and does not necessarily reflect changes in trade patterns with third countries. Similar procedures are followed to estimate the impact upon our exports of subsidies that displace U.S. exports in third country markets.

The task of estimating the impact of nontariff measures on U.S. exports is far more difficult, since there is no readily available estimate of the additional cost these restrictions impose upon imports. Quantitative restrictions or import licenses limit (or discourage) imports and thus raise domestic prices, much as a tariff does. However, without detailed information on price differences between countries and on relevant supply and demand conditions, it is difficult to derive the estimated effects of these measures upon U.S. exports. Similarly, it is difficult to quantify the impact upon U.S. exports (or commerce) of other foreign practices such as government procurement policies, nontransparent standards, or inadequate intellectual property rights protection.

In some cases, particular U.S. exports are restricted by both foreign tariff and nontariff barriers. For the reasons stated above, it may be difficult to estimate the impact of such nontariff barriers on U.S. exports. When the value of actual U.S. exports is reduced to an unknown extent by one or more than one nontariff measure, it then becomes derivatively difficult to estimate the effect of even the overlapping tariff barriers on U.S. exports.

The same limitations that affect the ability to estimate the impact of foreign barriers upon U.S. goods exports apply to U.S. services exports. Furthermore, the trade data on services exports are extremely limited in detail. For these reasons, estimates of the impact of foreign barriers on trade in services also are difficult to compute.

With respect to investment barriers, there are no accepted techniques for estimating the impact of such barriers on U.S. investment flows. For this reason, no such estimates are given in this report. The NTE includes generic government regulations and practices which are not product-specific. These are among the most difficult types of foreign practices for which to estimate trade effects.

In the context of trade actions brought under U.S. law, estimations of the impact of foreign practices on U.S. commerce are substantially more feasible. Trade actions under U.S. law are generally product-specific and therefore more tractable for estimating trade effects. In addition, the process used when a specific trade action is brought will frequently make available non-U.S. Government data (U.S. company or foreign sources) otherwise not available in the preparation of a broad survey such as this report.

In some cases, industry valuations estimating the financial effects of barriers are contained in the report. The methods computing these valuations are sometimes uncertain. Hence, their inclusion in the NTE report should not be construed as a U.S. Government endorsement of the estimates they reflect.

March 2007

Endnotes

1. The current NTE report covers only those financial services-related market access issues brought to the attention of USTR by outside sources. For the reader interested in a more comprehensive discussion of financial services barriers, the Treasury Department publishes quadrennially the National Treatment Study. Prepared in collaboration with the Secretary of State, the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, and the Department of Commerce, the Study analyzes in detail treatment of U.S. commercial banks and securities firms in foreign markets. It is intended as an authoritative reference for assessing financial services regimes abroad.

2. Corruption is an impediment to trade, a serious barrier to development, and a direct threat to our collective security. Corruption takes many forms and affects trade and development in different ways. In many countries, it affects customs practices, licensing decisions, and the awarding of government procurement contracts. If left unchecked, bribery and corruption can negate market access gained through trade negotiations, undermine the foundations of the international trading system, and frustrate broader reforms and economic stabilization programs. Corruption also hinders development and contributes to the cycle of poverty.

Information on specific problems associated with bribery and corruption is difficult to obtain, particularly since perpetrators go to great lengths to conceal their activities. Nevertheless, a consistent complaint from U.S. firms is that they have experienced situations that suggest corruption has played a role in the award of billions of dollars of foreign contracts and delayed or prevented the efficient movement of goods. Since the United States enacted the Foreign Corrupt Practices Act (FCPA) in 1977, U.S. companies have been prohibited from bribing foreign public officials, and numerous other domestic laws discipline corruption of public officials at the state and federal levels. The United States is committed to the active enforcement of the FCPA.

The United States Government has taken a leading role in addressing bribery and corruption in international business transactions and has made real progress over the past quarter century building international coalitions to fight bribery and corruption. Bribery and corruption are now being addressed in a number of fora. Some of these initiatives are now yielding positive results.

The United States Government led efforts to launch the Organization for Economic Cooperation and Develpoment (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Antibribery Convention). In November 1997, the United States and 33 other nations adopted the Antibribery Convention, which currently is in force for 36 countries, including the United States. The Antibribery Convention obligates its parties to criminalize the bribery of foreign public officials in the conduct of international business. It is aimed at proscribing the activities of those who offer, promise, or pay a bribe. (For additional information, see www.export.gov/tcc and www.oecd.org).

The United States played a critical role in the successful conclusion of negotiations that produced the United Nations Convention Against Corruption, the first global anti-corruption instrument. The Convention was opened for signature in December 2003, and is pending entry into force. The Convention requires countries to adopt such measures as may be necessary to criminalize fundamental anticorruption offenses, including bribery of domestic as well as foreign public officials. As of early March 2006, one hundred forty-one countries, including the United States, have signed the Convention and forty-nine have ratified it.

In March 1996, countries in the Western Hemisphere concluded negotiation of the Inter-American Convention Against Corruption (Inter-American Convention). The Inter-American Convention, a direct result of the Summit of the Americas Plan of Action, requires that parties criminalize bribery throughout the region. The Inter-American Convention entered into force in March 1997. The United States signed the Inter-American Convention on June 2, 1996 and deposited its instrument of ratification with the Organization of American States (OAS) on September 29, 2000. Twenty-eight of the thirty-three parties to the Inter-American Convention, including the United States, participate in a Follow-up Mechanism conducted under the auspices of the OAS to monitor implementation of the Convention. The Inter-American Convention addresses a broad range of corrupt acts including domestic corruption and transnational bribery. Signatories agree to enact legislation making it a crime for individuals to offer bribes to public officials and for public officials to solicit and accept bribes, and to implement various preventive measures.

The United States Government continues to push its anti-corruption agenda forward. Consistent with the Bipartisan Trade Promotion Authority Act of 2002 (TPA), the United States Government is seeking and obtaining binding commitments in free trade agreements (FTAs) that promote transparency and that specifically address corruption of public officials. Also consistent with TPA, the United States Government is seeking to secure a meaningful agreement on trade facilitation in the World Trade Organization and has been pressing for concrete commitments on customs operations and transparency of government procurement regimes of our FTA partners. The United States Government is also playing a leadership role on these issues in the G-8 Forum, the Asia Pacific Economic Cooperation (APEC) Forum, the Southeastern Europe Stability Pact and other fora.

3. Free alongside (f.a.s.): Under this term, the seller quotes a price, including delivery of the goods alongside and within the reach of the loading tackle (hoist) of the vessel bound overseas.

ANGOLA

TRADE SUMMARY

The U.S. goods trade deficit with Angola was $10.2 billion in 2006, an increase of $2.6 billion from $7.6 billion in 2005. U.S. goods exports in 2006 were $1.6 billion, up 66.9 percent from the previous year. Corresponding U.S. imports from Angola were $11.7 billion, up 38.1 percent. Angola is currently the 58th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Angola in 2005 was $1.4 billion, up from $1.1 billion in 2004.

IMPORT BARRIERS

Tariffs and Non-Tariff Measures

Angola is a Member of the World Trade Organization (WTO), the Common Market for Eastern and Southern Africa (COMESA), and the Southern African Development Community (SADC). In March 2003, Angola agreed to adhere to the SADC Protocol on Trade that seeks to facilitate trade by harmonizing and reducing tariffs, and by establishing regional policies on trade, customs, and methodology. However, Angola has delayed implementation of this protocol until 2008 so that the country can revive internal production of non-petroleum goods. This production has remained extremely low because infrastructure in the country has been devastated by 27 years of civil war and neglect. The government is concerned that implementation of the SADC Protocol on Trade would lead to a flood of imports, particularly from South Africa.

The Angolan government implemented a new customs code effective January 2007. The new code covers all customs activity and represents a major step in the reform and modernization of its customs service. The new code follows the guidelines of the World Customs Organization (WCO), WTO, and SADC. Angola is the first SADC member to publish a consolidated customs code. The code brings much-needed transparency and provides a sound legal basis for a modern and efficient customs system. It also provides a legal basis for efficient methods of customs controls in areas such as risk analysis, post import audit and improved technology, such as scanners. It will also allow Customs to take back control of major strategic functions such as pre-shipment inspection, and to promote itself more actively in regional and international markets. The previous revision of customs law (effective September 2005) brought import classification under the International Harmonized System Code and SADC procedures. That revision reduced tariff barriers by eliminating duties on basic products such as rice, wheat flour and beans, and reduced other duties by between 5 percent and 10 percent. Customs duties on six categories of goods range from as low as 2 percent on raw materials necessary for the nation's development, to as high as 30 percent for items like passenger automobiles. Besides the duties themselves, additional fees associated with importing include clearing costs (2 percent), VAT (2 percent to 30 percent depending on the good), revenue stamps (0.5 percent), port charges ($500 per 20 foot container or $850 per 40 foot container), and port storage fees (free for the first 15 days, then $20 per 20 foot container or $40 per 40 foot container). In December 2004, the government approved a new customs regime for the province of Cabinda, which reduces or eliminates import and export duties for Cabinda province. The regime for Cabinda does not apply to the petroleum industry, passenger vehicles, alcoholic beverages, tobacco, or jewelry.

Tariff obligations for the oil industry are largely determined by individually negotiated contracts between international oil companies and the Angolan government. In December 2004, a new Petroleum Customs Law was introduced that aimed to standardize tariff and customs obligations for the petroleum industry while protecting existing oil company rights and exemptions negotiated under prior contracts. According to customs officials, the law eliminates exemptions from duties on items imported by oil companies that are not directly used as equipment in oil production, as had been the case previously. Oil companies are currently disputing the customs officials' interpretation of the law. Because most U.S. exports to Angola consist of specialized oil industry equipment, which is largely exempt from tariffs, the impact of tariff barriers on U.S. exports is relatively low—estimated to be in the range of $10 million to $25 million.

Customs Barriers

Angola is a member of the WCO and signed the Letter of Intent to implement the WCO Framework in October 2005. In September 2005, the government approved a new customs code with the objective of facilitating clearance of commodities and reducing costs to importers. It replaces an outdated customs code dating back to colonial times and is harmonized with the Istanbul, Kyoto, and SADC international conventions.

Administration of Angola's customs service has improved in the last few years but remains a barrier to economic growth. As of October 2005, port clearance time averaged seven days including weekends. However, importers commonly face additional delays, often the result of capacity constraints at the Port of Luanda. For instance, shipping containers, although cleared, may be physically inaccessible because they are behind other containers. In November 2005, the government approved an extension of the contract for the customs clearance contractor for another three years.

In July 2006, the government enacted Decree 41/06, which incorporates a new set of rules and principles for the inspection of goods in the country-of-origin prior to export to Angola. Pursuant to the new rules, a mandatory pre-shipment inspection regime will only apply for the export of certain goods listed in the regulations or defined in the future by the Ministries of Finance, Agriculture, Health, Commerce and Industry. Also, pre-shipment inspection services for Angola will now be provided by an entity freely chosen by the importer of goods. The new regime of Pre-Shipment Inspection took effect on August 16, 2006.

The importation of certain goods into Angola requires an import license issued by the Ministry of Trade. The import license is renewable annually and covers all shipments of the authorized good or category of goods imported by the licensed importer. The importation of certain goods also requires specific authorization from various government ministries, which can delay the customs clearance process. Goods that require ministerial authorization include the following: pharmaceutical substances and saccharine and derived products (Ministry of Health); radios, transmitters, receivers, and other devices (Ministry of Post and Telecommunications); weapons, ammunition, fireworks, and explosives (Ministry of Interior); plants, roots, bulbs, microbial cultures, buds, fruits, seeds, and crates and other packages containing these products (Ministry of Agriculture); fiscal or postal stamps (Ministry of Post and Telecommunications); poisonous and toxic substances and drugs (Ministries of Agriculture, Industry, and Health); and samples or other goods imported to be given away (Customs). If companies operating in the oil and mining industries present a letter from the Minister of Petroleum or the Minister of Geology and Mines, they may import, without duty, equipment to be used exclusively for oil and mineral exploration.

Required customs paperwork includes the "Documento Unico" (single document) for the calculation of customs duties, proof of ownership of the good, bill of lading, commercial invoice, packing list, and specific shipment documents verifying the right to import or export the product. Any shipment of goods equal to or exceeding $1000 requires a clearing agent. Competition among clearing agents is limited as the government has only licensed between 50 and 55 clearing agents. This has resulted in high fees, which often range between 1 percent and 2 percent of the value of the declaration. However, in November 2005, Angolan customs announced plans to break the customs agents' monopoly by reducing the obstacles for new entrants. Some new agents are now being licensed.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Angola has adopted SADC guidelines on biotechnology, which effectively prohibit imports of transgenic grain or seed until regulatory systems governing biotechnology have been developed. In January 2005, the government promulgated a law banning the importation of biotechnology products using the text of an earlier ministerial decree issued by the Ministry of Agriculture in April 2004. The Ministry of Agriculture controls all agricultural imports, and importers must present documents certifying that their goods do not include transgenic products. Transgenic products can be imported for food aid, but must be milled or sterilized to render the grain incapable of germinating upon arrival in the country. Biotechnology imports for scientific research will be subject to regulations and controls to be established by the Ministry of Agriculture.

Three agencies in Angola assume responsibility for food safety controls: the National Consumer Institute (INADEC), Codex Angola, and the Ministry of Agriculture. The Ministry of Agriculture sets standards and issues regulations for agricultural goods produced, imported, and traded in the country. INADEC works to defend consumers' rights by conducting laboratory tests for food safety and quality. Codex Angola coordinates government policy and strategy regarding food safety controls and is working to promote updated food safety and food quality legislation, and to create a nationwide network of laboratories. Angola has one well-equipped testing laboratory used to test some imported foods; however, laboratory workers are limited in technical expertise.

Angola announced in 2006 that it will begin enforcing a labeling law that requires labeling in Portuguese. The government enforces laws requiring production and expiration dates for perishable products. Unlabeled products can be confiscated. In practice, many imports are admitted into the country with little reference to health, testing, or weight standards. Angolan standards, testing, labeling and certification requirements have little effect on U.S. agricultural exports to Angola. Angolan authorities have destroyed some imported food products they alleged were contaminated or unsuitable for human consumption. These allegations in some cases were the result of poor understanding of international labeling information.

GOVERNMENT PROCUREMENT

Angola is not a signatory to the WTO Agreement on Government Procurement. The government advertises tender notices in local and international publications 15 days to 90 days before the tenders are due. Tender documents are normally obtained from a specific government ministry, department, or agency for a non-refundable fee. Completed tenders, accompanied by a specified security deposit, are usually submitted directly to the procuring ministry. The tendering process often lacks transparency. Information about government projects and tenders is not often readily available from the appropriate authorities, and the interested parties must spend considerable time on research. Awards for government tenders are sometimes published in the government newspaper "Jornal de Angola." Under the Promotion of Angolan Private Entrepreneurs Law, the government gives Angolan companies preferential treatment in tendering for goods, services and public works contracts. In April 2006, the government announced that it is working on the New General Law on Public Acquisition and Respective Regulations, which will require public notice for government tenders and is expected to increase the transparency of the government procurement process.

The Angolan government has greatly increased spending to rehabilitate infrastructure damaged by the war and long neglect, as well as for election preparations. In 2006, Angola leased six Boeing aircraft and two U.S. spare engines for TAAG, the state-owned airline. To facilitate financing, Angola ratified the Cape Town Convention and related protocols to provide enhanced creditor rights with respect to security interests in mobile equipment, including aircraft, effective August 1, 2006. Opportunities for U.S. companies include installation of Angola's telecommunications backbone network, air navigation and radar equipment, rail equipment and communications systems, and power transmission lines.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Although Angolan law provides basic protection for intellectual property rights protection and the National Assembly is working to strengthen existing legislation and enforcement, current protection is weak due to a lack of enforcement capacity. Intellectual property is protected by Law 3/92 for industrial property and Law 4/90 for the attribution and protection of copyrights. Intellectual property rights are administered by the Ministry of Industry (trademarks, patents, and designs) and by the Ministry of Culture (authorship, literary, and artistic rights).

In August 2005, Angola's legislature approved the Paris Convention for the Protection of Industrial Property and the World Intellectual Property Organization (WIPO) Patent Cooperation Treaty. Each petition for a patent that is accepted is subject to a fee that varies by type of patent requested. No suits involving U.S. intellectual property are known to have been filed in Angola.

Government officials have made efforts to confiscate and destroy pirated goods. For example, in September 2006, the government raided an informal market and destroyed 1,500 DVDs, 3,500 music cassettes, and 200 kilograms of counterfeit pharmaceuticals. Ten vendors of pirated goods were arrested and await trial. The government has worked with international computer companies on anti-piracy measures.

SERVICES BARRIERS

Foreign participation in the services sector is generally not restricted. The banking sector comprises the bulk of the services sector and has grown substantially over the past two years. Portuguese banks and private Angolan banks lead the expansion along with South African banks. The underdeveloped banking sector collects most of its profits from service fees, largely in foreign exchange transactions. The central bank is working with the government to issue regulations that will implement a new financial sector law, promulgated in late 2005, that clarifies banking supervision. As a result of increasing competition and experience, banking services are improving. In addition to banks, Angola's financial sector has five licensed insurance companies to satisfy the demand created by new laws requiring automotive, aviation, and worker safety insurance. One of the insurance companies has not yet begun operations.

INVESTMENT BARRIERS

Angola is officially open to foreign investment, but its regulatory and legal infrastructure is not adequate to facilitate much direct investment outside the petroleum sector or to provide sufficient protection to foreign investors. Smaller, non-extractive firms tend to have a more difficult time conducting business in Angola than larger, multinational corporations engaged in extractive industries. Angola created the National Private Investment Agency (ANIP) in July 2003 to assist investors and facilitate new investment. In 2003, the Angolan government replaced the 1994 Foreign Investment Law with the Law on Private Investment (Law 11/03). The law lays out the general parameters, benefits, and obligations for foreign investment in Angola. It encourages foreign investment by providing equal treatment for domestic and foreign investors, offering fiscal and customs incentives, and simplifying the investment application process. However, it is vague on profit repatriation and includes weak legal safeguards to protect foreign investors. In addition, many provisions of the law are subordinate to other sectoral legislation, allowing other government ministries to override some of the protections and incentives offered by the investment law.

Angolan law has no provisions for international arbitration and requires that any investment dispute be resolved in Angolan courts. Angola has not ratified major international arbitration treaties. The World Bank's "Doing Business in 2006" survey estimates that commercial contract enforcement -- measured by the amount of time elapsed between filing of a complaint and receipt of restitution -- generally takes more than 1000 days in Angola. A voluntary arbitration law that provides the legal framework for speedier, non-judicial resolution of disputes has been drafted but has not yet been approved.

Angola's previous foreign investment law expressly prohibited foreign investment in the areas of defense, internal public order, and state security; in banking activities relating to the operations of the Central Bank and the Mint; in the administration of ports and airports; and in other areas of the State's exclusive responsibility by law. Although Law 11/03 does not explicitly restate these prohibitions, these areas are assumed to remain off-limits to foreign investors. Investments may benefit from a more standardized set of incentives under the Law on Tax and Customs Incentives for Private Investment, approved by the National Assembly in July 2003. However, companies must apply for these benefits when negotiating with ANIP.

Although the new investment law is part of an overall effort by the Angolan government to create a more investor-friendly environment, many laws governing the economy have vague provisions that permit wide interpretation and inconsistent application by the government across sectors. Investments in the petroleum, diamond, and financial sectors continue to be governed by specific legislation. Foreign investors can set up fully-owned subsidiaries in many sectors, but frequently they are strongly encouraged, though not formally required, to take on local partners.

Obtaining the proper permits and business licenses to operate in Angola is time-consuming and adds to the cost of investment. The World Bank "Doing Business in 2006" report identified Angola as the most time-consuming country, out of 155 countries surveyed, to establish a business, requiring an average of 146 days to register a business compared to a regional average of 63 days. According to the 2003 investment law, ANIP and the Council of Ministers should take no more than two months to approve a contract with an investor, but in practice this process normally takes considerably longer. After contract approval, the company must register and file documentation with the relevant government ministries.

In August 2003, the government established a one-stop shop, or "Guiche Unico," aimed at simplifying the process of registering a company by unifying under one roof the procedures required by various government ministries. However, the "Guiche Unico" lacks authority over the government ministries that must approve licenses, permits, and other requirements, and thus has had little success in expediting company registration. Representatives of several ministries staff the Guiche, but their ministries are still learning how to coordinate their work. The two most time-consuming steps are obtaining certification from the Notary Public and publication of the company name and statutes in the Diário da República, the national gazette managed by the National Press. The government has brought the registration time down to three weeks, but the certification and publication phases take months.

The government is gradually implementing local content legislation for the petroleum sector, originally promulgated in November 2003 (Order 127/03 of the Ministry of Petroleum). The legislation will require many foreign oil services companies currently supplying the petroleum sector to form joint-venture partnerships with local companies. For the provision of goods and services not requiring heavy capital investment and with a basic, medium, or higher level of non-specialized expertise, foreign companies may only participate as a contractor to Angolan companies. For activities requiring a medium level of capital investment and a higher level of expertise, not necessarily specialized, foreign companies may only participate in association with Angolan companies (i.e.: through a joint venture).

ELECTRONIC COMMERCE

The country's basic telecommunications law governs information technology, but includes no specific regulations regarding electronic commerce. Electronic commerce plays a negligible role in Angola's domestic economy.

OTHER BARRIERS

Corruption

Petty corruption is prevalent due to the lack of adequately trained staff, low civil service salaries, dependence on a centralized bureaucracy and antiquated regulations dating back to the colonial era. Procedures to register a company are complicated and may involve up to 14 steps with many different government ministries. Investors are often tempted to seek quicker service and approval by paying gratuities and other facilitation fees.

Angola's public and private companies have not traditionally used transparent accounting systems consistent with international norms, and few companies in Angola adhere to international audit standards. The government approved an audit law in 2002 that sought to require audits for all "large" companies, but has not yet enforced this rule.

Investors have at times experienced harassment, political interference, and pressure to sell their investments. In some cases, these practices have involved individuals with powerful positions within the government who exert pressure directly or through the established bureaucracy. As a result, some investors have experienced significant delays in payments for government contracts and delays in obtaining the proper permits or approval of projects. Investors report pressure to form joint ventures with powerful local interests. In general, the Angolan government has avoided expropriation of foreign-owned assets during the last decade and has upheld contractual obligations when disputes emerged into public view.

Recovering from War

Angola's badly damaged and neglected infrastructure substantially increases the cost of doing business for investors. Poor roads, destroyed bridges, and mined secondary routes raise transportation costs. The country is in the process of rebuilding its communications, energy, transportation, and road infrastructure, but the three main railroads will not be fully restored before the end of 2007, at the earliest. Domestic and international communications are improving, but communication networks are oversubscribed in the provinces and sometimes in Luanda, and coverage can be spotty. Frequent interruptions plague water and power supplies, while power surges can damage electronic equipment. Increased overhead for investors includes outlays for security services, back-up electrical generators, and cisterns. However, rebuilding infrastructure is a major policy objective of the Angolan government. The government budgeted $7 billion in 2006 on restoration of public infrastructure to address these deficiencies.

ARAB LEAGUE

The impact of the Arab League boycott (ALB) of Israel on U.S. trade and investment in the Middle East and North Africa varies from country to country. While it remains a serious barrier for U.S. firms attempting to export from Israel to some countries in the region, the Arab League boycott of Israel has virtually no effect on U.S. trade and investment in many other countries in the region. Arab League members include the Palestinian Authority and the following states: Algeria, Comoros, Djibouti, Egypt, Iraq, Jordan, Lebanon, Libya, Mauritania, Morocco, Somalia, Sudan, Syria, Tunisia, Yemen, and the Gulf Cooperation Council (GCC) countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates). The United States continues to oppose the boycott, and U.S. government officials have urged Arab League members to end its enforcement. Toward that goal, U.S. embassies and government officials raise the boycott with host country officials, noting the persistence of illegal boycott requests and the impact on both U.S. firms and on the countries' ability to expand trade and investment. Under U.S. antiboycott legislation enacted in 1978, U.S. firms are prohibited from responding to any request for information that is designed to determine compliance with the boycott and are required to report receipt of any such request to the U.S. Department of Commerce's Office of Antiboycott Compliance (OAC).

The primary aspect of the boycott prohibits the importation of Israeli-origin goods and services into boycotting countries. This prohibition may conflict with the obligation of Arab League member states that are also members of the World Trade Organization (WTO) to treat Israeli imports on a Most Favored Nation (MFN) basis. The secondary and tertiary aspects of the boycott discriminate against U.S. and other foreign firms that wish to do business with both Israel and boycotting countries. These constrain U.S. exports to the region. The secondary aspect of the boycott prohibits individuals – as well as private and public sector firms and organizations – in Arab League countries from engaging in business with U.S. and other foreign firms that contribute to Israel's military or economic development. Such firms are placed on a blacklist maintained by the Damascus-based Central Boycott Office (CBO), a specialized bureau of the Arab League. The tertiary aspect of the boycott prohibits business dealings with U.S. and other firms that do business with blacklisted companies.

While the legal structure of the boycott in the Arab League remains unchanged, enforcement of the boycott remains the responsibility of individual member states and enforcement efforts vary widely from country to country. Some member governments of the Arab League have consistently maintained that only the Arab League as a whole can revoke the boycott. Other member governments support the view that adherence to the boycott is a matter of national discretion, and a number of states have taken steps to dismantle some aspects of it.

Egypt has not enforced any aspect of the boycott since 1980, pursuant to its peace treaty with Israel, although U.S. firms occasionally find some government agencies using outdated forms containing boycott language. In past years, Egypt has included boycott language in tenders funded by the Arab League. The boycott language is drafted by the Arab League and not by the government of Egypt. Jordan ended its enforcement of the boycott with the signing of its peace treaty with Israel in 1994. Algeria, Morocco, Tunisia, and the Palestinian Authority do not enforce the boycott.

Libya has a boycott law on the books, but enforcement is inconsistent and senior Libyan officials report that the boycott is not being actively enforced.

In September 1994, the GCC countries announced an end to the secondary and tertiary aspects of the Arab League boycott of Israel, eliminating a significant trade barrier to U.S. firms. In December 1996, the GCC countries recognized the total dismantling of the boycott as a necessary step to advance peace and promote regional cooperation in the Middle East and North Africa. Although all GCC states are complying with these stated plans, some commercial documentation continues to contain boycott language.

Bahrain does not have any restrictions on trade with U.S. companies that have relations with Israeli companies. Outdated tender documents in Bahrain have occasionally referred to the secondary and tertiary aspects of the boycott, but such instances have typically been remedied quickly. Bahrain's Ministry of Finance circulated a memorandum to all Bahraini Ministries in September 2005, reminding them that the secondary and tertiary boycotts are no longer in place and to remove any boycott language, including primary boycott, from government tenders and contracts. The government of Bahrain has stated publicly that it recognizes the need to dismantle the primary boycott and is taking steps to do so. In September 2005, Bahrain closed down its boycott office, the only entity responsible for enforcing the boycott. The U.S. Government has received assurances from the government of Bahrain that it is committed to ending the boycott. Bahrain is fully committed to complying with WTO requirements on trade relations with other WTO Members, and Bahrain has no restrictions on American companies trading with Israel or doing business in Israel, regardless of their ownership or relations with Israeli companies. Bahrain did not attend the November 2006 Arab League boycott meeting in Damascus. Israeli-labeled products are reported to be found occasionally in the Bahraini market. There are no entities present in Bahrain for the purpose of promoting trade with Israel.

In accordance with the 1994 GCC decision, Kuwait no longer applies a secondary or tertiary boycott of firms doing business with Israel, and has taken steps to eliminate all direct references to the boycott of Israel in its commercial documents. Although Kuwaiti law does not include any specific language referring to or mandating a boycott of Israeli goods, Kuwait still applies a primary boycott of goods and services produced in Israel. Kuwait maintains an open boycott office in its Customs department and regularly attends Arab League boycott meetings. There is no direct trade between Kuwait and Israel.

Oman does not apply any aspect of the boycott, whether primary, secondary or tertiary, and has no laws to that effect. Although outdated boycott language occasionally appears inadvertently in tender documents, Oman is working to ensure such language is removed from these documents. In January 1996, Oman and Israel signed an agreement to open trade missions in each country. However, in October 2000, following the outbreak of the second Intifada, Oman and Israel suspended these missions. Omani customs processes Israeli-origin shipments entering with Israeli customs documentation. However, Omani firms recently have reportedly avoided marketing any identifiably Israeli consumer products. Telecommunications links and mail flow normally between the two countries.

In April 1996, Qatar and Israel agreed to exchange trade representation offices. The Israeli trade office opened in May 1996 and remains open. Qatar does not have any boycott laws on the books, and does not enforce the Arab League boycott. Although Qataris have sometimes visited Israel to investigate business opportunities, effectively there is no trade between the two states. Some Qatari government tender documents still include outdated boycott language. U.S. embassy officials have discussed this matter with the Central Tenders Committee, which claims that a final decision regarding the presence of boycott language in government tender documents is pending with the Ministry of Finance. The U.S. Government is currently working with the Ministry of Finance on this issue.

In accordance with the 1994 GCC decision, Saudi Arabia terminated the secondary and tertiary boycotts, and they are no longer enforced in the Kingdom. In light of its accession to the WTO in 2005, the Saudi government re-issued the original directive confirming that these two boycotts are not to be applied in Saudi Arabia. The Ministry of Commerce and Industry (MOC) established an office to address any reports of boycott violations. The MOC met with the U.S. Department of Commerce's Office of Anti-Boycott Compliance (OAC) in September 2005 and February 2006 to discuss methods for ensuring Saudi commercial documents and tenders are in compliance with anti-boycott regulations. The OAC's list of reported boycott violations in Saudi Arabia over the last few years has decreased dramatically, and the reported violations appear to reflect out-of-date language in recycled commercial and tender documents. Saudi companies have been willing to void or revise that language when they are notified of its use. Saudi Arabia is obligated to apply WTO commitments to all current members, including Israel.

In accordance with the 1994 GCC decision, the United Arab Emirates (UAE) does not implement the secondary and tertiary aspects of the boycott. The UAE has not renounced the primary boycott, however, enforcement of the primary boycott is unclear. U.S. firms continue to face boycott requests in the UAE as a result of administrative and bureaucratic inefficiencies. The UAE is taking steps to eliminate prohibited boycott requests, and the UAE government has issued a series of circulars to public and private companies explaining that enforcement of the secondary and tertiary aspects of the boycott is a violation of Emirati policy. The Embassy and other U.S. officials continue to work with the UAE to resolve boycott issues.

The legal status of Iraq's boycott laws is ambiguous. There is an existing law from 1956 which provides for the existence of an office charged with the enforcement of the boycott. Coalition Provision Authority (CPA) Order 80 amended Iraq's trademark law to remove boycott requirements from Iraqi trademark law. However, we understand from anecdotal reporting that the boycott is still being enforced by the Iraqi Office of Trademark Registration. In contrast, other Iraqi government officials, including at the Ministerial level, have asserted that the boycott is no longer in force as a practical matter. Nonetheless, U.S. companies continue to encounter prohibited requests from certain Iraqi Ministries, parastatals, and private sector entities. U.S. government authorities have addressed these on a case-by-case basis and are working with the government of Iraq to put in place a boycott-free legal structure. Senior Iraqi officials are aware that enforcement of the boycott would jeopardize Iraq's ability to attract foreign investment. Embassy officials expect that the government of Iraq will work to resolve remaining issues.

Yemen is implementing its 1995 decision to renounce observance of the secondary and tertiary aspects of the boycott. Yemen remains a participant in annual meetings of the Arab League boycott committee. The government of Yemen does not have an official boycott office. Yemen enforces the primary boycott of goods and services produced in Israel. There are no specific laws on the books in Yemen regarding the boycott.

Lebanon enforces the primary, secondary and tertiary boycotts.

ARGENTINA

TRADE SUMMARY

The U.S. goods trade balance with Argentina went from a trade deficit of $426 million in 2005 to a trade surplus of $801 million in 2006. U.S. goods exports in 2006 were $4.8 billion, up 15.8 percent from the previous year. Corresponding U.S. imports from Argentina were $4.0 billion, down 13.3 percent. Argentina is currently the 32nd largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Argentina were $1.8 billion in 2005, and U.S. imports were $792 million. Sales of services in Argentina by majority U.S.-owned affiliates were $2.8 billion in 2004 (latest data available), while sales of services in the United States by majority Argentine-owned firms were $29 million.

The stock of U.S. foreign direct investment (FDI) in Argentina in 2005 was $13.2 billion, up from $11.5 billion in 2004. U.S. FDI in Argentina is concentrated largely in the non-bank holding companies, manufacturing and information sectors.

IMPORT POLICIES

Worldwide, Argentina prohibits the import of many used capital goods. Used capital goods exempt from this prohibition (based on several conditions allowed by Resolution 511 in 2000) are subject to a 6 percent import tariff, as established by Resolution 78/2006 in February 2006. Some used machinery imports are allowed, but only if repaired or rebuilt. Imports of used clothing are prohibited through June 2010, except in donations to government or religious organizations, as established by Resolution 637 (2005). Argentina prohibits the importation and sale of used or re-treaded tires by law 25626; law 24051 precludes the importation of used or refurbished medical equipment, including imaging equipment and used automotive parts. In addition to limiting automobile and automotive parts trade, Brazil and Argentina's common automotive policy (Bilateral Auto Pact), which was renegotiated in 2004 with new aspects entering into force in 2006, bans the worldwide import of used self-propelled agricultural machinery. In 2006, Argentina initiated a safeguard investigation on imports of recordable compact discs. Argentina also currently imposes anti-dumping duties on imports of U.S. polyvinyl chloride.

Tariffs

Argentina's import tariffs range from zero percent to 35 percent, with an average applied tariff rate of 13 percent in 2006. A fee of 0.5 percent to fund the government of Argentina's compilation of trade data is assessed on most imports (90 percent of all harmonized system tariff lines). As noted above, Argentina also taxes some of its largest exports, at differing (sometimes indexed) rates. Total export tax revenue in 2005 was equal to 10.5 percent of the value of all Argentine exports, including goods not subject to export taxes.

The government of Argentina has solicited sector-specific voluntary price caps aimed at reducing price increases on key components of the consumer price index (CPI). Exporters may claim reimbursement for some domestically paid taxes, including value-added-tax (VAT) reimbursements. The average non-VAT export reimbursement rate is 4.1 percent of export value. In November 2005, the government eliminated such non-VAT reimbursements for approximately 200 food products, including milk and dairy products. Non-VAT reimbursements for these products were reinstated in 2006, after producers committed not to increase their prices. In July 2006, some types of vegetable oils were excluded from tax reimbursement by Resolution 530/2006.

MERCOSUR's common external tariff (CET) averages 13.6 percent and ranges from zero percent to 20 percent *ad valorem.* Full CET product coverage was scheduled for implementation in 2006, but has been delayed. Individual MERCOSUR member country exceptions to the CET are now permitted until the end of 2008. Currently Argentina has exceptions to the CET on capital goods (for which the CET is 14 percent but for which Argentina allows duty-free entry), computing and telecommunications goods and an additional diversified group of 100 products. Duty-free movement within the bloc, also originally scheduled for 2006, has been deferred indefinitely. Multiple tariffs may therefore be imposed on products imported from outside the bloc. Argentina and Brazil have adopted a Competitive Adaptation Clause, which permits countries to impose safeguards with defined phase-out periods and linked programs to improve sector competitiveness.

In 2005, the government imposed new non-automatic licenses on toys (Resolution 485/2005), requiring importers to obtain a certificate reviewed by three different offices in the Secretariat of Industry. The process takes 120 days, partly due to a backlog. Once issued, the certificates are valid for 60 days. Under Resolution 825/2001, toys and textiles imported from China are subject to substantial specific tariffs which affect U.S. firms operating in Argentina that import from China. Under a program included in the Resolution, these specific duties were reduced to a maximum 35 percent *ad valorem* equivalent tariff in January 2007.

Resolution 486/2005 established non-automatic licenses on shoes in 2005, requiring certificates that are valid for only 120 days and whose issuance involves procedures that, according to the private sector, are burdensome. There is an automatic license requirement for most footwear imports; the government of Argentina says this requirement is needed for informational purposes, but the private sector claims it is an obstacle to trade. In July 2004, Resolution 495/2004 established minimum specific import duties on footwear for 180 days, which were later extended to December 31, 2007. These import duties do not apply to goods from MERCOSUR countries and cannot exceed the value of an equivalent 35 percent *ad valorem* tariff.

Customs Procedures

Argentina subscribes to the WTO Agreement on Customs Valuation. There are certificate of origin requirements for a long list of products with non-preferential origin treatment, as established by the Federal Administration for Public Revenue's (AFIP's) External Note 8 of 2006, including textiles, capital goods, steel products and household appliances. This Note established a procedure ("Canal Rojo Valor") such that, when Customs finds that the declared price of an import is lower than its reference price, the importer must provide a guarantee for the duties and taxes on the difference. This customs verification procedure can take a long time and result in higher financial costs for importers.

In 2005, AFIP Resolution 1811/2005 modified the import-export regime applied to couriers. Previously, a simplified procedure for Customs clearance that applied to international operations up to $3,000 expedited couriers' activities. Resolution 1811/2005 reduced this maximum to $1,000. Additionally, couriers are considered importers and exporters of goods, rather than transporters, and also must declare the tax identification codes of the sender and addressee, both of which render the process more troublesome and costly. These burdensome regulations increase the cost not only for the courier, but also for users of courier services.

EXPORT POLICIES

Following the 2002 currency devaluation, the government of Argentina imposed tariffs on all but a few exports, including significant tariffs on key hydrocarbon and agricultural commodity exports, in order to generate revenue and increase domestic supplies of these commodities to constrain domestic price increases. These export tariffs continue to be actively managed by the government of Argentina.

The government of Argentina suspended beef exports for 180 days beginning in March 2006, excepting only beef exports to the European Union under the Hilton quota program, and beef exports guaranteed under bilateral agreements. Export taxes originally imposed in 2002 on boned cuts and heat-processed beef were increased from 5 percent to 15 percent. Both the ban and the higher export taxes were aimed at increasing local supply and avoiding further increases in domestic beef prices. Starting in June 2006, the government eased the ban, allowing maximum exports by volume of 40 percent (applied to each tariff line) of the 242,000 ton total exported between June and November of 2005. In September 2006, the government of Argentina further loosened the beef export ban, allowing exports to rise from 40 percent to 50 percent of the June to November 2005 total export volume, while extending the export caps until November 30, 2006.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Agricultural Products: The government has banned thymus gland sweetbreads since 2002 based on Resolution 117/2002, which sets criteria to assess the risk of bovine spongiform encephalitis (BSE) transmissibility. Import permits for salivary gland sweetbreads, which according to Resolution 117/2002 should be allowed, have been denied by SENASA, the government phyto-sanitary agency. In August 2006, Argentina issued Resolution 315/2006 that aligns Argentina's import requirements for BSE to those of the Organization for Animal Health. This is a significant development toward a more open market for beef and other bovine products. However, the Argentine National Food Institute continues to demand traceability and documents stamped/notarized by the Argentine Consulate for all bovine-derived imports. Even though there is no technical/sanitary restriction, Argentina continues to delay issuance of health certificates that would allow the resumption of exports of poultry meat and products from the United States.

Non-agricultural Products: Argentina's Standards Institute (IRAM) aligns the bulk of Argentine standards with U.S. or European norms. Argentina began mandating compliance with new national safety certifications on a wide range of products in early 1998, affecting U.S. exports of low-voltage electrical products (household appliances, electronics and electrical materials), toys, covers for dangerous products, gas products, construction steel, personal protective equipment, bicycles and elevators. Many businesses often find the procedures for compliance to be inconsistent, redundant and non-transparent. Enforcement by Customs of a regulation mandating the use of a national standard with respect to plugs for low-voltage equipment, as established by IRAM rules 2073/2063, and Customs homologation required by the Secretariat of Communications to ensure that telecommunication and radio equipment meet regulatory requirements, can result in long delays and do not apply to domestic producers.

Regulations that require product testing can be cumbersome, costly and problematic for small and medium-sized U.S. companies. Argentina's certificate of origin regulations require separate certificates for each of the countries involved in manufacturing the various components of a final product. In the past, Argentina failed to fulfill the notification and comment requirements of the WTO Agreement on Technical Barriers to Trade in its implementation of these measures.

Resolution 287/2000 established strict labeling requirements for footwear and textiles, which have specific characteristics in terms of print size, attachment to the garment, information contained, country of origin, importer and others. Importers complain that such requirements significantly delay import processing.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Argentina's lack of adequate and effective intellectual property protection has caused some friction in the bilateral trade relationship. Argentina has been on the Special 301 Priority Watch List since 1996.

Patents: The National Intellectual Property Institute (INPI) started to grant pharmaceutical patents in October 2000 after a nearly five-year moratorium. Issuance of pharmaceutical patents has been slow since that time. INPI, however, has taken a number of steps to reduce Argentina's large patent application backlog. In the past year, Argentina made significant progress in reducing its patent backlog. Steps include the implementation of fast-track procedures and a one-time opportunity in 2005 for companies to prioritize their patent applications before INPI. In April 2002, negotiations between the governments of the United States and Argentina clarified aspects of Argentina’s intellectual property system, such as provisions related to the patentability of microorganisms and its import restriction regime. Those negotiations did not resolve the dispute concerning the lack of protection for safety and efficacy data developed by pharmaceutical companies submitted to ANMAT (the Argentine equivalent of the U.S. Food and Drug Administration) for the approval of pharmaceutical products. Argentina amended its patent law in December 2003, as required by the May 2002 agreement between the two governments. The intention of the amendment was to provide protections for process patents and to ensure that preliminary injunctions were available in intellectual property court proceedings, among other steps. However, the injunctive relief process has proven slow enough to not be an effective deterrent to patent infringers in some cases. The United States retained its right to seek resolution under the WTO dispute settlement mechanism on the outstanding issue of data protection.

Copyrights: Argentina's copyright laws generally provide good protection. Argentina ratified the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty in 1999, though some implementation issues remain. In November 1998, Argentina promulgated legislation establishing software piracy as a criminal offense. The government has yet to fully comply with an agreement with the private sector to eliminate unlicensed software used in government offices.

Enforcement of copyrights on recorded music, videos, books and computer software remains inconsistent. Argentine customs and other government authorities generally cooperate with industry efforts to stop shipments of pirated merchandise, but inadequate resources and slow court procedures have hampered the effectiveness of enforcement efforts. The legal framework regarding Internet piracy provides few incentives to investigate and punish those who post infringing materials. Inadequate border controls, particularly at the border near Paraguay and Brazil, further contribute to the regional circulation of pirated goods. The U.S. copyright industries are increasingly concerned with the widespread offering of “home delivery” for pirated products. End-user piracy of business software, motion picture piracy and book piracy remains widespread. Law 25986 of January 2005 prohibits the import or export of merchandise which violates intellectual property rights. However, Argentine Customs authorities were unable to detain merchandise based on the presumption of a violation until regulations to implement this law were issued on October 12, 2006. The International Intellectual Property Alliance estimates that music piracy grew 5 percent in 2005 compared to 2004, representing a 60 percent piracy rate and $69.5 million in losses for 2005. The Argentine Chamber of Phonogram and Videogram Producers estimate that DVD movie piracy represents 52 percent of the market, or ARP 300 million per year. The Business Software

Alliance estimates a 77 percent piracy rate of business software, resulting in a $109 million loss to the business software industry. Business software piracy grew 2 percent in 2005 over 2004.

Trademarks and Geographical Indications: Argentina's trademark law, the Law on Trademarks and Designations (No. 22362), was issued in 1980. Laws 25380 and 25966 protect names of origin and geographical indications. Similar to other Latin American countries, Argentina has a somewhat limited view of eligible subject matter for trademarks, and does not accept applications for certification marks. Argentina does, however, provide protection for sound and scent trade marks. U.S. companies report that the process of registering trademarks generally takes over five months. The registration procedure was improved and made quicker with Presidential Decree 1141/2003.

Overall, enforcement of copyrights and trademarks remain a serious concern. Border controls and the prosecution of intellectual property violations are ineffective. Civil damages are non-deterrent and in criminal cases the judiciary is reluctant to impose deterrent penalties, such as prison sentences.

The United States and Argentina have been closely allied in the area of agricultural biotechnology, including as co-complainants in a WTO dispute challenging the EU moratorium on transgenic crops and the EU's implementation of the Cartagena Protocol of Biosafety. However, the Argentine government should adopt and enforce an intellectual property regime acceptable to foreign companies in order to attract sufficient investment in agricultural biotechnology. Argentina has been attempting to negotiate a system for royalty payments to accommodate agricultural companies where the Argentine Supreme Court previously declined to approve patent rights. These negotiations have reached an impasse and companies may choose to seek additional legal recourse if negotiations cannot be restarted and a reasonable solution achieved. The government opposes a grain-based collection system, as it believes this would undermine the joint WTO case against the EU, but this case was resolved in favor of the United States and Argentina. Argentine soybean exports for marketing year 2006/07 are forecast at 7.1 million metric tons. About 99 percent are biotechnology U.S. soybeans and large portions are produced without the necessary royalty payments.

SERVICES BARRIERS

Argentina enacted broad liberalization in the service sector as part of its economic reform program in the 1990s, but some barriers still exist. For example, the Argentine government obliges cable/pay television operators to register their programming with a government body. This government body imposed restrictions on cable-TV providers about the frequency of advertisements. In addition, restrictions regarding the showing, printing and dubbing of films burden U.S. exports, as does the practice of charging *ad valorem* customs duties based on the previously estimated value of the authors' rights, rather than solely on the value of the physical materials being imported, which is the WTO standard.

In the WTO, Argentina has committed to allow foreign suppliers of non-insurance financial services to establish all forms of commercial presence and has committed to provide market access and national treatment to foreign suppliers of non-insurance financial services. The only significant remaining issue is that lending limits for foreign bank branches are based on local paid-in capital, not the parent bank's capital.

In general, commercial presence of insurance firms is permitted under the same conditions required for local firms. Law 20091, however, establishes that the branches or agencies of foreign insurance firms will be authorized to perform insurance activities in Argentina if there is reciprocity in the respective countries' laws. There was a reform of minimum capital requirements for new insurance firms in 1998, which resulted in new firms having to fulfill higher minimum capital requirements, whereas older firms could still benefit from lower requirements. Therefore, firms that establish themselves in the Argentine market through the acquisition of another firm benefiting from the lower standards is in a better position than firms that begin in the Argentine market as new companies and, therefore, are subject to the new standards. These measures affect both foreign and local firms. The localization of assets maintained by insurance firms is affected by regulations issued by the government entity that supervises the sector, the National Insurance Superintendency. Some 75 percent of capital and 90 percent of technical reserves are to be invested within the country. There are lists of authorized investments that become stricter in the case of firms that manage pension funds (Administradoras de Fondos de Jubilaciones y Pensiones or AFJP). These lists apply to both foreign and local firms. Argentine residents cannot acquire life, medical or patrimony insurance abroad and foreign suppliers cannot publicize their services within Argentina. However, insurance for cargo is permitted and reinsurance engaged abroad is always permitted for all types of insurance. There is also a restriction on insuring goods owned or used by the national, provincial or municipal governments, independent agencies and people or firms that were granted concessions. The insurance for such goods has to be engaged with local firms, as established by Law 12988.

GOVERNMENT PROCUREMENT

Argentina is an observer to the WTO Plurilateral Agreement on Government Procurement. Law 25551 of 2001 establishes a national preference for local industry for most government purchases if the domestic supplier bid is no more than 5 percent to 7 percent (the latter figure for small or medium-sized businesses) higher than the foreign bid, and applies to tender offers by all government agencies, public utilities and concessionaires. There is similar legislation at the provincial level, resulting in entry barriers for foreign firms.

Inland water shipping is reserved for Argentine flag carriers. Any foreign firm entering the market will have to nationalize vessels, paying high import duties and follow strict local union regulations on nationality of the crew.

INVESTMENT BARRIERS

In line with WTO rules, Argentina in 1995 notified measures inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMS). The notified measures dealt with local content and balancing trade flows in the automotive industry. Proper notification allows developing country WTO Members to maintain such measures for a five-year transitional period, which ended January 1, 2000, for Argentina. In November 2001, the WTO granted an extension to the TRIMS transitional period allowing Argentina and several other countries to maintain TRIMS-inconsistent measures until December 31, 2003. Article 23 of the September 2002 bilateral auto pact between Argentina and Brazil allowed Argentina to maintain minimum domestic content requirements on vehicles manufactured in Argentina until 2005. Article 13 of the same agreement established trade balancing measures which were to expire in 2006. However, in mid-2006 the agreement, including the local content and trade balancing clauses, was extended through December 2008.

The government implemented an increasing variety of capital and exchange controls throughout 2002. These measures inhibited access to foreign exchange to pay for imports, which has created difficulties for U.S. investors in Argentina, among others. As of September 2002, the government retained strict controls on the release of foreign exchange to pay for imports of 2,700 products. During 2003, most of the exchange market controls for imports were relaxed or abolished imports can now be paid in advance regardless of the type of good involved. Importers, however, must show that imported products entered Argentina within 360 days of payment. There are no restrictions on payments for services imports (such as freight, insurance, technical assessment and professional fees).

Hard currency export earnings, both from goods and services, must be cleared in the local foreign exchange market (with exceptions), and there are time limits to fulfill this obligation. Those limits range from approximately 180 to 480 days for goods (depending on the goods involved) and 135 working days for services. For certain capital goods and situations where exports receive long-term financing not exceeding six years, exporters face more liberal time limits. The foreign exchange clearance requirement is limited to 30 percent of total revenues for hydrocarbons exports, and does not apply to exports of certain minerals, exports that were subject to temporary admission if they were not transformed, and to exports to Argentine foreign trade zones. Foreign currency earned through exports may be used for some foreign debt payments.

Argentina has expanded its capital control regime since 2003, with the stated goal of avoiding the potentially disruptive impact of large short-term capital flows on the nominal exchange rate. In June 2003, Argentina imposed a registration requirement for inflows and outflows of capital, and a 180-day minimum investment period. In May 2005, the government issued Presidential Decree 616/2005 and extended the minimum time period to 365 days. The Decree also expanded the registration requirement to include "all types of debt operations of residents that could imply a future foreign currency payment to non-residents" and requires that all foreign debt of private Argentine residents, with the exception of trade finance and initial public debt offerings that bring foreign exchange into the market, must include provisions that the debt need not be repaid in less than 365 days.

Decree 616/2005 (as implemented by Ministry of Economy resolutions issued during 2005 and 2006) also imposed more restrictive controls on the following classes of inbound investments: inflows of foreign funds from private sector debt (excluding foreign trade and initial stock and bond issues); inflows for initial public offerings of Central Bank debt instruments; inflows for most fiduciary funds; inflows of non-resident funds that are destined for the holding of Argentine pesos or the purchase of private sector financial instruments (excluding foreign direct investment and the primary issuance of stocks and bonds); and investments in public sector securities purchased in the secondary market. These inflows are subject to three restrictions: (a) they may not be transferred out of the country for 365 days after their entry; (b) proceeds from foreign exchange transactions involving these investments must be paid into an account in the local financial system; and (c) 30 percent of the amount of such transactions must be deposited in a local financial entity for 365 days in an account that must be denominated in dollars and pay no interest. Violations are subject to criminal prosecution. As of September 2006, a deposit is not required for capital inflows aimed to finance energy infrastructure works.

Under the bilateral investment treaty (BIT) between Argentina and the United States, which entered into force in 1994, each country committed to provide investors of the other country treatment equal to what it offers its own investors or investors from any other country. The BIT also includes obligations relating to compensation for expropriation, the free movement of capital and other investment-related transfers, and the right to hire senior managers of any nationality. Thirteen U.S. investors have submitted to binding investor-state arbitration under BIT claims against the government of Argentina that measures imposed by Argentina during the financial crisis that began in 2001 breached BIT obligations.

ELECTRONIC COMMERCE

Argentina has a legal framework for digital signatures. The Digital Signature Law 25506 of 2001 was implemented by Presidential Decrees 2628 of 2002 and 724 of June 2006. Argentine law has accepted digital signatures since early 2004, under the requirement that they are verified by a certified licensor. Decree 724/2006 allowed government of Argentina agencies to act as license certifiers and to issue certificates for government officials or private individuals, establishing conditions for use of digital signatures between public organizations and the community. The decree also eliminates the requirement that each entity with the authority to certify digital signatures be backed by liability insurance. Argentina does not allow the use of electronically produced air waybills, limiting their ability to speed up customs processing and the growth of electronic commerce transactions.

Electronic invoicing became effective in Argentina as of January 16, 2006, through AFIP Resolution 1956/2005. This new procedure allows replacement of the traditional paper invoice with an electronic one, which can be sent via the Internet. The new resolution establishes eligibility requirements for companies to obtain authorization to use e-invoicing, such as having appropriate IT systems and infrastructure to send and store originals, duplicates and receipts and to keep digital records/registry of all documentation sent and received.

AUSTRALIA

TRADE SUMMARY

The U.S. goods trade surplus with Australia was $9.6 billion in 2006, an increase of $1.1 billion from $8.5 billion in 2005. U.S. goods exports in 2006 were $17.8 billion, up 12.3 percent from the previous year. Corresponding U.S. imports from Australia were $8.2 billion, up 11.8 percent. Australia is currently the 14th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Australia were $7.4 billion in 2005, and U.S. imports were $4.7 billion. Sales of services in Australia by majority U.S.-owned affiliates were $18.4 billion in 2004 (latest data available), while sales of services in the United States by majority Australia-owned firms were $12.0 billion.

The stock of U.S. foreign direct investment (FDI) in Australia in 2005 was $113.4 billion. U.S. FDI in Australia is concentrated largely in the non-bank holding companies, manufacturing, finance, mining, and banking sectors.

FREE TRADE AGREEMENT (FTA)

The governments of the United States and Australia concluded an FTA in February 2004 that entered into force on January 1, 2005. Under the FTA, more than 99 percent of U.S. exports of manufactured goods and 100 percent of U.S. food and agricultural exports to Australia are now duty-free. The FTA will also eliminate tariffs within four years in the automotive sector and within 10 years on textiles. U.S. industry estimates the removal of tariffs affecting trade in textiles, automobiles, and automotive components will lead U.S. exports to Australia to increase between $100 million to $500 million in textiles and raise exports of automobiles and automotive components between $100 million to $500 million. A number of working groups have been established under the FTA to facilitate further liberalization of services trade as well.

Over the past 12 months, progress has been made on a number of outstanding FTA implementation issues, including measures that properly value innovative pharmaceutical products, strengthen copyright protection, and review the market for blood plasma products. These issues are discussed in the relevant sections below.

IMPORT POLICIES

Tariffs

Eighty-six percent of Australia's tariffs are between 0 percent and 5 percent, with more than 99 percent of tariff rates applied on an *ad valorem* basis. Ninety-seven percent of Australia's tariff lines are bound in the World Trade Organization (WTO). Australia's simple average bound tariff rate is 9.9 percent and its average applied tariff is 4.2 percent. The average applied rate for industrial products is 4.6 percent, with most bound rates set between zero percent and 55 percent. The average applied tariff for agricultural products is less than 1 percent, with bound rates generally set between 0 percent and 29 percent. Tariff-rate quotas are in place for some cheese items and non-manufactured tobacco (although the duty rate on tobacco has been 0 percent since 1995). Australia retains high tariff peaks on textiles, clothing, and footwear (maximum 25 percent) and passenger motor vehicles (15 percent).

STANDARDS, TESTING, LABELING AND CERTIFICATION

Sanitary and Phytosanitary Measures

The Australian government maintains a stringent regime for the application of sanitary and phytosanitary (SPS) measures. The FTA created a new mechanism for scientific cooperation between U.S. and Australian SPS authorities to resolve specific bilateral animal and plant health issues. This mechanism will facilitate cooperation at the earliest appropriate point in each country's regulatory process where it affects trade between the two countries.

Biotechnology

Australia has a substantial, risk-assessment-based regulatory framework for dealing with gene technology and organisms derived by the use of biotechnology, as well as a process for assessment and approval of foods derived by the use of biotechnology. The Gene Technology Act of 2000 established Australia's regulatory scheme for dealing with gene technology and organisms derived by the use of biotechnology. The Gene Technology Regulator serves the key role in assessing, regulating and licensing products of biotechnology and enforcing licensing conditions. A number of states have invoked restrictions on the planting of products of biotechnology in their jurisdictions, which is slowing the commercialization and adoption of the technology. (Biotechnology cotton, however, has been successfully introduced and planting of this product now dominates the cotton industry in Australia.)

Food Approvals: Foods derived by the use of biotechnology must be assessed, determined to be safe, and be approved before being sold for human consumption. Imported foods using biotechnology can be offered for sale in Australia only after being assessed by Food Standards Australia New Zealand (FSANZ) and being listed in the Food Standards Code. As of November 2006, there were four biotechnology processing aids and three biotechnology food additives that formed part of approximately 25 products on the FSANZ-approved list of "food produced using gene technology."

Food Labeling: Australia maintains mandatory labeling requirements for foods utilizing biotechnology, required if a food in its final form contains detectable DNA or protein resulting from the application of biotechnology, with a few exceptions. The law allows for a maximum level of 1 percent product of biotechnology. Meeting these biotechnology food labeling regulations can be onerous for manufacturers and others in the supply-chain, particularly for processed food, a large share of U.S. agricultural exports.

GOVERNMENT PROCUREMENT

Australia is the only major industrialized country that is not a signatory to the plurilateral WTO Agreement on Government Procurement (GPA). However, under the FTA, the Australian government opened its government procurement market to U.S. suppliers and eliminated discriminatory preferences for domestic suppliers. The FTA also requires the use of fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures for procurement covered by the Agreement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Australia is a member of the World Intellectual Property Organization (WIPO) and is a party to most multilateral IPR agreements, including: the Paris Convention for the Protection of Industrial Property; the Berne Convention for the Protection of Literary and Artistic Works; the Universal Copyright Convention;

the Rome Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations; and the Patent Cooperation Treaty. Under the FTA, Australia is obliged to accede and become a party to the 1996 WIPO Copyright Treaty and Performances and Phonograms Treaty. Australia is still reviewing the steps necessary for accession.

Australia amended its Copyright Act in December 2006, following extensive consultations with stakeholders. The amended Copyright Act, which includes strengthened enforcement measures, will enter into force in 2007. The December 2006 amendments also implement FTA provisions concerning circumvention of technological protection measures (TPMs) used in connection with the exercise of copyright. The provisions on TPMs are a step forward in protection for copyright owners in Australia. The United States will review implementation of these new provisions, including exceptions provided for in the law, to ensure consistency with FTA requirements.

Australia permits the parallel importation of computer software, electronic versions of books, periodicals, sheet music, sound recordings, branded goods (clothing, footwear, toys, and packaged food), and some electronic games. The Australian government continues to prohibit the parallel importation of films, but an estimated 20 percent of the DVDs in Australia are illegal parallel imports. Locally replicated DVD-Rs, videocassettes copied from video compact discs (VCDs) and DVDs, illegally parallel-imported DVDs, and pirated VCDs continue to be the major threat to Australia's otherwise low rate of piracy of audio-visual materials. Pirate DVDs imported from Asia also are an emerging problem.

Due to implementing commitments it made in the FTA, Australia now provides copyright protection for the life of the author plus 70 years (for works measured by a person's life), or 70 years (for corporate works). It also clarified that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies, an important principle in the digital realm. Australia also is implementing its FTA commitments regarding the liability of Internet service providers in connection with copyright infringements that take place over their networks.

Under the patent provisions of the FTA, Australia confirmed that its law makes patents available for any invention, subject to limited exclusions, and confirms the availability of patents for new uses or methods of using a known product. To guard against arbitrary revocation, Australia limits the grounds for revoking a patent to the grounds that would have justified a refusal to grant the patent; fraud is also grounds for revocation. Under the FTA, Australia also committed to patent term adjustments to compensate if there are unreasonable delays that occur while granting the patent, or if there is unreasonable curtailment of the effective patent term as a result of the marketing approval process for pharmaceutical products. In addition, the Australian government is implementing its commitment to protect test data that a company submits in seeking marketing approval for pharmaceutical and agricultural chemical products by precluding other firms from relying on the data, as well as measures to prevent the marketing of pharmaceutical products that infringe patents.

The trademark and geographical indication provisions of the FTA established that trademarks must include marks in respect of goods and services, collective marks, and certification marks, and that geographical indications are eligible for protection as marks. Australia is implementing its commitment to provide protection for marks and geographical indications, as well as efficient and transparent procedures governing the application for protection of marks and geographical indications. Australia has rules on domain name management that require a dispute resolution procedure to prevent trademark cyber-piracy, as it was required to provide under the FTA.

SERVICES BARRIERS

Telecommunications

The Australian government has recently reduced its 51 percent stake in Telstra and is now a minority shareholder with a 17 percent share, helping reduce concerns about the government's conflicting roles as both regulator and owner of the dominant operator. Australia has not addressed continuing concerns about foreign equity limits in Telstra, still capped at 35 percent. U.S industry remains concerned about the ability of Telstra to abuse its monopoly power. Alleged abuses include delays in making an acceptable public offer for access to its network and inflated pricing of wholesale services such as leased lines and interconnection with its mobile network. In 2006 the Australian government rejected a proposal by Telstra to significantly raise certain network access rates, but final decisions on such rates and the access Telstra will provide when it introduces its "Next Generation Network" over the next 3 years to 5 years remain to be resolved.

Audiovisual Trade Barriers

The Australian Communications and Media Authority Content Standards require that 55 percent of all free-to-air television programming broadcast between 6:00a.m. and midnight be of Australian origin with specific minimum annual sub-quotas for Australian (adult) drama, documentary and children's programs. In addition, the television advertising quota stipulates that at least 80 percent of total commercial television advertising during that same period must be Australian-produced. Australia's Broadcasting Services Amendment Act requires pay television channels with significant drama programming to spend 10 percent (with a requirement of up to 20 percent allowed under the FTA) of their programming budget on new Australian drama programs. Australian radio industry quotas require that up to 25 percent of all music broadcast between 6:00a.m. and midnight be "predominantly" Australian in origin/performance. The FTA allowed existing restrictions to remain, but limits or prohibits their extension to other media or means of transmission.

Media

There was considerable movement in 2006 in Australia's media regulations. In October 2006, Parliament passed legislation enacting changes to Australia's media laws relating to digital television including multi-channeling, foreign ownership and cross-media ownership. However, media remains a sensitive sector, and foreign investment proposals in the media sector, irrespective of size, will remain subject to prior approval by the Treasurer.

Other changes include opening up two reserved digital channels for new digital services such as mobile television or new in-home services, and permitting commercial free-to-air television stations to broadcast one standard definition multi-channel from 2009, and to allow full multi-channeling no later than the time of the digital switchover (2010-2012). The law relaxes current restrictions on cross-media ownership, with some restrictions in smaller media markets.

INVESTMENT BARRIERS

Pursuant to Australia's Foreign Investment Law, its Foreign Investment Review Board (FIRB) screens in advance potential foreign investments in Australia above a threshold value of A$50 million. The FIRB may deny approval of particular investments above that threshold on "national interest" grounds. The FTA, however, exempts all new "greenfield" U.S. investments from FIRB screening entirely. The FTA also raises the threshold for screening of most U.S. acquisitions of existing investments in Australia from A$50 million to A$800 million (indexed annually).

OTHER BARRIERS

Agriculture

Australia's applied agricultural tariffs are relatively low, with an unweighted average of less than 1 percent. Under the FTA, all U.S. agricultural products enter Australia duty-free. While Australian agriculture is relatively unprotected based on other traditional measures of assistance as well, such as producer subsidy equivalents and effective rates of assistance, Australia maintains a conservative and restrictive quarantine regime that effectively limits the openness of its market. This regime results in an effective import ban on many agricultural products and restricts access for many through strict import measures. As a result, there is low-to-zero import penetration for many of Australia's agricultural sub-sectors. The U.S. is continuing to seek to resolve long standing issues with its market access for table grapes and access for a number of products including apples, stone fruit, raspberries, and fresh, frozen and cooked poultry meat.

Commodity Boards and Agricultural Support

While Australian government intervention in the agricultural production sector is limited, a few selected commodities are exported through statutory marketing arrangements, including wheat and barley in South Australia, and rice in New South Wales. The Australian Wheat Board (AWB) holds the monopoly export rights for all bulk wheat exported from Australia. In January 2006, the Cole inquiry, set up by the Australian government began hearings on allegations of improprieties by AWB in connection with the U.N. Oil-For-Food Program. The final report of the Cole inquiry was made public in November 2006 and concluded that some AWB officials were aware of the payments. In response, in December 2006, the government of Australia removed the AWB's veto authority over all exporting firms submitting contracts to export wheat from Australia until June 2007. The veto authority has been given to the Agriculture Minister as an interim measure and the Australian government has proposed intensive consultation with the industry over the future of wheat export marketing.

Textile Clothing and Footwear (TCF) Sector Support

The Australian government provides assistance to the TCF industry through tariff protection as well as significant budgetary assistance. Previously scheduled tariff reductions for these industries came into effect on January 1, 2005.

For TCF products, tariffs were reduced from 25 percent to 17.5 percent on imports of clothing and certain other finished textiles goods; from 15 percent to 10 percent on imports of cotton sheeting, fabrics, footwear and carpet; and from 10 percent to 7.5 percent on imports of sleeping bags, table linen and footwear parts.

These reductions were provided for in the Customs Tariff Amendment (Textile, Clothing and Footwear post-2005 Arrangements) Act 2004. Under the Act, TCF tariffs will remain at their new rates until 2010, when they will be reduced to 5 percent until 2015. For apparel and certain finished textile goods, the tariff will be reduced to 10 percent in 2010, and then to 5 percent in 2015.

Automotive Sector Support

Automotive producers benefit from import duty credits designed to promote production, investment, and research and development. In 2002, the program was extended to 2015 with declining benefits to compensate for planned additional tariff reductions.

Pharmaceuticals

The FTA process addressed transparency and regulatory concerns and established an independent review process for innovative medicines. The FTA also established a Medicines Working Group, which has helped facilitate a constructive dialogue between the United States and Australia on health policy issues.

In the past, the U.S. pharmaceutical industry has raised concerns over the Australian government's policies and their support of the research and development of innovative pharmaceutical products. In November 2006, the Australian government announced a major reform to the pricing of pharmaceutical products listed on its Pharmaceutical Benefits Scheme (PBS), its national drug formulary. Under the plan, from August 1, 2007, different pricing arrangements would apply to drugs for which there is only a single brand listed and those for which there are multiple brands. Over time, the Australian government will move to a system of price disclosure where the actual price at which the medicine is being sold will become the price the government pays. The U.S. pharmaceutical industry is cautiously optimistic regarding these reforms, although many details about its implementation still remain unclear.

Blood Plasma Products and Fractionation

Foreign companies face substantial barriers to the provision of blood plasma products in the Australian market. Hospitals are reimbursed only for blood plasma products produced by an Australian company under a monopoly contract granted by the Australian government. While foreign blood products may be approved for sale in Australia, the exclusive contract makes it virtually impossible for foreign firms to sell their products in Australia except to fill shortages or provide products not otherwise available in Australia. Australia recently completed a review, required under the FTA, of its arrangements for the supply of blood fractionation services. The review's recommendation that Australia not pursue overseas fractionation of blood plasma products did not adequately consider the significant potential cost savings from introducing competition in the provision of blood fractionation services. The Australia government has recommended that its states adopt the tendering process prescribed in the Government Procurement chapter of the FTA. Australia's states will vote in early 2007 on whether or not to change existing arrangements.

BAHRAIN

TRADE SUMMARY

The U.S. goods trade deficit with Bahrain was $142 million in 2006, an increase of $61 million from $81 million in 2005. U.S. exports in 2006 were $491 million, up 39.9 percent from the previous year. Corresponding U.S. imports from Bahrain were $632 million, up 46.5 percent. Bahrain is currently the 85th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Bahrain in 2005 was $194 million, up from $180 million in 2004.

FREE TRADE AGREEMENT

Upon the August 2006 implementation of the United States-Bahrain Free Trade Agreement (FTA), 100 percent of bilateral trade in consumer and industrial products became duty-free immediately. Bahrain will phase out tariffs on the remaining handful of agricultural product lines within ten years. Textiles and apparel trade is duty-free, promoting new opportunities for U.S. and Bahraini fiber, yarn, fabric and apparel manufacturing. The FTA requires qualifying textile and apparel products to contain either U.S. or Bahraini yarn and fabric and contains a temporary transitional allowance for textiles and apparel that do not meet these requirements in order that U.S. and Bahraini producers can develop and expand business contacts. The FTA requires transparency and efficiency in customs administration, including publication of laws and regulations on the Internet and procedural certainty and fairness. Both governments agree to share information to combat illegal trans-shipment of goods and special customs cooperation measures to prevent fraud in the textile and apparel sector. In addition, the FTA requires customs procedures designed to facilitate the rapid clearance through customs of express delivery shipments.

IMPORT POLICIES

As a member of the Gulf Cooperation Council (GCC), Bahrain applies the GCC common external tariff of 5 percent for most non-U.S. products, with a limited number of GCC-approved country-specific exceptions. Bahrain’s exceptions to the common external tariff include alcohol (125 percent) and tobacco (100 percent). Some 421 food and medical items are exempted from customs duties entirely.

STANDARDS, TESTING, LABELING AND CERTIFICATION

As part of the GCC Customs Union, member countries are working toward unifying their standards and conformity assessment systems and have progressed considerably toward the goal of a unified food standard. Negotiations targeting adoption of a unified food standard during 2007 are under way. Each country currently applies either its own standard or a GCC standard.

Bahrain generally uses international or GCC standards, and the development of standards in Bahrain is based on the following principles: (a) no unique Bahraini standard is to be developed if there is an identical draft GCC standard in the process of being developed; and (b) developing new Bahraini standards must not create trade barriers. The total number of GCC standards adopted as Bahraini standards currently stands at 1020, of which 320 are mandatory and 700 are voluntary. There are also approximately 434 draft GCC standards under development, including a revised vehicle identification number location requirement that has elicited expressions of concern from at least one U.S. manufacturer. The Ministry of Industry and Commerce Undersecretariat for Standards and Consumer Protection has pledged to weigh carefully these concerns ahead of a decision. In light of GCC integration activity, Bahrain has decided to require date-of-production labeling on all food products.

GOVERNMENT PROCUREMENT

In October 2002, Bahrain implemented a new government procurement law to ensure transparency and reduce bureaucracy in government procurement. Under that law, specified procurements are eligible for bid by international suppliers. A Tender Board is chaired by a Minister of State who oversees all tenders and purchases with a value of BD 10,000 ($26,525) or more.

The Tender Board was an important measure toward ensuring a transparent bidding process, which the government of Bahrain recognized as vital to attracting foreign investment. The Tender Board awarded tenders worth $528.7 million in 2005, an increase of 14.3 percent compared to the previous year. With FTA implementation, Bahrain is required to conduct procurements covered by the FTA in a fair, transparent and non-discriminatory manner.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The FTA commits Bahrain to world-class standards for the protection and enforcement of IPR. Bahrain joined the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty (WPPT), effective December 15, 2005. The government of Bahrain launched a significant public awareness campaign in June 2006 equating piracy with theft, and enlisted Islamic religious officials to educate the public on the protection of intellectual property rights. The Arabian Anti-Piracy Association has recognized Bahrain’s many efforts to protect intellectual property rights, but notes that software piracy and certain forms of pay television signal theft remain a concern.

In order to implement its FTA obligations, Bahrain passed several key pieces of IPR legislation. These laws improve protections and criminalize various IPR violations, including copyright, trademark and patent infringement. Implementing regulations supporting these laws have also been enacted.

The GCC announced plans to establish a trademark office in Riyadh, Saudi Arabia that will be tasked with strengthening trademark protection.

SERVICES BARRIERS

Financial Sector

Bahrain established the Central Bank of Bahrain (CBB) in September 2006 to succeed the Bahrain Monetary Agency (BMA). The CBB is an operationally independent government entity and now enjoys an expanded range of enforcement powers and bears regulatory authority over the financial services industry, including the insurance and capital markets. Bahrain’s financial sector contributed $2.6 billion to the economy in 2005, representing 27.6 percent of GDP, up from 24.1 percent in 2004.

Telecommunications

The telecommunications sector in Bahrain has been liberalized since July 2004. There are currently two mobile providers in Bahrain: Batelco and Vodafone. In 2006, the Telecommunications Regulatory Authority (TRA) announced that it would consider opening a bid for a third license provider and commissioned a study and consumer survey to evaluate market demand. The TRA is currently entertaining bids to provide national fixed wireless services on the 3.5GHz spectrum. In August 2005, the TRA declared that any party interested in operating a WiFi hotspot must obtain a temporary frequency license, available for a period of three months (all other telecommunications licenses in Bahrain are valid for 15 years).

INVESTMENT BARRIERS

Bahrain permits 100 percent foreign ownership of new firms and the establishment of representative offices or branches of foreign companies without local sponsors. Wholly foreign-owned companies may be set up for regional distribution services and may operate within the domestic market as long as they do not exclusively pursue domestic commercial sales. Foreign companies established before 1975 may be exempt from this rule under certain circumstances.

Foreign firms and GCC nationals have been permitted to own land in Bahrain since January 2001. Non-GCC nationals may now own high-rise commercial and residential properties, as well as property related to tourism, banking, financial and health projects, and training centers, in specific geographic areas.

In an effort to streamline licensing and approval procedures, the Ministry of Commerce opened the Bahrain Investors Center (BIC) in October 2004 for both local and foreign companies seeking to register in Bahrain. According to Ministry of Commerce officials, 80 percent of all licenses can be processed and verified within approximately 24 hours, and an additional 10 percent can be processed and verified within five working days. The remaining 10 percent of licenses – related to environmental, power, health, and other important utilities and services – are processed separately and issued on a case-by-case basis.

BOLIVIA

TRADE SUMMARY

The U.S. goods trade deficit with Bolivia was $147 million in 2006, an increase of $73 million from $74 million in 2005. U.S. goods exports in 2006 were $215 million, down 1.9 percent from the previous year. Corresponding U.S. imports from Bolivia were $362 million, up 23.6 percent. Bolivia is currently the 110th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Bolivia in 2005 was $177 million, down from $224 million in 2004.

IMPORT POLICIES

Tariffs

Bolivia has a three-tier tariff structure. Capital goods designated for industrial development may enter duty-free; non-essential capital goods are subject to a 5 percent tariff; and most other goods are subject to a 10 percent tariff.

Non-Tariff Measures

Supreme Decree 27340, dated January 31, 2004, banned the importation of all used clothing. Although the ban was lifted to allow imports of certain used clothing, Supreme Decree 28761, dated June 21, 2006, continued the waiver of the ban only until April 20, 2007, with no possibility of an extension. In the same decree, the Bolivian government renewed its existing bans on old or damaged clothing, intimate apparel and bedding, and the requirement of certificates of disinfection issued at both the place of origin and destination for imports of all permitted used clothing.

U.S. industry reports that permitted imports of used clothing may be subject to non-tariff trade barriers. According to industry, Bolivian customs often disagrees with official invoices, typically asking importers to pay whatever valuation local customs authorities consider “fair value” for the shipment. U.S. officials are continuing to monitor the situation to determine what, if any, barriers exist.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Bolivian government imposes few specific import standards. The National Certification and Standardization Organization is charged with developing Bolivian product standards.

Supreme Decree 26510 established food product labeling requirements in 2003. Products normally retain their original labels, but must have complementary labeling showing the importer’s or distributor’s taxpayer identification number, sanitary registration number and ingredient translations.

GOVERNMENT PROCUREMENT

Since 1999, private (mostly foreign) firms have controlled the most significant of what were once state-owned enterprises, but government expenditures still account for a significant portion of Bolivia’s gross domestic product. The central government, regional governments (at the state and municipal levels) and other public entities remain important buyers of machinery, equipment, materials and other goods and services.

In an effort to encourage local production, the Bolivian government changed its purchasing rules in March 2004, through Supreme Decree 27328 dated January 31, 2004. Government purchases (except insurance contracts) under $20,000 may be made through direct invitation and price comparisons, with a minimum of three quotes. The government is legally required to issue tenders for purchases between $20,000 and $1,000,000. Importers of foreign goods can participate in these procurements only when locally manufactured products and service providers are unavailable or when the Bolivian government fails to award a contract. The government can call for international bids only for purchases between $1,000,000 and $5,000,000. Suppliers submitting bids for purchases over $5,000,000 must comply with specified prerequisites established in bidding documents exclusive to each purchase.

Bolivia is not a party to the World Trade Organization Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In 1999, the Bolivian government established the National Intellectual Property Service (SENAPI) to oversee IPR issues. The organization initiated a USAID-supported restructuring process in early 2003, but as of March 2007, the process remained incomplete.

Copyrights

The 1992 Copyright Law protects literary, artistic and scientific works for the lifetime of the author plus 50 years. The Law protects the rights of Bolivian authors, foreign authors domiciled in Bolivia and foreign authors published for the first time in Bolivia. Foreigners not domiciled in Bolivia enjoy protection under the Copyright Law to the extent provided in international conventions and treaties to which Bolivia is a party. Bolivian copyright protection includes the exclusive right to copy or reproduce works; to revise, adapt or prepare derivative works; to distribute copies of works; and to communicate the work publicly. Although the exclusive right to translate works is not explicitly granted, the Copyright Law does prevent unauthorized adaptation, transformation, modification and editing. The law also provides protection for software and databases.

Patents and Trademarks

SENAPI reviews patent registrations for form and substance and publishes notices of proposed registrations in the Official Gazette; if there are no objections within 30 working days, patents are granted for a period of 20 years.

The registration of trademarks parallels that of patents. Once obtained, a trademark is valid for a 10-year renewable period, but can be cancelled if not used within the three years after it was granted.

Enforcement

The 1992 Copyright Law recognizes copyright infringement as a public offense, and the 2001 Bolivian Criminal Procedures Code provides for the criminal prosecution of IPR violations. Despite these legal protections, IPR enforcement remains insufficient, and Bolivia remains on the U.S. Trade Representative's Special 301 Watch List. There is a continued need for more deterrent penalties to be applied in civil and criminal cases. Border enforcement also remains weak. Video, music and software piracy rates are among the highest in Latin America, with the International Intellectual Property Alliance estimating that piracy levels have reached 90 percent for recorded music. IIPA estimated software piracy rates of 83 percent in 2005.

INVESTMENT BARRIERS

Outside the hydrocarbons sector, foreign investors face few restrictions. The 1990 Investment Law provides for equal treatment of foreign firms and guarantees the unimpeded repatriation of profits, the free convertibility of currency, and the right to international arbitration (limited to contractual rights) in all sectors. Companies must follow the Bolivian commercial code to discontinue operations and repatriate their capital. The Bolivian government continues to discuss a bankruptcy law.

In the mid-1990s, the Bolivian government implemented its capitalization (privatization) program, which differed from traditional privatizations in that funds committed by foreign investors: (a) could only be used to acquire a 50 percent maximum equity share in former state-owned companies; and (b) were directed not to the Bolivian treasury, but to investment funds supporting the national pension system.

Bolivia has signed bilateral investment treaties with several countries, including the United States. The U.S.–Bolivia Bilateral Investment Treaty entered into force in June 2001. The treaty guarantees recourse to international arbitration, which may permit U.S. companies to obtain damages in disputes that cannot be adequately addressed in the Bolivian legal system, where judicial processes can be prolonged, non-transparent and occasionally corrupt.

Article 139 of the Bolivian Constitution stipulates that all hydrocarbon deposits, whatever their state or form, belong to the Bolivian government. No concessions or contracts may transfer ownership of hydrocarbon deposits to private or other interests. The Bolivian government exercises its right to explore and exploit hydrocarbon reserves and trade related products through the state-owned firm Yacimientos Petrolíferos Fiscales Bolivianos (YPFB). The law allows YPFB to enter into joint venture contracts for limited periods of time with national or foreign individuals or companies wishing to exploit or trade hydrocarbons or their derivatives.

Under the 1996 Hydrocarbons Law, the Bolivian government reduced royalties paid to the Bolivian treasury and local governments under existing joint venture contracts and attracted $4.6 billion in new investment, eventually signing 72 shared risk contracts.

In May 2005, the government of Bolivia adopted Hydrocarbons Law 3058, which required investors to migrate to new contracts within 180 days, imposed an additional 32 percent tax on revenues and forced producers to relinquish all hydrocarbons to the state. The law required companies to sell all hydrocarbons through YPFB and to satisfy the domestic market before exporting. Companies must contend with artificially low domestic prices set by the hydrocarbons regulator.

The Bolivian government subsequently issued a May 1, 2006, Supreme Decree "nationalizing" the hydrocarbons sector. The decree generally restated the provisions of the 2005 statute, giving companies six months to negotiate new operating contracts, transferring to the state control over the entire production chain and offering YPFB majority share of five companies, including two with U.S. investment.

All production companies signed new contracts in October 2006, just days before the deadline, and agreed to pay 50 percent in taxes and royalties, plus a varying take for YPFB ranging from zero percent to 32 percent. In late November 2006, the Bolivian Congress approved the new contracts. Separate negotiations between the government of Bolivia and the five companies destined for YPFB takeover continue.

BRAZIL

TRADE SUMMARY

The U.S. goods trade deficit with Brazil was $7.2 billion in 2006, a decrease of $1.9 billion from $9.1 billion in 2005. U.S. goods exports in 2006 were $19.2 billion, up 25.1 percent from the previous year. Corresponding U.S. imports from Brazil were $26.4 billion, up 8.0 percent. Brazil is currently the 13th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Brazil were $5.9 billion in 2005, and U.S. imports were $2.1 billion. Sales of services in Brazil by majority U.S.-owned affiliates were $12.9 billion in 2004 (latest data available), while sales of services in the United States by majority Brazil-owned firms were $461 million.

The stock of U.S. foreign direct investment (FDI) in Brazil in 2005 was $32.4 billion, up from $30.2 billion in 2004. U.S. FDI in Brazil is concentrated largely in the manufacturing, non-bank holding companies, finance, banking and mining sectors.

IMPORT POLICIES

Brazil's average applied tariff rate was 10.73 percent in 2005. Brazil is a member of MERCOSUR, a customs union formed in 1991 and comprised of Argentina, Brazil, Paraguay and Uruguay. Bolivia, Chile, Colombia, Ecuador and Peru have individually become affiliated with MERCOSUR as Associate Members between 1996 and 2004. Venezuela was admitted as a full member in 2005, although the process of completely integrating the Caracas regime into the bloc will take time. Full common external tariff (CET) product coverage scheduled for implementation in 2006 has been delayed. CETs range from zero percent to 35 percent *ad valorem*, with a number of country-specific exceptions. Currently, Brazil maintains its maximum allowable 100 exceptions to the CET. For example, although currently Brazil only imposes a 10 percent tariff on peaches and nectarines, the tariff ceiling is 55 percent.

High CETs significantly impede increased imports of U.S. agricultural products, distilled spirits, and computer and telecommunications equipment. Brazil applies additional import taxes and charges that can effectively double the actual cost of importing products into Brazil. High tariffs on information technology products and components as well as high taxes have led to a large gray market in personal computers. One safeguard measure is in place against toy imports. A number of imports are prohibited, including foreign blood products, all used consumer goods such as machinery, automobiles, clothing, refurbished medical equipment and other consumer goods. A 25 percent merchant marine tax on freight at certain ports puts U.S. agricultural products at a competitive disadvantage to MERCOSUR products. Brazil applies a 60 percent flat import tax on most manufactured retail goods imported by individuals that go through a simplified customs clearance procedure called RTS (simplified tax regime).

Import Licensing/Customs Valuation

All importers must register with the Secretariat of Foreign Trade (SECEX) to access Brazil's "SISCOMEX" computerized trade documentation system. SISCOMEX registration requirements are onerous, including a minimum capital requirement, although a contemplated upgrade to SISCOMEX is expected to cut wait times and streamline operations. In addition, fees are assessed for each import statement submitted through SISCOMEX. Most imports into Brazil are covered by an "automatic import license" regime. Brazil's non-automatic import licensing system includes imports of products that require authorization from specific ministries or agencies; such as beverages (Ministry of Agriculture), pharmaceuticals (Ministry of Health), and arms and munitions (National Defense Ministry). Although a list of products subject to non-automatic import licensing procedures is published on the Brazilian Ministry of Development, Industry and Trade website, specific information related to non-automatic import license requirements and explanations for rejections of non-automatic import license applications are lacking. These measures have made importing into Brazil less transparent and more cumbersome for U.S. exporters.

U.S. companies continue to complain of onerous and burdensome documentation requirements required before certain types of goods can enter Brazil – even on a temporary basis. For example, the Ministry of Health's regulatory agency ANVISA must approve product registrations for imported pharmaceuticals, medical devices, health and fitness equipment, cosmetics, and processed food products. Currently, the registration process at ANVISA takes about three to six months for new versions of existing products, but can take over six months to register products new to the market. Registration of pharmaceutical products can take over one year since ANVISA requires that a full battery of clinical testing be performed in Brazil, regardless of whether or not the drug already has FDA approval. On March 1, 2000, the term of validity for such a registration was shortened. Registration of some medical devices will now require companies to submit economic information, including projected worldwide pricing intentions, according to legislation passed on October 31, 2006. Implementation of such import measures not only delays entry of state-of-the-art U.S. pharmaceutical and medical products into the Brazilian market, it also renders it impossible for U.S. companies to demonstrate new-to-market goods at industry trade shows.

The United States has raised a concern with Brazil that the state of Rio de Janeiro administers the ICMS tax (a value-added tax collected by individual states) in a way that provides a preferential tax advantage to a Brazilian soda ash supplier located within the state. Similarly, some U.S. companies have raised concerns about the arbitrary application of various quotas and non-automatic import licensing procedures, such as authorizations from the Federal Police and the Nuclear Regulatory Agency. For example, Brazil maintains extremely restrictive import quotas and requires non-automatic import license approval for imports of lithium compounds, including lithium carbonate and lithium hydroxide, citing the potential nuclear applications of these products. These products, however, are widely available without restriction in global markets. The United States has raised this issue on numerous occasions, both bilaterally and in the World Trade Organization (WTO), without success because of incomplete responses from Brazil.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Sanitary and Phytosanitary (SPS) Measures

While some progress has been made in the area of sanitary and phytosanitary measures, significant issues remain that restrict U.S. agricultural and food exports. For example, due to concerns about Bovine Spongiform Encephalopathy (BSE), Brazil restricts U.S. exports of low-risk beef without scientific justification and contrary to the World Animal Health Organization. Brazil continues to prohibit the import of poultry and poultry products from the entire United States. Brazil has indicated that these restrictions are based, in part, on an alleged lack of reciprocity. Brazil's ban on durum and white wheat from the states of Washington, Oregon, Idaho, California, Nevada and Arizona due to phytosanitary concerns remains in place. While the United States understands that some of these SPS measures are being rewritten, the ban continues to adversely affect U.S. agricultural exports.

Biotechnology

Brazil's National Congress approved on March 2, 2005, the so-called Biosafety Bill, which replaced the previous legal framework in use since 1995 under which agricultural biotechnology was developed in Brazil. Brazil's President signed the Biosafety Bill, converting it into Law 11,105, on March 24, 2005. This law, which also includes provisions for stem cell research, became effective on March 28, 2005, after its publication in Brazil's official registry (Diario Oficial). Implementing regulations for the law were issued by presidential decree on November 23, 2005.

Although Law 11,105 has improved the quality of public debate on biotechnology in Brazil and provided a frame of reference for judicial proceedings, there are still some outstanding issues. The long-awaited decree allowed the National Technical Commission on Biosafety (CTNBio) to resume its normal operations and to evaluate nearly 500 pending requests for research and commercial approval of biotechnology products in Brazil. However, because of the new composition of CTNBio, including several environmentalists and anti-biotechnology members, the meetings of CTNBio have become deadlocked regarding decisions on research and commercial approvals of new biotechnology products. Other concerns include the application of the labeling regulations for biotechnology products, marketing and transportation restrictions in some states, widespread use of pirated (biotechnology) soybean and cotton seeds, and a pending court case between Monsanto and environmental and consumer non-governmental organizations. Also, on June 22, 2005, the Federal Public Prosecutor filed a lawsuit in Brazil's Supreme Court called Direct Action of Unconstitutionality (ADIN) against the new Biosafety Law. ADIN is a legal instrument based on Brazil's constitution that allows a challenge in the highest court of any law that is considered to be unconstitutional. The challenge is not likely to be resolved for some time, perhaps years.

GOVERNMENT PROCUREMENT

Brazil is not a signatory to the WTO Agreement on Government Procurement, and transparency in Brazil's procurement processes is at times lacking. The U.S. Government has received complaints concerning lack of transparency and preferences for Brazilian products in tenders for government and hospitals, including for domestically-produced medical equipment. Limitations on foreign capital participation in procurement bids reportedly impair access for potential service providers in the energy, construction, security and defense sectors. Brazilian federal, state and municipal governments, as well as related agencies and companies, in general follow a "buy national" policy.

Law 8,666 (1993), which covers most government procurement other than informatics and telecommunications, requires non-discriminatory treatment for all bidders regardless of the nationality or origin of the product or service. However, the law's implementing regulations allow consideration of non-price factors, giving preferences to certain goods produced in Brazil and stipulating local content requirements for eligibility for fiscal benefits.

Decree 1,070 (1994), which regulates the procurement of information technology goods and services, requires federal agencies and parastatal entities to give preferences to locally-produced computer products based on a complicated and nontransparent price/technology matrix. However, Brazil permits foreign companies to compete in any procurement-related multilateral development bank loans and opens selected procurements to international tenders.

EXPORT SUBSIDIES

The government of Brazil offers a variety of tax, tariff and financing incentives to encourage production for export and the use of Brazilian-made inputs in domestic production. For example, Brazil's National Bank for Economic and Social Development (BNDES) provides long-term financing to Brazilian industries through several different programs. The interest rates charged on this financing are customarily lower than the prevailing market interest rates for domestic financing. One BNDES program, FINAME, provides capital financing to Brazilian companies for, among other things, expansion and modernization projects as well as acquisition or leasing of new machinery and equipment. One goal of this program is to support the purchase of domestic over imported equipment and machinery. These programs can be used for financing capacity expansions and equipment purchases in industries such as steel and agriculture.

On November 21, 2005, Brazil's President signed Law 11,196 which contains provisions originally included in Provisional Measures (MP) 255/2005 and 252/2005 (commonly referred to as MP do Bem) that provide tax benefits to qualifying exporters. The law's Special Regime for the Information Technology Exportation Platform suspends certain social taxes imposed by the federal government (PIS/PASEP and COFINS) on goods and services imported by companies that commit to export software and information technology services to the extent that those exports account for over 80 percent of annual gross income. The MP's Special Regime for the Acquisition of Capital Goods by Exporting Enterprises (RECAP) suspends these same taxes on new machines, instruments and equipment imported by companies that commit for a period of at least three years to exports goods and services such that they account for at least 80 percent of overall gross income.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Patents and Trademarks

Brazil's industrial property law (Law 9,279/1996) became effective in May 1997. Concerns continue about a provision in the law that prohibits importation as a means of satisfying the requirement that a patent be "worked" in Brazil. This issue was the subject of a U.S. dispute settlement proceeding at the WTO, which was terminated without prejudice in June 2001.

The dispute was terminated based on Brazil's commitment to provide advance notice to, and hold consultations with, the United States should it deem it necessary in the future to grant a compulsory license for failure to work a patent.

Invoking TRIPS provisions, Brazil has at times threatened to issue compulsory licenses for anti-retrovirals used in treating HIV/AIDS if satisfactory supply agreements, including a reduction in prices, could not be reached with patent-holders. To date, Brazil has not issued such a license. Law 10,196 (2001) includes some problematic provisions, including a requirement that ANVISA approval be obtained prior to the issuance of a pharmaceutical patent. This raises a concern with respect to Article 27 of the TRIPS Agreement, which U.S. officials have communicated to Brazilian counterparts, and has contributed to a backlog in patent issuance.

In an effort to reduce the backlog of pending patent and trademark applications, Brazil's National Institute for Industrial Property (INPI) is hiring new patent and trademark examiners. In mid-2006 INPI instituted a new system of streamlined, paperless processing for trademarks, which it expected would enable it to substantially reduce its earlier backlog of six years (i.e., 600,000 cases) to one year. Meanwhile, on patents INPI estimates its backlog stands at 130,000 applications. That agency expects that by hiring more examiners and increasing training, it will be able to reduce its current backlog of 130,000 applications to 40,000 (representing about a four year wait) in three years. The U.S. Patent and Trademark Office is working with INPI to help that agency in its modernization efforts.

The U.S. Government has also received complaints that unauthorized copies of pharmaceutical products have received sanitary registrations that rely on undisclosed tests and other confidential data, raising concerns of consistency with TRIPS Article 39.3.

Law 10,603 (2002) on data confidentiality covers pharmaceuticals for veterinary use, fertilizers, agrotoxins and their components, and related products. The law does not cover pharmaceuticals for human use. If the product is not commercialized within two years of the date of sanitary registration, third parties may request use of the data for registration purposes.

Brazil has recently announced its intention to accede to the Madrid Protocol instrument of WIPO, with confirmation pending in the Chamber of External Commerce (CAMEX). Once confirmed with CAMEX, participation in the Protocol could be finalized between 2008 and 2009. The objective is to reduce tariffs on registering Brazilian trademarks in the 78 member countries of WIPO.

Copyrights

Brazil's Law 9,610 (1998) on copyrights included changes intended to bring Brazil into compliance with the Berne Convention and TRIPS. A 1998 software law protects computer programs for 50 years as "literary works" and makes software infringement a fiscal and an intellectual property crime. Brazil is not a party to the World Intellectual Property Organization Treaties on Copyright, and Performances and Phonograms.

Piracy remains a serious problem, although Brazilian authorities, working closely with rights holders, have made considerable progress to improve the county's enforcement record. The International Intellectual Property Alliance (IIPA) estimated losses due to piracy of copyrighted materials in Brazil totaled at least $957.3 million in 2005. The U.S. Government has engaged intensively with the Brazilian government on copyright enforcement as a result of the review of Brazil's benefits under the Generalized System of Preferences trade program, which was prompted by an IIPA petition charging that Brazil had failed to offer adequate protection to copyrighted materials. Intensive coordination and consultation on IPR issues led to the development of an extensive national plan to combat piracy and a marked increase in enforcement. The U.S. Government terminated this GSP review in January 2006.

SERVICES BARRIERS

Telecommunications

The telecommunications sector was privatized following the passage of the 1997 General Telecommunications Law, but has presented some regulatory challenges. In the fixed-line sector, for example, interconnection charges and other incumbency advantages have provided strong barriers to entry, and the companies created during a transitional duopoly stage have not fared well.

Brazil has not yet ratified its original WTO basic telecommunications commitments. In 2001, Brazil withdrew its schedule of commitments because of concerns raised by certain WTO Members that it maintained the legal prerogative of the Executive Branch to limit foreign participation in this sector, thereby creating significant uncertainty for investors. This legal prerogative is contained in Brazil's 1997 General Law on Telecommunications and is inscribed in Brazil's constitution. While Brazil has not pursued the constitutional change required to allow a revision of its offer to open up this sector, the current regulatory environment generally reflects the obligations contained in the WTO Basic Telecommunications Reference Paper.

Audio Visual Services

Brazil limits foreign ownership of cable and media companies, and has some restrictions on foreign programming contents. Foreign ownership of cable companies is limited to 49 percent, and the foreign owner must have a headquarters in Brazil and have had a presence in the country for the prior 10 years. Foreign cable and satellite television programmers are subject to an 11 percent remittance tax. The tax, however, can be avoided if the programmer invests 3 percent of its remittances in co-production of Brazilian audio-visual services. National cable and satellite operators are subject to a fixed title levy on foreign content and foreign advertising released on their channels. Law 10,610 (2002) limits foreign ownership in media outlets to 30 percent, including the print and "open broadcast" (non-cable) television sectors. Brazil's legislature is considering extension of this restriction to cover Internet Service Providers, pay TV channels and operators, and content producers and distributors. Such a change would pose a serious threat to a number of U.S. companies operating in Brazil as content producers/distributors. Open television companies are also subject to a regulation requiring that 80 percent of their programming content be domestic in origin.

Law 10,454 (2002) aims to promote the national film industry through creation of the National Film Agency and through various regulatory measures. The law imposes a fixed title levy on the release of foreign films in theaters, foreign home entertainment products and foreign programming for broadcast television.

Remittances to foreign producers of audiovisual works are subject to a 25 percent income withholding tax. Brazilian distributors of foreign films are subject to a levy equal to 11 percent of their withholding taxes. This tax, called the CONDECINE (Contribution to the Development of a National Film Industry), is waived for the Brazilian distributor if the producer of the foreign audiovisual work agrees to invest an amount equal to 70 percent of the income withholding tax on their remittances in co-productions with Brazilian film companies. The CONDECINE tax is also levied on any foreign cinematographic or video phonographic advertisement. The fee may vary according to the advertising content and the transmission segment.

Brazil also requires that 100 percent of all films and television shows be printed locally, and pending legislation would impose local dubbing and subtitling obligations. Importation of color prints for the theatrical and television markets is prohibited. Theatrical screen quotas for local films exist. Quotas on domestic titles for home video distributors, while not currently enforced, present another potential hindrance to commerce. If passed, a new rule would mandate that Pay-TV channels transmit election ads produced by political parties during prime time hours.

Express Delivery Services

A bill (PL 1491/99) that would reorganize the National Postal System, thought to be a potential threat to U.S. express delivery businesses, has been under consideration in the Brazilian Congress since 1999. The proposal, as it stands now, would create a regulatory agency for postal services as well as a new Postal Company of Brazil, owned and operated by the federal government. Although the bill would end the government monopoly over postal services after a ten-year period, it would also create a monopoly on the delivery of certain types of correspondence and parcels that are not now subject to regulation, such as express delivery packages, thereby significantly inhibiting market access by U.S. firms. The Lula Administration has sent a message to the Brazilian Congress requesting that the bill be withdrawn, but to date the Brazilian Congress has not acted on this request. Brazil applies a 60 percent flat import tax on most manufactured retail goods imported by individuals that go through a simplified customs clearance procedure called RTS (simplified tax regime) that is used by express delivery services. This flat tax substantially increases the cost to consumers of using express delivery services. Brazilian Customs has stated its intent to review the 60 percent flat tax as it moves forward with its current modernization efforts.

Financial Services

Brazil has not yet ratified its commitments from the 1997 Financial Services negotiations (known as the Fifth Protocol) or taken the necessary steps to make them binding under the General Agreement on Trade in Services. Brazil is South America's largest insurance market and earnings from premiums have grown rapidly in recent years. In 1996, Brazil eliminated the distinction between foreign and domestic capital, and many major U.S. firms have since entered the market mainly via joint ventures with established companies. Foreign participation, however, is limited to 50 percent of the capital of a company and to one third of its voting stock. Brazil’s Insurance Regulator (SUSEP) publishes all insurance regulations in advance for public comment, using the Internet as the primary means of dissemination of information. Licensing is an administrative act in Brazil and there is no legally stipulated maximum period for licensing. Insurers may be authorized to operate as life or non-life insurers or in both sectors, and the market largely comprises composite company structures. Insurers authorized exclusively to write life business may also sell pension plans.

Brazil maintains a government-owned reinsurance monopoly through the Brazil Reinsurance Institute (IRB). In early 2000, CNSP passed regulations allowing private companies to transact reinsurance in Brazil, which would also transfer IRB's self-regulatory functions to the insurance regulator (SUSEP). However, the then-opposition Workers' Party challenged the constitutionality of the law, and the Supreme Court upheld the relevant injunction in October 2002. On September 15, 2004, the Brazilian Supreme Court overruled the Indirect Petition of Unconstitutionality (Acao Indireta de Inconstitucionalidade - ADIN) which had been brought by the PT. This decision opens the door for privatization of the IRB and liberalization of the insurance sector, at the same time permitting SUSEP to assume complete regulatory and supervisory authority. However, IRB has recently issued new and stricter rules governing the cession of risks abroad effective January 1, 2005, which could impact the global arrangements of multinationals in Brazil. This new policy leads many to feel that little will change in the immediate future, and that new legislation will be required to fully privatize the reinsurance market. Even if liberalization does take place, it seems unlikely that IRB's predominance in the Brazilian reinsurance market will change immediately, although its self-regulatory role may change.

Cross-border supply of insurance services is not allowed. The IRB may, however, authorize insurance to be bought outside Brazil if coverage is not available in the country, the risk is deemed not convenient to the national interest, or if the insurance is for vessels with Special Brazilian Registry, provided the price is lower outside Brazil. In order for a Brazilian shipping company to obtain foreign hull insurance, they must submit information to IRB demonstrating that the foreign insurance policy is less expensive than that offered by Brazilian insurers. Brazilian importers must obtain cargo insurance from insurance firms resident in Brazil, although the firms may be foreign-owned.

Service trade opportunities in some sectors have been affected by limitations on foreign capital participation. Brazil's constitution precludes the expansion of foreign-owned banks until new financial sector legislation is issued. For practical reasons, the required legislation has not been issued, but Brazil’s President has the authority to authorize new foreign participants on a case-by-case basis. In practice, Brazil has approved the great majority of foreign service suppliers to enter the market or expand existing operations. United States financial service suppliers have established significant operations in Brazil. As of June 2005, foreign-owned or controlled assets accounted for 27.8 percent of Brazil's total banking sector equity.

INVESTMENT BARRIERS

In addition to restrictions discussed above, foreign investment is restricted in internal transportation, public utilities, media and other "strategic industries." Foreign ownership of land adjacent to national borders remains prohibited under Brazilian law, unless approved by Brazil's National Security Council. Despite investment restrictions, U.S. and other foreign firms have major investments in Brazil, with the United States accounting for more than one-third of total foreign investment. There is neither a bilateral investment treaty nor a treaty on the avoidance of double taxation between the United States and Brazil.

Energy

In 2004, Brazil began implementing new energy legislation to restructure the power generation and distribution sector. The new legislation gives the state a leading role in determining, for example, how much new power capacity is needed based on forecasts by an independent Energy Research Institute, which was created in 2005. The new model separates into two different competition groups power generators that have not yet amortized their investments (new energy) and those that have (old energy), based on whether a facility had been built by a certain cut-off date. This dual-pool structure has disadvantaged some U.S. companies that invested in the sector during privatization in the late 1990s and whose investments have not been amortized, but which are nevertheless included in the old energy pool. The Brazilian government is still in the midst of implementing the new model.

With regard to the electrical energy sector, a recent study by specialized sector marketing company, Comerc, projects that the cost of contracting electrical energy will increase by 88 percent over the next four years, causing a corresponding increase in the price passed on to consumers of all categories – residential, commercial and industrial. It can be extrapolated that U.S. direct investors would experience increases in energy-related production costs in country.

CAMBODIA

TRADE SUMMARY

The U.S. goods trade deficit with Cambodia was $2.1 billion in 2006, an increase of $417 million from $1.7 billion in 2005. U.S. goods exports in 2006 were $74 million, up 7.0 percent from the previous year. Corresponding U.S. imports from Cambodia were $2.2 billion, up 23.9 percent. Cambodia is currently the 138th largest export market for U.S. Goods.

The stock of U.S. foreign direct investment (FDI) in Cambodia in 2005 was $1 million, the same as in 2004.

In July 2006, Cambodia signed a Trade and Investment Framework Agreement (TIFA) with the United States that is intended to promote greater trade between and investment in the two countries, as well as to provide a forum to address bilateral trade issues and coordinate on regional and multilateral issues.

IMPORT POLICIES

Tariffs

Cambodia and the United States signed a Bilateral Trade Agreement (BTA) in October 1996. The agreement provides for reciprocal normal trade relations (NTR) tariff treatment. Cambodia acceded to the WTO in October 2004.

In January 2004, Cambodia launched a new customs tariff schedule that implements both the Harmonized System of Commodities Description and Coding System (HS) and ASEAN Harmonized Tariff Nomenclature (AHTN). Under the Common Effective Preferential Tariff (CEPT) scheme of the ASEAN Free Trade Agreement (AFTA), Cambodia will reduce or eliminate customs import duties on most AFTA-origin products by January 2015. Cambodia's MFN tariffs fall into roughly five bands: 0 percent, 7 percent, 15 percent, 35 percent and 40 percent; the simple average rate is below 20 percent.

Non-Tariff Barriers

Import prohibitions: Cambodia currently prohibits the commercial importation of the following products: narcotics, psychotropic substances and their precursors, toxic wastes and poisonous chemicals and substances, and pesticides.

Quantitative restrictions and non-automatic licensing: Some goods are subject to import restrictions and importers are required to have approval from relevant government agencies depending upon the nature of goods. For example, imports of pharmaceutical products are subject to prior permit from the Ministry of Health. Importers also need to secure import licenses from the Ministry of Agriculture, Forestry and Fishery for imports of agricultural inputs such as fertilizer and live animals and meat. Imports of weapons, explosives and ammunition require a license from the Ministry of Defense, while the National Bank of Cambodia approves imports of precious stones.

Foreign Exchange System: Although the riel is the official currency of Cambodia, the economy is heavily dollarized. Most commercial transactions are conducted in dollars. Under the Exchange Law of 1997, foreign direct investors are allowed to purchase foreign currencies freely through the banking system. The law specifically states that there shall be no restrictions on foreign-exchange operations, but the transactions must be conducted by authorized intermediaries; i.e., lawfully established banks in Cambodia. These banks are required to report to the National Bank of Cambodia all transactions in excess of $10,000. The Council of Ministers approved a draft Anti-Money Laundering Law on August 14, 2006 and it is expected to be ratified by the National Assembly in 2007.

Customs: Cambodia is in the process of reforming its customs regime through a five-year (2003–2008) reform and modernization program to streamline and improve the effectiveness of customs operations and to facilitate trade. With assistance from the International Monetary Fund (IMF), a revised Law on Customs has been drafted and is awaiting National Assembly approval. As part of its WTO accession commitments, Cambodia will implement the WTO Customs Valuation Agreement by January 2009.

Although Cambodia has implemented some reforms, customs procedures remain complicated. Both local and foreign businesses have complained that the Customs and Excise Department generally engages in practices that are non-transparent and that often appear arbitrary. Importers frequently cite problems with undue processing delays, excessive paperwork and formalities driven by excessively discretionary practices.

On October 10, 2006, the new customs system was launched by the Customs and Excise Department in cooperation with United Nations Conference on Trade and Development. The reform has shortened the time and cost of importation from 55 days in 2005 to 45 days in 2006. Export processing time has been reduced from 43 days in 2005 to 36 days in 2006. In early 2007, the Single Administrative Document will be implemented under a pilot program in Sihanoukville port and is expected to further decrease processing time for imports and exports.

Taxation: Cambodia levies a 10 percent VAT on goods and services. In theory, the VAT is to be applied to all goods and services, but in practice the Cambodian Government has first imposed the VAT on major companies. It is now expanding the base to which the VAT is applied.

The corporate tax rate is within the range of 20 percent to 30 percent depending on the nature of business. A concessional tax rate, or exemption, will be applied for those firms granted a tax-exempt period. Resident branches of overseas companies or banks are taxed at 20 percent. The Cambodian Government also applies a withholding tax of 14 percent on dividends, royalties, rents and interests.

STANDARDS, TESTING, LABELLING AND CERTIFICATION

Standardization is at an early stage in Cambodia and only partially regulated. The country currently has no body of law governing standards for traded goods. The sub-decree on Industrial Standards, passed in 2001, provided the basis for rules and procedures for adopting a new standard, technical regulations and conformity assessment procedures. The Law on Industrial Standards is in draft form.

Cambodia is currently working on the establishment of standards and other technical measures based on international standards, guidelines and recommendations. The United Nations Industrial Development Organization (UNIDO) is presently providing assistance to the Department of Industrial Standards of Cambodia (ISC) of the Ministry of Industry, Mines, and Energy (MIME) in creating a new product certification scheme conforming to the requirement of ISO/IEC Guide 65.

Quality control of foodstuff, plant and animal products is under the Department of Inspection and Fraud Repression (CamControl) of the Ministry of Commerce. CamControl is the national contact point for Codex Alimentarius. Its primary responsibility is the enforcement of quality and safety of products and services relating to sanitary and phytosanitary (SPS) measures through the establishment of standards and labeling requirements. Cambodia has not yet notified the WTO of its official SPS inquiry point.

The responsibility for establishing industrial standards and certifications resides with the ISC of the Ministry of Industry, Mines, and Energy. The ISC has been assigned as the inquiry point for technical barriers to trade (TBT) and as the agency responsible for notifications and publications required by the WTO TBT Agreement. The Ministry of Health is charged with prescribing standards, quality control, distribution and labeling requirement for medicines.

The Ministerial Regulation on Measures Against Food Products Devoid of Appropriate Label requires detailed labeling of food products circulated in Cambodia. For many products, it is mandatory to have labeling, instructions or warnings in Khmer language. Enforcement of this regulation remains weak and inconsistent.

Cambodia maintains a pre-shipment inspection system for quality control. Societé Generale de Surveillance (SGS) may inspect the quality of any goods shipped into the country.

Cambodia fully implemented the WTO TBT Agreement in January 2007 and was given a transitional period to fully implement the SPS Agreement by January 2008. Cambodia implemented a "Risk Management Strategy" for inspection of imported and exported goods in late 2006. The United States and Cambodia discussed progress being made to implement these commitments during TIFA consultations in February 2007 and Cambodia provided an update on the steps taken to date. The United States will continue to work with Cambodia to monitor implementation of these commitments through this ongoing dialogue.

Cambodia joined the International Organization for Standardization (ISO) in 1995 and is also a member of Codex Alimentarius, the World Organization for Animal Health, the International Plant Protection Convention, and the ASEAN Consultative Committee on Standards and Quality (ACCSQ). Cambodia has ratified the ASEAN Framework Agreement on Mutual Recognition Arrangements.

GOVERNMENT PROCUREMENT

Cambodia is not a signatory to the WTO Agreement on Government Procurement. Cambodia's government procurement regime is governed by a sub-decree issued in 1995. Under the sub-decree, Cambodia's procurement policies are open and well-defined. The sub-decree requires that all international purchases over 200 million riel ($50,000) for civil work and 100 million riel ($25,000) for goods must be made through public tender. The public tender will also be applied to domestic purchases below 200 million riel for civil works projects and 100 million riel for goods. Both international and domestic bidding is open to all interested bidders through public advertisement.

While Cambodia has clear regulations pertaining to government procurement, the conduct of procurement is often non-transparent. The Cambodian government often provides short time frames to respond to public announcements of tenders which frequently are not widely publicized.

EXPORT SUBSIDIES

The Cambodian government uses preferential tax incentives to attract investment and promote exports. Currently, Cambodia does not maintain programs for direct support to agriculture. The 1994 Law on Investment, amended in 2003, grants incentives and privileges including the exemption, in whole or in part, of customs duties and taxes to qualified investment projects (QIP), which refers to investment projects that have received a Final Registration Certificate issued by the Council for the Development of Cambodia.

The investment law provides an import duty exemption for construction materials, production equipment and production inputs used by export QIPs and domestic QIPs. Supporting QIPs are also entitled to the exemption, but the QIPs are required to pay customs duties and taxes on production inputs for the quantity that has not been supplied to the export industry or directly exported after review.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Cambodia has adopted legislation concerning IPR protection, including the Law on Copyrights and Related Rights and Patent and Industrial Designs. Cambodia became a member of the World Intellectual Property Organization (WIPO) in 1995 and became a member of the Paris Convention for the Protection of Industrial Property in 1998.

Cambodia is making progress in implementing the WTO TRIPS Agreement, but comprehensive enforcement remains problematic. The 1996 BTA contained a broad range of IPR obligations, which the Cambodian government is phasing in. The United States Government intends to continue work with Cambodia through the TIFA dialogue to assist in the full implementation of WTO and BTA commitments on IPR.

The Cambodian government has taken law enforcement action against the piracy of domestically-produced music or video products but not against piracy of foreign optical media. Cambodian copyright law allows IPR rights holders to file a complaint with the authorities to take action. However, rights holders requesting crackdowns on IPR pirating operations must pay support costs to the authorities for conducting the operations.

Trademarks

In 2002, the National Assembly passed a trademark law to implement Cambodia's TRIPS obligations. The law outlines specific penalties for trademark violations, including jail sentences and fines for counterfeiting registered trademarks. It also contains detailed procedures for registering trademarks, invalidation and removal of trademarks, licensing of trademarks, and infringement and remedies.

The Ministry of Commerce has taken effective action against trademark infringement in several cases since 1998. The Ministry has ordered local firms to stop using well-known U.S. trademarks. The Ministry of Commerce maintains an effective trademark registration system, registering more than 10,000 trademarks (over 2,900 for U.S. companies) under the terms of a 1991 sub-decree, and has proven cooperative in preventing unauthorized individuals from registering U.S. trademarks in Cambodia.

At least one U.S. company has brought legal action to protect its trademarks in Cambodia. The case reached the Supreme Court in Phnom Penh but the final ruling led to an ambiguous outcome that failed to provide clear protection of the company's trademark. The Phnom Penh Municipal Court handed down Cambodia's first trademark conviction in March 2006.

Patents and Industrial Designs

Cambodia has a very small industrial base and infringement of patents and industrial designs is not yet commercially significant. With assistance from WIPO, the Ministry of Industry, Mines and Energy (MIME) prepared a draft of a comprehensive law on the protection of patents and industrial designs in

April 1999. The National Assembly adopted the law and it entered into force in January 2003. The law provides for the filing, registration, and protection of patents, utility model certificates and industrial designs. The MIME has also issued a sub-decree on granting patents and registering industrial designs.

Cambodia has not yet made significant progress in legislating commitments undertaken in its bilateral agreement with the United States on Trade Relations and Intellectual Property Rights Protection in the areas of encrypted satellite signals, semiconductor layout designs, and trade secrets. The United States will continue to work with Cambodia to implement these commitments.

Copyrights

Cambodia enacted a copyright law in January 2003. Responsibility for copyrights is shared between the Ministry of Culture, which handles phonograms, compact discs (CDs), and other recordings; and the Ministry of Information, which deals with printed materials. Although Cambodia is not a major center for the production or export of pirated CDs, videos, and other copyrighted materials, these products are widely available in Cambodian markets. Pirated computer programs, digital video discs (DVDs), and music CDs are widely used throughout the country.

SERVICES BARRIERS

Foreign participation in the services sector is generally not restricted. Cambodia's legislation regarding the services sector has generally complied with the principles and provisions of the General Agreement on Trade in Services (GATS). Cambodia provides market access or national treatment for the cross-border supply, consumption abroad, and commercial presence of almost all services.

Accounting, Consulting and Tax Services

Cambodia provides market access and national treatment to foreign firms providing accounting, auditing and taxation services. Major international accounting and consulting firms operate in Cambodia.

Legal Services

According to the Cambodian Law on the Bar adopted in 1995, foreign lawyers can only practice domestic law in commercial association with Cambodian law firms and cannot directly represent clients in court, conduct activities to attract clients, or publish commercial advertisements.

Telecommunications Services

Private participation in mobile services, e-mail, electronic data interchange and code and protocol conversion are allowed and national treatment is accorded. In addition, Cambodia is committed to permitting licensed suppliers of mobile communications services to choose which technology to use for such services.

Cross-border supply for fixed-line voice telephone services, circuit-switched data transmission and private leased circuit services is provided exclusively by Telecom Cambodia. This restriction will be eliminated by January 2009 at which time foreign participation of up to 49 percent equity will be allowed. Cambodia is taking steps to create an independent regulatory body.

Courier Services

Cambodia does not restrict foreign ownership or participation for courier services. However, in 2006 Cambodia issued new regulations for the courier sector which included new licensing procedures and fees. U.S. providers of courier services have raised concerns with the United States and Cambodian Governments regarding this new regulation. Through discussions, several problematic provisions of earlier drafts were resolved; however, U.S. providers remain concerned that the Ministry of Posts and Telecommunications, a competitor in the field, has been established as the licensing authority under this regulation. Fees associated with the licensing are also high and, in U.S. industry's view, are not set at a reasonable level. The United States will continue to discuss this regulation with the Cambodian government under our TIFA.

Audiovisual Services

Cambodia does not prohibit foreign firms from distributing foreign films and videotapes. However, weaknesses in IPR enforcement have undermined the anticipated benefits of this policy.

Distribution Services

No limitation on market access or national treatment is imposed on foreign firms *i.e.,* wholesale trade and retailing services. Like other business activity, foreign firms are required to register with the Ministry of Commerce to obtain a business license.

Educational Services

Cambodia faces a shortage of qualified teachers and is in need of international-quality educators and education. Foreign participation in educational services is not restricted. Currently there are several foreign-owned schools in Phnom Penh.

Insurance Services

Licensed insurance companies including foreign companies can provide all types of insurance products. Cambodia's insurance sector is governed by the Law on Insurance of 2000. Several foreign insurance companies operate in Cambodia.

Banking services

Cambodia allows foreign banks to operate as either 100 percent foreign-owned subsidiaries or as branches. The 1999 Law on Banking and Financial Institutions and subsequent regulations guarantee foreign banks rights and obligations equal to local banks. The law imposes no restrictions on foreign ownership of banks. There are a few foreign bank subsidiaries operating in Phnom Penh.

Health-Related Services

Commercial presence, foreign ownership and management of private hospitals and clinics is permitted as long as at least one director for technical matters is Cambodian. Foreign firms are allowed to provide dental services through joint ventures with Cambodian legal entities.

Tourism and Travel-Related Services

Tourism is one of the most important sectors of the country's economy. Cambodia does not restrict foreigners' participation in this sector. Foreign companies may establish a commercial presence to operate hotels, restaurants, travel agencies, and tour operator services, provided that they register with the Ministry of Commerce for business licenses.

INVESTMENT BARRIERS

Although demonstrating modest improvement, Cambodia's investment climate remains poor. The World Economic Forum's 2006 competitiveness survey ranked Cambodia 103 out of 125 countries surveyed, up from 112 of 117 countries last year. The World Bank also ranked Cambodia near the bottom of the list, 133 out of 155, on business climate. Nevertheless, foreign direct investment (FDI) has sharply increased compared to 2004. Approved investment jumped to $378 million in 2005 from $61 million in 2004. The stock of U.S. investment in Cambodia was estimated to be $4.3 million in 2005.

The Cambodian Government actively solicits foreign private investment to boost its economic development. Cambodia's 1994 Investment Law, amended in 2003, is liberal and accords national treatment to all foreign investors but the Constitution restricts foreign ownership of land. Foreign investors may use land through concessions, unlimited long-term land leases and renewable limited short-term leases.

Cambodia has one of the most liberal and competitive investment laws in the region, but potential investors are often deterred by excessive bureaucracy and corruption. Cambodia has the potential for business investment in almost all sectors. The Cambodian Government particularly encourages investment in agriculture and agro-processing industries, environmental protection, export-oriented industries, tourism and infrastructure.

Cambodia has attempted to boost foreign investment through reforms intended to improve the investment climate. Through its biannual Government-Private Sector Forum, Cambodia has reduced business registration fees from $635 to $177 and decrease the registration period from 30 days to 10.5 days. Other reforms are under way to improve the business environment, including a World Bank-funded trade facilitation reform program.

ELECTRONIC COMMERCE

Electronic commerce is a new concept in Cambodia. Online commercial transactions are extremely limited and Internet access is still in its infancy. No legislation exists to govern these sectors but no specific restrictions on products or services traded via electronic commerce have been imposed.

The exclusive right to operate a Voice over Internet Protocol (VoIP) service has been granted to one local company.

OTHER BARRIERS

Corruption and Governance

Corruption is pervasive throughout the Cambodian government and business sector. In 2005, Transparency International ranked Cambodia 139 out of 159 countries surveyed for graft. Both foreign and local businesses have identified corruption in Cambodia as a major obstacle to business and a deterrent to FDI.

Prime Minister Hun Sen has publicly emphasized the need to fight corruption and has acknowledged that corruption takes a toll on economic performance and poverty alleviation. During the National Conference on Good Governance in December 2004, he described the country's governance problem as "a landmine buried in Cambodia's path towards reform". Cambodia undertook efforts to draft and enact anti-corruption legislation in 2004. To date, the law remains in draft form and is delayed by the pending revision of the penal code.

Judicial and Legal Framework: Cambodia's legal framework is incomplete and unevenly enforced. Many business-related draft laws are still pending. The judicial system is often arbitrary and subject to corruption. Many Cambodian and foreign business representatives perceive the court system to be unreliable and susceptible to external political and commercial influence, which constitutes one of the most serious legal risks that investors face. Most commercial disputes are solved by negotiations facilitated by the Ministry of Commerce, Cambodian Chamber of Commerce and other concerned institutions.

The Cambodian government plans to establish a commercial court, independent of other courts, in 2007.

Smuggling: Widespread *s*muggling of commodities such as vehicles, fuel, soft drinks and cigarettes has undermined fair competition, legitimate investment, and government revenue. The Cambodian Government has issued numerous orders to suppress smuggling and created various anti-smuggling units within governmental agencies, particularly the Department of Customs and Excise. Enforcement efforts remain weak and inconsistent.

CAMEROON

TRADE SUMMARY

The U.S. goods trade deficit with Cameroon was $154 million in 2006, an increase of $113 million from $41 million in 2005. U.S. goods exports in 2006 were $120 million, up 2.4 percent from the previous year. Corresponding U.S. imports from Cameroon were $274 million, up 73.2 percent. Cameroon is currently the 127th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Cameroon in 2005 was $279 million, up from $265 million in 2004.

IMPORT POLICIES

Tariffs

Cameroon is a Member of the World Trade Organization (WTO) and the Central African Economic and Monetary Community (in French, CEMAC), which includes Gabon, the Central African Republic, the Republic of Congo, Chad, and Equatorial Guinea. CEMAC countries have a common currency managed by a regional Central Bank, share a common financial, regulatory, and legal structure, and maintain a common external tariff on imports from non-CEMAC countries. In theory, tariffs have been eliminated within CEMAC, and only a value-added tax should be applied to goods traded among CEMAC members. There has been some delay, however, in fully achieving this goal, and currently both customs duties and value-added taxes are being assessed on imports within CEMAC. Trade levels between Cameroon and its neighbors are small compared to the trade flows between Cameroon and its principal trading partners in Europe.

The simple average of CEMAC's common external tariff (CET) is 18.4 percent. The CET is assessed through four tiers of tariff rates: 5 percent for essential goods, 10 percent for raw materials and capital goods, 20 percent for intermediate goods, and 30 percent for consumer goods. In addition, there are other taxes assessed on imports that can vary according to the nature of the item, the quantity of the particular item in the shipment, and even the mode of transport. As a result, average customs charges are, in reality, much higher. To improve customs revenue collection, the Cameroonian government has contracted with a Swiss company to assess and collect customs duties. All shipments, including any type of charitable donation or material, are subject to the customary import duties and fees unless written exoneration is obtained prior to shipment.

Non-Tariff Measures

Importers are required to register with the local Ministry of Trade and to notify the customs collection contractor of all imports. Export-import companies must register with, and secure a taxpayer's card from, the Ministry of Economy and Finance prior to registering with the Ministry of Trade. Contractors importing equipment and supplies related to public contracts may obtain a duty exemption from the Ministry of Economy and Finance when the duties would count as part of the government investment in the project. CEMAC has no regional licensing system. Agents and distributors must register with the government, and their contracts with suppliers must be notarized and published in the local press.

Cameroon requires a commercial invoice and a bill of lading for all imported goods. Three copies of the invoice are necessary for surface shipments, and four copies are needed for air shipments. The importer must also present a written approval certificate acknowledging that the business operator is an exporter or an importer and/or an exemption, if appropriate. Documentation of bank transactions is required if the value of the imported goods exceeds FCFA2 million (approximately $4,000). This is also true for pre-shipment inspection certificates, which require a "clean report of findings" from the customs collection contractor. For certain imports, such as used clothing, certificates of non-infestation are also required. A service fee of FCFA25,000 (approximately $50) is required for imported second-hand automobiles. All documents must be submitted within 48 hours of a shipment's arrival.

Cameroon is engaging in questionable customs practices, including assessing duties on its own estimated cost of production, rather than the actual purchase price, for three commonly subsidized goods -- beet sugar, flour, and metal rebar. This practice raises questions with respect to Cameroon's commitments under Articles 1-6 of the WTO Customs Valuation Agreement. Although the government has tried to speed customs clearance, customs fraud is still a major problem, and protracted negotiations with customs officers over the value of imported goods are common.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Department of Price Control, Weights and Measures is officially responsible for the administration of standards. Labels must be written in both French and English, and must include the country of origin as well as the name and address of the manufacturer. The pre-shipment inspection contractor may inspect the quality of any goods shipped into the country. In the absence of any specified domestic norm or standard, international norms and standards apply. In practice, most imports are admitted into the country without the need to meet specific standards.

GOVERNMENT PROCUREMENT

Cameroon is an observer, but not yet a member of the WTO Agreement on Government Procurement. The Government Procurement Regulatory Board administers public sector procurement. Local companies are gradually losing their preferential price margins and other preferential treatment with regards to government procurement and development projects. As part of its economic reform program, the government published more open tender announcements, set up independent monitors for large government contract awards, and instituted frequent audits of tender awards. In June 2006, the government committed to begin assessing its procurement system against World Bank criteria and to ensure effective application of a law barring participation of persons or companies who have broken procurement rules. A computerized public contract-tracking system is scheduled to be launched on the Public Procurement Regulatory Agency's website in 2007.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Cameroon is a member of the World Intellectual Property Organization and is a party to the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, and the Patent Cooperation Treaty. IPR enforcement is problematic due to the cost of enforcement and a less advanced understanding of intellectual property rights among some government officials and the populace. A few firms, including some from the United States, have complained of piracy but have found little practical legal recourse to enforce their intellectual property rights. Cameroonian artists' organizations have publicly complained about lax enforcement of copyright and related rights and have generated substantial public discussion on the importance of protecting intellectual property rights through vocal campaigns highlighting the damaging effect of widespread music piracy.

Yaounde, the capital of Cameroon, is also the headquarters for the 14-nation Africa Intellectual Property Organization (known by its French acronym OAPI), which offers patent and trademark registration.

SERVICES BARRIERS

Telecommunications

Cameroon has eliminated many restrictions on foreign trade in services and is gradually privatizing its telecommunications sector. Two mobile telephone firms, South African MTN and French Orange, currently operate in Cameroon, and state-owned phone operator CAMTEL has announced plans to launch a mobile service. After initial efforts to privatize CAMTEL collapsed when the two top bidders withdrew their offers, the government – with the consent of the World Bank – authorized CAMTEL to resume investments in the sector. As of mid-March 2007, no public announcement had been made about the most recent tender process, which was to have concluded in January 2007. Privatization of CAMTEL remains on Cameroon's official agenda with the IMF. A number of companies are now moving into local Very Small Aperture Terminal (VSAT) systems for data transmission, international telephone service and Internet access. After dropping a 2005 bid to acquire a local Internet service provider, MTN created a new entity, MTN Network Solutions, to provide Internet service. The Cameroon Telecommunications Regulator – Telecommunications Regulatory Board – regulates the sector and issues licenses for new companies to operate.

Insurance

Foreign firms can operate in Cameroon, but they must have local partners. There are several foreign insurance companies (including one U.S. firm) operating in Cameroon with Cameroonian partners.

INVESTMENT BARRIERS

The government states that it welcomes foreign investment and there has been significant improvement in the process of obtaining approvals for investment projects. Despite a number of recent government initiatives, Cameroon's investment climate remains challenging. The World Bank's "Doing Business in 2007" survey found that it takes 444 days to comply with licensing and permit requirements for ongoing business operations in Cameroon (compared with a sub-Saharan Africa regional average of 230 days, and 69 days in the United States), and also found that enforcing contracts can be particularly difficult.

Capital movements within CEMAC are completely free. Capital movements between CEMAC and third countries are permitted, provided that proper supporting documentation is available and prior notification is given to the exchange control authority. With respect to inward or outward foreign direct investment, investors are required to declare to the Ministry of Economy and Finance transactions above CFA100 million (approximately $200,000), and they must provide such notification within 30 days of the realization of the relevant transaction. The Bank of Central African States' decision to continue monitoring outward transfers, combined with its cumbersome payment system, has led many to conclude that controls on transfers remain in force.

Local and foreign investors, including some U.S. firms, have found Cameroonian courts too complicated and costly to resolve their contract or property rights disputes. Additionally, even with a favorable court judgment, enforcement of such a ruling under local law can be problematic. The United States-Cameroon Bilateral Investment Treaty, which entered into force in 1989, provides U.S. investors in Cameroon with significant legal protections and access to legally binding international arbitration to resolve investor-state disputes. Local arbitration options also exist (and are encouraged by Cameroonian private sector organizations).

OTHER BARRIERS

Problems with energy supply have been a major concern of the Cameroonian government and international financial institutions. The IMF and the World Bank, in particular, feel that the lack of a dependable supply of energy has limited FDI, so they are pushing stakeholders in the sector to improve capacity as quickly as possible. U.S.-owned power provider AES Sonel has announced plans for substantial investments to improve and expand its power production.

Corruption is pervasive throughout the public and business sectors. The judicial system, characterized by long delays and under-staffing in the areas of financial and commercial law, has imposed major expenses on some U.S. companies operating in Cameroon. Court decisions are often arbitrary and subject to corruption. Cameroon ratified the United Nations Convention Against Corruption in February 2006, but has yet to implement most of its provisions.

U.S. companies have expressed concern that the Ministry of Labor has made it more difficult for investors to sell their assets in Cameroon by requiring companies involved in share sales to make termination-of-contract payouts to contractual employees even when the contracts in question are being assumed by new owners. The issue appears to arise only when the divesting investors are foreign. This issue is currently under review by the Cameroonian government and has not yet been resolved.

CANADA

TRADE SUMMARY

The U.S. goods trade deficit with Canada was $72.8 billion in 2006, a decrease of $5.7 billion from $78.5 billion in 2005. U.S. goods exports in 2006 were $230.6 billion, up 8.8 percent from the previous year. Corresponding U.S. imports from Canada were $303.4 billion, up 4.5 percent. Canada is currently the largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Canada were $32.5 billion in 2005 (latest data available), and U.S. imports were $22.0 billion. Sales of services in Canada by majority U.S.-owned affiliates were $46.9 billion in 2004 (latest data available), while sales of services in the United States by majority Canada-owned firms were $36.6 billion.

The stock of U.S. foreign direct investment (FDI) in Canada in 2005 was $234.8 billion (latest data available), up from $212.8 billion in 2004. U.S. FDI in Canada is concentrated largely in the manufacturing, finance and mining sectors.

A Trading Relationship Based on Free Trade

The North American Free Trade Agreement (NAFTA) entered into force on January 1, 1994 replacing the U.S.-Canada Free Trade Agreement, which was implemented in 1989. The NAFTA progressively eliminated tariff and non-tariff barriers to trade in goods; improved access for services trade; established rules on investment; strengthened protection of intellectual property rights; and created an effective dispute settlement mechanism. Under the terms of the NAFTA, Canada eliminated tariffs on all remaining industrial and most agricultural products imported from the United States on January 1, 1998. The NAFTA is accompanied by supplemental agreements that provide for cooperation to enhance and enforce labor standards and to encourage environmentally friendly practices and bolster environmental protection in North America.

IMPORT POLICIES

Agricultural Products

Canada closely restricts imports of certain domestic “supply-managed” agricultural products such as dairy products, eggs and poultry through the use of tariff-rate quotas (TRQs). This practice severely limits the ability of U.S. producers to increase exports to Canada above the TRQ levels.

The Province of Quebec applies coloring restrictions on margarine. The province of Alberta, supported by the provinces of Manitoba and Saskatchewan, challenged Quebec's provincial coloring regulations through an inter-provincial trade dispute resolution panel appointed under the Agreement of Internal Trade. In June 2005, the Panel issued its ruling that the Quebec regulations on colored margarine restrict inter-provincial trade and recommended that Quebec amend its regulations to remove the ban on yellow-colored margarine no later than September 1, 2005. To date, Quebec has chosen not to implement the recommendations of the panel.

The Canadian Egg Marketing Agency operates a dual pricing scheme for processed egg products. Under the regime, the domestic Canadian price for shell eggs is maintained at a level substantially above the world price. Producers are also assessed a levy on all eggs sold, a portion of which is used to subsidize egg exports. This practice artificially increases Canadian exports of egg products at the expense of U.S. exporters. Canada also maintains a prohibitive tariff of 245 percent on U.S. exports of breaded cheese sticks.

Canada prohibits imports of fresh or processed fruits and vegetables in packages exceeding certain standard package sizes unless the government of Canada grants a ministerial exemption. To obtain an exemption, Canadian importers must demonstrate that there is an insufficient supply of a product in the domestic market. The import restrictions apply to all fresh and processed produce in bulk containers if there are standardized container sizes stipulated in the regulations for that commodity. For those horticultural products without prescribed container sizes, there is no restriction on bulk imports. The restriction has a negative impact on U.S. potatoes, apples and blueberries. In addition, Canadian regulations on fresh fruit and vegetable imports prohibit consignment sales of fresh fruit and vegetables in the absence of a pre-arranged buyer.

Restrictions on U.S. Grain Exports

U.S. access to the Canadian grain market has been limited partially by Canadian varietal controls. Canada requires that each variety of grain be registered and be visually distinguishable based on a system of Kernel Visual Distinguishability (KVD) requirements. Since U.S. varieties may not be visually distinct, they are not registered in Canada. As a result, U.S. wheat, regardless of quality, is sold in Canada as "feed" wheat at sharp price discounts compared to the Canadian varieties. Extensive consultations were held in 2003 with stakeholders and the Canada Grains Commission (CGC) on the operational details of a Variety Eligibility Declaration system that would require, by law, the use of declarations instead of the KVD system to segregate grain in the handling system. This proposal was eventually scrapped when it was deemed too costly and burdensome for producers and industry. In June 2005, the CGC put out a new discussion paper proposing a different approach, one that would relax KVD registration requirements for minor western Canadian wheat classes, and held a new series of stakeholder consultations. In June 2006, the CGC announced its intention to make changes to western Canadian wheat classes based on these consultations. These changes include the removal of KVD registration requirements from minor wheat classes, as well as the creation of a new General Purpose wheat class, effective August 1, 2008. The KVD requirements for the higher quality wheat, Canada Western Red Spring and Canada Western Amber Durum, will remain. While these policy changes are a step in the right direction, it only opens the door to varietal registration in Canada of lower priced, non-milling U.S. wheat varieties typically used for feed and industrial end-uses (biofuels, etc.).

On September 16, 2005, the Canadian International Trade Tribunal (CITT) and the Canada Border Services Agency (CBSA) launched an investigation into alleged dumping and subsidization of U.S. grain corn imports into Canada, following a petition filed by the several provincial corn producers' associations. The CITT concluded on April 18, 2006, that U.S. grain corn imports are not causing injury and are not threatening to cause injury to Canadian growers. As a result, the dumping and subsidy investigations were terminated and all provisional countervailing and antidumping duties collected by CBSA were refunded. The petitioners have appealed the CITT final determination to Canada's Federal Court of Appeal.

Personal Duty Exemption

The United States has urged Canada to facilitate cross border trade for border residents by relaxing its taxation of goods purchased in the United States by Canadian tourists. While U.S. and Canadian personal exemption regimes are not directly comparable, the United States allows an $800 per person exemption every 30 days, while Canada has an allowance linked to the length of the tourist's absence and allows only C$50 for tourists absent for at least 24 hours and C$200 for visits exceeding 48 hours. This practice discourages shopping visits to the United States by border residents.

Wine and Spirits

Market access barriers in several provinces hamper exports of U.S. wine and spirits to Canada. These include "cost of service" mark-ups, listings, reference prices and discounting distribution and warehousing policies.

The Canadian Wheat Board and State Trading Enterprises (STEs)

The United States has longstanding concerns about the monopolistic marketing practices of the Canadian Wheat Board. USTR seeks a level playing field for American farmers, including through World Trade Organization (WTO) negotiations. The U.S. WTO agriculture proposal calls for: (1) the end of exclusive STE export rights to ensure private sector competition in markets currently controlled by single desk exporters; (2) the establishment of WTO requirements to notify acquisition costs, export pricing other sales information for single desk exporters; and (3) the elimination of the use of government funds or guarantees to support or ensure the financial viability of single desk exporters. The new Conservative government has begun a review of the Wheat Board that could address many of these concerns.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Restrictions on Fortification of Foods

Canadian requirements for foods fortified with vitamins and minerals have created a costly burden for American food manufacturers who export to Canada. Health Canada restricts marketing of breakfast cereals and other products, such as orange juice, that are fortified with vitamins and/or minerals at certain levels. Canada's regulatory regime requires that products such as calcium-enhanced orange juice be treated as a drug. The regime forces manufacturers to label vitamin and mineral fortified breakfast cereals as "meal replacements" which imposes costs on manufacturers who must make separate production runs for the U.S. and Canadian markets.

In March 2005, the government of Canada released for public consideration a draft policy on supplemental fortification of food and beverages that reflects the study on Dietary Reference Intakes undertaken by the U.S. Institute of Medicine. Industry welcomed the draft policy as it may offer more latitude to manufacturers for discretionary fortification of foods and beverages than the current regulatory regime. The new policy may reduce the cross-border discrepancy in fortification rules; however, the final regulations based on it have not yet been submitted for public review.

Restrictions on Container Sizes

Canada's Processed Products Regulations (Canada Agricultural Products Act) prescribe standard container sizes for a wide range of processed fruit and vegetable products. No other NAFTA country imposes such mandatory container size restrictions. For example, the Processed Products Regulations require manufacturers of baby food to sell in only two standardized container sizes: 4.5 ounces (128 ml) and 7.5 ounces (213 ml). The requirement to sell in container sizes that exist only in Canada makes it more costly for U.S. producers of baby food to export their products to Canada. Canada claims that the regulations are being rewritten and suggests that U.S. concerns will be addressed. However, it appears that the effort to revise the regulations has stalled, as there has been no progress for the past several years.

SOFTWOOD LUMBER

The Softwood Lumber Agreement (SLA) was signed on September 12, 2006, and entered into force on October 12, 2006. On October 12, pursuant to a settlement of litigation, the U.S. Department of Commerce revoked the antidumping and countervailing duty orders on imports of softwood lumber from Canada. (The settlement ended a large portion of the litigation over trade in softwood lumber.) Upon revocation of the orders, U.S. Customs and Border Protection ceased collecting cash deposits, and began returning all previously-collected deposits, with interest to the importers of record. At the time of entry into force, there was an injunction preventing liquidation of entries covered by the first administrative review, but the U.S. Court of International Trade subsequently lifted the injunction on October 27, 2006, in order to permit liquidation of those entries. All entries have now been liquidated.

The SLA provides for unrestricted trade in softwood lumber in favorable market conditions. When the lumber market is soft, Canadian exporting provinces can choose either to collect an export tax that ranges from 5 percent to 15 percent as prices fall or to collect lower export taxes and limit export volumes. The SLA also includes provisions to address potential Canadian import surges, provide for effective dispute settlement, and monitor administration of the agreement through the establishment of a Softwood Lumber Committee.

Under the terms of the SLA, Canada also agreed to pay $500 million to members of the Coalition for Fair Lumber Imports, and $450 million to promote meritorious initiatives in the United States, which includes educational and charitable causes in timber-reliant communities; low-income housing and disaster relief; and educational and public-interest projects addressing forest management issues that affect timber-reliant communities, or the sustainability of forests as sources of building materials, wildlife habitat, bio-energy, recreation and other values. Further, the SLA encourages interested persons in Canada and the United States to establish a binational industry council, whose objectives are to strengthen the North American lumber industry by increasing the market for its products and to build stronger cross-border partnerships and trust at all levels of the industry.

The first meeting of the Softwood Lumber Committee was held in February 2007. During that meeting, Canada and the United States discussed a wide range of implementation-related issues. In addition, there were comprehensive discussions on two issues of great concern to the United States. First, the United States has expressed its concerns with the announcements by Quebec and Ontario of a number of assistance programs for their provincial softwood lumber industries. Second, the United States is concerned with respect to some aspects of Canada's administration of the export measures. The United States is reviewing the information provided by Canada regarding those two issues in order to determine next steps.

TECHNOLOGY PARTNERSHIPS CANADA (TPC)

TPC is a Canadian government program that supports the research and development activities of select industries. Established in 1996, TPC provided loan funding for so-called "pre-competitive" research and development activities for companies incorporated in Canada. Although TPC was targeted at a number of industries, a disproportionate amount of funding has been provided to aerospace and defense companies. To date, C$2.7 billion in TPC funding commitments have been made for over 600 projects, of which about 70 percent has been disbursed. According to the Canadian government, about 3 percent of TPC funds have been repaid. The Canadian government restructured the TPC program in 1999 after a WTO Dispute Panel requested by Brazil determined that it provided an illegal subsidy.

In 2006, Canada's Minister of Industry closed the program to new TPC applicants except for the aerospace and defense sectors. The government announced increased transparency and accountability requirements for all future projects to be funded under the TPC with the aim of better ensuring company compliance with the terms of their TPC contribution agreements. These new contractual requirements provide the government more leverage to act on any breaches of the contribution agreements and will also allow the Minister of Industry to publish the amount of each repayment made by recipient companies that have received investments under the improved agreement. However, these efforts to promote transparency do not remove the potential for trade distortions cause by the TPC and other programs. Of particular concern to U.S. industry is a November 2006 news report that TPC and other government aid may be used to support the launch of a new class of Bombardier "C Series" regional jets and a December 2006 news report of significant TPC funding used to support the development of more efficient aircraft engines. The U.S. Government continues to monitor this program as well as other Quebec provincial programs.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Canada is a member of the World Intellectual Property Organization (WIPO) and adheres to several international agreements, including the Paris Convention for the Protection of Industrial Property (1971) and the Berne Convention for the Protection of Literary and Artistic Works (1971). Canada is also a signatory of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (together the WIPO Treaties), which set standards for intellectual property protection in the digital environment. Canada has not yet ratified either treaty. Canada has indicated it is drafting legislation to provide stronger copyright protection. However, no bill has yet been introduced during the current Parliamentary session.

The United States hopes that the expected legislation will not only adequately ratify and implement the WIPO Treaties, including prohibiting the manufacture and trafficking in circumvention devices, but also enact a limitation-of-liability for Internet Service Providers that effectively reduces copyright infringement on the Internet by using the "notice-and-takedown" model, rather than the less effective "notice-and-notice" model.

U.S. intellectual property owners are concerned about Canada's weak border measures and general enforcement efforts. The lack of *ex officio* authority for Canadian Customs officers makes it difficult for them to seize shipments of counterfeit goods. To perform a civil seizure of a shipment under the Customs Act, the rights holder must obtain a court order, which requires detailed information on the shipment. However, Canada's Criminal Code allows for a public officer in the course of duty to seize any item discovered to be in violation of the law. For example, Customs can detain suspected counterfeit shipments and contact the Royal Canadian Mounted Police (RCMP), which can then proceed with investigation under criminal law. The Canadian government is considering ways to tighten border enforcement.

The majority of the pirated goods are high quality, factory produced products from Asia. Aside from pirated software, many stores sell and install circumvention devices, also made in Asia, that allow pirated products to be played in a legitimate console. Once pirated and counterfeit products clear Canadian Customs, enforcement is the responsibility of the RCMP and the local police. The RCMP lacks adequate resources, training and staff. Because Canadian laws are inadequate to address IPR issues, few prosecutors are willing or trained to prosecute the few cases that arise. Where an infringement case has gone to trial, the penalties imposed can be too weak to act as a deterrent jail time is rarely imposed.

Camcording

Unauthorized camcording in Canadian movie theaters is an increasing source of international DVD piracy. Although camcording with intent to distribute is considered a crime in Canada, the act of camcording in a theater is not a criminal offense. As Canadian prosecutors find it difficult to prove intent in such circumstances, Canadian law enforcement officials are often reluctant to pursue illicit camcording. Amending the Criminal Code to make the act of camcording in a theater a criminal offense would help address this problem.

Pharmaceuticals

The U.S. pharmaceutical industry has raised concerns about the pricing of patented medicines in Canada and encourages Canada and the Patented Medicine Prices Review Board (PMPRB) to move towards a more market-based review system.

In October 2006, Canada published new data protection measures for pharmaceuticals. The regulations are designed to give new and innovative drugs eight years of market exclusivity, with an additional six months of exclusivity for innovative drugs that are the subject of pediatric studies.

SERVICES BARRIERS

Audiovisual and Communications Services

In 2003, the government of Canada amended the Copyright Act to ensure that Internet retransmitters are ineligible for the compulsory retransmission license until the Canadian Radiotelevision and Telecommunications Commission (CRTC) licenses them as distribution undertakings. Internet "broadcasters" are currently exempt from licensing.

The Broadcasting Act lists among its objectives, "to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada." The federal broadcasting regulator, the CRTC, implements this policy. The CRTC requires that for Canadian conventional, over-the-air broadcasters Canadian programs must make up 60 percent of television broadcast time overall and 50 percent during evening hours (6 p.m. to midnight). It also requires that 35 percent of popular musical selections broadcast on radio should qualify as "Canadian" under a Canadian government-determined point system. For cable television and direct to home broadcast services, a preponderance (more than 50 percent) of the channels received by subscribers must be Canadian programming services.

Non-Canadian channels must be pre-approved (“listed”) by the CRTC. For other services, such as specialty television and satellite radio services, the required percentage of Canadian content varies according to the nature of the service.

The CRTC also requires that the English and French television networks operated by the Canadian Broadcasting Corporation not show popular foreign feature movies between 7 p.m. and 11 p.m. The only non-Canadian films that may be broadcast during that time must have been released in theaters at least two years previously and not be listed in the top 100 of Variety Magazine's top grossing films for at least the previous ten years.

Until 1997, CRTC policy in cases where a Canadian service was licensed in a format competing with that of an authorized non-Canadian service was to revoke the license of the non-Canadian service if the new Canadian applicant so requested. In July 1997, the CRTC announced that it would no longer be "disposed" to take such action. Nonetheless, Canadian licensees may still appeal the listing of a non-Canadian service which is thought to compete with a Canadian pay or specialty service the CRTC will consider removing existing non-Canadian services from the list, or shifting them into a less competitive location on the channel dial, if they change format to compete with a Canadian pay or specialty service.

Radiocommunication Act

A principal concern of the Canadian Cable Telecommunications Association (CCTA) is the spread of unauthorized use of satellite television services. Industry findings, extrapolated on a national basis, estimated that between 520,000 to 700,000 households within cabled areas use unauthorized satellite services. Any survey of the incidence of satellite signal theft outside cabled areas would add to these numbers.

This survey, combined with information obtained through Canadian film producers' investigations and related Internet newsgroups, supports the conclusion that there may be 1 million illegal users of U.S. satellite television systems in Canada, resulting in a significant annual loss to the legitimate satellite television industry. Of this number of illegal users, it is estimated that over 90 percent are involved in the "black market" (i.e., signal theft without any payment to U.S. satellite companies), with the remainder subscribing via the "gray market" where the unauthorized user does in fact purchase the signal from a U.S. satellite company for the signal, but only by pretending to be a U.S. resident.

Telecommunications Services

In its schedule of WTO services commitments, Canada retained a 46.7 percent limit on foreign ownership for all facilities-based telecommunications service suppliers except fixed satellite services and submarine cables. In addition to the equity limitations, Canada also retained a requirement for "Canadian control" of basic telecommunications facilities, which stipulates that at least 80 percent of the members of a board of directors must be Canadian citizens. These restrictions prevent global telecommunications service providers from managing and operating much of their own telecommunications facilities in Canada. In addition, these restrictions deny foreign providers certain regulatory advantages only available to facilities-based carriers (e.g., access to unbundled network elements and certain bottleneck facilities). As a consequence of foreign ownership restrictions, U.S. firms' presence in the Canadian market as wholly U.S.-owned operators is limited to that of a reseller, dependent on Canadian facilities-based operators for critical services and component parts. This limits those U.S. companies' options for providing high quality end-to-end telecommunications services as they cannot own or operate their own telecommunications transmission facilities.

In 2004, the CRTC decided that telephone communication over the Internet (VoIP) should be subject to the same regulatory regime as conventional telephone systems. In November 2006, however, the new Conservative government overruled the CRTC and determined that Canada will not regulate "access independent" VoIP services, those services that can reach the customer through any broadband Internet connection. "Access dependent" VoIP services, which connect customers over the service provider's own network, are still subject to regulation.

Barriers to Film Exports

The classification of theatrical and home video product distributed in Canada is within the exclusive jurisdiction of the provinces. There are six different provincial or regional classification boards to which Motion Picture Association members must submit product destined for theatrical release.

Most of these boards also classify product intended for home video distribution. As a control device to display a video's Quebec classification, the Quebec Cinema Act requires that a sticker be acquired from the Régie du Cinéma and attached to each pre-recorded video cassette and DVD at a cost of C$0.40 per unit. The Québec government proposes to reduce the sticker cost to C$0.30 for English and French versions of films dubbed into French in Quebec.

In addition to the direct cost of acquiring the stickers, there are the administrative costs of attaching stickers to each unit and removing them from all returns, plus the per-title, per-distributor administrative fee of C$55.00 charged by the Régie.

In an effort to create a uniform, consumer-friendly classification system that more readily comports with national advertising campaigns and other practical concerns of the industry, the Canadian video distribution industry has initiated a voluntary national classification system for works distributed on videocassette and DVD. Under this system, a film’s national rating is determined by averaging its provincial ratings and is displayed on the packaging. While some provinces accept the average national classification for the purpose of providing consumer information on pre-recorded video material, three of the provincial/regional boards, Manitoba, Quebec and the Maritime Provinces (New Brunswick, Nova Scotia and Prince Edward Island), also require that their own classification be displayed.

The lack of unanimous acceptance of the voluntary national classification and the negative precedent established by the Quebec stickering regime continue to create significant consumer confusion and expense.

INVESTMENT BARRIERS

General Establishment Restrictions

Under the Investment Canada Act, the Broadcasting Act, the Telecommunications Act and standing Canadian regulatory policy, Canada screens new or expanded foreign investment in the energy and mining, banking, fishing, publishing, telecommunications, transportation, film, music, broadcasting, cable television and real estate sectors.

Investment Canada Act

The Investment Canada Act has regulated foreign investment in Canada since 1985. Foreign investors must notify the government of Canada prior to the direct or indirect acquisition of an existing Canadian business of substantial size (as defined below). The Canadian government also reviews acquisitions by non-Canadians of existing Canadian businesses or establishments or of new Canadian businesses in designated types of business activity relating to Canada's culture, heritage or national identity where the federal government has authorized such review as being in the public interest. The government of Canada must be notified of any investment by a non-Canadian to:

• Establish a new Canadian business (regardless of size); or

• Acquire direct control of any existing Canadian business which either has assets of C$5 million or more; is in a business that is identified by regulation to be culturally sensitive; or is in uranium production, financial services or transportation services; or

• Acquire indirect control over any existing Canadian business, the assets of which exceed C$50 million in value in a non-cultural business or between C$5 million and C$50 million in a cultural business.

In 2006, the review threshold for WTO Members was set at C$265 million, rather than the C$5 million level applicable to non-WTO investors. In 2007, the review threshold is expected to be C$281 million. The WTO exemption does not include investments in production of uranium, financial services, transportation services or a cultural business. The dollar threshold varies year-to-year and is a function of Canadian gross domestic product. There is no review process for indirect acquisition of a Canadian business by investors of any Member of the WTO, with the exception of foreign acquisitions of any size in "cultural industries" (publishing, film, music, etc.).

Industry Canada is the reviewing authority for most investments, except for those related to cultural industries, which come under the jurisdiction of Heritage Canada. The ICA sets time limits for the reviews. The Minister of Industry has 45 days to determine whether or not to allow a proposed investment. The Minister can unilaterally extend the 45 day period by an additional 30 days by sending a notice to the investor prior to the expiration of the initial 45 day period. Further extensions are permitted if both the investor and the Minister agree to the extension. In practice, Canada allows most transactions to proceed, though in some instances only after prospective investors have agreed to fulfill certain conditions.

Publishing Policy

Foreign investors may directly acquire Canadian book publishing firms only under certain circumstances. Under an agreement on periodicals reached with the United States in May 1999, Canada permits 100 percent foreign ownership of businesses to publish, distribute and sell periodicals. However, direct acquisition by foreign investors of existing Canadian-owned book publishing and distribution businesses continues to be prohibited, except in extenuating circumstances, such as when the business is in clear financial distress and Canadians have had “full and fair” opportunity to purchase.

Film Industry Investment

Canadian law prohibits foreign acquisitions of Canadian-owned film distribution firms. A new distribution firm established with foreign investment may only market its own proprietary products. Indirect or direct acquisition of a foreign distribution firm operating in Canada is only allowed if the investor undertakes to reinvest a portion of its Canadian earnings in a manner specified by the Canadian government.

GOVERNMENT PROCUREMENT

As a party to the WTO Agreement on Government Procurement (GPA), Canada allows U.S. suppliers to compete on a non-discriminatory basis for its federal government contracts covered by the GPA. However, we have continuing concerns that Canada has not yet opened "sub-central" government procurement markets (i.e., procurement by provincial governments). Some Canadian provinces maintain "Buy Canada" price preferences and other discriminatory procurement policies that favor Canadian suppliers over U.S. and other foreign suppliers. Because Canada does not cover its provinces in its GPA commitment, Canadian suppliers do not benefit from the United States' GPA commitments with respect to 37 state governments' procurement markets. In recent years, several U.S. states and Canadian provinces have cooperated to make reciprocal changes in their government procurement systems that may enhance U.S. business access to the Canadian sub-federal government procurement market. However, the U.S. Government and a number of U.S. states have expressed concern that Canadian provincial restrictions continue to result in an imbalance of commercial opportunities in bilateral government procurement markets.

CHILE

TRADE SUMMARY

The U.S. goods trade deficit with Chile was $2.8 billion in 2006, an increase of $1.3 billion from $1.4 billion in 2005. U.S. goods exports in 2006 were $6.8 billion, up 30.0 percent from the previous year. Corresponding U.S. imports from Chile were $9.6 billion, up 43.5 percent. Chile is currently the 28th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Chile were $1.3 billion in 2005 (latest data available), and U.S. imports were $718 million. Sales of services in Chile by majority U.S.-owned affiliates were $3.1 billion in 2004 (latest data available), while sales of services in the United States by majority Chile-owned firms were not available in 2004 ($2 million in 2003).

The stock of U.S. foreign direct investment (FDI) in Chile in 2005 was $9.8 billion (latest data available), up from $9.7 billion in 2004. U.S. FDI in Chile is concentrated largely in the finance, manufacturing, banking and mining sectors.

IMPORT POLICIES

Tariffs

The U.S.-Chile Free Trade Agreement (FTA) entered into force on January 1, 2004. The FTA eliminates tariffs on 87 percent of bilateral trade immediately and will establish duty-free trade in all products within a maximum of 12 years. Approximately 75 percent of U.S. farm exports will enter Chile duty-free within four years.

Chile has one of the most open trade regimes in the world. The uniform applied tariff rate for virtually all goods is 6 percent. Importers also must pay a 19 percent value added tax (VAT) calculated on the customs value plus import tariff. In the case of duty-free imports, the VAT is calculated on the customs value alone.

There are several exceptions to the uniform tariff. For example, higher effective tariffs will remain throughout the U.S.-Chile FTA's 12-year transition period for wheat, wheat flour and sugar, which are still subject to an import price band system. In August 2001, Chile formally registered with the World Trade Organization (WTO) its new consolidated sugar import tariff, which increased the tariff from 31.5 percent to 98 percent. In order to increase the import tariff, Chile was obligated to offer quotas as compensation to its three principal suppliers, Argentina, Guatemala and Brazil.

Under the U.S.-Chile FTA, a 50 percent surcharge on used goods has been eliminated for goods originating in the United States. The importation of used passenger and cargo transport vehicles is prohibited with few exceptions. Many computer products and books enter Chile duty-free. Used clothing and other used textiles articles classified under Harmonized System (HS) heading 63.09 became duty-free upon entry into force of the agreement.

Import Controls

Chile's trade regime provides for the free importation of goods, except for those goods that are prohibited under existing legislation. Sometimes a potential import to Chile, due to its nature, might be subject to special authorization or oversight by an enforcement agency such as the Agricultural and Livestock Service, National Health Service, General Directorate of National Mobilization or the Directorate for Borders and Limits.

Customs authorities must approve and issue a report for all imports valued at more than $3,000. Imported goods must generally be shipped within 30 days from the day of the report, but longer periods may be authorized. Commercial banks may authorize imports of less than $3,000. Larger firms must report their import and export transactions to the Central Bank. Commercial banks may sell foreign currency to any importer to cover the price of the imported goods and related expenses, as well as to pay interest and other financing expenses that are authorized in the import report. There are virtually no restrictions on the types or amounts of goods that can be imported into Chile, nor any requirements to use the official foreign exchange market.

Non-Tariff Barriers

Chile maintains a complex price band system for wheat, wheat flour and sugar that will be phased out under the U.S.-Chile FTA for imports from the United States by 2016. The price band system was created in 1985 and is intended to guarantee a minimum and maximum price for the covered commodities. When certain cost, insurance and freight (CIF) prices (as calculated by Chilean authorities) fall below the floor, a special tax is added to the uniform tariff rate to raise the price to the minimum floor level. Price bands effectively set a minimum import price that is normally higher than both international and Chilean domestic prices.

The WTO Dispute Settlement Body (DSB) ruled on October 23, 2002, that Chile's price band system was inconsistent with Article 4.2 of the Agreement on Agriculture. Following arbitration, Chile was given until December 23, 2003, to implement the rulings and recommendations of the DSB to bring the price band into compliance with its WTO obligations. The Lagos Government and the Chilean Parliament agreed on a compromise proposal on August 7, 2003, eliminating the price band system on vegetable oils and introducing a number of modifications for wheat, wheat flour and sugar. In the case of sugar, wheat and wheat flour, the new values for the floor and ceiling prices came into effect in November 2003 and will remain until 2007.

Beginning in 2008, the floor will be adjusted downward by 2 percent a year, until 2014, when Chile's President will evaluate whether to continue the price band system or eliminate it. Mixtures (e.g., high fructose corn syrup) containing more than 65 percent sugar content are now subject to the sugar price band system. On January 20, 2006, the DSB established a panel with regard to a claim by Argentina that Chile's 2003 modifications to the price band are also WTO inconsistent. On December 8, 2006 the WTO Dispute Settlement Body maintained their original finding that Chile's price band system is a border measure similar to a variable import levy and to a minimum import price and, thus, inconsistent with Article 4.2 of the Agreement on Agriculture. Chile appealed the ruling on February 5, 2007.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Prior to the U.S.-Chile FTA, many of Chile's trade-restrictive sanitary and phytosanitary requirements prevented the entry of a number of U.S. agricultural and food exports. However, during the FTA negotiations, an *ad hoc* SPS working group was established to address a limited number of issues of concern to both the United States and Chile. Through this working group, important progress was made, including obtaining new market access for U.S. beef and processed beef products. In December 2003, Chile closed market access due to the detection of a single case of Bovine Spongiform Encephalopathy in the United States. In July 2005, Chile agreed to re-open the market for U.S. boneless beef, but access for offal and other select bovine products remains closed, contrary to international standards set by the World Animal Health Organization (OIE).

According to the Chilean Ministry of Health, all pork slaughtered in Chile must be tested for trichinae. However, testing for trichinae is not a common practice in the United States making it extremely difficult, if not impossible for the U.S. industry to meet this requirement. In April 2006, Chile's Ministry of Health along with the agricultural and livestock service of the Ministry of Agriculture agreed to allow U.S. frozen pork entry into Chile, if it were cold treated after slaughter, a common practice in the United States, and also accepted by the OIE.

Currently, Chile has approved the planting of agricultural biotechnology products only for export seed propagation. A Presidential Commission was created to review all aspects of agricultural biotechnology and issued its report in June 2003. While the Commission's report supported the increased use of biotechnology crops in Chile for both export and domestic consumption, to date no biotechnology crops have been approved for commercialization domestically.

Under existing Chilean requirements, all imported food products must file a request for a "Certificate of Use and Disposal" and provide microbiological, dietetic, chemical and physical analyses and samples, regardless of whether the product has been reviewed and approved previously for another applicant. The requirement for repeated reviews and sampling of previously approved imported products does not achieve a good balance between cost and effectiveness. With risk-based testing system, or even random testing, it would be possible to achieve nearly the same level of public health protection at a reduced cost.

GOVERNMENT PROCUREMENT

Individual government entities in Chile usually conduct their own procurement. Chilean law calls for public bids for large purchases, although procurement by negotiation is permitted in certain cases. Foreign and local bidders on government tenders must register with the Chilean Bureau of Government Procurement. They must also post a bank and/or guaranteed bond, usually equivalent to 10 percent of the total bid, to assure compliance with specifications and delivery dates. Chile is not a member of the WTO Agreement on Government Procurement.

The government of Chile created the Information System for Procurements and Public Contracts for the Public Sector (www.chilecompras.cl) in March 2000. Through this site, anyone can offer products or services and register in the system as a potential supplier for government procurement, free of charge.

The system also allows all public agencies to publish information concerning their public bidding processes and requirements for public viewing on the Internet. Public agencies also publish detailed reports on the results of procurement processes.

The U.S.-Chile FTA covers the procurement of most Chilean central government agencies, 13 regional governments, 11 ports and airports, and more than 340 municipalities in Chile. The FTA includes provisions aimed at preventing discrimination against U.S. firms when they are bidding on government procurement opportunities that are covered by the FTA.

EXPORT SUBSIDIES

Chile's Ministry of Foreign Affairs promotes the country's exports, including through grants to private companies or industries for export promotional activities. ProChile, the Export Promotion Bureau of Chile promotes specific products to targeted export markets. It provides matching funds of up to 50 percent to participating firms on approved market promotion activities.

Chile provides a simplified duty drawback program for nontraditional exports that reimburses firms a percentage of the value of the export. Companies purchasing capital equipment domestically or internationally can borrow up to 73 percent of the amount of the customs duties that would normally be paid on such equipment if it were not used exclusively for exporting. Such imported capital equipment must carry a minimum value of $3,813. For imported vehicles to be used in an export business, such vehicles must have a minimum value of $4,830. Another export-promotion measure lets all exporters defer import duties for up to seven years on imported capital equipment or receive an equivalent subsidy for domestically-produced capital goods. Chile has announced that it will phase out the simplified drawback program, in accordance with its WTO commitments.

Under Chile's separate value-added tax (VAT) reimbursement policy, exporters have the right to recoup the VAT they have paid when purchasing goods and using services intended for export activities. To be eligible for the VAT reimbursement policy, exporters must have annual sales of less than $16.7 million.

Chile also offers the Guarantee Fund (*Fondo de Garantia*) for small and medium enterprises. Through this fund, Chile guarantees access to credit provided by financial institutions and technical cooperation agencies to small and medium businesses. This Guarantee Fund benefits all those non-agricultural entrepreneurs whose annual gross sales do not exceed $8.2 million, and agricultural producers with annual gross sales less than $460,000. The U.S.-Chile FTA's Chapter on Market Access eliminates, over a transition period, the use of duty drawback and duty deferral for imports that are incorporated into any goods exported to the United States or Chile. Full drawback rights are allowed for the first eight years from entry into force. Beginning with year nine, the amount of drawback allowed is reduced until it reaches zero by year twelve.

Export Controls

Chilean customs authorities must approve and issue export reports. Exported goods must generally be shipped within 90 days from the date of the export report, but this period may be extended under certain conditions. Exporters may freely dispose of hard currency derived from exports. As with imports, exporters may use the formal or informal exchange market. Large firms must report all exports to the Chilean Central Bank, except for copper exports, which are authorized by the Chilean Copper Commission.

Duty-free import of materials used in products for export within 180 days is permitted with prior authorization. Free-zone imports are exempt from duties and value-added tax if re-exported.

The export/import process requires contracting the services of a specialized professional called a Customs Agent. The Customs Agent is the link between the exporter/importer and the National Customs Service. The Agent's mission is to facilitate foreign trade operations and to act as the official representative of the exporter/importer in the country. Agent fees are not standardized.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Concerns about degradation in Chile's protection of intellectual property are reflected in a January 2007 decision to elevate Chile to the Special 301 Priority Watch List following an Out of Cycle Review (OCR) conducted in 2006.

Chile became the subject of the OCR, because of substantive deficiencies in IPR laws and regulations and overall inadequate IPR enforcement despite the fact that Chile made numerous commitments to upgrade its IPR regime as a FTA partner. The lack of adequate protection for intellectual property rights is the most glaring trade irritant in Chile's otherwise excellent business climate. The predominant concerns involve patent and test data protection in the pharmaceutical sector and copyright piracy of movies, music and software.

Patents, Data Protection and Trademarks

As part of the OCR conducted during 2006, the United States and Chile have continued their discussions on Chile's obligations to protect intellectual property, including in connection with Chile's obligations under the FTA.

Chile is reportedly not meeting its FTA commitments with respect to the protection of patents and pharmaceutical test data in two ways. With respect to the protection of data submitted in conjunction with the marketing approval of pharmaceutical products, Chile remains unwilling to address the concerns of patent holders, who report that Chile has authorized the marketing of patent-infringing pharmaceutical products and has failed to provide an appropriate and effective mechanism through which patent holders may seek to prevent marketing in such cases. The United States remains concerned, as well, by reports that Chile has relied inappropriately on undisclosed test and other data submitted in connection with the approval of innovative drug products in order to approve generic versions of these drugs.

In December 2004, Chile's Congress approved legislation intended to bring the country into compliance with a number of its TRIPS commitments. The legislation provides for, among others things, expedited court proceedings and the authority to seize illegal copies of patented products. The legislation was also intended to implement certain FTA obligations, such as the extension of the patent term to compensate for unreasonable delays in the patent application process, and provision of stronger protection for pharmaceutical and agricultural chemical confidential test data submitted for marketing approval. Chile's implementing regulations for the data protection provisions entered into force on November 28, 2005. The regulations also contain exceptions and limitations that may undermine the effective protection of undisclosed safety and efficacy information.

Chile's Trademark Law is generally in line with international standards. However, legislation bringing Chile's law fully into compliance with its obligations under the FTA is still pending. Some U.S. trademark holders have complained of inadequate enforcement of trademark rights in Chile. In relation to Internet domain names, the United States and Chile have committed to creating a system to resolve problems of cyber-infringement of trademarks, following international standards. The FTA also requires Chile to respect the principle of "first in-time, first-in-right" with respect to trademarks and geographical indications.

Copyrights

The United States is concerned that Chile's commitment to the vigorous enforcement and prosecution of intellectual property theft of copyrighted goods appears to be diminishing significantly. Despite active enforcement efforts by the police, piracy of computer software and video and music recordings remains widespread in Chile. The incidence of Internet-based piracy also represents a growing challenge to the effective protection of intellectual property. Attempts to enforce copyrights in Chile have met with considerable delays in the courts and weak punishments when sentences were issued. According to the International Intellectual Property Alliance, estimated losses due to the piracy of copyrighted materials in Chile totaled $78.7 million in 2005.

Chile made two sets of amendments to its copyright law in 2003, one to implement TRIPS obligations and one to implement its FTA obligations. Amendments related to the FTA's provisions increased the period of protection for copyrights and related rights to "life of the author plus 70 years," established strong prohibitions against the circumvention of encryption technology attached to digital works, performances and phonograms; and established a legal framework to combat on-line piracy. The U.S.-Chile FTA also requires Chile to criminalize end-user piracy, mandate reimbursement for actual damages for IPR violations and penalize tampering with anti-piracy technology. The United States will continue to work with the Chilean government to improve enforcement and ensure full implementation of the FTA's enforcement obligations, which enter into force in 2008.

Chile ratified both the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty in April 2001.

SERVICES BARRIERS

Chile's relatively open services trade and investment regime stands in contrast to its relatively limited commitments under the General Agreement on Trade in Services (GATS). In particular, Chile maintains a "horizontal" limitation, applying to all sectors in Chile's GATS schedule, under which authorization for foreign investment in service industries may be contingent upon a number of factors, including employment generation, use of local inputs, and compensation. This restriction undermines the commercial value and predictability of Chile's GATS commitments.

Commitments in services under the U.S.-Chile FTA cover both cross-border supply of services and the right to invest. Market access commitments apply across a wide range of sectors, including computer and related services, telecommunications, audiovisual services, construction and engineering, tourism, advertising, express delivery, professional services, distribution services, adult education and training services, and environmental services.

Chile has made WTO commitments on most basic telecommunications services, adopting the WTO Reference Paper on Regulatory Commitments, and ratifying the GATS Fourth Protocol. Nonetheless, U.S. companies have complained of regulatory delays and a lack of transparency in regulatory decisions.

Financial Services

During its WTO financial services negotiations, Chile made commitments in banking services and in most securities and other financial services. However, the Chilean WTO Commitment Schedule in the securities sector did not include asset fund management (mutual funds, investment funds, foreign capital investment funds and pension funds). Chile also reserved the right to apply economic needs and national interest tests when licensing foreign service suppliers. In practice, Chile has allowed foreign banks to establish branches and to provide the same range of services as domestic banks. Foreign insurance companies established in Chile operate with unlimited access to the Chilean market, as long as their legal incorporations meet requirements established in the Chilean Corporate Law Code. Foreign-based insurance companies cannot offer or contract insurance policies in Chile directly or through intermediaries.

Under the U.S.-Chile FTA, banks, insurance, securities and related services operate in a more open, competitive and transparent market than previously. The financial services chapter of the FTA included core obligations concerning non-discrimination and most favored nation status, as well as additional market access obligations. U.S. insurance firms now have the right to establish subsidiaries or joint ventures in all insurance sectors with only limited exceptions. Chile also committed to phase in insurance branching rights and to modify its legislation to open up its market to key insurance sectors such as marine, aviation and transport insurance and the insurance brokerage of reinsurance. U.S. banks and securities firms are now also allowed to establish branches and subsidiaries and may invest in local firms without restriction, except under very limited circumstances. U.S. financial institutions are also able to offer financial services to citizens participating in Chile's privatized voluntary social saving plans. They have also gained increased market access through Chile's mandatory social security system. Chile now allows U.S.-based firms to offer cross-border services to Chileans in areas such as financial information, data processing and financial advisory services, with limited exceptions. Chilean mutual funds are permitted to use foreign-based portfolio managers.

INVESTMENT BARRIERS

Chile welcomes foreign investment, but maintains some controls and restrictions. Foreign direct investment is subject to *pro forma* screening by the government. The Foreign Investment Committee (FIC) of the Ministry of Economy reviews all foreign investment and sets the terms and conditions for all contracts involving foreign direct investment. FIC approval is required for the following categories of investment projects: those whose total value exceeds $5 million; those related to sectors or activities that are normally developed by the government and/or supplied by public services; those involving the mass media; and those made by foreign governments or foreign public entities. Foreign investment projects worth more than $5 million are entitled to the benefits and guarantees of Decree Law (D.L.) 600. Under this law, the FIC signs a separate contract with each investor that stipulates the time period within which the investment will be implemented, which varies according to the type of investment.

Under D.L. 600, profits from an investment may be repatriated immediately, but none of the original capital may be repatriated for one year.

Foreign investors in Chile may own up to 100 percent of an enterprise and there is no limit on the period during which they may own property. In the mining sector, a foreign investor might, for example, hold mining rights for an unlimited period but not own the land/mine itself in Chile. Foreign investors have access to all sectors of the economy with some limited exceptions in coastal trade, air transportation and the mass media.

Chile permits investment in the fishing sector to the extent that an investor's home country reciprocally permits Chilean nationals to invest in that sector. Most investment projects require additional permits and/or must fulfill other requirements aside from those set forth in D.L. 600 (e.g., pertaining to environmental protection). All investors, both local and foreign, must comply with sector-specific legislation at the national, regional and municipal levels.

Investors domiciled abroad may bring foreign currency into Chile under Chapter 14 of the Foreign Exchange Regulations of the Central Bank. Chapter 14 allows the investor to sell foreign currency freely through the formal or informal exchange market. In 2001, the Central Bank suspended its prior controls on capital flows, including the "*encaje*," a domestic deposit requirement that applied to short-term capital flows. The Central Bank also eliminated the one-year holding period for indirect investment. Outflows associated with capital returns, dividends, and other investments no longer require government approval. Restrictions on the issuance of American Depositary Receipts have also been lifted. Chilean companies are free to take out loans or issue bonds in a wide range of currencies.

The U.S.-Chile FTA further strengthened the legal framework for U.S. investors operating in Chile. All forms of investment are protected under the FTA, including enterprises, debt instruments, concessions, contracts and intellectual property. The FTA also prohibits certain restrictions on investors, such as the requirement to buy domestic rather than imported inputs. However, the obligations of "national treatment" and "most favored nation" will not be applied to measures that are an exception or waiver of the specific obligations on intellectual property. As per the FTA, the United States and Chile allow both transfers into and out of their territories related with an investment to be carried out freely and without delay. These transfers should be made in a currency of wide usage and at the current exchange rate observed in the market at the time of the transfer.

However, Chile may establish restrictions on payments or transfers associated with speculative or short-term investments in the event of a financial or economic crisis, for up to a period of one year. During this time, the investor would not be able to invoke the conflict resolution system in force for dealing with investor-state controversies.

The U.S. and Chilean governments have been discussing a bilateral tax treaty (a double taxation treaty), but were unable to conclude negotiations in 2006. Until such a treaty takes effect, profits of U.S. companies operating in Chile will continue to be subject to taxation by both governments.

OTHER BARRIERS

Luxury Tax

A luxury tax was applied to automobiles that exceeded an established CIF value. Under the terms of the FTA, the luxury tax on automobiles was phased out over four years by raising the threshold value and lowering the rate each year. Starting from January 1, 2007, the luxury tax will be eliminated completely.

Distilled Spirit Tax and Other Taxes

Chile collects an *ad valorem* tax of 27 percent on all liquor. Beer and wine are subject to a 15 percent *ad valorem* tax, while mineral water, soft drinks and syrups face a 13 percent tax. Other merchandise subject to additional taxes are: gold articles, platinum, ivory, jewelry, natural and synthetic precious stones (15 percent); compressed air arms, their accessories and bullets (15 percent); caviar preserves and its substitutes (1 percent). Imports of tobacco are also subject to an *ad valorem* tax – 51 percent for cigars, 60.4 percent for cigarettes and 57.9 percent for elaborated tobacco.

CHINA

TRADE SUMMARY

The U.S. goods trade deficit with China was $232.5 billion in 2006, an increase of $31 billion from $201.5 billion in 2005. U.S. goods exports in 2006 were $55.2 billion, up 31.7 percent from the previous year. Corresponding U.S. imports from China were $287.8 billion, up 18.2 percent. China is currently the 4th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to China were $9.1 billion in 2005 (latest data available), and U.S. imports were $6.5 billion. Sales of services in China by majority U.S.-owned affiliates were $5.1 billion in 2004 (latest data available), while sales of services in the United States by majority China-owned firms were not available in 2004 ($321 million in 2002 is latest data available).

The stock of U.S. foreign direct investment (FDI) in China in 2005 was $16.9 billion (latest data available), up from $15.0 billion in 2004. U.S. FDI in China is concentrated largely in the manufacturing, wholesale trade, mining and non-bank holding companies sectors.

When China acceded to the World Trade Organization (WTO) on December 11, 2001, it committed to implement over time a set of sweeping reforms that required it to lower trade barriers in virtually every sector of the economy, provide national treatment and improved market access to goods and services imported from the United States and other WTO Members, and protect intellectual property rights (IPR). Five years later, the deadlines for almost all of China's commitments have passed, and China's transition period as a new WTO Member is now essentially over.

China has taken significant and often impressive steps to reform its economy since acceding to the WTO. During this period, China has repealed, revised or enacted more than one thousand laws, regulations and other measures in an effort to bring its trading system into basic compliance with WTO standards. China has also taken steps to implement numerous specific commitments pursuant to schedules set forth in its WTO accession agreement. Each year, China has made annual reductions in its tariff rates, eliminated non-tariff barriers, expanded market access for foreign services providers and improved transparency. All of these steps were designed to deepen China's integration into the international trading system, as well as to facilitate and strengthen economic reforms that China had begun 20 years earlier.

Nevertheless, despite significant progress in many areas, China's record in implementing WTO commitments is decidedly mixed. China continues to pursue problematic industrial policies that rely on trade-distorting measures such as local content requirements, import and export restrictions, discriminatory regulations and prohibited subsidies, all of which raise serious WTO concerns. China's shortcomings in enforcing laws in areas where detailed WTO disciplines apply, such as intellectual property rights, have also created serious problems for the United States and its other trading partners.

Many of the United States' most difficult trade issues with China can be traced to excessive Chinese government intervention in the market through policy directives and the actions of individual officials. This government intervention, evident in many areas of China's economy, is a reflection of China's historic yet unfinished transition from a centrally planned economy to a free-market economy governed by rule of law. To some extent, these difficulties were anticipated. During the fifteen years of negotiations leading up to China's WTO accession, the United States and other WTO Members were aware of the state's large role in China's economy and carefully negotiated conditions for China's WTO accession that would, when implemented, lead to significantly reduced levels of government intervention in the market, and a corresponding reduction in trade distortions and market access barriers.

While China did make noteworthy progress as a result of economic reforms adopted before and in the first few years after its accession to the WTO, recently we have seen an upsurge in industrial planning measures as tools of economic development by China's central government authorities. China appears to want to expand the government's role in directing the economy and in developing internationally competitive Chinese enterprises, while also restricting the role of international companies in certain sectors.

Recognizing these challenges, USTR announced, in a "top-to-bottom" review of U.S.-China trade relations issued in February 2006, that it would adopt a dual-track approach to resolving its WTO concerns. The United States would continue to seek cooperative and pragmatic resolutions through bilateral dialogue with China, including the Joint Commission on Commerce and Trade (JCCT), as well as *ad hoc* bilateral meetings and a variety of sector-specific dialogues. However, when bilateral dialogue fails to succeed in addressing U.S. concerns, the United States will not hesitate to exercise its WTO rights through the initiation of dispute settlement against China, as it would with any other mature WTO trading partner.

The United States achieved some important successes through bilateral dialogue in 2006, including at a JCCT meeting in April. At that meeting, China made several commitments related to IPR protection and enforcement. It also committed to eliminate duplicative testing and certification requirements applicable to imported medical devices, to make adjustments to its registered capital requirements for telecommunications service providers and to finalize a protocol allowing the resumption of trade in U.S. beef and beef products. China also reaffirmed past commitments to technology neutrality for 3G telecommunications standards and to ensuring that foreign express couriers would not be impacted negatively by new rules in the postal area. In addition, China committed to commence, by no later than December 31, 2007, formal negotiations to join the WTO's Government Procurement Agreement. Since the JCCT meeting in April 2006, the United States has been working with China to make sure that it implements all of these commitments.

However, to date, other issues have evaded bilateral resolution, despite extensive dialogue. Issues like WTO-prohibited subsidies, IPR enforcement and certain market access concerns have resisted resolution. Although the United States has been making earnest efforts to resolve these concerns through bilateral discussions, it is prepared to pursue other options if the bilateral approach is not fruitful, as it recently did when it initiated a WTO dispute settlement case challenging apparent WTO-prohibited subsidies.

In several areas, Chinese policies and practices continued to cause particular concern for the United States and U.S. industry in 2006, particularly in light of China's WTO commitments, as is detailed below and in the 2006 USTR Report to Congress on China's WTO Compliance. First, the lack of effective IPR enforcement remains a major challenge, as counterfeiting and piracy in China remain at unacceptably high levels and cause serious economic harm to U.S. businesses in virtually every sector of the economy. Second, China has continued to resort to industrial policies that limit market access for non-Chinese-origin goods and foreign service providers, and that provide substantial government resources to support Chinese industries and increase exports. Third, capricious practices by Chinese customs and quarantine officials can delay or halt shipments of agricultural products into China, while sanitary and phytosanitary standards with questionable scientific bases and a generally opaque regulatory regime frequently bedevil traders in agricultural commodities. Fourth, Chinese regulatory authorities continue to frustrate efforts of U.S. providers of banking, insurance, motor vehicle financing, direct selling, telecommunications, construction and engineering, legal and other services to achieve their full market potential in China through the use of an opaque regulatory process, overly burdensome licensing and operating requirements, and other means. They have also imposed new restrictions on foreign providers of financial information services and have so far failed to open up the China market to foreign credit card companies. Fifth, transparency remains a concern, as many of China's regulatory regimes continued to suffer from systemic opacity, frustrating efforts of foreign – and domestic – businesses to achieve the potential benefits of China's WTO accession.

Overall, while China has a more open and competitive economy than 25 years ago, and China's WTO accession has led to the removal of many trade barriers, there are still barriers to trade that have yet to be dismantled. The central government continues to implement industrial policies that protect a number of noncompetitive or emerging sectors of the economy from foreign competition. In many sectors, import barriers, opaque and inconsistently applied legal provisions and limitations on foreign direct investment often combine to make it difficult for foreign firms to operate in China. In addition, some ministries, agencies and government-sponsored trade associations have renewed efforts to erect new technical barriers to trade. Meanwhile, many provincial governments at times have strongly resisted reforms that would eliminate sheltered markets for local enterprises or reduce jobs and revenues in their jurisdictions, although they have also supported market access for other foreign investors that do not pose a threat to local vested interests.

To meet its obligations as a responsible stakeholder in the world trading system, China will need to institutionalize market-oriented reforms and eliminate mechanisms that allow government officials to intervene in the Chinese economy in a manner that is inconsistent with market principles. China also needs to take additional steps to make its trade regime more predictable and transparent. Despite its remarkable transformation over the past quarter century, China continues to suffer from its command economy legacy, and Chinese government policymaking often operates in a way that prevents U.S. businesses from achieving their full potential in the China market. Through the new high-level Strategic Economic Dialogue launched in December 2006 and ongoing bilateral dialogues like the JCCT, the United States is pushing China to accelerate its transformation into a more market-based economy.

IMPORT BARRIERS

Prior to its WTO accession in December 2001, China restricted imports through high tariffs and taxes, quotas and other non-tariff measures, and restrictions on trading rights. Beginning in 2002, its first year in the WTO, China significantly reduced tariff rates on many products, decreased the number of goods subject to import quotas, expanded trading rights for Chinese enterprises and increased the transparency of its licensing procedures. Subsequently, China has continued to make progress by implementing tariff reductions on schedule, phasing out import quotas and expanding trading rights for foreign enterprises and individuals. Nevertheless, some serious problems remain, such as China's tariff treatment of imported automotive parts and China's refusal to grant trading rights for certain industries.

Trading Rights

Prior to its WTO accession, China restricted the types and numbers of entities with the right to trade. Only those domestic and foreign firms with trading rights could import goods into, or export goods out of, China. Restrictions on the type and number of firms with trading rights contributed to systemic inefficiencies in China's trading rights system and created substantial incentives to engage in smuggling and other corrupt practices.

In 1995, liberalization of China's trading rights system began to proceed gradually. The pace accelerated in 1999 when the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), the predecessor to China's existing Ministry of Commerce (MOFCOM), announced new guidelines allowing a wide variety of Chinese firms with annual export volumes valued in excess of $10 million to register for trading rights. In August 2001, China extended this regulation to allow foreign-invested firms to export their finished products. Import rights for foreign-invested firms were still restricted to the importation of inputs, equipment and other materials directly related to their manufacturing or processing operations. Firms and individuals without trading rights, including foreign-invested firms with a manufacturing presence in China seeking to import products made outside of China, were required to use a local agent.

In its WTO accession agreement, China committed to substantial liberalization in the area of trading rights. Specifically, China committed to eliminate its system of examination and approval of trading rights and to make full trading rights automatically available to all Chinese enterprises, Chinese-foreign joint ventures, wholly foreign-owned enterprises and foreign individuals, including sole proprietorships, within three years of its accession, or by December 11, 2004, which was the same deadline for China to eliminate most restrictions in the area of distribution services. China further committed to expand the availability of trading rights pursuant to an agreed schedule during the first three years of its WTO membership.

Although China did not fully adhere to the agreed phase-in schedule in some instances, it put in place a registration system implementing the required liberalization of trading rights, both for Chinese enterprises and for Chinese-foreign joint ventures, wholly foreign-owned enterprises and foreign individuals, including sole proprietorships. This liberalization is reflected in China's revised Foreign Trade Law, issued in April 2004. It provides for trading rights to be automatically available through a registration process for all domestic and foreign entities and individuals, effective July 1, 2004, almost six months ahead of the scheduled full liberalization required by China's accession agreement. In June 2004, MOFCOM issued implementing rules establishing the procedures for registering as a foreign trade operator. U.S. companies have reported few problems with the new trading rights registration process.

In December 2004, as required by its WTO accession agreement, China also ended its practice of granting import rights or export rights for certain products, including steel, natural rubber, wools, acrylic and plywood, only to designated enterprises. Any domestic or foreign enterprise or individual can now trade in these products.

Consistent with the terms of China's WTO accession agreement, the importation of some goods, such as petroleum and sugar, is still reserved for state-trading enterprises. In addition, for goods still subject to tariff-rate quotas such as grains, cotton, vegetable oils and fertilizers, China reserves a portion of the in-quota imports for state-trading enterprises, while it committed to make the remaining portion (ranging from 10 percent to 90 percent, depending on the commodity) available for importation through non-state traders. In some cases, the percentage available to non-state traders increases annually for a fixed number of years.

Meanwhile, however, China has not yet given foreign entities trading rights for the importation of books, newspapers, periodicals, electronic publications and audio and video products. Under the terms of China's accession agreement, China's trading rights commitments appear to apply fully to these products, as they are not among the products for which China reserved the right to engage in state trading. As a result, trading rights for these products should have been automatically available to all Chinese enterprises, Chinese-foreign joint ventures, wholly foreign-owned enterprises and foreign individuals as of December 11, 2004. Nevertheless, China continues to wholly reserve the right to import books, newspapers, periodicals, electronic publications and audio and video products to state trading enterprises.

Import Substitution Policies

Throughout the 1990s, China gradually reduced formal import substitution policies. When it acceded to the WTO, China agreed to eliminate all subsidies prohibited under Article 3 of the WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement), including all forms of subsidies contingent on the use of domestic over imported goods. In its WTO accession agreement, China also committed that it would not condition import or investment approvals on whether there are competing domestic suppliers or impose other performance requirements. In anticipation of this commitment, China enacted legal changes in 2000 and 2001 to eliminate local content requirements for foreign investments. Under the prevailing rules, however, investors are still "encouraged" to follow some of the formerly mandated practices. Instances in which the Chinese government has reportedly pursued import substitution or similar policies are described below.

Corporate Tax Deductions to Foreign-Invested Firms

Measures issued by the Ministry of Finance and the State Administration for Taxation (SAT) make income tax and value-added tax (VAT) refunds available to foreign-invested firms in connection with their purchases of domestically manufactured equipment. These refunds are not available in connection with purchases of imported equipment or equipment assembled in China from imported parts. A similar measure makes an income tax refund available in connection with domestic firms' purchases of domestically manufactured equipment for technology upgrading.

Automotive Parts

Before China's WTO accession, China's automobile industrial policy offered significant advantages for foreign-invested factories using high levels of local content. In 2001, in anticipation of China's new obligations as a WTO Member, the State Economic and Trade Commission (SETC) issued Bulletin No.13, which provided that the preferential policy for automobile localization rates would be cancelled upon China's WTO accession. However, U.S. automobile manufacturers reported that some local government officials continued to require local content and cited the old automobile industrial policy's standards. China also committed to issue a revised automotive industrial policy within two years of its WTO accession, or by December 11, 2003, but missed this deadline. In May 2004, China issued a new automobile industrial policy. It included provisions discouraging the importation of automotive parts and encouraging the use of domestic technology. It also required new automobile and automobile engine plants to include substantial investment in research and development facilities, even though China expressly committed in its WTO accession agreement not to condition investment rights or approvals on the conduct of research and development in China.

In 2005, China began to issue measures implementing the new automobile industrial policy. One measure that generated strong criticism from the United States, the EU, Japan and Canada was the *Measures on the Importation of Parts for Entire Automobiles*, which was issued by the National Development and Reform Commission (NDRC) in February 2005 and became effective in April 2005. These rules impose charges that unfairly discriminate against imported automotive parts and discourage automobile manufacturers in China from using imported automotive parts in the assembly of vehicles. Specifically, the rules require all vehicle manufacturers in China that use imported parts to register with China's Customs Administration and provide specific information about each vehicle they assemble, including a list of the imported and domestic parts to be used, and the value and supplier of each part. If the number or value of imported parts in an assembled vehicle exceeds specified thresholds, the regulations assess each of the imported parts a charge equal to the tariff on complete automobiles (typically 25 percent) rather than the tariff applicable to automotive parts (typically 10 percent). These rules appear to be inconsistent with several WTO provisions, including Article III of GATT 1994 and Article 2 of the Agreement on Trade-Related Investment Measures, as well as the commitment in China's accession agreement to eliminate all local content requirements relating to importation. In March and April 2006, the United States, the EU and Canada initiated dispute settlement against China by filing formal WTO consultations requests. Joint consultations were held in May 2006. However, these consultations did not lead to an agreed resolution. In September 2006, the United States, the EU and Canada filed requests for the establishment of a panel to hear the dispute. A panel was established at the October 2006 meeting of the WTO's Dispute Settlement Body.

Steel

China issued a new Steel and Iron Industry Development Policy in July 2005. Although many aspects of this new policy have not yet been implemented, it still includes a host of objectives and guidelines that raise serious concerns. For example, this policy requires that foreign enterprises seeking to invest in Chinese iron and steel enterprises possess proprietary technology or intellectual property in the processing of steel. Given that foreign investors are not allowed to have a controlling share in steel and iron enterprises in China, this requirement would seem to constitute a *de facto* technology transfer requirement, calling into question China's implementation of its WTO accession agreement commitment not to condition investment rights or approvals on the transfer of technology. This policy also appears to discriminate against foreign equipment and technology imports. Like other measures, this policy encourages the use of local content by calling for a variety of government financial support for steel and iron projects utilizing newly developed domestic equipment. Even more troubling, however, it calls for the use of domestically-produced steel-manufacturing equipment and domestic technologies whenever domestic suppliers exist, calling into question China's implementation of its WTO accession agreement commitment not to condition the right of investment or importation on whether competing domestic suppliers exist.

Semiconductors

China's 10th Five-Year Plan calls for an increase in Chinese semiconductor output from $2 billion in 2000 to $24 billion in 2010. In pursuit of this policy, China has attempted to encourage the development of China's domestic integrated circuit (IC) industry through, among other things, discriminatory VAT policies. In particular, through a series of measures, China has provided for the rebate of a substantial portion of the 17 percent VAT paid by domestic manufacturers on their locally-produced ICs. China, meanwhile, charged the full 17 percent VAT on imported ICs, unless they were designed in China. After bilateral meetings on this issue failed to yield a change in China's policy, in March 2004, the United States filed the first WTO case against China. In the ensuing consultations, China signaled its willingness to discuss a possible resolution. In July 2004, the United States and China reached a settlement in which China agreed to immediately cease certifying new Chinese IC manufacturers or products as eligible for the VAT rebate and to issue the necessary regulations to eliminate the VAT rebate entirely by November 1, 2004, with an effective date no later than April 1, 2005. China also agreed to repeal the relevant implementing rules that had made VAT rebates available for ICs designed in China but manufactured abroad by September 1, 2004, with an effective date no later than October 1, 2004. China followed through on each of these agreed steps in a timely manner, and the two sides notified the WTO in October 2005 that their dispute had been satisfactorily resolved. Nevertheless, the United States continues to monitor closely new financial support that China is making available to its domestic producers for consistency with the WTO Subsidies Agreement's disciplines.

Fertilizer

In 2001, China began exempting all phosphate fertilizers except diammonium phosphate (DAP) from the VAT. DAP, a product that the United States exports to China, competes with other phosphate fertilizers produced in China, particularly monoammonium phosphate. Both the United States Government and U.S. producers have complained that China has employed its VAT policies to benefit domestic fertilizer production.

Telecommunications Equipment

There have been continuing reports of the Ministry of Information Industry (MII) and China Telecom adopting policies to discourage the use of imported components or equipment. For example, MII has reportedly still not rescinded an internal circular issued in 1998 instructing telecommunications companies to buy components and equipment from domestic sources.

Tariffs and Other Import Charges

Under the terms of its WTO accession, China committed to substantial annual reductions in its tariff rates, with most of them taking place within five years of China's WTO accession. The largest reductions took place in 2002, immediately after China acceded to the WTO, when the overall average tariff rate fell from over 15 percent to 12 percent.

China's post-WTO accession tariff rates are "bound," meaning that China cannot raise them above the bound rates without "compensating" WTO trading partners (i.e.: re-balancing tariff concessions or, in accordance with WTO rules, being subject to withdrawal of substantially equivalent concessions by other WTO Members). "Bound" rates give importers a more predictable environment. China may also apply tariff rates significantly lower than the WTO-required rate, as in the case of goods that the government has identified as necessary to the development of a key industry. For example, China's Customs Administration has occasionally announced lower applied tariff rates for items that benefit key economic sectors, in particular for the automotive, steel and chemical industries.

U.S. exports continued to benefit from China's participation in the Information Technology Agreement (ITA), which requires the elimination of tariffs on computers, semiconductors and other information technology products. China began reducing and eliminating these tariffs in 2002 and continued to do so in the ensuing years, achieving the elimination of all ITA tariffs on January 1, 2005, as the tariffs dropped to zero from a pre-WTO accession average of 13.3 percent. U.S. exports of ITA goods continued to perform well in 2006, as they totaled $9.2 billion, an increase of 52 percent over the 2005 figure.

China completed its timely implementation of another significant tariff initiative, the WTO's Chemical Tariff Harmonization Agreement, in 2005. The United States exported $6.5 billion in chemicals to China in 2006, up from $5.6 billion in 2005, an increase of 16.7 percent.

However, China still maintains high duties on some products that compete with sensitive domestic industries. For example, the tariff on large motorcycles will only fall from 60 percent to 45 percent. Likewise, most video, digital video and audio recorders and players still face duties of approximately 30 percent. Raisins face duties of 35 percent.

U.S. exports of some bulk agricultural commodities have increased dramatically in recent years, and continue to perform strongly, especially soybeans and cotton. Exports of soybeans rose to more than $2.5 billion in 2006, a 12 percent increase over the previous year. Cotton exports rose 47 percent in the same period to nearly $2.1 billion, a new record. Exports of forest products such as lumber also continued to perform strongly, increasing by 16 percent over 2005, to reach $547 million in 2006. Fish and seafood exports rose 25 percent to $440 million in 2006. Meanwhile, exports of consumer-oriented agricultural products increased by 34 percent to $731 million in 2006.

Overall, China's tariff changes have increased market access for U.S. exporters in a range of industries, as China continued the process of reducing tariffs on goods of greatest importance to U.S. industry from a base average of 25 percent (in 1997) to 7 percent over a period of five years, starting on January 1, 2002. It made similar reductions throughout the agricultural sector. These tariff changes contributed to another significant increase in overall U.S. exports, which rose approximately 33 percent from January through December 2006, when compared to the same time period in 2005.

Tariff Classification

Chinese customs officers have wide discretion in classifying a particular import. While foreign businesses might at times have benefited from their ability to negotiate tariff classification into tariff categories with lower import duty rates, lack of uniformity makes it difficult to anticipate border charges.

Customs Valuation

In January 2002, shortly after acceding to the WTO, China's Customs Administration issued the Measures for Examining and Determining Customs Valuation of Imported Goods. These regulations addressed the inconsistencies that had existed between China's customs valuation methodologies and the WTO Agreement on Customs Valuation. The Customs Administration subsequently issued the Rules on the Determination of Customs Value of Royalties and License Fees Related to Imported Goods, effective July 2003. These rules were intended to clarify provisions of the January 2002 regulations that addressed the valuation of royalties and license fees. In addition, by December 11, 2003, China had issued a measure on interest charges and a measure requiring duties on software to be assessed on the basis of the value of the underlying carrier medium, meaning, for example, the CD-ROM or floppy disk itself, rather than the imputed value of the content, which includes, for example, the data recorded on a CD-ROM or floppy disk.

More than three years later, China has still not uniformly implemented these various measures. U.S. exporters continue to report that they are encountering valuation problems at many ports. According to U.S. exporters, even though the 2002 regulations and 2003 implementing rules provide that imported goods normally should be valued on the basis of their transaction price, meaning the price the importer actually paid, many Chinese customs officials are still improperly using "reference pricing," which usually results in a higher dutiable value. For example, imports of wood products are often subjected to reference pricing. In addition, some of China's customs officials are reportedly not applying the provisions in the 2002 regulations and 2003 implementing rules as they relate to software royalties and license fees. Following their pre-WTO accession practice, these officials are still automatically adding royalties and license fees to the dutiable value (for example, when an imported personal computer includes pre-installed software), even though China's 2003 implementing rules expressly direct them to add those fees only if they are import-related and a condition of sale for the goods being valued.

U.S. exporters have also continued to express concerns about the Customs Administration's handling of imports of digital media that contain instructions for the subsequent production of multiple copies of products such as DVDs. The Customs Administration has been inappropriately assessing duties based on the estimated value of the yet-to-be-produced copies.

More generally, U.S. exporters continue to be concerned about inefficient and inconsistent customs clearance procedures in China. These procedures vary from port to port, massive delays are not uncommon, and the fees charged appear to be excessive and are rising rapidly, giving rise to concerns about China's compliance with its obligations under Article VIII of GATT 1994.

Rules of Origin

In September 2004, nearly three years after China acceded to the WTO, the State Council finally issued the regulations intended to bring China's rules of origin into conformity with WTO rules for import and export purposes. These regulations took effect on January 1, 2005. Importers have not reported problems stemming from inappropriate application of rules of origin.

Border Trade

China's border trade policy continues to generate MFN and other concerns. China provides preferential import duty and VAT treatment to certain products, often from Russia, apparently even when those products are not confined to frontier traffic as envisioned by Article XXIV of GATT 1994. China addressed some of these concerns in 2003 when it eliminated preferential treatment for boric acid and 19 other products. Nonetheless, it appears that large operators are still able to take advantage of border trade policies to import bulk shipments across China's land borders into its interior at preferential rates. In addition, U.S. industry reports that China continues to use border trade policies to provide preferential treatment for Russian timber imports, to the detriment of U.S. timber exporters.

Antidumping, Countervailing Duty and Safeguard Measures

Since acceding to the WTO, China has emerged as a significant user of antidumping measures, with a total of 91 antidumping measures in place affecting imports from 21 countries, and 17 antidumping investigations in progress, by the end of 2006. China continued to actively apply its antidumping law in 2006, initiating several new investigations, although none of them involved U.S. products. Chemical products remain the most frequent target of Chinese antidumping actions.

Most of the rules and regulations used by MOFCOM to conduct its antidumping investigations were issued as provisional measures by MOFCOM's predecessor agencies − MOFTEC and SETC − shortly after China acceded to the WTO. While these measures generally represent good-faith efforts to implement the relevant WTO commitments and to improve China's pre-WTO accession measures, they also contain vague language, have gaps in areas of practice and allow inordinate discretion. Meanwhile, China's handling of antidumping investigations and reviews continues to raise concerns in key areas such as transparency and procedural fairness. Concerns with transparency, including access to information, are especially acute with regard to the injury portion of investigations.

To date, China has not initiated a countervailing duty investigation. China's only safeguard measure was removed at the end of 2003 after being in place for less than two years.

The Supreme People's Court has issued a judicial interpretation covering the review of antidumping and other trade remedy decisions. To date, however, judicial review of these types of decisions remains untested.

In one antidumping investigation involving imports of kraft linerboard from the United States, following an affirmative final determination and the imposition of antidumping duties in September 2005, the affected U.S. exporters filed for administrative reconsideration with MOFCOM. The exporters raised concerns with various aspects of the final determination, particularly the injury finding. In January 2006, immediately after the United States notified China that it intended to commence dispute settlement at the WTO, MOFCOM issued a decision repealing the antidumping order.

Non-Tariff Barriers

China's WTO accession agreement obligated China to address many of the non-tariff barriers it had historically used to restrict trade. For example, China is obligated to phase out its import quota system, apply international norms to its testing and standards administration, remove local content requirements, and make its licensing and registration regimes transparent. At the national level, China made progress following its WTO accession in reforming its testing system, revising regulations requiring local content and improving overall regulatory transparency, including in the licensing area. Despite this progress, however, as China's trade liberalization efforts moved forward, some non-tariff barriers remained in place and others were added.

Five years after China's WTO accession, many U.S. industries complain that they face significant non-tariff barriers to trade, which are discussed in more detail in various sections below. These barriers include, for example, regulations that set high thresholds for entry into service sectors such as banking, insurance and telecommunications, selective and unwarranted inspection requirements for agricultural imports and the use of questionable sanitary and phytosanitary measures to control import volumes. Many U.S. industries have also complained about China's manipulation of technical regulations and standards to favor domestic industries.

Import Quotas

In the past, China often did not announce import quota amounts or the process for allocating import quotas. China set import quotas through negotiations between central and local government officials at the end of each year. Import quotas on most products were eliminated or are scheduled for phase-out under the terms of China's WTO accession. China's accession agreement required China to eliminate existing import quotas for the top U.S. priority products upon accession and to phase out remaining import quotas on industrial goods, such as air conditioners, sound and video recording machines, color TVs, cameras, watches, crane lorries and chassis, and motorcycles, by January 1, 2005. While China's post-WTO accession import quota system was beset with problems, China did fully adhere to the agreed schedule for the elimination of all of its import quotas, the last of which China eliminated on January 1, 2005.

Tariff-Rate Quotas

In 1996, China claimed to have introduced a tariff-rate quota (TRQ) system for imports of wheat, corn, rice, soy oil, cotton, barley and vegetable oils. The quota amounts were not publicly announced, application and allocation procedures were not transparent, and importation occurred through state trading enterprises. China later introduced a TRQ system for fertilizer imports. Under these TRQ systems, China places quantitative restrictions on the amount of these commodities that can enter at a low "in-quota" tariff rate; any imports over that quantity are charged a prohibitively high duty.

As part of its WTO accession commitments, China was to establish large and increasing TRQs for imports of wheat, corn, rice, cotton, wool, sugar, rapeseed oil, palm oil, soybean oil and fertilizer, with most in-quota duties ranging from 1 percent to 9 percent. Each year, a portion of each TRQ is to be reserved for importation through non-state trading entities. China's accession agreement sets forth specific rules for administration of the TRQs, including increased transparency and reallocation of unused quotas to end-users that have an interest in importing. China phased out the vegetable oil TRQs in 2006, but currently maintains a TRQ regime on six agricultural products including wheat, cotton, corn, rice, wool and sugar, as well as three chemical fertilizers including di-ammonium phosphate.

For the first two years after China's WTO accession, China's implementation of its TRQ systems generated numerous complaints from foreign suppliers, with the most serious problems being lack of transparency, sub-divisions of the TRQ, small allocation sizes and burdensome licensing procedures. Repeated engagement by U.S. officials led to regulatory and operational changes by NDRC for shipments beginning January 1, 2004. Key changes included the elimination of separate allocations for general trade and processing trade, the elimination of certain unnecessary licensing requirements, and the creation of a new mechanism for identifying allocation recipients. In 2004, improvements in NDRC's TRQ administration became evident, although transparency continued to be problematic for some of the commodities subject to TRQs.

While NDRC was implementing the systemic changes in 2004, exports of some bulk agricultural commodities from the United States showed substantial increases, largely due to market conditions. In particular, despite some continuing problems with NDRC's handling of the cotton TRQs, U.S. cotton exports totaled a record $1.4 billion in both 2004 and 2005, followed by a new record of $2.1 billion in 2006. In addition, U.S. wheat exports totaled $495 million in 2004, as the TRQ allocations for wheat did not appear to act as a limiting factor, but declined significantly to $78 million in 2005 and then to $23 million in 2006. The drop in U.S. wheat exports was due to higher production and lower prices in China, which reduced China's overall import demand.

Meanwhile, the administration of China's TRQ system for fertilizer, handled by SETC and subsequently MOFCOM, has suffered from systemic problems since China's WTO accession. By 2006, this system was still operating with insufficient transparency, and administrative guidance still seemed to be affecting how the allocated quota was used. U.S. fertilizer exports to China have declined throughout the post-WTO accession period, due in part to continuing problems with MOFCOM's administration of the fertilizer TRQ system and in part to increasing subsidization, and resulting overcapacity, of China's domestic fertilizer industry. U.S. fertilizer exports to China decreased from $676 million in 2002 to $355 million in 2005. In 2006, U.S. fertilizer exports to China declined sharply again, totaling $232 million for the year.

In October 2006, perhaps in an attempt by the central authorities to rein in provincial and local efforts to build further unneeded capacity, the Tariff Policy Commission of the State Council announced a temporary reduction of the in-quota tariff rate for fertilizer from 4 percent to 1 percent, effective November 2006. It is too early to tell what effect this change may have on U.S. fertilizer exports to China. However, U.S. and other foreign fertilizer producers were anticipating increased exports after December 11, 2006, when China was scheduled to begin allowing foreign enterprises to engage in the wholesale and retail distribution of fertilizer within China.

Import Licenses

In the early 1990s, China began to reduce substantially the number of products subject to import licensing requirements. With its WTO accession in December 2001, China committed to the fair and non-discriminatory application of licensing procedures. Among other things, China also committed upon its WTO accession to limit the information that a trader must provide in order to receive a license, in order to ensure that licenses are not unnecessarily burdensome, and to increase transparency and predictability in the licensing process.

MOFTEC issued new regulations and implementing rules to facilitate licensing procedures shortly after China's accession to the WTO. However, license applicants initially reported that they had to provide sensitive business details unnecessary for simple import monitoring. In some sectors, importers also reported that MOFTEC was using a "one-license-per-shipment" system rather than providing licenses to firms for multiple shipments. MOFTEC began to allow more than one shipment per license in late 2002 following U.S. interventions, without modifying the measure authorizing the "one-license-per-shipment" system. In December 2004, MOFCOM issued revised licensing procedures for imported goods. Among other changes, import licenses no longer have quantitative restrictions, provisions related to designated trading were removed, and provisions allowing more than one license per shipment and an "under or over provision" for overloaded or short shipments were added.

China is the world's largest importer of iron ore, accounting for over 40 percent of global iron ore imports (based on 2006 data). Increasing global steel production, led by Chinese growth, has contributed to significant price increases over the past several years. In May 2005, after Chinese steel producers negotiated contracts with major foreign iron ore suppliers, the Chinese government began imposing new import licensing procedures for iron ore without prior WTO notification. Even though the WTO's Import Licensing Agreement calls for import licensing procedures that do not have a restrictive effect on trade, China reportedly restricted licenses to 48 traders and 70 steel producers and has not made public a list of the qualified enterprises or the qualifying criteria used. While the Chinese government maintained that it did not impose any qualifying criteria, it did acknowledge that two organizations affiliated with the Chinese government -- the China Steel Industry Association and the Commercial Chamber for Metals, Minerals and Chemicals Importers and Exporters -- had been discussing a set of rules regarding qualifying criteria such as production capacity and trade performance. In 2006, the United States continued to engage China and monitor developments, as this situation could set a troubling precedent for the handling of imports of other raw materials.

China's inspection and quarantine agency, the State Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), has also imposed inspection-related requirements that have led to restrictions on imports of many U.S. agricultural goods. In particular, two AQSIQ measures issued in 2002 require importers to obtain a Quarantine Inspection Permit (QIP) prior to signing purchase contracts for nearly all traded agricultural commodities. QIPs are one of the most important trade policy issues affecting the United States and China's other agricultural trading partners.

AQSIQ sometimes slows down or even suspends issuance of QIPs at its discretion, without notifying traders in advance or explaining its reasons, resulting in significant commercial uncertainty. Because of the commercial necessity to contract for commodity shipments when prices are low, combined with the inherent delays in having QIPs issued, many cargoes of products such as soybeans, meat and poultry arrive in Chinese ports without QIPs, creating delays in discharge and resulting in demurrage bills for Chinese purchasers. In addition, traders report that shipment are often closely scrutinized and are at risk for disapproval if they are considered too large in quantity.

Some improvements were made to the QIP system in 2004 following repeated U.S. engagement, both bilaterally and at the WTO. In June 2004, AQSIQ issued Decree 73, the Items on Handling the Review and Approval for Entry Animal and Plant Quarantine, which extended the period of validity for QIPs from three months to six months. AQSIQ also began issuing QIPs more frequently within the established time lines. Nevertheless, a great deal of uncertainty remains even with the extended period of validity, because a QIP still locks purchasers into a very narrow period to purchase, transport and discharge cargoes or containers before the QIP's expiration, and because AQSIQ continues to administer the QIP system in a seemingly arbitrary manner.

In 2006, the QIP system saw little improvement, and traders continued to be concerned that the rules and regulations of the QIP system remain available as an administrative tool to limit the quantity of imports. However, traders remain hesitant to press AQSIQ for change because they would risk reprisals. Many of them would at least like AQSIQ to eliminate the quantity requirements that it unofficially places on QIPs. These quantity requirements have been used often by AQSIQ during peak harvest periods to limit the flow of commodity imports. Eliminating this requirement would help to ensure that QIPs do not interfere with the market.

INTERNAL POLICIES

Taxation

Income Taxes

In April 2001, the National People's Congress passed long-awaited changes to the tax collection law, designed to standardize and increase the transparency of China's tax procedures. The State Council issued detailed regulations for the implementation of this law in September 2002. As part of a broader campaign to "rectify market order" and eliminate inter-provincial barriers to domestic commerce, the Chinese central government also implemented measures to prevent local governments from applying tax treatment that discriminated in favor of locally owned firms.

In order to narrow the widening urban-rural income gap, the Central Committee of the Communist Party of China and the State Council issued Document No. 1 of 2004, which instructed the governments at all levels to reduce the agricultural tax rate of 8.4 percent by 1 percent in 2004, along with the removal of all taxes on special farm produce except for tobacco. Document No. 1 also calls for further reductions in the agricultural tax rate until it is totally eliminated within five years. Where fiscally feasible, local governments were also called upon to reduce or eliminate agricultural taxes more quickly. Agricultural taxes were abolished nationwide effective January 2006.

Foreign investors, including those who have used investment as an entry point to the Chinese domestic market, have benefited from investment incentives such as tax holidays and grace periods, which allow them to reduce substantially their tax burden. Domestic enterprises have long resented rebates and other tax benefits enjoyed by foreign-invested firms, and these benefits may be gradually phased out. According to the tax laws and regulations currently in place, domestic and foreign-invested companies in China are subject to an income tax rate of 33 percent, but because of various tax waivers and incentives most domestic enterprises pay 24 percent and most foreign businesses pay 15 percent.

In December 2006, the Standing Committee of China's National People's Congress conducted its first deliberations over a draft law that proposes to unify corporate income tax rates for domestic and foreign companies in China. The draft law reportedly calls for a universal tax rate of 25 percent, with a 5-year grace period for foreign businesses. The draft law also reportedly includes the following preferential policies: (1) a 20 percent tax rate for small-sized businesses that are marginally profitable; (2) a 15 percent tax rate for government-supported key high technology enterprises; (3) preferential policies to venture capital and investments in environment protection, resource and water conservation and work safety; (4) extension of current preferential tax policies for investment in agriculture, forestry, husbandry, fishery and infrastructure (such as airports, railways and irrigation works); and (5) alternative preferential policies replacing the current preferential policy of awarding direct tax holidays to businesses created for laid off workers and disabled as well as businesses performing resource recycling. Because the draft law has not been circulated publicly, it is not clear whether, or on what timetable, existing preferential export-related policies benefiting foreign-invested enterprises (discussed below in the section on Export

Subsidies) would be withdrawn.
If the draft law comes into effect, the impact on foreign-invested firms whose businesses have benefited from lower taxes could be significant. Chinese companies, in general, will have a reduced tax burden, making them more competitive with these foreign-invested firms. At the same time, investment in the production of goods with higher technological content and in infrastructure could well rise as a result of the contemplated preferential policies.

Value-Added Taxes

Application of China's single most important revenue source – the VAT, which ranges between 13 percent and 17 percent, depending on the product – continues to be uneven. Importers from a wide range of sectors report that, because taxes on imported goods are reliably collected at the border, they are sometimes subject to application of a VAT that their domestic competitors often fail to pay. As discussed above in the section on Import Substitution Policies, the United States was successful in obtaining China's agreement to remove discriminatory VAT policies favoring domestically-produced semiconductors. In addition, China's selective exemption of certain fertilizer products from the VAT has operated to the disadvantage of imports from the United States.

Meanwhile, China maintains a measure that provides VAT refunds for foreign-invested enterprises when they purchase domestically made equipment, as discussed above in the section on Import Substitution Policies. These refunds are not available for purchases of imported equipment or equipment assembled in China from imported parts. In addition, another measure makes VAT exemptions available to foreign-invested enterprises with regard to imported equipment used to produce their products, provided that they export 100 percent of their production, as discussed below in the section on Export Subsidies.

China retains an active VAT rebate program for exports, although rebate payments are often delayed. In 2003, China announced the reduction of VAT rebates for exports by 3 percentage points, partly in response to foreign complaints about an under-valued renminbi (RMB). Although State Administration of Taxation officials reportedly plan to eliminate rebates eventually in order to increase tax revenues, China has continued this practice in order to spur domestic economic growth. In December 2004, for example, the Ministry of Finance and the State Administration of Taxation issued a circular announcing an increase in the VAT rebate rate from 13 percent to 17 percent for the export of certain information technology products, including integrated circuits, independent components, mobile telecommunication equipment and terminals, computers and periphery equipment, and numerically controlled machine tools. In 2005, China adjusted the ratio of the share of the export VAT refund burden between the central and local governments, from 75-25 to 92.5-7.5. China also halted refunds for some products in high demand domestically in order to discourage their export. For example, China eliminated a 13 percent VAT rebate for exports of steel billets and ingots, although it maintained VAT rebates of 8 percent to 13 percent for more processed steel products. In September 2006, China sought to discourage exports by eliminating VAT rebates for exports of coal, non-ferrous metal and waste and scrap, silicon and certain primary wood products, among other products, and by lowering existing VAT rebates for a variety of steel, non-ferrous metal, textiles and ceramics products.

Meanwhile, China continues to consider fundamental reform of its VAT regime and, in particular, the transformation from a production-based regime to one that is consumption-based. China has pursued a pilot program in the Northeast, but it is unclear when this reform might be extended nationwide.

Consumption Taxes

China's 1993 consumption tax system continues to raise concerns among U.S. exporters. Because China uses a substantially different tax base to compute consumption taxes for domestic and imported products, the tax burden imposed on imported consumer goods ranging from alcoholic beverages to cosmetics to automobiles is higher than for competing domestic products.

STANDARDS, TESTING, LABELING AND CERTIFICATION

In its WTO accession agreement, China committed to ensure that its regulatory authorities apply the same standards, technical regulations and conformity assessment procedures to both imported and domestic goods and use the same fees, processing periods and complaint procedures for both imported and domestic goods. China also committed that, in order to eliminate unnecessary barriers to trade, it would not maintain multiple or duplicative conformity assessment procedures and would not impose requirements exclusively on imported products. China further committed to ensure that its standards developers, regulatory authorities and conformity assessment bodies operated with transparency and allowed reasonable opportunities for public comment on proposed standards, technical regulations and conformity assessment procedures.

In anticipation of these commitments, China devoted significant energy to reforming its standards and testing and certification regimes prior to its WTO entry. In April 2001, China merged its domestic standards and conformity assessment agency and entry-exit inspection and quarantine agency into one new organization, AQSIQ. Chinese officials explained that this merger was designed to eliminate discriminatory treatment of imports, including requirements for multiple testing simply because a product was imported rather than domestically-produced. China also formed two quasi-independent agencies administratively under AQSIQ: (1) the Certification and Accreditation Administration of China (CNCA), which is charged with the task of unifying, implementing and administering the country's conformity assessment regime; and (2) the Standardization Administration of China (SAC), which is responsible for setting mandatory national standards, unifying China's administration of product standards and aligning its standards and technical regulations with international practices and China's commitments under the WTO Agreement on Technical Barriers to Trade (TBT Agreement).

In January 2002, China began the task of bringing its standards regime more in line with international practice with AQSIQ's issuance of rules designed to facilitate China's adoption of international standards. China subsequently embarked on the task of reviewing all of its existing 21,000 technical regulations to determine their continuing relevance and consistency with international standards. In November 2005, China reported that as of October 2005 it had nullified 1,416 national standards as a result of this review. China has since continued its review of existing standards ands technical regulations, but has not provided an update on its progress.

Nevertheless, in a number of sectors, including automobiles, automotive parts, telecommunications equipment, Internet protocols, wireless local area networks (see the "WAPI" section below), radio frequency identification technology, audio and video coding, food products and consumer products such as cosmetics, concern has grown as China has pursued the development of unique technical requirements, despite the existence of well-established international standards. These China-specific standards, which sometimes appear to lack a sound technical or scientific basis, could create significant barriers to entry into China's markets because of the high cost of compliance for foreign companies.

The lack of transparency in China's standards development process also troubles many foreign companies. The vast majority of Chinese standards-setting bodies are not fully open to foreign participation, in some cases refusing membership to foreign firms and in other cases refusing to allow companies with majority foreign ownership to vote. In some cases, foreign firms are allowed non-voting observer status, but are required to pay membership fees far in excess of those paid by the domestic voting members. Nevertheless, in 2005, some U.S. companies and industry groups concluded that China had begun to make progress in reforming its standardization system by strengthening its links with standards-setters in other countries and by moving its standards regime into closer conformity with international practice.

China's designated notification authority, MOFCOM, has been notifying proposed technical regulations and conformity assessment procedures to WTO Members, as required by the WTO Agreement on Technical Barriers to Trade. Almost all of these notified measures, however, have emanated from AQSIQ or SAC, and few of the trade-related technical regulations drafted by other agencies have been notified. Lack of meaningful comment periods also remains an issue. In many cases, an agency provides insufficient time for the submission of comments, and allots little time for the agency's consideration of those comments, before it finalizes a measure.

Despite China's commitment to apply the same standards and fees to domestic and imported products upon its accession to the WTO, many U.S. industries have complained about China's manipulation of technical regulations and standards to favor domestic industries. In fact, SAC issued a strategy report in September 2004 promoting China's development of standards and technical regulations as a means of protecting domestic industry as tariff rates fall. At the sub-national level, importers have expressed concern that local officials do not understand China's WTO commitments and apply arbitrary technical regulations and standards to protect local industries. These problems are compounded by the fact that coordination between AQSIQ and its affiliated bodies, CNCA and SAC, is lacking, as is coordination between these bodies and China Customs and other ministries and agencies, at both the central and local government levels, on issues related to technical regulations.

China's China Compulsory Certification (CCC) mark system took full effect in August 2003, following a transition period that lasted for fifteen months. The CCC mark replaced the prior "Great Wall" and "CCIB" marks and is now required for more than 130 product categories, such as electrical machinery, information technology equipment, household appliances and their components. In 2006, as in prior years, U.S. companies continued to complain that the regulations lack clarity regarding the products that require a CCC mark. They also have reported that China is applying the CCC mark requirements inconsistently and that many domestic products required by CNCA's regulations to have the CCC mark are still being sold without it. U.S. companies in some sectors also complained that certification remains a difficult, time-consuming and costly process. The process involves on-site inspection of manufacturing facilities outside of China, the cost of which is borne by producers. In addition, small- and medium-sized U.S. companies without a presence in China find it particularly burdensome to apply for CCC mark exemptions, such as for replacement and re-export, because China requires the applications to be done in person in the Beijing offices of CNCA. China also continues to require the CCC mark for products that would no longer seem to warrant mandatory certification, such as low-risk products and components.

To date, CNCA has accredited well over one hundred Chinese enterprises accreditation to test and certify for purposes of the CCC mark. Despite China's commitment that qualifying minority foreign-owned (upon China's accession to the WTO) and majority foreign-owned (two years later) joint venture conformity assessment bodies would be eligible for accreditation and would be accorded national treatment, China so far has not accredited any foreign-invested conformity assessment bodies. As a result, exporters to China are often required to submit their products to Chinese laboratories for duplicative tests that have already been performed abroad, resulting in greater expense and a longer time to market.

The concerns of U.S. exporters about the CCC mark are heightened by the increasing product scope of the CCC mark certification system. Beginning in 2004, several new categories of products have been added to the list of products requiring the CCC mark, including the addition of six categories of toy products, beginning on June 1, 2007. Additionally, the "China RoHS" scheme discussed below will utilize the CCC mark certification process for certain products to ensure compliance.

In other conformity assessment contexts, some importers report discriminatory treatment and uneven enforcement of technical regulations and standards. For example, foreign companies' products can only be tested in certain designated laboratories. Limited testing and certification capacity means that evaluations sometimes take much longer than international best practice would suggest is appropriate. As testing and certification capacity expands to meet this demand, U.S. companies with multi-country operations worry that inexperienced laboratories might make negative determinations that would have global consequences for the company.

Meanwhile, redundant testing requirements continue to trouble U.S. companies, particularly in cosmetics, new chemicals, pharmaceuticals, medical equipment, cellular telephones and other telecommunications products, consumer electronic products and automobiles. For example, China often requires telecommunications and information technology equipment to be tested and certified to the same electro-magnetic compatibility requirements by both MII and CNCA. In December 2004, SAC created technical committees to develop standards for testing environmental equipment, products developed through biotechnology, and new plant and animal varieties, suggesting that foreign companies may soon see additional requirements in these industries as well.

U.S. companies also cite problems with a lack of transparency in the certification process, lack of coordination among standards bodies, burdensome requirements and long processing times for licenses. Some companies have also expressed concern that their intellectual property will be released to competitors when they submit samples of high technology products for mandatory testing. Technical committees that evaluate products for licensing and certification are generally drawn from a pool of government, academic and industrial experts that companies fear may be too closely associated with their competitors. In some cases, laboratories responsible for testing imported products are affiliated with domestic competitors, making the possibility of intellectual property theft more likely.

WAPI

A particularly significant example of China's development of unique technical requirements, despite the existence of well-established international standards, arose in May 2003, when China issued two standards for encryption over Wireless Local Area Networks (WLANs), applicable to domestic and imported equipment containing WLAN (sometimes referred to as Wi-Fi) technologies. Conformance to these standards was scheduled to become mandatory in June 2004. The standards incorporated the WLAN Authentication and Privacy Infrastructure (WAPI) encryption algorithm for secure communications. This component of the standards differed significantly from internationally recognized standards. China sought to enforce the use of WAPI by mandating a particular algorithm (rather than mandating the need for encryption, and leaving the choice of the algorithm to the market) and providing the necessary algorithm only to a limited number of Chinese companies. U.S. and other foreign manufacturers would have been compelled to work with and through these companies, some of which were competitors, and provide them with their proprietary technical product specifications. Following high-level bilateral engagement, China agreed in April 2004 to postpone indefinitely implementation of WAPI and to work within international standards bodies on future development of wireless standards. This commitment led China to submit WAPI for consideration in the International Organization for Standardization (ISO) and International Electrotechnical Commission's (IEC) Joint Technical Committee 1 (ISO/IEC JTC1). In 2006, following balloting of ISO/IEC JTC1 members, the proposed WAPI amendment did not get enough votes to be accepted as an international standard.

In December 2005, the Ministry of Finance (MOF), MII and NDRC jointly issued the Opinions for Implementing Government Procurements of Wireless Local Areas Network. This measure seems to require all government agencies, quasi-government bodies and government-affiliated organizations, when procuring WLAN and related products using fiscal funds, to give priority to WAPI-compliant products. This measure took effect in February 2006. The United States has been monitoring developments in this area, but so far the trade effects of this policy appear to be limited.

Chemical Registration

In September 2003, China's State Environmental Protection Administration (SEPA) issued a regulation requiring manufacturers and importers of new chemicals to apply to SEPA's Chemical Registration Center (CRC) for approval and to provide extensive test data to substantiate the physical properties, consumer safety and environmental impact of the new chemical. U.S. industry's primary concerns are that CRC has not been able to make decisions on the approval of new chemicals in a timely manner and that the governing rules and testing requirements are not transparent and accessible. SEPA's CRC acknowledges receipt of more than 40 completed applications for new chemicals since October 2003. According to the most recent information available from U.S. industry, only a small number of new chemical applications have been approved.

U.S. industry notes that a number of applications have been pending well beyond the 120-day timeline set forth in the regulation. U.S. industry also complains of shifting requirements and implementation changes, such as recently expanded eco-toxicity testing requirements, which mandate that certain eco-toxicity testing, particularly fish eco-toxicity and bio-degradation studies, be carried out in one of six SEPA-accredited laboratories in China. These accredited laboratories have all been established since mid-2004 in response to the September 2003 regulation, and U.S. industry fears that if inexperience leads one of these new laboratories to declare a product unsafe, it could affect sales globally. China's lack of a low-volume exemption, meaning an exemption where trade in a given chemical falls below an annual volume threshold, also appears to hinder the importation of U.S. chemicals, particularly for high-value specialty chemicals sold in small quantities.

Toxic Chemicals

In December 2005, SEPA and the General Administration on Customs issued the Circular on the Highly Restricted Import/Export Toxic Chemicals List five days before it entered into force. In response to U.S. complaints that the notice period was too short, SEPA provided a transition period until June 2006 during which the regulation was apparently not enforced against shipments of chemicals imported from the United States. China subsequently notified the measure to the WTO TBT Committee in June 2006, with no opportunity for comment and no transition period. In addition to these problems, U.S. industry has expressed concerns about excessive fees required to register chemical products, as well as a lack of clarity on the scope of coverage of the measure.

Hazardous Substances

MII and six other Chinese agencies jointly issued the Administrative Measures on the Control of Pollution Caused by Electronic Information Products (China RoHS) in February 2006, with a March 2007 effective date. China did not notify China RoHS to the WTO TBT Committee until May 2006. China had notified an earlier measure setting out the broad framework for China RoHS, the Administrative Measure on Electronic Information Pollution Control, in September 2005, but it provided little detail on how China RoHS would operate.

The objective of China RoHS is to restrict the use of lead, mercury, cadmium, hexavalent chromium, poly-brominated bi-phenyls (PBB) and poly-brominated di-phenyl ethers (PBDE) in certain electrical information products. China RoHS has two main components. One component involves labeling and marking requirements for a long list of electrical information equipment products, which goes into effect in March 2007. The other component involves a planned requirement for in-country testing and certification using China's CCC mark system; however, the effective date for this requirement, and the products to which it will be applicable, remain unclear.

China RoHS is similar to a pre-existing European Union measure (EU RoHS Directive). However, China RoHS differs from the EU RoHS Directive in several ways, including through a different scope of products, unique requirements for labeling and marking across a wide range of electrical information equipment products and a requirement for CCC mark registration to test and certify the absence of the restricted substances in an as yet undetermined catalogue of products.

The China RoHS scheme has created substantial concern for U.S. and other foreign companies in several ways. These companies have expressed concerns about the justification for, and the burdensome nature of, China's labeling and marking requirements for a long list of products. The EU RoHS regulations do not require labeling. Additionally, the issue of how China's labeling and marking requirements will be applied to products containing many electrical information product components has not been adequately addressed by Chinese regulators, nor have the mandated labeling and marking requirements been notified to the WTO TBT Committee for review and comment.

Companies have also expressed concern about China's plans to require an in-country testing and certification process using the CCC mark system for the as yet to be determined catalogue of products that will be banned if they contain the hazardous substances identified above. No other country regulating hazardous substances in electrical information products requires in-country, government-administered testing for compliance, according to U.S. industry. For example, the EU requires companies to self-declare their conformity with the EU RoHS Directive.

Scrap Recycling

Scrap exports from the United States to China exceeded $4 billion in 2006, making scrap one of the United States' largest exports to China by value. In late 2003, China's AQSIQ issued a notice requiring overseas scrap material exporters to register with AQSIQ. The stated purpose of the new requirement was to better monitor the entry of scrap shipments into China reportedly due to high occurrences of receiving dangerous waste and illegal material in past shipments from overseas. It was not until May 2004 that AQSIQ issued the implementing rules. These rules established registration procedures, including an application deadline of July 2004, and set substantive requirements. In response to U.S. and other WTO Members' concerns that the application period was too short, AQSIQ extended the application deadline to August 2004, allowed companies who submitted incomplete applications to supplement required documents and extended the new requirement's effective date from November 2004 to January 2005.

In 2004, AQSIQ made public on its website the names of overseas exporters approved to ship scrap to China in two postings, the first in mid-October and the second at the end of December, only days before the new registration would take effect. In total, about 85 percent of worldwide applicants were granted approval, including hundreds of U.S. exporters. AQSIQ indicated that it would notify applicants that were not approved and that these exporters would be able to apply again six months after receiving notice of their rejection.

In July 2005, AQSIQ posted Bulletin No. 103/2005 on its website, announcing the resumption of the review and approval of registration applications for scrap imports. According to the bulletin, as of August 2005, scrap suppliers must wait three years to reapply for registration if they are denied eligibility. A December 2005 AQSIQ notice reported that an additional 260 company registrations had been approved, including 55 U.S. companies.

Since Bulletin No. 103/2005 was published, U.S. scrap exporters continue to experience problems related to inconsistent and unexplained rejections of licenses, confusing requirements imposed with little or no notice, and rejections of shipments at the point of entry. Problems are also being encountered within the United States as a result of pre-inspection requirements imposed by the Chinese authorities and conducted by Chinese-authorized inspectors at the shipment origin point.

Scrap Waste

In December 2004, China's President Hu Jintao signed Presidential Order No. 31, publishing the amended Law for the Prevention of Solid Scrap Waste Pollution, which went into effect in April 2005. According to this law, firms manufacturing, selling and importing items listed in the mandatory reclamation catalogue must recycle these items, and it is illegal to import scrap waste as component materials that cannot be rendered safe. Depending on the particular item, items that can be safely used as component materials are subject to either restricted import procedures or automatic licensing procedures. SEPA is charged with coordinating with MOFCOM, NDRC, China Customs and AQSIQ to design, adjust and publish the catalogues of imported solid scrap waste subject to the restricted or automatic licensing regimes. SEPA and MOFCOM, meanwhile, are responsible for reviewing and issuing licenses for the items subject to restricted import procedures.

Medical Devices

China still requires outdated type-testing (batch testing) for medical devices. Quality systems audits, a common practice in other major markets, address product safety and efficacy in a more rigorous manner than type-testing. As a result, requiring firms that have undergone internationally recognized quality systems audits to also be type-tested is redundant and does not provide any additional safety benefits, while it adds unnecessary costs and delays in getting needed medical device products to Chinese patients. Certain electro-medical devices also face redundant testing by two different agencies, the State Food and Drug Administration (SFDA) and AQSIQ, which administers the "CCC" mark for electrical safety. Both agencies perform virtually identical product tests and factory inspections prior to registration, but they do not recognize the results of one another's tests and inspections. The U.S. medical devices industry reports that this redundancy adds significant time and costs to bringing a new technology to market in China without providing any additional safety benefits.

At the April 2006 JCCT meeting, China committed to eliminate the testing and certification redundancies in the medical devices sector. However, AQSIQ/SFDA Notice No. 70, issued in April 2006, intended by China to fulfill the JCCT commitment, only eliminated a single redundancy. It only eliminated redundant testing and redundant testing fees, while failing to address separate and redundant AQSIQ and SFDA application fees, certification processes and inspection teams for inspecting the manufacturing facilities of medical device makers in the United States and other countries.

A similar concern exists for imported pacemakers, which are inspected by AQSIQ after clearing customs. This review adds unnecessary delay and costs to the distribution of these pacemakers, without providing any additional safety benefits, as pacemakers are scanned and re-calibrated by the hospital before implantation into patients.

Sanitary and Phytosanitary (SPS) Measures

In 2006, China's general lack of transparency remained a problem. China either failed to notify or belatedly notified to the WTO numerous SPS measures, resulting in measures that were adopted without the benefit of comments from other interested WTO Members. In addition, in some cases, the adopted measures were overly burdensome, appeared to lack a scientific foundation, or raised significant national treatment concerns. U.S. engagement with China at the WTO and bilaterally, including through the provision of technical assistance, has helped to ensure China's compliance with certain WTO transparency obligations. At the same time, however, various U.S. agricultural exports continued to be subjected to unnotified entry, inspection and labeling requirements or faced unwarranted import bans. The most problematic of China's SPS measures are described below.

Bovine Spongiform Encephalopathy (BSE)-Related Bans on Beef and Low-Risk Bovine Products

In December 2003, China and other countries imposed a ban on U.S. cattle, beef and processed beef products in response to a case of BSE found in a dairy cow which had been imported from Canada into the United States. Since that time, the United States has repeatedly provided China with extensive technical information on all aspects of its BSE-related surveillance and mitigation measures, internationally recognized by the World Organization for Animal Health (OIE) as effective and appropriate, for both food safety and animal health.

After three years, China still has not provided any scientific justification for continuing to maintain its ban, nor has it identified any of the administrative and regulatory steps necessary to lift the ban. Although China finally sent a technical team to the United States in October 2005, this visit did not advance a resolution of the impasse. At the April 2006 JCCT meeting, China agreed to conditionally reopen the Chinese market to U.S. beef, subject to the negotiation and finalization of an import protocol by technical experts on an expedited basis. Jointly negotiated protocols, and accompanying export certificates, are normal measures necessary for the export of any livestock products from the United States to China or other trading partners. At the end of June 2006, after three inconclusive rounds of negotiations, China's food safety regulators unilaterally announced a limited market opening, restricted to the entry of U.S. boneless beef from animals 30 months of age or less. One month later, they followed up that announcement with an announcement of 22 onerous entry conditions, many of which were unrelated to BSE. These unilateral announcements had no practical effect, because, as with any trading partners seeking to engage in livestock trade, the United States and China would have had to agree on language for actual export safety certificates before the trade could resume. Since then, the United States has pressed China to reconsider its position and to negotiate an appropriate protocol in light of China's WTO SPS Agreement obligations and relevant OIE guidelines.

At the same time that it banned U.S. cattle, beef and processed beef products, China also banned low-risk or "safe to trade" bovine products (i.e.: bovine semen and embryos, protein-free tallow and non-ruminant feeds and fats) even though they are deemed tradable based on OIE guidelines regardless of a country's BSE status. After numerous bilateral meetings and technical discussions in 2004, including a visit to U.S. bovine facilities by Chinese food safety officials, China announced a lifting of its BSE-related ban for low-risk bovine products in late September 2004. However, China conditioned the lifting of the ban on the negotiation of protocol agreements setting technical and certification parameters for incoming low-risk bovine products. In November 2004, U.S. and Chinese officials finalized and signed protocols that would enable the resumption of exports of U.S.-origin bovine semen and embryos, contingent on facility certification by China's regulatory authorities, as well as a resumption of exports of U.S.-origin non-ruminant feeds and fats. In July 2005, China finally announced the resumption of trade in bovine semen and embryos, following certifications for 52 U.S. facilities made earlier in the year. However, trade in U.S.-origin non-ruminant feeds and fats did not resume, as China's regulatory authorities insisted on a series of onerous, detailed and unnecessary information requirements that are not consistent with OIE guidelines and contrast sharply with U.S. requirements. As a result of further negotiations in December 2005, export certificates were finalized, and trade resumed in early 2006. Meanwhile, trade in protein-free tallow had not resumed by the end of 2006, as U.S. and Chinese officials had not reached agreement on provisions of a protocol.

Avian Influenza (AI)

In February 2004, China imposed a nationwide ban on U.S. poultry in response to cases of low-pathogenic AI found in Delaware. Throughout 2004, the United States provided technical information to China on the U.S. AI situation, and in August 2004 a high-level Chinese delegation conducted a review of the status of AI eradication efforts in the United States. In December 2004, China lifted its nationwide ban on U.S. poultry, leaving in place a ban only for the states of Connecticut and Rhode Island. In early 2005, following the announcement of low-pathogenic AI found in the state of New York, China did not impose a nationwide ban. Instead, demonstrating progress in following OIE guidelines, China imposed a ban limited to poultry from the state of New York.

In 2006, China imposed an import ban on poultry and poultry products originating from the state of Pennsylvania, based on incidents of low-pathogenic AI. China also suspended the importation of heat-treated and cooked poultry and poultry products at the same time, even though the OIE's AI chapter makes clear that products that have been heat-treated in a manner to inactivate the virus should not be subject to an AI-related import ban. Despite China's progress in imposing limited bans, as opposed to nationwide bans, in response to cases of AI, China's actions are problematic because any ban in response to cases of low-pathogen AI is inconsistent with international standards. The United States is attempting to work with China's regulators to address these issues.

Wheat

The 1999 U.S.-China Agricultural Cooperation Agreement established an agreed level of TCK fungus tolerance in U.S. wheat, and China no longer routinely blocks U.S. wheat exports from the Pacific Northwest on the basis of the TCK fungus. Nevertheless, China has imposed a maximum residue level (MRL) for selenium that is more stringent than the international standard and threatens U.S. wheat exports to China. In addition, China has imposed an MRL for vomitoxin in wheat in the absence of any international standard or scientific justification. Although these measures are problematic, U.S. exports of wheat to China appear to be unaffected by them. A drop in U.S. wheat exports in 2006 was attributable to other factors.

Zero Tolerance for Pathogens

Since 2002, China has applied SPS-related requirements on imported raw meat and poultry that do not appear to be consistent with Codex Alimentarius (Codex) guidelines or current scientific testing practices. One requirement establishes a zero tolerance limit for the presence of Salmonella bacteria. A similar zero tolerance standard exist for E. Coli and Listeria pathogens. Meanwhile, the complete elimination of these enteropathogenic bacteria is generally considered unachievable without first subjecting raw meat and poultry to a process of irradiation. Moreover, China apparently does not apply this same standard to domestic raw poultry and meat, raising national treatment concerns.

In late 2005 and early 2006, 14 U.S. pork and poultry plants were de-listed by China for alleged violations of zero tolerance standards for pathogens or detection of certain chemical residues. Despite positive results from USDA Food Safety and Inspection Service investigations of the plants, the majority of the plants were not re-listed as approved to ship products to China until April 2006, following extensive engagement between U.S. and Chinese regulatory officials because of differences between Codex guidelines and China's SPS related requirements on imported raw meat and poultry. Two U.S. plants remain de-listed while U.S. regulatory officials continue to press Chinese regulatory officials to re-list the plants or to provide scientific justification.

Meanwhile, China continues to maintain maximum residue levels (MRLs) for certain heavy metals, veterinary drugs and other residues that are inconsistent with Codex and other international standards. China also enforces a zero tolerance standard for some residues, even where Codex has adopted guidelines that many of China's major trading partners have adopted. U.S. regulatory officials have encouraged their Chinese counterparts to adopt MRLs that are scientifically based, safe and minimally trade disrupting.

Distilled Spirits

Until August 2006, China maintained a mandatory standard on distilled spirits that set maximum limits on naturally occurring substances, known as superior alcohols or fusel oils, which result from the production process. However, the Joint UN FAO/WHO Expert Committee on Food Additives, like U.S. regulators of alcohol, has recognized that superior alcohols are safe for human consumption. In August 2006, after several years of bilateral engagement and interventions by the United States at WTO TBT Committee meetings, China notified a proposed revision of its distilled spirits standard and indicated that it was accepting public comment. According to China's notification, the proposed revision would eliminate the requirement for tolerance levels of superior alcohols, or fusel oil. If adopted, it would bring China's standard in line with international norms.

Food Additive Standards

Another problematic area involves China's overly restrictive food additive standards. China continues to block many U.S. processed food products from entering the Chinese market by banning certain food additives that are widely used in other countries and have been approved by the World Health Organization. The most recent example is China's proposed *Hygienic Standard for Uses of Food Additives*, notified to the WTO in July 2005 so that WTO Members could comment on it. This proposed technical regulation is 237 pages long and covers dozens of residues and additives for nearly 1,000 commodities. In some cases, it employs domestic nomenclature rather than internationally recognized technical terms, making it difficult to assess the impact that it would have on specific products. The United States recently submitted detailed comments on the proposed technical regulation and asked China to delay its adoption until a thorough review could take place.

Biotechnology Regulations

In January 2002, the Ministry of Agriculture (MOA) issued new rules implementing June 2001 regulations on agricultural biotechnology safety, testing and labeling. The product most affected by these rules was soybeans, while corn and other commodities were also potentially affected. However, the rules did not provide adequate time for completion of required safety assessments before their effective date of March 20, 2002. In response to U.S. interventions, China issued interim rules, which allowed trade to continue while authorities carried out safety assessments of biotechnology products. These interim rules were extended twice and were set to expire in April 2004. In December 2003 talks, MOA officials promised that approval of Round-up Ready soybeans would be completed at least 60 days before expiration of the interim rules in order to prevent any trade disruption. China followed through on this promise and approved Round-up Ready soybeans, along with two cotton events and two corn events, in February 2004. Two months later, China issued final safety certificates for four additional corn events and seven canola events. China issued a formal safety certificate for another corn event later in 2004, leaving only one corn event still awaiting final approval. During the July 2005 JCCT meeting, MOA issued the final safety certificate for the remaining corn event. All of the approvals made in 2004 and 2005 were for three-year renewable safety certificates. In January 2007, MOA renewed safety certificates for all of the events that had originally been approved three years earlier.

Other U.S. concerns with China's biotechnology regulations remain. Areas of concern include limited timelines for submission of products, lack of clarity on assessment requirements for stacked (multiple trait) products and, at times, duplicative and unprecedented testing requirements.

Food Labeling

The U.S. processed food industry has registered concerns with a number of standards and labeling requirements on its exports to China. The meat industry in particular is concerned that labeling regulations issued in late 2002 contain several requirements that go beyond those of any other country. It asserts that these requirements are unnecessary and costly.

Chinese agricultural importers and importers of processed foods are also concerned about measures requiring labels for products containing material developed through the use of biotechnology, such as soybeans and corn. The June 2001 biotechnology regulations issued by MOA require labeling of bulk commodities, but implementation has been limited and sporadic. Future implementation of these measures remains uncertain.

The distilled spirits industry is concerned that China will require its products to comply with all existing food labeling requirements. The industry believes that some of these requirements are inappropriate. For example, China requires distilled spirits product labels to include a bottling date. According to accepted international practice relating to wines and spirits, however, the date of manufacture (production or bottling date) is not required. Because many spirits products consist of a blend of spirits that are aged for varying periods, a single "date of manufacture" is often not possible to specify, would not represent the actual age of the product and would confuse consumers regarding the actual age of the product. China also requires the labels of distilled spirits products to include a list of ingredients, even though the original ingredients (e.g., corn, wheat, rye and barley) are completely transformed and are no longer present after distillation. Furthermore, China maintains typeface specifications and translation requirements that are inconsistent with international standards.

EXPORT REGULATION

Export Licenses and Quotas

Over the last several years, China has progressively reduced the number of products requiring some type of export license. In 2005, China continued this trend, as it freed up three additional categories of products from this requirement (man-made jade, satin and some kinds of silk). As of the end of 2006, China continued to maintain export licensing requirements for 46 categories of products (totaling 312 items at the 8-digit tariff level), including important industrial raw materials like coke, fluorspar and rare earth oxides, as well as certain grains, cotton, livestock, certain metals, lethal chemicals and food products. In addition, China occasionally imposes new export licensing requirements on strategically sensitive commodities.

For some products, such as coke (a key steel input) and fluorspar (a key ingredient in a wide range of downstream products made with fluorocarbons), the export licensing system raises serious concerns under WTO rules that generally prohibit export restrictions. Export licenses for these two products are accompanied by export quotas and at times have required the payment of high export license fees beyond the administrative costs of administering an export license system.

In 2004, China's export restrictions on coke began to have a significant, adverse effect on U.S. integrated steel producers and their customers, as China's increasingly restrictive export restrictions pushed the export price of Chinese coke to the vicinity of $500 per metric ton (MT), more than three times the price in 2003. After a series of meetings in which the United States urged China to eliminate the practice of using export restrictions, not just for coke but also for other products, China raised the 2004 quota allotment for coke to 12.3 million MT, and it indicated that it would eventually raise the quota to the 2003 level of 14.3 million MT. Shortly thereafter, MOFCOM also issued an urgent notice reiterating that the sale of export licenses was illegal. In the ensuing months, with the increased supply of Chinese coke and the crackdown on the sale of export licenses, the export prices for Chinese coke declined significantly. U.S. industry was also able to obtain a substantially larger quantity of Chinese coke in 2004 than it had in 2003.

In May 2005, consistent with earlier indications from China, an NDRC official stated publicly that China would eliminate the coke export quota system as of January 1, 2006. A MOFCOM official also noted that while WTO rules allow Member countries to impose quotas on exports under certain circumstances, the rules simultaneously require restrictions on domestic consumption, which had not been done to date. In November 2005, when MOFCOM announced the 2006 export quota levels for agricultural, industrial and textile products, coke was absent from the list. MOFCOM later indicated that coke would still be subject to an export quota, except the export quota would now be administered by the NDRC, not MOFCOM. The reason given for the switch in coke export quota administration is that NDRC is responsible for dealing with industrial products that have significant influence on the national economy. In early December 2005, the NDRC released a list of 2006 coal export quotas, but did not include coke. In late December 2005, the NDRC finally issued the coke export quota, set at 14 million MT for 2006.

In 2006, even though the export price for Chinese coke remained relatively low compared to the $500 per MT price of 2004, the export quota kept world coke prices artificially high in 2006, and a significant differential existed between China's domestic coke prices and world coke prices. However, the Chinese government continued its efforts to direct market outcomes by maintaining the export quota on coke for 2007. In addition, in October 2006, China took the additional step of imposing a 5 percent duty on exports of coke.

In October 2006, China announced new export duties on certain steel inputs and semi-processed steel products. Applied in combination with differential VAT rebate policies, these export duties act to restrict exports of raw materials and semi-processed inputs (including coke) while promoting the production and export of more processed steel products.

China has imposed quotas and high license fees on exports of fluorspar since before its accession to the WTO, apparently with the objective of supporting China's downstream producers of the numerous products derived from fluorspar, such as non-ozone depleting hydrofluorocarbon refrigerants and foam blowing agents. While their foreign competitors pay higher world market prices for fluorspar, China's downstream producers benefit from the artificially low domestic prices for fluorspar and are able to export their products around the world at prices well below those of their foreign competitors. China has refused to modify its practices in this area, despite repeated U.S. requests. In fact, China has increased the protection afforded to its downstream producers by lowering the export quota on fluorspar each year and, in October 2006, by imposing a 10 percent duty on exports of fluorspar.

In December 2004, China announced plans to impose export duties on certain categories of textile and apparel products in an apparent effort to manage the export growth of textile and apparel products in response to concerns raised by its trading partners as the January 1, 2005 deadline for removal of global textile quotas drew near. In February 2005, MOFCOM issued rules imposing automatic licensing requirements for textile exports to the United States, the European Union and Hong Kong. Subsequently, China suspended the licensing requirements only to restore similar measures in June 2005 and July 2005 after the United States imposed safeguards on certain categories of textile imports from China. China claimed the measures were needed to avoid uncertainty among Chinese textile exporting firms, to encourage exports of high value-added items and to avoid rent seeking in license distributions. Under the June 2005 measures, MOFCOM, China Customs and AQSIQ jointly issued and made adjustments to a catalogue of subject items, listed by tariff codes, destination countries and regions, implementing periods and total licensed export quantities of subject items. Included in the catalogue were textile products subject to foreign safeguard actions or those subject to temporary quantitative regulation in accordance with bilateral agreements. In November 2005, USTR and MOFCOM signed a memorandum of understanding (MOU), under which China agreed to limit export growth rates in 34 categories of textiles, representing approximately 40 percent of bilateral trade in textiles, through 2008. The United States in turn agreed to dismiss all pending China-specific textile safeguard investigations and agreed to exercise restraint in invoking safeguards for categories of textiles falling outside the MOU. The United States and China also established an Electronic Visa Information System Arrangement to monitor trade in the affected products.

China requires export licenses on products that are the subject of antidumping duties in a foreign market. As was initially the case in 2005 for textile exports subject to safeguard limitations in the United States, the central government has often delegated responsibility for issuing these licenses to quasi-governmental industry associations formed to take the place of the ministries that governed production during the earlier central planning era. Foreign investors report that the industry associations are using the power to issue export licenses to force companies to participate in association-supported activities. For example, the steel producers' industry association will not issue an export license to any company that does not contribute to its antidumping defense funds.

Export Subsidies

China officially abolished subsidies in the form of direct budgetary outlays for exports of industrial goods on January 1, 1991. In its WTO accession agreement, China committed to eliminate all subsidies prohibited under Article 3 of the WTO Agreement on Subsidies and Countervailing Measures, including all forms of export subsidies on industrial and agricultural goods, upon its accession to the WTO in December 2001.

A general lack of transparency makes it difficult to identify and quantify possible export subsidies provided by the Chinese government. China's subsidy programs are often the result of internal administrative measures and are not publicized. Sometimes they take the form of income tax reductions or exemptions. They can also take a variety of other forms, including mechanisms such as credit allocations, low-interest loans, debt forgiveness and reduction of freight charges. U.S. industry has alleged that subsidization is a key reason that Chinese exports are undercutting prices in the United States and gaining market share. Of particular concern are China's practices in the steel, petrochemical, high technology, forestry and paper products, textiles, hardwood plywood, machinery and copper and other non-ferrous metals industries.

In April 2006, China finally submitted its long-overdue subsidies notification to the WTO's Subsidies Committee. Although the notification is lengthy, with over 70 subsidy programs reported, it is also notably incomplete, as it failed to notify any subsidies provided by China's state-owned banks or by provincial and local government authorities. In addition, while China notified several subsidies that appear to be prohibited under WTO rules, it did so without making any commitment to withdraw them, and it failed to notify other subsidies that appear to be prohibited.

Through the remainder of 2006, the United States pressed China to withdraw the subsidies that appear to be prohibited, which include both export subsidies and import substitution subsidies and benefit a wide range of industries in China, principally through income tax and VAT exemptions and reductions. However, China was unwilling to commit to the immediate withdrawal of these subsidies. Accordingly, the United States initiated a challenge to these subsidies under the WTO's dispute settlement procedures in early 2007.

Shortly after China acceded to the WTO, U.S. corn exporters began to complain that China was subsidizing its corn exports. In 2002 and 2003, it appeared that significant quantities of corn had been exported from China, including corn from Chinese government stocks, at prices that may have been 15 percent to 20 percent below domestic prices in China. As a result, U.S. corn exporters were losing market share for corn in their traditional Asian markets, such as South Korea and Malaysia, while China was exporting record amounts of corn. In 2004, however, trade analysts began to conclude that, because of several economic factors, including changes in the relationship between domestic prices and world prices, China was trending toward becoming a net importer of corn. One result appears to be that China's exports are largely made on a commercial basis, although concern remains regarding the operation of China's VAT rebate system for corn.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

With its acceptance of the TRIPS Agreement, China took on obligations to adhere to generally accepted international norms to protect and enforce the intellectual property rights held by U.S. and other foreign companies and individuals in China. Specifically, the TRIPS Agreement sets minimum standards of protection for copyrights and neighboring rights, trademarks, geographical indications, industrial designs, patents, integrated circuit layout designs and undisclosed information. Minimum standards are also established by the TRIPS Agreement for IPR enforcement procedures and remedies. The TRIPS Agreement additionally requires that, with very limited exceptions, WTO Members provide national and most favored nation (MFN) treatment to the nationals of other WTO Members with regard to the protection and enforcement of intellectual property rights.

Since its accession to the WTO, China has overhauled its legal regime and put in place a comprehensive set of laws and regulations aimed at protecting the intellectual property rights of domestic and foreign entities in China. At the same time, some key improvements in China's legal framework are still needed, and China has continued to demonstrate little success in actually enforcing its laws and regulations in the face of the challenges created by widespread counterfeiting, piracy and other forms of infringement. Indeed, USTR's April 2006 report under the Special 301 provisions of U.S. trade law cited inadequate IPR enforcement as one of China's greatest shortcomings as a trading partner. As a result, in 2006, the United States' bilateral engagement with China continued to focus on obtaining improvements to multiple aspects of China's system of IPR protection and enforcement so that significant reductions in IPR infringement in China could be realized and sustained over time.

Several factors contribute to China's poor IPR enforcement record. One major factor is China's chronic underutilization of deterrent criminal remedies. For example, legal measures in China that establish high thresholds for criminal investigation, prosecution and conviction preclude criminal remedies in many instances of commercial-scale counterfeiting and piracy, creating a "safe harbor" for infringers and raising concerns among the United States and some of its major trading partners relating to China's obligations under Article 61 of the TRIPS Agreement. With criminal remedies circumscribed, China's enforcement authorities rely instead on toothless administrative enforcement, which primarily results in small fines, administrative injunctions and other minor inconveniences for infringers. Meanwhile, procedures in civil actions are frequently cumbersome, and civil damages are generally low.

Another exacerbating factor – which also raises WTO concerns – is China's continued maintenance of import restrictions and restrictions on wholesale and retail distribution that reduce and delay market access for certain types of legitimate foreign products, such as movies, video games and books. These restrictions inadvertently help to ensure that infringing products continue to dominate those sectors within China.

China's leaders began to demonstrate a willingness to address U.S. concerns in October 2003, when a new IPR Leading Group was formed, signaling a more focused and sustained effort by China to tackle the IPR enforcement problem. Many officials in China, led by President Hu Jintao, Premier Wen Jiabao and Vice Premier Wu Yi, continued to give voice to China's commitment to protecting intellectual property rights in 2006 and worked hard to make it a reality, as they attempted to improve not only public awareness but also training and coordination among the numerous Chinese government entities involved in IPR enforcement while simultaneously fighting local protectionism and corruption. Sustained involvement by China's leaders is critical if China is to deliver on the IPR commitments that it made at the April 2004, July 2005 and April 2006 JCCT meetings, including China's core commitment to significantly reduce IPR infringement levels across the country.

Building on earlier engagement with China, the United States conducted an out-of-cycle review under the Special 301 provisions of U.S. trade law in 2004 and 2005. This review involved a systematic evaluation of China's entire IPR enforcement regime and concluded in April 2005 with the Administration's elevation of China to the Special 301 "Priority Watch" list and the creation of a comprehensive strategy for addressing China's ineffective IPR enforcement regime, which included the possible use of WTO mechanisms, as appropriate.

Pursuing this new strategy at the July 2005 JCCT meeting, the United States sought and obtained China's agreement to take a series of specific actions designed to: (1) increase criminal prosecutions of IPR violators; (2) improve border enforcement and reduce exports of infringing goods; (3) counter piracy of movies, audio visual products and software; (4) address Internet-related piracy; and (5) assist small- and medium-sized U.S. companies experiencing China-related IPR problems, among other things. To date, China has taken steps to fulfill many of these commitments. It adopted amended rules governing the transfer of administrative and customs cases to criminal authorities, and it took some steps to pursue administrative actions against end-user software piracy. China posted an IPR Ombudsman to its Embassy in Washington, who has facilitated contacts between U.S. Government officials and their counterparts in Beijing, and has been a source of information for U.S. businesses, including small- and medium-sized companies. China has also sought to expand enforcement cooperation.

In October 2005, the United States submitted a request to China under Article 63.3 of the TRIPS Agreement, as did both Japan and Switzerland, seeking more transparency on IPR infringement levels and enforcement activities in China, with the objective of obtaining a better basis for assessing the effectiveness of China's efforts to improve IPR enforcement since China's accession to the WTO.

However, despite the United States' extensive efforts to follow up on its Article 63.3 request bilaterally, China has since provided only limited information in response, hampering the United States' ability to evaluate whether China is taking all necessary steps to address the rampant IPR infringement found throughout China.

In 2006, the United States again used the JCCT process, including the IPR Working Group created at the April 2004 JCCT meeting, to secure new IPR commitments and, in a few instances, specific actions to implement past commitments. During the run-up to the April 2006 JCCT meeting, China took enforcement actions against plants that produce pirated optical discs, and it also issued new rules that require computers to be pre-installed with licensed operating system software. At the meeting itself, China further committed to ensure the legalization of software used in Chinese enterprises and to take up issues of government and enterprise software asset management in the JCCT IPR Working Group. China also agreed to work on cooperation to combat infringing goods displayed at trade fairs in China and to intensify efforts to eliminate infringing products at major consumer markets in China, such as the Silk Street Market in Beijing. The two sides further agreed that they would increase cooperation between their respective law enforcement authorities and customs authorities and that the United States would provide China with additional technical assistance to aid China in fully implementing the WIPO Internet treaties (i.e.: the WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty). In addition, China reaffirmed its prior commitments to continue efforts to ensure the use of legalized software at all levels of government and to adopt procedures to ensure that enterprises use legal software, beginning with state-owned enterprises and other large enterprises.

To date, China has made some progress in implementing its April 2006 JCCT commitments, but it has been slower than in the past. One bright spot appears to be China's implementation of the new rules requiring computers to be pre-installed with licensed operating system software, as U.S. industry has been pleased with the initial results of that effort.

Legal Framework

In most respects, China's framework of laws, regulations and implementing rules remains largely satisfactory. However, reforms are needed in a few key areas, including certain aspects of the Criminal Law and rapidly emerging fields, such as Internet copyright protection. In particular, right holders have pointed to a number of continuing deficiencies in China's criminal measures. For example, it appears that China would need to eliminate thresholds for criminal prosecution that provide a legal "safe harbor" for many commercial infringers if it is to bring its legal framework into compliance with its TRIPS Agreement obligations. In addition, while China introduced new regulations in 2006 that represent a positive step toward meeting the requirements of the WIPO Internet treaties, more work is needed at both the national level and the provincial level to meet the challenges of Internet piracy and fully implement the WIPO Internet treaties.

At the time of its accession to the WTO, China was in the process of modifying the full range of IPR laws, regulations and implementing rules, including those relating to patents, trademarks and copyrights. China had completed amendments to its Patent Law, Trademark Law and Copyright Law, along with regulations for the Patent Law. Within several months of its accession, China issued regulations for the Trademark Law and the Copyright Law, followed by implementing rules. China also issued regulations and implementing rules covering specific subject areas, such as integrated circuits, computer software and pharmaceuticals. U.S. experts carefully reviewed these measures after their issuance and, together with other WTO Members, participated in a comprehensive review of them before the WTO's TRIPS Council in 2002.

Since 2003, China has periodically issued new IPR laws, regulations and other measures. The U.S. Government has reviewed these measures through bilateral discussions and subsequent TRIPS Council reviews. Encouragingly, China has also become more willing to circulate proposed measures for public comment and to discuss proposed measures with interested trading partners and stakeholders.

In 2006, China announced a new Action Plan for revising its legal regime in order to better protect intellectual property rights. Among other things, this Action Plan sets out China's intentions for revising the Patent Law, the Trademark Law and related measures, and China subsequently did release new versions of both the Patent Law and the Trademark Law for public comment. Since then, the United States has been assessing the potential ramifications of the contemplated revisions for U.S. right holders. The U.S. Government and U.S. industry groups have also submitted written comments, along with invitations to continue dialogue on these important pieces of legislation.

China has also been working on other proposed legal measures that could have significant implications for the intellectual property rights of foreign right holders. In particular, China is drafting an Anti-Monopoly Law and has considered rules relating to the treatment of IPR by standards-setting organizations. The United States is carefully monitoring both of these efforts and has raised concerns with particular aspects of these proposals, both in bilateral meetings and at the WTO.

The United States, meanwhile, has repeatedly urged China to pursue additional legislative and regulatory changes, using both bilateral meetings and the annual transitional reviews before the WTO's TRIPS Council. The focus of U.S. efforts is to persuade China to improve its legal regime in certain critical areas, such as criminal IPR enforcement and legislative and regulatory reform, especially with regard to China's high criminal thresholds and other obstacles to effective enforcement. Other obstacles in the area of criminal enforcement include, for example, the lack of criminal liability for certain acts of copyright infringement, the profit motive requirement in copyright cases, the requirement of identical trademarks in counterfeiting cases and the absence of minimum, proportionate sentences and clear standards for initiation of police investigations in cases where there is a reasonable suspicion of criminal activity. At the same time, the United States has also been pressing China for a variety of changes to its administrative and civil enforcement regimes, such as the restoration of minimum (and deterrent) fines in administrative trademark enforcement cases, increased referral of administrative enforcement actions for criminal prosecution, elimination of the need for legalization and consularization of foreign evidence, implementation of a discovery process with compulsory measures for evidence protection, provision of meaningful injunctive relief and enforcement of judicial orders. While some of these issues do not raise specific WTO concerns, all of them will continue to detract from China's enforcement efforts until addressed.

In its 2006 Action Plan, China did not embrace reform of the Criminal Law, although it did undertake to "improve" its December 2004 judicial interpretation on the handling of criminal IPR cases. Improvement of that measure could include, for example, clarification of some issues related to China's problematic thresholds, but Chinese government officials have given no indication that this process will lead to the reduction or elimination of these thresholds – a key concern for U.S. right holders, particularly in light of China's obligations under Article 61 of the TRIPS Agreement. In the United States' view, China's high thresholds for criminal prosecution help to explain why criminal remedies are so underutilized in China, as these thresholds create a substantial "safe harbor" for commercial-scale infringers. The United States is determined to resolve this problem and, in November 2006, informed China that it would be filing a formal request for WTO consultations on this issue and certain other IPR enforcement issues. However, China asked the United States to delay that filing so that further bilateral discussions could take place. With the support of U.S. industry, the United States agreed to hold further bilateral discussions, with the objective of seeking a resolution in the near term.

The United States has also sought improvements in China's copyright protection in the context of electronic information networks since the April 2004 JCCT meeting. China took an important step at the time of that meeting when the National Copyright Administration (NCA) issued the Measures for Administrative Protection of Copyright on the Internet. That measure requires Internet service providers to take remedial actions to delete content that infringes on copyrights upon receipt of a complaint from the right holder, or face administrative penalties ranging from confiscation of illegal gains to fines of up to RMB100,000 ($12,500).

During the run-up to the July 2005 JCCT meeting, the United States also urged China to accede to the WIPO Internet treaties and to fully harmonize its regulations and implementing rules with them. Compliance with these treaties is not required under WTO rules, but they still reflect important international norms for providing copyright protection over the Internet. These treaties have been ratified by many developed and developing countries since they entered into force in 2002. In the case of China, this type of copyright protection is especially important in light of its rapidly increasing number of Internet users, many of whom have broadband access. At the July 2005 JCCT meeting, the United States obtained China's commitment to submit the legislative package necessary for China's accession to the WIPO Internet treaties to the National People's Congress by June 2006. Although China's fulfillment of this commitment has been delayed for technical reasons relating to coordination with Hong Kong and Macau, the Standing Committee of the National People's Congress issued a notice in late December 2006 indicating that China had decided to accede to the WIPO Internet treaties. Even before that decision, China had moved forward with the harmonization of some of its regulations and implementing rules in 2005 and 2006. In May 2006, for example, the State Council adopted an important Internet-related measure, the Regulations on the Protection of Copyright Over Information Networks, which went into effect in July 2006. Overall, this measure represents a welcome step, demonstrating China's determination to improve protection of the Internet-based right of communication to the public while China continues its preparations for accession to the WIPO Internet treaties. This measure is not comprehensive, however. A number of gaps remain to be filled for China to meet the challenges of Internet piracy and fully implement the WIPO Internet treaties.

With respect to software piracy, China issued new rules during the run-up to the 2006 JCCT meeting that require computers to be pre-installed with licensed operating system software and government agencies to purchase only computers satisfying this requirement. Combined with ongoing implementation of previous JCCT commitments on software piracy, it is hoped that these rules will contribute to significant further reductions in industry losses due to software piracy, which were estimated to have declined from $1.48 billion in 2004 to $1.27 billion in 2005. Achieving sustained reductions in end-user software piracy will require more enforcement by China's authorities, followed by high profile publicity of fines and other remedies imposed.

In the customs area, the United States was encouraged in 2006 by the Customs Administration's increased efforts to provide effective enforcement against counterfeit and pirated goods destined for export. Nevertheless, the United States remains concerned about the rapid growth in infringing products originating from China (discussed in the Enforcement section below). The United States also remains concerned about various aspects of the Regulations on the Customs Protection of Intellectual Property Rights, issued by the State Council in December 2003, and the Customs Administration's May 2004 implementing rules. Disposal of confiscated goods, for example, remains a problem under the implementing rules. Among other things, the implementing rules appear to mandate auction following removal of infringing features, rather than destruction of infringing goods not purchased by the right holder or used for public welfare. Allowing goods to re-enter the channels of commerce under these circumstances raises questions of consistency with provisions of the TRIPS Agreement and, in some cases, safety concerns. The United States raised these issues with China bilaterally and at the WTO in 2006, but so far China has not indicated that it will be addressing them.

The United States also remains concerned about a variety of weaknesses in China's legal framework that do not effectively deter, and may even encourage, certain types of infringing activity, such as the abusive registration of trademarks, the "squatting" of foreign company names and designs, the theft of trade secrets, the registration of other companies' trademarks as design patents and vice versa, the use of falsified or misleading license documents or company documentation to create the appearance of legitimacy in counterfeiting operations, and false indications of geographic origin of products. In 2006, the United States continued to discuss these and other problems with China and seek solutions for them.

In the pharmaceuticals sector, the United States continues to have a range of concerns. The United States has urged China to provide greater protection against unfair commercial use of undisclosed test and other data submitted by foreign pharmaceuticals companies seeking marketing approval for their products. The United States has also encouraged China to undertake a more robust system of patent linkage and to consider the adoption of a system of patent term restoration. In addition, built-in delays in China's marketing approval system for pharmaceuticals continue to create incentives for counterfeiting, as does China's inadequate regulatory oversight for the production of active pharmaceutical ingredients by domestic chemical manufacturers. In 2006, as in prior years, the United States sought to address all of these issues as part of its broader effort to work with China to improve China's regulatory regime for the pharmaceuticals sector.

Enforcement

The TRIPS Agreement requires China to ensure that enforcement procedures are available so as to permit effective action against any act of infringement of intellectual property rights covered by the TRIPS Agreement, including expeditious remedies to prevent infringement and remedies that constitute a deterrent to further infringement. Although the central government displayed strong leadership in modifying the full range of China's IPR laws and regulations in an effort to bring them into line with China's WTO commitments, effective IPR enforcement has not been achieved, and IPR infringement remains a serious problem throughout China. IPR enforcement is hampered by a lack of coordination among Chinese government ministries and agencies, a lack of training, the allocation of resources, a lack of transparency in the enforcement process and its outcomes, and local protectionism and corruption.

Despite repeated anti-piracy campaigns in China, an increasing number of civil IPR cases in Chinese courts and other efforts, overall piracy and counterfeiting levels in China remained unacceptably high in 2006. IPR infringement continued to affect products, brands and technologies from a wide range of industries, including films, music and sound recordings, publishing, business and entertainment software, pharmaceuticals, chemicals, information technology, apparel, athletic footwear, textile fabrics and floor coverings, consumer goods, food and beverages, electrical equipment, automotive parts and industrial products, among many others.

U.S. industry in 2006 continued to estimate that levels of piracy in China across all lines of copyright business range between 85 percent and 93 percent, indicating little or no improvement over 2005. Trade in pirated optical discs continues to thrive, supplied by both licensed and unlicensed factories and by smugglers. Small retail shops continue to be the major commercial outlets for pirated movies and music (and a wide variety of counterfeit goods), and roaming vendors offering cheap pirated discs continue to be visible in major cities across China. Piracy of books and journals and end-user piracy of business software also remain key concerns. In addition, Internet piracy is increasing, as is piracy over enclosed networks such as universities.

Although China made a commitment at the July 2005 JCCT meeting to take aggressive action against movie piracy, including enhanced enforcement for titles not yet authorized for distribution, right holders have monitored China's efforts and report little meaningful improvement in piracy of pre-release titles in several major cities. However, NCA began to undertake campaigns to combat Internet piracy in 2006. In addition, with the assistance of the Ministry of Education, NCA took initial steps to address textbook piracy on university campuses in late 2006. The continuation of these efforts, along with follow-up monitoring and consistent publicity, are needed to create lasting improvements.

China's widespread counterfeiting not only harms the business interests of foreign right holders, but also includes many products that pose a direct threat to the health and safety of consumers in the United States, China and elsewhere, such as pharmaceuticals, food and beverages, batteries, automotive parts, industrial equipment and toys, among many other products. At the same time, the harm from counterfeiting is not limited to right holders and consumers. China estimated its own annual tax losses due to counterfeiting at more than $3.2 billion in 2002, and this figure could only have grown in the ensuing years.

The United States places the highest priority on addressing the IPR protection and enforcement problems in China, and since 2004 it has devoted significant additional staff and resources, both in Washington and in Beijing, to address these problems. A domestic Chinese business constituency is also increasingly active in promoting IPR protection and enforcement. In fact, Chinese right holders own the vast majority of design patents, utility models, trademarks and plant varieties in China and have become the principal filers of invention patents. In addition, the vast majority of China's IPR enforcement efforts are undertaken at the behest of Chinese right holders seeking to protect their interests. Nevertheless, it is clear that there will continue to be a need for sustained efforts from the United States and other WTO Members and their industries, along with the devotion of considerable resources and political will to IPR protection and enforcement by the Chinese government, if significant improvements are to be achieved.

As in prior years, the United States worked with central and local government officials in China in 2006 in a determined and sustained effort to improve China's IPR enforcement, with a particular emphasis on the need for dramatically increased utilization of criminal remedies. A variety of U.S. agencies held regular bilateral discussions with their Chinese counterparts and have conducted numerous technical assistance programs for central and local government officials on TRIPS Agreement rules, enforcement methods, patent and trademark practices and procedures, transparency and rule of law issues. In addition, in 2006, the United States organized another annual roundtable meeting in China designed to bring together U.S. and Chinese government and industry officials. The United States also continued to use the IPR Working Group created at the April 2004 JCCT meeting and the JCCT process itself to press China for needed changes.

The United States' efforts have also benefited from cooperation with other WTO Members in seeking improvements in China's IPR enforcement, both in China and at the WTO during meetings of the TRIPS Council. For example, the United States, Japan and Switzerland made coordinated requests under Article 63.3 of the TRIPS Agreement in October 2005 in order to obtain more information about IPR infringement levels and enforcement activities in China and provide a better basis for assessing the effectiveness of China's efforts to improve IPR enforcement since China's accession to the WTO. In addition, the United States and the EC have increased coordination and information sharing on a range of China IPR issues over the last year. China's membership in the Asia Pacific Economic Cooperation Forum (APEC) also brings increased importance to APEC's work to develop regional IPR best practices.

The United States has also continued to pursue a comprehensive initiative to combat the enormous global trade in counterfeit and pirated goods, including exports of infringing goods from China to the United States and the rest of the world. That initiative, the Strategy Targeting Organized Piracy (STOP!), was announced in October 2004 and is a U.S. Government wide effort to stop fakes at the U.S. border, to empower U.S. businesses to secure and enforce their intellectual property rights in overseas markets, to expose international counterfeiters and pirates, to keep global supply chains free of infringing goods, to dismantle criminal enterprises that steal U.S. intellectual property and to reach out to like-minded U.S. trading partners in order to build an international coalition to stop counterfeiting and piracy worldwide.

China's share of infringing goods seized at the U.S. border increased from 69 percent in Fiscal Year 2005 to 81 percent in Fiscal Year 2006, with the value of infringing goods from China totaling more than $125 million. The continuing growth in both the absolute value and China's relative share of infringing goods seized at the border is a major challenge that calls for serious actions by the Chinese government.

China is making genuine efforts to improve IPR enforcement. U.S. industry has confirmed that some of China's special campaigns, such as the continuing "Mountain Eagle" campaign against trademark infringement crimes, have in fact resulted in increased arrests and seizures of infringing materials, although the disposition of seized goods and the outcomes of criminal cases remain largely obscured by a lack of transparency. The 2006 Action Plan announced that China will launch more of these "special crackdown efforts" with respect to various IPR infringement problems. The United States has urged China to use its implementation of the 2006 Action Plan as an opportunity to tackle emerging enforcement challenges, particularly the sale of pirated and counterfeit goods on the Internet. In addition, the United States has suggested that China use this opportunity to examine the potential benefits of specialized national IPR courts and prosecutors, providing faster trademark examination procedures and ensuring that the resources available to local administrative, police and judicial authorities charged with protecting and enforcing intellectual property rights are adequate to the task.

Nevertheless, despite its many positive efforts to improve IPR enforcement, China pursues other policies that continue to impede effective enforcement. China refuses to make needed changes to its legal framework that would facilitate the utilization of criminal remedies. These changes should be an important objective for China, given the lack of deterrence clearly evident in China's current enforcement regime, which relies too heavily on administrative enforcement. But, China continues to maintain counter-productive measures such as its high thresholds for criminal prosecution, which continue to constrain China's enforcement authorities while creating a "safe harbor" for substantial commercial-scale infringement. At the same time, China maintains market access barriers, such as import restrictions and restrictions on wholesale and retail distribution, which discourage and delay the introduction of a number of legitimate foreign products into China's market. These barriers create additional incentives for infringement of products like movies, video games and books and inevitably lead consumers to the black market, again compounding the severe problems already faced by China's enforcement authorities.

SERVICES BARRIERS

Until China's entry into the WTO, China's service sectors were among the most heavily regulated and protected sectors of the national economy. Foreign service providers were largely restricted to operations under the terms of selective "experimental" licenses. However, both as a matter of policy and as a result of its WTO commitments, China decided to significantly liberalize foreign investment in its service sectors. At present, the market for services, underdeveloped due to historical attitudes and policies, has significant growth potential in both the short and long term.

China's WTO commitments are designed to provide meaningful access for U.S. service providers. In its accession agreement, China committed to the substantial opening of a broad range of service sectors through the elimination of many existing limitations on market access at all levels of government, particularly in sectors of importance to the United States, such as banking, insurance, distribution, telecommunications and professional services. These commitments are far-reaching, particularly when compared to the services commitments of many other WTO Members.

China also made certain "horizontal" commitments, which apply to all sectors listed in its Services Schedule. The two most important of these cross-cutting commitments involve acquired rights and the licensing process. Under the acquired rights commitment, China agreed that the conditions of ownership, operation and scope of activities for a foreign company, as set out in the respective contractual or shareholder agreement or in a license establishing or authorizing the operation or supply of services by an existing foreign service supplier, will not be made more restrictive than they were on the date of China's accession to the WTO. In other words, if a foreign company had pre-WTO accession rights that went beyond the commitments made by China in its Services Schedule that company could continue to operate with those rights.

In the licensing area, prior to China's WTO accession, foreign companies in many sectors did not have an unqualified right to apply for a license to operate in China. They could only apply for a license if they first received an invitation from the relevant Chinese regulatory authorities, and even then the decision-making process lacked transparency and was subject to inordinate delay and discretion. In its accession agreement, China committed to licensing procedures that were streamlined, transparent and more predictable.

At present, many challenges remain in securing the benefits of China's services commitments. While China continued to keep pace nominally with the openings required by its WTO accession agreement, it also continued to maintain or erect terms of entry in some sectors that were so high or cumbersome as to prevent or discourage foreign suppliers from gaining market access. For example, excessive and often discriminatory capital requirements continued to restrict market entry for foreign suppliers in many sectors, such as insurance, banking, motor vehicle financing, securities, asset management, telecommunications, construction and freight forwarding, among others. In addition, in sectors such as insurance, banking and legal services, branching and related restrictions have been put into effect that raise concerns. In other sectors, such as construction services, problematic measures appear to be taking away previously acquired market access rights.

Meanwhile, the Administrative Licensing Law, which took effect in July 2004, has increased transparency in the licensing process, while reducing procedural obstacles and strengthening the legal environment for domestic and foreign enterprises. As a result, the licensing process in many sectors continued to proceed in a workman-like fashion in 2006, although concerns about unfair discrimination remained, particularly in the banking and insurance sectors. In addition, in some sectors, such as direct selling and telecommunications, the licensing process was characterized by inordinate delays.

Insurance Services

In its WTO accession agreement, China agreed to phase in expanded ownership rights for foreign companies, for the most part during the first three years of China's WTO membership. Upon China's accession to the WTO, foreign life insurers were to be permitted to hold 50 percent equity share in a joint venture; within two years of accession, foreign property, casualty and other non-life insurers were to be permitted to establish as a branch, joint venture or a wholly foreign-owned subsidiary; and, within three years of accession, or by December 11, 2004, foreign insurers handling large scale commercial risks, marine, aviation and transport insurance, and reinsurance were to be permitted 51 percent foreign equity share in a joint venture (with the right to establish as a wholly foreign-owned subsidiary within two more years). China further agreed that all foreign insurers would be permitted to expand the scope of their activities to include group, health and pension lines of insurance by December 11, 2004. In addition, China agreed to eliminate geographic restrictions on all types of insurance operations by December 11, 2004.

With regard to branching, China scheduled a WTO commitment to allow non-life firms to establish as a branch in China upon accession and to permit internal branching in accordance with the lifting of China's geographic restrictions. China further agreed that foreign insurers already established in China that were seeking authorization to establish branches or sub-branches would not have to satisfy the requirements applicable to foreign insurers seeking a license to enter China's market.

Shortly after China acceded to the WTO, the China Insurance Regulatory Commission (CIRC) issued several new insurance regulations, including ones directed at the regulation of foreign insurance companies. These regulations implemented many of China's commitments, but they also created problems in three critical areas – capitalization requirements, transparency and branching. In particular, China's capitalization requirements were significantly more exacting than those of other major economies, and they limited the ability of foreign insurers to make necessary joint venture arrangements. The regulations also continued to permit considerable bureaucratic discretion and to offer limited predictability to foreign insurers seeking to operate in China's market.

In May 2004, CIRC issued implementing rules, the Detailed Rules on the Regulations for the Administration of Foreign-Invested Insurance Companies. These rules lowered capital requirements for national licenses from RMB500 million ($62.5 million) to RMB200 million ($25 million) and for branch offices from RMB50 million ($6.25 million) to RMB20 million ($2.5 million). These changes have been welcomed by some U.S. insurers, but others still consider them to be too high. The rules also streamlined licensing application procedures and shortened approval times, although some procedures remain unclear. Meanwhile, the rules did not adequately address branching rights, as many aspects of this issue remain vague. The rules also did not address another issue that U.S. and other foreign insurers had begun to complain about – in practice, it appeared that Chinese insurers were being granted new branch approvals on a concurrent basis (more than one branch approval at a time), while foreign insurers had only received approvals on a consecutive basis (one branch approval at a time). In addition, while the rules provide some guidance regarding foreign insurers wishing to apply for approval to convert from a branch to a subsidiary, CIRC has continued to have difficulty adhering to its own regulatory requirement that it act on applications within 60 days, as long delays are routine.

By December 2004, in accordance with its WTO commitments, China had lifted all of its geographic restrictions on foreign insurers. China also took steps in 2005 to permit foreign insurers to offer health and group insurance as well as pension/corporate annuities and increased the 50 percent ceiling on foreign ownership of joint venture insurance brokerages to 51 percent. In 2006, with all geographic restrictions having been removed and most business scope restrictions lifted, the operations of foreign insurers in China continued to grow. Currently, 47 foreign insurers, including a large number of U.S. insurers, operate in China. Foreign insurers had nearly a 7 percent share of the national market (according to data through 2005), and they continued to capture encouraging market shares in major municipalities such as Beijing (20 percent), Shanghai (17 percent), Shenzhen (10 percent) and Guangzhou (9 percent).

Banking Services

In its WTO accession agreement, China committed to a five-year phase-in for banking services by foreign banks. Specifically, China agreed that, immediately upon its accession, it would allow U.S. and other foreign banks to conduct foreign currency business without any market access or national treatment limitations and conduct domestic currency business with foreign-invested enterprises and foreign individuals, subject to certain geographic restrictions. The ability of U.S. and other foreign banks to conduct domestic currency business with Chinese enterprises and individuals was to be phased in. Within two years after accession, foreign banks were also to be able to conduct domestic currency business with Chinese enterprises, subject to certain geographic restrictions, which were to be lifted gradually over the following three years. Within five years after accession, foreign banks were to be able to conduct domestic currency business with Chinese individuals, and all geographic restrictions were to be lifted. Foreign banks were also to be permitted to provide financial leasing services at the same time that Chinese banks were permitted to do so.

Shortly after China's accession to the WTO, the People's Bank of China (PBOC) issued regulations governing foreign-funded banks, along with implementing rules, which became effective February 1, 2002. The PBOC also issued several other related measures. Although these measures kept pace with the WTO commitments that China made, it became clear that the PBOC had decided to exercise extreme caution in opening up the banking sector. In particular, it imposed working capital requirements and other prudential rules that far exceeded international norms, both for the foreign banks' headquarters and branches, which made it more difficult for foreign banks to establish and expand their market presence in China. Many of these requirements, moreover, did not apply equally to foreign and domestic banks. For example, a foreign bank branch licensed to conduct business in all currencies for both corporate and individual clients had to satisfy an operating capital requirement of RMB500 million ($62.5 million), while a domestic bank branch with the same business scope needed only RMB300 million ($37.5 million) in operating capital. In addition, the PBOC allowed foreign-funded banks to open only one branch every 12 months.

In early 2004, following extensive engagement by the United States and other WTO Members, the PBOC reduced working capital requirements for various categories of foreign banks. With the issuance of the Implementing Rules for the Administrative Regulations on Foreign-Invested Financial Institutions later that year, the China Banking Regulatory Commission (CBRC) also removed the restriction that had limited foreign-funded banks to opening only one new branch every 12 months. Meanwhile, China kept up with its commitments regarding the lifting of geographic restrictions on foreign banks conducting domestic currency business with foreign enterprises and individuals and Chinese enterprises.

One area still raising concerns involves the establishment of Chinese-foreign joint banks. In the Services Schedule accompanying its WTO accession agreement, China agreed that qualified foreign financial institutions would be permitted to establish Chinese-foreign joint banks immediately after China acceded, and it did not schedule any limitation on the percentage of foreign ownership in these banks. To date, however, China has limited the sale of equity stakes in existing state-owned banks to a single foreign investor to 20 percent, while the total equity share of all foreign investors is limited to 25 percent.

By September 2006, despite high capital requirements and other impediments, 191 foreign banks, including a number of U.S. banks, reportedly had branches or representative offices in China, although only major banks have been large enough to satisfy the application requirements. In addition, the business that foreign banks were most eager to pursue in China – domestic currency business – had expanded tremendously, although China's regulatory authorities continued to shield domestic banks from foreign competition in some areas, such as by limiting product innovation by foreign banks. According to the PBOC and CBRC, the domestic currency business of U.S. and other foreign banks grew rapidly in the first two years after China's WTO accession, even though the banks' clients were then limited to foreign-invested enterprises and foreign individuals. Following the PBOC's December 2003 announcement that foreign banks would be permitted to conduct domestic currency business with Chinese enterprises subject to geographic restrictions allowed by China's WTO commitments, the growth in U.S. and other foreign banks' domestic currency business accelerated. By September 2006, the total assets of foreign banks in China reportedly had reached $105 billion, representing approximately 2 percent of total banking assets in China. In some coastal cities, the amount was higher. For example, in Shanghai, foreign banks' assets reportedly represented 12.4 percent of total banking assets in October 2005.

Notably, the five-year phase-in period for banking services by foreign banks was scheduled to end on December 11, 2006. By that time, China had committed to remove remaining geographic limitations and to allow foreign banks to conduct domestic currency business with Chinese individuals. Full implementation of these commitments should allow U.S. and other foreign banks to benefit tremendously from new business opportunities, and China should realize important benefits from having greater access to world-class banking services. In November 2006, however, the State Council issued the Regulations for the Administration of Foreign-Funded Banks. While the United States continues to work closely with U.S. banks to assess these regulations, which are intended to implement China's December 11, 2006 commitments, these regulations have generated some immediate concerns. For example, the regulations mandate that only foreign-funded banks that have had a representative office in China for two years and that have total assets exceeding $10 billion can apply to incorporate in China. After incorporating, moreover, these banks only become eligible to offer full domestic currency services to Chinese individuals if they can demonstrate that they have operated in China for three years and have had two consecutive years of profits. The regulations also restrict the scope of activities that can be conducted by foreign banks seeking to operate in China through branches instead of through subsidiaries. In particular, the regulations restrict the domestic currency business of foreign bank branches. While foreign bank branches can continue to take deposits from, and make loans to, Chinese enterprises in domestic currency, they can only take domestic currency deposits of RMB1 million ($125,000) or more from Chinese individuals and cannot make any domestic currency loans to Chinese individuals. Foreign bank branches also cannot issue domestic currency credit cards to Chinese enterprises or Chinese individuals.

Securities Services

Pursuant to the terms of China's WTO accession agreement, foreign securities firms were to receive the right to form joint ventures for fund management upon China's accession to the WTO in December 2001, while joint ventures for securities underwriting were to be permitted within three years after accession.

The China Securities Regulatory Commission (CSRC) issued regulations on the establishment of joint venture fund management companies and securities underwriting by Chinese-foreign joint ventures shortly after China's WTO accession. China's decision to limit foreign partners to a minority stake of these joint ventures (49 percent for fund management and 33 percent for securities trading), however, continues to limit their appeal to leading foreign firms and only a handful of joint ventures have been formed. In addition, China continues to limit the security underwriting joint ventures to underwriting A-shares and to underwriting and trading government and corporate debt, B-shares and H-shares. In December 2005, CSRC instituted a moratorium on foreign investment in the securities sector, claiming the need to clean up domestic securities companies and further develop the sector. The Chinese stock market performed well in 2006, and some observers were predicting that CSRC may lift the moratorium in the second half of 2007.

Since December 2002, China has allowed Qualified Foreign Institutional Investors (QFIIs) to trade in A-shares via special accounts opened at designated custodian banks. In 2006, prior stringent criteria were loosened considerably, allowing more foreign institutions to qualify as QFIIs. However, other requirements limit the extent to which QFIIs can trade in A-shares. In addition, by the end of 2006, CSRC had distributed over $9 billion of the $10 billion overall QFII quota, but had not indicated when it will increase the quota.

Financial Information Services

In its WTO accession agreement, China committed that, for the services included in its Services Schedule, the relevant regulatory authorities would be separate from and not accountable to, any service suppliers they regulated, with two specified exceptions. One of the services included in China's Services Schedule – and not listed as an exception – is the "provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services."

Nevertheless, concerns have been raised that China has still not established an independent regulator in the financial information services sector. Xinhua, the Chinese state news agency, is both a major market competitor of, and the regulator of, foreign financial information service providers in China.

In September 2006, a major problem developed when Xinhua issued the Administrative Measures on News and Information Release by Foreign News Agencies within China. These rules abolished the Measures for Administering the Release of Economic Information in China by Foreign News Agencies and Their Information Subsidiaries, which had been issued in 1996. Among other things, under one aspect of the 2006 rules, which has not yet been implemented, Xinhua would preclude foreign providers of financial information services from contracting directly with, or providing financial information services directly to, domestic Chinese clients. Instead, foreign financial information service providers would have to operate through a Xinhua-designated agent, and the one agent designated to date is a Xinhua affiliate. These new restrictions do not apply to domestic financial information service providers and, in addition, contrast with the rights previously enjoyed by foreign information service providers since the issuance of the 1996 rules, well before China's accession to the WTO in December 2001.

In response to complaints from the United States and the European Union, China's Premier publicly promised in September 2006 that the new rules would not change how foreign financial information service providers did business in China. Shortly thereafter, Xinhua told foreign financial information service providers that the new rules would not be applied to them until after an implementing measure was issued, although Xinhua subsequently began to pressure foreign financial information service providers to comply with the new restrictions.

Credit Cards

In the Services Schedule accompanying its Protocol of Accession, China committed to remove market access limitations and provide national treatment for foreign suppliers providing "payment and money transmission services, including credit, charge, and debit cards," with this commitment becoming effective with regard to the RMB business of retail clients no later than December 11, 2006. China also extended this commitment to cover the provision and transfer of financial information, financial data processing and advisory, intermediation and other financial services auxiliary to payments and money transmission services.

Under its existing rules, China restricts access to its market by foreign credit card companies. The rules only permit a bank in China to issue a credit card with a foreign logo on it if the card is co-branded with the logo of China Union Pay (CUP), an entity created by the PBOC and owned by participating Chinese banks. In addition, all RMB transactions must be processed through CUP's network, while the network of the foreign credit card company is used only to process foreign currency transactions.

In the second half of 2006, a number of troubling proposals were attributed to CUP and apparently supported by the PBOC. The common theme of these proposals was that CUP would be designated as a monopoly provider of payment and money transmission services for Chinese consumers for RMB processing and that no other providers would be able to enter this market. To date, China has taken no steps to implement its commitment to open up its market to foreign credit card companies. China reportedly is in the process of drafting regulations in this area, but no drafts have been made publicly available.

Wholesaling Services and Commission Agents' Services

In its WTO accession agreement, China committed to provide national treatment and eliminate market access restrictions for foreign enterprises seeking to provide wholesaling and commission agents' services and related services, such as repair and maintenance services, through a local presence within three years of China's accession (or by December 11, 2004), subject to limited product exceptions. In the interim, China agreed to progressively liberalize its treatment of these services pursuant to a set schedule. The phase-in of these services was supposed to start with minority foreign-owned joint ventures by December 11, 2002, followed by majority foreign-owned joint ventures by December 11, 2003.

Shortly after acceding to the WTO, China fell behind in its implementation of the required progressive liberalization, as foreign enterprises continued to face a variety of restrictions. It was not until mid-2004, following high-level U.S. engagement that China began to take steps to liberalize. At that time, MOFCOM issued regulations providing national treatment and eliminating market access restrictions on joint ventures providing wholesaling services and commission agents' services. These regulations also established a timetable for extending this liberalization to wholly foreign-owned enterprises on December 11, 2004.

While these regulations were welcome, MOFCOM was very slow to implement them, and it still has not implemented them fully. Initially, MOFCOM did not issue any guidance regarding how its approval system would operate, and the application process remained opaque. In most instances, the application process turned into a protracted negotiation, as the central and local approving authorities were still in the process of determining the appropriate procedures and documentation requirements. When approvals were issued, moreover, the central and local approving authorities imposed a variety of restrictions, such as limits on the scope of products that could be distributed and limits on the specific services that could be supplied. Registered capital requirements have also varied.

In addition, through the first six months of 2005, the Chinese authorities rarely issued approvals for existing enterprises seeking to expand their business scope to include wholesale distribution, in part because the Chinese authorities were sorting out historical tax treatment and Free Trade Zone (FTZ) issues. The Chinese authorities did issue some approvals for the establishment of new wholesale distribution enterprises, but this route did not make business sense for many enterprises already established in China.

By June 2005, the Chinese authorities had begun to make progress in resolving many of the problems that had plagued the application and approval process, including how it would handle the tax and FTZ issues that had stalled many enterprises' applications. In July 2005, MOFCOM and the General Administration of Customs (Customs Administration) issued the Circular on Issues Concerning the Trade Administration of Bonded Zones and Bonded Logistics Parks, which clarified the handling of applications from enterprises located in FTZs. At the July 2005 JCCT meeting, China also committed to improve the transparency of the application and approval process. Consistent with this commitment, in September 2005, MOFCOM issued the Application and Approval Guidelines for Foreign Investments, which clarify many aspects of the application and approval process. Some improvements subsequently took place in the application and approval process, but it was not until MOFCOM issued the Notice on Entrusting National Economic and Technological Development Zones with the Authority to Approve Foreign-Funded Distribution Firms and International Forwarding Agents in February 2006 that the problems with the application and approval process largely disappeared. With the issuance of that measure, MOFCOM devolved the right to grant distribution licenses from the central authorities to provincial-level authorities, making the application and approval process more efficient and less time-consuming, although some technical challenges remain with regard to, for example, manufacturing enterprises seeking to expand the scope of their business to include distribution activities.

These developments have enabled U.S. companies to improve the efficiency of their China supply chain management, and as a result many of them are restructuring their legal entities to integrate their China operations into their global business more fully and efficiently. At the same time, U.S. companies in some industries continue to have concerns with regard to product and services restrictions that China has yet to remove.

U.S. industry remains seriously concerned about continuing restrictions on the rights of foreign enterprises to engage in wholesale (and retail) distribution of books, newspapers, periodicals, electronic publications and audio and video products. Some measures, such as the April 2004 distribution services regulations, purport to allow foreign enterprises to engage in wholesale (and retail) distribution of these products. However, a host of other measures appear to impose market access or national treatment limitations, such as the State Council's April 2005 Several Opinions on Canvassing Foreign Investment into the Cultural Sector; NDRC's November 2004 Catalogue for the Guidance of Foreign Investment Industries; the Provisions on the Administration of the Publication Market, issued by the General Administration of Press and Publication (GAPP) in June 2004; the Rule on Management of Foreign-Invested Book, Magazine and Newspaper Distribution Enterprises, issued by GAPP and MOFTEC in March 2003; and the Administrative Regulations on Electronic Publications, issued by GAPP in December 1997. Under these measures, for some of the products at issue, distribution is limited to Chinese state-owned enterprises. For others, only Chinese-foreign joint ventures with minority foreign ownership are permitted to engage in distribution or foreign enterprises face restrictive requirements not imposed on domestic enterprises.

China began to implement several measures governing the distribution of automobiles by foreign enterprises in 2005, including the Implementing Rules for the Administration of Brand-Specific Automobile Dealerships, jointly issued by MOFCOM, the NDRC and the State Administration for Industry and Commerce (SAIC) in February 2005. The NDRC followed up with the Rules for Auto External Marks in November 2005, and MOFCOM issued the Implementing Rules for the Evaluation of Eligibility of Auto General Distributors and Brand-specific Dealers in January 2006. While U.S. industry has generally welcomed these measures, they do contain some restrictions on foreign enterprises that may not be applied to domestic enterprises.

China delayed the implementation of its wholesale distribution services commitments with regard to pharmaceuticals, despite the fact that the exception for pharmaceuticals contained in China's accession agreement expired as of December 11, 2004. Although the April 2004 distribution services regulations indicated that separate regulations would be issued for the pharmaceuticals sector, China did not issue any further regulations and continued to require foreign pharmaceutical companies to sell their finished products through Chinese wholesalers (after hiring Chinese importers to bring their finished products into the country) through the remainder of 2004 and the first half of 2005. In the second half of 2005, China began allowing the acceptance of applications from foreign pharmaceutical companies for wholesale distribution licenses under the April 2004 distribution services regulations and the State Food and Drug

Administration's Rules on the Management of Drug Business Licenses. Since then, U.S. and other foreign pharmaceutical companies have been able to obtain wholesale distribution licenses. However, it appears that some provincial-level authorities have not yet begun issuing these licenses because of uncertainty generated by the provision in the April 2004 distribution services regulations indicating that MOFCOM would issue separate regulations covering pharmaceuticals. At the same time, despite overall progress in this area, many other restrictions affecting the pharmaceuticals sector make it difficult for foreign pharmaceutical companies to realize the full benefits of China's wholesale distribution commitments. The United States continues to engage the Chinese regulatory authorities in these areas as part of an effort to promote comprehensive reform of China's healthcare system and to reduce unnecessary trade barriers.

U.S. industry remains concerned about the uncertainty created by the provision in the April 2004 distribution services regulations that allows the local approving authorities to withhold wholesale (and retail) distribution license approvals when, as is the case in most cities, urban commercial network plans have not yet been formulated. This provision could operate as a *de facto* restriction on the operations of foreign wholesalers (and retailers).

In early December 2006, China issued the Measures for the Administration of the Market for Crude Oil and the Measures for the Administration of the Market for Refined Oil Products. These measures are intended to implement China's significant market-opening WTO commitments, scheduled for December 11, 2006, to permit foreign enterprises to engage in wholesale distribution of crude oil and processed oil (e.g., gasoline), in China. China's full implementation of these commitments would allow U.S. industry to begin to take advantage of China's earlier, partial opening of the retail distribution sector to foreign enterprises. However, these regulations impose high thresholds and other potential impediments on foreign enterprises seeking to enter the wholesale distribution sector, such as requirements relating to levels of storage capacity, pipelines, rail lines, docks and supply contracts. These requirements appear designed to maintain the monopolies enjoyed by state-owned China National Petroleum Corporation and China Petrochemical Corporation.

Retailing Services

In 1999, the Chinese government broadened the scope for foreign investment in the retail sector. New regulations encouraged the entry of large international retailers (such as hypermarkets and warehouse-style stores) into China. China's subsequent WTO commitments were designed to further expand the ability of foreign retailers to enter the market through a much wider range of modalities. China committed to allow 100 percent foreign ownership of smaller retail operations, some large retail operations, gas stations and even car dealerships within three years to five years of China's December 2001 WTO accession, although certain types of large retail operations could still face ownership limitations.

As in the area of wholesaling and commission agents' services, China fell behind in its implementation of the required progressive liberalization of retailing services shortly after acceding to the WTO, as foreign enterprises continued to face a variety of restrictions. China only began to take steps to liberalize in mid-2004, when MOFCOM issued regulations providing national treatment and eliminating market access restrictions on joint ventures supplying retailing services. These regulations also established a timetable for extending this liberalization to wholly foreign-owned enterprises on December 11, 2004.

Many of the same problems that plagued the application and approval process for wholesaling and commission agents' services also arose in the area of retailing services. The changes that took place in the application and approval process in 2005 helped to improve the situation, but it was MOFCOM's issuance of the Notice on Entrusting National Economic and Technological Development Zones with the Authority to Approve Foreign-Funded Distribution Firms and International Forwarding Agents in February 2006 that made the problems with the application and approval process largely disappear.

U.S. industry continues to have concerns with regard to the provision in the April 2004 distribution services regulations allowing the approving authorities to withhold retail distribution license approvals when, as is the case in many cities, urban commercial network plans have not yet been formulated. It appears that China may be applying this provision in a discriminatory manner. In April 2006, MOFCOM issued a notice explaining that foreign-invested enterprises would not be granted approvals for projects in cities that had not yet finalized their urban commercial network plans, while it appears that domestic enterprises continue to receive approvals for their projects.

Meanwhile, it appears that China may not be fully implementing its commitment to allow foreign enterprises to sell gasoline at the retail level. Although China's retail services commitments initially did not apply to processed oil, as it was one of the excepted goods under China's Services Schedule, that exception expired on December 11, 2004, and by that time China committed to permit wholly foreign-owned enterprises to operate gas stations. However, according to some recent reports, China is now claiming that gas stations fall under the chain store provision in its Services Schedule, which applies to "those chain stores which sell products of different types and brands from multiple suppliers with more than 30 outlets" and permits only joint ventures with minority foreign ownership.

Franchising Services

As part of its services commitments, China committed to permit the cross-border supply of franchising services immediately upon its accession to the WTO. It also committed to permit foreign enterprises to provide franchising services in China, without any market access or national treatment limitations, by December 11, 2004. In December 2004, MOFCOM issued new rules governing the supply of franchising services in China, the Measures for the Administration of Commercial Franchises, which became effective in February 2005. These rules raised a number of concerns. Of particular concern is a requirement that a franchiser own and operate at least two units in China for one year before being eligible to offer franchises in China. The business models of many U.S. franchising companies, including some large hotel chains, are adversely affected by this requirement because they do not own and operate units, instead relying exclusively on franchisees to distribute goods and services. The rules also impose high capital requirements and require broad and vague information disclosure by franchisers, with uncertain liability if these disclosure requirements are not met. Following U.S. Government and U.S. industry requests that China address these issues by revising the December 2005 franchising rules, China reported in November 2006 that revised franchising rules had been submitted to the State Council for review and would be issued in due course.

Sales Away From a Fixed Location

In 1998, China banned all direct selling activities (or sales away from a fixed location) after some foreign and domestic firms used direct selling techniques to operate fraudulent pyramid schemes and other less-than-legitimate operations disguised as direct selling to bilk participants. No U.S. firms were implicated in these schemes. Meanwhile, some large U.S. and other foreign direct selling firms were allowed to continue operating in China after altering their business models. In its WTO accession agreement, China committed to the resumption of direct selling activities by December 2004.

In August and September 2005, nine months overdue, the Chinese authorities issued the measures designed to implement China's direct selling commitments – the Measures for the Administration of

Direct Selling and the Regulations on the Administration of Anti-Pyramid Sales Scams. These measures became effective on December 1, 2005, and contained several problematic provisions. For example, one provision outlaws practices allowed in every country in which the U.S. industry operates – reportedly 170 countries in all – by refusing to allow direct selling enterprises to pay compensation based on team sales, where upstream personnel are compensated based on downstream sales. In addition, there is a cap limiting the amount of compensation based on sales revenue to 30 percent, which inhibits direct selling companies from employing compensation as a tool to motivate their sales representatives. Other problematic provisions in the 2005 measures include onerous and vague requirements to establish fixed location "service centers" in each urban district where direct sellers operate; a three-year experience requirement that only applies to foreign enterprises, not domestic ones; restrictions on the cross-border supply of direct selling services; limited product categories permitted for direct sales; and high capital requirements that may limit smaller direct sellers' access to the market. The measures also impose burdensome education and certification requirements for salespersons and trainers, forbidding foreigners from working in either capacity.

In September 2006, China issued implementing rules governing the establishment of direct selling service centers. These rules, while clarifying some aspects of the earlier measures, also include vague provisions that could lead to undue local requirements being placed on service centers. The rules should streamline service center requirements at the national level.

Under the 2005 measures, a direct selling company must receive approvals from both MOFCOM and SAIC before beginning operations. MOFCOM issued its first direct selling license approval under the 2005 measures in February 2006 and had approved 15 licenses to Chinese and foreign companies by the end of 2006. Despite this progress, the MOFCOM licensing process has been characterized by a lack of transparency and significant delays. The 2005 measures establish a 90-day license approval process, but most of the MOFCOM approvals took between 4 months and 11 months. In addition, according to U.S. industry, more than 20 companies that applied for direct selling licenses in early 2006 are still awaiting approval, with little clarity on timing or process. The scope of licenses approved by MOFCOM has also been limited, with only three companies approved to conduct direct selling in more than one province in China. Meanwhile, few companies have received the SAIC approval necessary to begin operations.

Express Delivery Services

Beginning in December 2001, the State Postal Bureau (together with MOFTEC and MII) issued restrictive measures that could have jeopardized market access that foreign express delivery firms (which were then required to operate as joint ventures with Chinese partners) enjoyed prior to China's accession. These measures threatened to curtail the scope of operations of foreign express delivery firms licensed prior to China's accession to the WTO, despite China's horizontal commitment on acquired rights. Specifically, a measure issued in December 2001 required firms wishing to deliver letters to apply for entrustment with China Post. A second measure, issued in February 2002, extended China Post's monopoly on letters by creating weight and rate restrictions on letter deliveries by private firms. Following high-level U.S. interventions, in September 2002, a third measure eliminated the weight and rate restrictions on letter deliveries and streamlined the entrustment application procedure. Two major U.S. express delivery firms subsequently applied for and obtained entrustment certificates from China Post.

In July 2003, however, China circulated draft amendments to its Postal Law that generated two immediate concerns among U.S. companies. First, the draft amendments purported to give China Post a monopoly over the delivery of letters under 500 grams, which would have constituted a new restriction on the scope of activities of existing foreign-invested express delivery companies, raising concerns in light of China's horizontal acquired rights commitment. Second, the draft amendments did not address the need for an independent regulator.

In September, October and November 2003, China circulated new sets of draft Postal Law amendments. While each set of draft amendments included a different definition of the China Post monopoly, the most recent draft amendments continued to provide China Post with a monopoly on letters weighing less than 500 grams. They also included other problematic provisions. For example, they appeared to create a new, more burdensome licensing process, and they seemed to require express couriers to pay a percentage of their revenue from the delivery of letters into a universal service fund.

In April 2004, following high-level U.S. engagement urging China not to cut back on the scope of activities that foreign-invested express delivery companies had been licensed to provide prior to China's WTO accession, Vice Premier Wu Yi committed that old problems, like the weight restriction, would not resurface as new problems. In July 2004, however, the State Council circulated another set of draft amendments to the postal services law. Despite Vice Premier Wu's commitment, these draft amendments continued to include a weight restriction, now reduced from 500 grams to 350 grams and did little to address other U.S. concerns.

In April 2006, as more reports began to surface of problematic provisions in subsequent drafts of the Postal Law, Vice Premier Wu Yi reiterated China's commitment that the regulatory environment for express delivery services by foreign companies would not be negatively impacted by the issuance of new rules, including the Postal Law. Later in 2006, however, China began to circulate an "eighth" draft of the Postal Law among Chinese stakeholders, and this draft continued to generate serious concerns. Although this draft has not been officially released, it reportedly would impose a minimum weight restriction on addressed letters weighing less than 150 grams, exclude foreign service providers from the domestic express delivery market and impose a tax to fund universal mail service in China. When the United States raised concerns about this "eighth" draft both bilaterally and at the WTO in October 2006 and November 2006, Chinese government officials responded that the draft is undergoing major revisions.

Meanwhile, in August 2006, the State Council began implementing its July 2005 plan to separate China's postal operations from the administrative function of regulating China's postal system, with the State Postal Administration (SPA) to serve as the regulator and a new state-owned enterprise − the China Post Group Corporation − to be set up to conduct postal business. Although the July 2005 plan has still not been released to the public, SPA announced the establishment of 31 provincial-level Postal Management Bureaus to assist in the regulatory effort in September 2006. The China Post Group Corporation was established in January 2007.

Construction, Engineering, Architectural and Contracting Services

Prior to China's WTO accession, U.S. construction, engineering and architectural firms and U.S. contractors enjoyed a relatively cooperative and open relationship with the Chinese government. These firms operated in the Chinese market through joint venture arrangements and were less affected by regulatory problems than other service sectors. Nevertheless, they also faced restrictions. It was difficult for foreign firms to obtain licenses to perform services except on a project-by-project basis. Foreign firms also faced severe partnering and bidding restrictions.

In September 2002, the Ministry of Construction and MOFTEC jointly issued Decrees 113 and 114, which opened up construction and related construction design services to joint ventures with majority foreign ownership and, two years ahead of schedule, wholly foreign-owned enterprises. At the same time, however, these decrees created concerns for U.S. and other foreign firms by imposing new and more restrictive conditions than existed prior to China's WTO accession, when they were permitted to work in China on a project-by-project basis pursuant to Ministry of Construction rules. In particular, these decrees for the first time required foreign firms to obtain qualification certificates, effective October 2003. In addition, these decrees for the first time required foreign-invested firms supplying construction services to incorporate in China, and they imposed high minimum registered capital requirements and foreign personnel residency requirements that are difficult for many foreign firms to satisfy. In consultation with U.S. industry, the United States, in a high-level intervention, pressed its concerns about Decrees 113 and 114 and sought a delay before the decrees' problematic requirements would become effective. In September 2003, the Ministry of Construction agreed to extend the implementation date from October 2003 until April 2004 so the concerns of foreign firms could be analyzed further.

In April 2004, Decree 113 went into effect. However, in September 2004, the Ministry of Construction and MOFCOM issued Circular 159, which permitted foreign providers of construction services and related construction engineering design services to continue operating on a project by-project basis until July 2005, effectively extending the effective date of the incorporation-related requirements.

Decree 114 implementing rules were released and became effective in January 2007. These rules allow the Chinese authorities to begin accepting applications from foreign-invested enterprises, including wholly foreign-owned enterprises, seeking to provide engineering, integrated engineering and architectural services. The rules also make several positive regulatory changes, including the temporary lifting of foreign personnel staffing and residency requirements for foreign-invested design companies.

Meanwhile, in November 2004, the Ministry of Construction issued the Provisional Measures for Construction Project Management (known as Decree 200), which became effective in December 2004. Among other things, Decree 200 appears to preclude the same company from providing construction services and related construction engineering design services if it also provides project management services on the same project. This aspect of the decree raises concerns because U.S. companies often provide all of these services in combination when working on a project in a foreign market. No implementing regulations for Decree 200 have been issued.

Transportation and Logistics Services

The transportation and logistics sector has in the past faced severe regulatory restrictions, high costs, dominance by government-invested agents and limitations on permitted activities. The multiple government bodies responsible for this sector include the Ministry of Communications, the Ministry of Railways, MOFCOM, NDRC and the Civil Aviation Administration of China. Overlapping jurisdictions, multiple sets of approval requirements and opaque regulations hinder market access. In some areas, domestic firms have also used government connections and investments to monopolize the sector.

Nevertheless, like China's own reform policies, China's WTO commitments support a broad opening of the transportation and logistics sector to foreign service providers, to be phased in over time. Foreign firms should be able to invest freely in warehousing, road freight transport, rail freight transport and freight forwarding companies within three years to six years after WTO accession, depending on the sector.

In July 2002, MOFCOM's predecessor, MOFTEC, issued a Notice on Establishing Foreign-Invested Logistics Companies in Trial Regions. This notice allows foreign-invested logistics companies (with up to 50 percent foreign ownership and registered capital of $5 million) to establish in several designated cities. U.S. firms have expressed concern about the high capital requirement and the 50 percent cap on foreign ownership, which may conflict with China's WTO commitments for certain types of logistics services.

In November 2002, China issued regulations allowing majority foreign ownership of road transportation firms, as it was required to do within one year of its WTO accession. China was also obligated to issue regulations allowing majority foreign-owned joint ventures to enter the fields of packaging services, storage and warehousing, and freight forwarding one year after its accession; it issued timely regulations allowing 75 percent foreign-owned joint ventures in these fields.

China took a significant step in July 2004 to increase market access for U.S. passenger and cargo carriers by signing a landmark amendment to the aviation agreement with the United States. The amended agreement will more than double the number of U.S. airlines operating in China and will increase by five times the number of flights providing passenger and cargo services between the two countries over the next six years. The agreement also allows each country's carriers to serve any city in the other country, provides for unlimited code-sharing between them, expands opportunities for charter operators, and eliminates government regulation of pricing as of 2008. U.S. passenger and cargo carriers have since obtained additional routes and increased flight frequencies, as envisioned by the agreement. Meanwhile, an important commitment enshrined in the July 2004 agreement calls for the commencement of negotiations toward further liberalization through a bilateral Open Skies Agreement. The first round of these negotiations took place in April 2006. However, China subsequently postponed the second round of negotiations. In December 2006, at the inaugural meeting of U.S.-China Strategic Economic Dialogue (SED) in Beijing, the United States and China agreed to resume work toward liberalization of the aviation relationship with the mutually agreed goal of making meaningful progress in time for the second SED meeting, tentatively scheduled for May 2007. U.S. and Chinese civil aviation delegations resumed negotiations in January 2007.

In 2003, China took steps to liberalize the maritime services sector despite having made limited WTO commitments. The United States and China signed a far-reaching, five-year bilateral maritime agreement, which gave U.S.-registered companies the legal flexibility to perform an extensive range of additional shipping and logistics activities in China. U.S. shipping and container transport services companies, along with their subsidiaries, affiliates and joint ventures are also able to establish branch offices in China without geographic limitation.

In April 2005, AQSIQ issued the Criteria for the Classification and Assessment of Logistics Firms. Under this measure, AQSIQ uses a firm's business and financial situation, equipment, operating infrastructure, management, services provided and human resource information as of the time of its business license application in order to classify the firm into one of three broad categories: transport, warehouse or multi-service, for regulatory purposes. Some firms have criticized this measure as creating "hastily formulated standards" that inappropriately restrict the business scope of logistics firms and have also complained about unnecessary and burdensome requirements. In addition, freight forwarding firms are concerned about not being included in one of the three logistics business categories, particularly because it may prevent their participation in relevant standards-setting activities.

Telecommunications

In its WTO accession agreement, China made important commitments in the area of telecommunications services. It agreed to permit foreign suppliers to provide a broad range of services through joint ventures with Chinese companies, including domestic and international wired services, mobile voice and data services, value-added services, such as electronic mail, voice mail and on-line information and database retrieval, and paging services. The foreign stake permitted in the joint ventures is to increase over time, reaching a maximum of 49 percent for most types of services. In addition, China agreed to eliminate all geographical restrictions within two to six years after its WTO accession, depending on the particular service sector.

Importantly, when it acceded to the WTO, China also accepted key regulatory principles from the WTO Reference Paper. As a result, China became obligated to separate the regulatory and operating functions of MII (which had been both the telecommunications regulatory agency in China and the operator of China Telecom) upon its accession and to implement its regulations in an impartial manner. Since China's accession, MII has spun-off China Telecom, which now competes in the market with other telecommunications operators. While the formal separation of regulator and operator has occurred, evidence of continued MII influence over operational decisions of the telecommunications operators (e.g., relating to personnel, corporate organization and standards) suggests that regulatory independence may be far from complete. The current regulator, MII, is not structured as an independent entity as it still bears the responsibility to help develop China's information technology and telecommunications manufacturing industries.

China is also obligated to adopt pro-competitive regulatory principles, such as transparent licensing, cost-based pricing and the right of interconnection, which are necessary for foreign-invested joint ventures to compete against established operators. China appears laggard in implementing these commitments, however. For example, there is no sign that "major suppliers" in China have made their interconnection arrangements public. With practically no foreign participation in the market, it has been difficult to assess compliance with such commitments. This very lack of foreign participation, however, is indicative of a licensing regime that has not been conducive to foreign investment, in part due to a lack of transparency.

China's Regulations on Foreign-Invested Telecommunications Enterprises went into effect in January 2002. These regulations define registered-capital requirements, equity caps, requirements for Chinese and foreign partners, and licensing procedures. The regulations stipulate that foreign-invested telecommunications enterprises can undertake either basic or value-added telecommunications services. Foreign ownership may not exceed 49 percent in the case of basic telecommunications services (excluding wireless paging) and 50 percent in the case of value-added services (including wireless paging, which is otherwise categorized as a basic service). While China committed to giving foreign applicants freedom to choose potential joint venture partners, it appears that MII is interpreting requirements regarding technical qualifications to effectively exclude all but incumbent operators, foreclosing additional competition in the market. For foreign operators interested in offering international services, requirements to use a gateway operated by a state-owned operator appear excessive and unjustified. The capitalization requirement established for new entrants, which exceeds $240 million, is another major impediment to market access. There appears to be no justification for such a requirement, particularly for companies interested in leasing, rather than building facilities, while specific licensing terms for resale-based operators do not appear to exist. Meanwhile, MII continues to process applications very slowly for the few foreign-invested telecommunications enterprises that have attempted to satisfy MII's licensing requirements. The results have been predictable: no new joint ventures appear to have been formed in the basic telecommunications sector since China introduced the January 2002 regulations.

At times, MII has also changed applicable rules without notice and without transparency. For example, in February 2003, MII announced a reclassification of certain basic and value-added telecommunications services effective in April 2003. No public comment period was provided. This move limited the ability of U.S. firms to access China's telecommunications market because basic services are on a slower liberalization schedule and are subject to lower foreign equity limits and higher capitalization requirements.

Little progress has been made in opening the market for value-added services, such as Internet service and content providers. MII announced moves toward convergence in voice, video and data services in 2000, but China considers information content sensitive, so foreign companies face significant barriers in the Internet services sector. Although more foreign companies are registering ".com.cn" websites in China, these sites are still often blocked, which hinders companies' abilities to maintain a stable Internet presence. The requirement that Internet service providers (ISPs) must provide user login information and transaction records to authorities upon request, without clear guidelines as to the circumstances and situations that warrant such actions, raises concerns about consumer privacy and prevention of data misuse. Meanwhile, even though China has now completed its fifth year of WTO membership, the United States is aware of only one application for a license to provide value-added services that has completed the MII licensing process. That license was awarded to a Chinese-Korean joint venture in 2005.

Foreign equity investment limitations for ISPs and Internet content providers (ICPs) mirror the timetable for value-added services in China's WTO accession agreement (30 percent upon accession, 49 percent within one year after accession and 50 percent within two years after accession). However, ICPs must still win the approval of MII and/or local telecommunications administrations depending on the geographic coverage of their services before they can receive foreign capital, cooperate with foreign businesses, or attempt domestic or overseas stock listings. Their services, including even simple commercial websites, are also subject to excessive capitalization requirements that bear little relation to any legitimate licensing goals.

In 2004, a draft of the long-awaited Telecommunications Law began to circulate among Chinese ministries and agencies. If China takes the initiative, this law could be a vehicle for addressing existing market access barriers and other problematic aspects of China's current telecommunications regime. The current status and content of this legislation is unclear, despite repeated U.S. efforts to obtain this information.

Meanwhile, even though China committed in its WTO accession agreement that further liberalization of this sector would be discussed in the current round of WTO negotiations, China has yet to make an improved services offer. With the modest telecommunications commitments made by China in its WTO accession agreement having so far failed to facilitate effective market entry for foreign firms, further liberalization, bound through the current round of WTO negotiations, appears critical to improving market access prospects for this sector.

At the April 2006 JCCT meeting, China committed to make appropriate adjustments to its registered capital requirements for telecommunications service providers. However, to date, Chinese regulators have taken no steps to adjust capitalization levels, nor have they provided any information on the timing, scope or level of any planned adjustments. China's continued imposition of excessive capital requirements, taken together with MII's reclassification of value-added services as basic services and MII's slow license application process, has kept in place formidable barriers to market entry for foreign enterprises.

On-Line Services

China operates the world's most comprehensive and technologically advanced Internet filtering regime. Chinese authorities routinely filter Internet traffic entering China, focusing primarily on the content they deem objectionable on political, social or religious grounds. In 2002, China lifted filters on most major western news sites. Nevertheless, since then, foreign news websites have periodically been blocked, as happened, for example, for several weeks during the 16th National Congress of the Communist Party of

China in 2003. More generally, according to a Harvard University study published in 2002, China had still blocked 19,032 sites on multiple occasions. This study was updated in 2005, and identified routinely blocked sites that relate to Taiwan, the Falun Gong spiritual movement, Tibet, the Tiananmen Square incident and Chinese opposition political parties. The updated study also identified routinely blocked sites that relate to various political topics including "boycott," "human rights," "pro-democracy" and "opposition."

Changes to Internet filtering can occur without warning or public explanation. For example, the popular Internet search engine Google was blocked completely in China for a few weeks starting in late August 2002. When Google became available again in September 2002, its "cached pages" feature remained blocked; that feature had previously allowed users in China to access "snapshots" of some web pages that were otherwise blocked in China. While all of these practices remain prevalent, the updated study found that China's filtering regime had become more targeted and fine-tuned than in 2002. For example, sites relating to specific topics such as Falun Gong and the Tiananmen Square incident were less accessible in 2005 while sites relating vaguely to topics such as revolution and Taiwan were more accessible. Few, if any, websites related strictly to economic and business matters, however, are blocked.

China's Internet regulation regime is exceedingly complex. Internet content restrictions for ICPs, electronic commerce sites and application service providers located in China are governed by a number of measures, not all of which are public. Since 2000, these measures have increased greatly, and it is reported that at least 12 government entities have authority over Internet access and content. Some of these measures restrict who may report news and place limits on what exactly may constitute news. The most important of these measures was issued in September 2000 and updated in September 2005. In addition to interfering with news reporting in the traditional sense, this measure may provide a basis for Chinese authorities to interfere with the normal business reporting operations of non-news organizations, such as multinational corporations, if they use the Internet to keep clients, members, their headquarters and other interested parties informed about events in China.

In March 2002, the Internet Society of China established a "Public Pledge on Self-Discipline for the China Internet Industry." This group is nominally private but is affiliated with China's Ministry of Information Industry and currently has more than 200 members. Signatories commit to "refrain from producing, posting or disseminating pernicious information that may jeopardize state security and disrupt social stability, contravene laws and regulations and spread superstition and obscenity." Reportedly, 130 major Internet portals have since signed the pledge.

Audio-Visual Services

Shortly after acceding to the WTO in December 2001, China issued the Regulations on the Administration of Audio-Visual Products and the Regulations on the Management of Film, both of which went into effect on February 1, 2002. These regulations were designed to bring more order and transparency to the audio-visual and film industries, with the objective of moving toward greater commercial efficiency in accordance with domestic reform efforts and China's WTO commitments.

Despite these positive moves and various subsequently issued regulations that provided incrementally more market access, China's desire to protect the revenues earned by the state-owned movie and print media importers and distributors, and China's concerns about politically sensitive materials, result in continued restrictions on foreign providers of audio-visual services. For example, importation and distribution of sound recordings, videos, films, books and journals remain highly restricted. Inconsistent and subjective application of censorship regulations further impedes market growth for foreign providers.

In July 2004, the State Administration for Radio, Film and TV (SARFT) issued the Rules for the Administration of China-Foreign Cooperation in Filmmaking. These rules cover filmmaking and provide for joint Chinese-foreign filmmaking cooperatives, with licenses required for both the cooperative and the Chinese partner. In October 2004, SARFT and MOFCOM issued the Provisional Rules on the Access Requirements for Film. These rules cover film production, distribution, screening and imports by domestic firms, and film production and screenings involving foreign firms. All firms engaged in these businesses are subject to SARFT licensing. Foreign firms are allowed to form joint ventures and cooperative firms engaged in film production, technology and equipment. Joint ventures or cooperative firms must have at least RMB5 million ($625,000) of registered capital, and foreign capital cannot make up more than 49 percent of the total share.

The Chinese government limits the number of foreign films allowed to enter China each year on a revenue-sharing basis. China currently allows in 20 foreign films per year (up from ten foreign films per year through much of the 1990s) on a revenue-sharing basis pursuant to a commitment that it made upon acceding to the WTO. However, China treats its WTO commitment as a ceiling, rather than a floor, which artificially increases demand for pirated products. Furthermore, lengthy censorship reviews by Chinese authorities at times can delay the arrival of legitimately imported foreign films on Chinese movie screens. When the films do make it through the censorship process, they have sometimes been subject to blackout viewing periods during national holidays and other times. China's large black market for foreign DVDs and other home entertainment video products continues to grow because these market access restrictions create a demand for pirated goods in the absence of legitimately licensed home entertainment. When legitimate products are blocked from the market by Chinese legal restrictions, demand is satisfied almost entirely by pirates. Rampant piracy also diminishes the incentive for foreign investment in movie theaters (which is currently limited to a minority stake). Some progress was achieved in 2004, when MOFCOM approved a U.S.-invested film distribution joint venture and took steps to shorten the time required to bring films to market.

In October 2004, SARFT and MOFCOM issued the Provisional Rules on the Administration of China-Foreign Joint Venture and Cooperative TV Program Production Firms. These rules establish a minimum registered capital requirement of RMB2 million ($250,000) for joint ventures and cooperative firms and mandate a share of no less than 51 percent for domestic partners. In February 2005, SARFT issued a circular placing further restrictions on foreign partners and requiring two-thirds of the programs of a joint venture or cooperative firm to have Chinese themes.

China is reportedly in the process of formulating a policy to support its weak cartoon industry. According to several reports, in June 2005, SARFT began circulating a draft measure providing that only domestically-produced cartoons could be broadcast during prime-time viewing hours and that advertisements shown during this period should be used to finance the production of domestic cartoons. The draft measure also reportedly forbids the introduction of foreign cartoons under the disguise of domestic cartoons as well as cartoons that are jointly made with foreigners. SARFT issued the final version of this measure in August 2006, and it became effective in September 2006.

Finally, in August 2005, the State Council issued a directive stating that non-public capital cannot be used to establish or operate a news agency, newspaper, publishing house, radio station or TV station. The directive also stated that radio and television signal broadcasting and relay station, satellite and backbone networks are closed to non-public capital.

Tourism and Travel Services

Since its accession to the WTO in December 2001, China has relaxed some of its restrictions on foreign operators to improve the competitiveness of its tourism and travel industries. China has also taken steps to implement its WTO commitments.

Immediately following its WTO accession, the State Council issued new travel agency regulations, the Regulations on the Administration of Travel Agencies. These regulations were designed to better enable large foreign travel and tourism service providers to participate as minority partners in operating full-service joint venture travel agencies handling foreign inbound tourism.

The China National Tourism Administration (CNTA) and MOFCOM subsequently issued the Provisional Measures for the Establishment of Foreign-Controlled and Wholly Foreign-Funded Travel Agencies, effective July 2003, which for the first time expressly allowed both foreign-controlled joint ventures and wholly foreign-owned enterprises in its travel industry. Under this measure, these travel agencies were allowed to engage in foreign inbound tourism through the establishment of offices in five major foreign tourist destinations in China (Beijing, Shanghai, Guangzhou, Shenzhen and Xian). Furthermore, the measures stipulated that foreign-controlled travel agencies must have an annual worldwide turnover in excess of $40 million, and wholly foreign-funded travel agencies must have an annual worldwide turnover in excess of $500 million. Both types of travel agencies were also subject to a local registered capital requirement of RMB4 million (approximately $500,000).

In February 2005, CNTA and MOFCOM issued a measure lowering the minimum registered capital requirement for foreign-controlled and wholly foreign-owned travel agencies from RMB4 million (approximately $500,000) to RMB2.5 million (approximately $312,500), which had been required as of December 2004 by its WTO accession agreement. It also lifted all remaining geographical restrictions on the establishment of foreign-controlled and wholly foreign-owned travel agencies, nearly three years in advance of the schedule set forth in its WTO accession agreement.

Recently, it was reported that CNTA would further ease its restrictions on foreign travel agencies operating in China beginning in July 2007. Among other proposed measures, CNTA will reportedly remove controls on the subsidiaries of foreign travel agencies and lower the capital requirements for foreign travel agencies to the same level as domestic travel agencies.

Foreign entry into China's tourism and travel industry continues to grow. In November 2003, Germany's Touristic Union International (TUI) signed a letter of intent with the China Tourism Agency to form the first foreign-controlled joint venture travel agency since China's WTO accession. Japan Airlines subsequently established the first wholly foreign-owned travel agency. By the end of 2006, China had approved the operations of 25 foreign-controlled joint venture travel agencies and wholly foreign-owned travel agencies.

The growth in China's travel and tourism industry is strong. In 2006, China hosted 22 million foreign tourists, representing an increase of 8.5 percent over the previous year. China also generated $33.5 billion in tourism revenues, making it the sixth-largest market globally. The World Tourism Council (WTC) estimates that, in 2006, growth in China's tourism and travel industry ranked second globally. The WTC also predicts sustained long-term growth in demand for China's tourism and travel industry at 8.7 percent per year (in real terms) between 2007 and 2016.

While notable improvements have been made by China, foreign firms continue to be restricted from competing under the same conditions as Chinese firms. For example, with regard to the outbound tourist market, wholly foreign-owned enterprises and Chinese-foreign joint ventures continue to be restricted in selling outbound airline tickets. In addition, China requires all travel agents, airlines and other booking entities to use or connect into China's nationally owned and operated computer reservation system when booking airline tickets. Meanwhile, holders of official Chinese passports are required to use China's state-owned airlines or their code-share partners. Nearly 23,000 holders of official Chinese passports were issued U.S. visas (in 2004), and most of them were employees of state-owned enterprises, who would not be considered government employees in most countries. This represents a significant loss of business for U.S. airlines.

At the same time, the United States has increased its visa options to Chinese nationals visiting the United States. Beginning in January 2005, eligible Chinese nationals wishing to visit the United States temporarily for business (B-1) or tourism (B-2) could be issued visas that were valid for 12 months and multiple entries. The previous maximum length of visas issued for these purposes was six months and multiple entries. Additionally, since November 2006, U.S.-bound tour parties from seven Chinese travel agencies have been allowed to apply for group visas as opposed to previously required business visas.

Education and Training Services

China faces a shortage of qualified teachers and clearly needs educators in inland regions. However, the Ministry of Education (MOE) continues to restrict participation by foreign educators and trainers. China permits only non-profit educational activities that do not compete with the MOE-supervised nine years of compulsory education, thereby inhibiting much-needed foreign investment in the education sector. In April 2000, MOE also banned foreign companies and organizations from offering educational services via satellite networks.

In June 2004, the Ministry of Education issued the Implementing Rules for China-Foreign Cooperative Education Projects. Although formulated to implement the Regulations on China-Foreign Cooperation in Running Schools, issued in September 2003, the rules allow foreign educators to participate only in certain activities, including education offering academic certificates, supplementary education and pre-school education. These activities cannot take the form of activities at actual educational institutions.

Foreign universities may set up non-profit operations. However, they must have a Chinese university host and partner to ensure that programs bar subversive content and localize imported information.

Meanwhile, China's training market is unregulated, which discourages potential investors from entering the market.

Legal Services

Prior to its WTO accession, China maintained various restrictions in the area of legal services. It prohibited representative offices of foreign law firms from practicing Chinese law or engaging in profit-making activities with regard to non-Chinese law. It also imposed restrictions on foreign law firms' formal affiliation with Chinese law firms, limited foreign law firms to one representative office and maintained geographic restrictions. Chinese law firms, on the other hand, have been able to open offices freely throughout China since 1996.

As part of its WTO accession, China agreed to lift quantitative and geographical restrictions on the establishment of representative offices by foreign law firms within one year after accession. In addition, foreign representative offices are to be able to engage in profit-making business, to advise clients on foreign legal matters and to provide information on the impact of the Chinese legal environment, among other things. They also are to be able to maintain long-term "entrustment" relationships with Chinese law firms and to instruct lawyers in the Chinese law firm as agreed between the two law firms.

The State Council issued the Regulations on the Administration of Foreign Law Firm Representative Offices in December 2001, and the Ministry of Justice issued implementing rules in July 2002. While these measures removed some market access barriers, they also generated concern among foreign law firms doing business in China. In many areas, these measures were ambiguous. For example, it appeared that these measures created an economic needs test for foreign law firms that want to establish offices in China, which would raise concerns regarding China's compliance with its GATS commitments. The measures also seemed to take an overly restrictive view of the types of legal services that foreign law firms may provide. In addition, the procedures for establishing a new office or an additional office were unnecessarily time-consuming. For example, a foreign law firm may not establish an additional representative office until its most recently established representative office has been in practice for three consecutive years. Foreign attorneys also may not take China's bar examination, and they may not hire registered members of the Chinese bar as attorneys.

Although a number of U.S. and other foreign law firms have been able to open a second office in China, little progress has been made on the other problematic aspects of these measures, particularly the economic needs test, the unreasonable restrictions on the types of legal services that can be provided and the unnecessary delays that must be endured when seeking to establish new offices. These obstacles continue to prevent foreign law firms from participating fully in China's legal market.

Accounting and Management Consultancy Services

Prior to China's accession to the WTO, foreign accounting firms could not choose their own Chinese joint venture partners freely or enter into contractual agreements that could fully integrate these joint ventures. Upon its accession to the WTO, China agreed to allow foreign accounting firms to partner with any Chinese entity of their choice. China also agreed to abandon the prohibition on foreign accounting firms' representative offices engaging in profit-making activities. In addition, China agreed that foreign accounting firms could engage in taxation and management consulting services, without having to satisfy the more restrictive requirements on form of establishment applicable to new entities seeking to provide those services separately.

The Chinese Institute of Certified Public Accountants, a government body under MOF, has made progress in modernizing accounting in China. Since China's WTO accession, MOF has released four newly revised auditing statements covering inter-bank confirmation, capital verification, accounting estimates and the audit of commercial bank financial statements. Furthermore, MOF has been active in standardizing accounting procedures across a wide range of topics including investments, inventories, cash flow statements and fixed assets. CSRC, meanwhile, requires a listed company to appoint a certified international CPA firm to conduct audits on prospectuses and annual reports in accordance with international standards.

Despite these positive changes, pervasive problems remain. Differing accounting regulations limit the comparability of data, and the accounting practices followed by many domestic firms do not meet international conventions.

Advertising Services

Prior to China's accession to the WTO, foreign advertising firms had been restricted to representative offices or minority ownership of joint ventures. In its WTO accession agreement, however, China agreed to allow majority foreign ownership of joint venture advertising companies by December 11, 2003, and wholly foreign-owned subsidiaries by December 11, 2005.

In March 2004, SAIC and MOFCOM issued rules governing joint venture, cooperative and wholly foreign-owned advertising firms. To establish branches, a firm must have paid in full its registered capital and have at least RMB20 million ($2.5 million) in annual advertising revenue. Foreign firms are currently limited to a 70 percent share of joint venture and cooperative firms. Implementing rules, effective January 1, 2005, subsequently allowed wholly foreign-owned advertising firms to conduct business in China.

Advertising in China is still governed by China's 1995 Advertising Law, which is enforced by SAIC. Among other things, the law bans messages "hindering the public or violating social customs." The law is also subject to interpretation by SAIC, which must approve all advertising campaigns. One additional difficulty for foreign advertising firms, as well as foreign manufacturers, is that China has strict regulations prohibiting comparative advertising as well as any advertising with claims about the relative superiority of one brand over another. Marketing strategies that are successful in some other countries are therefore illegal in China.

Movement of Professionals

Generally, there are no special entry restrictions placed on U.S. professionals who wish to work in China, such as doctors or engineers. However, like other foreign professionals, they must receive approval from the Foreign Experts Bureau. Prior to arrival, a prospective American job applicant may be asked to provide notarized copies of his or her professional credentials and a summary of past work experience. The credentials will be used by the employer to file for a "foreign experts residency permit" for the American employee. Once the "foreign expert" permit is authorized, the prospective employee can request a work visa (a "Z" visa) from a Chinese embassy or consulate. If the prospective employee arrives in China on a visitors' visa (an "L" visa) prior to commencing employment, the prospective employee is usually asked to depart China prior to starting work, and to apply for the appropriate work visa from a foreign entry point (usually Hong Kong). Local employers are responsible for all employment or income tax and other withholdings for these "foreign experts" while they are employed in China. The government has liberalized access somewhat by issuing "permanent resident" visas to long-time foreign residents of China, which replace the additional "resident cards" previously required.

INVESTMENT BARRIERS

The volume of foreign investment in China remained high in 2006 despite the introduction of significant new investment barriers. According to the United Nations Conference on Trade and Development, China received $72.4 billion in FDI in 2006, 3 percent less than in 2005. China was the world's third-largest investment destination, after the United States and the United Kingdom. Foreign investors also continued to earn high rates of return in 2006, indicating that China remains an attractive market in which to invest despite the continuing challenges of doing business there. The World Bank Doing Business Report gave China a global ranking for "ease of doing business" of 93 in 2006. Although this ranking was an improvement over China's 108 ranking in 2005, faster progress toward removing investment barriers and reducing government intervention in companies' investment decisions could open new markets to U.S. and other foreign firms, especially in the services sector. In 2006, investors continued to face a lack of transparency, inconsistently enforced laws and regulations, weak IPR protection, corruption and an unreliable legal system incapable of enforcing contracts and judgments.

While China's leadership has repeatedly affirmed its commitment to further open China to foreign investment, China adopted a series of more restrictive foreign investment policies in 2006. These policies indicated that China would be more selective in encouraging foreign investment, more actively targeting higher value-added sectors (including high technology research and development, advanced manufacturing, energy efficiency and modern agriculture and services) rather than basic manufacturing. It also appeared that China would be seeking to spread the benefits of foreign investment beyond China's comparatively wealthy coastal area by encouraging multinationals to establish regional headquarters and operations in Central, Western and Northeast China.

While the United States supports the liberalization of China's investment regime, the United States is concerned about the recent increase in proposed and adopted measures that restrict investment. Often, these restrictions are accompanied by other problematic industrial policies, such as the increased use of subsidies, preferences for using domestic rather than imported goods and the development of China-specific standards. Many of these developments appear to represent protectionist tools by industrial planners to shield inefficient or monopolistic enterprises from competition, counter to the market-oriented principles that have been the basis for much of China's economic success.

Investment Requirements

Upon its accession to the WTO, China assumed the obligations of the Agreement on Trade-Related Investment Measures (TRIMS Agreement), which prohibits investment measures that violate GATT Article III obligations to treat imports no less favorably than domestic products or the GATT Article XI obligation not to impose quantitative restrictions on imports. The TRIMS Agreement thus expressly requires elimination of measures such as those that require or provide benefits for the incorporation of local inputs (known as local content requirements) in the manufacturing process, or measures that restrict a firm's imports to an amount related to its exports or related to the amount of foreign exchange a firm earns (known as trade balancing requirements). In its WTO accession agreement, China also specifically agreed to eliminate export performance, local content and foreign exchange balancing requirements from its laws, regulations and other measures, and not to enforce the terms of any contracts imposing these requirements. In addition, China agreed that it would no longer condition importation or investment approvals on these requirements or on requirements such as technology transfer and offsets.

Although China has revised many laws and regulations to conform to its WTO investment commitments, some of the revised laws and regulations continue to "encourage" technology transfer, without formally requiring it. U.S. companies remain concerned that this "encouragement" in practice can amount to a "requirement" in many cases, particularly in light of the high degree of discretion provided to Chinese government officials when reviewing investment applications. Similarly, some laws and regulations "encourage" exportation or the use of local content. Moreover, according to U.S. companies, some Chinese government officials in 2006 – even in the absence of encouraging language in a law or regulation – still consider factors such as export performance and local content when deciding whether to approve an investment or to recommend approval of a loan from a Chinese policy bank, which is often essential to the success of an investment project.

Investment Guidelines

Foreign Investment Catalogue

China's foreign investment objectives are primarily defined through its Foreign Investment Catalogue, which is revised every few years and supplemented by directives from various government agencies. Revisions to the catalogue and contradictions between it and other pronouncements have confused investors and added to the perception that the investment guidelines do not provide a stable basis for business planning. The resulting uncertainty as to which industries are being promoted as investment targets and for how long undermines confidence in the stability of the investment climate.

China's most recent revisions to the catalogue took effect January 1, 2005. Investment in unlisted sectors is considered "permitted," while China "encourages" investment in sectors where it believes it benefits from foreign assistance or technology transfers. Furthermore, investment is "restricted" in sectors that do not meet "the needs of China's national economic development." In these instances, foreign firms must form joint ventures with Chinese firms and restrict their equity ownership to a minority share if they want to invest in China.

China "prohibits" foreign investment in sectors that it views as key to its national security, such as news agencies, radio and television broadcasting stations and networks, radio and television programming, film production and screening, and the publication, importation and wholesale distribution of press and audio-visual products. The production of arms and the mining and processing of certain minerals by foreign investors are also prohibited. In addition, U.S. investors have expressed concern about China's prohibition of investment in the production and development of biotechnology plant seeds.

Since 2004, provincial governments have enjoyed expanded authority to directly approve many foreign investment projects. Currently, in "encouraged" and "permitted" sectors, proposed foreign investments valued above $500 million require NDRC review and State Council approval. Furthermore, foreign projects in "restricted" sectors valued above $50 million require similar central government review and approval.

China uses a variety of incentives to encourage foreign investment in targeted sectors, like high technology industries, such as duty-free import of capital equipment and VAT rebates on inputs. Foreign investors in targeted regions and special economic zones and in certain industries, such as machinery and construction, also benefit from reduced income taxes, although in December 2006 the National People's Congress began considering a draft enterprise income tax law that could eliminate many of these tax advantages.

Administrative Measures to Restrict Investment

In 2006, Chinese regulators announced several measures that limit the ability of foreign firms to participate in investment in China's market.

For example, in June 2006, the State Council issued the Opinions on the Revitalization of the Industrial Machinery Manufacturing Industries, which calls for China to expand the market share of domestic companies involved in 16 types of equipment manufacturing, including large equipment for clean and efficient power generation, critical semiconductor manufacturing equipment, civilian aircraft and aircraft engines, pollution control equipment, textiles machinery and large excavators. This measure advocates a variety of policy supports, such as preferential import duties on parts needed for research and development, encouraging domestic procurement of major technical equipment, a dedicated capital market financing fund for domestic firms and strict review of imports. This measure also suggests that China will implement controls on foreign investments in the industrial machinery manufacturing industries, including a requirement for administrative approval when foreign entities seek majority ownership or control of leading domestic firms.

In August 2006, MOFCOM and five other government agencies issued the Provisions of Acquisition of Domestic Enterprises by Foreign Investment, which became effective September 2006. This measure revised existing rules for mergers and acquisitions involving foreign investors and, among other things, established a legal basis for a "national economic security" review process that can block proposed transactions. Under the new rules, foreign mergers and acquisitions of domestic enterprises that would result in "actual control" of a domestic enterprise in a "key industry" with "potential impact on national economic security" or that would alter control of a famous Chinese trademark or brand require MOFCOM approval. The new rules also place MOFCOM in the role of determining if the domestic acquisition target has been appropriately valued and allow MOFCOM to initiate an anti-monopoly investigation if "large market shares" are involved or if market competition is "materially" affected. Although implementing measures have not yet been issued, foreign investors have already found that they face greater difficulties purchasing controlling stakes in prominent Chinese firms, and several proposed transactions have stalled. In one positive development, the new rules do now permit the use of foreign shares as consideration for the acquisition of Chinese companies, a change that could facilitate foreign investment in China.

Subsequently, in November 2006, the NDRC released a Five-Year Plan on foreign investment, which promised greater scrutiny over foreign capital utilization. The plan calls for the realization of a "fundamental shift" from "quantity" to "quality" in foreign investment during the period from 2006 to 2010. The state's focus would change from shoring up domestic capital and foreign exchange shortfalls to introducing advanced technology, management expertise and talent. In addition, more attention would be paid to ecology, environment and energy efficiency. The plan also demands tighter tax supervision of foreign enterprises, and it seeks to restrict foreign firms' acquisition of "dragon head" enterprises, to prevent the "emergence or expansion of foreign capital monopolies," to protect national economic security and to prevent the "abuse of intellectual property."

In December 2006, the State Assets Supervision and Administration Commission (SASAC) issued the Guiding Opinion Concerning the Advancement of Adjustments of State Capital and the Restructuring of State-Owned Enterprises, which identified an expansive list of sectors deemed critical to the national economy. This measure explained that "pillar" and "backbone" industries such as automotive, chemical, construction, electronic information, equipment manufacturing, iron and steel, non-ferrous metal, science and technology, and survey and design must maintain relatively strong state control. Reportedly, SASAC officials also identified a separate set of seven strategic sectors in which state capital must play a leading role, including aviation, coal, defense, electric power and grid, oil and petrochemicals, shipping, and telecommunications. It remains unclear how SASAC will implement these policies.

In 2006, China also continued to employ various sector-specific measures designed to impose new requirements on foreign investors. Measures affecting foreign investment in the automotive and steel sectors are discussed above in the section on Import Substitution Policies.

Other Investment Issues

Venture Capital

In March 2003, new regulations took effect permitting the establishment of foreign-invested venture capital firms, including wholly foreign-owned enterprises, aimed at funding high technology and new technology startups in industries open to foreign investment. These regulations lowered capital requirements, allowed foreign-invested firms to manage funds directly invested from overseas, and offered the option of establishing venture capital firms in a form similar to the limited liability partnerships used in other countries.

Meanwhile, regulations that took effect in April 2001 permitted foreign private equity firms subject to limits on corporate structure, share issuance and transfers, and investment exit options. These same regulations, however, bar all domestic and foreign securities firms from the private equity business.

Investment exit problems, especially the difficulty of listing on China's stock exchanges, coupled with the bureaucratic approvals required to list overseas, have limited interest in establishing China-based venture capital and private equity investment. As a result, most foreign venture capital and private equity investments in China are actually housed in offshore investment entities, which, as with other offshore FDI, can be transferred without Chinese government approval.

The Chinese government issued new regulations for domestic venture capital firms in the fall of 2005, and implementing rules went into effect on March 1, 2006. It is unclear if foreign firms choosing to operate onshore will be allowed to take advantage of the incentives offered to domestic firms.

Holding Companies

China has relaxed some restrictions on the scope and operations of holding companies, although minimum capital requirements normally make the establishment of a holding company suitable only for corporations with several large investments. Holding companies may manage human resources across their affiliates and also provide certain market research and other services. However, some restrictions on services provided by holding companies and on holding companies' financial operations and the ability to balance foreign exchange internally remain in place. Profit and loss consolidation within holding companies also remains prohibited.

China has begun to open its domestic equity markets to investments from foreign firms. Through the Qualified Foreign Institutional Investor (QFII) program, foreign securities firms may apply for QFII status, which permits limited access to the RMB-denominated A-share market. As of October 2006, China had granted QFII status to 50 foreign entities, 41 of which had obtained quotas totaling $8.2 billion.

Access to Capital Markets

Foreign-invested firms in China are often unable to access domestic and international stock markets, to sell corporate bonds and equity, or to engage in normal merger, acquisition and divestment activity. In addition, foreign exchange transactions on China's capital account can be concluded only with case-by-case official review, and approvals are tightly regulated. However, recent regulations permitting greater capital outflows and pronouncements by Chinese government officials encouraging Chinese firms to invest abroad suggest that China now recognizes that continued large capital inflows are not sustainable. To date, foreign firms remain generally satisfied because they are able to repatriate profits. At the same time, most major foreign firms prefer to reinvest their profits, not exit the Chinese market.

GOVERNMENT PROCUREMENT

The WTO Agreement on Government Procurement (GPA) is a plurilateral agreement and currently covers the United States and 39 other WTO Members that have joined it. The GPA applies to the procurement of goods and services by central and sub-central government entities listed by each party, subject to thresholds and certain exceptions. It requires GPA parties to provide MFN and national treatment to the goods, services and suppliers of other GPA parties and to apply detailed procedures designed to ensure fairness and predictability in the procurement process.

At present, China is not a party to the GPA. It committed to become an observer to the GPA upon its WTO accession, and in February 2002, it became an observer to the WTO Committee on Government Procurement. China also committed, in its WTO accession agreement, to initiate negotiations for accession to the GPA "as soon as possible." Following sustained U.S. engagement, China agreed at the April 2006 JCCT meeting that it would initiate GPA negotiations by no later than December 2007.

Until it joins the GPA, China has committed in its WTO accession agreement that all of its central and local government entities will conduct their procurements in a transparent manner. China also agreed that, if it opened a procurement to foreign suppliers, it would provide MFN treatment by allowing all foreign suppliers an equal opportunity to participate in the bidding process.

In June 2002, China adopted its Government Procurement Law, which became effective in January 2003. This law attempts to follow the spirit of the GPA and incorporates provisions from the United Nations Model Law on Procurement of Goods. The law also directs central and sub-central government entities to give priority to "local" goods and services, with limited exceptions, as China is permitted to do, because it is not yet a party to the GPA. China envisions that this law will improve transparency, reduce corruption and lower government costs. This law is also seen as a necessary step toward reforming China's government procurement system in preparation for China eventually becoming a party to the GPA. It is notable, however, that the Government Procurement Law does not cover tendering and bidding for public works projects, which represent at least one-half of China's government procurement market. Those projects are subject to a different regulatory regime, which will have to be brought into compliance with the GPA before China accedes to the GPA.

China began the process of drafting regulations implementing the Government Procurement Law soon after its issuance in June 2002. MOF issued these regulations – the Measures on the Administration of Bidding for Government-Procured Goods and Services – in August 2004. They set out detailed procedures for the solicitation, submission and evaluation of bids for government contracts relating to goods and services and help to clarify the scope and coverage of the Government Procurement Law. MOF also issued several sets of implementing rules, including measures relating to the announcement of government procurements and the handling of complaints by suppliers relating to government procurement.

Meanwhile, beginning in 2003, U.S. companies expressed concerns about implementing rules on government software procurement being drafted by MOF. At a time when China's already large software market was projected to grow by more than 50 percent annually, the initial draft of these rules reportedly contained guidelines mandating that central and local governments – the largest purchasers of software in China – purchase only software developed in China to the extent possible. In response, the United States organized an industry roundtable to inform the relevant Chinese ministries of the views and concerns of interested U.S. trade associations. U.S. industry officials explained that the creation of a domestic software industry cut off from global standards would lead to inefficiencies and would limit, rather than promote, the development of China's software industry. Working closely with U.S. industry, the United States also submitted written comments on the software procurement proposal and followed up by strongly reiterating its concerns with China during a series of bilateral meetings. The United States was concerned not only about U.S. software exporters continuing access to China's large and growing market for packaged and custom software – $7.5 billion in 2004 – but also about the precedent that could be established for other sectors if China proceeded with MOF's proposed restrictions on the purchase of foreign software by central and local governments. At the July 2005 JCCT meeting, China took note of the United States' strong concerns and indicated that it would indefinitely suspend the drafting of implementing rules on government software procurement.

Soon afterwards, however, the issue of preferences for the purchase of domestic goods again appeared, when the State Council issued China's Medium to Long Term Science and Technology Master Plan in early 2006. The NDRC and several other ministries and agencies are in charge of developing regulations to implement this strategy, which includes preferences for the purchase of domestic goods as an important industrial policy tool. The United States is concerned that these regulations may unfairly discriminate against U.S. firms and is therefore closely monitoring developments in this area.

A similar issue arose in December 2005, when China issued a measure announcing that products incorporating the WAPI standards should be given preference in government procurement. This measure is discussed above in the "Standards, Technical Regulations and Conformity Assessment Procedures" section.

ELECTRONIC COMMERCE

China has experienced dramatic growth in Internet usage since 1999. According to the 19th Internet survey recently published by the China Internet Network Information Center (CNNIC), the number of Internet users in China reached approximately 137 million at the end of 2006, representing an increase of 23 percent over the previous year, second only to the United States in terms of total users. Falling personal computer prices and the arrival of devices tailored for the Chinese market will further expand Internet access.

China has also experienced a dramatic increase in the number of domain names established. By the end of 2006, there were more than 4.1 million registered domain names in China. Of this total, there were more than 1.8 million domain names registered under ".cn", representing a 64 percent increase over the previous year. However, despite these developments, CNNIC reported that only 24 percent of surveyed Chinese Internet users frequently use the Internet for online shopping services. Nevertheless, China is experiencing the rapid development of online businesses such as search engines, network education, online advertisements, audio-video service, paid e-mail, short message, online job hunting, Internet consulting, e-trading and online gaming.

The Chinese government recognizes the potential of electronic commerce to promote exports and increase competitiveness and has made some progress toward establishing a viable commercial environment. However, some Chinese ministries with responsibility for electronic commerce have excessively regulated the Internet, thereby stifling the free flow of information and the consumer privacy needed for electronic commerce to flourish. Content is still controlled and encryption regulated, as discussed more fully above (in the "Online Services" section).

A number of technical problems also inhibit the growth of electronic commerce in China. Rates charged by government-approved Internet service providers make Internet access expensive for most Chinese citizens. Slow connection speeds are another problem, although this is changing quickly as broadband connections become more readily available. By the end of 2006, nearly 76 percent of China's Internet users had broadband connections, representing an increase of 18 percentage points over 2005, and China Telecom is now reportedly the world's largest digital subscriber line, or DSL, operator. There are now 104 million broadband subscribers in China. China surpassed Japan in 2004 as the country with the second most broadband lines after the United States. At the same time, Internet penetration remains relatively low in China, and there is a large urban/rural divide in penetration rates (the urban penetration rate is six times higher than the rural penetration rate as of July 2006), so there is still significant room for growth.

Other impediments to Chinese businesses and consumers conducting online transactions include the paucity of credit payment systems, consumer reluctance to trust online merchants, the lack of secure online payment systems and inefficient delivery systems. China has also yet to develop a legal framework conducive to the rapid growth of electronic commerce. Laws recognizing the validity of "e-contracting" tools and stressing the importance of online privacy and security have been proposed, but not yet issued. Despite these obstacles, however, a large and growing percentage of Chinese Internet users reportedly have made online purchases.

In August 2004, China passed its first electronic commerce legislation, which addressed, among other things, e-signatures. China is reportedly drafting data privacy legislation and regulations that will address online transactions and payments.

ANTICOMPETITIVE PRACTICES

Competition Policy Laws and Regulations

China maintains many laws and regulations in the competition policy area. China's principal law is the Anti-Unfair Competition Law, enacted by the National People's Congress (NPC) in 1993. This law addresses a variety of matters, as it (a) prohibits firms from using a trademark, name or packaging without a license, as well as false advertising and other practices intended to confuse consumers; (b) outlaws bribery, the purchase or sale of business secrets, and predatory pricing; (c) restricts a firm's ability to tie the sale of one product to another or impose "unreasonable conditions" on purchases; (d) bans collusion and outlaws "spreading false facts" that damage a competitor; and (e) in theory, limits the business practices of legally-authorized monopolies and restricts the government's ability to require that private firms engage in certain commercial transactions with state-owned enterprises.

China maintains some laws and regulations that limit competition. For example, the national government has legislated that production in certain sectors be concentrated in monopolies, near monopolies or authorized oligopolies. As in some other countries, these enterprises are concentrated in capital intensive sectors, like electricity and transportation, or in industries such as fixed-line telephony and postal services, in which this approach may be used to ensure national coverage. Some of the key laws and regulations include the Law on Electricity (1996), Civil Aviation Law (1995), Regulations on Telecommunication (2000), Postal Law (1986), Railroad Law (1991) and Commercial Bank Law (amended in 2003), among others. The enforcement of these laws and regulations is uneven as a result of the challenges inherent in attempting to coordinate their implementation nationally and as a result of inconsistent local and provincial enforcement. As China further reforms its economy, it is expected that many of these laws will be revised.

More troubling are efforts by government authorities at all levels in China to regulate competition with specific firms, often state-owned enterprises. Official statements often suggest that these efforts are tied primarily to employment concerns. However, the ultimate beneficiaries of the resulting protectionist measures are often unclear. In addition, local governments frequently enact rules that restrict inter-provincial trade. Because the central government has difficulty enforcing its own competition policy measures at the local level, these local government rules continue to restrict market access for certain imported products, raise production costs and limit market opportunities for foreign-invested enterprises.

In June 2006, the NPC conducted the first of the three required readings of a draft Anti-Monopoly Law, which has been in development for nearly 15 years. The United States is carefully following the progress of the draft law, which, among other things, would strengthen the central government's ability to tackle locally authorized monopolies. In bilateral meetings, the United States has raised concerns with particular aspects of the draft law, including legal standards for determining whether a firm has a dominant market position and whether it is abusing that position, notification obligations for foreign mergers and acquisitions, the coverage of state enterprises and disciplines on administrative monopolies. The United States has also raised concerns about the proper relationship between intellectual property rights and antimonopoly enforcement, urging that the mere ownership of an intellectual property right not be considered proof of a dominant market position and that a patent owner's simple refusal to license its technology not be viewed as an antimonopoly violation. A second NPC reading has not yet been scheduled.

Measures Restricting Inward Investment

In 2006, China began to revise its policies toward inward investment. While insisting that it remains open to foreign investment, China adopted policies that restrict inward investment in a range of "strategic" sectors, which appear designed to shield domestic enterprises from foreign competition.

As discussed above in the Investment Barriers section, these policies include the State Council's June 2006 Opinions on the Revitalization of the Industrial Machinery Manufacturing Industries, which calls for China to expand the market share of domestic companies in 16 equipment manufacturing industries. In August 2006, the Ministry of Commerce and five other agencies issued revised rules for foreign mergers and acquisitions, which, among other things, establish a vague "national economic security" basis for rejecting proposed deals as well as an anti-monopoly review that can block deals. In November 2006, the NDRC issued a Five-Year Plan on foreign investment that seeks to restrict foreign acquisitions of leading Chinese enterprises, prevent the emergence of foreign capital monopolies, protect industrial security and prevent abuse of intellectual property. Finally, in December 2006, SASAC published an expansive list of "critical economic sectors" in which China should restrict foreign participation.

Some of these measures maintain or create conflicts of interest by assigning regulatory power to agencies that administer state-owned enterprises competing in the same sectors. In addition, key terms in the new policies, such as "national economic security," remain undefined. The opaque standards and ill-defined processes in these measures have introduced additional ambiguity into China's competition policy.

OTHER BARRIERS

Transparency

In its WTO accession agreement, China committed to publish all laws, regulations and other measures that relate to trade matters, including those that affect imports, and generally to provide a reasonable period for commenting on them before implementation. China also agreed to establish or designate an official journal for the publication of these trade-related measures. In addition, China agreed to provide a copy of new trade-related laws, regulations and other measures to the WTO Secretariat in Geneva, translated into one or more of the WTO's official languages (English, French and Spanish) no later than 90 days after implementation. China further agreed to create various enquiry points for its WTO trading partners and foreign businesses to obtain information about these measures.

Various government-owned specialty newspapers routinely carry the texts of government regulations, implementing rules, circulars and announcements. Many government ministries also publish digests or gazettes containing the texts of these measures, both in written form and on their websites. In addition, there has been a proliferation of online news and information services that routinely offer up-to-date news about, and texts of, new laws and regulations. Some services even provide legal-quality English translations by subscription. However, many measures that do not rise to the level of ministry-issued regulations or implementing rules continue to remain unavailable to the public. China's ministries routinely implement policies based on internal "guidance" or "opinions" that are not available to foreign firms. In addition, experimental or informal policies and draft regulations are regarded as internal matters and public access is tightly controlled.

While positive in some respects, the sheer number of outlets through which trade-related measures are published complicates the ability of interested parties to track their development and issuance. In late 2002, China designated the China Foreign Economic and Trade Gazette as the official journal for this purpose. Published by MOFCOM, it came out on a trial basis in October 2002 and as an official publication in January 2003. However, this journal does not carry draft measures for public comment, nor does it consistently carry trade-related measures developed by ministries and agencies other than MOFCOM. The establishment or designation of a single comprehensive journal would enhance the ability of WTO Members to track the drafting, issuance and implementation of trade-related measures. Furthermore, the use of a single journal to request comments on proposed trade-related measures, as envisioned in China's WTO accession agreement, would facilitate the timely notification of comment periods and submission of comments. In March 2006, the State Council issued a notice directing all central, provincial and local government entities to begin sending copies of all of their trade-related measures to MOFCOM for immediate publication in the MOFCOM Gazette. The United States has been monitoring the effectiveness of this notice, both to assess whether all government entities regularly publish their trade-related measures in the MOFCOM Gazette and whether all types of measures are being published. So far, adherence to the State Council's notice is far from complete.

In December 2001, the State Council issued regulations explicitly allowing comment periods and hearings. However, many of China's ministries and agencies continued to follow the practice prior to China's accession to the WTO. The ministry or agency responsible for drafting a new or revised law or regulation will normally consult with and submit drafts to other ministries and agencies, Chinese experts and affected Chinese companies. At times, the responsible ministry or agency will also consult with select foreign companies, although it will not necessarily share drafts with them. As a result, only a small proportion of new or revised laws and regulations have been issued after a period for public comment, and even in these cases the amount of time provided for public comment has generally been short.

In 2004, some improvements took place, particularly on the part of MOFCOM, which began following the rules set forth in its Provisional Regulations on Administrative Transparency, issued in November 2003. Those rules could potentially serve as a model for other ministries and agencies seeking to improve their transparency. Nevertheless, basic compliance with China's notice-and-comment commitment has continued to be uneven. In the area of intellectual property rights, for example, several ministries and agencies circulated proposed measures for public comment in 2005 and 2006. The National People's Congress also circulated a proposed Labor Contract Law for public comment in March 2006. However, China did not provide for public comment on major trade-related laws and regulations, such as the April 2005 Measures on the Importation of Parts for Entire Automobiles, which has since given rise to a WTO dispute brought by the United States, the EC and Canada, CIRC's December 2005 Regulations on the Administration of the Reinsurance Business, August 2006 merger and acquisition regulations, or Xinhua's September 2006 Administrative Measures on News and Information Release by Foreign News Agencies within China. In addition, China did not seek public input on new rules on telecommunications value-added services issued by MII in July 2006, or new rules on qualification requirements for senior managers of insurance companies issued by CIRC in July 2006. The United States and other WTO Members have also been seeking the opportunity to comment on a number of significant new measures, such as the draft Postal Law and the draft Telecommunications Law, so far without success.

Meanwhile, China's ministries and agencies continue to have a much better record when it comes to making new or revised laws and regulations available to the public. In accordance with State Council regulations issued in December 2001, which require the publication of new or amended regulations 30 days before their implementation, almost all new or revised laws and regulations have been available (in Chinese) soon after issuance and prior to their effective date, an improvement over pre-WTO accession practice. Indeed, these laws and regulations are often published not only in official journals, but also on the Internet. At the same time, however, China continues to lag behind in providing translations of these laws and regulations.

U.S. industry continues to report instances where Chinese regulators provide Chinese companies unofficial guidance, which is usually unavailable to foreign entities. In some cases, Chinese officials have provided unpublished documents to interested parties, but this dissemination has been *ad hoc* and based more on personal connections than formal procedures.

In late 2001, MOFCOM's predecessor, MOFTEC, established an enquiry point to provide information on new trade and investment laws, regulations and other measures. Other ministries and agencies have also established formal or informal, subject-specific enquiry points. Since the creation of these various enquiry points, U.S. companies have generally found them to be responsive and helpful, and have generally received timely replies.

Legal Framework

Laws and Regulations

Laws and regulations in China tend to be more general and ambiguous than in other countries. While this approach allows the Chinese authorities to apply laws and regulations flexibly, it also results in inconsistency and confusion in application. Companies often have difficulty determining whether their activities contravene a particular law or regulation.

In China, regulations are also promulgated by a host of different ministries and governments at the central, provincial and local levels, and it is not unusual for the resulting regulations to be at odds with each other. Even though finalized regulations are now routinely published in China, they often leave room for discretionary application and inconsistencies, either through honest misunderstanding or by design. Indeed, government bureaucracies have sometimes been accused of selectively applying regulations. China has many strict rules that are often ignored in practice until a person or entity falls out of official favor. Governmental authorities can wield their discretionary power to crack down on foreign or disfavored investors or make special demands on them simply by threatening to crack down.

This lack of a clear and consistent framework of laws and regulations can be a barrier to the participation of foreign firms in the Chinese domestic market. A comprehensive legal framework, coupled with adequate prior notice of proposed changes to laws and regulations and an opportunity to comment on those changes, would greatly enhance business conditions, promote commerce and reduce opportunities for corruption. The U.S. Government has provided technical assistance, at the central, provincial and local levels of government in China, in an effort to promote improvements in China's legislative and regulatory drafting process. In its WTO accession agreement, China committed to establish tribunals for the review of all administrative actions relating to the implementation of trade-related laws, regulations, judicial decisions and administrative rulings. These tribunals must be impartial and independent of the government authorities entrusted with the administrative enforcement in question, and their review procedures must include the right of appeal. To date, little information is publicly available regarding the frequency or outcomes of review before these tribunals.

China also committed, at all levels of government, to apply, implement and administer all of its laws, regulations and other measures relating to trade in goods and services in a uniform and impartial manner throughout China, including in special economic areas. In connection with this commitment, in 2002, China also established an internal review mechanism, now overseen by MOFCOM's Department of WTO Affairs, to handle cases of non-uniform application of laws. The actual workings of this mechanism remain unclear, however.

Commercial Dispute Resolution

Both foreign and domestic companies often avoid seeking resolution of commercial disputes through the Chinese courts, as skepticism about the independence and professionalism of China's court system and the enforceability of court judgments and awards remains high. There is a widespread perception that judges, particularly outside of China's big cities, are subject to influence by local political or business pressures. Most judges are not trained in the law and/or lack higher education, although this problem decreases at the higher levels of the judiciary.

At the same time, the Chinese government is moving to establish consistent and reliable mechanisms for dispute resolution through the adoption of improved codes of ethics for judges and lawyers and increased emphasis on the consistent and predictable application of laws. The Judges' Law, issued by the Standing Committee of the National People's Congress in 1995, requires judges to have degrees in law or in other subjects where they have acquired specialized legal knowledge, and permits judges appointed before the law's implementation who do not meet these standards to undergo necessary training. In 1999, the Supreme People's Court began requiring judges to be appointed based on merit and educational background and experience, rather than through politics or favoritism. In 2002, the Supreme People's Court issued rules designating certain higher-level courts to hear cases involving administrative agency decisions relating to international trade in goods or services or intellectual property rights. According to the Supreme People's Court, China's more experienced judges sit on the designated courts, and the geographic area under the jurisdiction of each of these designated courts has been broadened in an attempt to minimize local protectionism. The rules provide that foreign or Chinese enterprises and individuals may bring cases in the designated courts raising challenges under the Administrative Litigation Law to decisions made by China's administrative agencies relating to international trade matters. The rules also state that when there is more than one reasonable interpretation of a law or regulation, the courts should choose an interpretation that is consistent with the provisions of international agreements to which China has committed, such as the WTO rules.

Despite initial enthusiasm, foreign observers have grown increasingly skeptical of the China International Economic and Trade Arbitration Commission (CIETAC) as a forum for the arbitration of trade disputes. Some foreign firms have obtained satisfactory rulings from CIETAC but other firms and legal professionals have raised concerns about restrictions on the selection of arbitrators and inadequacies in procedural rules necessary to ensure thorough, orderly and fair management of cases.

Finally, in cases where the judiciary or arbitration panels have issued judgments in favor of foreign-invested enterprises, enforcement of the judgments has often been difficult. Officials responsible for enforcement are often beholden to local interests and unwilling to enforce court judgments against locally powerful companies or individuals.

Labor Issues

In recent years, China has expanded the scope of its national labor laws and regulations so they now cover most, though not all, key labor areas. Even with these changes, China does not adhere to certain internationally recognized labor standards, such as the rights of freedom of association and collective bargaining. There are many reports indicating that China does not enforce its laws and regulations concerning minimum wages, hours of work and occupational safety and health. There are also persistent concerns about the use of prison labor and child labor. In addition, labor laws and regulations are applied inconsistently between Chinese-owned enterprises and foreign-invested enterprises.

The Chinese government is slowly developing nationwide pension, unemployment insurance, medical insurance and workplace injury insurance systems that require substantial employer contributions. These systems are still rudimentary and characterized by serious funding shortfalls, in part due to widespread non-compliance among domestic firms. A Chinese government audit report published in November 2006 reveals that more than RMB7 billion ($875 million) of China's RMB2 trillion ($250 billion) social security funds had been misappropriated. This revelation has made social security the primary concern for many Chinese citizens, according to a subsequent survey.

The cost of labor, especially unskilled labor, is low in much of China. The existence of a large pool of surplus rural workers, many of whom seek work in urban areas, helps to keep unskilled wages low. Some companies offering substandard wages and working conditions have experienced shortages of unskilled labor. Where competition for workers is intense and the supply limited, as in the case of technical, managerial and professional staff in China’s coastal areas, wages can be higher. However, restrictions on labor mobility distort labor costs. China is gradually easing restrictions under the country’s household registration system, which has traditionally limited the movement of workers within the country, in part due to the recognition that labor mobility is essential to the continued growth of the economy. Reportedly, wages for many migrant workers, especially construction workers, are not paid on a monthly basis as required by China’s national labor laws and regulations, but rather at year end. These workers also remain vulnerable to wage arrearages.

In 2005, the China National Textile and Apparel Council established the Committee for the Promotion of Corporate Social Accountability System for Chinese Textile Enterprises (CSC-9000T). Reportedly, increasing numbers of Chinese firms have realized the importance of social accountability but remain confused about the various foreign corporate social accountability standards and certifications bodies that exist. The council formed CSC-9000T to formulate Chinese corporate social responsibility standards to promote among Chinese firms. The standards are based on relevant Chinese legislation and regulations and reference international practices. More than 300 council members have adopted these standards. CSC-9000T is designed as a capacity building program to train members on best practices for complying with Chinese legal standards, rather than an accreditation or audit-based system. Ten members participated in the pilot phase of the CSC-9000T project in 2006, and the organization is now preparing to expand the pilot project to 100 members. The pilot project consists of surveying standards implementation and providing follow-up training for participating companies. CSC-9000T is also working with international Corporate Social Responsibility organizations and buyers to refine the program and publicize its existence.

Corruption

Many people expected that China’s entry into the WTO, which mandated a significant reduction in tariffs, would in turn reduce incentives for smuggling-related corruption. While WTO membership has increased China’s exposure to international best practices and resulted in some overall improvements in transparency, corruption remains endemic. Chinese officials themselves admit that corruption is one of the most serious problems the country faces, and China’s new leadership has called for an acceleration of the country’s anti-corruption drive with a focus on closer monitoring of provincial-level officials. According to Chinese state media sources, from January 2003 to August 2006, more than 67,500 government officials were punished for corruption, with approximately 17,000 of those officials being punished for corruption between January 2006 and August 2006. China also launched an anti-corruption campaign in 2006 targeting Communist Party of China officials. According to the Xinhua News Agency, more than 97,000 party officials were punished in 2006.

In July 2004, China implemented a new Administrative Licensing Law. This law is designed to increase transparency in the licensing process, an area that has long served as a source of official corruption. This law seeks to ensure the reasonable use of administrative licensing powers to protect the interests of corporations and individuals and to promote efficient administrative management by requiring government agencies to set up special offices for issuing licenses and to respond to applications within 20 days. Since its 2004 implementation, the law has increased transparency in the licensing process, while reducing procedural obstacles and strengthening the legal environment for domestic and foreign enterprises.

China issued its first law on unfair competition in 1993, and the central government continues to call for improved self-discipline and anti-corruption initiatives at all levels of government. While the central government in recent years has pledged to begin awarding contracts solely on the basis of commercial criteria, it is unclear how quickly and to what extent the government will be able to follow through on this commitment. U.S. suppliers complain that the widespread existence of unfair bidding practices in China puts them at a competitive disadvantage. This dilemma is less severe in sectors where the United States holds clear technological or cost advantages. Corruption nevertheless undermines the long-term competitiveness of both foreign and domestic entities in the Chinese market.

Land Issues

China's constitution specifies that all land is owned in common by all the people. In practice, agricultural collectives, under the firm control of local Communist Party chairmen, distribute agricultural land to the rural poor, while city governments distribute land for residential and industrial use. The State and collectives can either "grant" or "allocate" land use rights to enterprises in return for the payment of fees. Enterprises granted land-use rights are guaranteed compensation if the State asserts eminent domain over the land, while those with allocated rights are not. Granted land-use rights cost more, not surprisingly, than allocated rights. However, the law does not define standards for compensation when eminent domain supersedes granted land-use rights. This situation creates considerable uncertainty when foreign investors are ordered to vacate. The absence of public hearings on planned public projects, moreover, can give affected parties, including foreign investors, little advance warning.

The time limit for land-use rights acquired by foreign investors for both industrial and commercial enterprises is 50 years. A major problem for foreign investors is the array of regulations that govern their ability to acquire land-use rights. Local implementation of these regulations may vary from central government standards, and prohibited practices may occur in one area while they are enforced in another. Most wholly-owned foreign enterprises seek granted land-use rights to state-owned urban land as the most reliable protection for their operations. Chinese-foreign joint ventures usually attempt to acquire granted land-use rights through lease or contribution arrangements with the local partners.

China's current rural land law, which took effect in 2003, gives peasants fixed contracts for periods of 30 years to 50 years and permits peasants to exchange or rent out their land-use rights while their use contract remains in force. There is no immediate prospect for changing from land-use rights to direct ownership of rural land. However, since 2004, China's leadership has pressed for sturdier land rights for farmers along with stricter controls over the legal process for converting farmland from agricultural to industrial or residential use. Local governments are no longer supposed to expropriate land for commercial use, as farmers are now supposed to be able to negotiate a compensation price for land directly with commercial users. However, implementation of these provisions lags.

China's National People's Congress passed a Property Rights Law on March 16, 2007, the first comprehensive legal protection to private property since the founding of the People's Republic in 1949. The property law, which generated years of controversy in the Chinese government but was never published in draft form, reportedly grants equal legal protection to private, state, and collectively owned property. This protection would cover the "means of production," such as factories, but agricultural land would remain a collective possession subject to 30-year leases. It is unclear at this time how the law will be implemented.

COLOMBIA

TRADE SUMMARY

The U.S. goods trade deficit with Colombia was $2.6 billion in 2006, a decrease of $830 million from $3.4 billion in 2005. U.S. goods exports in 2006 were $6.7 billion, up 22.8 percent from the previous year. Corresponding U.S. imports from Colombia were $9.3 billion, up 4.7 percent. Colombia is currently the 29th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Colombia in 2005 was $3.4 billion (latest data available), up from $2.8 billion in 2004. U.S. FDI in Colombia is concentrated largely in the manufacturing, mining, and wholesale sectors.

United States – Colombia Trade Promotion Agreement (CTPA)

In May 2004, the United States entered into free trade negotiations with Colombia, Ecuador and Peru. To date, the United States has concluded free trade agreements with Peru and Colombia. The United States-Colombia Trade Promotion Agreement (CTPA) was signed on November 22, 2006. The United States and Colombia will work towards securing approval of the CTPA by their respective legislatures in 2007.

IMPORT POLICIES

Tariffs

Colombia has opened its economy considerably since the early 1990s. Customs duties have been cut and many non-tariff barriers eliminated. Most duties have been consolidated into three tariff levels: 0 percent to 5 percent on capital goods, industrial goods and raw materials not produced in Colombia; 10 percent on manufactured goods with some exceptions; and 15 percent to 20 percent on consumer and "sensitive" goods.

Some important exceptions include automobiles, which are subject to a 35 percent tariff, and many agricultural products, which fall under a variable "price band" import duty system. The price band system includes 14 product groups and covers more than 150 tariff lines. When international prices surpass the price band ceiling, tariffs are reduced; when prices drop below the price band floor, tariffs are raised. At times this results in duties approaching or exceeding 100 percent for important U.S. exports to Colombia, including corn and products made from corn including pet food, wheat, rice, soybeans, pork, poultry, cheeses and powdered milk, and negatively affects U.S. access.

Colombia will immediately eliminate its price band system on trade with the United States upon entry into force of the CTPA. This is critical for the United States to be able to compete with regional and MERCOSUR countries. Over half of the value of current U.S. agricultural exports to Colombia will enter duty-free upon entry into force of the CTPA, including high quality beef, a variety of poultry products, soybeans and soybean meal, cotton, wheat, whey, and most horticultural and processed food products. U.S. agricultural exporters will also benefit from duty-free access through tariff-rate quotas, including on corn, rice, dairy products, and pet food.

In addition, over 80 percent of U.S. exports of consumer and industrial products to Colombia will become duty-free immediately under the CTPA, with remaining tariffs phased out over 10 years. Colombia also agreed to join the World Trade Organization (WTO) Information Technology Agreement, removing tariffs and addressing non-tariff barriers to information technology products.

Non-Tariff Measures

Colombia prohibits imports of used clothing, and used and new automotive vehicles whose importation occurs more than two years following their date of production. Colombia grants licenses for the importation of certain used goods under limited circumstances. These licenses are granted at the discretion of the Ministry of Industry, Trade and Tourism. Industry reports that in practice, approval is not granted, resulting in the effective prohibition of these imports. U.S. officials continue to monitor the situation in the context of the WTO Import Licensing Committee.

Colombia also uses discretionary import licensing to ban imports of powdered milk and poultry parts. Colombia removed the "absorption" requirements for all remaining agricultural products at the end of 2003, when the WTO waiver allowing them to link imports to local purchases expired. The Colombian government replaced this system with tariff-rate quotas for rice, yellow corn, white corn and cotton, and a requirement to purchase local production in order to import under the tariff-rate quota.

Additionally, industry has been negatively affected by the position taken by the Colombian customs authority that certain types of automatic teller machines (ATMs) do not qualify as ATMs, thereby subjecting these imports to higher duties.

The United States addressed a significant number of Colombia's barriers during the CTPA negotiations. For example, under the Agreement, the government of Colombia committed to ensuring that access to a CTPA tariff-rate quota (TRQ) in-quota quantity will not be conditioned on purchase of domestic production. This obligation addresses a key barrier U.S. agricultural exporters have faced in the Colombian market.

In addition, Colombia's prohibitions on the importation of used goods apply to remanufactured goods, thereby effectively prohibiting the importation of U.S. remanufactured goods. Under the CTPA, Colombia affirmed that it would not adopt or maintain prohibitions or restrictions on trade in remanufactured goods, and that certain existing prohibitions on trade in used goods would not apply to remanufactured goods. Upon entry into force of the CTPA, this commitment will provide significant new export and investment opportunities for firms involved in remanufactured products such as machinery, computers, cellular phones and other devices.

Under Law 788, Colombia assesses a consumption tax on beverage alcohol based on a system of specific rates per degree (percentage point) of alcohol strength. This tax regime discriminates against imported distilled spirits through arbitrary breakpoints that have the effect of applying a lower tax rate per degree of alcohol to domestically-produced spirits. Under the CTPA, Colombia committed to eliminate this discriminatory element of the excise tax for imports of distilled spirits within four years of entry into force of the agreement. Additionally, under the national treatment principle of the CTPA, Colombia committed to eliminate discriminatory practices that have restricted the ability of U.S. distilled spirits companies to conduct business in Colombia.

In December 2005, Colombia enacted Decree No. 4665 which established potential trade restrictions on importers of textiles and apparel, and footwear. On April 27, 2006, Colombia passed Decree No. 1299, which rescinded Decree No. 4665 and removed such restrictions.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The United States and Colombia resolved a number of sanitary and phytosanitary (SPS) barriers to agricultural trade during 2006. In February of 2006, Colombia formalized its recognition of the equivalence of the U.S. meat and poultry inspection systems. In August 2006, the U.S. Government and the Colombian government agreed on the contents of sanitary certificates to accompany shipments of U.S. beef and beef products to Colombia. In October, Colombia implemented this agreement, thereby reopening its market to all U.S. beef and beef products, except high risk materials, when accompanied by a sanitary certificate issued by the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS), consistent with international standards. In addition, in 2006, Colombia agreed to allow the importation of U.S. poultry and poultry products from all U.S. states accompanied by an FSIS Export Certificate of Wholesomeness. Work toward formalizing agreement on the specific contents of these and other U.S. sanitary certificates accompanying U.S. poultry and poultry products to Colombia is ongoing.

Colombia requires companies not only to list the ingredients for pet food, but also the percentage of those ingredients contained in the products, which U.S. companies consider proprietary information. In addition, no pet food may contain any bovine or bovine ingredients with the exception of bovine or bovine materials legally imported from Australia or New Zealand or any other country recognized as free of BSE.

U.S. companies retailing nutritional supplements in Colombia continue to experience problems due to the lack of legislation that establishes clear parameters for sanitary registration. Colombia does not have a specific classification for nutritional supplements. The Colombian government, through the Ministry of Social Protection, published Decree 3249 on September 18, 2006, establishing regulations for the production, commercialization, packaging, labeling, registration, quality control, sanitary surveillance and sanitary control for dietary supplements, both imported and locally-produced.

For textile products, Colombia requires that in addition to the name of the producer, the name of the importer also be included on the label. Industry reports that such information is difficult if not impossible to know during the manufacturing process when permanent labels are attached. Re-labeling of products upon entry to meet these requirements results in additional costs and delays.

GOVERNMENT PROCUREMENT

Government procurement represents approximately 16 percent of gross domestic product according to the Colombian government. The Government Procurement and Contracting Law, Law 80/93, establishes procedures for the selection of suppliers, mainly through public tenders. The private sector has complained of a lack of transparency and credibility, and inefficiency in government procurement processes. The Colombian Congress is in the process of reforming Law 80.

Under the CTPA, Colombia agreed to provide U.S. goods, services and suppliers with national treatment. U.S. firms will have access to the purchases of Colombia's ministries and departments, legislature, courts, and first-tier sub-central entities as well as a number of Colombia's government enterprises, including its oil company. Once the CTPA enters into force, Colombia will not be able to apply Law 816 of 2003, which mandates that all public entities accord preferential treatment to bids that incorporate Colombian goods or services. This Law has created a barrier to participation by U.S. suppliers in Colombian government procurement.

Additionally under the CTPA, the United States and Colombia agreed to terms that require the use of fair and transparent procurement procedures, such as advance notice of purchases and timely and effective bid review procedures.

Colombia is not a signatory of the WTO Agreement on Government Procurement, but is an observer to that agreement. According to industry analysts, the elimination of barriers in the government procurement sector could yield an increase of U.S. exports in the range of $100 million to $500 million.

EXPORT SUBSIDIES

Colombia has been working to eliminate export subsidies since its General Agreement on Tariffs and Trade (GATT) accession. This process has continued under the WTO Agreement on Subsidies and Countervailing Measures.

Free zones are geographic areas where industrialization processes are promoted through special customs, tax and foreign exchange regimes. Users of free zones are exempt from income tax, import tariffs and value-added tax on imports, and have access to special credit lines offered by Colombia's foreign trade bank (Bancoldex). In compliance with its obligations under the WTO, the Colombian government announced it would phase out all export subsidies in free trade zones by December 31, 2006. However, free trade zones and special import-export zones will maintain their special customs and foreign exchange regimes. After December 31, 2006, free zones in Colombia are no longer exempt from the income tax.

The Colombian government eliminated "Plan Vallejo" on December 31, 2006. This was an export subsidy program that allowed for duty exemptions on the import of capital goods and raw materials used to manufacture goods that were subsequently exported.

In 2006, the Ministry of Agriculture created the Sanitary Incentive for banana and flower producers, consisting of a direct subsidy to improve phytosanitary controls for these export-oriented crops. The government of Colombia appropriated approximately $32 million for this program. The government also granted approximately $6.2 million in export subsidies for exporters of sugar-cane, palm, tobacco, fruit (including plantain), milk and dairy products, cacao, beef, shrimp and fish, to hedge their exchange rate risk; and an additional $14.7 million for Rural Capitalization Incentives, which consists of direct subsidies to agricultural producers who make new investments directed at modernizing their production for international markets.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In Colombia, the grant, registration and administration of intellectual property rights (industrial property and copyright) are carried out by four different government entities. The Superintendence of Industry and Commerce acts as the Colombian patent and trademark office. This agency was given control of the government's IPR policy effective January 2000. The agency suffers from inadequate financing and personnel, a high turnover rate and a large backlog of trademark and patent applications, which has led to a large number of appeals. The Colombian Agricultural Institute is in charge of the issuance of plant variety protection and agro-chemical patents. The Ministry of Social Protection is in charge of the issuance of pharmaceutical patents, while the Ministry of Justice is in charge of the issuance of literary copyrights. Each of these entities suffers from significant financial and technical resource constraints. Moreover, the lack of uniformity and consistency in IPR registration and oversight procedures limits the transparency and predictability of the IPR enforcement regime.

The CTPA provides for improved standards for the protection and enforcement of a broad range of intellectual property rights, which are consistent with U.S. standards of protection and enforcement and with emerging international standards. Such improvements include state-of-the-art protections for digital products such as U.S. software, music, text and videos; stronger protection for U.S. patents, trademarks and test data, including an electronic system for the registration and maintenance of trademarks; and further deterrence of piracy and counterfeiting by criminalizing end-use piracy.

Copyrights

Colombia provides generally comprehensive legal protection of copyrights through a combination of Andean Community and Colombian law, although certain enhancements are expected in connection with Colombia's implementation of the CTPA. Colombian Law 44 and the country's civil code include some provisions for IPR enforcement and have been used to combat infringement and to protect copyrights.

Patents and Trademarks

The patent regime in Colombia currently provides for a 20-year protection period for patents and a 10-year term for industrial designs; protection is also provided for new plant varieties. However, U.S. companies are concerned that the Colombian government does not provide patent protection for new uses of previously known or patented products. In 2002, the Colombian government issued Decree 2085, which improved the protection of confidential data for pharmaceutical and agro-chemical products.

Colombia is a member of the Inter-American Convention for Trademark and Commercial Protection. Enforcement of trademark rights legislation in Colombia is showing some progress, but contraband and counterfeiting are widespread.

Enforcement

In January 2005, Law 890 and Law 906 took effect, and included constructive amendments to the Colombian criminal code of 2001 and the Colombian criminal procedures code, in regard to copyright enforcement. First, Article 14 of Law 890 increased the prison sentences for all crimes in the criminal code. Second, Article 5 of Law 890 modified Article 64 of the criminal code, mandating that judges may grant parole only if the convict has completed two-thirds of the prison term and shows good behavior. Granting parole is subject to the full payment of fines imposed and indemnification of the victim.

The International Intellectual Property Alliance estimates that in 2005 piracy levels in Colombia for recorded music reached 71 percent, with damage to U.S. industry estimated at about $48 million. Motion picture piracy represented 75 percent of the market, with an estimated loss of $40 million. Piracy in both business software and book publishing continued to grow in 2005. According to the Business Software Alliance, losses due to piracy in business software amounted to $44.8 million in 2005 (a 55 percent piracy level) while book piracy generated losses of $60 million (piracy level for books is uncertain). Although Colombia has made some progress toward strengthening its IPR regime, it still needs to make further improvements by addressing copyright piracy, conducting effective prosecutions, imposing deterrent sentences by courts and strengthening border enforcement initiatives.

SERVICES BARRIERS

Colombia maintains specific restrictions in a variety of sectors, including in broadcasting, telecommunications, financial services, transportation, tourism and certain professions. In addition, Colombia maintains certain restrictions affecting all sectors, including measures that condition the provision of services on establishment in Colombia, and other measures that can prevent companies from hiring the managers, professionals and key personnel of their choice. Colombia also maintains highly restrictive laws regarding agency relationships that make it very difficult for principals to terminate relationships with unproductive local agents.

Under the CTPA, Colombia will accord substantial market access across its entire service regime, subject to a limited number of exceptions. Colombia agreed to remove and to limit specific barriers. For example, Colombia will phase in several liberalizations in financial services, such as allowing branching by banks and insurance companies and allowing the sale of international maritime shipping and commercial aviation insurance within four years of entry into force of the agreement. Under the agreement, mutual funds and pension funds will be allowed to use portfolio managers in the United States.

Colombia retained the ability to impose a local content measure on free-to-air broadcasting, including a 70 percent requirement during weekday prime-time hours, but agreed to reduce such requirements on weekends and at the regional level. Colombia also agreed to limit its ability to impose such requirements on subscription television, in movie theaters and on advertising in these media platforms. Finally, Colombia made a commitment to phase out restrictions on the number of broadcasting concessions at the regional and local level and to cap a discriminatory movie fee.

Colombia limits the supply of land cargo transportation to natural or legal persons with a commercial presence in the country. Colombia has exchanged rights in agreements with surrounding countries removing this requirement. Under the terms of these agreements, U.S.-owned companies are treated as companies of the host country. Under the terms of the CTPA, Colombia committed to allow 100 percent foreign ownership of land cargo transportation enterprises in Colombia. The agreement removes the Ministry of Foreign Trade's right to impose cargo reservation restrictions on U.S.-flagged vessels.

Additionally, Colombia committed in the CTPA to allow companies in most sectors to hire managers and other professionals of their choice free from nationality restrictions, including those applying to engineers and architects. Colombia also committed to remove onerous restrictions applying to agency relationships affecting the sale of goods. Some restrictions that remain under the CTPA are those requiring residency in the accounting and tourist sectors.

Telecommunications

In June 2005, the Telecommunications Regulatory Commission (CRT) adopted Resolution 1250, which modified the tariff framework for local fixed telephony. The new tariff framework includes three components: (1) shifts from methodologies that exercised direct control over rates to methodologies that regulate based on rules of behavior; (2) improves competitiveness by mandating minutes-based billing; and (3) provides incentives by shifting from a regulation based on income caps, to a regulation based on price caps. As a result, these measures have reduced fixed line bills by between 9 percent and 33 percent. The CRT continues working to determine final cap amounts for all regional networks.

CRT Resolution 1296, enacted on September 13, 2005, stipulated an eventual cap of $392 pesos (U.S. 17 cents) on fixed to mobile call rates, to be implemented in two phases. The first phase called for a reduction to $464 pesos (U.S. 20 cents) by November 1, 2005; followed by a second drop to $392 pesos (U.S. 17 cents) by November 1, 2006. Implementation of the resolution was postponed on October 31, 2005, after local operators complained that the new caps were below cost. In 2006, carriers and the CRT agreed to a single step reduction to a cap of $464 pesos (U.S. 20 cents), which was successfully implemented in 2006.

The CRT has sought measures geared at unbundling the subscriber loop to promote competition and as a way for incumbent operators to diversify their offerings, find an alternate source of income, and promote investment in new infrastructure, such as for broadband access. In Colombia, cable penetration is limited, and the deployment of digital subscriber line technology has been slow, resulting in lower than average broadband access penetration compared to other Latin American countries. Nevertheless, broadband access is growing. The CRT has been working to design new regulatory measures in order to promote faster deployment of network services, including broadband access, and plans to submit a proposal in this regard in the near future.

In July 2006, the CRT obligated Comcel and Movistar to offer direct interconnection to their networks by the trunking company Avantel for the next 10 years, based on certain technical, operational and economic conditions. This decision is important to U.S. phone companies that may seek to interconnect with the Colombian dominant suppliers' fixed networks at nondiscriminatory and cost-based rates. Under the CTPA, U.S. firms will be able to lease lines from Colombian telecommunications networks on non-discriminatory terms and to re-sell most telecommunications services of Colombian suppliers to build a customer base.

During the CTPA negotiations, Colombia agreed to remove significant barriers to entry in telecommunications services including a reduction of the high license fees for telecommunications services (currently $150 million for a long distance license), as well as permitting resale of telecommunications services.

INVESTMENT BARRIERS

Colombian law currently requires that foreign investments be accorded national treatment. One hundred percent foreign ownership is permitted in most sectors of the Colombian economy. Exceptions include activities related to national security and the disposal of hazardous waste. Investment screening has been eliminated, and the registration requirements that still exist are generally mere formalities. In the telecommunications, financial services, oil and mining sectors, for example, prospective foreign investors must comply with certain registration procedures, but there are no restrictions on the amount of foreign capital that may be invested in these sectors. All foreign investment must be registered with the Central Bank's foreign exchange office within three months in order to ensure the right to repatriate profits and remittances.

All foreign investors, like domestic investors, must obtain a license from the Superintendent of Companies and register with the local chamber of commerce. To promote the discovery and exploitation of new oil reserves, the Colombian government, through Law 756 of 2002, changed royalties from a flat 20 percent to a sliding scale, from 8 percent to 25 percent, depending on the size of the field. Colombia also implemented in June 2003 a new hydrocarbon policy, Law 1760, designed to attract foreign oil companies to Colombia. The new policy eliminated Ecopetrol's mandatory participation in joint ventures, allowed private companies 100 percent control of exploration and production projects, and restructured Ecopetrol by creating the National Hydrocarbon Agency (ANH). Although Ecopetrol is still state-owned, it increasingly operates like other commercial hydrocarbon companies. In December 2006, Colombia passed a law permitting the sale of 20 percent of Ecopetrol.

The ANH regulates the hydrocarbon sector and issues exploration and production contracts. The government is also extending existing contracts on a case-by-case basis. In early November 2005, the ANH established a requirement that companies or joint ventures interested in signing exploration/exploitation agreements with Colombia should be considered "capable." To qualify as "capable," an operator must prove a minimum of five years of experience at the time of the exploration/exploitation proposal; joint venture partners must prove a minimum of ten years of experience at the time of the proposal.

Colombian television broadcast laws (Law 182/95 and Law 375/96) impose several restrictions on foreign investment. Foreign investment in broadcast television network and programming companies is also capped at 40 percent.

In August 2005, the government issued Law 963, which authorizes the conclusion of legal stability agreements between foreign or local investors and the Colombian government. Under a stability agreement, the Colombian government promises not to change the tax and regulatory treatment applicable to an investor for periods of between 3 years and 20 years. All foreign and local investors making new investments exceeding one million dollars in value after the issuance of the law are eligible for stability agreements with the Colombian government. Such agreements may be signed in most sectors of the Colombian economy, including manufacturing, agriculture, tourism, mining, petroleum, telecommunications, construction, transportation and energy. Stability agreements are subject to a 1 percent fee on the annual value of the new investment. In late October of 2005, the Social and Economic Policy Council approved a modification of the Colombian Foreign Investment Statute (Decree 2080 of 2000) allowing foreign investors to use local financing resources (local credit) for the purchasing of securities in the Colombian stock market.

In December 2005, the government issued Decree 4474, which mandated that foreign portfolio investment should remain in the country for at least one year. The government revoked this measure through Decree 1940 in June 2006, allowing all foreign portfolio investment and proceeds to be freely remitted abroad without restrictions.

Colombia agreed to strong protections for U.S. investors in the CTPA. When it enters into force, the agreement will establish a stable legal framework for U.S. investors operating in Colombia. All forms of investment will be protected under the CTPA. U.S. investors will enjoy in almost all circumstances the right to establish, acquire and operate investments in Colombia on an equal footing with local investors. The CTPA's investor protections will also be backed by a transparent, binding investor-state arbitration mechanism.

ELECTRONIC COMMERCE

Banking and financial services organizations have been at the forefront of electronic commerce development in Colombia. For example, Colombia's stock exchange and its member banks and brokerages were quick to shift from floor-driven trading to remote private Internet-based electronic trading networks and were likewise quick to introduce e-banking and e-brokerage systems for their clients. This trend continues today, with a heightened focus on strengthening security and industry-wide self-regulatory capabilities, ensuring data privacy and adding to e-banking, brokerage data, and transaction systems capabilities.

The United States and Colombia agreed to provisions on electronic commerce in the CTPA that will provide non-discriminatory treatment of digital products. The United States and Colombia also agreed not to impose customs duties on digital products transmitted electronically. The CTPA agreement also establishes procedures for resolving disputes about trademarks used in Internet domain names.

COSTA RICA

TRADE SUMMARY

The U.S. goods trade surplus with Costa Rica was $288 million in 2006, an increase of $105 million from $183 million in 2005. U.S. goods exports in 2006 were $4.1 billion, up 14.8 percent. Corresponding U.S. imports from Costa Rica were $3.8 billion, up 12.63 percent. Costa Rica is currently the 35th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Costa Rica in 2005 was $1.3 billion (latest data available), up from $1.1 billion in 2004. U.S. FDI in Costa Rica is concentrated largely in the manufacturing sector.

IMPORT POLICIES

Free Trade Agreement

The United States concluded free trade agreement negotiations with El Salvador, Guatemala, Honduras and Nicaragua in December 2003 and with Costa Rica in January 2004. In May 2004, the six countries signed the United States–Central America Free Trade Agreement. During 2004, the United States and the Central American countries integrated the Dominican Republic into the free trade agreement. On August 5, 2004, the seven countries signed the Dominican Republic–Central America–United States Free Trade Agreement (CAFTA-DR).

All of the signatory countries have ratified the agreement, with the exception of Costa Rica. The agreement has entered into force for the Dominican Republic, Guatemala, Honduras, El Salvador and Nicaragua.

Consideration of the CAFTA-DR by the foreign relations committee of Costa Rica's legislative assembly has been under way since October 2005. Formal testimony before the committee concluded in October 2006, and the CAFTA-DR was voted favorably out of committee on December 12, 2006. Ratification of the CAFTA-DR is expected during 2007. The Arias administration also has submitted to the assembly the legislation necessary to implement the CAFTA-DR, such as proposed laws to open gradually the telecommunications and insurance markets, and to provide greater protections for intellectual property rights.

When implemented, the CAFTA-DR will remove barriers to trade and investment in the region and strengthen regional economic integration. The CAFTA-DR also requires the Central American countries and the Dominican Republic to undertake reforms to provide market liberalization as well as transparency and certainty in a number of areas, including: customs administration, protection of intellectual property rights, services, investment, financial services, government procurement, and sanitary and phytosanitary (SPS) measures.

Tariffs

As a member of the Central American Common Market, Costa Rica agreed in 1995 to reduce its common external tariff to a maximum of 15 percent. However, some goods, such as new and used automobiles, are subject to much higher tariffs. When the CAFTA-DR enters into force with respect to Costa Rica, about 80 percent of U.S. industrial goods will enter Costa Rica duty-free immediately, with the remaining tariffs phased-out over ten years. Nearly all textile and apparel goods that meet the agreement's rules of origin will be duty-free and quota-free immediately, promoting new opportunities for U.S. and regional fiber, yarn, fabric and apparel manufacturing companies.

Most tariffs on agricultural products range from 1 percent to 15 percent. However, selected agricultural commodities currently are protected by tariffs that significantly exceed the 15 percent CACM common external tariff ceiling. These commodities include: frozen french fries (40 percent), fresh potatoes (46 percent), dehydrated potatoes (up to 90 percent), dairy products (40 percent to 65 percent) and poultry products (up to 150 percent). Under the CAFTA-DR, when the agreement enters into force, more than half of U.S. agricultural exports to Costa Rica will be duty-free immediately. Costa Rica will eliminate its remaining tariffs on virtually all agricultural products within 15 years (17 years for chicken leg quarters and 20 years for rice and dairy products). For the most sensitive products, tariff-rate quotas (TRQs) will permit some immediate duty-free access for specified quantities during the tariff phase-out period, with the duty-free amounts expanding during that period. Costa Rica will liberalize trade in fresh potatoes and onions through expansion of an existing TRQ, rather than by tariff reductions.

The agreement will also require transparency and efficiency in administering customs procedures, including the agreement's rules of origin. Under the CAFTA-DR, Costa Rica has committed to ensure greater certainty and fairness in the administration of these procedures, and all CAFTA-DR countries agreed to share information to combat illegal transshipment of goods.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The establishment of an electronic "one-stop" import-export window in 2000 and other more recent improvements have reduced the time required for customs processing in Costa Rica. Nonetheless, procedures remain complex and bureaucratic.

Under current regulations, Costa Rica does not require testing prior to selling food products. The Ministry of Health must test and register domestically-produced or imported pharmaceuticals, feeds, chemicals and cosmetics before they can be sold in Costa Rica. As implemented, however, this system appears to be enforced more rigorously on imported goods than on domestically-produced goods. For example, domestic products are often not subjected to analysis due to a lack of adequate laboratory testing equipment and funds.

In addition, Costa Rica requires that all imported products be certified safe and allowed for sale in the country of origin in order to be registered. Food traders express concern regarding the length of time it takes to register a product under this process, which can take months. Costa Rica requires extensive documentation to be notarized by the Costa Rican consulate in the country of origin for the importation of distilled spirits. These import requirements are burdensome and costly to U.S. exporters. The five Central American countries, including Costa Rica, are in the process of developing common standards for the importation of several products, including distilled spirits, which should facilitate trade.

Sanitary and phytosanitary (SPS) requirements can often be cumbersome and lengthy. In addition, the Ministry of Agriculture and Livestock enforces SPS measures that appear to be inconsistent with international standards and not based on science (e.g., zero tolerance for salmonella on raw meat and poultry products).

Legislation passed in 2005 creating a national animal health service provides statutory authority for Costa Rica to undertake an equivalency determination to recognize the equivalence of the U.S. food safety and inspection system for meat and poultry. Current requirements call for the approval of individual meat and poultry plants as a prerequisite for exporting to Costa Rica. Costa Rica has committed to complete its equivalence determination prior to the entry into force of the CAFTA-DR.

GOVERNMENT PROCUREMENT

Costa Rica is not a signatory to the World Trade Organization (WTO) Agreement on Government Procurement. In recent years, a growing number of U.S. exporters and investors have reported unsatisfactory experiences in participating in Costa Rican government procurements. For example, the Costa Rican government, through its Comptroller General, has occasionally annulled contract awards and required government agencies to re-bid tenders to supply large state-owned enterprises. The Costa Rican government has also substantially modified tender specifications midway through the procurement process. The bidders in these cases were forced to bear the costs associated with these changes.

The CAFTA-DR, when it enters into force with respect to Costa Rica, will require the use of fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the agreement. Under the CAFTA-DR, U.S. suppliers will be permitted to bid on the procurements of most Costa Rican government entities, including state-owned enterprises, on the same basis as Costa Rican suppliers. The anti-corruption provisions in the agreement will require each government to ensure under its domestic law that bribery in trade-related matters, including in government procurement, is treated as a criminal offense or is subject to comparable penalties.

EXPORT SUBSIDIES

Tax holidays are available for investors in free trade zones, unless tax credits are available in an investor's home country for taxes paid in Costa Rica. In 2000, Costa Rica ceased granting financial investment subsidies and tax holidays to new exporters.

Under the CAFTA-DR, Costa Rica has committed to not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement (e.g., the exportation of a given level or percentage of goods). Costa Rica may maintain existing duty waiver measures through 2009 provided such measures are consistent with its WTO obligations.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The U.S. continues to have concerns over Costa Rica's inadequate enforcement of intellectual property laws. Consequently, Costa Rica remained on the 2006 Special 301 Watch List. While many elements of Costa Rican intellectual property laws appear to be in line with international standards, the country's criminal codes have certain weaknesses, including minimum amounts in damages necessary to justify imprisonment, that limit effective deterrence of intellectual property crimes. Initiatives, including the formation of an inter-governmental intellectual property rights commission and the training of judges and prosecutors on intellectual property laws, have not produced significant improvements in the prosecution of IPR crimes. Further, a lack of political will to aggressively prosecute IPR violators, frequently attributed to scarce resources, has undercut deterrence.

Costa Rica is considering changes to its existing IPR laws to address limitations and loopholes that currently prevent effective enforcement. Several proposals to strengthen IPR laws have languished in the legislative assembly during the past two years. These and other IPR reforms will be needed to comply with the requirements of the CAFTA-DR and will strengthen Costa Rica's IPR protection regime. Implementation of CAFTA-DR obligations also will provide stronger deterrence against piracy and counterfeiting by, for example, requiring Costa Rica to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them, something that the government is not currently capable of doing in an expeditious or effective manner. The CAFTA-DR will also mandate both statutory and actual damages for copyright and trademark infringement, helping to ensure that monetary damages can be awarded even when it is difficult to assign a monetary value to the violation.

Patents, Data Protection and Plant Protection

Costa Rica acceded to the Paris Convention for the Protection of Industrial Property in 1995. Amendments made to the patent law at that time extended the term of protection for a patent from 12 years to 20 years from the date of the filing of the application for all inventions.

Implementation of the CAFTA-DR obligations will require Costa Rica to protect data submitted for regulatory approval against unfair commercial use for a period of five years following the issuance of marketing approval for pharmaceuticals and ten years for agricultural chemicals.

CAFTA-DR obligations will require that Costa Rica accede to the UPOV Convention (International Union for the Protection of New Varieties of Plants, 1991) and make best efforts to provide patent protection for plants.

Copyrights

Costa Rica's copyright law is not uniformly enforced. Long delays in copyright enforcement cases continue to be a serious problem. The copyright regime was revised in 1994 to provide specific protection for computer software and in 1999 to protect integrated circuit designs. In addition, Costa Rica became a Party to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty in 2002. Though piracy of satellite television transmissions by the domestic cable television industry has been curtailed, U.S. industry continues to express concern that some apartment buildings and hotels continue to engage in satellite signal piracy.

Unauthorized sound recordings, videos, optical discs and computer software are also widespread, although some progress has been made in reducing their presence in the market. Efforts in copyright protection are significantly hindered by the lack of adequate funding and personnel committed to intellectual property enforcement.

CAFTA-DR enforcement provisions are designed to help reduce copyright piracy.

Trademarks

The sale of imported counterfeit reproductions of well known trademarks is common in Costa Rica. Legal recourse against these practices is available in Costa Rica, but may require protracted and costly litigation. Costa Rican authorities have recently intensified efforts to raid businesses and confiscate property, especially clothing, which is infringing registered trademarks.

SERVICES BARRIERS

Costa Rica's insurance, telecommunications, electricity distribution, petroleum distribution and railroad sectors are all state monopolies. In addition, there are restrictions on the participation of foreign companies in some private sector activities, such as customs handling, medical services, ferry service, prison operation and professional services. Under the CAFTA-DR, when the agreement enters into force with respect to Costa Rica, Costa Rica will accord substantial market access across the country's entire services sector, subject to a few exceptions. For example, liberalization in insurance will be achieved through a phased-in approach with an initial, limited opening at entry into force, an opening of the vast majority of the market by 2008 and a total opening by 2011. Costa Rica also agreed to the establishment of an independent insurance regulatory body. This will require further legislative and regulatory reform.

Costa Rican regulations restrict the ability of certain professions to practice on a permanent basis in Costa Rica, such as medical practitioners, lawyers, certified public accountants, engineers, architects and teachers. Such professionals must be members of a local association that sets residency, examination and apprenticeship requirements. However, under the CAFTA-DR, Costa Rica has agreed to allow the provision of certain professional services on a reciprocal basis and also agreed to provide for temporary licensing of professional services.

Costa Rica made specific commitments to open its telecommunications market in three key areas and to establish a regulatory framework to foster effective market access and competition. Under the CAFTA-DR terms that anticipated timely agreement ratification, certain telecommunications market segments in Costa Rica were to have opened up gradually, beginning with private network services on January 1, 2006; Internet services and wireless services were to have followed on January 1, 2007. However, since the CAFTA-DR did not enter into force with respect to Costa Rica by those dates, Costa Rica will provide such market openings as soon as the agreement enters into force.

Costa Rica has ratified its commitments under the 1997 WTO Financial Services Agreement and accepted the Fifth Protocol of the GATS. Under this agreement, Costa Rica committed to allow foreign financial service providers to establish foreign-owned bank subsidiaries not registered as Costa Rican companies in Costa Rica to provide lending and deposit-taking services, leasing services, credit card services, and financial information services. The Costa Rican insurance monopoly will be privatized in a phased approach to give U.S. insurance suppliers full access to the market by 2011.

Costa Rica made no commitments in the WTO for the provision of securities trading, for underwriting services, nor for any type of insurance services. The CAFTA-DR, however, provides for liberalization in all these areas (with insurance sector liberalization to be phased-in as noted above). Private commercial banks are required to open branches in rural areas of the country or to deposit with the Central Bank 17 percent of their checking account deposits for state-owned commercial banks that have rural branches in order to qualify for the benefits of the law. The CAFTA-DR will ensure that foreign banks are treated under the same rules as domestic private banks.

INVESTMENT BARRIERS

The CAFTA-DR establishes a more secure and predictable legal framework for U.S. investors operating in Costa Rica. Under the CAFTA-DR, all forms of investment are protected, including enterprises, debt, concessions, contract and intellectual property. Upon implementation of the CAFTA-DR, U.S. investors will enjoy, in almost all circumstances, the right to establish, acquire and operate investments in Costa Rica on an equal footing with local investors. Among the rights the CAFTA-DR will afford to U.S. investors are due process protections and the right to receive a fair market value for property in the event of an expropriation. Investor rights will be protected under the CAFTA-DR by an effective, impartial procedure for dispute settlement that is fully transparent and open to the public. Submissions to dispute panels and dispute panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.

Several U.S. investors have experienced minor difficulties executing contracts made with the Costa Rican government. While electricity distribution remains a state monopoly, an electricity co-generation law enacted in 1996 allowed some private sector participation in the production of electricity, but not in its transmission. This law has since been modified to permit the private construction and operation of plants under build-operate-transfer and build-lease-transfer mechanisms, but the operator must have at least 35 percent Costa Rican equity. Existing private power producers have had their long-term, fixed-rate contracts challenged by certain Costa Rican governmental organizations, but these contracts have been honored. A U.S.-led airport management consortium has maintained that the terms of its concession agreement have been repeatedly altered by the Costa Rican government.

OTHER BARRIERS

The law regulating commercial representatives of foreign firms (Law No. 6209) grants local companies exclusive representation, even without a signed agreement, for an indefinite period of time. In most cases, foreign companies must pay indemnity compensation in order to terminate a relationship with the local company.

Under the CAFTA-DR, Costa Rica has committed to change this "dealer protection" regime. Under the existing regime, foreign firms may be tied to exclusive or inefficient distributor arrangements. Costa Rica committed to establish a new legal regime that will give U.S. firms and their Costa Rican partners more freedom to contract the terms of their commercial relations, which in turn will encourage the use of arbitration to resolve disputes between parties to dealer contracts.

ELECTRONIC COMMERCE

The CAFTA-DR includes provisions on electronic commerce that reflect its importance to global trade. Under the CAFTA-DR, when the agreement enters into force with respect to Costa Rica, Costa Rica will be obligated to provide non-discriminatory treatment to U.S. digital products, not to impose customs duties on digital products transmitted electronically and to work together with the United States in policy areas related to electronic commerce.

COTE D'IVOIRE

TRADE SUMMARY

The U.S. goods trade deficit with Cote d'Ivoire was $554 million in 2006, a decrease of $520 million from $1.1 billion in 2005. U.S. goods exports in 2006 were $148 million, up 18.7 percent from the previous year. Corresponding U.S. imports from Cote d'Ivoire were $702 million, down 41.4 percent. Cote d'Ivoire is currently the 117th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Cote d'Ivoire in 2005 was $296 million (latest data available), up from $251 million in 2004.

IMPORT POLICIES

Cote d'Ivoire is a Member of the World Trade Organization (WTO), the West African Economic and Monetary Union (known by its French acronym, UEMOA), and the Economic Community of West African States (ECOWAS). In January 2000, Cote d'Ivoire eliminated tariffs on imports from the eight member countries of UEMOA when UEMOA's Common External Tariff (CET) entered into effect. Imports from all other countries are subject to tariffs based on the CET schedule of 5 percent for raw materials and inputs for local manufacture, 10 percent for semi-finished goods, and 20 percent for finished products. In 2004, UEMOA suspended its practice of temporary duty-free status for imported goods destined for another country in the zone. This change means that goods entering UEMOA from non-member countries may no longer transit a UEMOA country duty-free en route to their final destination. Duties are now assessed at the first port of entry.

A statistical fee of 1 percent is levied on the CIF (cost, insurance, and freight) value of imports except those destined for re-export, transit or donations for humanitarian purposes under international agreements. Another tax on imports into Cote d'Ivoire is a 1 percent community levy (solidarity tax) on the CIF value, which goes to a compensation fund to assist WAEMU members, such as landlocked Niger, Burkina Faso and Mali, which suffered from revenue losses due to the implementation of the CET. There are special taxes on fish (between 5 percent and 20 percent), rice (between 5 percent and 10 percent based on category), alcohol (45 percent), tobacco (between 5 percent and 20 percent), cigarettes (between 30 percent and 35 percent), certain textile products (20 percent), and petroleum products (between 5 percent and 20 percent). These special taxes are designed to protect national industries. The Customs office collects a value added tax (VAT) of 18 percent on all imports, reduced from 20 percent in 2003. This tax computation is calculated on the CIF value added to the duty and the statistical fee. Cote d'Ivoire continues to apply minimum import prices (MIPs) to imports of certain products such as cooking oil, cigarettes, sugar, used clothes, concentrated tomato, broken rice, matches, copybook, tissues, polypropylene sacks, alcohol and milk, though the WTO waiver it once had allowing it to apply MIPs on some products has long since expired.

There are no quotas on merchandise imports, although the following items are subject to import prohibitions, restrictions or prior authorization: petroleum products, animal products, live plants, seeds, arms and munitions, plastic bags, distilling equipment, pornography, saccharin, narcotics, explosives, illicit drugs and toxic waste. Textile imports are subject to some authorization requirements by the Department of External Trade.

Rules governing the handling of imported toxic waste were apparently ignored in the September 2006 incident involving the illegal dumping of several hundred tons of toxic waste unloaded by an Ivorian company from a foreign vessel in the environs of the capital city Abidjan, which, according to official figures, left ten dead and thousands ill.

STANDARDS, TESTING, LABELING AND CERTIFICATION

All items imported into Cote d'Ivoire must have a certificate of compliance to clear customs. Two European companies, BIVAC (affiliated to the French group Bureau Veritas) and the Swiss firm Cotecna, are contracted to carry out all qualitative and quantitative verifications of goods imported into Cote d'Ivoire with a value exceeding CFA 1.5 million (approximately $3,000). All merchandise packaging must be clearly labeled as to its origin. Manufactured food products must be labeled in French and have an expiration date. Standards generally follow French or European norms.

GOVERNMENT PROCUREMENT

The government of Cote d'Ivoire publishes tender notices in the local press and sometimes publishes tenders in international magazines and newspapers. On occasion, there is a charge for the bidding documents. Cote d'Ivoire has a generally decentralized government procurement system, with most ministries implementing their own procurements. The Bureau National d'Etudes Techniques et de Developpement (BNETD), the government's technical and investment planning agency and think tank, sometimes serves as an executing agency representing ministries for major projects to be financed by international institutions.

In 2005, the Ministry of Finance introduced institutional changes in the government procurement system such as: decentralizing operations, increasing transparency, creating commissions to review irregular procurements, imposing stricter internal management controls and establishing an appeals process.

The government has created the "Direction des Marches Publics" (DMP), a centralized office of public bids in the Ministry of Finance to help ensure compliance with international bidding practices. While theoretically the office is functioning and the procurement process is open, some well-entrenched foreign companies, through their relations with government officials, may retain a preferred position in securing bid awards. Many firms continue to see corruption as an obstacle that affects procurement decisions. Cote d'Ivoire is not a signatory to the WTO Agreement on Government Procurement.

SERVICES BARRIERS

Banks and insurance companies are subject to licensing requirements, but there are no restrictions on foreign ownership or establishment of subsidiaries. Foreign participation is widespread in computer services, education, and training. Prior approval is required for foreign investment in the health sector, travel agencies, and law and accounting firms; majority foreign ownership of companies in these sectors is not permitted, though foreign companies currently operate in all these sectors in partnership with local firms and with government permission. While one U.S. bank, Citibank, is currently operating in Cote d'Ivoire, American insurance and reinsurance companies are not present in the Ivorian market.

Cote d'Ivoire does not formally require majority Ivorian ownership in most sectors other than those noted above. There are professional associations, such as legal and accountancy associations that serve to regulate professional services, which require Ivorian nationality. For example, there are restrictions on the registration of foreign nationals by the accountants' association, unless they have already been practicing in Cote d'Ivoire for several years under the license of an Ivorian practitioner. In the case of legal services, Cote d'Ivoire distinguishes between providing legal advice and practicing law in court. The former is liberalized, but in order to be admitted to the Ivorian bar and practice in a courtroom, lawyers must be accredited by the Ivorian lawyers' association, which requires Ivorian nationality.

INVESTMENT BARRIERS

The government encourages foreign investment, but in recent years political instability has substantially undermined investor confidence. The negative effects of the 1999 coup d'etat, the ensuing 10-month military rule, and the upheavals surrounding the elections in October 2000 had not dissipated when an attempted coup d'etat that turned into a civil war occurred in September 2002. In November 2004, many (particularly foreign-owned) businesses were destroyed and looted, further dampening near-term investment prospects. Ongoing efforts at national reconciliation have made limited progress, but there has been no resolution of the crisis. There has been no progress on privatization since 2002.

The Ivorian investment code provides tax incentives for investments larger than $1 million, as well as land concessions for projects. Concessionary agreements that exempt investors from tax regulations require the additional approval of the Ministry of Finance and Economy and the Ministry of Industry, making the clearance procedure for planned investments, if tax breaks are sought, time-consuming and confusing. The Center for the Promotion of Investment in Cote d'Ivoire (CEPICI) was established to act as a one-stop shop for investment to help alleviate this problem. Even when companies have complied fully with the requirements, tax exemptions are sometimes denied with little explanation, giving rise to accusations of favoritism and corruption.

In August 2006, the government instituted new rules governing the rebate of VAT for companies that export more than 70 percent of their production, such as multinational cocoa purchasing-and-export companies. Qualifying companies will now be subject to initial VAT collections on all their purchases, local and imported, rather than solely on imported goods as previously was the case. VAT rebates will be delayed 12 months to 36 months. The result is that qualifying companies will see a three- or four-fold increase in their VAT payments and a significant slowdown in already slow reimbursements.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The Ivorian Civil Code protects the acquisition and disposition of intellectual property rights. Cote d'Ivoire is a party to the Paris Convention for the Protection of Industrial Property, its 1958 revision, the Berne Convention for the Protection of Literary and Artistic Works, and the 1977 Bangui Agreement covering 16 Francophone African countries in the African Intellectual Property Organization (OAPI), and is a signatory to the Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite, the Patent Law Treaty, and the Trademark Law Treaty.

Effective February 2002, changes were made to the Bangui Agreement in an effort to bring it into conformity with the TRIPS Agreement. Under OAPI, rights registered in one member country are valid for other member states. Patents are valid for ten years, with the possibility of two five-year extensions. Trademarks are valid for ten years and are renewable indefinitely. Copyrights are valid for 50 years.

In 2001, Ivorian experts drafted a new law in an effort to bring Cote d'Ivoire into conformity with the TRIPS Agreement. The new law adds specific protection for computer programs, databases, and authors' rights with regard to rented films and videos. However, the National Assembly has not yet approved this legislation and likely will not take action until political ambiguities concerning the Assembly's term of office are clarified. The Assembly's mandate expired at the end of 2005 and new legislative elections are effectively on hold until the political reconciliation process progresses.

The government's Office of Industrial Property is charged with ensuring the protection of patents, trademarks, industrial designs and commercial names. The office faces an array of challenges, including inadequate resources, lack of political will, and the distraction of the ongoing political crisis. As a result, enforcement of IPR is largely ineffective. Foreign companies, especially from East and South Asia, flood the Ivorian market with all types of counterfeit goods. In addition, lack of customs checks in rebel-held Western and Northern border areas makes law enforcement action on trade of counterfeit textiles, pharmaceuticals and vehicle parts difficult. Government efforts to combat piracy are modest. The Ivorian Office of Authors' Rights (BURIDA) established a new sticker system in January 2004, to protect audio, video, literary and artistic property rights in music and computer programs. BURIDA's operations have been hampered by a long-running dispute between management and board members over policy and leadership issues, specifically with regard to who should direct the agency. To resolve the crisis at BURIDA, in March 2006, the Minister of Culture invoked a ministerial bylaw to establish a temporary administration and a commission to study and propose a comprehensive reform of this organization. Despite the ongoing management issue, the agency, in conjunction with lawyers and magistrates, does help to promote IPR enforcement.

ELECTRONIC COMMERCE

Electronic commerce is in its very early stages in Cote d'Ivoire, but is expected to grow over time. There are a number of cultural barriers to growth, including the custom of paying with cash and the absence of widespread issuance and use of credit cards. Despite these barriers, individuals and businesses have begun experimenting with electronic commerce, and interest in the medium continues to gain ground. Hotels, restaurants, retail outlets and travel agencies are developing the ability to accept credit cards. Banks also have started implementation of telephone, Internet and SMS banking in addition to ATM services. Citibank, for example, offers an international e-banking platform to all clients world-wide, a feature that has helped them to retain clientele in Abidjan and attract new customers. Effective August 3, 2006, the West African Central Bank, Banque Centrale des Etats de l'Afrique de l'Ouest (BCEAO), established the inter-bank automated payment system to reduce delays in bank settlement operations. Small- and medium-sized businesses continue to explore electronic commerce, and interest in the medium continues to gain ground.

OTHER BARRIERS

Many U.S. companies view corruption as an obstacle to investment in Cote d'Ivoire. Corruption has the greatest impact on judicial proceedings, contract awards, customs and tax issues. It is common for judges who are open to financial influence to distort the merits of a case. Corruption and the recent political crisis have affected the Ivorian government's ability to attract and retain foreign investment. Some U.S. investors have raised specific concerns about the rule of law and the government's ability to provide equal protection under the law. In 1997, the government of Cote d'Ivoire authorized the creation of an arbitration court, the Joint Court of Justice and Arbitration, which is a member of the regional arbitration board known as the Organization for the Harmonization of Business Law in Africa (OHADA). Since then, however, the court has examined 45 cases (only 5 in 2005). In July 2004, the governing body was strengthened with the added participation of local Chambers of Commerce, and the rules governing enforcement of arbitral awards were modified to allow for a quicker enforcement of awards. The business community has welcomed the 2004 revisions and the Arbitration Board has acted effectively as an alternative vehicle for timely business dispute resolution. In addition to its local arbitration board, Cote d'Ivoire is a member of the International Center for the Settlement of Investment Disputes

DOMINICAN REPUBLIC

TRADE SUMMARY

The U.S. goods trade surplus with Dominican Republic was $819 million in 2006, an increase of $704 million from $115 million in 2005. U.S. goods exports in 2006 were $5.3 billion, up 13.3 percent from the previous year. Corresponding U.S. imports from Dominican Republic were $4.5 billion, down 1.6 percent. Dominican Republic is currently the 31st largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Dominican Republic in 2005 was $758 million (latest data available), down from $1.1 billion in 2004. U.S. FDI in Dominican Republic is concentrated largely in the manufacturing and wholesale trade sectors.

IMPORT POLICIES

Free Trade Agreement

The United States concluded free trade agreement negotiations with El Salvador, Guatemala, Honduras and Nicaragua in December 2003 and with Costa Rica in January 2004. In May 2004, the six countries signed the United States–Central America Free Trade Agreement. During 2004, the United States and the Central American countries integrated the Dominican Republic into the free trade agreement. On August 5, 2004, the seven countries signed the Dominican Republic–Central America–United States Free Trade Agreement (CAFTA-DR).

All of the signatory countries have ratified the agreement, with the exception of Costa Rica. The agreement entered into force for the Dominican Republic on March 1, 2007. The agreement also has entered into force for El Salvador, Guatemala, Honduras and Nicaragua.

The agreement removes barriers to trade and investment in the region and will strengthen regional economic integration. The CAFTA-DR also requires the Central American countries and the Dominican Republic to undertake needed reforms to provide market liberalization as well as greater transparency and certainty in a number of areas, including: customs administration, protection of intellectual property rights, services, investment, financial services, government procurement, and sanitary and phytosanitary (SPS) measures.

Tariffs

As a result of the CAFTA-DR having entered into force with respect to the Dominican Republic on March 1, 2007, about 80 percent of U.S. industrial and consumer goods are to enter the Dominican Republic duty-free immediately, with the remaining tariffs, which currently range up to 20 percent, phased-out within ten years. Nearly all textile and apparel goods that meet the agreement's rules of origin are to enter duty-free and quota-free immediately, providing new opportunities for U.S. and regional manufacturers of fiber, yarn, fabric and apparel. The agreement's tariff treatment for textile and apparel goods is retroactive to January 1, 2004. In July 2006, the government eliminated an exchange surcharge (*recargo cambiario*), which levied a 13 percent tax on all imports.

Under the CAFTA-DR, more than half of U.S. agricultural exports are to enter the Dominican Republic duty-free immediately. The Dominican Republic will eliminate its remaining tariffs on nearly all agricultural goods within 15 years. The tariffs for rice, chicken leg quarters and dairy products are to be phased-out within 20 years. The Dominican Republic applies a 20 percent tariff on U.S. frozen french fries and dehydrated potatoes, which will be phased-out within five years for frozen french fries and ten years for dehydrated potatoes. For the most sensitive products, tariff-rate quotas (TRQs) will permit some immediate duty-free access for specified quantities during the tariff phase-out period, with the duty-free amount expanding during that period.

Non-Tariff Measures

Customs Department policies and procedures frequently provoke complaints by businesses, and arbitrary clearance requirements sometimes delay the importation of merchandise for lengthy periods. On July 1, 2001, the Dominican Republic agreed to apply the World Trade Organization (WTO) Agreement on Customs Valuation whereby all imported goods from WTO Member countries pay duties according to the transaction value. The Dominican Republic requested and received authorization from the WTO to exclude 31 items. Duties on the excluded products are assessed on the basis of a minimum "reference value" assigned by Dominican Customs. U.S. exporters have reported that Dominican Customs has often used the list of reference values for non-excluded items rather than accept commercial invoices as it is supposed to.

On July 11, 2006, the Deputy Director of Customs announced that Customs would make adjustments to reference values due to high levels of undervaluation by businesses. Dominican importers and associations have complained to the U.S. Embassy that Dominican Customs has increased reference values for all products entering the country. For printing and graphics, Customs has increased assigned values approximately 30 percent over invoice values. Plastics and resins are being assigned values that are 20 percent to 30 percent higher than their invoice values and assigned values for automobiles have increased by 30 percent to 60 percent over previous valuations. In addition, for 2006 the government created an additional 17 percent tax on the first "*matricula*" (registration document) for all vehicles.

In July 2006, the Dominican Congress enacted a law providing autonomy to Dominican Customs but stating that Customs no longer has an allotment from the National Budget to support its operations. Instead, the institution must now rely on a percentage of aggregate tariff revenues and funds generated by service fees to support its operations. As a result, a service fee based on the value of all merchandise that enters the Dominican Republic was implemented by Customs. The business community complained that the fee was inconsistent with WTO and CAFTA-DR rules. In November 2006, the Dominican Congress modified the law to provide that the service fees would be specific fees, rather than value-based fees. In December 2006, Dominican Customs promulgated new regulations establishing specific fees based on weight and volume.

On October 31, 2005, the United States and the Dominican Republic signed a Customs Mutual Assistance Agreement that allows customs officials to exchange information, intelligence, and documents designed to help prevent customs offenses. The agreement provides a basis for cooperation and investigation in the areas of trade fraud, money laundering, smuggling, export controls and related security. The United States recently donated non-intrusive (X-ray) verification equipment that will upgrade and expedite the verification process. Dominican Customs is in the process of expanding the project by either purchasing or leasing additional equipment.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Sanitary permits have been used in the Dominican Republic as import licenses to control import levels of selected commodities and products. The lengthy and unpredictable approval process for sanitary permits for shipments of U.S. meat and dairy products has been a serious problem for importers. In connection with the implementation of the CAFTA-DR, the Dominican Republic issued regulations that would discontinue this practice.

In addition, the Ministry of Agriculture and Livestock enforces sanitary measures that appear to be inconsistent with international standards and not based on science (e.g., zero tolerance for salmonella on raw meat and poultry products and for Tilletia sp. on shipments of U.S. rice). When the United States and Central America launched the free trade agreement negotiations, they initiated an active working group dialogue on SPS barriers to agricultural trade to facilitate market access that met in parallel with the negotiations. Through the work of this group, the Dominican Republic has committed to resolve specific measures restricting U.S. exports to the Dominican Republic. In addition, for beef, pork and poultry, the Dominican Republic agreed to recognize the equivalence of the U.S. food safety and inspection system, thereby eliminating the need for plant-by-plant inspections.

GOVERNMENT PROCUREMENT

The Dominican Republic is not a signatory to the WTO Agreement on Government Procurement. Suppliers have complained that Dominican government procurement is not conducted in a transparent manner and that corruption is widespread.

The CAFTA-DR requires the use of fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the agreement. Under the CAFTA-DR, U.S. suppliers are to be permitted to bid on procurements of most Dominican government entities, including key ministries and state-owned enterprises, on the same basis as Dominican suppliers. The anti-corruption provisions in the agreement require each government to ensure under its domestic law that bribery in trade-related matters, including in government procurement, is treated as a criminal offense or subject to comparable penalties.

EXPORT SUBSIDIES

The Dominican Republic does not have export promotion schemes other than the tariff exemptions for inputs given to firms in the free trade zones. Under the CAFTA-DR, the Dominican Republic may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement (e.g., the exportation of a given level or percentage of goods). The Dominican Republic may maintain existing duty waiver measures through 2009 provided such measures are consistent with its WTO obligations.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

While recently enacted Dominican laws provide for sanctions to protect copyrighted works and have improved the regulatory framework for patent and trademark protection, U.S. industry continues to cite lack of IPR enforcement as a major concern. There has been improved coordination to stop television broadcast piracy among various government agencies including the Secretariat of Industry and Commerce, the Attorney General's Office, the Patent Office and the Copyright Office. To implement CAFTA-DR requirements, the Dominican government passed legislation in November 2006 to strengthen its IPR protection regime by, for example, requiring authorities to seize, forfeit, and destroy counterfeit and pirated goods and the equipment used to produce them. The CAFTA-DR mandates both statutory and actual damages for copyright and trademark infringement, measures that help ensure that monetary damages can be awarded even when it is difficult to assign a monetary value to the infringement.

Patents and Trademarks

The U.S. pharmaceutical industry has expressed concern that the sanitary authority of the Dominican Republic Department of Health continues to approve the import, export, manufacture, marketing and/or sale of pharmaceutical products that are infringing copies of patented products registered in the Dominican Republic. The Industrial Property Law, which was overhauled in 2000, has not often been applied in legal proceedings, so the effectiveness of the law has not been thoroughly tested.

The CAFTA-DR requires that test data submitted to the Dominican government for the purpose of product approval be protected against unfair commercial use for a period of five years for pharmaceuticals and ten years for agricultural chemicals. Legislation providing for this protection was passed in November 2006.

Copyrights

Despite a strong copyright law, the appointment of a specialized IPR prosecutor with nationwide jurisdiction and some improvement in enforcement activity, piracy of copyrighted materials remains common. Audio recordings and software are often copied without authorization. While the authorities have made efforts to seize and destroy such pirated goods, U.S. industry representatives point to lengthy delays when cases are submitted for prosecution.

SERVICES BARRIERS

Over the last few years, the Dominican Republic has taken steps to reform and liberalize the financial services sector. In October 2002, the Dominican Republic passed a monetary and financial law that provides for national treatment of investors in most of the financial services sector. The law establishes a regulatory regime for monetary and financial institutions, and provides for participation of foreign investment in financial intermediary activities in the Dominican Republic. The Dominican Republic ratified the 1997 WTO Financial Services Agreement and its monetary and financial law appears to go beyond the commitments of the WTO agreement.

The Dominican Republic has committed to allowing foreign banks to establish branches or local companies with up to 100 percent foreign equity to supply services in deposit-taking, lending and credit cards. Branches of foreign banks have a phase-in period of six years from 2004 to establish sufficient locally held capital to meet the same requirements that are applied to domestic banks. A foreign insurance company can establish a wholly owned subsidiary. Under the CAFTA-DR, U.S. financial service suppliers are to be allowed to establish subsidiaries, joint ventures or branches for banks and insurance companies. In addition, U.S.-based firms will be permitted to supply insurance on a cross-border basis, including reinsurance; reinsurance brokerage; and, marine, aviation, and transport insurance.

INVESTMENT BARRIERS

Existing Dominican legislation does not contain effective procedures for settling disputes arising from government actions with respect to foreign investors. Dominican expropriation standards are not consistent with international law standards and numerous U.S. investors have had disputes related to expropriated property. Subsequent to United States-Dominican Trade and Investment Council meetings in October 2002, the Dominican government set out to examine outstanding expropriation cases for possible resolution under a 1999 law. With assistance from USAID, the Dominican government identified and resolved 248 cases.

The Dominican Republic implemented the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) in August 2002. The New York Convention provides courts a mechanism to enforce international arbitral awards. In a case that was recently concluded, Dominican lower courts had declined to recognize the authority of an international arbiter specified in a contract between a U.S. firm and a Dominican consulting firm. The case was on appeal to the Dominican Supreme Court when the parties decided to settle out of court. In another instance, the Dominican Supreme Court ruled in favor of an investor whose land and businesses were expropriated from the government. To date, the government only returned the investor's land which constituted the smaller of the two investments.

Under the CAFTA-DR, all forms of investment are protected including enterprises, debt, concessions, contracts and intellectual property. In almost all circumstances, U.S. investors enjoy the right to establish, acquire and operate investments in the Dominican Republic on an equal footing with local investors. Among the rights afforded to U.S. investors are due process protections and the right to receive a fair market value for property in the event of an expropriation. Investor rights are protected under the CAFTA-DR by an effective, impartial procedure for dispute settlement that is fully transparent. Submissions to dispute panels and panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.

ELECTRONIC COMMERCE

Law 126-02 enacted in 2002 regulates electronic commerce, documents and digital signatures. The CAFTA-DR includes provisions on electronic commerce that reflect the issue's importance to global trade. Under the CAFTA-DR, the Dominican Republic has committed to provide non-discriminatory treatment of U.S. digital products, not to impose customs duties on digital products transmitted electronically, and to work together with the United States in policy areas related to electronic commerce.

OTHER BARRIERS

U.S. companies complain about a lack of transparency and corruption in many sectors. In addition, the judicial process in the Dominican Republic can be lengthy and unpredictable, creating uncertainty for U.S. companies. For example, a Dominican Supreme Court decision regarding the imposition of taxes on airlines was issued in 1999, stating that the Dominican Congress by law must approve any new taxes. Yet a seemingly contradictory resolution was issued in October 2006 by the Dominican civil aviation authority, which imposed without Dominican Congressional approval a tax on all airlines to be paid in U.S. dollars. The 2006 resolution is currently being challenged in the Dominican courts. The CAFTA-DR will enhance transparency, predictability and the rule of law in virtually all areas of trade and investment. In connection with the implementation of the CAFTA-DR, the Dominican Congress approved anti-corruption provisions under its domestic law that ensure that bribery in trade-related matters is treated as a criminal offense or is subject to comparable penalties.

Dealer Protection

Many U.S. companies have expressed concern that the Dominican Dealer Protection Law 173, which applies only to foreign suppliers, makes it extremely difficult to terminate contracts with local agents or distributors without paying exorbitant indemnities. Under Law 173, foreign firms may be tied to exclusive or inefficient distributor arrangements. Several U.S. companies have lost lawsuits brought under this law and have suffered significant financial penalties. By limiting the ability of a foreign firm to change its local agent without severe penalties and compensation, this law has had a negative effect on market access and on consumer welfare.

The CAFTA-DR required the Dominican Republic to change this dealer protection regime to provide more freedom to contract the terms of commercial relations and to encourage the use of arbitration to resolve disputes between parties to dealer contracts. In November 2006, the Dominican Congress passed legislation to modify Law 173 to make future contracts of U.S. companies exempt from its restrictive provisions.

ECUADOR

TRADE SUMMARY

The U.S. goods trade deficit with Ecuador was $4.4 billion in 2006, an increase of $571 million from $3.8 billion in 2005. U.S. goods exports in 2006 were $2.7 billion, up 38.9 percent from the previous year. Corresponding U.S. imports from Ecuador were $7.1 billion, up 23.2 percent. Ecuador is currently the 44th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ecuador in 2005 was $760 million (latest data available), up from $720 million in 2004. U.S. FDI in Ecuador is concentrated largely in the mining sector.

Free Trade Negotiations

On November 18, 2003, the United States Trade Representative notified the Congress of the President's intent to initiate free trade agreement negotiations with Colombia, Peru and Ecuador, with Bolivia participating as an observer. Negotiations were launched on May 18, 2004, in Cartagena, Colombia. Negotiations with Ecuador took place through March 2006, but no date has been set for future negotiations.

IMPORT POLICIES

Tariffs

When Ecuador joined the World Trade Organization (WTO) in January 1996, it bound most of its tariff rates at 30 percent or less, except for agricultural products in the Andean Price Band System (APBS). Ecuador's average applied most favored nation tariff rate is 11.9 percent. Ecuador applies a four-tiered structure with levels of 5 percent for most raw materials and capital goods, 10 percent or 15 percent for intermediate goods, and 20 percent for most consumer goods. A small number of products including planting seeds, agricultural chemicals and veterinary products are duty-free.

As a member of the Andean Community (CAN), Ecuador grants and receives exemptions from tariffs (i.e., reduced *ad valorem* tariffs and no application of the Andean Price Band System) for products from the other CAN countries (Bolivia, Colombia and Peru). Currently, these countries have an Andean Free Trade Zone and are soon expected to apply Common External Tariffs (CET), as stated in CAN Decision 370. On January 31, 2006, the CAN trade ministers decided to postpone the entry into force of a new CET with a four-tiered structure (percent tariff levels of 0, 5, 10 and 20) for one year, until January 31, 2007. During this period, Peru applied its own tariff schedule while Ecuador and Colombia applied the structure permitted by Decision 370.

Ecuador maintains the APBS on 153 agricultural products (13 "marker" and 140 "linked" products) imported from outside the CAN. The 13 "marker" products are wheat, rice, sugar, barley, white and yellow corn, soybean, soybean meal, African palm oil, soy oil, chicken meat, pork meat and powdered milk. The APBS works as an internal price stabilization mechanism whereby the basic (*ad-valorem*) tariff is adjusted (increased or decreased) using a variable levy. The amount of the variable levy results from the relation between bi-weekly reference prices and floor and ceiling prices established by the CAN for each marker product. The price band works to maintain protection for domestic industry by keeping tariffs high when world prices fall, and drops tariffs when world prices rise.

As part of its WTO accession, Ecuador committed to phase out its price band system, starting in January 1996, with a total phase out by December 2001. No steps have been taken to comply with this commitment. Ecuador argues that retaining the APBS is WTO-consistent and does not constitute a violation of its agreements since Ecuador bound its final tariffs for agricultural commodities between 31.5 percent and 85.5 percent (the same bindings as the APBS).

Tariff-Rate Quotas

During the Uruguay Round, Ecuador agreed to establish tariff-rate quotas (TRQs) for a number of agricultural imports. In May of 2000, Ecuador created a TRQ Committee to administer and manage TRQs, which have remained constant and in line with WTO commitments since 2001. However, quota allocations are not always requested by importers because the tariffs under the APBS are sometimes lower than the in-quota TRQ tariffs. At the same time, the TRQ Committee is highly politicized and sometimes does not approve TRQ requests for certain products in order to protect local production (this is common with products such as poultry and powdered milk).

Products subject to TRQs include wheat, corn, sorghum, barely, barely malt, soybean meal, powdered milk, frozen turkeys and frozen chicken parts.

Non-Tariff Measures

Ecuador has failed to eliminate several non-tariff barriers since its WTO accession. Importers must register with the Central Bank through approved banking institutions to obtain import licenses for all products. Ecuador requires prior authorization from the Ministry of Agriculture (MAG) for the importation of most agricultural products. For certain sensitive products such as corn, soybean meal, dairy and poultry, the Minister himself or a designee must sign the authorization. The MAG argues that the authorization is to ensure sanitary standards and tax rules are followed. In reality, authorizations seem to be granted in a discretionary manner based on pressures for protection of domestic production. Another administrative hurdle agricultural importers must overcome is the MAG's use of "Consultative Committees." These committees, mainly composed of local producers, often advise the MAG against granting import permits to foreign suppliers. The MAG often requires that all local production be purchased at high prices before authorizing imports. If these barriers were removed, it is estimated that U.S. corn and soybean meal exports could increase by $10 million to $25 million each. The Ministry of Health is required to provide prior authorization for processed, canned and packaged products in the form of a Sanitary Registration. In general, the bureaucratic procedures that importers must follow in order to obtain authorizations continue to be cumbersome, protectionist and non-transparent.

Ecuador assesses a special consumption tax (ICE) of 32 percent on imported and domestic spirits. However, the taxable base upon which Ecuador assesses the ICE is arbitrary and complicated and differs for domestic and imported spirits. For imported spirits, the ICE is applied to the ex-customs value, which is then marked-up 25 percent (i.e., taxable base = [c.i.f. value + tariff + VAT] marked up by 25 percent); the ICE is assessed on this inflated value. In contrast, for domestic spirits, the ICE is assessed on the ex-factory price, and the 25 percent mark-up, although legally required, is not generally applied (i.e., taxable base = [ex-factory value + VAT]). In both cases, the excise tax is based on arbitrary values and not on actual transaction values.

Ecuador also continues to maintain a pre-shipment inspection regime for imports with a free on board value of more than $4,000. An authorized inspection company conducts pre-shipment inspection (both before shipment and after specific export documentation has been completed at the intended destination), and customs authorities perform random spot-checks. These practices generally add between six and eight weeks to shipping times.

Ecuador maintains bans on the import of used motor vehicles, tires and clothing.

In April 2006, Ecuador's Congress approved a controversial Food and Nutrition Security law. This bill invoked the precautionary principle and in practice prohibited the use, handling, trade or import of any food products that may have contained organisms derived from biotechnology, since Ecuador did not possess appropriate institutions to provide proof of their safety. The prohibition stopped large imports of several commodities in high demand by the animal feed and cooking oil industry (soybean meal and oil) for several weeks. However, due to pressure from local industry, Ecuador's Attorney General declared this law unenforceable due to technical errors in the text.

Health Code legislation passed by Congress in December 2006 reintroduces the provisions of the Food and Nutrition Security law. However, imports have continued normally and it appears the Ministry of Agriculture is awaiting the development of implementing legislation before enforcing the law. Affected private sector industries plan to work with Ecuadorian authorities to develop implementing regulations that would not impede trade in biotechnology products.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Ecuador's Animal and Plant Health Inspection Service (SESA) is responsible for administering Ecuador's sanitary and phytosanitary controls. According to Ecuadorian importers, bureaucratic procedures required to obtain clearance still appear to discriminate against foreign products. Ecuador is bound by the WTO Agreement on the Application of Sanitary and Phytosanitary (SPS) measures, yet denials of SPS certification often appear to lack a scientific basis and to have been used in a discriminatory fashion to block the import of U.S. products that compete with Ecuadorian production. This occurs most often with poultry, turkey and pork meats, beef, dairy products, and fresh fruit. The ability to import some products, such as rice, corn, soybeans and soybean meal, depends entirely on the discretion of the MAG which will often look to the Consultative Committees for advice. Ecuador has yet to fulfill its notification obligations under the WTO SPS Agreement. The impact of removing this barrier would mean an increase of U.S. exports of up to $10 million.

SESA follows the CAN's "Andean Sanitary Standards." Some standards applicable for third countries are different from those applied to CAN members. For example, there can be differences in the requirements for CAN and third countries for the importation of live animals, animal products, and plants and plant by-products. SESA also requires certifications for each product stating that the product is safe for human consumption or, in the case of live animals, that the animal is healthy and that the country of origin or the area of production is free from certain exotic plant or animal disease. Industry sources assert that this process has been used unreasonably by SESA to prevent entry of animal products - especially poultry - that compete with local producers.

Sanitary registrations are required for imported as well as domestic processed food, cosmetics, pesticides, pharmaceuticals and syringes as well as some other consumer goods. However, in a side agreement to its WTO Accession Agreement, Ecuador committed to accept the U.S. Certificate of Free Sale authorized by the U.S. Food and Drug Administration, instead of the Government of Ecuador's Sanitary Registration. In August 2000, the government of Ecuador passed a law (*Ley de Promocion Social y Participacion Ciudadana*, Segunda Parte – also known as Troley II), followed by regulations issued in June 2001, to reform the issuance of sanitary permits for food products. This is a step towards modernizing the issuance of sanitary registrations with new regulations that allow the acceptance of free sale certificates, require that the government issue sanitary permits within 30 days of receipt of a request, and reduce the number of documents required to obtain a permit. However, it does not appear that these regulations are being applied consistently and U.S. export losses are estimated to be around $5 million.

U.S. firms report that the Izquieta Perez National Hygiene Institute (INHIP - the Ministry of Health's executive arm responsible for granting the sanitary registration certificate) office in Guayaquil accepts the U.S. Certificates of Free Sale, but continues to apply the old regime for sanitary permits. In addition, non-transparent bureaucratic procedures and inefficiency have delayed issuance beyond 30 days and in some cases have reportedly blocked the entry of some products imported from the United States.

U.S. companies have expressed concerns regarding regulations issued by Ecuador's public health ministry requiring foreign food manufacturers to disclose confidential information such as formulas of imported food and pharmaceutical products. This requirement appears to go beyond the requirements of the Codex Alimentarius Commission on International Standards and Labeling. Pharmaceutical and agrichemical industry sources estimate that lost U.S. exports due to this problem amount to $10 million to $25 million.

The U.S. Foreign Agricultural Service has been facilitating SPS training for Ecuadorian officials by providing SPS experts for seminars and other training forums.

GOVERNMENT PROCUREMENT

Government procurement is regulated by a 2001 public contracting law. Foreign bidders must be registered in Ecuador and have a local legal representative in order to participate in government procurement. The law does not discriminate against U.S. or foreign suppliers. However, bidding for government contracts can be cumbersome and relatively non-transparent. This lack of transparency can lead to cancellations of bid solicitations that unnecessarily add to the costs of participating in government procurement and to subjecting the procurement process to possible manipulation by contracting authorities. A large number of government-controlled companies (e.g., fixed-line telephony providers, electric power generators and distributors, hospitals, and clinics) are not subject to Ecuador's rules on government procurement. Ecuador is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The basic legal tenets of Ecuador's IPR regime are provided for under a comprehensive 1998 IPR law and Andean Pact Decisions 345, 351 and 486. The 1998 intellectual property law provides greater protection for intellectual property than existed before it came into effect; however, Ecuador's IPR regime is deficient in a number of areas and the law is not being adequately enforced.

Copyrights

The government of Ecuador, through the National Copyright Office's Strategic Plan Against Piracy, has committed to take action to reduce the levels of copyright piracy, including implementation and enforcement of its 1998 Copyright Law. However, copyright enforcement remains a significant problem, especially concerning sound recordings, computer software and motion pictures. The government of Ecuador has not taken action to clarify Article 78 of the 1999 Law on Higher Education, which could be interpreted to permit software copyright violations by educational institutions.

Patents and Trademarks

Ecuador's 1998 IPR law provided an improved legal basis for protecting patents, trademarks and trade secrets. However, concerns remain regarding several provisions, including a working requirement for patents, and inadequate protection of proprietary pharmaceutical test data submitted for marketing approval. U.S. companies are also concerned that the Ecuadorian government does not provide patent protection to new uses of previously known or patented products.

Government of Ecuador health authorities continue to approve the commercialization of new drugs that are the bioequivalent of patented drugs, thereby denying the originator companies effective patent protection for innovative drugs. However, a court decision in 2006 that characterized efforts by a patent holder to remove illegal copies from the market as an illegal competitive practice was overturned on appeal in 2007.

Proprietary pharmaceutical test data submitted for marketing approval is also not being afforded adequate protection. In effect, the government of Ecuador is allowing the test data of registered drugs from originator companies to be relied upon by others seeking approval for their own version of the same product. According to the pharmaceutical industry, confidential chemical formulae and descriptions of manufacturing processes have also found their way into the hands of competitor companies. A recent modification to Ecuador's health code in late 2006 permits sanitary registrations without regard to whether or not a medication is patented.

Enforcement

There continues to be an active local trade in pirated audio and video recordings, computer software and counterfeit brand name apparel. The International Intellectual Property Alliance estimates that piracy levels in Ecuador for recorded music have reached 90 percent, with total estimated damage due to piracy of $26.3 million in 2005. At times, judges in IPR cases, before issuing a preliminary injunction, demand a guaranty and evidentiary requirements that may exceed legal requirements and in effect limit the ability of rights holders to enforce their rights. Ecuador has made no progress in establishing the specialized IPR courts required by Ecuador's 1998 IPR law. The national police and the customs service are responsible for carrying out IPR enforcement, but do not always enforce court orders. Some local pharmaceutical companies produce or import counterfeit drugs and have sought to block compliance with Ecuador's Intellectual Property law and improvements in patent protection. U.S. industry estimates damage due to the failure to provide data exclusivity is at least $5 million.

SERVICES BARRIERS

Financial Services

Ecuador has ratified the WTO Agreement on Financial Services. The 1993 Equity Markets Law and the 1994 General Financial Institutions Law significantly opened markets in financial services and provided for national treatment of foreign suppliers. The Superintendent of Banks must certify accountants.

Telecommunications

In the area of basic telecommunications, Ecuador has only undertaken WTO commitments for domestic cellular services. Accordingly, it does not have market access or national treatment obligations for other domestic and international telecommunications services, such as fixed-line voice telephony and data transmission services. In addition, Ecuador has not committed to adhere to the pro-competitive regulatory commitments of the WTO Reference Paper. Several U.S. telecommunications companies have complained that they have had their international circuits disconnected without proper notice of alleged infractions.

INVESTMENT BARRIERS

Ecuador's foreign investment policy is governed largely by the national implementing legislation for Andean Pact Decisions 291 and 292 of 1991. Under Ecuadorian law, foreign investors are accorded the same rights of establishment as Ecuadorian private investors, may own up to 100 percent of enterprises in most sectors without prior government approval, and face the same tax regime. There are no controls or limits on transfers of profits or capital. In disputes, U.S. companies have resorted to local courts or alternate dispute resolution mechanisms such as the Chambers of Commerce; others have pursued international commercial dispute resolution mechanisms as provided for in their contracts or under the U.S.-Ecuador Bilateral Investment Treaty (BIT).

The transparency and stability of the country’s investment regime are significantly weakened by the existence of numerous investment-related laws that overlap or that appear to have mutually inconsistent provisions. This judicial complexity increases the risks and costs of doing business in Ecuador.

The BIT, which entered into force in May 1997, includes obligations relating to national and most-favored-nation treatment; prompt, adequate and effective compensation for expropriation; the freedom to make investment-related transfers; and access to binding international arbitration of investment disputes.

In early 2005, Ecuador's Congress modified the Arbitration and Mediation Law to prohibit international arbitration of investment disputes if the national interest could be affected. Depending on how it is interpreted and applied, this modification of Ecuador’s law may conflict with Ecuador’s standing consent to binding arbitration under the BIT. At a minimum, the new law could create confusion among investors regarding their arbitration rights and may also reinforce negative impressions among investors of Ecuador’s commitment to international arbitration.

Certain sectors of Ecuador's economy are reserved to the state. All foreign investment in petroleum exploration and development must be carried out under contract with the state oil company. U.S. and other foreign oil companies produce oil in Ecuador under such contracts. Foreign investment in domestic fishing operations, with exceptions, is limited to 49 percent of equity. Foreign companies cannot own more than 25 percent equity in broadcast stations, and foreigners are prohibited from owning land on the borders or the coast.

Several oil companies are involved in a dispute with the government of Ecuador relating to the refund of value-added taxes. In 2004, one of the disputing U.S. companies won a $75 million international arbitration award against the government of Ecuador. The government has requested a judicial review of the arbitration award. After notice of the award, Ecuador’s solicitor general (Procurador General) initiated an investigation of the company for allegedly transferring assets to another foreign company without obtaining the required government authorization. The government of Ecuador has since nullified the company’s contract and seized the company’s considerable assets in Ecuador. The U.S. company has initiated arbitration proceedings under the BIT.

In 2006, Ecuador amended its hydrocarbons law, unilaterally increasing the share of revenues owed to the government under existing oil production sharing contracts. As a result, at least one U.S. company faces bankruptcy and is attempting to negotiate a change to its concession contract that would permit it to continue operating and investing in Ecuador (it has also initiated arbitration proceedings as allowed by its contract).

U.S. investors in the electricity sector face problems of chronic underpayment, due in part to government-regulated prices and the inability to cut off consumers that do not pay their bills; government subsidies only partially offset these losses and are not available to all firms. A 2006 electricity reform law attempts to address some of the problems plaguing the sector, but the problem of underpayment has not been resolved. U.S. firms in this sector are also pursuing international arbitration, and are simultaneously attempting to negotiate settlements with the government of Ecuador.

Effective compensation for expropriation is provided for in Ecuadorian law, but is often difficult to obtain. The extent to which foreign and domestic investors receive prompt, adequate and effective compensation for expropriations varies widely. It can be difficult to enforce property and concession rights, particularly in the real property, agriculture, oil and mining sectors. Foreign oil, energy and telecommunications companies, among others, have often had difficulties resolving contract issues with state or local partners.

EGYPT

TRADE SUMMARY

The U.S. goods trade surplus with Egypt was $1.7 billion in 2006, an increase of $642 million from $1.1 billion in 2005. U.S. goods exports in 2006 were $4.1 billion, up 29.9 percent from the previous year. Corresponding U.S. imports from Egypt were $2.4 billion, up 14.5 percent. Egypt is currently the 37th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Egypt in 2005 was $4.8 billion (latest data available), up from $4.1 billion in 2004. U.S. FDI in Egypt is concentrated largely in the mining sector.

IMPORT POLICIES

Over the past decade, the Government of Egypt (GOE) has gradually liberalized its trade regime and economic policies in general. The reform process had been somewhat halting until the appointment of Prime Minister Ahmed Nazif and a new ministerial economic team in 2004. Under the leadership of Prime Minister Nazif, the GOE has adopted a wide range of significant reform measures, although much remains to be done. To maintain its reform momentum, the GOE should continue its efforts to reduce red tape, reduce corruption, reform the cumbersome bureaucracy, and eliminate unreasonable and non-science based health and safety standards.

Tariffs and sales taxes

On September 8, 2004, the GOE announced a new tariff structure. The government removed services fees and import surcharges, reduced the number of *ad valorem* tariff bands from 27 to 6, dismantled tariff inconsistencies, and rationalized national sub-headings above the six-digit level of the Harmonized System (HS). The changes in tariffs reduced the officially announced weighted average tariff rate from 14.6 percent to 9.1 percent. The government also eliminated services fees and import surcharges ranging from 1 percent to 4 percent. The GOE replaced its 13,000-line ten-digit tariff structure with a six-digit structure with less than 6,000 tariff lines. This change should reduce disputes over product classification for customs purposes. Additionally, the GOE eliminated export duties on 25 products in short supply on the domestic market. Although the Finance Minister announced plans to reduce tariffs further by mid-2005, to date, no further reductions have been made.

While Egypt has undertaken significant tariff reforms, it continues to apply high tariff rates to a range of products. Tariffs on passenger cars with engines under 1,600cc were reduced in 2004 to a maximum of 40 percent, while cars with engines over 1,600cc now have a tariff rate of 135 percent. The tariff schedule for foreign movies is complex, but in general, foreign movies are subject to duties and import taxes of about 46 percent of the value of a film (32 percent for a copy of the movie, 12 percent on posters and 2 percent on the movie reel), as well as a 10 percent sales tax and a 20 percent box office tax (compared to a 5 percent box office tax for local films). The tariff rate on apparel is 40 percent and a 2004 ministerial decree requires companies wishing to export to Egypt to register with the Egyptian General Organization for Import and Export Controls (GOIEC).

High tariffs restrict the competitiveness of U.S. food products and alcoholic beverages. U.S. apples and pears face a 40 percent *ad valorem* duty. In 2004 the tariff rate on poultry was reduced to 32 percent and in July 2006 Egypt removed the tariff on whole chicken imports until December 31, 2006. However, arduous and unreasonable requirements continue to block U.S. whole chicken exports and Egyptian halal requirements prevent the import of U.S. poultry parts. There is a 300 percent duty on wine for use in hotels, plus a 40 percent sales tax. The tariff for alcoholic beverages ranges from 1200 percent to 3000 percent. The impact of high tariffs is compounded by what U.S. exporters describe as Egypt's non-transparent and burdensome application of sanitary and phytosanitary measures.

All goods are subject to a sales tax ranging from 5 percent to 25 percent. Egypt applies a sales tax of 10 percent on high-quality imported flour that does not apply to locally-produced flour. In 2004, the Ministry of Finance amended the sales tax law with the goal of reducing prices and attracting investment. In early 2005, Law No. 9 was issued, which exempted capital goods from the sales tax. In 2005, the Parliament passed legislation reducing taxes on soft drinks from a high of 60 percent to an effective sales tax rate (after government-approved deductions) of about 18 percent. The Finance Minister plans some additional amendments to the sales tax introduced in 2006 to unify sales tax categories, establish new tax rebates, and raise the minimum requirement for sales tax registration to exempt small producers and traders. The current minimums for sales tax registration are annual sales of LE150,000($26,100) for traders and LE54,000($9,400) for producers and service-providers. In June 2006, the Egyptian parliament approved amendments to some articles of the Stamp Duty Law (Law No. 111 for 1980). The reform simplified procedures and halved the stamp duty tax rate for certain products and services. The executive regulations pertaining to the amendments were issued in mid-September 2006.

Customs Procedures

Egypt adopted the WTO customs valuation system in 2001. The system has not been fully implemented, and thus importers sometimes face a confusing mix of the new (invoice-based) and old (reference price) valuation systems depending on the type of imports. The Ministry of Finance is trying to assist customs officials by translating and simplifying the WTO valuation system, which uses seven valuation methods. The Ministry of Finance has committed to a comprehensive program to reform Egypt's customs administration, and a priority is to complete implementation of the WTO Customs Valuation Agreement. USAID is funding a six-year, $30 million customs reform project to support the Ministry of Finance's efforts. The Ministry of Finance is also working with other donors, including the European Union, on customs reform issues. A new Customs Law addressing valuation and other problems was expected to be discussed in parliament in late 2006, but has not yet been submitted and remains under preparation by the Ministry of Finance.

The Egyptian Government has established an Account Management System to streamline and facilitate the customs treatment of large importers. In addition, in 2005, the Egyptian government established in the ports of Alexandria, Suez and Damietta Model Customs and Tax Centers which offer simplified customs and tax procedures for importers. An additional center was inaugurated in Dekheila in August 2006 and another in Port Said in mid-November 2006. Plans are ongoing to open two additional model centers in El-Adabeya Port (Suez) and Cairo Airport's Cargo Village in 2007. The GOE has also established a Large Taxpayer Center to provide similar services for large sales and income tax payers.

Import Bans and Barriers

Passenger vehicles may only be imported within one year after the year of production. Egyptian regulations allow investors to import a vehicle for private use without restriction in the year of manufacture, provided that approval is obtained from the Chairman of the General Authority for Investments and Free Zones (GOIEC).

The Egyptian Ministry of Health prohibits the import of natural products, vitamins, and food supplements in their finished form. These items may be marketed in Egypt only through local manufacture under license, or by sending ingredients and premixes to a local pharmaceutical firm to be prepared and packed in accordance with Ministry of Health specifications. Only local factories are allowed to produce food supplements, and to import raw materials used in the manufacturing process.

The Nutrition Institute and the Drug Planning and Policy Center of the Ministry of Health register and approve all nutritional supplements and dietary foods. It takes from four months to one year for approval. Importers must apply for a license for dietary products. The validity period of the license varies from 1 year to 5 years depending on the product. After the expiration date of the license, the importer must submit a new request for license renewal. License renewal costs about $500. However, if a similar local dietary product is available in the market, registration for an imported product will not be approved.

The Ministry of Health must approve the importation of new, used and refurbished medical equipment and supplies to Egypt in advance; without the approval such imports are banned. This requirement does not differentiate between the most complex computer-based imaging equipment and the most basic of supplies. The MOH approval process entails a number of demanding steps. The importer must submit a form requesting the Ministry of Health's approval to import medical equipment. The importer is also required to provide a safety certificate issued by official health authorities in the country of origin, as well as a certificate of approval from the Food and Drug Administration or the European Bureau of Standards. The importer must also present an original certificate from the manufacturer indicating the production year of the equipment and certify that the equipment is new. All medical equipment must be tested in the country of origin and proven safe before it will be approved for importation into Egypt. The importer must prove it has a service center to provide after-sales support for the imported medical equipment, including spare parts and technical maintenance.

Egypt continues to block imports of U.S. poultry and poultry products based on concerns that U.S. industry does not meet Egyptian halal requirements, despite U.S. efforts to address these concerns and U.S. industry's success in exporting to other Islamic markets. A decree in July 2006 lifted the overall ban on poultry imports for six months, and that decree was extended to allow imports through the end of March 2007. The government also lowered the duty on whole birds from 32 percent to 20 percent in February 2007. However, the government still bans the import of poultry parts, such as leg quarters, and requires that Ministry of Agriculture officials be present to observe proper halal slaughter, even though the poultry industry in the United States contracts with the Islamic Council of the United States to perform that service.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Standards are established by the Egyptian Organization for Standardization and Quality Control (EOS) in the Ministry of Trade and Industry. Verification of compliance is the responsibility of agencies affiliated with various ministries, including the Ministry of Health, the Ministry of Agriculture and, for imported goods, GOIEC in the Ministry of Foreign Trade and Industry.

Egypt has increased efforts to bring mandatory regulations into conformity with international standards. Of Egypt's 3,387 standards, 387 are Egyptian technical regulations or mandatory standards. In the absence of a mandatory Egyptian standard, Ministerial Decree Number 180/1996 allows importers to choose a relevant standard among seven international systems including ISO, European, American, Japanese, British, German and, for food, Codex standards. Importers, however, report that despite having met international standards and/or displaying international marks, products often are subjected to standards testing upon arrival at the port. Product testing procedures are not uniform or transparent and inadequately-staffed and poorly-equipped laboratories often yield faulty test results and cause lengthy delays. Procedures are particularly cumbersome for products under the purview of the Ministry of Health.

The EOS also issues quality and conformity marks. The conformity marks are mandatory for certain goods that can affect health and safety. The quality mark is issued by the EOS upon request by a producer and is valid for two years. Goods carrying the mark are subject to random testing.

In 2005, Egypt's testing requirements improved with the issuance of new import/export regulations, which completely replaced the former regulations with more transparent and liberalized rules designed to facilitate trade. The new regulations reduced the number of imported goods subject to inspection by GOEIC and allowed importers to use certifications of conformity from any internationally accredited laboratory inside or outside of Egypt for those goods still subject to inspection by GOEIC. The new import/export regulations also transferred responsibility for issuing and reviewing certificates of origin from GOEIC to the Egyptian Customs Administration, introduced a mechanism for enforcing intellectual property rights at the border and extended the preferential inspection treatment given to inputs for manufacturing to include inputs for the service industry. While these measures have helped improve Egypt's inspection regime, the new regulations are not applied consistently or uniformly.

With respect to agricultural products, Egyptian tariff and non-tariff barriers adversely impact bilateral trade. While Egypt is a key U.S. agricultural export market and a major purchaser of U.S. wheat and corn, certain imports such as poultry parts are banned. Others, including beef, apples and pears are subject to sanitary and phytosanitary measures that are non-transparent and burdensome. Food imports are sometimes subject to quality standards that appear to lack technical and scientific justification and exports may have to comply with burdensome labeling and packaging requirements. For example, meat products can only be imported directly from the country of origin and must include details in Arabic sealed inside and listed on the outside of the package. This labeling requirement raises processing costs and discourages some exporters from competing in the Egyptian market.

The Ministry of Trade and Industry is working with the Ministries of Health and Agriculture, among others, to review sanitary and phytosanitary standards, and food product inspection procedures to ensure WTO compliance and prevent duplicative inspection. The new export/import regulations eliminated the requirement that perishable products have at least one-half of their shelf life remaining at the time of importation, but further amendment of the Egyptian standard may be required before this can be fully implemented.

GOVERNMENT PROCUREMENT

Egypt is not a signatory to the WTO Agreement on Government Procurement. The 1998 law governing government procurement mandates that technical factors, not just price, be considered in awarding contracts. A preference is granted to parastatal companies when their bids are within 15 percent of other bids. In the 2004 Small and Medium-Sized Enterprises (SMEs) Development Law, SMEs were given the right to supply 10 percent of the value of all government procurement denoted in any tender. The law grants suppliers certain rights, such as speedy return of their bid bonds and an explanation of why a competing supplier was awarded the bid. Many concerns about transparency remain, however. For example, the Prime Minister has the authority to determine the terms, conditions, and rules for procurement by specific entities. In July 2006, the Tenders and Bids Law was amended to allow state property to be sold by direct agreement in cases where a public auction would be impractical. In September 2006, the executive regulations of the Tenders and Bids Law were also amended to streamline procurement procedures. The changes shorten the period required for announcing tenders and evaluating bids, reduce the cost for tender documents, require procuring entities to hold pre-bid meetings to clarify items in tenders and include model contract terms clearly setting out rights and obligations of contractors. The amendments allow small- and medium-sized enterprises to obtain tender documents at cost, in order to help such firms participate in competitions.

In 2004, the Prime Minister issued a decree stipulating strict adherence by all government ministries to the provisions of the Tenders and Auctions Law limiting direct purchasing to cases of national security or emergency. The Tenders and Auctions Law was amended in May 2006 to require the procuring governmental entity to change the contract value with the supplier, pursuant to the increase or decrease in cost which took place after the date determined for opening the technical envelopes or after the date of awarding the contract. The amendments also require the procuring entity to disburse to the contractor advance payments for work in-progress. The amendment also stipulates compensating contractors for price fluctuations that might occur during the first year of the contract.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Though Egypt is a signatory to many of the international intellectual property conventions, intellectual property rights (IPR) protection was well below international standards until 2002. In 2002, Egypt strengthened its IPR regime through improvements in its domestic legal framework and enforcement capabilities. Egypt also passed a comprehensive IPR law to protect intellectual property and to attempt to bring the country into line with its obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Responding to Egypt’s improved IPR protection, in 2003, USTR improved Egypt's status from the Special 301 “Priority Watch List” (a designation that Egypt had retained since 1997) to the “Watch List.” However, the U.S. Government was deeply concerned in late 2003 by the Egyptian government’s issuance of marketing approval for local manufacturers to produce patent-infringing copies of several U.S. pharmaceutical products. As a result of these marketing approvals, in 2004, USTR again elevated Egypt to the “Priority Watch List,” where it remains.

Egypt's inadequate protection of the intellectual property of U.S. and other foreign pharmaceutical firms has continued to raise serious concerns. As recently as 2005, Egypt approved the production and marketing of Egyptian generic versions of U.S. pharmaceuticals based on unauthorized reliance upon confidential pharmaceutical test data submitted for marketing approval. Protection for pharmaceutical confidential test data submitted for marketing approval remains an on-going U.S. concern and the U.S. Government closely monitors this issue. The United States has pushed for and was encouraged that the GOE in 2006 instituted steps to increase the transparency of the application procedures for generic approvals, a measure which should enhance the ability to identify efforts to produce unauthorized copies of U.S. pharmaceutical products. This issue will remain a point of continuing engagement by the U.S. Government with Egypt.

Progress has been made in establishing and strengthening some of the government institutions necessary for an effective intellectual property protection regime. Provisions of the new IPR Law allowing for the patenting of pharmaceutical products took effect on January 1, 2005. A modern, computerized Egyptian Patent Office under the authority of the Ministry of Higher Education and State for Scientific Research has been working to improve its ability to receive and examine paper or electronically filed patent applications.

Egypt has taken advantage of various technical assistance opportunities provided by both the USAID and the U.S. Patent and Trademark Office (USPTO) on topics such as patent and trademark examination, specialized pharmaceutical patent examination, Patent Cooperation Treaty application processing, industrial design examination, trademark examination and IPR enforcement. The Patent Cooperation Treaty (PCT) entered into force in Egypt in 2003. In 2005, Egypt began reviewing PCT patent applications filed for approval in Egypt. Currently, Egypt is the eighth-largest filer of PCT patent applications among developing country PCT members. In accordance with its TRIPS obligations, the Egyptian Patent Office opened the "mailbox" for pharmaceutical patent applications on January 1, 2005, and began examining the approximately 1,500 pharmaceutical patent applications submitted for approval through this process. In October 2006, the Egyptian Patent Office accepted the granting of the first two pharmaceutical product applications submitted to the mailbox, unless an opposition is filed within 60 days of its mid-January 2007 publication in the official gazette. In addition, the World Intellectual Property Organization (WIPO) has designated Egypt as a regional patent training center. The Egyptian Patent Office also is in the process of adopting a manual of patent examination procedures to promote quality, consistency, and transparency in the examination process.

The new IP law offers trademark protection for 10 years. Concerns remain, however, regarding the implementation of key TRIPS obligations, including the lack of a specific grant of trademark rights in light of Article 16.1 of TRIPS.

In addition, the new IP law appears to lack a specific provision implementing TRIPS Article 23, which requires members to provide the legal means to prevent the use of geographical indications for wines and spirits where the goods do not come from the place named, even if consumers are not misled.

The Egyptian Trademark and Industrial Designs Office, as well as market inspectors responsible for non-copyright related IPR enforcement, are located in the Ministry of Trade and Industry. In 2005, the Trademark Office eliminated a five-year backlog of pending trademark applications and in 2006, the Trademark Office began work on other processing issues. It currently takes one year to register a mark in Egypt. The Ministry relocated the Trademark and Industrial Designs Office to a modern facility in 2005. The process of registration is now fully automated and the new offices have access to the Internet for international searches for the first time, as well as other communications improvements. In 2006, Egypt acceded to the Nice Agreement. Industrial design applications are also examined against an automated a database and the offices are developing transparent procedures for filing and examination.

Infringement of trademarks, textile designs, and industrial designs remains a problem, but the GOE has taken steps to improve enforcement in this area by training civil inspectors in IPR enforcement, issuing improved inspection procedures and taking steps to implement measures at its borders to prevent the importation of counterfeit and pirated goods. New regulations and procedures to implement TRIPS obligations relating to border measures are also being developed.

In 2004, the Ministry of Agriculture established a new Plant Variety Registration Office. However, certain provisions of the Egyptian 2002 IPR law made it difficult for applicants to meet the requirements to register for protection of their new, distinct, uniform, and stable plant varieties. In July 2006, the Prime Minister issued Decree No. 1241 which amended Article 158 and deleted Article 159 of the executive regulations to the IPR Law. This eliminated the need to apply to deposit samples in the National Gene Bank. The decree also eliminated the final obstacle to obtaining plant variety protection in Egypt. Egypt is still reforming the administration of its IPR laws, including protection of plant varieties, as part of its efforts to join the International Union for the Protection of New Varieties of Plants.

High levels of piracy adversely impact most copyright industries in Egypt, including motion pictures, sound recordings, books and other printed matter, and computer software. Improvements have occurred with regard to computer software protection, and the GOE took steps to ensure the authorized use of legitimate business software in civilian government departments and schools. However, in its 2007 Special 301 submission, the International Intellectual Property Alliance estimated piracy rates in the Egyptian market for business software at 47 percent and music at 70 percent in 2006. There continues to be a problem with false licensing, where a local distributor presents documents that purport to authorize the distribution of a work, but that have been supplied by a party lacking authorization authority. Even when the Ministry of Culture is convinced that the documents are fraudulent, the distributor is permitted to rely upon Ministry of Culture approval and to distribute pirated software, music, and films. This practice undermines copyright protection in Egypt. The Egyptian government has taken steps to revoke such approvals for well-known pirates. The GOE attributes its lack of further action against false licensing to its inadequate human and physical resources in this area.

A USAID technical assistance program is working with several ministries to strengthen IPR enforcement and increase public awareness. The USAID program is also working with the Ministry of Justice on IPR enforcement issues, including efforts to increase the legal awareness of judges on IPR issues and to build institutional capacity to handle infringement cases. In 2005 and 2006, approximately 1375 judges (or approximately 30 percent of sitting judges) had received local training in intellectual property rights enforcement, and a number of Egyptian judges participated in USPTO IPR enforcement training programs in the United States and Middle East region. In 2006, approximately 400 judges from the Courts of First Instance received training in cooperation with the Egyptian National Center for Judicial Studies on IPR and the use of injunctions. Prior to receiving this training, very few injunctions were issued in Egypt and even fewer trademark injunctions (one every few years). As of this writing, 10 trademark-related injunctions have been issued in the few months since the training occurred. In addition, 150 civil inspectors have been trained in IPR enforcement procedures.

SERVICES BARRIERS

GATS Commitments

Egypt participated actively in the Uruguay Round negotiations on services, but made commitments in only four sectors: construction, tourism, financial services, and international maritime transport. Egypt subsequently made commitments in the 1997 WTO Agreement on Financial Services. In 2005, Egypt revised its services offer to include computer services, courier services, air transport services, some construction sub-sectors (building and finishing works), and some insurance sub-sectors.

Egypt has restrictions for most services sectors in which it has made GATS commitments. These restrictions place a 49 percent limit on foreign equity in construction and transport services. In the computer services sector, larger contributions of foreign equity may be permitted, such as when the Ministry of Communication and Information Technology determines that such services are an integral part of a larger business model and will add value to the country. With courier services, some cases require special authorization from the Egyptian National Postal Organization (ENPO). Egypt restricts the employment of non-nationals to 10 percent of the personnel employed by a company. Limitations on foreign management also apply to computer-related services (60 percent of top-level management should be Egyptian after three years of the start up date of the venture). Restrictions on the acquisition of land by foreigners for commercial purposes were amended in 2002 to allow the acquisition of land by non-Egyptians under certain criteria and procedures.

Insurance

State-owned insurance firms dominate the Egyptian market. Foreign firms may own up to 100 percent of Egyptian private insurance firms, although the market remains closed to foreign intermediaries. There are currently at least six foreign insurance companies operating in the market. There are eleven private sector insurance companies, three of which are joint ventures with U.S. firms. The state-owned Egyptian Reinsurance Company (Egypt Re) is the only registered company in the reinsurance market. Direct insurers were required by law to make compulsory cessions to Egypt Re, although this requirement has been progressively reduced since 1999 and replaced by voluntary cessions. Since Egypt is a member of the African Union, direct insurers are also required to cede 5 percent of their reinsurance business to Africa Re**.**

The Egyptian market remains small and underdeveloped due to many factors including excessive premium taxes. The market remains dominated by the four state-owned insurance companies that controlled over 75 percent of the non-life insurance market and 56.2 percent of the life insurance market in 2004. In 2005, the Ministry of Investment commissioned an international consortium to restructure its four state-owned insurance companies, opening the way for their privatization. The ministry has selected a consortium of the Paris-based BNP-Paribas, Egypt's Commercial International Bank (CIB) and the New York-based insurance consulting firm Milliman and Ernst & Young to oversee the process. The "privatization team" continues to work on a privatization plan for one or more of the state-owned insurance companies. The consortium submitted a final Diagnostic and Valuation report for the four companies in December 2006. The report of Restructuring and Possible Execution of Privatization Scenarios is expected to be finalized by March 2007**.** Senior insurance officials are predicting the first privatization to take place by mid-2007 and the growing inclination among the policy makers is to restructure and privatize all four.

Banking

There are currently 39 banks in Egypt. Egypt does not limit foreign equity participation in local banks. Several foreign banks have majority shares in Egyptian banks, while other foreign banks are registered as branches of the parent bank (rather than subsidiaries). Foreign banks can conduct all banking activities in Egypt. New foreign banking entrants face barriers, however. Because the government believes there are too many banks in Egypt, it has not issued a new banking license in at least ten years and it plans in the next five years to reduce the number of banks in Egypt to 21. As a result, the only way a foreign bank can enter the market in Egypt is to purchase an existing bank.

In 2002, the Central Bank of Egypt (CBE) required that banks raise their capital adequacy ratios to meet Basel II standards. Six banks failed to achieve the new threshold's June 2005 deadline to meet the capital increase or complete subsequent procedures such as merging with larger institutions. Although the government had advocated the merger of some smaller banks since early 2001, progress has been slow. As of the end of 2005, 11 small banks had been merged into larger banks and the Central Bank had begun legal procedures to liquidate branches of three foreign banks that had not met the capital requirement. The GOE has also been proceeding with plans to divest its shares in joint venture banks. To date, the public sector has divested its shares in eight joint venture banks.

Egypt limits the issuance of licenses for financial institutions to moderate competitive shocks in this sector. The United States views licensing restrictions on U.S. financial institutions as a serious concern.

Progress has been slow in the government's plans to restructure the four state-owned banks that control over 50 percent of the banking sector's total assets. In 2004, the government appointed new, western-trained senior management teams for the four banks. In October 2006, after a lengthy process, the first public bank – Bank of Alexandria – was privatized through a multiple round auction that concluded with the sale of 80 percent of the Bank's shares to the Italian bank, Sanpaolo IMI. Downsizing and privatization should strengthen Egypt's banking sector and improve implementation of market-based financial operations.

Securities

Egypt's WTO financial services commitment in the securities sector provides for unrestricted market access and national treatment for foreign companies. International investors operate in the Egyptian stock market largely without restriction. Several foreign brokers, including U.S. and European firms, have established or purchased stakes in brokerage companies. In 2002, the Minister of Finance established the Primary Dealers System, which began operations in 2004. The system allows financial institutions registered with the Ministry of Finance, currently including 13 banks, to underwrite primary issues of government securities and to activate trading in the secondary market through the sale, purchase, and repurchase of government securities. The government is using the primary dealers system to manage its public debt, secure non-CBE financing, and create a market-based yield curve for public debt.

Telecommunications

Telecommunications services have expanded rapidly in the past four years as the sector has been liberalized and opened to international competition. The impetus for the liberalization came from Egypt's 2002 accession to the WTO Basic Telecommunications Agreement and, in 2003, to the WTO Information Technology Agreement. These agreements required the liberalization of telecommunication services, full autonomy of the National Telecommunications Regulatory Authority by 2006, and the phasing out of tariffs on all information technology imports from WTO Members.

In 2003, Egypt's parliament approved a new telecommunications law that established the framework for the government to meet these commitments. More progress, however, is needed in establishing full autonomy for the National Telecommunication Regulatory Authority. The 2003 law provided for the termination of Telecom Egypt's monopoly of domestic and international telephone service by January 2006. Domestic service is now open to competition. Steps are underway to implement the 2003 law for international service, but the government has not yet issued licenses for new operators. The United States is concerned by reports that only one additional license will be issued for an international gateway service. Limiting international gateway services to a single provider would limit competition and undermine Egypt’s commitment to fully liberalize this sector.

The GOE began divesting state ownership of Telecom Egypt in 2005 by privatizing 20 percent of its assets. Yet the continued presence of Ministry of Communication and Information Technology officials on Telecom Egypt’s Board of Directors raises concerns regarding Egypt’s commitment to liberalize this sector. International firms actively participate in Internet and cellular services and are eligible to bid on licenses for new telecommunications services and for contracts offered by Telecom Egypt to modernize its networks and switching equipment. Telecom Egypt has sought foreign participation in the management and operation of the national telecommunications grid, although no agreements have yet been signed.

In the cellular service market, which currently consists of two private GSM operators, the government awarded a third license through a public tender in July 2006. The license stipulates that the winner employ neutral second- or third-generation technology (either GSM or CDMA). The GOE has set the second quarter of 2007 as the target date for the third mobile company to be fully operational.

More progress, however, is needed in establishing full autonomy for the National Telecommunication Regulatory Authority. There continue to be complaints that Egypt is stifling competition in favor of

Telecom Egypt by not licensing companies seeking to provide Voice over Internet Protocol (VOIP) in Egypt. In addition, Telecom Egypt has been slow in negotiating interconnection arrangements and international gateway accessibility with carriers. Though a previous complaint on this VOIP issue has been resolved, the lack of a Reference Interconnection Offer by Telecom Egypt continues to introduce delays for carriers seeking interconnection.

Transportation

Maritime and air transportation services are being liberalized. The GOE's monopoly on maritime transport ended in 1998, and the private sector now conducts most maritime activities, including loading, supplying, ship repair, and, increasingly, container handling. There are two privately-owned and operated Egyptian ports, Ain Sukhna and East Port Said. Egypt Air's monopoly on carrying passengers has been curtailed, and several privately-owned airlines operate regularly scheduled domestic flights and international charter services, although the national carrier remains the dominant player. The U.S. Air Transport Agreement with Egypt was concluded in 1964 and has been changed only twice in the past 37 years. In 1991, a security article was added. In 1997, the two countries agreed to amend the agreement with the addition of limited cooperative marketing arrangements – some of which increased routing and operational flexibility – and a safety article. The agreement remains very restrictive with no provisions on charter services. Private and foreign air carriers may not operate charter flights to and from Cairo without the approval of the national carrier, Egypt Air. U.S. and Egyptian officials held a digital video conference on December 12, 2006 to discuss the possibility of concluding an Open-Skies air services agreement to replace the 1964 agreement. Both sides agreed to maintain contact and exchange views to move the process forward.

Other Services

Egypt maintains several other barriers to the provision of certain services by U.S. and other foreign firms. Foreign motion pictures are subject to a screen quota and distributors may import only five prints of any foreign film. The GOE applies to private express mail operators a postal agency fee of 10 percent of annual revenue from shipments under 20 kilos, a fee that negatively affects their competitiveness.

Shipments over 20 kilos are treated as freight and are not subject to the 10 percent fee. According to the Egyptian labor law, foreigners cannot be employed as export and import customs clearance officers or tourist guides.

INVESTMENT BARRIERS

Under the 1992 United States-Egypt Bilateral Investment Treaty (BIT), Egypt committed to maintaining the critical elements of an open investment regime, including national and most-favored nation (MFN) treatment (with exceptions specified in the treaty), the right to make financial transfers freely and promptly, and international law standards for expropriation and compensation. The BIT also provides for binding international arbitration of certain disputes between a treaty party and an investor of the other party.

An income tax law passed by the Egyptian Parliament in 2005 reduced and simplified tax rates on corporate profits and personal income. The corporate tax rate was reduced from 42 percent to 20 percent (but maintained at 40.55 percent for oil companies). The new legislation also eliminated all previous exemptions and tax holidays. The law included provisions to expand the tax base, including incentives aimed at encouraging individuals and companies in the informal sector to legalize their status. The Investment Incentives Law No.8 of 1997 was extensively amended in 2005, in conformance with the new income tax law. The preferences and incentives that had been offered to new investors in priority sectors, such as agriculture, housing, transportation, petroleum, and computer software, were eliminated. The amendments, however, allow for limited exceptions to be made for multinational firms or other large investors, subject to approval by the Prime Minister. Investment incentives granted to investors before the law was amended continue under a "grandfather" clause.

ANTICOMPETITIVE PRACTICES

Egyptian antitrust law focuses on preventing intentionally unfair or abusive practices such as lowering prices to the detriment of smaller competitors or limiting supply to the market to the detriment of consumers. According to the law, a company holding 25 percent or more market share of a given sector may be subject to investigation if suspected of illegal or unfair market practices. Penalties for companies found to have engaged in monopolistic practices range from LE13,000($2,260) to LE10 million($1.7 million). The law is implemented by an independent governmental body, the Egyptian Competition Authority, which reports to the Prime Minister and is funded by direct government appropriations and/or donations from professional or academic bodies. However, the law will not apply to utilities and infrastructure projects, such as water supply, sewage, electricity, telecommunications, transportation and natural gas. The executive regulations of the law were issued in 2005 by Prime Ministerial decree.

ELECTRONIC COMMERCE

Egypt's Electronic Signature Law 15 of 2004 established the Information Technology Industry Development Authority (ITIDA) to act as the E-signature regulatory authority. The executive regulations of this law were issued in 2005.

ITIDA's first mandate is to build and operate the Root Certificate Authority (Root CA). This Root CA will be the trust anchor for all relying parties within that domain. Furthermore, the Root CA will issue digital certificates to subordinate Certificate Service Providers (CSP) to provide the proper infrastructure for the use of E-Signature in Egypt. ITIDA's second mandate is to license a limited number of CSPs to issue digital certificates and corresponding electronic signatures for citizens and private sector companies' clients.

In July 2006, four certificate authorities were granted their licenses to verify e-signatures. In addition, the RFP for the establishment of "Root Certificate Authority" and "Government Certificate Authority" were issued in 2006 and currently ITIDA is in the process of evaluating the submitted proposals. (Website: www.itida.gov.eg)

Egypt is currently preparing a draft act for information security and cyber crime.

The Ministry of Administrative Development is taking a leading role in implementing an E-government program, which will have social and economic impacts. It will help in rendering effortless services to citizens, cut down on government expenditures on procurement, increase its purchase of information technology hardware and software, and promote Electronic commerce.
(Website: http://www.ad.gov.eg/english/default.aspx)

OTHER BARRIERS

Pharmaceutical Price Controls

The Egyptian government controls prices in the pharmaceutical sector and does not have a transparent mechanism for pharmaceutical pricing. The Ministry of Health (MOH) reviews prices of various pharmaceutical products and negotiates with companies to adjust prices of pharmaceuticals based on nontransparent criteria. The Ministry of Health has not allowed pharmaceutical prices to adjust completely to compensate for inflation and depreciation of the Egyptian pound since 2000. For example, although the Egyptian pound has fallen 40 percent in value against the U.S. dollar since 2000, the government has granted price increases for only some pharmaceutical products. Because both domestic and foreign pharmaceutical companies rely heavily on imported inputs, profitability has dropped sharply and some companies claim to be operating at a loss. In 2004, the government cut customs duties on most imports of pharmaceutical inputs and products from 10 percent to 2 percent. The government claims this step allowed local pharmaceutical companies to compensate for some of their losses from the depreciation of the pound in recent years. Also in 2004, the Ministry of Health lifted restrictions on exporting pharmaceuticals to encourage pharmaceutical investment and exports and announced its intention to create a fund to stabilize prices of local pharmaceutical products. Further details about the fund's operations are not available. During 2005, the government approved price increases on select foreign and domestic pharmaceutical products.

Export Restrictions

In 2004, the Ministry of Agriculture removed restrictions on long and medium-long staple cotton which had been imposed to make varieties more available for local mills. The Minister of Foreign Trade and Industry then announced that all types of cotton would be available for exporting in the 2004/2005 season and that the government would not interfere in cotton pricing. However, the U.S. Government continues to have concerns about Egypt's Alexandria Cotton Exporters' Association (ALCOTEXA), which controls all cotton export pricing and policies.

EL SALVADOR

TRADE SUMMARY

The U.S. goods trade balance with El Salvador went from a trade deficit of $134 million in 2005 to a trade surplus of $301 million in 2006. U.S. goods exports in 2006 were $2.2 billion, up 16.3 percent from the previous year. Corresponding U.S. imports from El Salvador were $1.9 billion, down 6.7 percent. El Salvador is currently the 51st largest export market for U.S. goods.

The stock of U.S. foreign direct investment in El Salvador in 2005 was $928 million (latest data available), up from $842 million in 2004.

IMPORT POLICIES

Free Trade Agreement

The United States concluded free trade agreement negotiations with El Salvador, Guatemala, Honduras and Nicaragua in December 2003 and with Costa Rica in January 2004. In May 2004, the six countries signed the United States–Central America Free Trade Agreement. During 2004, the United States and the Central American countries integrated the Dominican Republic into the Free Trade Agreement. On August 5, 2004, the seven countries signed the Dominican Republic–Central America–United States Free Trade Agreement (CAFTA-DR).

All of the signatory countries have ratified the agreement with the exception of Costa Rica. The agreement entered into force for El Salvador on March 1, 2006. The agreement also has entered into force for the Dominican Republic, Guatemala, Honduras and Nicaragua.

The agreement removes barriers to trade and investment in the region and will strengthen regional economic integration. The CAFTA-DR also requires the Central American countries and the Dominican Republic to undertake needed reforms to provide market liberalization as well as greater transparency and certainty in a number of areas, including: customs administration, protection of intellectual property rights, services, investment, financial services, government procurement, and sanitary and phytosanitary (SPS) measures.

Tariffs

As a member of the Central American Common Market, El Salvador agreed in 1995 to reduce its common external tariff to a maximum of 15 percent. However, there are several exceptions. Some goods, such as new and used automobiles, are subject to much higher tariffs. Tariffs on new and used finished clothing are generally 25 percent, while tariffs on fabrics are 20 percent or more. Vehicles are assessed a 30 percent duty. Agricultural products face the highest tariffs. Dairy, rice, pork and poultry products are assessed a 40 percent duty. In addition to a value-added tax of 13 percent paid on all goods and services, alcoholic beverages are subject to a 20 percent to 40 percent duty, as well as domestic taxes that include a specific tax based on alcoholic content and a 20 percent sales tax.

Under the CAFTA-DR, about 80 percent of U.S. industrial and consumer goods now enter El Salvador duty-free, with the remaining tariffs phased-out over ten years. Nearly all textile and apparel goods that meet the agreement's rules of origin are now traded duty-free and quota-free, promoting new opportunities for U.S. and regional fiber, yarn, fabric and apparel manufacturing companies. The agreement's tariff treatment for textile and apparel goods is retroactive to January 1, 2004.

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter El Salvador duty-free. El Salvador will eliminate its remaining tariffs on nearly all agricultural products within 15 years (18 years for rice and chicken leg quarters and 20 years for dairy products). For the most sensitive products, tariff-rate quotas (TRQs) will permit some immediate duty-free access for specified quantities during the tariff phase-out period, with the duty-free amount expanding during that period. El Salvador will liberalize trade in white corn through expansion of a TRQ, rather than by tariff reductions.

The agreement also requires transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. Under the CAFTA-DR, El Salvador committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and all CAFTA-DR countries agreed to share information to combat illegal transshipment of goods. In addition, El Salvador has negotiated agreements with express-delivery companies to allow for faster handling of their packages.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Although sanitary standards have generally not been a barrier in El Salvador, practices with respect to raw poultry and eggs are notable exceptions. Since 1992, the Ministry of Agriculture has imposed restrictions on U.S. raw poultry and egg imports. El Salvador has yet to provide a scientific justification for these measures, which do not appear to be based on relevant international standards. Furthermore, the Salvadoran government does not appear to apply these same restrictions on domestic production, raising potential national treatment concerns. As a result of these measures, the United States has been unable to export raw poultry or eggs to El Salvador. U.S. industry estimates the value of lost U.S. poultry and eggs exports at $5 million to $10 million per year. Resolution of this issue is a priority for the United States.

The Salvadoran government requires that rice shipments be fumigated at the importers' cost unless they are accompanied by a U.S. Department of Agriculture (USDA) certificate stating that the rice is free of Tilletia barclayana. However, since there is no chemical treatment that is both practical and effective against Tilletia barclayana, USDA cannot issue these certificates. El Salvador failed to notify this measure to the World Trade Organization (WTO) SPS Committee.

All imports of fresh food, agricultural commodities and live animals must have a sanitary certificate from the Ministry of Agriculture and the Ministry of Public Health. Basic grains must have import licenses from the Ministry of Agriculture, while dairy products require import licenses from the Ministry of Public Health. Consumer products require a certificate showing approval by U.S. health authorities for public sale.

Importers must deliver samples of all foods for laboratory testing to the Ministry of Public Health, which, upon approval, issues the product registration numbers that allow them to be sold at retail outlets. At present, there is no standard regulation allowing entry of U.S.-approved products. Some processed foods approved for use in the United States were rejected after further analysis in El Salvador, thereby barring their sale. The United States has obtained access for U.S. products rejected by the Ministry of Public Health testing on a case-by-case basis.

The United States and the Ministry of Public Health initiated discussions on this issue in 2002. Through the CAFTA-DR, the United States continues to engage El Salvador on this issue in venues such as the SPS and Trade Capacity Building Committees. In addition, in connection with the CAFTA-DR, El

Salvador agreed to recognize the equivalence of the U.S. food safety and inspection system for meat, poultry and dairy products, thereby eliminating the need for plant-by-plant inspection.

The five Central American countries, including El Salvador, are in the process of developing common standards for the importation of several products, including distilled spirits, which should facilitate trade. Also, El Salvador has withdrawn a previous proposed standard for alcoholic beverages that was opposed by U.S. industry.

GOVERNMENT PROCUREMENT

El Salvador is not a signatory to the WTO Agreement on Government Procurement. However, government purchases and construction contracts are usually open to foreign bidders.

The 2000 Public Sector Procurement and Contracting Law applies to the central government as well as to autonomous agencies and municipalities. The Ministry of Finance's Public Administration Procurement and Contracting Regulatory Unit establishes procurement and contracting policy, but all government agencies have their own procurement and contracting units to implement that policy. Under the law, government purchases worth more than approximately $108,000 must be announced publicly and are subject to open bidding; those worth approximately $13,600 or more must also be announced, but may be subject to bidding by invitation only; and for smaller purchases, government agencies must evaluate at least three offers for quality and price. If a domestic offer is assessed as equal to a foreign offer, the government must give preference to the domestic offer. Under the law, the head of a government agency or ministry may intervene to award a procurement or contract to a seller who may not have otherwise been selected. For government procurement made using external financing or donations, separate procurement procedures may apply.

The CAFTA-DR requires the use of fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the agreement. Under the CAFTA-DR, U.S. suppliers will be permitted to bid on procurements of most Salvadoran government entities, including key ministries and state-owned enterprises, on the same basis as Salvadoran suppliers. The anti-corruption provisions in the agreement require each government to ensure under its domestic law that bribery in trade-related matters, including in government procurement, is treated as a criminal offense, or is subject to comparable penalties.

EXPORT SUBSIDIES

El Salvador gives a 6 percent tax rebate on exports shipped outside Central America if they have undergone a transformation process that adds at least 30 percent to the original value. Firms operating in free trade zones enjoy a 10-year exemption from income tax as well as duty-free privileges.

Under the CAFTA-DR, El Salvador may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement (e.g., the exportation of a given level or percentage of goods). El Salvador may maintain existing duty waiver measures through 2009 provided such measures are consistent with its WTO obligations.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In December 2005, El Salvador amended the Intellectual Property Promotion and Protection Law, Law of Trademarks and Other Distinctive Signs, and Penal Code to implement its CAFTA-DR obligations on intellectual property rights (IPR). The CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of intellectual property rights, which are consistent with U.S. standards of protection and enforcement and with emerging international standards. Such improvements include state-of-the-art protections for digital products such as U.S. software, music, text and videos; stronger protection for U.S. patents, trademarks and test data, including an electronic system for the registration and maintenance of trademarks; and further deterrence of piracy and counterfeiting.

The piracy of optical media, both music and video, remains a concern in El Salvador. Optical media imported from the United States by pirates are being used as duplication masters. There has also been concern expressed about inadequate enforcement of cable broadcast rights and the competitive disadvantage it places on legitimate providers of this service. Using *ex-officio* authority granted by the December 2005 amendments to the Penal Code, the police and Attorney General's Office seized 194,610 optical media in 2006 and made several arrests.

SERVICES BARRIERS

El Salvador maintains few barriers to services trade. El Salvador has accepted the Fifth Protocol to the WTO General Agreement on Trade in Services, which was necessary to bring its CAFTA-DR commitments on financial services into effect. Foreign investors are limited to 49 percent of equity ownership in free reception television and AM/FM radio broadcasting. There are no such restrictions on cable television ownership. Notaries must be Salvadoran citizens. The CAFTA-DR granted substantial market access across the entire services regime, offering new access in sectors such as telecommunications, express delivery, computer and related services, tourism, energy, transport, construction and engineering, financial services, insurance, audio/visual and entertainment, professional, environment, and other sectors.

A U.S. long distance telephone service provider has alleged that the dominant fixed-line telephone company refuses to sign an interconnection agreement with it on terms already extended to another market entrant, as required by Salvadoran law. A decision on this case is still pending before the Supreme Court of El Salvador. Separately, in January 2006, the government amended the telecommunications law to implement its CAFTA-DR obligations on interconnection, bundling, resale and other issues important to opening the sector to U.S. companies. These reforms went into effect January 1, 2007.

INVESTMENT BARRIERS

The CAFTA-DR establishes a more secure and predictable legal framework for U.S. investors operating in El Salvador. Under the CAFTA-DR, all forms of investment are protected including enterprises, debt, concessions, contract and intellectual property. U.S. investors enjoy, in almost all circumstances, the right to establish, acquire and operate investments in El Salvador on an equal footing with local investors. Among the rights afforded to U.S. investors are due process protection and the right to receive a fair market value for property in the event of an expropriation. Investor rights are protected under the CAFTA-DR by an effective, impartial procedure for dispute settlement that is fully transparent and open to the public. Submissions to dispute panels and dispute panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.

There are few formal investment barriers in El Salvador. However, U.S. investors complain that judicial and regulatory weaknesses limit their investment in El Salvador.

El Salvador is developing a cost-based pricing model for the electricity sector to replace the existing competition-based system. The new system would allow the adoption of long-term contracts and may alleviate current market-distorting regulations and intervention by the regulator, SIGET, as well as politicized management of hydro-electric resources by the state-owned hydropower generator CEL. The United States has expressed its concerns regarding the impact of duplicative regulations and the regulator's seemingly arbitrary decision-making processes and how they are deterrents to U.S. electric energy investments in El Salvador.

The first case of commercial arbitration in El Salvador involved a U.S. firm contracted by the parastatal water company for infrastructure work. The water company refused to pay for work performed, claiming there were irregularities in the procurement process. The arbitration panel ruled in favor of the U.S firm in 2004, but in late 2006 the Supreme Court in El Salvador overturned the arbitral decision and ruled that the U.S. firm's contract with the water company was invalid. No further arbitration cases have been adjudicated in El Salvador, at least in part because potential clients lack confidence that the courts will respect arbitral decisions.

ELECTRONIC COMMERCE

The CAFTA-DR includes provisions on electronic commerce that reflect its importance to global trade. Under the CAFTA-DR, El Salvador has committed to provide non-discriminatory treatment to U.S. digital products, not to impose customs duties on digital products transmitted electronically, and to work together with the United States in policy areas related to electronic commerce.

ETHIOPIA

TRADE SUMMARY

The U.S. goods trade surplus with Ethiopia was $56 million in 2006, a decrease of $392 million from $448 million in 2005. U.S. goods exports in 2006 were $137 million, down 73.1 percent from the previous year. Corresponding U.S. imports from Ethiopia were $81 million, up 31.3 percent. Ethiopia is currently the 121st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ethiopia in 2005 was $55 million, up from $53 million in 2004.

TRADE BARRIERS

Tariffs

Tariffs are an important source of Ethiopian government revenue; in 2005 they comprised 18 percent of total domestic revenue. Revenue, not protection of local industry, is the primary purpose of Ethiopia's tariffs. However, highly protective tariffs are applied on certain items such as textiles products and leather goods to protect local industries. Tariffs are applied evenly to all countries (except for a 10 percent reduction given to COMESA countries) and have been lowered substantially in recent years; *ad valorem* duties range from 0 percent to 35 percent, with a weighted average of 17.5 percent. Importers also enjoy duty drawback and duty-free provisions when they use the imports in the production of export goods. There have been instances in which burdensome regulatory or licensing requirements have prevented the local sale of U.S. exports. In general, however, these have not been significant.

A deterrent to imports generally is the strict foreign exchange control regime administered by Ethiopia's central bank, the National Bank of Ethiopia, which has a monopoly on all foreign currency transactions and supervises payments made abroad. The local currency (Birr) is not freely convertible. Because Ethiopia perennially experiences a large current account deficit and foreign exchange is in short supply, the Bank limits access to foreign exchange and importers can have difficulty obtaining it. For larger firms, state enterprises and enterprises owned by the ruling party, obtaining foreign exchange is not usually a major concern, but for others the procedures and bureaucracy in arranging trade-related payments can pose burdensome delays. Less well-connected importers, particularly smaller, new-to-market firms complain that there is not a level playing field. Supplier credit is rarely allowed. An importer must apply for an import permit and obtain a letter of credit for 100 percent of the value of imports before an order can be placed. Even then, import permits are not always granted.

Ethiopia is not a Member of the WTO but has observer status and is in the early stages of the accession process. It is a member of the Common Market for East and Southern Africa (COMESA), but is not a party to the COMESA Free Trade Area.

Customs Procedures

In June 2004, Ethiopia discontinued its pre-shipment inspection regime, which domestic producers, including textile and garment manufacturers, found burdensome and costly. The Customs Authority generally levies duties based on the invoice transaction, though on occasion it revalues goods based on a price database maintained by an outside contractor if the invoice transaction values appear significantly lower than expected.

The Customs Authority has made a major effort in recent years to increase transparency; its valuation methodologies and procedures are available to the public on its website. It has also done much to streamline services to importers. Customs clearance time, which used to take 43 days on the average, has been reduced to less than a week in most cases.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Quality and Standards Authority of Ethiopia regulates all exports and imports that have Ethiopian standards. Except for a few types of imports, there are no general requirements for product certification. Certification is required for foodstuffs, construction materials, chemicals, textiles and pharmaceuticals. Standards are consistent with international norms (ISO/IEC Guide 28). Pharmaceuticals that have been extensively tested and licensed in other countries are allowed to enter the Ethiopian market with no further testing. However industry reports that there have been instances in which regulatory or licensing requirements have prevented the import and/or local sale of products from the United States and other countries, particularly personal hygiene and health care products.

GOVERNMENT PROCUREMENT

A high proportion of Ethiopian import transactions are conducted through government tenders, reflecting the heavy involvement of the government in the overall economy. The tender announcements are usually made public to all interested potential bidders, regardless of the nationality of the supplier or the origin of the products/services. Bureaucratic procedures and delays in the decision-making process sometimes impede foreign participation in tenders. U.S. firms have complained that the abrupt cancellation of tenders and lack of transparency in the procurement system influences some procurement decisions. There is reason to believe that state-owned and party-owned enterprises have enjoyed some *de facto* advantages over private firms in the government procurement process.

Several very large contracts have been signed in recent years between government corporations and Asian companies without a tender process, apparently because Asian governments offered supplier credit at very favorable terms. Ethiopia is not a member of the World Trade Organization (WTO) Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Ethiopia became a member of the World Intellectual Property Organization in 1998. In April 2003, the government established the Ethiopian Intellectual Property Office as an autonomous government body responsible for the administration of patents, trademarks, copyrights, and other intellectual property policy and legal issues.

Within the last two years, IPR has received a great deal of government interest and attention. Ethiopia enacted a series of new laws pertaining to some areas of IPR, namely, copyright and related rights, plant varieties and trademarks.

The 2004 copyright law improved protection for literary and artistic works, and extended protection for the rights of performers, producers of phonograms and broadcasting organizations. In 2006, a new trademark law was enacted that was designed to bring Ethiopian law in line with the laws of other jurisdictions worldwide. The Ministries of Trade and Industry and Justice are finalizing a revised commercial code to enhance the protection and enforcement of intellectual property rights.

The government is in the process of developing new laws for the protection of geographical indications and trade secrets.

INVESTMENT BARRIERS

In recent years, the government has taken major steps to open the Ethiopian economy to foreign investment. However, official and unofficial barriers still exist. Ethiopia's investment code restricts investment in the banking, insurance and micro-credit industries to domestic investors. Other areas of investment reserved for Ethiopian nationals include broadcasting, air transport services using aircraft with a seating capacity greater than 20 passengers, and forwarding/shipping agency services. In addition, foreign investors are barred from investing in a wide range of small retail and wholesale enterprises (e.g., printing, restaurants and beauty shops).

The investment proclamation of July 2002 exclusively reserved to the government investment in the transmission and supply of electrical energy through the integrated national grid system and non-courier postal services. Private investment in telecommunication services and defense industries is permitted, but only in partnership with the government.

An August 2005 directive allows private companies to provide Internet service through the government's backbone infrastructure, but implementing regulations have yet to be promulgated and the state-owned Ethiopian Telecommunications Corporation maintains a monopoly on Internet service. There are no regulations on international data flows or data processing use.

The government is privatizing a large number of state-owned enterprises. Most, but not all, of the tenders issued by the Privatization and Public Enterprises Supervising Agency are open to foreign participation. Some investors bidding on these properties have complained about a lack of transparency in the process. Others who have leased land or invested in formerly state-owned businesses subject to privatization have sometimes experienced bureaucratic problems (e.g., transferring title, delay in evaluating tenders, tax arrears).

All land in Ethiopia belongs to the state; there is no private land ownership. Land may be leased from local and regional authorities for up to 99 years. In practice, land has been made readily available by the authorities to foreign investors in manufacturing and agro-business, but less so for real estate developers.

ELECTRONIC COMMERCE

The low telecommunication penetration rate, the monopoly on Internet service provision, restrictions on foreign exchange and the low level of development of the financial sector have impeded the growth of electronic commerce. However, there do not appear to be any trade restrictions specific to electronic commerce.

OTHER BARRIERS

Ethiopian and foreign investors alike complain about patronage networks and *de facto* preferences shown to businesses owned by the government or associates of the governing party.

Franchising

Difficulties in product quality control, banking regulations and continuing foreign exchange convertibility issues make franchising difficult. Currently, there are no U.S. franchise operations in the country, though there are local Sheraton and Hilton hotels that run under U.S.-linked management contracts.

Judiciary

The judicial system does not offer a high level of property protection. Ethiopia's judicial system remains inadequately staffed and inexperienced, particularly with respect to commercial disputes. While property and contractual rights are recognized and there are commercial and bankruptcy laws, judges often lack understanding of commercial matters. Contractual enforcement remains weak. There is no guarantee that the award of an international arbitral tribunal will be fully accepted and implemented by Ethiopian authorities. Ethiopia has signed but never ratified the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the "ICSID Convention").

EUROPEAN UNION

TRADE SUMMARY

The U.S. goods trade deficit with European Union was $116.6 billion in 2006, a decrease of $5.7 billion from $122.3 billion in 2005. U.S. goods exports in 2006 were $214.0 billion, up 14.8 percent from the previous year. Corresponding U.S. imports from European Union were $330.6 billion, up 7.1 percent. European Union countries, together, rank 2nd behind Canada as an export market for the United States in 2006.

U.S. exports of private commercial services (i.e., excluding military and government) to the European Union were $127.8 billion in 2005 (latest data available), and U.S. imports were $105.9 million. Sales of services in the European Union by majority U.S.-owned affiliates were $249.1 billion in 2004 (latest data available), while sales of services in the United States by majority European Union owned firms were $224.3 billion.

The stock of U.S. foreign direct investment (FDI) in the European Union in 2005 was $949.0 billion (latest data available), down from $973.0 billion in 2004. U.S. FDI in the European Union is concentrated largely in the non-bank holding companies, manufacturing, finance, and wholesale trade sectors.

OVERVIEW

In most respects, the enormous United States-EU trade and investment relationship operates smoothly and to the great benefit of companies, workers, and consumers on both sides of the Atlantic. In recognition of this fact, leaders of the United States and the European Union agreed, in the context of the June 2005 United States-EU Summit (reaffirmed at the June 2006 United States-EU Summit), to pursue additional transatlantic economic integration through a series of cooperative initiatives in areas such as regulatory cooperation, intellectual property rights enforcement, innovation, and trade and security, among other issues.

Despite the broadly positive nature of the United States-EU trade and investment relationship, U.S. exporters in some sectors continue to face chronic barriers to entering the EU market. A number of these barriers have been highlighted in this report for many years, despite repeated efforts to resolve them through bilateral consultations or, in some cases, the dispute settlement provisions of the WTO.

Over the course of the past year, U.S. concerns continued regarding the EU's longstanding policy of subsidizing the development, production, and marketing of large civil aircraft. In general, barriers to access for U.S. agricultural exports continue to be a source of frustration for the United States. Even where formal EU agricultural tariff barriers may be relatively low, U.S. exports of leading commodities such as corn, beef, poultry, soy, pork and rice are significantly restricted or excluded altogether due to restrictive EU non-tariff barriers or regulatory approaches that often do not reflect a sound assessment of actual risks posed by the goods in question. In addition, the trade-distorting effects of various EU Member State policies governing pharmaceuticals and health care products are generating concerns related both to market access and to healthcare innovation. This year's report also outlines concerns of U.S. exporters with respect to a number of emerging EU policies that may threaten to disrupt trade in the future, such as the proposed new EU chemicals regulation.

On October 17, 2006, the EU Council approved Romania and Bulgaria's accession to the European Union, and the two countries joined the EU on January 1, 2007. Because Romania and Bulgaria began adopting EU laws and regulations in the lead-up to their accession to the EU, this report includes a discussion of enlargement-related trade policy issues as well as other barriers in the Romanian and Bulgarian markets.

IMPORT POLICIES

Customs Administration

Notwithstanding the existence of a body of EU customs law, the EU does not operate as a single customs administration. Rather, there is a separate agency responsible for the administration of EU customs law in each of the EU's 27 Member States. The 27 separate agencies do not administer EU customs law in a uniform manner, as is required by Article X:3(a) of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"). No EU institutions or procedures ensure that EU rules on classification, valuation, origin, and customs procedures are applied in a way that remains the same from Member State to Member State. 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. 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, in theory, the Committee exists 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 of EU customs law, but 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 can 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 Court of Justice of the European Union (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 both of the foregoing sets of concerns with the EU in various fora. The concerns have taken on new prominence in light of the expansion of the EU (which now includes 27 Member States) and the focus of the Doha Development Agenda on trade facilitation. Given the growing negative consequences of deficiencies in the EU's customs administration and review procedures, the United States initiated WTO consultations in September 2004. Subsequently, in March 2005, a dispute settlement panel was formed to consider U.S. complaints.

On June 16, 2006, the panel circulated its report, in which it found a lack of uniform administration in certain specified instances, and found no breach of the EU's obligations with respect to prompt review and correction of customs determinations. The United States and EU each appealed different aspects of the panel report. In its report issued on November 13, 2006, the Appellate Body agreed that the panel had misread the U.S. complaint. The Appellate Body also agreed with the United States on certain other legal points and agreed with the EU that the panel had erred in finding non-uniform administration in two particular instances. Finally, the Appellate Body agreed with the panel's finding of no breach of the EU's obligation regarding prompt review and correction of customs administrative action.

The panel and Appellate Body reports were adopted at the December 11, 2006 meeting of the WTO Dispute Settlement Body. The reports as adopted included a finding that the EU is in breach of its obligation of uniform administration with respect to rules pertaining to the tariff classification of certain liquid crystal display monitors.

EU Enlargement

In anticipation of the accession of Romania and Bulgaria to the EU on January 1, 2007, the United States in December 2006 entered into negotiations with the EU within the framework of GATT provisions relating to the expansion of customs unions. Upon their accessions, Romania and Bulgaria were required to change their tariff schedules to conform to the EU's common external tariff schedule, resulting in increased tariffs on certain products imported into Romania and Bulgaria from third countries. Under General Agreement on Tariffs and Trade 1994 (GATT 1994) Articles XXIV: 6 and XXVIII, the United States is entitled to compensation from the EU to offset some of these changes. The expansion of pre-existing EU quotas to account for the addition of Romania and Bulgaria to the European Union common market is another key element of the negotiations. This round of enlargement presents particular issues for exporters to Romania and Bulgaria of key commodities such as pork, which will face a significant increase in applied tariff rates and the imposition of quotas. In 2007, the United States will seek to conclude an appropriate bilateral compensation agreement with the European Commission and ensure that its benefits are implemented as soon as possible.

On March 22, 2006, the United States and the EU signed a bilateral agreement within the framework of the GATT related to the May 2004 enlargement of the European Union. As part of the agreement, the EU opened new country-specific tariff-rate quotas for U.S. exports of boneless ham, poultry, and corn gluten meal. It expanded existing global tariff-rate Quotas for food preparations, fructose, pork, rice, barley, wheat, maize, preserved fruits, fruit juices, pasta, chocolate, pet food, beef, poultry, live bovine animals and sheep, and various cheeses and vegetables. It permanently reduced tariffs on protein concentrates, fish (hake, Alaska Pollack, surimi), chemicals (polyvinyl butyral), aluminum tube, and molybdenuym wire. These unilateral EU concessions went into effect in July 2006.

In addition to tariff changes, the adoption of EU non-tariff barriers by acceding member states has resulted in the loss of significant markets for U.S. exports of poultry, and severely restricted U.S. exports of other agricultural commodities (see Sanitary and Phytosanitary section).

In 2003, to address potential incompatibilities between Bilateral Investment Treaty (BIT) obligations and EU law, the United States and Romania and Bulgaria agreed to make several narrow amendments to the texts of their respective BITs. Both the United States and these two countries have ratified the BIT amendments, and the amendments entered into force upon an exchange of instruments. This exchange took place in Bulgaria on January 16, 2007, and in Romania on February 9.

The customs administration issues noted above for the EU will only become more complex with the addition of Romania and Bulgaria. In Bulgaria, in particular, exporters have reported inconsistent customs valuation and the use of minimum import prices, which may be applied arbitrarily to calculate customs duties.

WTO Information Technology Agreement

The United States has expressed concerns about EU proposals to apply duties as high as 14 percent to imports of several technologically-sophisticated versions of products covered under the WTO Information Technology Agreement (ITA). Such products include certain set-top boxes with a communication function (e.g. cable boxes), flat panel displays for computers, digital still image video cameras, and certain units of automatic data processing machines (e.g. multifunction or "all-in-one" printer/copier/scanner devices). All ITA Members, including the EU, committed to bind and eliminate customs duties on these products when coverage for the ITA was finalized in 1996. However, the EU continued to draft proposals in 2006 that would redefine what products are eligible for duty-free treatment, limiting such treatment to less technologically sophisticated versions of these products, many of which are no longer sold in today's marketplace. These new product definitions proposed by the EU are not found in the ITA and are so narrow that almost none of today's models of the aforementioned ITA products would be guaranteed duty-free treatment if imported into the EU. The United States has raised its concerns both bilaterally and in the ITA Committee in Geneva and will continue to press the EU to abide by the letter and spirit of the ITA.

Restrictions Affecting U.S. Wine Exports

Since the mid-1980s, U.S. wines have been permitted entry to the EU market through temporary exemptions from certain EU wine regulations governing permissible wine-making practices. The temporary nature of these derogations created continuous uncertainty for U.S. wine exporters. In 2002, the EU adopted a new wine labeling regulation (Commission Regulation No. 753/2002). The United States, along with a number of other WTO Members, raised serious concerns about the lack of clarity in the new regulation and its WTO-consistency and urged the EU to withdraw the regulation. The regulation appeared to be more trade restrictive than necessary to meet any legitimate objective, as it would prohibit the presentation on imported wine of information important for the marketing of wine unless certain conditions were met (e.g., the marketing information used must be regulated in the producing country). In addition, the EU imposed restrictions on the use of traditional terms listed in the regulation, in some instances granting exclusive use of a term to an EU wine, thereby raising national treatment concerns. Traditional terms are, for the most part, terms used with certain other expressions (often geographical indications) to describe wine or liqueur and in many cases the terms are merely descriptive (e.g., "ruby" and "tawny").

On March 10, 2006, the European Union and the United States signed an agreement on certain aspects of wine trade as a first phase to a broader agreement on trade in wine. The agreement, which went into effect the day of the signing, is intended to eliminate the uncertainties caused by the previous temporary exemptions and to provide more stable market conditions for the wine sector. The pact simplifies export procedures for American wine-makers hoping to increase their share of a trade currently worth around $2.8 billion annually. It provides for mutual acceptance of current wine-making practices and sets up a consultative process for accepting new wine-making practices. It also addresses some of the concerns raised by the EU's wine-labeling regulation, including a provision for the use of certain EU-regulated terms on U.S. wine. Finally, the agreement provides for the negotiation of an additional agreement to further facilitate trade in wine between the parties. These negotiations began in June 2006.

Bananas

Acting against the backdrop of understandings reached separately with the United States and Ecuador in 2001 setting out the means for reaching a resolution to the long-running dispute regarding trade in bananas, the EU instituted a new banana import regime on January 1, 2006. The 2001 understandings required that by January 1, 2006, the EU must put in place a tariff-only regime for bananas. The understandings further required the EU to seek waivers of its GATT Article I and XIII obligations in order to continue temporarily a modified banana import regime incorporating tariff-rate quotas and import licensing requirements. The Article I waiver as finally granted by the WTO required that the future tariff-only regime result in at least maintaining total market access for MFN banana suppliers.

In the fall of 2005, the EU made two proposals for a new tariff rate for bananas. Both of these proposals were subject to review by a WTO arbitrator (according to the terms of the Article I waiver), which found that both proposals failed to satisfy the EU's obligation at least to maintain total market access for non-preferential suppliers of bananas to the EU market. EU consultations and negotiations with a number of Latin American banana exporting countries throughout 2005 yielded no agreement on the shape of the EC's post-January 1, 2006 regime. The regime as eventually implemented on January 1, 2006, combined a 176 euro/metric ton most-favored nation (MFN) tariff level with a continued zero duty tariff-rate quota for bananas originating in Africa, Pacific and Caribbean (ACP) countries, with whom the EU maintains a preferential trading relationship. In November 2006, after continued negotiations failed to achieve a satisfactory result, Ecuador filed a request under Article 21.5 of the WTO Dispute Settlement Understanding for consultations with the EU regarding the compliance of this new regime with the EU's obligations under the WTO. The United States joined as a third party in these consultations.

The United States' strong interest is that the EU's import regime must uphold the EU's multilateral commitment to put in place a WTO-compatible structure that at least maintains total market access for non-preferential banana suppliers. While the United States does not directly export bananas to the EU, this is an issue of considerable importance to U.S. companies involved in the production, distribution, and marketing of bananas.

Market Access Restrictions for U.S. Pharmaceuticals

U.S. pharmaceutical companies encounter persistent market access problems throughout countries of the European Union due to the effective price, volume, and access controls placed on medicines by national governments. In most cases, Member State governments administer medicine reimbursement programs as part of their healthcare programs, which cover a significant segment of the market. The procedures for getting a product on the reimbursement list and the price controls maintained for those products that are on the list lack transparency and have a strong negative impact on U.S. exports. The EU also places strict controls on the nature of information that pharmaceutical companies can furnish to patients. The combination of these measures can limit patients' access to innovative products and may diminish investments by EU companies in pharmaceuticals research and development.

The EU's single market allows pharmaceuticals, like other goods, to move freely within the EU, while Member States' controlled prices vary greatly from one country to another. This situation permits intermediaries to buy medicines, often in bulk quantities, in EU countries where the government-determined price is lower and sell them in other EU countries where the price is set at a higher level – a practice known as parallel trade, where traders do not contribute any value to research and development costs.

Austria: Austria maintains a bureaucratic pharmaceutical reimbursement approval process that limits market access for innovative products. A pharmaceutical firm seeking to include a product on the list of reimbursable drugs without prior authorization must first obtain the approval of the umbrella organization of social insurance funds (Hauptverband/HVB). Almost all new innovative pharmaceuticals must be individually approved by HVB physicians, who remain reluctant to prescribe them to avoid bureaucratic hurdles. A reform of the reimbursement system came into effect on January 1, 2005, but the situation has not improved. U.S. companies operating in Austria report cumulative losses between $25 million and $100 million due to these practices.

Belgium: Pharmaceutical companies consider Belgium among the most inhospitable markets in Europe. Taxes, pricing policies, and slow approvals discourage investment in research and development. Prices on pharmaceuticals reimbursed through the Belgian healthcare system remain at well below European averages, and there is strong government pressure on doctors to favor generics and lowest-cost drugs over patented products. Further, in addition to the turnover and profit taxes applied exclusively in this sector, pharmaceutical companies are required to fund a buffer to cover what have been chronic gaps between budgeted and actual government spending on pharmaceuticals. In combination, these tax measures amount to a 10 percent to 11 percent additional levy on the sector. The government did not pass promised legislation in 2006 to exempt drugs under patent from a mandatory price decrease that went into effect in the fall of 2005.

Bulgaria: The Bulgarian government's drug supply mechanism constitutes a major market access barrier to U.S. pharmaceutical exports. New drug legislation imposes liability on companies for failures of distributors to meet drug supply obligations (incorrect or late deliveries). Instead of holding distributors accountable for correct distribution, the government holds pharmaceutical manufacturers liable for the distributors' performance, over which manufacturers have no control. The registration processes for pharmaceutical products and for drug pricing and reimbursement, including the process by which the National Health Insurance Fund classifies drugs, are cumbersome and non-transparent. Newer drugs are often arbitrarily classified with their older, generic versions for pricing purposes, thereby limiting companies' ability to recover their research and development costs.

Cyprus: The Cypriot pharmaceuticals market suffers from several distortions that have resulted in unnecessary barriers to trade and retail shortages of many pharmaceuticals. Of the 3,300 drugs sold in Cyprus prior to May 1, 2004, only around 2000 were available in October 2006.

Since acceding to the EU on May 1, 2004, the government of Cyprus (GOC) imposed retail price cuts for pharmaceuticals of around 20 percent. The mechanism used by the GOC to set pharmaceutical retail prices involves using a basket of prices of the same drug in eight other EU countries (identified as two high price, four medium price, and two low price countries). However, local representatives of pharmaceutical companies believe the selected countries are not representative, pushing the benchmark price downward. During 2006, the situation improved somewhat, with marginal price concessions to pharmaceutical importers.

Furthermore, the government discriminates against new, innovative drugs when procuring pharmaceuticals for the public health sector. Innovative, cutting-edge drugs are generally left off the government's procurement list until cheaper substitutes become available. Cyprus is currently overhauling its national health scheme, aiming to upgrade public health care by 2008. The process may result in reforms to the current government procurement system.

Czech Republic: In October 2005, the European Commission sent a letter initiating infringement proceedings against the government of the Czech Republic for not properly implementing the EU Transparency Directive. The complaint focused on the non-transparent pharmaceutical categorization process that decides which medicines will be covered by public health insurance and determines the level of reimbursement. In October 2006, the EC alerted the GOCR that they would move toward potential legal action unless the GOCR corrects this lack of transparency. The GOCR has drafted a legislative plan in consultation with industry and the EC to address the issue.

Denmark: The pharmaceutical industry, in general, and U.S. firms in particular, complain that Danish reimbursement standards lack objective and verifiable criteria and do not meet even minimal standards of transparency. Furthermore, the industry claims that the Danish government has failed to provide reimbursement for new innovative medicines or has delayed reimbursement for long periods. Within the context of the Danish social security system, this has the practical effect of preventing the sale and use of such medicines. The government has maintained pressure to further decrease prices or sales of innovative pharmaceutical products, and as of April 1, 2005, a new reimbursement system was introduced. Under the new rules, reimbursements are determined on the basis of the lowest-priced medicine available in each therapeutic category, meaning that the patients' own contributions increase unless the cheapest product (often generics) is chosen. Reimbursements only apply to medicines bought in a Danish-authorized pharmacy.

Finland: Innovative pharmaceutical companies in Finland have raised concerns that government regulations have resulted in an uncompetitive environment marked by pricing policies that place low ceilings on pharmaceutical prices and limit the price differentials allowed between generic and innovative products. Further, industry claims that it takes more than three years for a pharmaceutical product to be approved for full reimbursement under the national insurance scheme.

In early 2004, Finland's Ministry of Social Affairs and Health (MoSAH) began preparing legislation that would extend the time that brand-name drugs are protected from competition by generic alternatives. Research-based pharmaceutical companies, legislators and civil servants at MoSAH and the Ministry of Trade and Industry worked closely together and produced a report to the Minister of Social Affairs and Health. Parliament approved an amendment to the Finnish Medicine Act in late 2005 that prevents the inclusion of patent-infringing generic pharmaceuticals on national mandatory generic substitution lists. This amendment entered into effect on February 1, 2006.

France: France's new Health High Authority, HAS ("Haute Autorite de Sante"), an advisory body set up by the French government to spur French healthcare reform, began its activities on January 1, 2005. HAS plays a critical role in assessing the expected or actual clinical benefit delivered by healthcare products, procedures and services, and advises on decisions about inclusion of a product, medical device, health technology or procedure on the list of products and services that qualify for reimbursement under the French Social Security system. Since its inception, HAS has recommended that 221 drugs be removed from the list of reimbursable drugs. In spite of complaints from pharmaceutical companies, the new agency confirmed that France would maintain its own, separate assessment of innovative drugs, even after these products have been granted a Marketing Authorization under the Centralized European Procedure. HAS notes that the specific features of the French healthcare environment will have to be taken into account but that France intends, where possible, to initiate a strategy of alliances with other similar healthcare bodies in the EU.

Germany: As part of a broader health-care reform package, Germany introduced a reference pricing scheme on generic and patented pharmaceuticals on January 1, 2005. U.S. firms contend that they bear the brunt of cost-containment by virtue of their dominance (25 percent) of the German market. U.S. pharmaceutical companies note serious concerns about lack of transparency and fairness in the decision-making process related to the new reference pricing scheme, which does not provide a fair rate of return for patented, innovative medicines. Additional cost constraint measures were imposed through the combining of patented, innovative products with generic products, known as "jumbo groups." Both reference pricing and its variant, jumbo groups, are strongly opposed by U.S. pharmaceutical companies. The U.S. Government has raised this issue repeatedly with the German government, including during the visits of interagency U.S. health policy delegations to Berlin in June 2005 and February 2006. Legislation that went into effect in May 2006 clarified how drugs are declared innovative and provided more transparency in the decision-making process, addressing some industry concerns. The German government has continued to debate new, broader healthcare reform legislation, but the packages put forward to date have not contained further measures that would alleviate the disadvantages to U.S. and other countries' producers of innovative pharmaceuticals.

Hungary: In June 2004, the Hungarian government and various pharmaceutical companies signed a contract to end price freezes until December 31, 2006 and return drug prices to March 2004 levels. In addition, a draft document by the State Reform Committee suggests that healthcare spending could remain at current levels until 2010, in effect extending a June 2004 agreement that limits health budget increases to 5 percent. This measure, in conjunction with an October 2005 cap on company payments to the health budget, could have negative results for drug manufacturers, since current regulations state that pharmaceutical companies are responsible for financing gaps in the drug subsidy budget. Finally, the government of Hungary initiated a generic drug program in June 2005 encouraging doctors to prescribe alternatives to the name brands as part of its "100 steps" program.

Italy: U.S. companies have raised concerns about Italian government measures that they believe will have a deleterious impact on their business and could have a negative impact on patient care. Among these are: (i) an across-the-board decrease in reimbursement prices for almost 300 drugs now on the reimbursement list; (ii) an increase in the amount that industry must "pay back" to the central government for regions' annualized overspending on pharmaceuticals; and (iii) additional discounts on certain classes of drugs that will disproportionately disadvantage U.S. research-based companies. U.S. companies are eager to continue a dialogue with the Italian government to improve transparency in Italy's cost-containment measures and look for solutions that provide the greatest value in terms of potentially life-saving innovation and patient care.

Lithuania: Some pharmaceutical products in Lithuania are sold at very low prices to consumers. The government reimburses pharmaceutical manufacturers the difference between this price and a price set by the health insurance law. The Lithuanian government amended this law on July 5, 2005, to change the formula used to calculate this price. The new formula yields a price that is 5 percent less than the average price of the drug in six Central and Eastern European countries. Pharmaceutical manufacturers are not required to participate in this system, and outside of this system, they are free to market their products and charge market prices.

The Netherlands: The Dutch Ministry of Health views pharmaceuticals as a prime target for savings in its national healthcare budget. Industry asserts that the Ministry does not fully recognize the added value of incremental innovation. Various measures are in force or planned that delay the reimbursement of new compounds or favor generic drugs. The current multi-party agreement between the Ministry of Health, insurers, pharmacists, and generic manufacturers was extended for another year in 2005. Nefarma, the association representing the innovative industry, joined the agreement on January 1, 2005. Under the current agreement, Nefarma members will reduce their prices of multi-source brands (out-of-patent products for which there are generics available) by an average of 40 percent. This reduction affects older products, while new, innovative products are protected. Discussions among the same stakeholders now have the objective of either extending the multi-party agreement after the end of 2007 or to modernize the current reimbursement system and/or the Pharmaceutical Pricing Act.

Poland: For several years, the Polish government has alleged that foreign pharmaceutical companies charged excessive margins for drugs and owed hundreds of millions of dollars in fines under a 2000-2002 ordinance related to pharmaceutical pricing. Although this ordinance was subsequently struck down by Polish courts, the issue remains unsettled and subject to potential legal action by both the National Health Fund and Finance Ministry. Poland has thus far ignored requests for EU arbitration of this issue. The uncertainty and amount of the potential fines threaten not only future investment, but also the existing investments of foreign innovative pharmaceutical firms in Poland.

In July 2006, the Polish government instituted a 13 percent across-the-board price cut on all imported pharmaceutical products. The Polish government contended that it cut prices in response to exchange rate changes. According to the U.S. pharmaceutical industry, however, the Polish government makes reimbursements in Polish zloty and should therefore be unaffected by exchange rate variations. The pharmaceutical industry has also raised questions of WTO-consistency, on the grounds that the regulation applies only to importers. The European Commission is investigating the consistency of the price reductions with EU rules. In September 2006, some foreign pharmaceutical companies were issued additional price reductions to hospital supply products ranging from 4 percent to 34 percent that entered into effect in early October 2006. No explanation was given for the reductions.

Polish legislation requires that the Ministry of Health update its drug reimbursement list at least once a year. It is from this list that doctors most often prescribe drugs as purchases are subsidized by the Polish National Health Fund, making them more affordable for patients. In the seven years prior to December 2006, the Polish Ministry of Health added only four innovative drugs to its reimbursement list. Failure to add drugs to the reimbursement list seriously undermined U.S. and international innovative drug producers' market position in favor of the Polish generic industry. In December of 2006, the Health Ministry added 12 new innovative drugs to its reimbursement list (comprising over 50 products). The Polish government announced that it plans to add another 20 innovative drugs (comprising over 100 products) to the list in Summer 2007. The U.S. pharmaceutical industry is concerned that reimbursement prices are set arbitrarily and often without transparency. Pending legislation will require the Health Ministry to publish its selection criteria and formalize an appeals process for drugs not selected for the reimbursement list.

Portugal: In September 2006, Portugal enacted the Consumption of Medicine in Hospitals statute, an adaptation of EU Directive 2004/27/EC. The statute restricts the introduction of new medicines in hospitals, with the exception of generics, by requiring studies demonstrating that the new drugs are more cost effective than the generic versions. An individual study can cost up to $50,000 and take one year to complete. This restriction already existed for new entries in the retail sector. Industry estimates that these requirements will result in a cost to U.S. firms of $315,000 in studies and $12.6 million in lost sales.

Pharmaceuticals destined for retail and hospital use have been given 0 percent and 4 percent growth ceilings, respectively. If the pharmaceutical industry surpasses these percentages, it will be required to repay the government the overage, not to exceed $30 million and $15 million, respectively.

Substantial delays in government payments to the pharmaceutical industry persist although the government's outstanding debt has decreased from $1 billion in 2005 to $883 million in 2006.

Spain: A pharmaceutical must go through a lengthy and costly approval and registration process with the Spanish Ministry of Health unless it was previously registered in another EU Member State or with the European Medicines Agency. This process delays the entry of innovative pharmaceuticals into the Spanish market. Further delays are caused by a lengthy administrative pricing process, coupled with onerous government reimbursement procedures.

Slovakia: U.S. and European pharmaceutical companies complain that a Slovakian Ministry of Health decree (No. 723/2004), which went into effect on October 15, 2005, further reduces the transparency of government decisions regarding the pricing and reimbursement decisions for medicines prescribed by national health insurance. The decree specifies the rules to be applied in determining the price of the medicinal product and level of reimbursement. The original decree provided detailed rules for the calculation of the price and the level of reimbursement. However, recent amendment of the decree cancelled the detailed rules for determining the reimbursement amount and, instead, provided the Ministry of Health, as the deciding authority, with wide discretion to decide on the amount of reimbursement without setting a clear set of guidelines for such decisions. All parameters on the list are reviewable by the Ministry of Health four times a year. Since these decisions fall outside the Slovak Administrative Code, there is no formal process for the decisions to be appealed by the companies. The new regulation has increased the subjectivity of the Board's decision-making, thereby minimizing the predictability and transparency of the process.

Slovenia: Non-Slovene pharmaceutical companies have expressed concern about the government of Slovenia's non-transparent procedures in pricing and reimbursement. In November 2005, the government moved to implement Therapeutic Reference Pricing (TRP), most likely as an attempt at reducing government expenditures. Pharmaceutical stakeholders have claimed that this penalizes innovation while rewarding imitation. Through proactive measures by innovative companies, TRP was left out of the New Medicine Law. The threat of TRP continues and will continue as the government of Slovenia tries to reduce government spending on health without enacting measures unpopular with citizens.

Innovative U.S. drug manufacturers continue to face pricing issues, with the government setting price limitations based on a "basket" of "European average prices." Currently, the government is considering an option to match its price to the lowest price in the "basket" rather than the average, threatening to further inhibit Slovenian consumers' access to new drugs. Slovenian regulations require health professionals to prescribe drugs with the lowest price in their group as stated on the Interchangeable Drug List (IDL). These are the only drugs that are fully reimbursed under the state insurance plan.

United Kingdom (UK): The UK's National Institute for Health and Clinical Excellence (NICE) is responsible for judging the clinical and cost-effectiveness of new and existing drugs, treatments, and medical devices, and providing guidance to the UK's National Health Service (NHS) on whether the NHS should fund a treatment. NICE's review is in addition to the normal national approval process through the UK's Medicines and Healthcare Products Regulatory Agency. The slow implementation and lack of transparency of NICE guidance is a disincentive for U.S. and European pharmaceutical companies to launch innovative products in the UK.

The UK also limits the profits pharmaceutical companies are allowed on their sales to NHS through the Pharmaceutical Price Regulation Scheme (PPRS), which requires companies that sold more than $2 million worth of branded medicines to the NHS in the previous year to reduce prices by 7 percent. Companies that exceed the profit target by more than 40 percent must refund the excess either as a lump sum payment to the Department of Health or as price reductions to the NHS. The Office of Fair Trading has recommended replacing the PPRS with a value-based pricing system.

Uranium Imports

The United States is concerned that EU policies may restrict the import into the EU of enriched uranium and possibly downstream goods such as nuclear fuel, nuclear rods, and assemblies. Since 1992, the EU has maintained strict quantitative restrictions on imports of enriched uranium to protect its domestic producers. Since 1994, these restrictions have been applied 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 impose explicit quotas on imports of enriched uranium, limiting imports to only about 20 percent of the European market. The United States has raised concerns about the import quotas and the non-transparent nature of the Corfu

Declaration and its application. Further, the United States is closely monitoring whether future EU agreements with Russia under negotiation in the nuclear area will follow WTO rules on import quotas and transparency.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Overview

With the decline of traditional transatlantic trade barriers, EU regulatory measures are increasingly viewed as impediments for U.S. exporters of manufactured and agricultural products. Compliance with divergent technical regulations and standards for products sold in the United States and the EU imposes additional costs on U.S. exporters (e.g., duplicative testing, product redesign) and increases the time required to bring a product to market. Such costs for U.S. exporters are compounded by a lack of transparency in the development of EU regulations and a lack of meaningful opportunity for non-EU stakeholders to provide input on draft EU regulations and standards. To address these systemic concerns, the United States continues to promote greater U.S.-EU regulatory cooperation and enhanced transparency in the EU regulatory system.

Despite often sharing similar regulatory objectives, the U.S.-EU dialogue frequently is unable to promptly resolve regulatory-based trade problems. In particular, many U.S. exporters view the EU's growing use of its "precautionary principle" to restrict or prohibit trade in certain products, in the absence of a scientific justification for doing so, as a pretext for market protection. Further, EU regulatory barriers are often compounded by multiple and overlapping measures affecting particular products. Poultry, beef, agricultural biotechnology products, and wine are examples of products that face multiple layers of restrictive regulation in the EU marketplace. To illustrate:

- U.S. efforts to reopen the EU to U.S. poultry exports have been hindered by multiple obstacles. As a result, resolution of any one obstacle (e.g., the EU allowing the use of alternative antimicrobial treatments on poultry meat) would not necessarily result in a reopening of trade due to the existence of other obstacles (such as requirements regarding on-farm practices for raising poultry). Beef trade faces similar problems.

- U.S. exporters of agricultural biotechnology products have been harmed not only by the *de facto* moratorium on approving new products but also by the existence of certain Member State prohibitions on products already approved for marketing within the European Community. This was the subject of a successful WTO challenge by the United States.

- Despite the recent conclusion of a U.S.-EU agreement on wine trade, U.S. wine exporters are still confronted by the uncertainty surrounding the EU's restrictions on labeling practices, as well as high tariffs, heavy subsidization of EU wine producers, uneven recognition of wine labels at the Member State level, failure to provide protection for foreign GIs, and public affairs campaigns denigrating the quality of U.S. wine.

Standardization

Given the massive U.S.-EU trade relationship and the volume of EU standardization work in regulated market segments, European standards activities are of considerable importance to U.S. exporters. A number of standards-related problems continue to impede U.S. exports, including a general inability to participate in the formation of EU standards and occasional reliance on design-based, rather than performance-based, standards. Disparities between the practices of some European conformity assessment bodies add to the frustration and cost for American exporters. In addition, there are concerns related to the procedures, responsibilities (e.g., accountability and redress), and lack of transparency in the Member States, the European Commission, and the European standards bodies. In the case of many sectors, European directives and their relevant standards pose a significant impediment to American exports.

Pressure Equipment: In May 2002, the EU Pressure Equipment Directive (PED) entered into force, imposing new requirements on manufacturers of such equipment. Previously, pressure equipment manufacturers could demonstrate conformity based on standards for material specifications, including the U.S. ASME Code. Manufacturers using the ASME Code may now be excluded from the EU market because the European standards incorporate material specifications slightly different from those found in the ASME Code. In the absence of a full set of harmonized EU standards, the PED permits manufacturers to file for an EAM (European Approval of Materials); however, few requests for EAMs have been approved so far. Another option, the Particular Material Appraisal (PMA), is a costly process for which there are no clearly defined procedures in the PED. In light of these factors, U.S. manufacturers seek continued acceptance of materials that meet the ASME code that have been widely used in Europe for decades prior to the PED. In an effort to bring the two sides closer together, U.S. and EU officials and stakeholders agreed to a pilot project to eliminate redundant testing requirements for materials. The two sides are beginning technical cooperation, starting with an attempt to harmonize several testing standards.

The Netherlands: The Dutch parliament has shelved consideration of a proposed amendment to the Environmental Management Act that could have significantly impacted U.S. exporters of wood products. The amendment would have required assessment criteria to be equivalent to one particular certification program to the exclusion of others, require a declaration on where the wood is produced, as well as an auditor's report of delivery. The amendment was shelved following an agreement between the Dutch government, wood industry, and NGOs on a certifying system to test sustainable produced wood.

Agricultural Biotechnology Products

Since 1998, the European Union's Council of Ministers has not managed to assemble a qualified majority of EU Member States in support of agricultural biotechnology product approvals, despite the lack of any legitimate health or safety reason not to approve them. While the European Commission granted approval for a limited number of biotechnology products under its legislative authority, the United States considers that the EU continues to lack a predictable, workable process for approving these products in a way that reflects scientific, rather than political factors. At the level of the EU Council, it is clear that many Member States still actively support and maintain a *de facto* moratorium on product approvals.

In May 2003, the United States initiated a WTO dispute settlement process related to the EU's *de facto* moratorium on approvals of biotechnology products and to the existence of individual Member State marketing prohibitions on previously approved biotechnology products. The panel hearing this dispute delivered its interim report in February 2006 and published the final report on September 29. The European Commission has not yet indicated how it plans to implement the panel report.

Several Member States have imposed marketing bans (safeguard measures) on some biotechnology products that had been previously approved at the EU level. On June 24, 2005, the Environment Council rejected, by a qualified majority, the eight Commission proposals to lift safeguard measures imposed by five Member States against biotechnology maize. On October 5, 2005, the European Court of Justice ruled against Upper Austria's effective ban on growing biotechnology crops since there was no scientific evidence to substantiate the ban.

Recent public attacks on the EU's independent scientific authority, the European Food Safety Authority (EFSA), appear to be slowing down the approval process. Specifically, the European Commission published a proposal on April 12 on improving the agriculture biotechnology legislative framework that has been implemented retroactively on EFSA biotechnology food safety opinions. In 2006, the Austrian EU Presidency presided over the debate on EFSA and also attempted to revise decision-making criteria for biotechnology approvals, despite the fact that the Member States had approved the decision-making procedure presently in place. The Environment Council did push the Commission to revisit criteria for EFSA scientific opinions; this could create further undue delays of biotechnology product approvals.

On August 18, 2006, USDA announced that a biotechnology rice variety (LL 601) had been detected in samples taken from U.S. long grain rice. At that time, LL601 was not approved for marketing in either the EU or the United States, but has since been deregulated in the United States. While both the EU and the United States have reviewed the available scientific data and concluded that there are no human health, food safety, or environmental concerns associated with this rice, the DG for Health and Consumer Protection (DG SANCO) directed the 25 Member States to test products for the presence of LL 601 rice in their markets. Trace elements were found in both bulk shipments and in processed food products, resulting in product rejection and destruction. However, differences in testing protocols on both sides of the Atlantic raised questions about the reliability of testing. In response, the U.S. Government began intensive talks with EU officials to establish a common protocol for bulk shipments from the United States in an effort to avoid mandatory testing upon arrival in the EU. These talks failed to produce an agreement and the Commission, with Member State support, introduced mandatory testing at destination, effective October 23, 2006. This has had the effect of continuing the effective embargo on trade in rice from the United States.

Co-existence: In accordance with the European Commission's guidance document on the co-existence of biotechnology and conventional crops, which recommends a regional approach to co-existence issues, a number of Member States (including Spain, Denmark, Germany, Italy, the Netherlands and most regions in Austria) have drafted new co-existence laws or have chosen to provide industry guidance. While the decrees/laws vary substantially from country to country, they generally require extensive control, monitoring and reporting of biotechnology crops. The European Commission may initiate infringement proceedings against a Member State's co-existence law if it is judged to be incompatible with EU law. However, there is no time limit on how quickly the Commission must act. The European Commission and the Austrian EU Presidency co- hosted a Conference on Co-existence in April 2006. In addition to the Conference's conclusion that there was a need for all Member States to define their co-existence policy, there was a call for a European-wide seed threshold to assist governments in choosing scientifically-based separation distances.

Traceability and Labeling: In April 2004, EC Regulations 1829/2003 and 1830/2003 governing the approval, traceability and labeling of biotechnology food and feed became effective. The regulations include mandatory traceability and labeling for all biotechnology and downstream products. Among the traceability rules are requirements that information that a product contains or consists of biotechnology products must be transmitted to each operator throughout the entire supply chain. Operators must also have a standardized system in place to keep information about biotechnology products and to identify the operator by whom and to whom it was transferred for a period of five years from each transaction. The requirements include an obligation to label appropriate products and to indicate if the food is different from its conventional counterpart in composition, nutritional value, intended use or health implications.

In some cases, these burdensome directives have already severely restricted market access for U.S. food suppliers because food producers have reformulated their products to eliminate the use of biotechnology products. Food producers have indicated concern about needing to find expensive or limited alternatives. The Directives generally are anticipated to have a negative impact on a wide range of U.S. exports, including processed food exports. The European Commission issued a report in spring 2006 on the implementation of the traceability and labeling directive that was largely inconclusive because of the limited number of products containing biotechnology material that have entered the EU market.

Austria: The Austrian Biotechnology Law allows, in principle, for planting of biotechnology crops. However, strict and complicated rules on liability and compensation still represent a *de facto* barrier against all EU-approved biotechnology crops. All nine Austrian provinces have passed biotechnology precautionary bills to protect their organic and small-scale agricultural sector. Three Austrian ordinances still ban the planting of all EU-approved biotechnology crops and a new fourth ordinance bans the marketing of a biotechnology oilseed rape. Under current Austrian rules, unapproved biotechnology events must not be detected in conventional seeds ("zero tolerance"), but EU-approved events may be present in conventional and organic seeds up to 0.1 percent.

Driven by political rather than scientific factors, the government of Austria has effectively banned most agricultural biotechnology applications apart from research. All major Austrian supermarket chains have banned biotechnology products from their shelves, even those labeled according to EC regulations.

Baltic countries: In Estonia, Latvia, and Lithuania, the scientific community in each country broadly agrees that the technology is safe and can provide benefits to producers and consumers. Some officials in Estonia and Latvia have expressed interest in the potential use of biotechnology for industrial purposes, such as the production of paper from high-starch potatoes and cellulosic biofuel from willows and grasses.

Despite concerns, all three countries are moving forward with developing co-existence regulations and agreed to a general framework for such regulations in July 2006. The proposed documentation and registration requirements for farmers wishing to plant biotechnology seed are quite onerous in each of the country's draft proposals. Currently, interest in biotechnology among Baltic farmers does not seem high, because the region's climate is less favorable for the biotechnology seed varieties currently approved in the EU. New seed varieties could stimulate interest, but onerous co-existence requirements could slow or even stifle use.

Cyprus: Cyprus has adopted increasingly tough standards for biotechnology products, which, in some cases, exceed minimum EU requirements. For example: (a) GOC application requirements for new agricultural biotechnology crops are more arduous than in other EU countries; (b) permits for such crops must be renewed every five years; and (c) the GOC has declared as "GMO-free" areas under the Natura 2000 project (corresponding to 14 percent of Cyprus). Biotechnology products that are already licensed in the EU may circulate in Cyprus freely. However, biotechnology organisms must be approved, even if they are already licensed in other EU countries.

France: A biotechnology bill transposing EU Directives 1998/81 and 2001/18, which provides for co-existence measures, and revises the regulatory approval process for France, passed the Senate in March 2006 but has not been considered by the National Assembly. It is unlikely that the bill will proceed further in the legislative process before the May 2007 national elections. The French government will be required to pay penalties to the European Commission (EC) if the Directives 1998/91 and 2001/18 are not transposed on time. Notwithstanding the lack of co-existence regulations in France, biotechnology corn production increased from 500 hectares in 2005 to 5,000 hectares in 2006. France has consistently entertained applications for biotechnology research plots and accepted 30 applications for research in open-fields in 2006. In addition, since 2004, France has, at the EU level, voted in favor of certain biotechnology products under Directive 2001/18.

In 2005 and 2006, anti-biotechnology activists destroyed more than 50 percent of test fields in France and recently attacked several commercial biotechnology corn fields. The French Ministry of Agriculture issued two press communiques this summer condemning the destruction of research and commercial crops that are produced legally in France. The communiques were particularly noteworthy, since before these incidents, the Ministry did not have a strong track record of condemning such behavior. Agriculture Minister Bussereau affirmed his support to farmers and researchers stating that firm instructions had been given to local authorities to guarantee the security of biotechnology test plots and that legal proceedings will be launched systematically against those who destroy biotechnology crops.

Germany: In November 2005, the new grand coalition government decided to re-examine the biotechnology law with the goal of making the legal rules for biotechnology crops more practicable. As of November 2006, this had yet to occur because of the lack of consensus on several key points, including liability. Also in November 2005, Germany approved five Bt corn varieties for commercial planting. In 2006, farmers mainly in eastern Germany planted 950 hectares of Bt corn compared to about 300 hectares in 2005. The seed industry is optimistic that the Bt corn area will rise further in 2007. In the summer of 2006, farmers interested in biotechnology seeds founded a self-help organization for farmers interested in biotechnology crop production called InnoPlanta AGIL which has carried out several outreach and educational activities. Despite these positive developments, the number of vandalistic field destructions increased in 2006.

Greece: Greece has opposed the introduction of biotechnology seeds for field tests, despite support for such tests by Greek farmers and Greece's agricultural science community.

Hungary: Extensive biotechnology research is taking place in Hungary, and the Hungarian government has allowed field tests for herbicide resistant corn, wheat and other crops. Although Hungary is required to adopt all relevant EU biotechnology legislation, Hungary has not yet prepared the national application rules for the EU biotechnology regulations on food and feed, and traceability and labeling. In early 2007, the EU Council again upheld Hungary's "safeguard clause" and with it a January 2005 Hungarian moratorium on corn varieties containing the Monsanto MON 810 event. The measure bans the production, use, distribution, and import of hybrids deriving from the MON 810 maize lines. The ban applies to seed producers and distributors as well as farmers. The moratorium is being addressed in the context of the country's co-existence legislation, which is currently awaiting Parliamentary approval and serves as the regulatory framework through which Hungary views biotechnology in the agricultural sector.

Italy: There are varying positions on agricultural biotechnology products among Italy's Ministries of Health, Agriculture, and Environment. The Ministry of Agriculture has imposed rigorous thresholds for seed purity in an effort to minimize the risk of adventitious presence. Current regulations permit only the minimum detectable 0.05 percent of biotechnology seeds to be present. In the case of soybeans used for animal feed, the Ministry of Agriculture allows the use of imported biotechnology beans, as the Ministry is unable to meet Italian feed demand from non-biotechnology sources.

On November 29, 2004, the Regional Administrative Tribunal (TAR) of Lazio (which includes Rome) annulled the decree banning the commercialization of four EU-approved biotechnology corn varieties (BT11, MON 810, MON 809, and T25). Separately, in March 2006, the Italian High Court ruled that coexistence legislation enacted by Parliament was unconstitutional. In its ruling, the Court stated that Italy's regions are responsible for the development of co-existence legislation. The regions are engaged in this task, although only a few are expected to consider the interest of farmers in the process. The United States is concerned that this legislation could discourage biotechnology crop planting and will watch developments closely.

Luxembourg: Luxembourg remains staunchly opposed to biotechnology crops, banning the marketing or growing of biotechnology crops and opposing the approval of new biotechnology products for EU use. Luxembourg acknowledges that their national ban is a problem for the EU with regard to WTO obligations (Luxembourg was one of the six member states whose bans were the subject of a WTO dispute in which the WTO dispute panel found such bans to be inconsistent with WTO rules), but the issue remains politically explosive due to highly vocal opposition. Despite the EU Commission's continued efforts in 2006 to have Luxembourg withdraw its national ban, the law remains in effect. Legislation which would regulate the growing of biotechnology crops in Luxembourg remained stalled in a parliamentary committee for a second year. However, the Luxembourg Chamber of Deputies adopted a law implementing EU directive 98/44/CE on the legal protection of biotechnological inventions of 1998.

Poland: The Polish government opposes the use of biotechnology and in mid-2006 enacted legislation that bans the sale and registration (but not planting) of biotechnology seeds. In two years, it will prohibit the production, import and sale of animal feed produced from transgenic crops.

In contrast to the government's opposition to biotechnology products, many well-respected local scientists and a number of farm groups support their use. Support among farmers is growing along with the spread of the European corn borer into Poland's western corn producing regions.

The EU has notified Polish officials that their seed ban violates EU obligations but the government remains committed to its legislation. The ban may raise WTO concerns, as WTO obligations require that sanitary and phytosanitary regulations be based on science. If the ban on biotechnology feed were to be enforced, it could have a devastating impact on Polish livestock production, especially pork and poultry.

With the exception of some animal feed sales, the United States currently has little biotechnology trade with Poland, but there is strong interest in marketing transgenic seeds in the country. Poland currently does not produce any transgenic crops, with the possible exception of minor quantities grown for research purposes. Poland annually imports about 1.5 to 2.0 MMT of soybean meal, most of which is produced from transgenic soybeans. While the majority of these imports are from Argentina, some are transshipped U.S.-origin soybeans.

Portugal: Portugal, one of only five EU countries to cultivate biotechnology crops, began planting biotechnology corn in 2005. Biotechnology crops are expected to reach 1400 hectares in 2006, twice the 2005 level. However, 2005 co-existence legislation and current proposed legislation to establish biotechnology-free areas will likely constrain further expansion of biotechnology corn.

In early 2006, the government of Portugal established the Authority for Food and Economic Safety (AFES) under the auspices of the Ministry of Economy. AFES works with the European Food Safety Authority to conduct biotechnology assessment, risk monitoring and communications.

Romania: Romania's adoption of EU legislation on biotechnology has resulted in significant change of policy regarding biotechnology. Before 2006, Romania was the largest planter of biotechnology soybeans in Europe. Despite protests from domestic producers, Romania decided to drastically limit biotechnology cultivation in 2006 and to totally ban it in 2007.

Spain: Spain remains the EU member with the largest area under biotechnology corn cultivation. However, the current government tends to take a more restrictive position with respect to agricultural biotechnology. As a result, Spain typically abstains on Commission proposals for approving biotechnology events. Moreover, Spain recently released proposed regulations that would impose 220 meter distance requirements between conventional, organic and biotechnology crops. If approved, biotechnology use is likely to decline in Spain.

Barriers Affecting Trade In Cattle, Beef, Poultry, And Animal By-Products

A variety of EU measures, outlined below, have the effect of severely restricting U.S. exports of livestock products to the European Union market. The adoption of EU non-tariff barriers by Romania and Bulgaria in the process of acceding to the EU in 2006 resulted in the loss of significant markets for U.S. exports.

EU Hormone Directive

In 1988, the EU provisionally banned the use of substances that have a hormonal growth-promoting effect in raising food-producing animals. This action effectively banned the export to the EU of beef from cattle raised in the United States. The use of hormone implants is approved by the U.S. Food and Drug Administration and is a common practice in U.S. beef cattle production. The United States launched a formal WTO dispute settlement procedure in May 1996 challenging the EU ban. In 1999, the WTO ruled that the EU's ban was inconsistent with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) because it was not based on a scientific risk assessment, and authorized the United States to impose sanctions on EU products with an annual trade value of $116.8 million.

In September 2003, the EU announced the entry into force of an amendment (EC Directive 2003/74) to its Hormone Directive (EC Directive 96/22). The new Directive recodified the ban on the use of estradiol for growth promotion purposes and established provisional bans on the five other growth hormones included in the original EU legislation. With enforcement of this new Directive, the EU argued that it was now in compliance with the earlier WTO ruling.

At present, the United States continues to apply 100 percent duties on $116.8 million of U.S. imports from the EU. In November 2004, the EU requested WTO consultations with the United States on this matter, claiming that U.S. sanctions were no longer justified. The dispute is now before a WTO panel, which is expected to publish its findings in the spring of 2007. The United States maintains that the revised EU measure cannot be considered to implement WTO recommendations and rulings related to this matter, and that the U.S. sanctions therefore remain authorized.

Animal By-Products Legislation

In October 2002, the European Commission approved EC Regulation 1774/2002, which regulates the importation of animal by-products not fit for human consumption. The regulation went into force in May 2004. During 2003, intensive technical discussions between U.S. and EU officials successfully addressed some issues and prevented trade disruption for a significant portion (at least $300 million) of U.S. exports to the EU of animal by-products. However, it is estimated that with the publication of the final text, about $100 million of U.S. animal by-product exports to the EU remain adversely affected to some degree. In particular, the United States remains concerned about various outstanding issues for which the EU has not provided risk assessments, such as a ban on the use of dead-in-transport poultry in pet food. The U.S. exports remaining most exposed to this regulation are dry pet food, other animal protein products, and some hides and skins. It is unclear as to the regulation's overall effect on further downstream products such as certain *in vitro* diagnostic products that may use animal by-products. In October 2005, the Commission presented a report to the EU Parliament recommending amendments to EC Regulation 1774/2002. Any agreed amendments would need to be voted on by the EU Parliament. The U.S. commented extensively on this report, which was also notified to the WTO. Furthermore, the Commission organized a conference on animal by-products in Brussels on September 20, 2006, following three sessions of a Training Initiative Pilot Program which took place in June, July and August 2006. The United States used this opportunity to share with Member States the numerous problems exporters have encountered with the 1774/2002 Regulation resulting from inconsistent interpretation and implementation by Member States. The U.S. Government will continue to seek progress on this issue in the short- and mid-term. A series of other products and issues under discussion are not expected to make it through the EU legislative process for another two years.

Poultry Meat Restrictions

U.S. poultry meat exports to the EU have been banned since April 1, 1997, because U.S. poultry producers currently use washes of low-concentration anti-microbial treatments (AMTs) to reduce the level of pathogens in poultry meat production, a practice not permitted by the EU sanitary regime. In December 2005, the European Commission's Food Safety Authority completed studies of four AMTs and found them to be safe, and in February 2006, the European Commission's Health and Consumer Protection Directorate General circulated the first draft of its proposal to allow those substances to be used on poultry meat in the EU market. That draft regulation proposed to ban the use of more than one AMT and require poultry treated with AMTs to be rinsed after treatment. These two requirements are not fully consistent with U.S. production methods and will limit some U.S. exporters' ability to trade poultry to the EU under this regulation, but would nonetheless mark a lifting of the ban on U.S. poultry exports. In 2007, the United States will continue to push for a regulation allowing the use of AMTs to be finalized in the EU legislative process.

Lithuania: Lithuanian veterinary officials have started to more strictly enforce EU transshipment regulations, especially those that they interpret to apply to labeling. As a result, products with labels that do not include the language of the destination country or with labels that indicate a destination other than the actual destination may be detained. For example, Lithuanian officials recently detained a shipment of U.S. poultry with labeling in Chinese destined for Kazakhstan, even though Kazakhstan permits such imports.

Finland and Sweden: The European Commission has granted both Finland and Sweden extensions of the derogations approved in their EU accession agreements, which allow both countries to continue to enforce stricter salmonella controls and stricter border controls for live animals (quarantine) than those enforced by other EU Member States. These countries also impose strict requirements regarding the importation of fresh (including frozen) meat, ground meat, and meat preparations, (with the exception of heat-treated meat) and table eggs.

Romania and Bulgaria: The European Commission has granted some Romanian and Bulgarian domestic meat-processing facilities a transition period for adopting certain EU poultry and pork meat requirements until 2009. Imports from non-EU sources, such as the United States, however, must immediately comply with the EU requirements, creating a national treatment issue. This change has practically put an end to trade in what was previously the top U.S. agricultural export to Romania, frozen broiler chickens. U.S. pork imports have also been adversely affected. The United States has raised these national treatment concerns in the WTO Sanitary and Phytosanitary Committee.

Barriers Affecting Vitamins and Health Food Products

France: France transposed its list of permitted vitamin and mineral preparations to be added in food supplements as established in EU Directives 2002/46/EC and 2006/37/EC in March 2006. However, France adopted a decree in May 2006 to set tolerance levels and daily allowance for vitamins and minerals that are not in accordance with standards established in relevant EU Directives.

Greece: In implementing the EU Food Supplement Directive, Greece restricted the sale of protein-based meal replacement products to pharmacies and specialized stores, limiting the ability of U.S. companies to sell such products through direct sales.

Spain: Spain has restrictive practices with respect to the use of vitamins and health food products. Since March 2002, Ministry of Health inspectors have raided health food shops and removed 227 different types of health food products from the market. Although the EU passed a new Directive on dietetics, Spain maintains its restrictive policy with regard to limits in vitamin and mineral composition.

EMERGING REGULATORY BARRIERS

In addition to the previously mentioned trade barriers arising from EU policies regarding standards, testing, labeling, and certification, the United States has serious concerns about the ongoing development of new regulations that would appear to have serious adverse consequences for U.S. exporters in the future. The United States is actively engaging the European Union with respect to the issues outlined below.

EU Directive on Wood Packaging Material (WPM)

In February 2005, the EU suspended its plan to implement a new Directive on wood packaging material (WPM) that could affect up to $80 billion worth of U.S. agricultural and commercial exports to the EU that are shipped on wooden pallets or in wood packaging materials. The Directive, published by the European Commission on October 5, 2004, would place a debarking requirement, in addition to heat treatment fumigation, on WPM from the United States and other countries.

The EU Directive is more restrictive than the international standard established by the International Plant Protection Convention (IPPC), Guidelines for Regulating Wood Packaging Material in International Trade (IPSM-15). IPPC members, including the EU, approved ISPM-15 to harmonize and safeguard WPM requirements in world trade. IPPC members approved specific treatments and the marking of WPM but did not support a debarking requirement in the absence of a scientific justification. The IPPC continues to assess emerging scientific studies related to this issue. EU Member States approved a further postponement of the unilateral debarking requirement until December 2008, with a review of the issue scheduled for 2007.

Chemicals

In October 2003, the European Commission presented its proposal for a massive overhaul of existing EU chemicals regulation. The proposal, called REACH (Registration, Evaluation, and Authorization of Chemicals), requires all chemicals produced or imported into the EU in volumes above one ton per year (affecting approximately 30,000 chemicals) to be registered in a central database, and imposes new testing and marketing requirements. Chemicals of very high concern would need an authorization for use in the EU. This legislation could impact virtually every industrial sector, from automobiles to textiles because it regulates substances on their own, in preparations, and in products.

While the United States supports the EU's objectives of protecting human health and the environment, it questions the workability of the present approach. A risk-based approach would allow the EU to address its environmental, public health and safety priorities while avoiding the imposition of disproportionate costs, large burdens on vital substance and product manufacturers and importers, and avoid the likely adverse impacts on trade and innovation. Many of the EU's trading partners expressed similar concerns.

In December 2006, the EU reached agreement on its final regulation. REACH is to enter into force on June 1, 2007. The United States will continue to monitor closely the implementation of this EU regulation and remain engaged constructively with the EU to ensure that U.S. interests are protected.

Cosmetics

The EU's cosmetics directive calls for an EU-wide ban on animal testing within the EU for cosmetic products and an EU-wide ban on the marketing/sale of cosmetic products that have been tested on animals, whether such testing has occurred inside or outside the EU. It will prohibit the sale in the EU of U.S. cosmetics products tested on animals as of 2009 or 2013 (depending on the type of test) or earlier if the European Community has approved an alternative testing method.

To minimize possible trade disruption, the U.S. Government and the European Commission have embarked on a joint project to develop harmonized, alternative, non-animal testing methods. The project involves cooperation between the U.S. Interagency Coordinating Committee on the Validation of Alternative Methods and the European Center for the Validation of Alternative Methods (ECVAM). The aim is to develop agreed alternative testing methods that would be submitted to the OECD process for international validation. The validation of alternative methods is a long and expensive process, taking an average of seven years. The EC is actively encouraging ECVAM to pursue alternative methods in the near term.

Waste Management (WEEE and RoHS Directives)

In January 2003, the European Union adopted two Directives in an effort to address environmental concerns related to the growing volume of waste electrical and electronic equipment. The Waste Electrical and Electronic Equipment (WEEE) Directive focuses on the collection and recycling of electrical and electronic equipment waste. The Restriction of the Use of certain Hazardous Substances (RoHS) Directive addresses restrictions on the use of certain substances in electrical and electronic equipment, such as lead, mercury, cadmium, and certain flame-retardants.

Under the WEEE Directive, producers are held individually responsible for financing the collection, treatment, and recycling of the waste arising from their new products as of August 2005. Producers have the choice of managing their waste on an individual basis or participating in a collective scheme. Waste from old products is the collective responsibility of existing producers based on their market share.

Member States were required to transpose the WEEE Directive into national law by August 13, 2004, and to implement it by August 13, 2005. Many Member States are behind in their implementation and do not have their national WEEE registration systems in place. The WEEE Directive required that by December 31, 2006, Member States ensure a target of at least four kilograms of electrical and electronic equipment per inhabitant per year is being collected from private households. The policy is intended to create an incentive for companies to design more environment-friendly products.

Under the RoHS Directive, as of July 1, 2006, the placing on the European market of electrical and electronic equipment containing lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls, and polybrominated diphenyl ethers is prohibited, with some limited exemptions. The Commission Decision, published on August 18, 2005, established maximum concentration values of 0.1 percent by weight in homogenous materials for lead, mercury, hexavalent chromium, polybrominated biphenyls (PBB), and polybrominated diphenyl ethers (PDBE) and 0.01 percent by weight in homogenous materials for cadmium.

Some U.S. companies seeking to comply with the RoHS Directive claim to face significant commercial uncertainties. Firms assert that they lack sufficient, clear, and legally binding guidance from the EU on product scope and, in cases where technically viable alternatives do not exist, businesses face a lengthy, uncertain, and non-transparent exemption process. The European Commission will consider RoHS exemption requests on an ongoing basis, and will be regularly reviewing the need for existing exemptions. Some exporters claim that the uncertainty about RoHS provisions is having an adverse impact on companies as they must make practical design, production, and commercial decisions without adequate information.

Increasing the uncertainty for U.S. manufacturers is the fact that enforcement of RoHS will be managed at the national level. In the absence of a common approach to approval and established EU-wide standards and test methods, a product may be deemed compliant in one country and non-compliant in another.

Given the substantial impacts of RoHS substance bans on international trade, the U.S. Government has urged the European Commission to provide sufficiently detailed, legally binding guidance to give companies seeking to comply with RoHS commercial certainty. The United States has also urged the Commission to make the exemption process more efficient and transparent so that companies can have definitive answers more promptly on whether and how the Directive will apply to their products and to move towards greater harmonization of approaches in the implementation and enforcement of both Directives.

Battery Directive

In 2003, the European Commission proposed a revised version of the 1991 EU Battery Directive. The aim of the new Directive is to collect and recycle all waste batteries and to prevent their incineration and disposal. Producers must finance the collection, treatment, and recycling of waste batteries. On the issue of nickel cadmium (NiCd), the Commission proposes to set high collection targets rather than a ban. The impact assessment carried out by the Commission identifies this approach for dealing with NiCd batteries as the best option from the environment and economic points of view.

In July 2006, the European Parliament and the EU Council of Ministers agreed on a compromise to revise the 1991 Directive on batteries and accumulators. The new directive bans batteries containing cadmium (at levels above 0.002 percent) and mercury (at levels above 0.0005percent) but there are exceptions for emergency and alarms systems, medical equipment and cordless power tools. It also provides for collecting and recycling targets to be reached by 2016 at the latest.

Energy Using Products (EUP)

The EU framework directive promoting eco-design for energy-using products (EUP) entered into force on August 11, 2005, and EU Member States have until August 11, 2007, to transpose it into national law. Through this directive, the EU means to regulate the integration of energy efficiency and other environmental considerations at the design phase of a product. Once in place, design requirements will become legally binding for all products sold in the EU. The legislation commits the European

Commission to draw up a working plan for "implementing measures" by July 2007 that will identify products and set specific standards. The directive contains an initial list of products for which technical studies are now underway, including lighting, office equipment, heating equipment, domestic appliances, air conditioning, and consumer electronics, and energy losses from standby modes. The directive sets out CE marking requirements for the items covered by implementing measures. Industry is most concerned about the possible need for a complete product life cycle analysis, and fears adverse impacts on design flexibility, new product development and introduction, as well as increased administrative burdens.

Metric Directive

Beginning January 1, 2010, the European Union Council Directive 80/181/EEC (Metric Directive) will allow the use of only metric units, and prohibit the use of any other measurements for most products sold in the EU. Going well beyond labeling, the Metric Directive will make the sole use of metric units obligatory in all aspects of life in the European Union, including on labels, packaging, advertising, catalogs, technical manuals, and user instructions. This prohibition will end a longstanding practice in the European trade community of allowing manufacturers flexibility on labeling products. When implemented, the Directive will also create an inconsistency with U.S. law. Unless the Metric Directive implementation date is extended again, as of January 1, 2010, displaying U.S. customary units on a box or label will be illegal in the EU. Most American and European companies which make consumer products will be forced to create separate labels, one for the U.S. market including both metric and imperial measurements, and another for the EU market displaying only metric units, therefore imposing additional costs.

Acceleration of the Phase-Outs of Ozone-Depleting Substances and Greenhouse Gases

As part of a wider climate change program to reduce emissions of greenhouse gases to meet its Kyoto Protocol objectives, the European Union adopted legislation in May 2006 to regulate the emission of fluorinated gases (f-gases). The measures improve the containment of f-gases and introduce specific restrictions on their marketing and use in specific applications. Two pieces of legislation were adopted – a regulation on f-gases used in stationary applications and the other, a Directive regulating hydrofluorocarbons (HFCs) in vehicle air conditioning. The first measure (the “stationary” Regulation) will impact U.S. manufacturers of stationary air conditioning and refrigeration equipment and the companies that produce the chemicals used in them. The second will affect U.S. car and parts manufacturers by phasing-out HFC134a in vehicle air conditioning beginning in 2011 with a complete ban by 2017.

The “stationary” Regulation seeks to improve containment of f-gases by setting minimum standards for inspection and recovery, and, where containment is not feasible, proposes to ban marketing and use of certain applications. Examples of applications using f-gases the Regulation seeks to ban include vehicle tires, non-refillable containers, windows, footwear, one-component foams, self-chilling drinking cans, novelty aerosols and fire extinguishers. The Regulation allows Member States to maintain or introduce stricter protective measures in order to reach Kyoto targets by December 21, 2012. The United States will continue to closely monitor Member States’ implementation.

Other Member State Measures

Some EU Member States have their own national practices regarding standards, testing, labeling, and certification. A brief discussion of the additional national practices of concern to the United States follows:

Austria: Austria became the second EU country after Denmark to ban a range of uses of the three fluorinated gases controlled under the Kyoto protocol on climate change. An ordinance that took effect on November 22, 2002, prohibits the use in new sprays, solvents, and fire extinguishers of hydrofluorocarbons (HFCs), perfluorocarbons, and sulphur hexafluoride. The ordinance phases out their use in foams between mid-2003 and the end of 2007. It bans their use in new refrigeration and air-conditioning equipment by the end of 2007. The ban appears to exempt production of HFCs in Austria for the export market. Even under the new EU regulation that focuses on containment instead of bans, the government of Austria has indicated it will try to retain its own national HFC bans.

Denmark: As of January 1, 2007, Danish law bans equipment with charges of less than 150 grams and equipment with charges over 10 kilos. Industry believes these laws will have an adverse effect on the market by creating an additional and disproportionate barrier to products that are manufactured in and distributed across the EU.

Finland: A ban on the importation and sale of new appliances containing hydrochlorofluorocarbons (HCFCs) was imposed on January 1, 2000, and remains in place. The importation of the chemical HCFC is allowed when used for maintenance of old refrigeration appliances using HCFC. New HCFC compounds used for maintenance of refrigeration equipment will be banned as of 2010 and use of all HCFC compounds, including recycled compounds, will be banned as of 2015.

Greece: Greece has not approved the use of corrugated stainless steel pipe (CSST) for use in internal gas industry applications. One U.S. company has been seeking approval to sell in the Greek market since 1997. In late 2005 the Greek standards organization, ELOT, was charged via presidential decree with developing standards for materials used in internal gas installations, which would cover CSST. As of this writing, ELOT has not yet taken the first step of forming a committee that would draft these standards.

GOVERNMENT PROCUREMENT

Since the European Communities is party to the WTO Agreement on Government Procurement (GPA), all of the Member States are also subject to the GPA. This includes Romania and Bulgaria, which became subject to the GPA upon their accession to the EU in January 2007.

In an effort to open government procurement markets within the Member States, the EU in 2004 adopted a revised Utilities Directive (2004/17), covering purchases in the water, transportation, energy, and postal services sectors. Member States were mandated to implement the new Utilities Directive by the end of January 2006, but some EU Member States still had not implemented it.

This Directive requires open, objective bidding procedures but still discriminates against bids with less than 50 percent EU content that are not covered by an international or reciprocal bilateral agreement. The EU-content requirement applies to U.S 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.

The Directive's discriminatory provisions were waived for heavy electrical equipment manufactured in the United States under the May 1995 Memorandum of Understanding on Government Procurement between the United States and the EU. In 1993, the United States imposed sanctions on a number of Member States for their implementation of discriminatory provisions of an earlier version of the Directive applicable to telecommunications equipment. Directive 2004/17 clarified that those discriminatory provisions no longer applied to the EU telecommunications sector; the United States thus lifted the sanctions (and the EU lifted reciprocal sanctions against U.S. suppliers) on March 1, 2006.

While U.S. suppliers participate significantly in EU government procurement, the lack of availability of statistics on procurements conducted in EU member states makes it difficult to accurately assess the opportunities available under the GPA to U.S. suppliers.

Other Member State Measures

Member States have their own national practices regarding government procurement. Some Member States require offsets in defense procurement, defined as a contract condition or undertaking that encourages local development or improves a party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade, and similar actions or requirements. Defense procurement related to national security is not covered by the GPA and therefore is not subject to GPA standards. A brief discussion of some of the national practices of particular concern to the United States follows.

Austria: U.S. firms continue to report a strong pro-EU bias and pro-Austrian bias in government contract awards. In major defense purchases related to national security, most government procurement regulations do not apply, and offset requirements can reach up to 200 percent of the value of the contract. Defense offsets in Austria are linked to political considerations and transparency remains limited. Austria’s largest military procurement to date, the $2 billion purchase of fighter jets in 2002, was awarded in manner that concerned U.S. defense contractors for its lack of transparency, and apparent bias against a U.S. proposal.

Czech Republic: U.S. and other foreign companies express great concern about the transparency of the public procurement process. Many U.S. bidders report that Czech (or other European) bidders are favored and usually win contract awards despite having less competitive bids and questionable ability to deliver on the terms of the tender. This has been a problem particularly in construction and the purchase of military equipment as well as in the sale of state-owned industries. Parliament passed a new law on government procurement in 2006, but did little to improve procurement transparency. In fact, the law reduces transparency on construction projects by raising the monetary threshold that would mandate an open public tender from 2 million crowns to 6 million crowns. According to Transparency International, only 27 percent of all public tenders were open to multiple bids in 2005. Bribery in government procurement continues to be a problem. A recent World Bank study noted that the Czech Republic is the only country among the ten EU Members that joined the EU in 2004 where the level of corruption worsened since 2003.

France: France has a strong and extremely competitive aerospace and defense manufacturing base. Having allowed only limited privatization in the sector, the French government continues to maintain shares in several major prime contractors. The French defense market remains difficult but not impossible for non-European competition. Even in the case of European competition, French companies are often selected as prime contractors. Nevertheless, U.S. firms do enjoy success as component and systems suppliers in instances where U.S. products provide capabilities required for interoperability, or where the cost of internal development is prohibitive. The Defense Ministry, which handles around 70 percent of the equipment budget, has a tendency to select non-American contractors, even when their bids cost more and take longer to fulfill the contract. These factors have made it difficult for U.S. defense firms to take part in French/European programs.

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, are not in or have not been in bankruptcy, have paid in full their social security obligations for their employees, and other requirements. All board members and the managing director must submit certifications from competent authorities that they have not engaged in fraud, money laundering, criminal activity, or similar activities. These requirements are especially difficult for U.S. firms because there are no competent authorities that issue these types of certifications in the United States. In such cases, companies submitting bids are allowed to submit sworn, notarized, and translated statements from corporate officers. Nonetheless, there exists much confusion among Greek authorities as to how U.S. firms may comply with these requirements.

The government of Greece maintains that it is in the process of reforming and simplifying its procurement laws. According to government officials, new legislation will be released within the next several months.

Greece continues to require offsets as a condition for the awarding of defense contracts.

Ireland: Government procurement in Ireland is generally tendered under open and transparent procurement regulations. U.S. companies have raised concerns, however, that they have been successful in only a few national and regional government tenders, particularly for infrastructure-related procurements. U.S. firms complain that lengthy budgetary decisions delay procurements and that unsuccessful bidders often have difficulty obtaining information on the basis for behind the tender award. Once awarded a contract, companies can experience significant delays in finalizing contracts and commencing work. Successful bidders have also subsequently found that tender documentation does not accurately describe the project conditions under which the procurement is to be conducted.

Italy: Procurement authority is widely dispersed with over 22,000 contracting agencies at the national, regional, and local levels (including regions, municipalities, hospitals, universities, etc.). Italy's public procurement sector is noted for its lack of transparency and corruption, which have created obstacles for some U.S. firms.

Since new laws were implemented in the mid-1990s, corruption has been reduced, but not entirely eliminated, especially at the local level. These laws were enacted after corruption scandals, largely associated with irregularities in public works and public procurement of goods and services, caused an overhaul of procurement personnel.

Lithuania: The public procurement process in Lithuania is not always transparent. Complaints persist that some tenders are so narrowly defined that they appear to be drafted so that only one company can provide the good or service. Since 2003, the government of Lithuania (GOL) has required offset agreements as a condition for the award of contracts for procurement of military equipment exceeding LTL 5 million (about $1.8 million). The GOL purchases most U.S. military equipment using U.S. government grant money, which precludes offsets. The GOL has requested offsets for defense purchases it has made using its own funds. This offset requirement adds an unnecessary level of complexity to exporting military equipment to Lithuania.

Portugal: U.S. firms face stiff competition when bidding against EU firms on procurement projects in Portugal. The Portuguese tend to favor EU firms even when bids from U.S. firms appear technically superior or lower in price. There is a general lack of transparency in procurement procedures. It appears to U.S. firms that they are more successful when investing in joint venture projects with Portuguese or other EU firms.

Slovenia: The Slovenian government has said that it intends to improve the transparency of its public procurement process. The Ministry for Public Administration has also said it will create an e-procurement system, but efforts in this area have stalled. American firms continue to express concerns that the public procurement process in Slovenia is non-transparent. Many American bidders report that European firms are favored and usually win contracts in spite of more costly offers and questionable ability to deliver and service their products. This is a problem across the entire range of public procurement, but it seems most prevalent in telecommunications, medical equipment, and defense procurement.

United Kingdom (UK): The UK defense market is increasingly defined by the terms of the December 2005 Defence Industrial Strategy (DIS). The document highlights specific sectors and capabilities that the government believes are necessary to retain in the UK; in these areas, procurement will generally be based on partnerships between the Ministry of Defence (MoD) and selected companies. One example is the partnership between the MoD and AgustaWestland for rotorcraft procurement. DIS does not preclude partnerships with non-UK companies and U.S. companies with UK operations could be invited by MoD to form partnerships in key programs in the future. Outside of those areas of partnership highlighted in the DIS, defense procurement is to a large extent an open and competitive process. There have, however, been examples of non-competitive procurements in recent years, as well as instances where a U.S. supplier was initially selected, but the decision was subsequently overturned and the contract awarded to a domestic supplier.

SUBSIDIES POLICIES

Government Support for Airbus

Over many years, the governments of France, Germany, Spain, and the United Kingdom have provided subsidies to their respective Airbus member companies to aid in the development, production and marketing of Airbus large civil aircraft. These governments have financed between 33 and 100 percent of the development costs for all Airbus aircraft models ("launch aid") and provided other forms of support, including equity infusions, debt forgiveness, debt rollovers, and marketing assistance, including 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 European civil aeronautics industry. EU governments have spent hundreds of millions of euros to create infrastructure needed for Airbus programs, including 751 million euros from the City of Hamburg to purchase land that Airbus is using for the Airbus A380 "superjumbo" project and 182 million euros from French authorities to create the AeroConstellation site, which contains the Airbus facilities for the A380. With more than $6 billion in subsidies, the Airbus A380 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 not yet repaid any of the financing it received for the A380.

The Airbus Integrated Company – successor to the original Airbus consortium and owned by the European Aeronautic, Defense, and Space Company (EADS) – is now the second-largest aerospace company in the world. With more than half of worldwide deliveries of new large civil aircraft over the last few years, Airbus 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 submitted a WTO consultation request with respect to the launch aid and other forms of subsidies that EU governments have provided to Airbus. Concurrent with the U.S. WTO consultation request, the United

States also exercised its right to terminate the 1992 U.S.–EU bilateral agreement on large civil aircraft. The consultations failed to resolve the U.S. concerns, however, and a renewed effort to negotiate a solution ended without success in April 2005.

Therefore, on May 31, 2005, the United States submitted a WTO panel request. The WTO established the panel on July 20, 2005, and panel proceedings are currently ongoing. U.S. officials have consistently noted their willingness to negotiate a new bilateral agreement on large civil aircraft, even while the WTO litigation proceeds, but have insisted that any such agreement must end launch aid and other direct subsidies for the development and production of such aircraft.

Government Support for Airbus Suppliers

Belgium: The federal government of Belgium, in coordination with Belgium's three regional governments, subsidizes Belgian aircraft component manufacturers that supply parts to the Airbus Integrated Company. Industry sources report about 160 million euros remain from a 195 million federal-regional subsidy package for Airbus A380-related research and development that started in 2001, and that costs covered to date have netted orders worth 1.3 billion euros for the A380. Belgium claims the program was structured in accordance with the 1992 bilateral agreement and covers non-recurring costs. On October 14, 2005, the Belgian federal government made a decision in principle to assist Belgian aviation part producers with 150 million euros of reimbursable public financing, available for non-recurring development costs for the Airbus A350. Airbus's redesign of the A350 has delayed implementation of this program.

France: In addition to the launch aid that the French government provided for the development of the Airbus A380 super-jumbo aircraft in 2005, France continues to provide reimbursable advances for Airbus programs, engines, helicopters, and on-board equipment. Appropriations in 2006 totaled 218 million euros, of which 168 million euros are committed to the A380. Overall 2006 appropriations, including 55 million euros in support of research and development by industrialists in the sector, amount to 273 million euros.

Spain: The recently completed Puerto Real factory in Spain's Andalucia region is responsible for constructing 10 percent of Airbus' A380 aircraft. Spain's Ministry of Science and Technology currently subsidizes A380 construction through its agreement to provide 376 million euros in direct assistance through 2013.

Furthermore, the regional government of Andalucia has channeled an additional 13 million euros of State General Administration regional incentive funds and 17.5 million euros of its own funds to subsidize the A380 project. Spain has provided numerous additional grants to Airbus' parent company, EADS.

Government Support for Aircraft Engines

United Kingdom (UK): In February 2001, the UK government announced its intention to provide up to 250 million pounds to Rolls-Royce to support development of two additional engine models for large civil aircraft, the Trent 600 and 900.

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 pounds "reimbursable advance" without opening a formal investigation into whether the advance constituted an illegal (under EU law) state aid. According to a European 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 has been repaid.

Continuing UK government support of Rolls-Royce raises serious concerns about UK and EU adherence to the WTO Subsidies and Countervailing Measures Agreement. U.S. engine suppliers have lost sales of engines and claim that they have encountered suppressed prices in the United States and world markets.

France: The French government-owned engine manufacturer SNECMA merged with technology and communications firm Sagem to form Safran. The government supports the Safran SaM146 propulsive engine program with a reimbursable advance of 140 million euros.

Canned Fruit Subsidies

The EU continues to subsidize shipments of canned peaches as well as the production of apples, prunes, grapes, wine, cherries, and citrus. Although a 1985 U.S.-EU Canned Fruit Agreement brought some discipline to processing subsidies, significant fraud and abuse have undermined the discipline imposed by the Agreement. Growers and producers of peaches receive a range of assistance from producer aid, market withdrawal subsidies, sugar export rebates, producer organization aid, and regional development assistance. The United States will continue to monitor EU subsidies to this sector and evaluate their trade-distorting effects.

Wood Industry Subsidies

Several EU Member States and regional governments within them provided state aid to pulp, paper, and wood processing projects. Germany, in particular, has given aid in the form of grants, loans, and loan guarantees for pulp and paper and wood processing operations, especially in eastern Germany. These subsidy programs are part of the overall combined EU/national regional support programs. This has added substantial new capacity and has contributed to a substantial drop in U.S. pulp and paper exports to the EU and world markets, while fostering a rise in European paper and lumber and wooden panel exports to the United States and third country markets. A combination of factors, namely robust growth in the construction sector and duties put on Canadian softwood lumber, has also increased the competitiveness of German construction lumber in the United States.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Overview

The EU and its Member States support strong protection for intellectual property rights (IPR). Together, the U.S. and the EU have committed to enforcing IPR in third countries and at our borders in the EU-U.S. Action Strategy endorsed at the June 2006 U.S.-EU Summit. In 2006, the European Commission issued communications on strengthening the criminal law framework to combat intellectual property offenses, and a renewed effort to introduce a community patent.

The United States has raised concerns regarding the IPR practices of the EU or its Member States, either through the U.S. Special 301 process or through WTO Dispute Settlement procedures concerning failure to fully implement the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The United States continues to be engaged with the EU and individual Member States on these matters.

In April 2004, the EU adopted a Directive on the enforcement of intellectual and industrial property rights, such as copyright and related rights, trademarks, designs, and patents. This Directive requires all Member States to apply effective and proportionate remedies and penalties that form a deterrent against those engaged in counterfeiting and piracy. Member States are required to have a similar set of measures, procedures, and remedies available for rights holders to defend their IPR. Member States were supposed to have implemented the Directive by April 2006. At present, only about one half of the Member States have transposed the legislation.

Designs

The EU adopted a Regulation introducing a single Community system for the protection of designs in December 2001. The Regulation provides for two types of design protection, directly applicable in each EU Member State: the registered Community design and the unregistered Community design. Under the registered Community design system, holders of eligible designs can use an inexpensive procedure to register designs with the EU's Office for Harmonization in the Internal Market (OHIM). The holders will then be granted exclusive rights to use the designs anywhere in the EU for up to 25 years. Unregistered Community designs that meet the Regulation's requirements are automatically protected for three years from the date of disclosure of the design to the public. Protection for any registered Community design was automatically extended to the ten new EU Member States on May 1, 2004.

The European Commission has proposed amending the Legal Protection of Designs Directive (98/71) by removing Member States' option to maintain design protection for "visible" replacement vehicle parts, such as hoods, bumpers, doors, lamps, rear protection panels, windscreens, and wings. The proposal would allow independent part manufacturers, not linked to the producers of finished vehicles, to compete throughout the EU market for visible replacement parts. Neither non-visible parts, like engine or mechanical parts, nor components in new vehicles would be affected by the proposal.

Patents

Patent filing and maintenance fees in the EU and its Member States are significantly higher than in other countries. Fees associated with the filing, issuance, and maintenance of a patent over its life far exceed those in the United States.

In some countries, such as Portugal, copies of medicines that are still under patent are allowed on the market by the Ministries of Health.

Data Exclusivity

In some of the new Member States in particular, there is a lack of protection for data submitted to obtain marketing approval for pharmaceutical and agricultural chemical products. Article 39.3 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement requires such protection.

Bulgaria: The U.S. pharmaceutical industry is concerned about Bulgarian legislation that requires a valid patent as a prerequisite for obtaining data protection. Bulgaria is reportedly considering legislation to eliminate this requirement.

Hungary: Hungary's 2001 ministerial decree on the protection of test data took effect on January 1, 2003. Retroactive protection exists for pharmaceutical products that received first marketing authorization in the EU or Hungary on or after April 12, 2001. However, Hungary generally does not provide an effective system to prevent the issuance of marketing approvals for unauthorized patent-infringing copies of pharmaceutical products, and patent infringements are dealt with by administrative courts lacking expert knowledge, or the power to take injunctive measures.

Poland: Concerns remain over delays in full implementation of the EU data protection regime. Polish law currently supports the EU data protection regime for drugs centrally registered at the EU level. For drugs nationally registered in Poland, however, (in practice, those drugs registered before Poland's EU accession) Polish law provides for only 6 years of data exclusivity. Poland requested that the European Commission delay implementation of the EU requirement for 15 years. The Commission has not informed Poland of its final decision. In addition, while the government has signaled that it is considering implementation of a coordination mechanism between the Health Ministry and the patent agency, no concrete actions have been taken to do so.

Portugal: In September 2006, Portugal enacted the Consumption of Medicine in Hospitals statute, an adaptation of EU Directive 2004/27/EC. The statute extends data exclusivity from six years to ten and only requires companies to renew licenses once after five years as opposed to every five years. However, the statute also states that the Ministry of Health does not need to cross-check with the Ministry of Economy for existing patents before granting licenses to generic drug manufacturers. According to industry sources, this latter aspect of the legislation may cost U.S. pharmaceutical companies over $500,000 in lost sales and tens of thousands more in legal fees.

Patenting of Biotechnological Inventions

A 1998 EU Directive (98/44) on the legal protection of biotechnological inventions harmonizes EU Member State rules on patent protection for biotechnological inventions. Although Member States were required to bring their national laws into compliance with the Directive by July 2000, some had not yet fully met that obligation, and the European Commission has started legal proceedings at the European Court of Justice against them.

Trademarks

Registration of trademarks with the European Union's Office for Harmonization in the Internal Market (OHIM) began in 1996. OHIM issues a single Community trademark that is valid in all EU Member States.

Madrid Protocol

On October 1, 2004, the European Community acceded to the World Intellectual Property Organization (WIPO) Madrid Protocol, establishing a link between the Madrid Protocol system, administered by WIPO, and the Community Trademark system, administered by OHIM. Community Trademark applicants and holders now are allowed to apply for international protection of their trademarks through the filing of an international application under the Madrid Protocol.

Conversely, holders of international registrations under the Madrid Protocol will be entitled to apply for protection of their trademarks under the Community Trademark system.

Geographical Indications (GI)

The United States has long had concerns that the EU's system for the protection of geographical indications, reflected in Community Regulation 1493/99 for wines and spirits and in previous Regulation

2081/92 for certain other agricultural products and foodstuffs, appears to fall short of what is required under the TRIPS Agreement.

As a result of a WTO dispute launched by the United States, the WTO Dispite Settlement Body ruled on April 20, 2005, that the EC's regulation on food-related geographical indications (GIs) was inconsistent with the EC's obligations under the TRIPS Agreement and the GATT 1994. In its report, the DSB agreed that the EC's GI regulation impermissibly discriminated against non-EC products and persons, and agreed with the United States that the regulation could not create broad exceptions to trademark rights guaranteed by the TRIPS Agreement. In response, the EC published an amended GI regulation in April 2006 that is intended to implement the DSB's recommendations and rulings. The United States continues to have some concerns about this amended regulation and is carefully monitoring its application.

Additional Member State Practices:

Belgium: While Belgium transposed the EU Copyright Directive into national law in May 2005, it failed to meet the April 2006 deadline to implement the Enforcement Directive. Belgium also has not implemented EU Regulation 1383/2003 concerning customs actions against goods suspected of infringing certain intellectual property rights. Domestically pirated and parallel-imported DVDs are a growing problem in Belgium. An industry trade association estimates that 250,000 illegal downloads of DVDs occur daily in Belgium, and illegal copies on VHS, CD-R and DVD-R media are distributed by specialty stores, retail outlets, and local and international Internet sites. The recording industry estimates that 85 percent of blank digital media sold in Belgium are used for illegal downloads of music or videos. Annual losses to the U.S. motion picture industry through IPR piracy in Belgium are estimated at over 15 million euros. Belgium's 1994 Copyright Law provides deterrent penalties for piracy, but legal procedures are cumbersome and the court system is overburdened. Obtaining a judicial restraining order against Internet piracy, for example, takes two to three months, and judges demand proof of damages to assign more than token fines. However, the country's first-ever prison sentence for copyright piracy was imposed in April 2006, and Belgium was the first of the EU-15 to ratify the WIPO Copyright Treaty in May 2006.

Bulgaria: Overall optical disc piracy has dropped, but largely due to an increase in piracy over the Internet. While the government has taken a number of significant steps to combat piracy, these actions have not yet led to significant convictions, and the piracy rate has not fallen drastically. Furthermore, Bulgaria is still widely used for the transshipment of pirated compact discs from Russia and Ukraine to the Balkans, Greece, and Turkey. Bulgarian legislation was further amended to harmonize with EU requirements and to provide a better legal framework for efficient IPR enforcement. The laws that were amended include the Law on Copyright and Related Rights, the Law on Patents, the Law on Marks and Geographical Indications, the Law on Industrial Design and Art, 172a (copyright and related rights criminal offences) and 172b (industrial property rights criminal offences) of the Penal Code of the Republic of Bulgaria. In September 2005, the parliament approved the long awaited Law on Administrative Control over the Manufacture and Distribution of Optical Disc Media, which now requires source identification code on blank optical discs produced in Bulgaria and strengthens the import/export regime for raw materials and equipment involved in optical disk production.

Cyprus: IPR legislation in Cyprus is, on the whole, modern and comprehensive, although enforcement should be further improved. Cyprus has harmonized its IPR regime with EU requirements as part of its accession to the EU in 2004. According to industry sources, the level of DVD and CD piracy continues at roughly 50 percent. Software piracy, largely fueled by small personal computer assembly and sale operations, has declined to 53 percent but is still significantly above the European average. Internet piracy is a growing concern.

Czech Republic: Although the Czech Republic has made progress in strengthening anti-piracy legislation and enforcement, significant problems remain with piracy and counterfeiting in open-air markets near the Czech border. New amendments were added in 2006 to the Copyright Law and the Law on Consumer Protection, which grants the Customs Office, a law enforcement agency with over 6,000 armed inspectors, greater authority to seize counterfeit products and requires all marketplace sellers to register with the municipality. The level of IPR piracy is rising and several IPR watchdog groups, especially from the recording and manufacturing industries, have recommended the Czech Republic be placed on the Special 301 Priority Watch List. There are also problems in court proceedings. Court cases, including IPR related cases, can often stretch to five years on average, and even then the current system for the calculation and collection of damages favor defendants according to legal experts who work in the field.

France: Although the French government has significantly stepped up its efforts to fight piracy, video piracy and unauthorized parallel imports continue to impose losses on U.S. industry, and cable piracy and Internet piracy continue to present further problems in this area. France was the last Member State to pass legislation implementing the EU Copyright Directive in August 2006. Some U.S. stakeholders have expressed concerns with the provisions of that law related to digital rights management and technological protection measures, which may result in the forced disclosure and use of technical information that may be protected by intellectual property such as copyright, patents and trade secrets.

Germany: Non-retail outlets (Internet, print media, mail order, open-air markets) are the primary distribution channels for pirated goods in Germany. Pirated videos, VCDs, and DVDs are sold primarily by residential mail-order dealers who offer the products via the Internet or through newspaper advertisements, or directly sell them in flea markets. German copyright legislation allows the making of private copies, which, although it does not include sharing or downloading of music, has been sometimes misunderstood as being a broad exception. Starting in 2005, the German entertainment industry has blanketed the country with commercials as an information campaign to educate the public regarding the problem of piracy, especially on the Internet. While German federal authorities have been receptive to U.S. IPR concerns, there have been mixed results at the German state-level, which can have broad impact due to Germany's decentralized law enforcement structure. German authorities in several cases have prosecuted pirates who downloaded music and videos from the Internet and then distributed burned CDs or DVDs. In October 2004, they arrested four individuals who ran a major ring selling pirated videos on the Internet. The German government in July 2003 enacted amendments to the German Copyright Act intended to bring it in line with the EU Copyright/"Information Society" Directive. The Ministry of Justice has introduced additional amendments to the copyright law that are likely to be considered by Parliament in 2007. U.S. publishers have expressed a concern that these amendments might result in insufficient protections for copyrighted works, particularly those in digital format. The United States continues to engage the German government on the issue.

Greece: Although protection of intellectual property rights in Greece is better than it was during the last decade, there are troubling signs that violations, particularly in copyrighted audio-visual products and apparel and footwear, are once again on the rise. Despite the existence of adequate IPR legislation, a major problem appears to be a reluctance on the part of Greek judges to sentence IPR violators to jail, or impose fines of a high enough level to act as a deterrent. The United States welcomes initiatives by the government of Greece to make efforts to educate the judiciary on IPR matters to discourage this trend.

Hungary: Hungary acceded to the European Patent Convention on January 1, 2003 and has amended the Hungarian Patent Act accordingly. Act CII of 2003 modified the Hungarian Copyright Act and the Hungarian Design Act in order to bring them in line with the relevant EU legislation. The Hungarian Patent Office implemented the EU Copyright/"Information Society" Directive. In October 2004, Hungary implemented Council Regulation 1383/2003, concerning customs action against goods suspected of infringing certain intellectual property rights. Further, a government decree established a customs task force to accept claims from producers whose trademarks or copyrights were infringed.

Italy: Italy's anti-piracy laws, which also address Internet piracy, are among the toughest in Europe. However, Italy possesses one of the highest overall piracy rates in Western Europe due to a lack of adequate enforcement efforts. Italian judges rarely hand down meaningful jail sentences for cases of IPR theft, and are seen as the weak link in Italy's efforts to combat piracy effectively. Leaders in industry, government and academia all say a change in public perception of the seriousness of IPR crimes is needed before there can be better IPR protection in Italy.

In April 2005, the Italian government created a "High Commissioner" position to coordinate IPR protection. Seizures of counterfeit and pirated goods by Italian authorities increased in the past year, though enforcement varies widely from region to region. Italian law allows police to impose a fine of up to 10,000 euros for possession of fake goods. While this tough measure increased public awareness of IPR crime, there is only sporadic enforcement. Street vendors continue to openly sell pirated and counterfeited goods.

Lithuania: Estimates of piracy levels of optical media, software, and motion pictures in Lithuania vary, but it remains a problem. The situation appears to be improving, however. Lithuania adopted legislation in 2006 that harmonizes Lithuania's laws with EU regulations, strengthening IPR protection by increasing penalties and making it easier for prosecutors to present necessary evidence. The Lithuanian government has demonstrated the political will to enforce IPR protections in specific cases, but the government needs to continue to improve its efficacy in combating piracy. The Lithuanian government made progress in early 2007 by closing down a notorious Internet pirate website, but should continue enforcement efforts agains Internet piracy.

Poland: Poland has shown progress on several elements of IP protection. The Polish government has increased anti-piracy efforts, improving enforcement at the Warsaw Stadium and in the border bazaars frequented by German tourists and others. In addition, the Interministerial Antipiracy Group published an IPR strategy that emphasizes cooperation with industry. Although Poland has made some progress in strengthening border enforcement in conjunction with rights-holders, problems remain both along the eastern and western borders with importation and sale of counterfeit alcohol, tobacco, and pirate optical discs. As border enforcement continues to strengthen, Internet piracy of movies and music is also becoming a more serious problem. According to an anti-piracy group, the Polish court system is currently overburdened with nearly five thousand pending IPR protection cases, many of which are not scheduled to be prosecuted for several years.

Romania: Although authorities have made gradual improvements, the rates of copyright piracy are high in Romania. Levels of DVD piracy have risen to 80 percent, while levels of videocassette piracy are down to 20 percent and the most blatant retail piracy has been eliminated. While product was mainly smuggled into the market in the past, concerns are rising that capacity to produce in Romania may be growing. Another area of concern is the illegal sale of counterfeit decoder devices and stealing video signals from cable services. The appointment in 2003 of a special IPR prosecutor in the General Prosecutor's Office (GPO) and the establishment of a small IPR office in the GPO in 2005 have improved enforcement, but few IPR cases are prosecuted.

Spain: Copyright infringement remains a serious problem with illegal Internet downloads becoming increasingly important. Content provider companies say that Internet Service Providers resist their requests to move aggressively against websites illegally trafficking in copyrighted material and in shutting down service to illegal downloaders. There is a government-organized working group on Internet governance including both sets of stakeholders but so far no solution has been found.

Sweden: Sweden remains a major contributor to the worldwide problem of Internet piracy. Although the police raid against Pirate Bay (the world's largest Bit Torrent tracker) sent shockwaves through international file-sharing circles, the fact that Pirate Bay was back in operation within a few days casts a shadow over the forceful actions of the Swedish authorities and prospective legal action against the operators is likely to take time. Sweden is also still a host to a large part of the world's "top sites" for piracy and the largest number of DC++ file-sharing hubs and users.

The legislative and enforcement framework in Sweden is generally effective against conventional hard goods piracy but actual enforcement with respect to Internet piracy has been weak. In the last year, however, the Swedish government has repeatedly signaled to police and prosecutors that it wants to step up efforts to curb Internet piracy. The government has also requested that the industry provide legal alternatives to file-sharing, and it has appointed a government commission to look into possibilities to encourage such a development.

In the last year, several cases of illegal distribution of copyrighted material on the Internet have been tried in the Swedish courts. The courts have successfully used existing legislation to sentence defendants for the infringing activities. The Swedish government also is working on strengthening existing laws to make it easier for law enforcement officials to meet evidentiary requirements.

SERVICES BARRIERS

Concerns Related to EU Enlargement

On May 28, 2004, the European Commission notified members of the World Trade Organization of a proposed consolidation of the EU's schedule of specific commitments under the General Agreement on Trade in Services (GATS) pursuant to GATS Article V to reflect both the 1995 accession to the European Union of Austria, Finland, and Sweden, and the 2004 accession of Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic, and Slovenia. As a result of this proposed consolidation, a number of previous GATS commitments by these countries have been modified in a way that may reduce sector-specific or horizontal market access commitments. Although not within the scope of the EU's GATS Article V notification, the EU's consolidation proposal also entails the extension to the new Member States of most-favored nation exemptions reflected in the EU's existing schedule of GATS commitments.

Following GATS rules, which allow a Member to reduce or withdraw commitments provided that they negotiate offsetting compensation to maintain the overall level of market access, the United States closely worked with Brazil, Hong Kong, Japan, Canada and 12 other WTO Members to negotiate a compensation package with the European Union. Negotiations were successfully completed on September 25, 2006. The agreed compensation package contains new and enhanced commitments in several other services sectors, including public utilities, engineering, computer, advertising, and financial services.

Television Broadcast Directive (Television without Frontiers Directive)

The 1989 EU Broadcast Directive (also known as the Television without Frontiers Directive) includes a provision requiring that a majority of television transmission time be reserved for European-origin programs "where practicable and by appropriate means." All EU Member States, including the Member States that acceded to the EU in May 2004 and January 2007, have enacted legislation to implement the

Broadcast Directive. It remains important to ensure that the flexibility built into the Directive is preserved and that individual broadcasting markets are allowed to develop according to their specific conditions and needs.

In December, 2005, the European Commission adopted a proposal for revising the Television without Frontiers Directive. The proposal distinguishes between "linear" services (scheduled broadcasting via traditional TV or other means which "pushes" content) and "non-linear" services (such as on-demand films or other news which the viewer "pulls" from a network). TV broadcasting rules would apply to linear services in a modernized, more flexible form, while non-linear services (which are not covered under the 1989 directive) would be subject to a set of basic principles, including the protection of minors and prevention of incitement to racial hatred. The proposal maintains the country of origin principle. The Culture Committee of the European Parliament issued a report on the proposal in August, 2006. The legislation, which requires approval of the European Parliament and Member States, is not expected to be finalized until late 2007 or possibly 2008.

Several EU Member States have specific legislation that hinders the free flow of some programming. A summary of some of the more salient restrictive national practices follows.

France: France continues to apply its more restrictive version of the EU Broadcast Directive which was first introduced into French legislation and approved by the European Commission in 1992. In implementing the Directive, France chose to specify a percentage of European programming (60 percent) and French programming (40 percent) which exceeded the requirements of the Broadcast Directive. Moreover, these quotas apply to both the 24-hour day and prime time slots, and the definition of prime time differs from network to network. The prime time rules are a significant barrier to access of U.S. programs to the French market. In addition, the United States continues to be concerned that radio broadcast quotas which have been in effect since 1996 (40 percent of songs on almost all French private and public radio stations must be Francophone), limit broadcasts of American music.

Italy: Legislation passed in 1998 that made Italy's TV broadcast quota stricter than the EU Broadcast Directive remains in effect. The legislation makes 51 percent European content mandatory during prime time, and excludes talk shows from the programming that may be counted toward fulfilling the quota. A 1998 regulation also requires all multiplex movie theaters of more than 1,300 seats to reserve 15 to 20 percent of their seats, distributed over no fewer than three screens, to showing EU films. In May 2004, Italy enacted controversial media reform through the "Gasparri Law," under which the media/communications market is considered one sector. Under this law, no single operator may receive more than 20 percent of the sector's total revenues. In addition, the law provides for the gradual privatization of RAI, the state-owned radio and television broadcasting conglomerate. The government of Italy is in the process of reconsidering Gasparri Law provisions.

Spain: Spain's theatrical film system has been modified sufficiently in recent years so that it is no longer a major source of trade friction. Government regulations issued in 1997 require exhibitors to show one day of EU-produced film for every three days of non-EU-produced film. Spanish law requires that the quotas issue be reviewed in 2006. The Ministry of Culture is currently preparing a draft Film Law.

Postal Services

United States service and package service providers have in the past expressed concern that postal monopolies in many EU Member States restrict their market access and create unfair conditions of competition with the incumbents.

With the adoption of the Postal Services Directive, the European Union in 1997 took a first step to get national postal monopolies to gradually open up to competition. A second Directive in 2002 succeeded in opening up a number of postal services -- including all outgoing cross-border mail -- but stopped short of liberalizing the market for the delivery of letters weighing less than 50 grams. On October 18, 2006, the European Commission adopted a proposal to open up postal markets to full, unrestricted competition by 2009. The proposal is subject to approval by the Member States and the European Parliament and is expected to go into effect in summer 2007.

Belgium: While the Belgian Post has taken measures in recent years to liberalize, industry competitors continue to express concerns about market access and a postal monopoly operating in Belgium. January 2006 legislation introduced a licensing regime for universal postal services as well as a compensation fund for universal service. The licensing regime would provide revenue to the Belgian Post if liberalization proved unprofitable due to its universal service obligation. Under the current legal framework, express companies appear to be exempt from the licensing regime as well as from the obligation to provide for a compensation fund for universal service on the condition that these services are clearly distinct from the universal postal service by virtue of their value-added characteristics.

Germany: In February 2005, the Federal Regulatory Agency (Bundesnetzagentur) took action against Deutsche Post AG (DPAG), in response to complaints from competitors. Its ruling forbids DPAG from hindering or discriminating against rival small- and medium-sized providers of mail preparation services, especially those collecting and presorting letters and feeding mail items weighing less than 100 grams into DPAG's sorting centers. This ruling follows an October 2004 move by the European Commission to initiate a treaty infringement procedure against Germany for failing to mandate that DPAG offer unbundled access to competitors. Some U.S. companies have indicated they might be interested in providing services such as sorting.

Ireland: Currently, postal services "reserved" to An Post, the national postal agency and Ireland's designated Universal Service Provider, are confined to items of domestic correspondence and incoming cross-border correspondence weighing 50g or less. All mail falling outside this category is open to competition and can be handled by any mail/package company operating in the Irish market. From January 2009, the postal market will be fully open to competition and other operators will be free to handle any mail now reserved to An Post.

Professional Services

In the area of professional services, there are significant variations among EU Member State requirements for foreign lawyers and accountants intending to practice in the European Union. While many of these are not outright barriers, disparities among Member State requirements can complicate access to the European market for U.S. lawyers and accountants.

Legal Services:

Austria: U.S. citizens can only provide legal advice on U.S. law and public international law (excluding EU law) on a temporary basis. Only an Austrian or other EU national can join the Bar Association. U.S. nationals cannot represent clients before Austrian courts and authorities, and cannot establish a commercial presence in Austria. However, informal cooperation with Austrian partners is possible.

Czech Republic: The Czech Republic requires that all attorneys be members of the Czech bar. U.S. educated lawyers may register with the Czech Bar and take an equivalency exam, but are limited to practicing home state (U.S.) law and international law. To represent clients in Czech courts, U.S. lawyers must first undergo a three-year legal traineeship and pass the Czech bar exam. U.S. firms are allowed to cooperate with local firms and lend them their name; as a result, firms that operate in the country do so as independent Czech branches. They may have U.S. attorneys that are attached to the staffs as "advisors."

Finland: Foreigners from non-EU countries cannot become members of the Finnish Bar Association and receive the higher law profession title of Asianajaja (Attorney at Law). Persons holding the title of Asianajaja are subject to Asianajaja Law as well as bar regulations. While the title gives added prestige and helps solicit clients, it is not essential to practice domestic or international law or to represent a client in court.

France: Non-EU firms are not permitted to establish branch offices in France under their own names. Also, non-EU lawyers and firms are not permitted to form partnerships with or hire French lawyers.

Germany: U.S. lawyers that have joined the German Bar Association under their home title may practice international law (but not EU law) and the law of their home country. To be admitted to the bar to practice German law, individuals generally have to complete five years of study, then successfully complete the first of two state exams. After successfully completing the first exam they undertake two years of practical training. Individuals then take the second state exam, and upon passing, are admitted to the bar.

Hungary: Foreign non-EU lawyers may provide legal advice on legislation of their own country and international law. Lawyers registered in the EU may be admitted to the bar. Foreign lawyers from non-EU countries may establish a partnership with a Hungarian legal firm and provide legal services under a "cooperation agreement."

Ireland: In general, lawyers with non-Irish qualifications who wish to practice Irish law and appear before Irish courts must either pass transfer examinations or retrain as lawyers under the direction of the Law Society of Ireland. Only lawyers who have either been admitted to the Bar of England, Wales, or Northern Ireland, practiced as an attorney in New York, California, Pennsylvania (with five years experience required in Pennsylvania), or New Zealand, or have been admitted as lawyers in either an EU or EFTA Member State are entitled to take the transfer examination.

Italy: In 2001, Italy passed a law implementing EU Directive 98/5 on EU lawyers' freedom to establish themselves EU-wide and enabling Italian lawyers to practice jointly, including with EU lawyers, through a limited liability partnership or through the Italian branch of a partnership formed in another EU Member State, as long as the limited liability partnership is composed exclusively of Italian and EU lawyers. The status of non-EU lawyers is not explicitly addressed by the law. This omission leaves the status of international law firms with offices in Italy uncertain, insofar as they have Italian and non-EU lawyers as partners. Despite this ambiguity, several major U.S. law firms have a presence in Italy.

Lithuania: Only EU citizens may join the Lithuanian bar and establish law firms that provide the full range of legal services. Lithuanian law permits U.S. attorneys to establish law offices that provide paralegal services. These firms differ from traditional law firms, however, in that they cannot compel Lithuanian institutions to provide information, nor can they protect legally the lawyer-client privilege. U.S. firms can, however, easily partner with a local law firm to provide a full range of legal services.

Slovakia: In August 2006, the Slovak Antimonopoly Office overturned Act No. 586/2003 (the Advocacy Act) which was designed to force non-EU-based law firms to change their legal status from a branch partnership to a limited liability company (LLC). Under the Advocacy Act, an LLC had to be owned by an EU advocate registered in Slovakia or a Slovak national, and non-EU law firms could not market themselves under their internationally recognized corporate identities, incurring extra costs to comply with the special rules. The ruling also overturned the Slovak Bar's internal rules that restrict a firm's name to that of living partners. The Slovak Antimonopoly Office found that the rules contravened Article 81 of the Founding Treaty of the European Community, as well as Slovakia's own Act on the Protection of Economic Competition.

The Slovak law still requires non-EU-based lawyers and law firms to register with the Slovak Bar Association to practice law in Slovakia. In 2006, no U.S. attorneys have been able to register. The United States is concerned that the Slovak Bar consistently has tried to limit foreign lawyers' ability to practice law in Slovakia; this provision of the Advocacy Act appears to facilitate its ability to deny foreign lawyers registration.

Accounting and Auditing Services:

France: There is a nationality requirement for the establishment of a practice, which can be waived at the discretion of the French authorities. An applicant for such a permit, however, must have lived in France for at least five years.

Greece: U.S. access to the Greek accounting market remains limited. A 1997 Presidential decree established a method for fixing minimum fees for audits and established restrictions on the use of different types of personnel in audits. It also prohibited auditing firms from doing multiple tasks for a client, thus raising the cost of audit work. The Greek government has defended these regulations as necessary to ensure the quality and objectivity of audits.

Hungary: Only Hungarian-certified accountants may conduct audits, but this individual may work for a foreign-owned firm.

Architectural Services:

The U.S. National Council for Architectural Registration Boards and the EU Architect's Council of Europe signed a joint recommendation for a Mutual Recognition Agreement for Architects in November 2005. The U.S. Government and the European Commission will collaborate with relevant regulators and professional associations to consider options for the promotion of progress towards such an agreement in accordance with each side's legal systems.

Austria: Only citizens from EU and EEA Member States are eligible to obtain a license to provide independent architectural services in Austria. This restriction does not appear to be reflected in the European Communities' Schedule of Specific Commitments under the GATS.

Financial Services:

Poland: Citibank and other service providers have requested that the Polish government treat independent legal persons as a single taxable person as allowed by the EU VAT Directive. VAT grouping is already employed by the UK, the Netherlands, Ireland, Germany, Austria, Denmark, Finland and Sweden. VAT grouping would allow financial service providers to recover VAT charges they incur upon making intra-company payments for supplies, including labor costs.

Telecommunications Market Access

Both the WTO commitments covering telecommunications services and the EU's Common Regulatory Framework for Electronic Communications Networks and Services (Framework Directive), have encouraged liberalization and competition in the European telecommunications sector. As part of the WTO Agreement, for example, all EU Member States made commitments to provide market access and national treatment for voice telephony and data services. The Framework Directive imposes additional liberalization and harmonization requirements, and the Commission has taken action against Member States that have not implemented the Framework Directive. However, implementation of these requirements has been uneven across Member States and in many markets significant problems remain, including with the provisioning and pricing of unbundled local loops, line sharing, co-location, and the provisioning of leased lines. Partial government ownership of some Member States' incumbent telecommunications operators also has the potential to raise problems for new entrants.

In 2002, the EU issued a new regulatory framework for electronic communications that includes the EU Framework Directive and four specific Directives on: (1) licensing; (2) access and interconnection; (3) universal service and user rights; and (4) data protection.

This new regulatory framework requires Member States to update and adapt legislation to account for converging technologies and for future technological and market developments. It applies to all forms of electronic communications networks and associated services, not just traditional fixed telephony networks. The long-term goal is to phase out sector-specific, *ex-ante* regulation (for all but public interest reasons) in favor of reliance on general competition rules.

Beginning in December 2005, the European Commission began a process of reviewing the directives under the regulatory framework for electronic communications, and the European Commission is expected to make proposals for revising the directives in mid-2007.

Member State Practices:

Enforcement of existing legislation by the National Regulating Authorities (NRAs) has been hampered by unnecessarily lengthy and cumbersome procedures in France, Italy, Austria, and Portugal, among others. The European Commission has also found that incumbents in Germany, Greece, Spain, Italy, Ireland, Austria, Finland, and Sweden have slowed the arrival of competition by systematically appealing their national regulators' decisions.

Austria: In general, Austria has moved toward a more open and competitive telecommunications market and has implemented the relevant directives. There are several outstanding concerns related to: (1) the unbundling of the "last mile," (2) deficient procedures for the wholesale broadband access market (including bitstream access), (3) problems with the wholesale line rental, (4) interconnection fees and (5) the market for public telecommunications transit services. Generally, Austria's NRA – the TKC – provides timely initial decisions, but follow-up on those decisions, including the appeals process for such decisions, remains uncertain and slow.

Finland: Finland has one of the most mature mobile markets in Europe, with overall penetration rates in 2006 above the EU average. Fierce competition and a tough regulatory environment have created a difficult market for mobile operators. Finland has the third lowest mobile call charges of all Member States, behind only Denmark and Luxemburg. The merger of Telia and Sonera in 2002 reduced the number of competitors, since Telia in consequence relinquished its Finnish mobile business, and in late 2005 Tele2 also withdrew.

Finnish mobile phone operators have slowed the arrival of competition by systematically appealing the Finnish NRA – Finnish Communications Regulatory Authority FICORA's SMP (significant market power) decisions. The appeal processes have played an important role in the effectiveness of regulation in Finland, and appeals can take several years. Recent cases from Finland, where appeals have taken as long as three to five years, underscore the fact that the current system creates a high degree of regulatory uncertainty.

France: French cell phone usage is finally catching up to the European average, topping 80 percent penetration in 2006.

France implemented the EU Framework Directive in 2004, and the NRA (ARCEP) has made some progress in subsequently conducting the required market analyses of telecommunications sectors.

France Telecom (FT) was fined 80 million euros in July 2006 by a French Court of Appeals, which had found the company abused its position as France's dominant telecommunications operator by blocking access for rival ADSL Internet operators to its network between 1999 and 2002. The appeals court upheld an earlier decision by the French Competition Council, which has been playing an increasingly important role in the telecommunications sector as France Telecom struggles to maintain its dominant position. FT's domination is no longer a given as innovative technologies are deployed to offer "triple play" (long distance, Internet, and television) and even "four play" (triple play plus mobile telephone) packages at cut rate prices.

Germany: Germany has made slow progress in introducing competition to some sectors of its telecommunications market. The revised Telecommunications Act entered into force in June 2004 and most competitors to DT believe that it should facilitate enhanced competition. New entrants report they continue to face difficulties competing with the partially state-owned incumbent Deutsche Telekom AG (DT), which retains a near-monopoly in a number of key services, including local loop and broadband connections. On the positive side, greater competition for local and long-distance calling has helped competitors gain more than 20 percent of the local calling market since 2003. Currently, the National Regulatory Agency is studying how it should regulate 18 individual market segments, as required by the Framework Directive. After more than a year, it has completed twelve market studies.

In 2006, the German government amended the Telecommunications Act to boost customer protection rules, including more transparent pricing and billing, and introduce liability limitations for service providers. Section 9a of the amended Act, which took effect in February 2007, may grant "regulatory holidays" for services in new markets. DT has lobbied hard for such an exemption; competitors complain that Section 9a will shield DT from regulation as it installs a lucrative fiber optic network in order to provide triple play services. Since DT lacks a significant competitor capable of making a similar offering, this provision risks creating a *de facto* monopoly for services which do not meet the criteria of a "new market." The U.S. Government has raised serious concerns and engaged the German government repeatedly on this issue. The European Commissioner for Information Society initiated infringement proceedings immediately after Section 9a entered into force.

Companies have complained that DT and other mobile providers charge excessive termination rates when fixed-line users call mobile phones. After a June 2004 voluntary agreement by mobile operators failed to reduce termination charges and under continued EU pressure, the Federal Network Agency directed mobile providers in August 2006 to lower termination charges to a cost-based level. In addition, in October 2005, in response to complaints by competitors, the National Regulatory Agency launched a probe into whether DT is violating its dominant market position with the offer of a new low-cost ISDN

Internet connection subscription fee. In September 2006, it issued a ruling requiring DT to grant competitors, upon request, IP bitstream access to residential customers, such as unbundled broadband access based on the Internet protocol.

Hungary: The Hungarian telecommunications market is almost fully liberalized. However, legal obstacles, as well as a lack of investors, have hindered competition. In May 2005, following the general policy of majority owner Deutsche Telekom (DT), the Hungarian "T-Brands" (Axelero, the Internet service provider; the business solutions branch; and the cable provider branch) merged with Matáv, the former monopolist and today's market-leading telephony provider, under the name of Magyar Telekom Rt. In October 2005, Magyar Telekom Rt. merged with T-Mobile Hungary, the leading mobile phone operator, which is also partially owned by DT. This involved changes in management and strengthened Magyar Telekom's leading position in the voice and communications market. UPC and TELE2, as new-fixed line providers, launched their services offering lower tariffs than Matav. In addition, UPC has focused on bundling television, broadband Internet and telephony services to gain larger market share in an ever-shrinking fixed-line telephony environment. The number of fixed line subscriptions decreased to 33.8 percent by the end of the second quarter of 2006, while mobile phone penetration continues to increase, reaching nearly 94 percent at the end of the same quarter.

Ireland: The government privatized the state monopoly, Telecom Eireann, in 1999, and the new company, Eircom, retains a 74 percent share of the fixed lines in Ireland and dominates leased-line services and national interconnection, entailing high prices for local services. Competition in the Irish communications market intensified in 2006, with an ever-growing number of authorised operators. There were also several high-profile mergers and acquisitions, notably the purchase of a majority stake in Eircom by Australia-based Babcock and Brown in June 2006. There are four mobile operators active in the Irish market. As of June 2006, the mobile penetration rate in Ireland was 103 percent, with 4.37 million mobile subscribers.

Broadband use has grown with an increase in the number of licensed operators. Broadband penetration was estimated at 8.8 percent in June 2006, up from 5 percent in 2005. Ireland has adopted EU local loop unbundling (LLU) legislation, and the government has initiated legal action to compel Eircom to complete LLU in order to promote competition and innovation in the DSL market.

Luxembourg: In 2005, Luxembourg began revising administrative procedures to implement the EU Framework Directive to liberalize Member States' telecommunications markets and allow for fairer competition. Despite these efforts, the state-owned P&T company continues to dominate the nation's telecommunications market. In addition, despite a 1998 court ruling opening Luxembourg's small mobile phone market to competition, the wireless communications market remains dominated by only three companies, one of which is half-owned by the state company.

Poland: Telecommunications and Internet investments remain strong in Poland. New competitors (Netia, Orange, Germanos) have entered the cellular market, and well-known Internet presences, such as Google, are locating in Warsaw. Still, the ability of new entrants to compete may have been hindered by the failure of Poland's Electronic Communications Office – UKE – to implement the EU Framework Directive in a timely manner. The UKE continues to battle Polish telecommunications operator TPSA over its monopolistic business practices.

Spain: Access to leased lines in Spain remains problematic because rates do not appear to be based on actual cost. Despite actions by CMT, Spain's NRA, wholesale prices are still above the European average and approximately 100 percent above U.S. prices. This has allowed the incumbent operator Telefónica to offer services to customers at substantially lower rates than competitive carriers.

U.S. companies have complained that Spanish mobile operators are charging excessively high mobile termination rates and that they are squeezed out of the fixed-to-mobile communications market because mobile operators offer their subscribers mobile-to-mobile and fixed-to-mobile calls at below wholesale rates. Spanish anti-trust authorities are considering penalizing these mobile operators.

Evolution of the broadband market has been slow and problematic, and many operators have ceased offering these services. However, Telefónica's market share is being challenged by two operators: Ya.com and Wanadoo. Both of these companies have established partnerships with Spanish fixed and mobile line carriers.

INVESTMENT BARRIERS

Overview

The European Commission's mandate on investment issues is evolving. EU Member States negotiate their own bilateral investment protection and taxation treaties and generally retain responsibility for their investment regimes. In many areas, individual Member State policies and practices have a more significant impact on U.S. firms than do EU-level policies and practices.

Under the 1993 Maastricht Treaty, free movement of capital became an EU responsibility and capital controls both among EU Member States and between EU members and third countries were lifted. A few Member States' barriers remain in place, although in particular cases, EU law may supersede these. Right of establishment issues, particularly regarding third countries, are a shared competence between the EU and the Member States. The division of this shared competence varies from sector to sector based on whether the EU has issued regulations in a particular sector. Direct branches of non-EU financial service institutions remain subject to individual Member State authorization and regulation.

The EU requires national treatment for foreign investors in most sectors. EU law, with a few exceptions, requires that any company established under the laws of one Member State must, as a Community undertaking, receive national treatment in all Member States, regardless of its ultimate ownership. However, some restrictions on U.S. investment do exist under EU law and others have been proposed, as discussed below.

Ownership Restrictions and Reciprocity Provisions

EU Treaty Articles 43 (establishment) and 56/57 (capital movements) have helped the EU to achieve one of the most hospitable climates for U.S. investment in the world, but some restrictions on foreign direct investment remain in place. Under EU law, the right to provide aviation transport services within the EU is reserved to firms majority-owned and controlled by EU nationals. The right to provide maritime transport services within certain EU Member States is also restricted. EU banking, insurance and investment services directives currently include "reciprocal" national treatment clauses under which a financial services firm from a third country may be denied the right to establish a new business in the EU if the EU determines that the investor's home country denies national treatment to EU service providers. The right of U.S. firms to national treatment in this area was reinforced by the EU's GATS commitments.

After years of discussion, the Council of Ministers finally agreed in March 2004 on a directive on takeover bids ("Takeover Directive"). The original proposal would have banned any national legislation allowing companies to prevent hostile takeovers through the use of defensive measures (e.g., "poison pills" or multiple voting rights). The final directive makes it optional for Member States and companies to maintain a regime that rules out these defensive measures or to opt out of such rules. The European Parliament debated whether to limit the benefits of the new directive to companies that apply the same provisions, (*e.g.*, limiting the right of a board to take defensive measures or to mitigate the role of restrictions on share transfers or voting in a takeover bid). Article 12.3 of the final text is ambiguous as to whether the limitation would apply to non-EU firms, although the preamble of the legislation states that the application of the optional measures is without prejudice to international agreements to which the EC is a party.

The Directive was due to be implemented by the Member States by May 20, 2006. However, only Denmark, France, Hungary, Luxembourg, and the UK met this deadline. Ireland and Germany implemented the Directive after the deadline, and other countries have introduced draft legislation.

Under the 1994 hydrocarbons directive (Directive 94/22/EC), an investor may be denied a license to explore for and exploit hydrocarbon resources if the investor's home country does not permit EU investors to engage in those activities under circumstances "comparable" to those in the EU. These reciprocity provisions thus far have not affected any U.S.-owned firms.

Member State Practices

Austria: While European Economic Area (EEA) Member States' banks may operate branches on the basis of their home country licenses, banks from outside the EEA must obtain Austrian licenses to operate in Austria. However, if a non-EEA bank has already obtained a license in another EEA country for the operation of a subsidiary, it does not need a license to establish branch offices in Austria.

Bulgaria: Local companies in which foreign partners have controlling interests must obtain licenses to engage in certain activities, including: production and export of arms/ammunition; banking and insurance; exploration, development, and exploitation of natural resources; and acquisition of property in certain geographic areas. On February 23, 2007, the United States and Bulgaria signed the Treaty on Avoidance of Double Taxation (DTT). The U.S. business community in Bulgaria believes that the DTT will facilitate bilateral investment and trade. The insolvency rules in Bulgaria's Commercial Code and its Law on Public Offering of Securities (2005) have greatly improved the legislative protection for minority shareholders, but enforcement of the law's provisions is inadequate and corporate governance remains weak.

Cyprus: Property Acquisition: Cypriot law imposes significant restrictions on the foreign ownership of real property. Persons not ordinarily resident in Cyprus (whether of EU or non-EU origin) may purchase only a single piece of real estate (not to exceed three donum or roughly one acre) for private use (normally a holiday home). Exceptions can be made for projects requiring larger plots of land (i.e., beyond that necessary for a private residence) but they are difficult to obtain and are rarely granted. The restriction on property acquisition for EU citizens not normally resident in Cyprus will expire in May 2009. (Cyprus received a temporary derogation from the EU *acquis communautaire* on this issue, lasting for five years after accession). The restrictions will continue to apply, however, to non-EU residents, including U.S. nationals.

Tertiary education investment restrictions: Cypriot legislation on foreign investment in tertiary education distinguishes between colleges and universities. Investment in universities, defined as institutions with no fewer than 1,000 students enrolled in a sufficiently diverse range of classes and curricula, is encouraged. Foreign (including non-EU) investors can set up or acquire a university in Cyprus by simply registering a company on the island and following a set of non-discriminatory criteria. By contrast, non-EU investment in colleges is discouraged. Non-EU investors can set up or acquire a local college by registering a company in Cyprus or elsewhere in the EU provided that the company has EU-origin shareholders and directors. As a consequence, non-EU investors are not allowed to participate whether as directors or shareholders in the administration of local colleges.

Investment Restriction in Media Companies: Cyprus also restricts non-EU ownership of local mass media companies to 5 percent or less for individual investors and 25 percent or less for all foreign investors in each individual media company.

Construction: Under the Registration and Control of Contractors Laws of 2001 and 2004, the right to register as a construction contractor in Cyprus is reserved for citizens of EU Member States. Non-EU entities are not allowed to own a majority stake in a local construction company. Non-EU physical persons or legal entities may bid on specific construction projects, but only after obtaining a special license by the Council of Ministers.

Professional Recognition of Real Estate Agents and Other Groups: The current law licensing real estate agents to practice in Cyprus, last amended in 2003, acts as a protectionist measure, creating significant barriers to entry into the profession. Cypriot law recognizes only licensed individuals (not companies) to act as authorized real estate entities and licenses are only granted to individuals who have served as apprentices to licensed individuals for up to eight years. Existing real estate agents have also tried to use the law to restrict the ability of foreign real estate networks to advertise in their own names, although this interpretation of the law is under debate. There are also similar concerns about the transparency of the legislation concerning state recognition and accreditation of several other professions, including medical doctors and civil aviation pilots.

France: There are generally few screening or prior approval requirements for non-EU foreign investment in France. As part of a November 2004 law that streamlined the French Monetary and Financial Code, however, the State Council was directed to define a number of sensitive sectors in which prior approval would be required before acquisition of an equity stake.

A December 2005 government decree lists 11 business sectors in which the French Ministry of Economy, Finance and Industry has the right to monitor and restrict foreign ownership through a system of "prior authorization." These sectors include: businesses involved in the gambling industry, regulated businesses providing private security services, businesses involved in the research and development or manufacture of means of fighting the illegal use of pathogens or toxic substances by terrorists and preventing the adverse health-related consequences of such use, businesses dealing with wiretapping and mail interception equipment, businesses licensed to audit and certify services relating to the security of information technology systems and products, businesses providing goods and services relating to the security of the information systems of public or private-sector companies managing critical infrastructures, and businesses relating to certain dual-use items and technology.

The GOF is working on a draft bill on the protection from foreign takeover bids of 20 French companies defined as "sensitive." In addition, the government implemented the EU anti-takeover directive on March 31, 2006. Implementing legislation allows companies to resort to a U.S. style "poison pill" takeover defense, including granting existing shareholders and employees the right to increase their leverage by buying more shares through stock purchase warrants at a discount in case of an unwanted takeover. The government also asked the state-owned financial institution Caisse de Depots et Consignations (CDC), France's largest institutional investor, to work as a domestic buffer against foreign takeovers by increasing its stakes in French companies. In the name of "economic patriotism," the French government has thus demonstrated an inclination to intervene in potential transnational mergers or to otherwise signal its interest in defending French commercial "champions" from foreign takeover attempts.

Germany: Germany's 2002 takeover law was marginally changed by the implementation of the EU takeover directive. Germany made use of its "opt-out" right and retained measures that allow firms to ward off hostile takeover bids, first at the shareholder level, where management may be given authority at annual shareholder meetings to take necessary measures to guard against unwanted takeover interest; and, second, at the management level, where the managing board may take protective measures upon approval by the supervisory board, bypassing the need for shareholder approval altogether. The EU directive offers companies the choice either to abide by the German law or to "opt-in" to the EU regulation. Companies using the "opt-in" may limit their waiver of Germany's protective measures to companies that also have no measures in place to fend-off hostile takeover bids.

Germany passed legislation in July 2004 requiring notification by foreign entities of investments expected to exceed 25 percent of the equity of German firms engaged in the production of armaments and cryptology technology used for classified government communications. Following an inter-ministerial review, the government may veto such sales within one month of receipt of a notification. The German government expanded the scope of the law in 2005 to include tank and tracked vehicle engines to block a U.S. financial investor from buying a tank engine manufacturer.

Greece: Greek authorities consider local content and export performance when evaluating applications for tax and investment incentives. Such criteria do not appear to be prerequisites for approving investments, however.

Greece has opened its telecommunications market and is in the process of gradually liberalizing its energy sector. At present, however, Greece's inhospitable regulatory framework has hampered efforts by U.S. firms to develop energy production facilities.

U.S. and other non-EU investors receive less advantageous treatment in Greece than domestic or other EU competitors in the banking, mining, maritime, air transport and broadcast industries (which were opened to EU citizens under EU single market rules). For reasons of national security, non-EU investors are restricted in their ability to purchase land in border regions and on certain islands.

Italy: The EU Takeover Directive has not yet been incorporated into Italian law. Current Italian law, which continues to apply pending the enactment in Italy of the EU Directive, requires the target of a takeover or merger bid to obtain authorization from shareholders before undertaking defensive measures to fend off a hostile bid and provides for a break-through rule on the most common pre-bid defensive tactics (i.e., shareholder voting agreements).

With few exceptions, Italy provides national treatment to foreign investors established in Italy or in another EU member state, as required by Article 43 of the EU Treaty. Under current regulations, U.S. and other non-Italian banks must obtain Bank of Italy approval to operate in Italy. Foreign banks face the same capital requirements as banks chartered in Italy. U.S. and other investment firms from non-EU countries may operate with authorization from Italy's securities market regulator, CONSOB. CONSOB may deny authorization to investment firms from countries that discriminate against Italian firms.

Malta: Maltese law requires that anyone buying residential or commercial real estate must obtain a permit from the Minister of Finance. EU citizens and returning Maltese migrants who have lived in Malta for more than five years receive a waiver from these permits. Non-EU citizens are not entitled to this waiver. Despite the restriction, permission to purchase land for commercial or residential purposes is normally granted. No U.S. businesses appear to have been discouraged from investing in Malta because of these restrictions. The restrictions have, however, delayed certain business investment projects involving American businesses.

Romania: A law on securities that was passed in 2004 entitles majority shareholders owning 95 percent of the total stock in a firm to buy residual shares. This law is considered to be a compromise, and provides very limited minority shareholder protection. Some minority shareholders have complained that Romanian authorities do not adequately protect their rights. A continued impediment to foreign investment is Romania's inconsistent legal and regulatory system. Tax laws change frequently and are unevenly enforced. Tort cases often require lengthy, expensive procedures, and judges' rulings are often not enforced.

ELECTRONIC COMMERCE

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

Data Privacy:

The EU Data Protection Directive (1995/46) allows the transmission of EU data to third countries only if those countries are deemed by the European Commission to provide an adequate level of protection by reason of its domestic law or of the international commitments it has entered into (Article 25(6)). U.S. companies can only receive or transfer employee and customer information from the EU by using one of the exceptions to the Directive's adequacy requirements or by demonstrating they can provide adequate protection for the transferred data. These requirements can be burdensome for many U.S. industries that rely on data exchange across the Atlantic.

Currently, the Commission has recognized Switzerland, Canada, Argentina, Guernsey, Isle of Man, the U.S. Department of Commerce's Safe Harbor Privacy Principles, and the transfer of Air Passenger Name Record to the U.S. Bureau of Customs and Border Protection as providing adequate protection. The U.S. Safe Harbor framework provides U.S. companies with a simple, streamlined means of complying with the adequacy requirement. The agreement allows U.S. companies that commit to a series of data protection principles (based on the Directive) and that publicly state their commitment by "self-certifying" on a dedicated website (www.export.gov/safeharbor), to continue to receive and transfer personal data from the EU. Signing up to the Safe Harbor is voluntary, but the rules are binding on signatories. A failure to fulfill the commitments of the Safe Harbor framework is actionable either as an unfair and deceptive practice under Section 5 of the FTC Act or, for air carriers and ticket agents, under a concurrent Department of Transportation statute.

The U.S. Government actively supports the Safe Harbor framework and encourages the European Commission and Member States to continue to use the flexibility offered by the Data Protection Directive to avoid unnecessary interruptions in data flows to the United States. Furthermore, the U.S. Government expects the European Commission and EU Member States to fulfill their commitment to inform the U.S. Government if they become aware of any actions that may interrupt data flows to the United States.

Brussels Regulation:

On December 22, 2000, the EU adopted the so-called Brussels Regulation which allows consumers to sue companies in the court of their country of residence, "when the website is directed to [his/her] Member State or to several countries, including that Member State." Industry has complained that the practical effect of this regulation is that companies doing business on the Internet in the EU risk being sued in every EU Member State, as opposed to being subject to the jurisprudence of their country of origin.

OTHER BARRIERS

Healthcare

Ireland: U.S. healthcare firms have faced difficulties entering Ireland's hybrid public-private health system. To generate sufficient revenues to justify investments in Irish hospitals and equipment, U.S. firms usually seek to treat both private and public patients. The treatment of public patients, however, requires a Service Level Agreement from the Health Service Executive (HSE), the administrative agency that oversees Ireland's hospital system. U.S. firms report difficulties in securing such an agreement from the HSE, despite longstanding problems with the provision of public health services in Ireland.

In the health insurance market, Ireland has espoused "risk equalization," whereby private insurers are required by law to compensate the Voluntary Health Insurance (VHI) Board, a quasi-governmental body, for the additional risk that it accepts in offering community (or equal) rating for policy-holders of different ages and medical profiles. Compensation is to be paid once a certain threshold based on the number of insured is reached, but the Irish government has not clarified the formula for determining the threshold. This ambiguity has been a factor in discouraging U.S. insurance firms from entering the Irish market.

GHANA

TRADE SUMMARY

The U.S. goods trade surplus with Ghana was $98 million in 2006, a decrease of $81 million from $179 million in 2005. U.S. goods exports in 2006 were $290 million, down 14.1 percent from the previous year. Corresponding U.S. imports from Ghana were $192 million, up 21.3 percent. Ghana is currently the 97th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Ghana in 2005 was $230 million (latest data available), down from $238 million in 2004.

IMPORT POLICIES

Tariffs

Ghana is a Member of the WTO and the Economic Community of West African States (ECOWAS). Along with other ECOWAS countries, Ghana adopted a common external tariff (CET) in 2005. The ECOWAS CET requires that members simplify and harmonize ad valorem tariff rates into four bands: zero duty on social goods (e.g., medicine, publications); 5 percent duty on imported raw materials; 10 percent duty on intermediate goods; and 20 percent duty on finished goods. Currently, Ghana maintains 190 exceptions to the CET. Tariff rates for the items covered under exceptions are within the 0 percent to 20 percent range, but will require some increase or decrease to align with the CET. Ghana, along with six other Anglophone countries, is currently in a transition period and is negotiating the exceptions with ECOWAS. The transition period ends December 2007. Consensus on a comprehensive ECOWAS CET must be reached by January 2008.

The Ghanaian government continues to support domestic private enterprise with financial incentives and tax holidays in order to develop competitive domestic industries with export capabilities. Nevertheless, Ghanaian manufacturers and producers contend that the country's relatively low tariff structure puts them at a competitive disadvantage vis-à-vis imports from countries that enjoy greater production and marketing economies of scale. Conversely, the relatively low tariff structure reduces producer costs for imported raw materials and inputs, so there is also some local demand for further tariff reductions, especially on inputs used by local businesses. Since 2004, the Ghanaian government has responded by reducing the import duty on livestock inputs, pharmaceutical raw materials, and inputs for textiles production. In addition, there is a zero tariff on some imported manufacturing raw materials. Further adjustments both upward and downward may occur as the CET process moves ahead. Tariff information is available on the Customs Excise and Preventive Service (CEPS) website (www.cepsghana.org).

Non-Tariff Measures

Importers are confronted by a variety of fees and charges in addition to tariffs. Ghana levies a 12.5 percent value-added tax (VAT) plus 2.5 percent National Health Insurance Levy on the duty-inclusive value of all imports and locally-produced goods, with a few selected exemptions. In addition, Ghana imposes a 0.5 percent ECOWAS surcharge on all goods originating from non-ECOWAS countries and charges 0.4 percent of the sum of the free on board (FOB) value of goods and VAT for the use of the automated clearing system, the Ghana Community Network (GCNet). Further, under the Export Development and Investment Fund Act, Ghana imposes a 0.5 percent duty on all non-petroleum products imported in commercial quantities. Ghana also applies a 1 percent processing fee to all duty-free imports.

All imports are subject to destination inspection and an inspection fee of 1 percent cost, insurance, freight (CIF). Importers have indicated that they would prefer a flat fee on each transaction. The destination inspection services are currently provided by four private companies licensed by the government of Ghana. Importers are lobbying the Ghanaian government to shift the provision of destination services from the four licensed companies to Ghana Customs because of the cost and delays incurred as a result of having an outside provider.

Imports of malt drinks, water, beer, and tobacco products are subject to excise taxes ranging between 5 percent and 140 percent. An examination fee of 1 percent is applied to imported vehicles. Imported used vehicles that are more than 10 years old incur an additional tax (penalty) ranging from 5 percent to 50 percent of the CIF value of the used vehicles. Ghana Customs maintains a price list of vehicles that it uses to determine the value of used vehicles for tax purposes. There are complaints that this system is non-transparent. The price list is not publicly available.

All communications equipment requires a clearance letter from the National Communications Authority.

Each year, between May and October, there is a temporary ban on the importation of fish, except canned fish, to protect local fishermen during their peak season. Ghana continues to ban imports of U.S. bone–in beef due to Bovine Spongiform Encephalopathy (BSE). Certificates are required for agricultural, food, cosmetics and pharmaceutical imports. The procedures are cumbersome. Permits are required for poultry and poultry product imports. The permit process is time-consuming, and at the time the permit is issued, a non-standardized quantity limit is imposed.

Ghana prohibits the importation of meat with a fat content by weight greater than 25 percent for beef, 42 percent for pork, 15 percent for poultry, and 35 percent for mutton. It also restricts the importation of condensed or evaporated milk with less than 8 percent milk fat by weight, and dried milk or milk powder containing less than 26 percent by weight of milk fat, with the exception of imported skim milk in containers. Imported turkeys must have their oil glands removed.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Ghana has issued its own standards for most products under the auspices of its testing authority, the Ghana Standards Board (GSB). The GSB has promulgated more than 250 Ghanaian standards and adopted more than 3,057 international standards for certification purposes. The GSB determines standards for all products. Authority for enforcing standards for food, drugs, cosmetics, and health items lies with the Food and Drugs Board. Ghana intends to adopt more internationally-recognized standards and move away from its mandatory domestic standards, except for products that raise environmental or human health or safety concerns.

In July 2005, Ghana instituted a "Conformity Assessment Program," which requires that some imported goods it classifies as "high risk goods" be inspected by the GSB officials at the port to ensure they meet Ghanaian standards before obtaining release from customs. The GSB has classified the high risk goods (HRG) into 17 broad groups, including food products, electrical appliances and used goods. The classification of items is vague and broad in scope and presents numerous questions regarding coverage. For example, the category of "alcoholic and non-alcoholic products" could feasibly include beverages, pharmaceuticals, and industrial products under the same classification. The process requires prior registration with GSB as an importer of HRG and a GSB approval to import HRG. The importer must submit to GSB a sample of the high risk product, accompanied by a certificate of analysis or a certificate of conformance from accredited laboratories in the country of import. Most often, the GSB officials conduct a physical examination and check labeling and marking requirements and ensure that goods are released within 48 hours. Currently, the fee for registering each HRG is 200,000 cedis (about $22.00). There is also a testing fee in addition to the registration fees. This is not fixed but based on the number and kinds of parameters tested. U.S. companies, however, have stated that the standards which the program tests against are unknown; the fee schedules are not published; and independent third party certifications and marks may not be recognized, resulting in costly and redundant testing.

GOVERNMENT PROCUREMENT

Ghana is not a signatory to the WTO Agreement on Government Procurement. In December 2003, however, Parliament passed a public procurement law that codified guidelines to enhance transparency and efficiency and assign administration of procurement to a central body.

In August 2004, the government inaugurated the Public Procurement Board. Individual government entities have formed tender committees and tender review boards to conduct their own procurement. Large public procurements are made by open tender and non-domestic firms are allowed to participate. A draft guideline has been prepared which gives a margin of preference of 7.5 percent to 20 percent to domestic suppliers of goods and services for international competitive bidding. Notwithstanding the new procurement law, companies cannot expect complete transparency in locally funded contracts. There have been recent allegations of corruption in the tender process.

EXPORT SUBSIDIES

The government uses preferential credits and tax incentives to promote exports. The Export Development Investment Fund administers financing on preferential terms using a 12 percent interest rate, which is below market rates. Agricultural export subsidies were eliminated in the mid-1980s. The Export Processing Zone (EPZ) Law, enacted in 1995, leaves corporate profits untaxed for the first 10 years of business operation in an EPZ, after which the tax rate climbs to 8 percent (the same as for non-EPZ companies). Seventy percent of production in the EPZ zones must be exported. Under the 2006 budget, submitted to Parliament in November 2005, the government reduced the corporate tax rate for non-exporting companies from 28 percent to 25 percent, effective January 1, 2006.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Ghana is a party to the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, the World Intellectual Property Organization (WIPO) Copyright Treaty and the African Regional Industrial Property Organization. Ghana has signed the WIPO Performances and Phonograms Treaty. Since December 2003, Parliament has passed six bills designed to bring Ghana into compliance with the TRIPS Agreement. The new laws address copyright, trademarks, patents, layout-designs (topographies) of integrated circuits, geographical indications, and industrial designs. Regulations to define the procedures for IPR protection and enforcement have not been promulgated.

Piracy of copyrighted works is known to take place, although there is no reliable information on the scale of this activity. Holders of intellectual property rights have access to local courts for redress of grievances, although few trademark, patent, and copyright infringement cases have been filed in Ghana in recent years. Government-initiated enforcement is virtually non-existent.

SERVICES BARRIERS

The investment code excludes foreign investors from participating in four economic sectors: petty trading, the operation of taxi and car rental services with fleets of fewer than ten vehicles, lotteries (excluding soccer pools), and the operation of beauty salons and barber shops. Provision of services by professionals such as lawyers, accountants, and doctors requires membership in a professional body. Requirements for membership are identical for both Ghanaians and non-Ghanaians.

Ghana has committed to offering access to foreign telecommunications providers for most basic services, but has required that these services be provided through joint ventures with Ghanaian nationals. In 2004, the National Communications Authority (NCA) opened up the market by allowing additional carriers beyond the previous duopoly. The NCA has yet to become an effective mechanism to resolve complaints of anticompetitive practices by Ghana Telecom, the state-owned national telecommunications operator.

Ghana allows up to 60 percent foreign ownership in insurance firms. This cap does not apply to auxiliary insurance services, which allows 100 percent foreign ownership. Ghana allows foreign companies to provide a full range of services, as long as they are registered as companies in Ghana.

Foreigners may participate in banking and other non-insurance financial services but there are some conditions relating to non-resident foreigners. Shares held by a single non-resident foreigner and the total number of shares held by all non-resident foreigners in one security listed on the Ghana Stock Exchange may not exceed 10 percent and 74 percent, respectively. The Central Bank must issue licenses for banking and leasing. For securities trading, a license is required from the Securities Regulatory Commission. Capital requirements for establishing a bank have been increased to 70 billion cedis (approximately $7.7 million), and are now the same for both foreign-owned banks and Ghanaian-owned banks. Prior to implementing the Bank of Ghana's universal banking policy in 2004, foreign-owned banks faced higher capital requirements than Ghanaian-owned banks (50 billion cedis versus 25 billion cedis, approximately $5.4 million and $2.7 million, respectively).

INVESTMENT BARRIERS

The 1994 Investment Code (Act 478) eliminated the need for prior approval of foreign investment projects by the Ghana Investment Promotion Center. Investment registration, which the government undertakes essentially for statistical purposes, is supposed to be accomplished within five working days. However, according to the "Administrative and Regulatory Cost Survey," conducted by the World Bank and International Finance Corporation-funded Foreign Investment Advisory Service in 2003, the actual time reported by respondents averaged two weeks. The World Bank reported in its "Doing Business 2007" report that the total time to start a business in Ghana was 81 days, an improvement from 129 days prior to 2003, but still significantly longer than in many other countries at a similar level of development.

Investment incentives have been written into the corporate tax and customs codes. Incentives include the exemption from import tariffs for manufacturing inputs and equipment and generous tax breaks. Work visa quotas for businesses are in effect. The following minimum equity requirements apply, in the form of either cash or its equivalent in capital goods, for non-Ghanaians who want to invest in Ghana: $10,000 for joint ventures with a Ghanaian; $50,000 for enterprises wholly-owned by a non-Ghanaian; and $300,000 for trading companies (firms that buy/sell finished goods) either wholly or partly-owned by non-Ghanaians. Trading companies must also employ at least ten Ghanaians.

The Ghanaian government at one point controlled more than 350 state-owned enterprises, but nearly 300 were privatized by the end of 2000 under the privatization program of former President Rawlings.

Privatization efforts have continued under the Kufuor Administration under a reconstituted Divestiture Implementation Committee. As of December 31, 2005, a total of 351 firms had been privatized, leaving only a handful of state-owned enterprises. Privatization in the telecommunications sector is moving ahead, albeit slowly. In October 2006, the government solicited letters of interest for a transactions advisor for the privatization of Ghana Telecom. A selection should be made by mid-2007. A short list of four bidders for Westel was identified; one bidder dropped out and the remaining three made technical proposals to the government in March 2007. A decision is pending. Shares of Ghana Oil Company and the State Insurance Company are slated to be floated on the Ghana Stock Exchange in 2007. The dilution of government ownership of Ghana Commercial Bank through issuance of new shares is on hold until a court case brought by a shareholder over the matter has been resolved.

ELECTRONIC COMMERCE

Barriers to electronic commerce are mainly due to inadequate telecommunications and financial infrastructure. The payment system in Ghana is largely cash-based. The legalization of foreign exchange bureaus has made foreign currency readily available for small transactions. Local banks can facilitate the transfer of foreign payments abroad. Transfers of large quantities of foreign currency, however, can run into significant delays. Parliament passed a new Foreign Exchange Act in November 2006 that provides a new legal framework for the management of foreign exchange transactions and should help address these problems.

OTHER BARRIERS

U.S. companies interested in doing business in Ghana should be aware of other barriers, such as limited and costly credit facilities for local importers. There are frequent problems related to the complex land tenure system, and establishing clear title can be difficult. Non-Ghanaians can have access to land on a leasehold basis. Frequent backlogs of cargo at the port hurt the business climate. The Customs Service phased in an automated customs declaration system that was established in the last quarter of 2002 to facilitate customs clearance. Although the new system has cut down the number of days for clearing goods from the ports, the desired impact has yet to be realized because complementary services from government agencies, banks, destination inspection companies, and security services have not been established.

The high cost of local financing (with short-term interest rates currently above 20 percent) is a significant disincentive for local traders, inhibiting the expansion of most Ghanaian businesses from their current micro-scale operations and constraining industrial growth. The high cost of credit in Ghana is a function of the high risks of doing business in Ghana. They also reflect high labor costs as well as the oligopolistic structure of the banking sector and directed lending to state-owned enterprises. Ghanaian banks are among Africa's most profitable due to wide interest/deposit rate spreads. The residual effects of a highly regulated economy and lack of transparency in government operations create an element of risk for potential investors. Bureaucratic inertia is frequently a problem in government ministries, and administrative approvals take longer than they should. Entrenched local interests sometimes have the ability to derail or delay new entrants, and securing government approvals may depend upon an applicant's local contacts. The political leanings of the Ghanaian partners of foreign investors are often subject to government scrutiny. Corruption historically has been an issue with which foreign firms have had to contend. The government has indicated its intent to address this issue, particularly through the passage of Public Procurement, Financial Administration, and Internal Audit Acts. However, these Acts have not been fully implemented and are therefore not effective in reducing or eliminating government corruption.

GUATEMALA

TRADE SUMMARY

The U.S. goods trade balance with Guatemala went from a trade deficit of $302 million in 2005 to a trade surplus of $418 million in 2006. U.S. goods exports in 2006 were $3.5 billion, up 24.1 percent from the previous year. Corresponding U.S. imports from Guatemala were $3.1 billion, down 1.2 percent. Guatemala is currently the 39th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Guatemala in 2005 was $379 million (latest data available), down from $400 million in 2004.

IMPORT POLICIES

Free Trade Agreement

The United States concluded free trade agreement negotiations with El Salvador, Guatemala, Honduras and Nicaragua in December 2003 and with Costa Rica in January 2004. In May 2004, the six countries signed the United States–Central America Free Trade Agreement. During 2004, the United States and the Central American countries integrated the Dominican Republic into the free trade agreement. On August 5, 2004, the seven countries signed the Dominican Republic–Central America–United States Free Trade Agreement (CAFTA-DR).

All of the signatory countries have ratified the agreement, with the exception of Coast Rica. The agreement entered into force for Guatemala on July 1, 2006. The agreement also has entered into force for the Dominican Republic, El Salvador, Honduras and Nicaragua.

The agreement removes barriers to trade and investment in the region and will strengthen regional economic integration. The CAFTA-DR also requires the Central American countries and the Dominican Republic to undertake needed reforms to provide market liberalization as well as greater transparency and certainty in a number of areas, including: customs administration, protection of intellectual property rights, services, investment, financial services, government procurement, and sanitary and phytosanitary (SPS) measures.

Tariffs

As a member of the Central American Common Market (CACM), Guatemala agreed in 1995 to reduce its common external tariff to a maximum of 15 percent. There are exceptions, however, including tariffs of up to 40 percent on alcoholic beverages and up to 20 percent on white corn, beans, sugar, cigarettes, various types of vehicles and firearms. Other exceptions include the higher tariffs applied to agricultural commodity imports in excess of any applicable tariff-rate quota (TRQ). The average applied rate on all products is approximately 6 percent.

Under the CAFTA-DR, about 80 percent of U.S. industrial and consumer goods now enter Guatemala duty-free, with the remaining tariffs phased-out over ten years. Nearly all textile and apparel goods that meet the agreement's rules of origin are now traded duty-free and quota-free, promoting new opportunities for U.S. and regional fiber, yarn, fabric and apparel manufacturing. The agreement's tariff treatment for textile and apparel goods is retroactive to January 1, 2004.

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter Guatemala duty-free. Guatemala will eliminate its remaining tariffs on nearly all agricultural products within 15 years (18 years for rice and chicken leg quarters and 20 years for dairy products). For the most sensitive products, tariff-rate quotas (TRQs) will permit some immediate duty-free access for specified quantities during the tariff phase-out period, with the duty-free amount expanding during that period. Guatemala will slowly liberalize trade in white corn, a particularly sensitive product, through expansion of a TRQ projected to increase at a 2 percent annual rate with an aggregate increase to 24 percent by the end of 2025. Guatemala's imports of corn consist mainly of yellow corn, 90 percent of which already comes from the United States.

The agreement also requires transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. Under the CAFTA-DR, Guatemala committed to ensure greater procedural certainty and fairness in the administration of these procedures, and all CAFTA-DR countries agreed to share information to combat illegal transshipment of goods.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Guatemalan law requires that food products sold in the domestic market be tested, registered and labeled in Spanish, although stick-on labels are permitted. Products sold in bulk are exempt from the labeling requirement unless they are to be sold at the retail level as an individual unit. Enforcement of product registration and labeling requirements has been inconsistent but is improving. Labeling standards are required for food, pharmaceuticals, pesticides, footwear and distilled beverages. At this point, food registration has been standardized for the region so that sample analysis is not necessary if the product has been registered in any of the CAFTA-DR countries.

When the United States and Central America launched the free trade agreement negotiations, they initiated a working group dialogue on SPS barriers to agricultural trade that met in conjunction with the negotiations to facilitate market access. The objective was to use the impetus of active trade negotiations to seek changes to the Central American countries' SPS regimes. Through the work of this group, Guatemala has committed to resolving specific measures that may affect U.S. exports to Guatemala. In addition, in connection with the CAFTA-DR, Guatemala agreed to recognize the equivalence of the U.S. food safety and inspection system for meat and poultry, thereby eliminating the need for plant-by-plant inspections.

The five Central American countries, including Guatemala, are in the process of developing common standards for the importation of several products, including distilled spirits, which should facilitate trade.

GOVERNMENT PROCUREMENT

Guatemala is not a signatory to the World Trade Organization (WTO) Government Procurement Agreement. Guatemala's Government Procurement Law requires most government purchases over 900,000 quetzals (approximately $117,800) to be submitted for public competitive bidding. Foreign suppliers must submit their bids through locally registered representatives, a process that can place foreign bidders at a competitive disadvantage. Additionally, U.S. companies have alleged that corruption exists in public procurement, which is a barrier to entry.

Since 2004, Guatemalan entities have been required to use Guatecompras, an Internet-based electronic system to publicize Guatemala's procurement needs; this has improved transparency in the government procurement process. Reforms to the Government Procurement Law approved as part of CAFTA-DR implementation also require the use of Guatecompras in all procurements.

The CAFTA-DR requires the use of fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the agreement. Under the CAFTA-DR, U.S. suppliers will be permitted to bid on procurements of most Guatemalan government entities, including key ministries and state-owned enterprises, on the same basis as Guatemalan suppliers. The anti-corruption provisions in the agreement require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense, or is subject to comparable penalties.

EXPORT SUBSIDIES

Under the CAFTA-DR, Guatemala may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement (e.g., the exportation of a given level or percentage of goods). Guatemala may maintain existing duty waiver measures through 2009 provided such measures are consistent with its WTO obligations.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In May 2006, Guatemala strengthened its legal framework for the protection of intellectual property rights (IPR) with the passage of laws in preparation for the entry into force of the CAFTA-DR. The CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of intellectual property rights, which are consistent with U.S. standards of protection and enforcement and with emerging international standards. Such improvements include state-of-the-art protections for digital products such as U.S. software, music, text and videos; stronger protection for U.S. patents and trademarks; and further deterrence of piracy and counterfeiting. The CAFTA-DR also requires Guatemala to protect undisclosed test data submitted for the purpose of product marketing approval of pharmaceutical and agricultural chemical products against disclosure and unfair commercial use. We are monitoring Guatemala's compliance with these provisions in particular.

SERVICES BARRIERS

Foreign banks may open branches or subsidiaries in Guatemala subject to the conditions of the Monetary Board, including capital and lending requirements based exclusively on the balance sheet of the local entity.

Some professional services may only be supplied by professionals with locally recognized academic credentials. Public notaries must be Guatemalan nationals. Foreign enterprises may provide licensed professional services in Guatemala through a contract or other relationship with an enterprise established in Guatemala. Under the CAFTA-DR, U.S. insurance companies are able to establish wholly-owned subsidiaries and joint ventures, with a four-year phase-in for branches. U.S. insurance suppliers will also be able to provide cross-border insurance in areas such as marine, aviation and transportation, goods in international transit and the brokerage for these products, and reinsurance. Services auxiliary to insurance such as claims settlement, actuarial, risk assessment and consulting may be provided on a cross-border basis as well.

The CAFTA-DR requires Guatemala to ensure reasonable and non-discriminatory access to essential telecommunications facilities and to ensure that – by no later than 2007 – major suppliers provide interconnection at cost-oriented rates. U.S. companies have raised allegations of anti-competitive behavior, including unilateral changes of interconnection rates and suspension of service, by the country's dominant fixed-line telephone service provider, Telgua, a subsidiary of Telmex of Mexico. Although Guatemala's courts have ruled against Telgua in those cases where a verdict has been reached, the companies allege that the anticompetitive practices continue.

INVESTMENT BARRIERS

The CAFTA-DR establishes a more secure and predictable legal framework for U.S. investors operating in Guatemala. Under the CAFTA-DR, all forms of investment are protected, including enterprises, debt, concessions, contract and intellectual property. U.S. investors enjoy, in almost all circumstances, the right to establish, acquire and operate investments in Guatemala on an equal footing with local investors. Among the rights afforded to U.S. investors are due process protections and the right to receive a fair market value for property in the event of an expropriation. Investor rights are protected under the CAFTA-DR by an effective, impartial procedure for dispute settlement that is fully transparent and open to the public. Submissions to dispute panels and dispute panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.

Guatemala's 1998 investment law generally provides for national treatment of foreign investment. However, specific restrictions remain in several sectors of the economy, including auditing and forestry, although these restrictions are not always enforced. Complex and confusing laws, regulations, red tape, and corruption constitute practical barriers to investment.

ELECTRONIC COMMERCE

The CAFTA-DR includes provisions on electronic commerce that reflect its importance to global trade. Under the CAFTA-DR, Guatemala has committed to provide non-discriminatory treatment to U.S. digital products, not to impose customs duties on digital products transmitted electronically, and to work together with the United States in policy areas related to electronic commerce.

OTHER BARRIERS

Allegations of official corruption under the previous administration and a poor security environment may have weakened investors' confidence and affected investment and trade decisions related to Guatemala.

HONDURAS

TRADE SUMMARY

The U.S. goods trade deficit with Honduras was $25 million in 2006, a decrease of $471 million from $495 million in 2005. U.S. goods exports in 2006 were $3.69 billion, up 13.5 percent from the previous year. Corresponding U.S. imports from Honduras were $3.72 billion, down 0.8 percent. Honduras is currently the 38th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Honduras in 2005 was $402 million (latest data available), up from $314 million in 2004. U.S. FDI in Honduras is concentrated largely in the manufacturing sector.

IMPORT POLICIES

Free Trade Agreement

The United States concluded free trade agreement negotiations with El Salvador, Guatemala, Honduras and Nicaragua in December 2003 and with Costa Rica in January 2004. In May 2004, the six countries signed the United States–Central America Free Trade Agreement. During 2004, the United States and the Central American countries integrated the Dominican Republic into the free trade agreement. On August 5, 2004, the seven countries signed the Dominican Republic–Central America–United States Free Trade Agreement (CAFTA-DR).

All of the signatory countries have ratified the agreement, with the exception of Costa Rica. The agreement entered into force for Honduras on April 1, 2006. The agreement also has entered into force for the Dominican Republic, El Salvador, Guatemala and Nicaragua.

The agreement removes barriers to trade and investment in the region and will strengthen regional economic integration. The CAFTA-DR also requires the Central American countries and the Dominican Republic to undertake needed reforms to provide market liberalization as well as greater transparency and certainty in a number of areas, including: customs administration, protection of intellectual property rights, services, investment, financial services, government procurement, and sanitary and phytosanitary (SPS) measures.

Tariffs

As a member of the Central American Common Market, Honduras agreed in 1995 to reduce its common external tariff to a maximum of 15 percent.

Under the CAFTA-DR, about 80 percent of U.S. industrial and consumer goods now enter Honduras duty-free, with the remaining tariffs phased-out over ten years. Nearly all textile and apparel goods that meet the agreement's rules of origin are now traded duty-free and quota-free, promoting new opportunities for U.S. and regional fiber, yarn, fabric and apparel manufacturing. The agreement's tariff treatment for textile and apparel goods is retroactive to January 1, 2004.

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter Honduras duty-free. Honduras will eliminate its remaining tariffs on nearly all agricultural products within 15 years (18 years for rice and chicken leg quarters and 20 years for dairy products). For the most sensitive products, tariff-rate Quotas (TRQs) will permit some immediate duty-free access for specified quantities during the tariff phase-out period, with the duty-free amount expanding during that period. Honduras will liberalize trade in white corn through expansion of a TRQ, rather than by tariff reductions.

The agreement also requires transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. Under the CAFTA-DR, Honduras committed to ensure greater procedural certainty and fairness in the administration of these procedures, and all CAFTA-DR countries agreed to share information to combat illegal trans-shipment of goods. In the early months of the CAFTA-DR, a small number of U.S. exporters experienced delays in their product clearing Honduran customs, due to confusion over classification procedures.

Honduras implemented the WTO Customs Valuation Agreement in February 2000.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Food imports into Honduras could grow significantly with a more transparent and efficient process of granting sanitary permits. The Honduran government requires that sanitary permits be obtained from the Ministry of Health for all imported foodstuffs and that all processed food products be labeled in Spanish and registered with the Division of Food Control of the Ministry of Health. While the Ministry of Health (under the previous Maduro administration) agreed to expedite this surveillance process by focusing most closely on products considered to be a high risk for sanitary concerns (such as raw meat) and simplifying the procedures for low risk products, concerns remain that the regulations are not being strictly enforced for Honduran competitors. Importers of U.S. products note difficulty in obtaining permits for new product lines. The Honduran government has also cited SPS concerns in periodically denying applications for the importation of pork, poultry and dairy products. Lack of clear guidelines regarding the exact cooking temperatures to determine the difference between “cooked” and “raw” chicken continue to pose challenges for U.S. importers. The U.S. Department of Agriculture and the U.S. Poultry and Egg Export Council have been working with the Honduran government to determine the exact regulations and documentation for raw chicken imports.

From 2002 to mid-year 2006, Honduras imposed a ban on poultry products from a number of U.S. states, due to concerns over low-pathogenic avian influenza. The ban was eliminated in June 2006.

When the United States and Central America launched the free trade agreement negotiations, they initiated an active working group dialogue on sanitary and phytosanitary (SPS) barriers to agricultural trade that met alongside the negotiations to facilitate market access. The objective was to use the impetus of active trade negotiations to seek changes to the Central American countries’ SPS regimes. Through the work of this group, Honduras committed to resolving specific measures affecting U.S. exports to Honduras. In addition, under the CAFTA-DR, Honduras agreed to recognize the equivalence of the U.S. food safety and inspection system for meat and poultry, thus eliminating the need for plant-by-plant inspection.

The five Central American countries, including Honduras, are in the process of developing common standards for the importation of several products, including distilled spirits, which should facilitate trade.

GOVERNMENT PROCUREMENT

Honduras is not a signatory to the World Trade Organization (WTO) Agreement on Government Procurement. Under the Government Contracting Law, which entered into force in October 2001, all public works contracts over one million lempiras (approximately $53,000 as of November 2006) must be offered through public competitive bidding. Public contracts between 500,000 and one million lempiras ($25,000 and $50,000) can be offered through a private bid, and contracts less than 500,000 lempiras ($25,000) are exempt from the bidding process.

The CAFTA-DR requires the use of fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the agreement. Under the CAFTA-DR, U.S. suppliers will be permitted to bid on procurements covered by the agreement of most Honduran government entities, including most key ministries, on the same basis as Honduran suppliers. The anti-corruption provisions in the CAFTA-DR require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including government procurement, is treated as a criminal offense, or is subject to comparable penalties. The CAFTA-DR eliminated a Honduran requirement that foreign firms act through a local agent that was at least 51 percent Honduran-owned.

EXPORT SUBSIDIES

Honduras does not have export promotion schemes other than the tax exemptions given to firms in free trade zones.

Under the CAFTA-DR, Honduras may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement (e.g., the exportation of a given level or percentage of goods). Honduras may maintain existing duty waiver measures for such time as it is an Annex VII country for the purposes of the WTO Agreement on Subsidies and Countervailing Measures (SCM). Thereafter, Honduras shall maintain any such measures in accordance with Article 27.4 of the SCM Agreement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In early 2006, Honduras strengthened its legal framework for the protection of intellectual property rights (IPR) with the passage of new laws in preparation for the entry into force of the CAFTA-DR. CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of intellectual property rights, which are consistent with U.S. standards of protection and enforcement and with emerging international standards. Such improvements include state-of-the-art protections for digital products such as U.S. software, music, text and videos; stronger protection for U.S. patents, trademarks and test data, including an electronic system for the registration and maintenance of trademarks; and further deterrence of piracy and counterfeiting .

During 2006, Honduran government prosecutors engaged in a series of raids against producers and vendors of pirated goods. This renewed emphasis on enforcement marks a notably positive shift towards greater anti-piracy efforts.

SERVICES BARRIERS

Under the CAFTA-DR, Honduras allows substantial market access in services across their entire services regime, subject to very few exceptions. The right to provide professional services may be granted on a reciprocal basis depending on the requirements in individual U.S. states. In addition, U.S. financial service suppliers have full rights to establish subsidiaries, joint ventures or branches for banks and insurance companies. There is a phase-in for branching in insurance. Honduras allows U.S.-based firms to offer cross-border services in areas such as financial information and data processing, and financial advisory services. Portfolio managers in the United States will be able to provide portfolio management services to both mutual funds and pension funds in Honduras.

In 2006, two major U.S. financial services firms each acquired Central American regional banks, including their Honduran portfolios, primarily credit card customers. However, a proposed Honduran law setting credit card rates and banning late fees has raised serious concerns for at least one of these regional banks.

Until December 2005, the government-owned telephone company Hondutel maintained monopoly rights over all fixed-line telephony services. In 2003, the government began to allow foreign investors to participate in fixed-line telephony services as "sub-operators" in partnership with Hondutel. At present, approximately 40 firms have entered into "sub-operator" contracts with Hondutel.

INVESTMENT BARRIERS

The CAFTA-DR establishes a more secure and predictable legal framework for U.S. investors operating in Honduras. Under the CAFTA-DR, all forms of investment are protected, including enterprises, debt, concessions, contract and intellectual property. U.S. investors enjoy, in almost all circumstances, the right to establish, acquire and operate investments in Honduras on an equal footing with local investors. Among the rights afforded to U.S. investors are due process protections and the right to receive a fair market value for property in the event of an expropriation. Investor rights are protected under the CAFTA-DR by an effective, impartial procedure for dispute settlement that is fully transparent and open to the public. Submissions to dispute panels and dispute panel hearings will be open to the public, and interested parties will have the opportunity to submit their views. Under the CAFTA-DR, the existing United States-Honduras Bilateral Investment Treaty will be suspended after a period of 10 years. Investors will continue to have important investment rights and protections under the investment provisions of the CAFTA-DR.

In 2006, the Honduran government announced that it would develop a bidding system to select importers of petroleum products into Honduras. This has caused great concern among the private sector as it could disenfranchise existing importers and call into question existing contracts. The U.S. Government continues to work through these issues with Honduras. Currently, the Honduran government must approve any foreign investment in sectors including telecommunications, basic health, air transport, private education, and most sectors related to natural resources and farming. Foreign ownership of land within 40 km of the coastlines and national boundaries is constitutionally prohibited, although tourism investment laws allow for certain exceptions. Inadequate land title procedures, including overlapping claims and a weak judiciary, have led to numerous investment disputes involving U.S. nationals who are landowners.

ELECTRONIC COMMERCE

The CAFTA-DR includes provisions on electronic commerce that reflect its importance to global trade. Under the CAFTA-DR, Honduras has committed to provide non-discriminatory treatment of digital products, not to impose customs duties on digital products transmitted electronically, and to work together with the United States in policy areas related to electronic commerce.

Honduras currently has no domestic legislation concerning electronic commerce, as the sector is still not developed in the Honduran market. The Electronic Commerce System Directorate, a joint project of the Chamber of Commerce and Industry of Tegucigalpa, the Chamber of Commerce and Industry of Cortés and the National Industry Association, is the institution in charge of establishing the policies and norms pertaining to electronic commerce in Honduras.

Although improving, Honduras still lacks adequate basic telecommunications infrastructure and Internet bandwidth capacity to effectively support significant electronic commerce. Except for web page promotional material, companies are not utilizing computer-based sales as a substantial distribution channel in Honduras.

OTHER BARRIERS

Historically, U.S. firms and private citizens have found corruption to be a serious problem, which complicates doing business in Honduras. Corruption appears to be most prevalent in the areas of government procurement, the buying and selling of real estate (particularly land title transfers), performance requirements, and the regulatory system. Honduras' judicial system is subject to influence, and the resolution of investment and business disputes involving foreigners is largely non-transparent. The anti-corruption provisions in the CAFTA-DR require each government to ensure under its domestic law that bribery in trade-related matters is treated as a criminal offense, or is subject to comparable penalties.

Anti-Competitive Practices

U.S. industry has expressed concern that investors who set up business in Honduras have at times found themselves subject to practices that, in the United States, might be considered anticompetitive. For example, in 2003, a U.S.-Japanese joint venture established a cement company in Honduras, challenging the duopoly enjoyed by the two Honduran companies in the market. In 2004, the investor complained that the existing duopoly in the sector was engaging in anti-competitive predatory pricing practices. Despite the conclusions of an investigation by the Ministry of Commerce and the Attorney General's office that the duopoly "seeing the reduction in its market share, began to apply predatory pricing with the intention of eliminating [the U.S. firm] from the market," no subsequent prosecution was ever brought and the U.S. firm was forced to leave the Honduran market. After the firm left the market, prices increased dramatically to well above their previous level, until they were subsequently regulated by Honduran government action. There have also been allegations that steel prices are also fixed in Honduras, and on a regional basis there are reports of price collusion by the major steel producers. In 2006, the Honduran government passed a Competition law, establishing an anti-trust enforcement commission to combat such abuses. However, the government delayed for more than six months in naming the commissioners. As of March 2007, the Commission has received some funding, begun hiring staff and secured permanent office space.

HONG KONG

TRADE SUMMARY

The U.S. goods trade surplus with Hong Kong was $9.8 billion in 2006, an increase of $2.4 billion from $7.5 billion in 2005. U.S. goods exports in 2006 were $17.8 billion, up 8.7 percent from the previous year. Corresponding U.S. imports from Hong Kong were $7.9 billion, down 10.7 percent. Hong Kong is currently the 15th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Hong Kong were $3.7 billion in 2005 (latest data available), and U.S. imports were $4.9 billion. Sales of services in Hong Kong by majority U.S.-owned affiliates were $9.0 billion in 2004 (latest data available), while sales of services in the United States by majority Hong Kong-owned firms were $1.4 billion.

The stock of U.S. foreign direct investment (FDI) in Hong Kong in 2005 was $37.9 billion (latest data available), up from $34.8 billion in 2004. U.S. FDI in Hong Kong is concentrated largely in the non-bank holding companies, finance, and wholesale trade sectors.

IMPORT POLICIES

The Hong Kong government pursues a market-oriented approach to commerce. Hong Kong is a duty-free port with few barriers to trade in goods and services and few restrictions on foreign capital flows and investment. Hong Kong, however, has traditionally maintained excise duties on certain goods, including alcoholic beverages that were among the highest in the world. On February 28, 2007, following numerous interventions by the U.S. Government, the Hong Kong Financial Secretary announced with immediate effect that taxes on wine would drop from 80 percent to 40 percent, and beer and liquor (containing not more than 30 percent alcohol) would drop from 40 percent to 20 percent. The 100 percent tax on spirits (more than 30 percent alcohol content) was left unchanged. The U.S. Government is pleased with this largely positive development and encourages Hong Kong to eliminate the remaining excise duties on alcoholic beverages.

Hong Kong banned imports of U.S. beef in December 2003 following an imported case of Bovine Spongiform Encephalopathy (BSE). After two years of intensive efforts on the part of the U.S. Government and industry, the Hong Kong government announced the partial reopening of its market, with certain restrictions, in December 2005. Excessive restrictions, however, have discouraged most qualified U.S. beef exporters from shipping to Hong Kong. It is estimated that the two-year ban cost U.S. exporters approximately $160 million. The U.S. Government continues to press Hong Kong to normalize trade and implement import requirements consistent with World Organisation for Animal Health (OIE) guidelines or international standards.

COMPETITION POLICY

In late 2006, the Hong Kong government established an independent Competition Policy Review Committee to discuss the need, scope and application of a comprehensive and cross-sector law on competition. This has caused heated controversies on possible impacts of such a law in Hong Kong, especially among the business sector, and the U.S. Government will continue to follow these developments.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The Hong Kong government continues to maintain a robust IPR protection regime. Hong Kong has strong laws in place, a dedicated and effective enforcement capacity, and a judicial system that supports enforcement efforts by sentencing those convicted of IPR violations to prison. There are, however, vulnerabilities with regard to some forms of infringement. The Hong Kong government has increased its efforts to educate the public about intellectual property through television advertisement campaigns, a "No Fakes" program, and well-publicized raids against producers and retailers of infringing goods. The U.S. Government continues to monitor the situation to ensure that Hong Kong sustains its IPR protection efforts and addresses remaining problem areas.

In 2006, there were 1,063 arrests for optical disc piracy and 708 other counterfeit-related arrests. During the same period, the judiciary handed down 1,453 copyright and trademark convictions, the majority of which led to prison sentences of six to twelve months. Hong Kong Customs' intelligence operations and raids on underground production facilities have closed most large-scale pirate manufacturing operations, prompting many producers of pirated optical media to switch to computers or compact disc burners to produce illicit copies and forcing retailers to rely increasingly on smuggled goods. Since 2004, Hong Kong Customs has used the Organized and Serious Crimes Ordinance (OSCO) to prosecute piracy syndicates and to freeze their assets. As a result, the volume of openly-marketed pirated optical media found in retail shopping arcades has decreased significantly in recent years, but infringing products remain available in certain parts of Hong Kong. U.S. Government officials have encouraged the Hong Kong government to sustain the pace of its ongoing enforcement activities aimed at local producers and vendors of infringing products.

Hong Kong's IPR enforcement efforts have helped reduce losses by some U.S. companies, but the rapid growth of peer-to-peer downloading from the Internet, end-use piracy, and the illicit importation and transshipment of pirated and counterfeit goods—including optical media and name brand apparel from mainland China—continue to be problematic. The software industry estimates that Hong Kong's software piracy rate in 2005 was 54 percent, placing Hong Kong well above the software piracy rates in other advanced economies. Losses to business and entertainment software rights owners are estimated at approximately $147 million, and the government has yet to successfully prosecute a contested business end-user piracy case.

The Hong Kong government has taken some steps to address each of these continuing problems. In October 2005, in the first successful case of its kind in the world, Hong Kong convicted a man for using BitTorrent file sharing technology to distribute illegally on the Internet three Hollywood movies. He was sentenced to three months imprisonment. The Hong Kong government issued a press release at the time of the conviction quoting the Secretary for Commerce, Industry, and Trade as stating that the posting of copyrighted materials in Hong Kong using BitTorrent dropped 80 percent in the wake of the man's arrest ten months before. The case is currently under appeal. Hong Kong officials have also established a joint task force with copyright industry representatives to track down online pirates using peer-to-peer networks for unauthorized file sharing. In addition to criminal litigation, both the music and movie industries have increased the use of civil lawsuits against illegal file downloaders. However, because of the higher cost-effectiveness of civil liability, the industries have called on the government to expand criminal liability by putting forward "Digital Agenda" legislation covering digital technology issues, including copyright issues, as soon as possible.

Hong Kong Customs routinely seizes IPR infringing products from mainland China and elsewhere. In November 2005, Hong Kong Customs and four local Internet service providers (ISPs), along with trade associations and IPR owners of a number of brand names, launched a new program called "E-Auctioning with Integrity," to prevent and stop piracy activities at auction sites. Under the program, ISPs intensified their monitoring of goods auctioned on their sites and remove IPR-violating items when the IPR owners alert the ISPs of the suspected counterfeit goods being auctioned. The information on the auction sites is passed on to Hong Kong Customs for investigation. In October 2006, the Hong Kong government also partnered with software industry representatives in launching a pilot program to provide free on-site audits for companies to determine if they are unknowingly using unlicensed software and to assist violators in purchasing licenses to guarantee the use of genuine computer products. This program is part of recently announced efforts to reduce high software end-user piracy rates and crack down on companies using pirated software.

Another education program begun in February 2006 by the Hong Kong Customs and Excise Department was a pilot run of the "Youth Ambassador Against Internet Piracy Scheme." About 200,000 "youth ambassadors" participated in the program, and, by July 2006, the Hong Kong Customs and Excise Department announced that it had received 1,200 reports of suspected BitTorrent seed files involving pirated copyright work from the youth ambassadors. According to the Hong Kong government, over 60 percent of the infringing files were removed, and a great majority of the remaining files were invalidated. Despite these concrete actions, U.S. officials continued to urge Hong Kong authorities to intensify efforts to address end-user piracy, as well as retail counterfeiting problems.

On June 21, 2006, the government extended the expiry date of the Copyright (Suspension of Amendments) Ordinance 2001 from July 31, 2006 to July 31, 2007 to give lawmakers more time to examine its draft of an enhanced Copyright Ordinance and industry representatives sufficient opportunity to express their views. The Hong Kong Legislative Council continued to debate draft legislation for this enhanced Copyright Ordinance and delayed adoption of the legislation several times with no set timetable for approval. Industry stakeholders remained concerned about possible loopholes in the proposed legislation concerning digital rights management and circumvention of technical prevention measures, parallel imports for optical discs, fair use provisions for copyrighted works, and business end-user software piracy. In December 2006, the Hong Kong government published a public consultation "Copyright Protection in the Digital Environment" document to address the challenges of the digital era and ensure that amendments to the Hong Kong Copyright Ordinance would cover issues related to Internet piracy.

The lack of a copyright register in Hong Kong continued in 2006 to make it difficult for law enforcement officials and prosecutors to identify original copyright owners in infringement cases, effectively increasing the burden of proof that copyright owners need to present to prove infringement. Although Hong Kong judges, law enforcement officials, and IP industry stakeholders have complained about the lack of a copyright register in the past, on July 18, 2006, the government decided not to establish such a register, citing concerns about a register's cost-effectiveness and divergent views among different copyright owners' associations. In 2006, the U.S. Government continued to promote the promulgation of an amended Copyright Ordinance, including development of a copyright register in Hong Kong, which would protect rights owners and end users and cover issues related to Internet piracy.

SERVICES BARRIERS

As a result of changes to legislation and regulations in recent years, there are no significant trade barriers to note with regard to telecommunications or electronic commerce.

Hong Kong completed its liberalization of fixed-line telecommunications network services market on January 1, 2003. There are no limits on the number of licenses which can be issued and no time limit for submitting license applications. In July 2004, the Hong Kong government announced that it would cancel the fixed and mobile network interconnection fee by June 30, 2008. In 2006, Hong Kong's Office of the Telecommunications Authority (OFTA) published a public consultation paper that detailed specific proposals for canceling the fee. While mobile phone operators welcomed the consultation, fixed line phone operators questioned the move because it would mean the loss of approximately HK$600 million (approximately US$77 million) in fees paid by wireless providers to fixed line operators each year. The HKG also has preliminary plans to force the city's fixed-line operators to lease their networks to providers of voice over Internet protocol (VOIP) services. This move was prompted by complaints that fixed-line operators were blocking such sales to protect market share.

As of November 2004, U.S. banks licensed in Hong Kong have been able to provide renminbi (RMB) services. In November 2005, banks in Hong Kong were permitted modest increases in the scope of RMB business they can offer to clients, including providing services related to deposit taking, exchange, remittances, and credit cards. Making loans in Hong Kong in RMB, however, is still not permitted for any bank.

The October 2002 U.S.-Hong Kong Civil Aviation Agreement significantly expanded opportunities for U.S. carriers. The agreement allows cooperative marketing arrangements between U.S., Hong Kong and third-country carriers (code sharing) and also increases the ability of U.S. carriers to operate cargo and passenger services between Hong Kong and third countries. However, restrictions on frequencies and routes for these services remain. In 2005, the U.S. and Hong Kong governments convened a round of negotiations to expand the Air Services Agreement. The talks were inconclusive and no further negotiations have been scheduled.

Foreign law firms that practice foreign law in Hong Kong are barred from practicing Hong Kong law and from employing or joining into partnership with Hong Kong solicitors. Foreign law firms that wish to provide both foreign and Hong Kong legal services may do so only by establishing a Hong Kong legal practice in which all partners are Hong Kong-qualified solicitors and the number of registered foreign lawyers employed does not exceed the number of Hong Kong solicitors. Such firms may be associated with, or even be branches of, overseas law firms if they meet certain criteria (e.g., at least one partner of the Hong Kong firm must also be a partner in the overseas firm).

Pharmaceuticals

U.S. industry has expressed concerns about lengthy approval procedures for new pharmaceuticals which shorten the effective patent life of new products by six months. In addition, U.S. industry is concerned about the lack of transparency in the Hong Kong Hospital Authority’s approval process for new drugs. These cumbersome procedures also inhibit the patent owners’ ability to market their products on a timely basis.

U.S. pharmaceutical companies are concerned that the Hong Kong Department of Health continues to issue marketing authorizations for patent-infringing pharmaceutical products. In addition, the industry has concerns about sales of counterfeit pharmaceuticals—which threaten consumer safety and brand reputation—and it seeks more vigorous enforcement and tougher penalties to deter this kind of illicit trade. According to industry, counterfeit pharmaceuticals from other countries (particularly within the Asia-Pacific region) are being imported in increasing quantities into Hong Kong. Counterfeit pharmaceuticals are then re-packaged to appear similar to legitimate pharmaceuticals registered in Hong Kong. The U.S. Government continues to urge the Hong Kong government to address both the marketing approval/patent protection linkage issue and the counterfeiting issue as they pertain to pharmaceutical products.

INDIA

TRADE SUMMARY

The U.S. goods trade deficit with India was $11.7 billion in 2006, an increase of $920 million from $10.8 billion in 2005. U.S. goods exports in 2006 were $10.1 billion, up 26.3 percent from the previous year. Corresponding U.S. imports from India were $21.8 billion, up 16.1 percent. India is currently the 21st largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to India were $5.2 billion in 2005 (latest data available), and U.S. imports were $5.0 billion. Sales of services in India by majority U.S.-owned affiliates were $2.2 billion in 2004 (latest data available), while sales of services in the United States by majority India-owned firms were $1.8 billion.

The stock of U.S. foreign direct investment (FDI) in India in 2005 was $8.5 billion (latest data available), up from $7.7 billion in 2004. U.S. FDI in India is concentrated largely in the information, manufacturing and banking sectors.

IMPORT POLICIES

India's tariffs remain high. U.S. producers encounter tariff and non-tariff barriers that impede their exports, despite the government of India’s (GOI) economic reform program initiated in 1991. While U.S. exports continued to grow in 2006 – continuing a positive growth trend since 2001 – substantial expansion in bilateral trade will depend on continued and significant additional Indian liberalization.

The GOI has made substantial progress in restructuring tariffs applied to non-agricultural goods. In February 2007, the GOI’s 2007-2008 budget proposes to reduce the peak applied duty on most non-agricultural products from 12.5 percent to 10 percent. Despite tariff cuts on these goods, India’s maximum (peak) tariff applied to non-agricultural goods has increased substantially over the years. The government applies high tariffs to petrochemicals, automobiles, motorcycles and finished steel products. Also, the U.S. textile industry continues to have concerns about non-transparent applications of tariffs and taxes. India’s agricultural tariffs – which are among the highest in the world – remain untouched.

India's simple average applied tariff rate was 27 percent in 2005, including excise taxes. The GOI in February 2007 announced cuts deeper than that level in the basic custom duty on many raw materials and intermediates. For example, polyester fibers, yarn and other raw materials was lowered from 10 percent to 7.5 percent. The GOI also adjusted downward tariffs on chemicals and plastics from 12.5 percent to 7.5 percent.

The GOI assesses a 1 percent customs handling fee on all imports in addition to the applied customs duty. The GOI’s 2007-2008 budget proposes to levy an additional education “cess” of 1 percent on top of the 2 percent education fund assessment already levied on all sales, both imported and domestic. The education “cess” is a surcharge applied to nearly all direct and indirect taxes to help finance education. The GOI includes tariffs in calculating the value upon which to assess additional charges, except where specifically exempted. Finally, various states apply local duties within their jurisdictions in many cases. The cumulative effect of these various additional charges renders the effective applied duties substantially higher on retail prices of imported goods.

The United States has actively sought market-opening opportunities in India, both bilaterally and multilaterally in the Doha Development Round. The U.S. Trade Representative (USTR) and India's Minister of Commerce chair the United States-India Trade Policy Forum (TPF) meeting, which was constituted during Prime Minister Sing's visit to Washington in 2005. As part of the United States-India Economic Dialogue, the TPF meets regularly through its five focus groups – agriculture, innovation and creativity (including Intellectual Property Rights), investment, services, and tariff and non-tariff barriers – to discuss the full range of bilateral trade and investment issues.

In the World Trade Organization (WTO), India has bound tariffs in 2006 on 73.8 percent of its tariff lines, an increase from the 68 percent of lines bound in 2005. However, the majority of these bindings exceed India's applied rates of duty. In agriculture, India's WTO bound tariffs range from 100 percent to 300 percent, also higher than the applied rates in many product areas.

For example, India's applied – and WTO bound – base tariff on imports of spirits is 150 percent *ad valorem*. Since 2001, India has applied "additional duties" on imports of wines and spirits, which are assessed on top of the basic customs duty and vary depending on the per-case CIF value of the imported products. In March 2006, India's Finance Ministry established a 4 percent *ad valorem* "extra additional duty" on all imports, including wines and spirits, with a few exceptions. The extra additional duty is applied on top of the basic customs duty and additional duty. The application of the additional and extra additional duties on top of the base tariff yields effective tariff rates on imported spirits that range from 225 percent to 550 percent *ad valorem*. The applied tariff on wines is 100 percent *ad valorem* (the bound rate is 150 percent) and, along with additional and extra additional duties, yield effective tariff rates of 150 percent to 264 percent *ad valorem*. In December 2006, the United States requested to join the European Communities' WTO dispute settlement consultations on India's additional and extra additional duties on wines and spirits. India rejected that request. On March 6, 2007, the United States requested WTO dispute settlement consultations with India over the additional and extra additional duties.

The Indian government publishes tariffs and additional tax rates that apply to imports, but there is no single official publication that includes all information on tariffs, fees and tax rates on imports. The system lacks transparency. Importers must consult separate tariff and excise tax schedules, as well as any applicable additional public notifications and notices, to determine current tariff and tax rates. The rate at which the customs duty is imposed on the goods depends on the classification of the goods determined under the Customs Tariff. The Customs Tariff is generally aligned with the Harmonized System of Nomenclature (HSN). The rate at which the excise duty is imposed on the goods also depends on the classification of the goods under the Excise Tariff, which is primarily based on the HSN. Each Indian state also levies taxes on interstate commerce, which creates additional confusion.

Import Licensing

Importers of vehicles of any type face restrictive and trade-distorting import practices. For example, the GOI requires special licenses for importing motorcycles. These licenses are virtually impossible to obtain. Import licenses for motorcycles are granted only to foreign nationals: (1) permanently residing in India; (2) working in India for foreign firms that hold greater than 30 percent equity; or (3) working at embassies located in India. Certain domestic importers are eligible to import motorcycles without a license but only if these imports are offset by exports attributable to the same importer.

India also maintains a negative import list. The negative list is currently divided into three categories: (1) banned or prohibited items (e.g., tallow, fat, and oils of animal origin); (2) restricted items which require a non-automatic import license (e.g., livestock products, certain chemicals); and (3) "canalized" items (e.g., petroleum products, some pharmaceuticals, and bulk grains) importable only by government trading monopolies subject to cabinet approval regarding timing and quantity.

India has liberalized many restrictions on the importation of capital goods. The government allows imports of second-hand capital goods by the end-users without requiring an import license, provided the goods have a residual life of five years. Refurbished computer spare parts can only be imported if an Indian Chartered Engineer certifies that the equipment retains at least 80 percent of its residual life, while refurbished computer parts from domestic sources are not subject to this requirement.

India requires foreign exporters of unshredded scrap metal to register with the Director General of Foreign Trade (DGFT) in the Indian Department of Commerce to enable such products to enter the Indian market. The registration process has been hampered by inefficiency and a lack of transparency. The United States continues to urge the DGFT to implement a transparent registration system.

Fertilizer Subsidy Regime

The Indian government subsidizes di-ammonium phosphate (DAP) fertilizer. Under the current system, the GOI sets a maximum retail price that can be charged to farmers for DAP. This price is not adequate to cover the cost of producing or importing DAP. The excess costs for domestic producers and importers are subsidized and at different levels that favor domestic DAP over imports. From July 2004 through June 2005, base rate subsidies were equalized but final subsidy amounts continued to disadvantage imports. The disadvantage has limited regular commercial import transactions. In addition to this disadvantage, the current system fixes the subsidy on a retroactive basis and in a non-transparent manner, which in turn acts as a further deterrent for importers. The United States continues to press India to end its costly, trade-distorting treatment of DAP.

Customs Procedures

The GOI appears to apply discretionary customs valuation criteria to import transactions. Valuation procedures allow Customs to reject the declared transaction value of an import when a sale is deemed to involve a reduction from the ordinary competitive price. U.S. exporters have reported that India’s customs valuation methodologies do not reflect actual transaction values and effectively increase tariff rates. The United States is working through the WTO Committee on Customs Valuation to obtain further information from India on its valuation methods and will continue to examine the customs valuation procedures for consistency with India's obligations under the WTO Customs Valuation Agreement.

Indian Customs requires extensive documentation, which inhibits the free flow of trade and leads to frequent processing delays. In large part this red tape is a consequence of India’s complex tariff structure and multiple exemptions, which may vary according to product, user, or specific Indian export promotion program.

In line with its unofficial policy of revising edible oil reference prices once every 15 days, the Indian government announced reduced tariff values for palm and soybean oils in January 2006. India continues to maintain a reference price system for soybean oil to address alleged under-invoicing. The reference price is the basis upon which India assesses its 45 percent customs duty. When the GOI reference price for soybean oil rises above the transaction price, the effective rate of duty may also increase above India’s 45 percent WTO-bound tariff. Although the reviews are done periodically, India has not formally defined this procedure, making it non-transparent and unpredictable. Exports of U.S. crude soybean oil to India are negligible after reaching a peak of $25 million in 2002. The U.S. Government continues to raise this issue with India, but has not received a response from the Indian government that clarifies its policy and the reference price scheme's relationship to India's WTO commitments.

Certain customs procedures impede importation of automotive products. Motor vehicles may be imported through only three specific ports and only from the country of manufacture. Declared transaction values of automotive products may be rejected, insofar as legitimate reductions in the wholesale price of such products are ignored.

Indian Customs has taken the position that certain types of automatic teller machines (ATMs) do not qualify as ATMs and, therefore, are not entitled to duty-free treatment under the WTO Information Technology Agreement.

In 2005, India proposed a Draft Integrated Food Law. U.S. industry remains concerned that, if enacted, the proposed law would provide inadequate due process because it: (1) imposes the burden of proof on the food producer when food products are "seized" by a food inspector; and (2) provides limited procedural options to permit food manufacturers to appeal inspector decisions.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The GOI has identified over 100 specific commodities (including food preservatives and additives, milk powder, infant milk foods, certain types of cement, household and similar electrical appliances, gas cylinders, tires, and multi-purpose dry cell batteries) that the Bureau of Indian Standards (BIS) must certify before the products are allowed to enter the country. A system now exists by which foreign companies can receive automatic certification for products made outside India, provided BIS has first inspected and licensed the production facility (at the manufacturer's expense). Licensing fees include the cost of the initial inspector's visit and tests, an annual fee of approximately $2,000 and a marking fee that ranges from 0.2 percent to 1 percent of the value of certified goods imported into or produced in India.

In 2004, Indian Customs began to require registration or an exemption certificate for imported boric acid. The Ministry of Agriculture's Central Insecticides Board and Registration Committee has not published adequate information on the criteria and procedures for obtaining this documentation. Imports of boric acid are, therefore, effectively blocked. Indian government rulemaking has been *ad hoc* and confusing. India may be the only country that requires registration of boric acid intended for non-insecticide use. U.S. industry is required to register, although 90 percent of all boric acid imports into India are for non-insecticide uses (such as glassmaking) and should qualify for an exemption. India's boric acid producers are not subject to the same requirements. The U.S. Government has raised this issue with the GOI on numerous occasions, but India has taken little action to address the concerns except to web-post general contact information indicating which ministries are responsible for issuing no-objection certificates to import non-insecticidal boric acid, based on the end use of the product.

The U.S. Government is increasingly concerned over India's failure to notify certain technical regulations to the WTO. India's procedures for establishing vehicle emissions standards, for example, are vague and non-transparent. The emissions standards seem to favor small displacement motorcycles that are primarily manufactured by Indian producers. Even the latest low-emission technology used by U.S. manufacturers of large motorcycles – which are not manufactured in India – fails to meet India's prohibitive requirements. The U.S. Embassy and private industry have sought to convince the GOI that very stringent emissions standards for large motorcycles already widely in use in many countries (e.g., the United States or European Union), address India's environmental concerns.

In bilateral and multilateral forums, the U.S. Government has discussed with, and raised concerns about, the Indian government's use and implementation of technical regulations, standards and conformity procedures. For example, the United States raised concerns about India's implementation in 2006 of new regulatory requirements for medical devices. While welcoming regulations that improve product safety and effectiveness, U.S. companies report that the "guidelines" are causing confusion, and they would benefit from greater clarity and consistency with international standards and practice.

The GOI is considering making mandatory a new certification system for tires. Industry alleges that this would require, among other things, foreign tire manufacturers to retest their tires in India, subject them to higher licensing fees than domestic manufacturers, and emboss the logo of the BIS along with an approval number to gain access to the Indian market. Tire industries in the United States, the European Community, and Japan have raised concerns about this new measure unnecessarily restricting trade by requiring redundant testing, labeling and conformity assessment, which significantly increases costs to tire manufacturers. The U.S. Government conveyed industry's concerns bilaterally to India's Ministry of Commerce and BIS. Additionally, the United States raised the issue before the WTO Technical Barriers to Trade Committee, along with the European Community and Korea.

The state of Maharashtra's Food and Drug Administration (FDA) has tried to restrict sales of dietary supplements in tablet or capsule form to pharmacies by reclassifying such products from foods to drugs. An interim stay order issued by the Maharashtra High Court has prevented implementation of the Maharashtra FDA's measure. India also enacted the Food and Safety Standards law that U.S. companies' hope will clarify the legal status of dietary supplements. It is still unclear which ministry will be responsible for implementing the law.

In September 2005, as part of the U.S.-India Commercial Dialogue, officials of the U.S. Government and the Indian government initiated a Standards Dialogue Working Group to seek transparency and understanding of how standards impact upon our bilateral commerce. Three sessions of the dialogue were held in 2005, and several more meetings were held in 2006. More Commercial Dialogue sessions are anticipated in 2007.

SANITARY AND PHYTOSANITARY (SPS) MEASURES

The U.S. Government has raised concerns with the GOI regarding India's failure to notify certain SPS measures to the WTO. Bilateral technical level discussions within the Trade Policy Forum's Agriculture Focus Group are ongoing and have resulted in long-term agreements to allow continued entry for key U.S. export commodities such as almonds. The U.S. Government continues to impress upon India the need to base its SPS measures on science, including those affecting almonds, apples, bovine genetics, dairy products, pulses, poultry, pet food, specific pathogen free eggs, forest products, and food derived from biotechnology.

The U.S. Government calls for establishing food standards on the basis of risk analysis and strongly recommends that the results of a risk assessment must be taken into consideration in risk management decisions. The U.S. objects to India's use of undefined principles, which can result in an unscientific application of risk management. The end result can potentially block trade in food and agricultural products.

GOI implementation of the "Plant Quarantine (Regulation of Import into India) Order, 2003" and its amendments, prior to notifying them to the WTO SPS Committee, threatens U.S. exports of U.S. pulses, fresh fruits and vegetables, among others. Through substantial effort, the U.S. Department of Agriculture has maintained market access for these products, but such access is continually under threat from opaque and unscientific regulations.

The Indian government has implemented several sanitary restrictions that do not appear to be based on Office of International Epizootics (OIE) and CODEX recommendations. The OIE and CODEX are the international standard setting bodies for animal health issues and food products, respectively, recognized in the WTO Sanitary and Phytosanitary Agreement. Such restrictions have unduly restricted Indian imports of poultry and poultry products, pet food, bovine genetics, and dairy products.

In the absence of a transparent policy framework for assessing the safety of biotechnology commodities and foods, the GOI decision-making process is slow, non-transparent and arbitrary. Meanwhile, Indian researchers themselves are engaged in the domestic development of agricultural products derived from biotechnology such as mustard seed, potatoes, tomatoes, cabbage, cauliflower, chilies, groundnuts, and rice. They, too, have expressed frustrations regarding the approval process. The GOI reports that it is currently reviewing its policy for evaluating the safety of foods made using biotechnology.

On August 24, 2006, the government enacted an integrated food law, which is called the "Food Safety and Standards Act, 2006." This new legislation attempts to consolidate the existing multitude of laws and regulations governing the food and food-processing sectors. It also establishes a Food Safety and Standards Authority (FSSA). The FSSA will be responsible for establishing food safety standards for packaged and processed foods and regulating India's manufacturing storage, distribution, sale, and import sectors. Reportedly, under the FSSA's authority, all existing regulations, including PFA Rules (1955), EPA Rules (1989), and Plant Quarantine (2003), would be repealed with a view toward adopting international norms and food regulatory systems. At this time, it is unclear which Ministry will house the FSSA.

GOVERNMENT PROCUREMENT

India is not a signatory to the WTO Agreement on Government Procurement. Indian government procurement practices and procedures are non-transparent. Foreign firms rarely win Indian government contracts due to the preference afforded to Indian state-owned enterprises in the award of government contracts and the prevalence of such enterprises. The Purchase Preference Policy (PPP) applied by government enterprises and government departments gives preference to any state-owned enterprise that makes an offer that is within 10 percent of the lowest bid. The GOI renewed this policy for three years, until March 31, 2008, with some modifications.

EXPORT SUBSIDIES

The tax exemption for profits from export earnings was phased out over a five-year period that ended in March 2005. Tax holidays continue for Export Oriented Units and exporters in Special Economic Zones. In addition to these programs, India continues to maintain several duty drawback programs that appear to allow for drawback in excess of duties levied on imported inputs. India also provides pre-shipment and post-shipment export financing to exporters at a preferential rate. India also provides incentives to its textile industry through several programs, such as the Technology Upgradation Fund Scheme (TUFS) and the Scheme for Integrated Textile Parks (SITP). India has not submitted a notification to the WTO Committee on Subsidies and Countervailing Measures since 2001.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

India amended its patent laws effective January 1, 2005. Large-scale copyright piracy, especially in the software, optical media, and publishing industries, continues to be a major problem. The United States retained India on the "Priority Watch List" as part of the 2006 Special 301 review. These issues are discussed in the Trade Policy Forum's Innovation and Creativity Focus Group.

Patents

The amended patent law extends product patent protection to pharmaceuticals and agricultural chemicals. While a positive step, these changes do not address several important weaknesses in India's patent law. For example, the new law does not clarify some ambiguities regarding the scope of patentable inventions. There is also a large backlog in pending patent applications, resulting in long waiting periods for patent approval. The GOI is currently reviewing legislation and implementing regulations to address these deficiencies.

Additionally, the U.S. Government is aware of growing concerns by some pharmaceutical companies that the application of the new pre-grant opposition rules and post-grant challenge opportunity impede timely grant of patent applications for new compounds and protection once granted. The law also contains ambiguities concerning the enforcement of patents issued from mailbox applications.

Indian law does not provide for adequate protection against unfair commercial use of test or other data that companies submit in order to obtain government marketing approval for their pharmaceutical or agricultural chemical products. The GOI currently is preparing a report that will make a recommendation on adopting data protection legislation for submission to Parliament in 2007. Without specific protection against unfair commercial use of clinical test data, companies in India are able to copy certain pharmaceutical products and seek immediate government approval for marketing based on the original developer's data. Recognizing the role that effective data protection plays in fostering innovation and investment, a small but growing domestic Indian constituency, comprised of Indian pharmaceutical companies, technology firms, and educational and research institutions, favors changes to improve protection of data.

Copyrights

India's copyright laws need updating and enforcement is weak. The GOI has proposed amendments that would update the copyright laws to address issues related to the Internet and digital works. However, the proposed amendments have some deficiencies. For example, the law does not appear to provide adequate legal protection and effective legal remedies against circumvention of effective technological protection measures. The GOI is not a party to either the 1996 WIPO Copyright Treaty (WCT) or the WIPO Performances and Phonograms Treaty (WPPT).

Piracy of copyrighted materials (primarily software, films, popular fiction works and certain textbooks) remains a problem for both U.S. and Indian producers. Costs to the U.S. industry amounted to nearly $440 million in 2005. Pirated semiconductors are often sold in violation of copyright and semiconductor mask laws. India has not adopted an optical disc law to deal with optical media piracy, although inter-ministerial consultations to examine whether optical disk legislation is necessary are now underway. Classification of copyright and trademark infringements as "cognizable offenses" has expanded police search and seizure authority. The law provides for minimum criminal penalties, including mandatory minimum jail terms, though these penalties are not often implemented effectively.

The establishment of a Copyright Enforcement Advisory Council with responsibility for policy development and coordination, as well as the initiation of a program for training police officers and prosecutors concerned with enforcement of copyright laws, has not been vigorously pursued. Due to backlogs in the court system and documentary and other procedural requirements, few cases recently have been prosecuted. U.S. and Indian industries report that piracy levels in all sectors remain high.

Cable television piracy continues to be a significant problem, with estimates of tens of thousands of cable operators who operate without a license in India. Copyrighted U.S. product also is transmitted without authorization by licensed cable operators often using pirated videocassettes, video compact discs (VCDs), or DVDs as source materials. This has had a significant detrimental effect on all motion picture market segments in India – theatrical, home video, and television. For instance, pirated videos are available in major cities before their local theatrical release. While noting pockets of positive movement, the United States continues to press for adequate and effective copyright protection.

Enforcement

India's criminal justice system does not effectively support the protection of intellectual property. India's criminal IPR enforcement regime, including border protection against counterfeit and pirated goods, remains weak. There have been few reported convictions for copyright infringements resulting from raids, including raids against repeat offenders. Adjudication of cases is extremely slow. Police action against pirates of motion pictures has improved since 2004. Obstruction of raids, leaks of confidential information, delays in criminal case preparation, and the lack of adequately trained officials have further hampered the criminal enforcement process.

Amendments to the Code of Civil Procedure are being considered that would require civil cases to be completed within one year. These amendments may provide more expeditious disposition of the civil cases in Indian courts.

SERVICES BARRIERS

Indian government entities have a strong ownership presence in some major services industries such as banking and insurance. Nevertheless, private firms play a preponderant or exclusive role in a number of rapidly growing parts of the services sector, including the information technology sector, advertising, the professions, car rental, and a wide range of business consulting services. There is a growing public awareness of India's potential as a major services exporter and increasing demand for a more open services market. While India has submitted an initial offer to provide further services liberalization in the WTO Doha Round, the offer does not remove existing limitations in such key sectors as distribution, telecommunications, financial services and the professions. The United States will continue to press India bilaterally in the Trade Policy Forum's Services Focus Group and at the WTO to open its services markets.

Insurance

The Insurance Regulatory and Development Authority (IRDA) law opened India's insurance market to private participation with a limit on foreign equity of 26 percent of paid-up capital. In addition, all partners must divest ownership stakes to a maximum of 26 percent within ten years of the joint venture's formation. In July 2004, the GOI announced its intention to amend the IRDA law to increase that cap to 49 percent. However, opposition from Leftist parties has thus far prevented the GOI from allowing greater foreign participation in the insurance sector.

Banking

Foreign banks may operate in India through one of three channels: a direct branch, a wholly-owned subsidiary, or through a stake in a private Indian bank. However, no foreign bank may purchase more than 5 percent of an Indian private bank without approval of the Reserve Bank of India (RBI), and no non-bank, foreign or domestic, may purchase more than 10 percent of such banks without RBI approval. All foreign stakes, taken together, cannot exceed 74 percent of the capital of an Indian private bank. Although India has opened up to privately-held banks, most Indian banks are government-owned, and entry of foreign banks remains highly regulated. State-owned banks hold roughly 80 percent of the assets of the banking system, although private banks are growing rapidly.

The RBI has granted operating approval to 31 new foreign banks or bank branches since issuing new guidelines in 1993. As of January 2007, there were 29 foreign banks with 255 branch offices operating in India. Under India's branch authorization policy, foreign banks are required to bring in an assigned capital of $25 million at the time of the opening of their first branch and also are required to submit their internal branch expansion plans on an annual basis. Five U.S. banks now have a total of 16 branches in India. They operate under restrictive conditions including directed lending and asset allocation requirements. Their ability to expand organically is severely limited by non-transparent quotas on branch office expansion and the granting of licenses by the RBI. Under its WTO commitments, India pledges to grant 12 new foreign branch office licenses annually, but according to Indian government sources, the GOI issued 20 licenses in 2006. In contrast, domestic private Indian banks received 100 branch office licenses in 2006. Foreign banks are allowed to establish wholly-owned subsidiaries but must divest their ownership stakes down to 26 percent by 2009, making this option largely unattractive. As a result, there are no wholly-owned subsidiaries of foreign banks in India.

Foreign ownership of the banking system is capped by law at 15 percent. Aggregate foreign direct investment (FDI), foreign institutional investment (FII) or portfolio investment and investments by non-resident Indians is capped at 49 percent (up to 74 percent with permission of a bank's Board). Ownership by foreign individuals is capped at 10 percent. In addition, voting rights in a local bank are capped at 10 percent for all aggregate foreign investors.

Audiovisual and Communications Services

The Indian government has removed most barriers to the import of motion pictures, although U.S. companies have experienced difficulty in importing film/video publicity materials and are unable to license movie-related merchandise due to royalty remittance restrictions.

Entertainment taxes on motion pictures are estimated on a countrywide basis by U.S. industry at 35 percent to 40 percent of the admission price. Such taxes vary by state, from 15 percent to over 100 percent. Some states charge zero or lower tax rates on films in the local language than on films in other languages.

In March 2004, in the face of considerable distributor and consumer resistance, as well as confusion surrounding pricing issues and other rules, the GOI suspended implementation of the Conditional Access System (CAS) for cable television. However, CAS was implemented, in accordance with a Delhi High Court Order, on January 1, 2007. The CAS requires television subscribers to install set-top-box decoders to view premium channels. By providing tighter regulation of the cable industry as a whole, CAS is expected to help reduce the problem of pirated broadcasts.

The government of India FDI of up to 49 percent in Indian cable networks and companies that uplink from India. Total foreign investment in "direct-to-home" (DTH) broadcasting has been restricted to 49 percent, with an FDI ceiling of 20 percent on investments by broadcasting companies and cable companies. At present, news channels are permitted to have up to 26 percent foreign equity investment. They must also ensure that a dominant Indian partner holds at least 51 percent equity. Operational control of the editorial content must be in Indian hands. The Indian government has also announced restrictive minimum capitalization requirements. In addition, all pay television content providers are required to make their content available to all cable and satellite television system operators; and content providers must give 30 day public notification before terminating their signals to non-paying system operators.

In November 2005, the Ministry of Information and Broadcasting announced its "Policy Guidelines for Downlinking of Television Channels" – ostensibly to guard against harmful content – that include major new restrictions on foreign pay-television channels doing business in India. These channels are received through cable television systems that reach 62 million Indian households, mainly in urban areas, and also through direct-to-home satellite services now coming online. These regulations, if left unchanged, will deter future investment by non-Indian broadcasters by imposing new, onerous bureaucratic processes, fees, and litigation expenses; extracting new taxation; threatening revenues from, and protection of, purchased rights for broadcasting programs; and restricting India-directed content, news, and advertising.

Accounting

Only graduates of an Indian university can qualify as professional accountants in India. Foreign accounting firms can practice in India if their home country provides reciprocity to Indian firms. Internationally recognized firm names may not be used, unless they are comprised of the names of proprietors or partners or a name already in use in India. This limitation applies to all but the two U.S. accounting firms that were established prior to the imposition of this rule. The Institute of Chartered Accountants of India (ICAI) continues to ban the use of logos of accounting firms. Only firms established as a partnership may provide financial auditing services. Foreign accountants may not be equity partners in an Indian accounting firm.

Construction, Architecture and Engineering

Many construction projects are offered only on a non-convertible rupee payment basis. Only government projects financed by international development agencies permit payments in foreign currency. Foreign construction firms are not awarded government contracts unless local firms are unable to perform the work. Foreign firms may only participate through joint ventures with Indian firms.

Legal Services

India requires that anyone wishing to practice law must enroll as a member of the Bar Council, and if that person happens to be a foreign national, then he must belong to a country that allows Indian nationals reciprocal rights to practice in their country. FDI is not permitted in this sector, and international law firms are also not authorized to open offices in India. Foreign services providers may be engaged as employees or consultants in local law firms, but they cannot sign legal documents, represent clients, or be appointed as partners. India has not made any offers for opening up the legal services sector at the WTO. In 2006, the U.S. Government and the Indian government announced the formation, under the Trade Policy Forum, of a bilateral Legal Services Working Group to promote greater cooperation between U.S. and Indian lawyers and to address market access issues.

Telecommunications

India has taken positive steps towards liberalizing, and introducing private investment and competition in, its telecommunications services market. Concerns remain regarding India's weak multilateral commitments in basic and value-added telecommunications services and the apparent bias of telecommunications policy towards government-owned services providers. Despite many pro-competitive recommendations the telecommunications regulator proposes after a process of public consultations, the Department of Telecommunications (DOT) often delays adoption of those recommendations or rejects them without adequate explanation.

India's national telecommunications policy allows private participation in the provision of all types of telecommunications services. In November 2005, foreign equity limits were raised from 49 percent to 74 percent for National and International Long Distance (NLD/ILD) services. However, inter-ministerial differences related to the implementing regulations have prevented companies from taking advantage of the market opening. Thus, while companies may obtain a license for NLD and/or ILD services, the absence of implementing regulations causes a great deal of uncertainty in the market. The GOI has proposed new requirements on how international networks are managed in India, which U.S. operators believe seriously impede their ability to do business. In the face of widespread complaints, the GOI agreed to delay implementation of these rules for a third time (until early 2007) while it finds a solution to address industry concerns. The U.S. Government is currently confirming reports that the GOI has taken steps to mitigate industry concerns.

Competitive carriers have expressed concerns about the neutrality and fairness of government policy. The GOI retains a significant ownership stake and interest in the financial health of three telecommunications firms, all of which formerly enjoyed monopoly status in their areas of operation. The government holds a 26 percent interest in the international carrier, VSNL; a 56 percent interest in MTNL, which primarily serves the Delhi and Mumbai metropolitan areas; and a 100 percent interest in BSNL, which provides domestic services throughout the rest of India.

U.S. telecommunications companies have complained about the restrictive polices adopted by incumbent Indian international service provider VSNL on international submarine cable access and landing stations in India. U.S. companies have requested that the Indian government intervene to ensure that VSNL makes available submarine cable capacity to other suppliers and provides access to, and use of, cable landing stations on a reasonable and non-discriminatory basis. In December 2005, the Telecommunications Regulatory Authority of India (TRAI) issued recommendations in its "Measure to Promote Competition in International Private Leased Circuits in India," which were adopted by the Department of Telecommunications (DOT) in late 2006. USTR is encouraged that the DOT finally adopted the recommendations, but quick implementation by TRAI will be important to ensure that U.S. carriers enjoy equal access to essential facilities in India. If adopted, these recommendations would potentially resolve many of the U.S. telecommunications companies' problems in this market.

India's Access Deficit Charge ("ADC") regime disproportionately impacts consumers making international calls to India. India's telecommunications regulator, TRAI, implemented the ADC in 2003 in relation with its Telecommunications Interconnection Usage Charge ("IUC") Regulation. However, the ADC is not an "interconnection charge," but rather, a supplemental collection to subsidize socially desirable services and a component of India's overall universal service regime.

There have been longstanding concerns with the ADC, and in particular with the high ADC applied to inbound international long distance traffic, which is currently twice the level of the ADC for outbound international calls. The ADC paid on domestic calling in India is a mere fraction of these amounts.

Although modifications in the ADC rules in February 2006 brought significant reductions in the ADC rates for international calls, India continues to place an unreasonable and discriminatory ADC burden on foreign international service providers and their customers making calls to India. India has stated that the ADC will be cut in proportion to a glide path which allows for the ADC to enter a sunset regime in 2008. The U.S. Government will continue to monitor this issue.

Though Voice over Internet Protocol (VoIP) services were legalized in India in 2002, one U.S. trade association reports that certain restrictions imposed by TRAI on the connection of the services to a PSTN, as well as non-industry standard quality of service requirements developed by TRAI have hampered the ability of companies to expand the provision of this service in India.

U.S. satellite operators have long complained about the closed and protected satellite services market in India. For many services, specific preferences are granted to those using Indian satellites over those seeking to use a foreign satellite system, even though current Indian regulations do not preclude the use of foreign satellites. In practice, for most services, including domestic VSAT services, domestic television distribution and Direct-to-Home (DTH) television services, foreign satellite capacity must be provided through the Indian Space and Research Organization (ISRO). That is, the foreign operator must sell its capacity to ISRO, a direct competitor of the foreign operator, who then resells it to the customer. This middleman scenario raises a number of concerns: first, it creates additional costs for the consumer that pays a markup added by ISRO (the amount of which varies); second, it allows ISRO to negotiate the terms under which the foreign satellite capacity will be provided, with the goal (explicitly stated at times) of moving the service to one of ISRO's satellites once capacity is available; and third, the market grows at the rate determined by ISRO. Finally, U.S. satellite operators have said that the policy and practice involved in selling satellite services in India is opaque and confusing.

In 2004, TRAI recommended that India adopt an "open skies" policy and allow competition in the satellite services market. Prior to that date, India had already instituted a partial open skies policy with respect to international VSAT connections to the U.S. Internet Backbone for Indian ISPs. However, to date, the further liberalization proposed by the TRAI recommendations has not been adopted by the government of India, and likely faced resistance from ISRO for protectionist reasons.

Distribution Services

The retail sector in India is largely closed to foreign investment. In January 2006 the GOI began allowing foreign direct investment in single-brand retail stores, subject to a foreign equity cap of 51 percent. Foreign direct investment in multi-brand retail outlets is not permitted. With regard to directly selling, current Indian law does not sufficiently differentiate between legitimate direct selling operations and pyramid schemes.

Postal and Express Delivery

In 2006, India's Department of Post made public a draft of the India Post Office (Amendment) Bill 2006. The draft bill updates the 1898 Post Office Act but also includes provisions with potentially harmful effects for the operations of private express delivery companies. The key issues of concern to U.S. industry are: (1) the draft bill includes a provision requiring all registered service providers to contribute to financing the regulator's universal service obligation; (2) the postal monopoly would be expanded by providing the Indian Postal Department the exclusive right to carry all "letters" up to 300 grams; (3) the bill would require registration of companies carrying anything categorized as a "postal article," effectively placing the express industry under the authority of the postal regulator, rather than an independent body; and (4) the bill would impose limits on foreign investment and might force foreign-owned express companies to divest their existing operations in India. The U.S. Government continues to encourage the GOI to strike these problematic provisions from any final postal reform legislation as currently drafted.

Education

A Group of Ministers recommended to the Indian Cabinet in November 2006 that it introduce legislation in parliament that would allow foreign universities to establish campuses in India.

INVESTMENT BARRIERS

Equity Restrictions

Most sectors of the Indian economy are now at least partially open to foreign investment, with certain exceptions. The Indian government continues to prohibit or severely restrict FDI in certain politically sensitive sectors, such as agriculture, retail trading, railways, and real estate. At the same time, the GOI has liberalized other aspects of foreign investment and eliminated various government approvals. Automatic FDI approval in many industries, including bulk manufacturing activities, is now allowed while some sectors still require government approval.

The Indian government's stringent and non-transparent regulations and procedures governing local shareholding inhibit inward investment and increase risk to new entrants. Foreign purchaser attempts to acquire 100 percent ownership of a locally traded company, permissible in principle, faces regulatory hurdles that render 100 percent ownership unobtainable under current practice. Price control regulations have undermined incentives for foreign investors to increase their equity holdings in India. Some companies report forced renegotiation of contracts in the power sector to accommodate government changes at the state and central levels. Press Note 18, promulgated in 1998 by the Ministry of Industry, poses major impediments to investment in India by requiring prior approval of the Indian party to a joint venture before the foreign partner can pursue other investment opportunities in India. This provision was widely abused, holding foreign partners hostage, even for failed joint ventures. In January 2005, the GOI partially lifted Press Note 18 by eliminating its application to all new joint ventures and relaxing the hold local firms have on the future business plans of foreign partners for existing joint ventures.

Investment Disputes

There has been significant progress toward resolving several payment disputes that American power sector investors have with the State of Tamil Nadu. The GOI, which has limited jurisdiction over commercial disputes involving matters under state jurisdiction, has been helpful in convincing Tamil Nadu to settle these commercial disputes. The United States continues to urge the GOI that in order to create an attractive and reliable investment climate, India and its political subdivisions need to provide a secure legal and regulatory framework for the private sector, as well as institutionalized dispute resolution mechanisms to expedite resolution of commercial issues.

ANTICOMPETITIVE PRACTICES

India suffers from a slow bureaucracy and regulatory bodies that reportedly apply monopoly and fair trade regulations selectively. With little or no fear of government action and with a clogged court system where cases linger for years, Indian firms face few if any disincentives to engage in anticompetitive business practices.

OTHER BARRIERS

India has an unwritten policy that favors counter trade (a form of trade in which imports and exports are linked in individual transactions). The Indian Minerals and Metals Trading Corporation is the major counter trade body, although the State Trading Corporation also handles a small amount of counter trade. Private companies also are encouraged to use counter trade. Global tenders usually include a clause stating that, all other factors being equal, preference will be given to companies willing to agree to counter trade. The exact nature of offsetting exports is unspecified, as is the export destination. The Indian government does try, nonetheless, to eliminate the use of re-exports in counter-trade.

India's medicines policy is of concern to U.S. pharmaceutical companies. While the scope of the rigid government-controlled pricing system has been reduced, final steps to eliminate it have stalled.

Some politicians and GOI officials continue to call for expanding price controls as the preferred means to confront inflationary trends. The GOI is currently reviewing proposed legislation that would significantly expand price controls over medicines. Indian states fail to apply consistently certain national laws and regulations. This creates uncertainty for U.S. companies exporting to, and investing in, India. U.S. companies affected by such inconsistency include: cable television content providers of programming subject to conditional access system rules and distilled spirits producers who face non-uniform state-level taxes despite the national government's directive to harmonize such taxes. In addition, less than universal adoption of a state-level value added tax by all Indian states and conflicting regulations continue to hamper the free flow of goods within India.

India has continued to apply aggressively its antidumping law. During the past year for which WTO statistics are available, India initiated 36 (highest among all WTO Members) antidumping cases and imposed 14 (fourth highest among all WTO Members) antidumping measures. India's new investigations focused largely on plastics and textiles, and only one of these initiations involved U.S. exports. India's implementation of its antidumping regime has raised concerns in key areas such as transparency, due process and notification.

The United States will continue to seek clarification and address concerns both bilaterally and multilaterally. In September 2004, the United States participated in a technical exchange with Indian antidumping administrators to obtain a better understanding of India's trade remedies laws and their compliance with India's WTO obligations. The United States and India have agreed within the context of the U.S.-India Commercial Dialogue to continue these discussions on trade remedy issues and are in the process of scheduling another technical exchange.

INDONESIA

TRADE SUMMARY

The U.S. goods trade deficit with Indonesia was $10.3 billion in 2006, an increase of $1.4 billion from $9.0 billion in 2005. U.S. goods exports in 2006 were $3.1 billion, up 0.8 percent from the previous year. Corresponding U.S. imports from Indonesia were $13.4 billion, up 11.6 percent. Indonesia is currently the 40th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Indonesia were $1.2 billion in 2005 (latest data available), and U.S. imports were $348 million. Sales of services in Indonesia by majority U.S.-owned affiliates were not available in 2004 ($1.1 billion in 2003) (latest data available), while sales of services in the United States by majority Indonesia-owned firms were $21 million in 2004.

The stock of U.S. foreign direct investment (FDI) in Indonesia was $9.9 billion in 2005 (latest data available). U.S. FDI in Indonesia is concentrated largely in the mining, and non-bank holding companies sectors.

The United States and Indonesia concluded a bilateral Trade and Investment Framework Agreement (TIFA) in 1996. In recent years, the United States and Indonesia have held regular meetings under the TIFA. The United States has used the TIFA to discuss and seek resolution of many issues that threaten to inhibit bilateral trade and investment. The United States- Indonesia TIFA is a component in the Enterprise for ASEAN Initiative, which was launched by President Bush in October 2002.

OVERVIEW

Since taking office on October 20, 2004, President Yudhoyono, Indonesia's first directly-elected leader, has pursued plans to improve Indonesia's business climate and regional competitiveness; attract greater foreign and domestic investment, especially in infrastructure and export sectors; and generate high-quality job growth needed for sustained economic development. An October 18, 2005 Presidential Decree established an interagency Indonesian National Trade Negotiation Team, with the Coordinating Minister for the Economy and the Minister of Trade as its chair and deputy chair, respectively. This team has the overarching goal of improving coordination of Indonesian government strategies and positions in trade dialogues and negotiations. Early in the Yudhoyono Administration, Minister of Trade Mari Pangestu announced a comprehensive trade policy review aimed at dismantling protectionist measures of previous administrations, rationalizing and harmonizing tariffs, and gradually removing bans and quotas and lowering tariffs. As part of this review, Indonesia's Team Tariff, an interagency body responsible for reviewing tariff and non-tariff measures, announced in December 2004 and January 2006 the completion of each of the two phases of a comprehensive Tariff Harmonization Program.

President Yudhoyono's program to improve Indonesia's business climate and competitiveness seeks to address concerns over the wide range of business problems some United States industry encounters in Indonesia, including the lack of contract enforceability, arbitrary and inconsistent interpretation and enforcement of laws, the absence of a transparent and predictable regulatory environment, irregularities in government procurement tenders, poor infrastructure, labor market rigidities, discriminatory taxation, and ineffective enforcement of intellectual property rights. These business problems cause uncertainty, which combined with widespread corruption, and an unreliable judicial system, hinders commercial dealings in

Indonesia. The Yudhoyono Administration has focused its reform agenda first on revising Indonesia's investment, tax, customs and labor laws; undertaking an effective anti-corruption campaign; and laying the foundation for judicial and civil service reform. On March 2, 2006 the Indonesian government announced an "Investment Climate Improvement Package" containing 85 regulatory and institutional reforms it planned to take in 2006 to improve the investment climate. The package focused on five areas: general investment policies; customs, excise and duties policies; taxation; labor; and small and medium enterprises (SMEs). Indonesia also announced on February 17, 2006, an ambitious infrastructure policy reform package. However, much of the reform agenda has yet to be implemented.

President Yudhoyono continues to make progress in his multi-faceted anti-corruption program. He placed reformers in key positions, such as the chiefs of the tax and customs offices in April 2006. The national budgets for 2006 and 2007 provided additional resources to government agencies engaged in anti-corruption efforts including the Attorney General's Office. Meanwhile, anti-corruption institutions are active and growing in significance and donor assistance to improve public sector performance is robust.

Other priorities for Indonesia in 2006 were continuing recovery and reconstruction efforts following the massive loss of life and destruction from the December 26, 2004 earthquake and tsunami in Aceh and Nias and May 27 earthquake in Jogjakarta and Central Java. Indonesia's economy demonstrated impressive resilience following October 2005 reductions in government fuel subsidies and monetary policy tightening in response to a budget and currency crisis brought on by record world fuel prices. By mid-2006, consumption showed signs of recovery, inflation was on the decline, and Bank Indonesia (central bank) began lowering interest rates. Meanwhile, high world commodity prices contributed to record exports and foreign reserves, enabling Indonesia in October 2006 to complete payment of its IMF program four years ahead of schedule. Investment also showed some signs of recovery with the improving macro-economic environment, but remains well below pre-financial crisis levels.

The United States and Indonesia reenergized Trade and Investment Framework Agreement (TIFA) talks in 2005, and continue to hold regular productive meetings to discuss outstanding trade concerns and to explore areas for future cooperation. The Indonesian government generally has adhered to its long-term trade liberalization program, and the Yudhoyono Administration has actively pursued greater access to global markets through bilateral, regional and multilateral agreements. Indonesia fully implemented the first stage of its commitments under the ASEAN Free Trade Agreement (AFTA) on schedule in 2002, and has been active in ASEAN's efforts to pursue free trade agreements with China, Japan, South Korea, India, Australia and New Zealand.

IMPORT POLICIES

Tariffs

In the late 1980s, Indonesia began long-term trade reform to wean the economy away from its dependence on the petroleum sector and to increase Indonesia's industrial competitiveness. In the early 1990s, it began a series of annual deregulation packages designed to gradually lower applied tariff rates, convert non-tariff barriers into tariffs, and remove restrictions on foreign investment. By January 2003, about 70 percent of Indonesia's tariff lines were assessed import duties ranging between zero percent and 5 percent. Indonesia's unweighted applied tariff average is 6.9 percent, compared to 20 percent in 1994. Indonesia's average WTO bound rate is 37.1 percent.

The Indonesian government released a new tariff reduction package in January 2004. The new tariff book categorizes tariffs into International Non-ASEAN Tariffs and ASEAN Tariffs. Most Non-ASEAN tariffs fall into 0 percent, 5 percent, and 10 percent tiers, except for sensitive items such as automotive goods and alcohol. ASEAN tariffs fall into three tiers, 0 percent, 2.5 percent, and 5 percent, for all goods covered by the AFTA.

In December 2004, Team Tariff announced the results of the first phase of its Tariff Harmonization Program (THP) with new rates that went into effect on January 1, 2005. This first phase covered 1,964 tariff lines with actual changes to 239 lines: 96 tariff increases and 143 tariff reductions. Of particular note are tariff increases for agricultural (rice, fish, chicken quarters, mangos, carrots, mandarin oranges and flowers) and ceramic products and tariff decreases for some mining related products. In January 2006, Team Tariff announced the results of the second and final phase of the THP. Of 9,209 tariff lines reviewed, Indonesia made changes to 800, lowering 635 tariffs and increasing 165. Most Indonesian tariffs are bound at 40 percent. Products for which tariff bindings exceed 40 percent or which remain unbound include automobiles, iron, steel, and some chemical products. In the agricultural sector, 1,341 tariff lines have bindings at or above 40 percent, including the most sensitive and heavily protected sectors. In the current WTO Doha negotiations, Indonesia, as leader of the G-33, has been advocating special products exemptions from tariff reductions for rice, sugar, soybeans, and corn.

Since late 1999, rice imports have been subject to a specific tariff of 430 rupiah per kilogram (5.1 cents per kilogram or approximately 30 percent on an *ad valorem* basis). In 2004, the Indonesian government instituted bans on imports of rice, sugar and salt, and in 2005, Indonesia increased import duties on corn and soybeans from zero percent to 5 percent and 10 percent, respectively. Local agriculture interests continue to lobby the government to increase tariff rates above the levels bound in the WTO on sensitive agricultural products, such as sugar, soybeans and corn. However, the Minister of Trade is conducting a comprehensive trade policy review that remained ongoing as of March 2007, which may address these tariffs.

Non-Tariff Barriers

During the Soeharto era, the National Logistics Agency (Bulog), had a monopoly on importing and distributing major bulk food commodities, such as wheat, rice, sugar, and soybeans, but it now has the status of a state-owned enterprise with responsibility for maintaining stocks for distribution to military and low-income families, and for managing the country's rice stabilization program. Bulog has floated the idea of again becoming a state trading enterprise with monopoly import rights for some products, but the Indonesian government has not taken action on this proposal. Bulog is no longer entitled to draw on Bank Indonesia credit lines, a privilege it long enjoyed under the Soeharto regime, and must use commercial credit and pay import duties. In conjunction with the minimization of Bulog's authority and role, some designated private companies are now permitted to import rice, wheat, wheat flour, soybeans, garlic, and sugar.

The Indonesian government continues to maintain a ban on imports of chicken parts originally imposed in September 2000 by the Directorate General of Livestock Services in the Ministry of Agriculture (MOA). The U.S. Government has raised concerns about this issue, but the MOA continues to insist on the necessity to assure consumers that imports are *halal* (produced in accordance with Islamic practices). U.S. imports comply with Indonesia's established requirements for *halal* certification, and several ministries have unsuccessfully sought to repeal the ban. U.S. industry estimates the value of lost trade from this ban at roughly $10 million per year.

Indonesia’s government also imposes *de facto* quantitative restrictions on imports of meat and poultry products by requiring an Importer Letter of Recommendation. In approving requests for such letters, the Indonesian government can arbitrarily alter the quantity allowed to enter, raising concerns that these

Letters of Recommendation are being used to limit imports. U.S. industry estimates the annual trade impact of this restriction to be between $10 million and $25 million.

Following the June 2005 finding in the United States of a single case of Bovine Spongiform Encephalopathy (BSE), Indonesia's MOA banned imports of U.S. meat and other ruminant products on July 1, 2005. The MOA has yet to inform the United States what information it will need to reinstate this trade, nor would it be ready to reconsider U.S. beef imports. U.S. beef exports had been growing rapidly and approached a record $15 million in 2005 prior to imposition of the import ban. Recent movement to allow meat and bone meal (MBM) imports from the United States on a company by company basis following on site inspection by the MOA has provided very limited access.

The Indonesian government has imposed a rice import ban since February 2004, which was only eased somewhat in November 2005, when the Ministry of Trade issued import permits to Bulog allowing for imports of about 70,000 tons of rice, and again in September 2006 when imports of 210,000 tons were authorized. However, these decisions met with sharp criticism from other ministries, producer groups, and Members of Parliament. Minister of Trade Pangestu, in February 2007, announced that Indonesia was relaxing the ban on rice imports in 2007 due to a late rains and a poor harvest, but that this did not indicate an outright end to the ban on rice imports. Historically, the United States has not made significant commercial sales of rice to Indonesia; most shipments have occurred through the P.L. 480 Title I concessional loan program.

In June 2004, the Ministry of Trade banned the importation of salt during the harvest season from July through the end of each year. Under the regulations, salt importing companies must be registered and source 50 percent of their raw materials locally. A September 2004 Ministry of Trade decree allows five companies to import sugar. It also states that the Ministry of Trade decides which companies can import sugar and how much.

In May 2005, Indonesia issued a proposed regulation, Decree 37, which imposed new requirements for fresh fruit and vegetable imports. The proposal inaccurately reflected the presence of fruit flies in the United States. Although the United States corrected this information in its August 2005 response to the proposed regulation, Decree 37 became effective on March 27, 2006 without modification of the U.S. pest status. The final regulation requires imports of fruit fly host commodities to originate from fruit fly free areas or to be treated as a condition of entry. Eleven U.S. fruit exports were affected by Decree 37, including apples and grapes. Indonesia is the seventh-largest market for U.S. apples worth over $20 million in 2005. In December 2006, following a Ministry of Agriculture inspection visit, Indonesia declared California as a pest free area for the Mediterranean fruit fly for grapes, opening the way to renewed grape exports. The United States will continue to press Indonesia to permit resumption of U.S. fruit exports on the basis of sound science and in conformance with international sanitary and phytosanitary standards.

Quantitative import limits apply to wines and distilled spirits. In addition to the regular import duty of 170 percent, a 10 percent VAT and 35 percent luxury tax, the Indonesian government restricts imports of alcoholic beverages to three registered importers, including one state-owned enterprise.

The U.S. Government has received reports that Indonesia's Customs Service uses a schedule of arbitrary "check prices" rather than actual transaction prices on importation documents to assess duties on food product imports. Indonesian Customs officials defend this practice by arguing it combats under-invoicing. They claim that 80 percent of all Customs applications, electronic or paper, are accepted without extraordinary review. Importers are notified, however, when an application appears to be suspicious and, if the matter is still not resolved, Customs makes an assessment based on an average of the price of the same or a similar product imported during the previous 90 days. Indonesian Customs, however, does not publicize this methodology or a current list of such reference prices. As a result, although most food product import tariffs remain at 5 percent, the effective level of duties can be much higher. For example, industry estimates that application of arbitrary check prices adds up to $2,000 per shipment of U.S. table grapes to Indonesia, leading to an estimated annual loss of around $3.5 million per year in potential trade for this product alone. The U.S. Government also has received many complaints from importers about costly delays and requests for unofficial payments from a number of companies importing goods through Indonesian ports.

Parliament approved an amended Customs Law on October 18 that cuts red tape for importers and exporters and imposes stiffer sanctions on smugglers. It establishes a code of ethics for customs officers and a set of penalties and incentives to punish corrupt behavior and reward good performance. The United States will press for active enforcement of this law.

Import Licensing

The Indonesian government continues to reduce the number of products subject to import restrictions and special licensing requirements. Currently, 141 tariff lines are subject to import licensing restrictions, down from 1,112 tariff lines in 1990. Alcoholic beverages, lubricants, explosives, and certain dangerous chemical compounds, among other items, are subject to these requirements.

In March 2002, the Minister of Industry and Trade issued a decree on Special Importer Identification Code Numbers (NPIK). This decree requires importers of certain product categories to apply for a special importer identity card, without which products can be detained at port. These goods include: corn, rice, soybeans, sugar, textile and related products, shoes, electronics and toys.

On October 23, 2002, the Minister of Industry and Trade issued a decree concerning Textile Import Arrangements. Only companies that have production facilities using imported fabrics as inputs for finished products, such as garments or furniture, may obtain import licenses. The United States has raised concerns that the import licensing requirements restrict and distort trade and has recommended that the decree be rescinded. The Indonesian government insists the regulations are designed to help curb smuggling from neighboring countries.

STANDARDS, TESTING, LABELING AND CERTIFICATION

In July 2000, the Indonesian government implemented the Consumer Protection Law of 1998 by requiring registration of imported food products. Importers must apply for a registration number from the Agency for Drug and Food Control (BPOM). According to U.S. importers, these requirements have proven to be overly complex, time consuming, and costly.

BPOM tests imported food products although implementation of this requirement is not yet complete and enforcement is inconsistent. Some U.S. producers have expressed concerns that the extremely detailed information on product ingredients and processing they must provide may require them to reveal proprietary business information leading some of them to discontinue sales in Indonesia. If fully implemented the annual level of trade adversely affected by this requirement is estimated by U.S. industry at between $10 million and $25 million.

Beginning January 2001, Indonesia’s regulations required labels identifying food containing "genetically engineered" ingredients and "irradiated" ingredients. However, the Indonesian government has not implemented these new requirements because it has yet to establish minimum threshold-presence levels.

U.S. industry estimates that the new regulation could affect sales of approximately $411 million annually in soybeans and soybean meal from the United States. The U.S. Government is closely monitoring this issue.

GOVERNMENT PROCUREMENT

Indonesia is not a signatory to the WTO Agreement on Government Procurement. In 2004, Indonesia issued a Presidential Decree on government procurement aimed at simplifying procedures and increasing efficiency and transparency in the procurement process. However, the new rules grant some special preferences to encourage domestic sourcing and call for the maximization of local content in government projects, regardless of their source of funding. According to the Decree, foreign companies are eligible to bid on government contracts as part of a joint partnership or as a subcontractor to a domestic firm, and permissible foreign participation increased from $1 million to $5 million. Nevertheless, regional decentralization may introduce additional barriers as local and provincial governments adopt their own procurement rules.

Bilateral or multilateral donors finance many large government contracts and often impose special procurement requirements. For large, government-funded projects, international competitive bidding practices must be followed. The Indonesian government seeks concessional financing for most procurement projects. Since late 1999, the Indonesian government has conducted audits of the state-owned electricity company (PLN), the state oil and gas company (Pertamina), and the State Logistics Agency (Bulog), and identified serious irregularities in their procurement. However, no legal action has been taken with respect to these irregularities.

Foreign firms bidding on high value government-sponsored projects have been asked to purchase and export the equivalent value in selected Indonesian products. Government departments, institutes, and corporations are expected to utilize domestic goods and services to the maximum extent feasible, with the exception of foreign aid-financed procurement of goods and services. State-owned enterprises that publicly offer shares through the stock exchange are exempted from government procurement regulations.

EXPORT SUBSIDIES

In 2004, the Indonesian government ended several credit programs that offered subsidized loans to agriculture and small and medium sized businesses to support exports.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

IPR protection and enforcement remains a serious concern in Indonesia, where widespread optical disc piracy and counterfeiting of consumer goods, including automotive parts and pharmaceuticals, cost U.S. firms and the Indonesian government hundreds of millions of dollars in lost revenues and pose serious health and safety concerns for Indonesians. Indonesia has made some progress in the past couple of years, and recent increased Indonesian commitment to IPR protection and enforcement led the U.S. Government on November 6, 2006, to improve Indonesia's Special 301 standing to Watch List.

Copyrights

Indonesia's copyright law came into force in July 2003. The law contains a number of important provisions long sought by U.S. and Indonesian copyright holders, including provision for the issuance of an implementing regulation on optical disks (OD), criminal penalties for end-user piracy, and the ability of rights holders to seek civil injunctions against pirates. An OD regulation became effective in April

2005. The Ministry of Industry leads an interagency OD factory monitoring team that has registered 27 factories and begun unannounced inspections with some support from local intellectual property industry associations. The success of the monitoring team's efforts will depend on its ability to conduct more robust and unannounced inspections on a regular basis and Indonesia's ability to effectively sanction factories and their management involved in piracy.

The Copyright Law establishes rights to license, produce, rent or broadcast audiovisual, cinematographic, and computer software. It also provides protections for neighboring rights in sound recordings and for the producers of phonograms. It stipulates a 50-year term of protection for many copyrighted works.

The Indonesian government regularly consults with copyright holders and associations. In recent years, movies on high-quality pirated DVDs have become increasingly available alongside video compact disks (VCDs). Following a December 2005 directive by Indonesia National Police (INP) Chief Sutanto, police stepped up with increased and sustained IPR enforcement activities, particularly against pirate OD vendors, distributors and factories. The Jakarta and Surabaya police were particularly active, seizing and destroying millions of illegal ODs, arresting hundreds of suspects, and seizing or sealing illegal burners and OD production lines. These activities, however, have yet to result in a significant increase in prosecutions and deterrent fines or custodial sentences, or the permanent impoundment or destruction of large scale production equipment used to manufacture pirated products. While recent police enforcement activities have resulted in some decrease in the quantity and availability of pirated ODs, the rate of piracy in Indonesia remains high, undermining the sale and rental of legitimate products. According to U.S. industry estimates, total losses from copyright piracy in Indonesia during 2005 were above $200 million.

Patents

Indonesia enacted its Patent Law on August 1, 2001. The law consolidated three previous laws covering patents, and established an independent commission to rule on patent disputes and appeals. The law transferred jurisdiction over IPR civil cases to the Commercial Court from the District Court, and raised the maximum fine for patent violations to Rp 500 million ($60,000). The term of protection remains 20 years with a possible two-year extension. A patent is subject to cancellation only in the event the patent holder fails to pay annual fees within specified periods. Unauthorized use of a product or process invention that is the subject of a pending application constitutes patent infringement.

Despite these measures, Indonesia continues to suffer from a lack of effective enforcement of patent rights. The patent law does not address some of the weaknesses that concern foreign rights holders. Chief among these is the requirement that an inventor must physically produce a product or utilize a process in Indonesia in order to obtain a patent for the product or process.

Trademarks

Indonesia enacted its trademark law on August 1, 2001. The law raised the maximum fine for criminal trademark violations to Rp 1 billion ($120,000), and slightly reduced the maximum possible prison term. The Indonesian government justified this move by claiming that financial penalties were a greater deterrent to IPR violators than imprisonment. Foreign rights holders, arguing that most IPR cases never result in the maximum sentence, had pushed for minimum sentencing guidelines rather than higher fines.

The trademark law provides for the determination of trademark rights by priority of registration, rather than by priority of commercial use. The law also provides for the protection of well-known marks, but offers no administrative procedures or legal grounds under which legitimate owners of well-known marks can cancel pre-existing registrations. Currently, the only avenue for challenging existing trademark registrations in Indonesia is through the courts, an often-burdensome undertaking that must be initiated within five years from the date of the disputed registration. Faster processing (within 180 days) of trademark cases by the Commercial Courts has provided relief to some trademark holders. However, industry representatives are seeking additional injunctions by the courts, especially in cases where a lower court eventually invalidates a false trademark registration.

SERVICES BARRIERS

Despite relaxation of some restrictions, trade barriers to services continue to exist in many sectors.

Legal Services

A few local law firms currently dominate the legal market, and foreign law firms cannot operate directly in Indonesia. A foreign law firm seeking to enter the market must establish a relationship with a local firm. Only Indonesian citizens with a degree from an Indonesian legal facility or other recognized institution may practice as lawyers. Foreign lawyers can only work in Indonesia as "legal consultants" and must first obtain the approval of the Ministry of Justice and Human Rights.

Distribution

In 1998-99, Indonesia liberalized portions of the distribution services sector under the terms of its agreements with the IMF. The Indonesian government eliminated restrictive marketing arrangements for cement, paper, plywood, cloves and other spices. Indonesia allows up to 100 percent foreign equity in the distribution and retail sectors, with the condition that the investor enter into a “partnership agreement” with a small-scale Indonesian enterprise. This partnership agreement need not involve an equity stake in the project.

In the energy sector, Indonesia passed an Oil and Gas Law in November 2001 to deregulate the downstream oil and gas sectors, which includes refining, distribution, storage and retail activities. Under the law, the state oil and gas company Pertamina was converted into a limited liability company (Regulation No. 31/2003) and ended its public service obligation (PSO) two years after passage of the law. The law also stipulates the formation of a new Oil and Gas Downstream Business Regulating Board (Badan Pengatur Kegiatan Usaha Hilir Migas, or BPH Migas) that effectively took control of Pertamina’s former regulatory function over the downstream industry. Although the day-to-day activities of the board must still be defined through implementing regulations, BPH Migas is an independent government institution that reports directly to the President. Its primary functions include regulating the supply and distribution of oil fuel, allocating sufficient fuel oil to meet national fuel oil reserves, stipulating conditions on fuel oil transportation and storage, setting tariffs for natural gas pipeline use, setting the price of natural gas for households and small consumers, and regulating the transmission and distribution of natural gas. The downstream sector is further regulated with President Regulation No. 46/2004 on Oil and Gas Downstream Activities, issued October 14, 2004, which outlines the general procedures, activities and licenses for downstream activities.

In October 2005, Shell was the first private investor to open a non-Pertamina retail fuel station in Indonesia. About 25 local and international investors, including Malaysia’s national oil and gas company Petronas, are reported to have obtained initial licenses for downstream operation.

Financial Services

Indonesia allows 99 percent foreign ownership of domestic banks. In October 2006, BI launched a new banking policy package consisting of 11 regulations. The two-fold aim of the package is to expand the banks' role in the financing of development and to promote consolidation of small banks, which create a supervisory burden while generating little economic activity. (More than 40 of Indonesia's 131 banks have capital of less than $11 million.) The new rules ease lending limits and minimum capital requirements for sound commercial banks. The "single presence policy," will require banks with the same owner to consolidate their presence. They must submit a restructuring plan to BI by December 2007 and report quarterly starting January 2008. The restructuring is be completed by December 2010. To promote banks' intermediary function, the regulatory package relaxes the Legal Lending Limit and creates more flexibility for banks to respond to financing needs in the real sector.

Accounting Services

Foreign firms cannot practice under international firms' names, although terms such as "in association with" are permissible. Foreign accounting firms must operate through technical assistance arrangements with local firms. Foreign agents and auditors may act only as consultants and cannot sign audit reports. Licensed accountants must hold Indonesian citizenship.

Audio-Visual

Indonesia bans all foreign investment in media businesses, including cinema construction or operation, video distribution and broadcast services. Foreign investment is prohibited in broadcast and media sectors, including the film industry (film making, film technical service providers and movie house operations). Foreign investment in the provision of radio and television broadcasting services, radio and television broadcasting subscription services and media print information services also are prohibited.

Construction, Architecture and Engineering

Foreign consultants working under government contract are subject to government billing rates. Foreign construction firms are only permitted to be subcontractors or advisors to local firms in areas where the government believes that a local firm is unable to do the work. In addition, for government-financed projects, foreign companies must form joint ventures with local firms.

Telecommunications Services

Indonesia has recently made progress in making the telecommunications playing field more transparent and competitive in all but basic services delivery. Foreign investors face few impediments to entering the Indonesian value-added telecommunications market.

Indonesia formed a telecommunications regulatory body in July 2004 to improve transparency in regulation development and dispute resolution. To date, this body has been largely inactive and the Ministry of Communication and Information has been more effective in pushing through sector reforms.

The provisions of Indonesia's Telecommunications Law 36, which came into force in 2000, have guided reforms to end monopolies and open basic telecommunications services to majority foreign ownership. Telecommunications Law 36 lays out goals that exceed many of the modest commitments Indonesia agreed to under the WTO Basic Telecommunications Agreement (maximum foreign investment limit of 35 percent for telecommunications services companies) and the WTO Pro-Competition Annex in 1997 (transparent regulatory procedures, nondiscriminatory licensing, and competitive safeguards for companies operating in Indonesian markets).

In 2002, subsequent implementing regulations for Telecommunications Law 36 established conditions for a new policy of duopoly and accelerated reforms. The government ended the exclusive rights of PT Telkom for domestic long distance service and local fixed-line service in August 2003 and of PT Indosat and Satelindo for international calling service in 2003. Instead, PT Telkom and PT Indosat were established as Indonesia's only full service providers, a move that ensured PT Indosat's survival in the face of increasing competition from Voice Over Internet Protocol (VOIP) services. Since 2002, however, PT Telkom has focused most investment in the value-added cellular market and added very few new lines to remote areas. Although homes and businesses in Indonesia that are wired can enjoy world class telecommunications services by combing services of different providers, only 5 percent of homes have even basic connectivity.

Furthermore, Indonesia allows PT Telkom to charge interconnection fees to both domestic and foreign competitors that renders it almost impossible for other operators to offer service in any but the major metropolitan centers. As a result, most of the major operators (Including PT Indosat) do not have significant foot-print into outlying areas in the same fashion as PT Telkom, simply because they could not be in a position to offer affordable services when interconnection to PT Telkom's vast network reach is required.

Telecommunications Law 36 removed previous requirements that prospective foreign investors partner or enter into a revenue-sharing arrangement with a state-owned enterprise. In January 2002, to attract investors, the government committed to raise telephone tariffs each year for three years to achieve market levels. Popular resistance, however, prevented the second round of price increases in 2003. Indonesia has undertaken partial privatization of its telecommunications companies. In July 2002, government ownership of PT Telkom was reduced to 51 percent, after a public offering of 3.1 percent. In December the same year, the government reduced its ownership of PT Indosat to 15 percent, after it sold 41.9 percent to Singapore Technologies Telemedia.

INVESTMENT BARRIERS

The Yudhoyono Administration has made improving Indonesia's investment climate a priority and has focused its reform agenda first on revising investment, tax, customs and labor laws; undertaking an effective anti-corruption campaign; and laying the foundation for judicial and civil service reform.

A World Bank study found that it takes 97 days on average to establish a business in Indonesia. FDI declined sharply after the 1997-98 financial crisis, but realized foreign investments topped $8.9 billion in 2005, a sign that investor confidence is on the mend. Indonesian government approvals for investment proposals reached $10.4 billion in 2004, compared to $14.3 billion in 2003 and $9.9 billion in 2002.

Indonesia blocks or restricts foreign investment in some sectors. These restricted sectors are included in the "negative list." The most recent list of restricted sectors, issued in August 2000, opened some sectors, including certain medical services, but other sectors remain closed, such as casino and gaming facilities, air traffic and marine vessel certification and classification systems, and radio frequencies. Various infrastructure sectors and the airline, medical services, marine and fisheries, industrial, and other trade sectors are open to investment subject to joint venture or other conditions.

On January 1, 2001, Indonesia began to implement a large-scale decentralization of authority and budget control from the central government to the provincial and district-level governments. Differences of opinion between the central and local governments about which level of government has authority on certain issues have increased uncertainty among foreign investors. In many areas, despite being contrary to Indonesian law, local governments have instituted trade distorting, revenue-raising measures

In an effort to help alleviate this problem, under proposed revisions to the law, local governments would be granted the authority to tax based upon a "positive" list indicating affirmative local authority, rather than a "negative" list indicating areas where the central government retains authority.

Decentralization has complicated government efforts to improve Indonesia's investment climate and reduce burdensome bureaucratic procedures and other requirements on foreign investors. Indonesian law provides for both 100-percent foreign ownership of direct investment and joint ventures with a minimum Indonesian equity of 5 percent. Currently, Indonesia's Investment Coordinating Board (BKPM) and other relevant agencies in certain sectors must approve proposed foreign investments, but under the new proposed Investment Law being debated in Parliament, Indonesia would move from an investment approval to an investment registration system and BKPM's new mission would be investment promotion. The proposed new investment law do is to provide greater clarity on which sectors are closed and which sectors are open to foreign investment.

In an effort to speed up implementation of proposed reforms, Indonesia on March 2 announced an Investment Climate Improvement Package containing 85 regulatory and institutional reforms it plans to take in 2006 to improve the investment climate. The package focuses on five areas -- general investment policies; customs, excise and duties policies; taxation; labor; and small and medium enterprises -- and specifically calls for revisions to the investment, labor, tax and customs laws. Following a number of delays, Indonesia's Parliament is not expected to pass Indonesia's proposed investment law or tax law amendments until mid-2007. In response to labor demonstrations in April and May 2006, Indonesia decided to indefinitely postpone plans to revise the country's labor laws.

ELECTRONIC COMMERCE

Despite the proliferation of Internet service providers in recent years, several factors hinder the growth of electronic commerce in Indonesia. These include the lack of a clear policy in support of an open telecommunications infrastructure, monopoly provision of fixed landline service by PT Telkom, a low level of computer ownership by both businesses and individuals, lack of funding and weak IPR protection. U.S. industry has identified the lack of a legal framework for ensuring security of online transactions as a particularly significant impediment. The Indonesian government completed drafting of cyber crime and electronic transactions legislation in September 2005 and the measures are currently being debated in the legislature.

OTHER BARRIERS

Transparency

Foreign companies continue to experience problems with corruption in Indonesia. Companies have expressed concern about demands for unwarranted fees to obtain required permits or licenses, and government awards of contracts and concessions based on personal relationships. Legal uncertainty is also a frequent complaint, and courts at several levels are perceived as inefficient and corrupt. The central government is pushing for improvements. The President is urging state-owned enterprises to improve management performance and reduce corruption. Tax administration is undergoing real change with a modernization team committed to reform under a new Director General. New leadership in customs is also seeking to improve services and efficiency. These are part of broader Ministry of Finance reforms which include improving capital markets supervision, debt management, budget and expenditure planning and internal controls. Reform in other areas such as the non-bank financial sector such as pensions and insurance, however, remains slow.

Indonesia has empowered several corruption-fighting bodies. The Corruption Elimination Commission (KPK) dramatically ramped up its activity since it set up operations in 2004. In 2004 it conducted 17 pre-investigations, 1 investigation and began 2 prosecutions: in 2005, it had 31 pre-investigations, 19 investigations and 17 cases being prosecuted. The Special Court of Corruption, domiciled in the District Court of Central Jakarta but with jurisdiction over all of Indonesia, handles all anti-corruption cases initiated or taken over by the KPK. The Attorney General's Office announced in August 2006 the formation of a "reform team" to improve prosecutor performance. President Yudhoyono created a Police Commission in June 2006 to advise him on police-related issues. He named three anti-corruption "champions" in August 2006: Attorney General Abdul Rahman Saleh, National Police Chief General Sutanto, and KPK Deputy Chairman Erry Riyana Hardjapmengkas. A Presidential Working Unit to improve public services and policy implementation was also formed in November 2006. An "Interagency Corruption Eradication Team") has been active in investigation and prosecution of public corruption including of several high-ranking officials. In addition, Indonesia ratified the United Nations Convention Against Corruption in March 2006 and passed new whistleblower protection legislation in August 2006.

Many challenges remain and Indonesia's commitment to reform is attracting robust donor assistance. The U.S. Millennium Challenge Corporation provided a $55 million grant for Indonesia's "Threshold Country Plan" in October 2006. The two-year plan has a strong anti-corruption component including judicial reform, increased enforcement capabilities to fight money laundering, prosecution of cases of public corruption, and reduction of opportunities for corruption through the modernization of public procurement systems. Donor organizations from Europe, Japan, Australia and the United States are providing grants, technical expertise and training for Indonesian institutions. The World Bank and the Asian Development Bank programs remain robust to help improve all types of public sector performance.

Automotive Policies

The maximum tariff on automobiles is 80 percent. Tariffs on passenger car kits imported for assembly range from 25 percent to 50 percent, depending on engine size. Tariffs on non-passenger car kits are a uniform 25 percent. Tariffs on automotive components and parts imported for local assembly of passenger cars and minivans are a uniform rate of 15 percent. Imports of motor vehicles are no longer restricted to registered importers or sole agents of foreign automakers, but are open to any licensed general importer. U.S. motorcycle manufacturers remain concerned about the high tariff of 60 percent (25 percent on knockdown kits), the luxury tax of 75 percent, as well as the prohibition on motorcycle traffic on tollways as barriers to the Indonesian market.

The luxury sales tax on 4,000 cc sedans and 4x4 Jeeps or vans is 75 percent. The luxury tax on automobiles with engine capacity of under 1500 cc ranges from 10 to 30 percent. The luxury tax on automobiles with engine capacity between 1,500 cc and 3,000 cc ranges from 20 percent to 40 percent, depending on the size of the engine and body style of the vehicle. In 2006, a dramatic increase in fuel prices, which took effect in October 2005 led to a significant shift in motor vehicle sales to vehicles with engine displacement below 1500 cc Forty percent of the market is made up of passenger cars with engine displacement under 1500 cc, with the MPV type vehicles accounting for 35 percent. These MPV type vehicles, predominantly produced in Indonesia, have a luxury tax of 10 percent.

ISRAEL

TRADE SUMMARY

The U.S. goods trade deficit with Israel was $8.2 billion in 2006, an increase of $1.1 billion from $7.1 billion in 2005. U.S. goods exports in 2006 were $11.0 billion, up 12.6 percent from the previous year. Corresponding U.S. imports from Israel were $19.1 billion, up 13.8 percent. Israel is currently the 20th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Israel were $2.7 billion in 2005 (latest data available), and U.S. imports were $2.4 billion. Sales of services in Israel by majority U.S.-owned affiliates were $601 million in 2004 (latest data available), while sales of services in the United States by majority Israel-owned firms were $488 million.

The stock of U.S. foreign direct investment (FDI) in Israel in 2005 was $7.9 billion (latest data available), up from $6.9 billion in 2004. U.S. FDI in Israel is concentrated largely in the manufacturing and information sectors.

The United States-Israel Free Trade Area Agreement

Under the United States-Israel Free Trade Area Agreement (FTA), signed in 1985, the United States and Israel agreed to phased tariff reductions culminating in the complete elimination of duties on all products by 1995. Most tariffs between the United States and Israel have been eliminated as agreed, although tariff and non-tariff barriers continue to affect a certain portion of U.S. agricultural exports.

To temporarily and partially address the differing views between the two countries over how the U.S.-Israel FTA applies to trade in agricultural products, in 1996, the United States and Israel signed an Agreement on Trade in Agricultural Products, establishing a program of gradual and steady market access liberalization for food and agricultural products effective through December 31, 2001. Negotiation and implementation of a new agricultural agreement was successfully completed in 2004. The new agreement is effective through December 31, 2008, and provides improved access for select U.S. agricultural products. The agreement provides U.S. food and agricultural products access to the Israeli market under one of three different categories: unlimited duty-free access; duty-free tariff-rate quotas (TRQs); or preferential tariffs, which are set at least 10 percent below Israel's most-favored nation (MFN) rates. The agreement also provides for annual increases in TRQs.

IMPORT POLICIES

Tariffs

Under the 1985 FTA, the United States and Israel agreed to eliminate duties on all products by January 1, 1995, the end of the implementation period. Israel removed duties on U.S. non-agricultural products according to the FTA schedule, but substantial tariffs remain on some U.S. agricultural products.

Agriculture

Market Access: Approximately 90 percent of U.S. agricultural exports (by value) enter Israel duty- and quota-free as a result of Israel's implementation of commitments under the WTO, the FTA, and the 2004

Agricultural Agreement. However, remaining U.S. agricultural exports, consisting largely of consumer-oriented goods, face restrictions such as a complicated tariff-rate quota system and high tariffs. In addition, the ability of U.S. exporters to utilize available quota volumes can be hampered by problems with the administration and transparency of Israel's TRQs. TRQ-related problems include a lack of data on quota fill-rates and license allocation issues such as small non-commercially viable quota quantities and administrative difficulties in obtaining licenses for within quota imports. Under the 2004 Agricultural Agreement, the Israeli government committed to taking steps to improve the administration of TRQs, including engaging in regular bilateral consultations. However, the mid-year reallocation of unutilized quotas by the Israeli Quota Administration failed to solve the problems.

Restrictions remain on other U.S. agricultural exports, including high value goods that are important to the Israeli agricultural sector such as dairy products, fresh fruits, fresh vegetables, almonds, wine, and some processed foods. According to industry estimates, elimination of levies on processed foods could result in increased sales by U.S. companies, with appropriate market development efforts, in the range of $25 million to $50 million. Removal of quotas and levies on dried fruits could result in increases in sales by U.S. exporters of up to $10 million. U.S. growers of apples, pears, cherries and stone fruits estimate that elimination of Israeli trade barriers would lead to an increase of $5 million to $25 million in export sales of these products. It is estimated that free trade in agriculture could result in U.S. almond exports growing by as much as $10 million.

The Israeli New Food Committee of the Ministry of Health published regulations for new food registrations in February 2006. The registration of foods containing bioengineered ingredients is expected to begin in early 2007. The new procedure is for registration only and will not affect the labeling of modified food products. It is expected that U.S. products may be affected by these new regulations more than products from other sources.

Meat Imports and Kosher Certification: Israel prohibits the importation of any meat or meat product that is not certified as kosher by Israel's chief rabbinate, a policy that presents significant challenges for U.S. meat exporters. There is strong demand in Israel for quality kosher beef. However, the process for granting kosher certificates is expensive and complex. In 2002, the U.S. meat industry and the two governments attempted to develop steps to facilitate U.S. compliance with Israel's kosher requirements. Unfortunately, these efforts were unsuccessful. Industry estimates that kosher certification for U.S. meat could result in an annual increase in U.S. meat exports of $15 million in the medium term and more than $25 million in the long term. In addition, work on an agreement on veterinary certificates of health for live animal imports was suspended after the announcement of the discovery of a single U.S. case of Bovine Spongiform Encephalopathy (BSE) involving an imported animal. The Israeli government has engaged in regular consultations with the U.S. Department of Agriculture to alleviate any remaining concerns, but the ban remains in effect.

Israel permits the domestic production and marketing of non-kosher meat, but bans its importation. The ban on the import of non-kosher meat raises questions in terms of the 1985 FTA requirement that any religious-based restrictions be applied in accordance with the principle of national treatment. U.S. firms estimate that elimination of the prohibition on non-kosher imports could result in increased sales of up to $10 million.

Wine Imports: The 2004 Agricultural Agreement for the first time granted U.S. wine exporters an annual tariff-rate quota of 200,000 liters of wine. In addition, U.S. exports in excess of the quota limit are charged with a tariff lower than Israel's MFN rate. However, the current method of quota allocation for wine creates a significant challenge for wine imports. Equal quotas are allocated to each applicant for an import license – qualified or otherwise. Further compounding the problem, the reallocation of quotas at the end of a period often occurs too late to make it commercially viable for another importer to utilize the remaining quota. Wine importers note that the government of Israel (GOI) does not require Israeli wine producers to follow the detailed labeling requirements of the official Israel Standard for Wine, while these rules are strictly enforced on imported wines.

Rabbinical regulations for kosher certification also pose challenges for U.S. and other foreign wine exporters. For example, rabbinical regulations do not permit use of the same company name on kosher and non-kosher wines. To keep their kosher certification, importers of kosher wines are not permitted to import non-kosher wines. Kosher wines cannot be stored in the same warehouse as non-kosher wines.

Sales of U.S. wines to Israel are about $700,000 per year. The industry estimates that the elimination of trade barriers could result in increased exports worth up to $10 million per year.

Agricultural Labeling Requirements: Imported food products face rigid labeling requirements. For many products, Israeli labeling requirements are far more cumbersome than U.S. requirements. The cost of additional labeling has acted as a deterrent for many U.S. companies that have considered marketing their products in Israel. The loss of sales of American products is difficult to estimate due to the variety of products affected by these regulations.

The Israeli government has adopted licensing requirements for “sensitive” and “non-sensitive" products, classifications ostensibly based on a product’s potential impact on public health. Importers have experienced difficulties and incurred significant costs in obtaining these licenses. The list of sensitive foods includes: milk products and milk products substitutes; meat and poultry products and their substitutes; fish products, and their substitutes; food supplements: vitamins, minerals and herbs; baby food; egg products; canned food (under pH 4.5); gelatin products, including products that contain gelatin; honey products; other food products stored at low temperature; mineral water; mushroom products; and food that was exported, but then returned to Israel.

Customs Procedures

Some U.S. exporters have reported difficulties in claiming preferences under the FTA. Israeli concerns about the U.S. methods for issuing certificates of origin have sometimes delayed entry of, or delayed preferential tariff treatment for, U.S. goods entering Israel.

Purchase Taxes

The GOI further reduced the value added tax (VAT) rate to 15.5 percent in the spring of 2006. The import tax on new automobiles will be lowered to 72 percent by 2010.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Technical standards pose a prominent non-tariff barrier limiting U.S. exporters' access to the Israeli market. Israeli law mandates that the Standards Institution of Israel (SII) adopt international technical standards whenever feasible. However, the SII has not implemented this requirement, instead opting frequently for restrictive standards into Israeli regulations that serve to hinder or exclude U.S. products. In addition, the lack of transparency and industry participation in SII's formal process for adopting or developing technical standards appears to be a significant market access obstacle to U.S. exporters, despite concerted U.S. Government efforts to address these issues. Moreover, each government ministry may adopt additional technical regulations that can prevent the importation of U.S.-made products and services to Israel. This procedure has created difficulties for U.S. exporters who contend that transparency and due process are frequently lacking, including for food imports.

In addition, U.S. industry has said that requirements for technical standards are often not uniformly enforced. In some instances, domestic products appear to have an advantage over imports because enforcement of labeling requirements and other regulations on domestic producers has been inconsistent, while technical regulations are more strictly enforced with respect to imported goods. U.S. companies that have been doing business in Israel for many years are increasingly confronted with new, often EU-based, standards that have been adopted into Israeli regulations and that arbitrarily discriminate against U.S. products in such areas as electrical products and automobiles. In addition, the SII will not recognize U.S. testing of electrical components and products unless the product undergoes additional and often costly tests in Israel.

The U.S. Embassy has established a four party committee to address standards issues that prevent American companies from exporting to Israel. The committee includes representatives of the U.S. Embassy, the Israel-American Chamber of Commerce, the Ministry of Industry, Trade and Labor, and the SII. American companies that face export problems may submit cases for review by the committee. This system has been somewhat effective in obtaining individual waivers for companies. However, SII has not always provided the waivers that it said would be forthcoming. In addition, the SII has not implemented a "time line" that the four party committee established in order to assure timely responses. The United States is pressing for a more systematic solution to prevent the loss of market access for American companies.

SII recently indicated that it is in the process of applying for membership in European standards development organizations, the European Committee for Standardization (CEN) and the European Committee for Electro technical Standardization (CENELEC).

Under the terms of the CEN agreement, SII will become a Partner Standardization Body (PSB). As a PSB, Israel must agree to implement as a national standard the European standards developed by the CEN technical committees in which it participates. PSB agreements typically include a clause requiring signatories to withdraw conflicting standards from the market. This is particularly troublesome in the case of Israel in reinforcing the trend of excluding products based on U.S. standards, in addition to deviating from domestic legislation, which specifically allows for the adoption of multiple international standards, in compliance with technical regulations. The USG has expressed concern that CEN membership may serve to further disadvantage U.S. exporters, particularly small and medium sized firms, despite assurances from SII that it will maintain the right to adopt parallel standards, including U.S.-based standards, citing national deviations as the reason to include non CEN-developed standards.

According to the terms of the agreement with CENELEC, the SII would be allowed to join any committee, with the requirement that it adopt standards developed by the technical body of which it is a member. SII will be able to join at the level of Working Group, which usually deals with one specific standard. As a member of the working group, SII will commit to adopt any standard(s) resulting from the working group. Eighty-five percent of CENELEC standards are IEC-based standards. SII indicated its interest in joining only those committees where no IEC standard exists and only in cases where there is interest by the Israeli industry.

GOVERNMENT PROCUREMENT

Israel is a signatory to the WTO Agreement on Government Procurement (GPA), which covers most Israeli government entities and government-owned corporations. Most of the country's open international public tenders are published in the local press. However, government-owned corporations make extensive use of selective tendering procedures. In addition, the lack of transparency in the public procurement process discourages U.S. companies from participating in major projects and disadvantages those that choose to compete. Enforcement of the public procurement laws and regulations is not consistent.

Israel also has offset requirements that it implements through international cooperation (IC) agreements. Under IC agreements, foreign companies offset their earnings from sales to the government of Israel by agreeing to invest in local industry, co-develop or co-produce, subcontract to local companies, or purchase from Israeli industry. As of January 1, 2006, the IC offset percentage for industries covered by Israel's WTO GPA obligations is 28 percent of the value of the contract; for procurements excluded from GPA coverage, including most military procurements, the offset is 35 percent. Israel also agreed to negotiate a schedule for the reduction of its offsets in ongoing market access negotiations, which the GPA Parties are aiming to conclude in spring 2007.

U.S. suppliers have found the size and nature of their IC proposals to be a decisive factor in close tender competitions, despite a court decision that prohibits the use of offset proposals in determining the award of a contract. Small and medium-sized U.S. exporters are often reluctant to commit to make purchases in Israel in order to comply with the IC requirements and refrain from participation in GOI tenders.

In addition, the inclusion of unlimited liability clauses in many government tenders discourages American firms from competing. When faced with the possibility of millions of dollars in legal costs for unforeseeable problems resulting from a government contract, most American firms are forced to insure against the risk, which raises their overall bid price, and reduces their competitiveness.

The United States-Israeli Reciprocal Defense Procurement Memorandum of Understanding (MOU), extended in 1997, is intended to facilitate defense cooperation in part by allowing each government to allow sources from the other country to compete on defense requirements on as equal a basis as possible, consistent with national laws and regulations. This MOU applies to procurements of conventional defense supplies and services by either Government, including procurements the MOD makes using government of Israel funding in the form of Israeli currency. U.S. suppliers have expressed concern about the lack of transparency and apparent lack of justification for excluding U.S. suppliers from MOD tendering opportunities. The MOU, which has had a favorable effect on the Israeli defense industries by opening up the U.S. market to their products, has not resulted in a sufficiently open market for U.S. suppliers interested in competing for MOD procurements funded by Israel.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Israel is a Member of the WTO and the World Intellectual Property Organization (WIPO). It is a signatory to the Berne Convention for the Protection of Literary and Artistic Works, the Universal Copyright Convention, the Paris Convention for the Protection of Industrial Property, and the Patent Cooperation Treaty. Israel was obligated to implement the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) by January 1, 2000. The United States continues to encourage Israel to accede to the WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty (commonly known as the WIPO Internet Treaties), particularly in view of the importance of Israel's high-technology software and telecommunication industries.

In April 2005, Israel adopted limited data exclusivity legislation that provided some new protection from unfair commercial use of the confidential test data of pharmaceutical firms. However, these data exclusivity provisions provide data protection periods that fall far short of the periods provided in OECD-level economies, as well as other countries in the Middle East. Furthermore, the U.S. Government and U.S. industry remain concerned that even during these truncated periods of protection, generic companies may not be prohibited from relying on the undisclosed test data of U.S. companies to get approvals for the export of the generic product. The Israeli government and pharmaceutical industry assert that this is not the case. This issue is being reexamined in the 2007 Special 301 review. Research and development, as well as clinical trial expenditures made by international pharmaceutical companies, have fallen in recent years as these companies have moved these activities to countries with more favorable data protection regimes.

In December 2005, the Israeli government passed legislation that curtailed existing pharmaceutical patent term adjustments granted to compensate for delays in obtaining regulatory approval of a drug. This legislation further weakened the protection for intellectual property of research-based pharmaceutical companies in Israel. The new legislation references a group of 31 countries (Australia, the United States, Iceland, Japan, Norway, Switzerland and the 25 countries of the EU) in determining the length of patent term extension. In addition, the legislation creates numerous bureaucratic obstacles for patent holders who wish to apply for a patent term extension. The legislation also applies retroactively to all pending applications for patent term extensions and already granted patent term extensions.

As a result of the deficiencies of the data exclusivity legislation and the prospect of passage of the patent term extension legislation, Israel was placed in April 2005 on the Special 301 “Priority Watch List” and retained on the Priority Watch List in 2006. The U.S. Government continues to urge the Israeli government and the Knesset to take steps that will provide a reasonable period of non-reliance on confidential data and periods of patent term extension similar to that granted in OECD countries.

Israel has increased its budgetary, educational, police, and judicial resources devoted to the enforcement of the country’s copyright and trademark laws. In addition, Israel passed amendments to its copyright laws that should make it easier for law enforcement officials, prosecutors, and judges to pursue, prosecute, and punish copyright crimes. In 2005, U.S. industry estimated the loss due to inadequate intellectual property protection for motion pictures, records and music, business software, entertainment software and books to be $154 million.

In 2005, the government of Israel introduced in the Knesset new draft legislation to update and consolidate the country’s copyright laws. If passed in its current form, this legislation will result in the exclusion of end-user piracy from criminal liability, a step that may lead to weaker protection for business software. The legislation also explicitly permits the parallel importation of copyrighted works, which may harm rights holders. In October 2004, the government of Israel assured the United States that it would continue to provide U.S. music rights-holders' with national treatment protection. However, the language of the 2005 copyright legislation does not explicitly state that U.S. rights holders will be compensated for the public performance of phonographic recordings. In follow-up consultations with the Israeli government throughout 2006, the U.S. again received assurances that under existing Israeli law, this protection would continue to be seamlessly afforded U.S. rights holders with the passage of the legislation. The United States is closely tracking these developments and working to assure that Israel fulfills its commitment to accord national treatment to U.S. music rights holders consistent with a 1953 U.S.-Israel bilateral treaty and Israel’s repeated assurances.

SERVICES BARRIERS

Audiovisual and Communications Services

Israel has made progress in liberalizing its telecommunications sector. Foreign companies are now able to participate in joint ventures providing cellular and international telephone service, direct home broadcasting satellite services, cable television, and Internet service. Israel officially opened domestic telephone service to domestic and foreign competition in 2000. Also, the Israeli government has approved the use of wireless technologies, such as Bluetooth devices and WiFi (802.11) devices. In October 2005, the Israeli government sold its controlling interest in the Bezeq Group, the state-owned telecommunications company, to a group of private investors.

In 2001, Bezeq received a license to provide high speed Internet service with the condition that it permits other Internet service providers to have access to its infrastructure. The Knesset amended the telecommunications law to permit cable television providers (including firms with U.S. ownership) to provide high-speed Internet and other telecommunications services.

Only selected private Israeli television channels are allowed to advertise. These channels received broadcast licenses and the advertising privilege in exchange for certain investment commitments. Israeli law largely prohibits other channels, both public and private, from advertising. The government funds the country's public channels, whereas the remaining private channels generate revenues via subscription fees. In 2002, the Israeli government developed regulations that allow foreign channels aired through the country's cable and satellite networks to broadcast a limited amount of advertising aimed at a domestic Israeli audience. Currently, the regulations allow foreign channels to use up to 25 percent of their total advertising time to target the Israeli market. The regulations allow a foreign channel to apply for more than 25 percent advertising time if the channel can prove that it has a sizable viewing audience outside of Israel. The U.S. Government is concerned that these restrictions on advertising will inhibit the economic viability of U.S. firms participating in the Israeli broadcasting sector.

INVESTMENT BARRIERS

The Israeli government actively solicits foreign private investment, including joint ventures, especially in industries involving exports, tourism, telecommunications, and high technology. Foreign firms are accorded national treatment in terms of taxation and labor relations, and are eligible for incentives for designated "approved" investments in priority development zones. There are generally no foreign ownership restrictions, but the foreign entity must be registered in Israel. Investments in regulated sectors, including electronic commerce, banking, insurance, and defense industries, require prior government approval in Israel. Profits, dividends, and rents generally can be repatriated from Israel without difficulty through a licensed bank.

Numerous U.S. companies have subsidiaries in Israel. Israel is a member of the International Centre for Settlement of Investment Disputes (ICSID) and a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

ELECTRONIC COMMERCE

U.S. industry has not reported any barriers to electronic commerce in Israel. Israel still lacks a clear body of regulations and tax laws covering electronic commerce transactions. The Electronic Signature Bill regulates signatures on electronic media. Loopholes in the laws dictate that a consumer can decline to pay for any merchandise for which they did not physically sign, which serves as a disincentive to the establishment of online businesses. The Ministry of Justice maintains a register of authorizing entities to issue electronic certificates attesting to the signature of the sender of an electronic message. Also under its jurisdiction is the Registrar of Data Bases, which by law must issue licenses to any firm or individual holding a client database. This measure is designed to protect personal information from unwanted third-party intrusion.

JAPAN

TRADE SUMMARY

The U.S. goods trade deficit with Japan was $88.4 billion in 2006, an increase of $5.9 billion from $82.5 billion in 2005. U.S. goods exports in 2006 were $59.6 billion, up 7.5 percent from the previous year. Corresponding U.S. imports from Japan were $148.1 billion, up 7.3 percent. Japan is currently the 3rd largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Japan were $41.8 billion in 2005 (latest data available), and U.S. imports were $22.3 billion. Sales of services in Japan by majority U.S.-owned affiliates were $48.4 billion in 2004 (latest data available), while sales of services in the United States by majority Japan-owned firms were $26.0 billion.

The stock of U.S. foreign direct investment (FDI) in Japan in 2005 was $75.5 billion (latest data available), up from $68.1 billion in 2004. U.S. FDI in Japan is concentrated largely in the finance, manufacturing, wholesale trade, and professional, scientific, and technical services sectors.

REGULATORY REFORM OVERVIEW

The United States-Japan Regulatory Reform and Competition Policy Initiative

Launched in 2001, the Regulatory Reform and Competition Policy Initiative (Regulatory Reform Initiative) remains a key forum by which the U.S. Government seeks changes to Japan’s practices that create barriers to market access, limit competition in the marketplace, or otherwise contribute to difficulties that U.S. companies face in the Japanese market. As a result of this broad focus, the Regulatory Reform Initiative addresses practices in multiple industry sectors, including telecommunications, pharmaceuticals/medical devices, information technologies, agriculture, and distribution services. Through this initiative, the United States also urges improvements in practices that cut across numerous industry sectors, including in competition policy, commercial law, and transparency in regulatory and policy making processes. The Regulatory Reform Initiative is one component of the overarching United States-Japan Economic Partnership for Growth.

In June 2006, the U.S. and Japanese governments concluded their fifth annual Report to the Leaders which identified progress made under the Regulatory Reform Initiative over the previous seven months. The U.S. Government presented new detailed recommendations to Japan in December 2006 to urge further sectoral and structural regulatory reform. These recommendations will be discussed through the first half of 2007 with the aim of concluding the sixth Report to the Leaders in mid-2007 to reflect progress achieved across all areas.

SECTORAL REGULATORY REFORM

Telecommunications

Under the Regulatory Reform Initiative, the United States continues to seek regulatory changes to promote competition, innovation, and choice in Japan's telecommunications sector. Through its December 2006 Regulatory Reform submission and in bilateral consultations, the United States has asked

Japan to take measures to ensure market-based technology decisions, strengthen competitive safeguards on dominant carriers and streamline certification processes for telecommunications equipment. In addition, the United States continues to request that Japan develop a plan to move regulatory functions from a ministerial agency, where it is subject to direct political control, to an independent regulatory agency. It is also important for Japan to continue to foster greater transparency in rulemaking (particularly rules or decisions originating from informal study groups) and allow wider participation of interested stakeholders.

Interconnection: Japanese laws and regulations do not prevent Nippon Telegraph and Telephone (NTT) regional carriers from imposing high rates and onerous conditions on their competitors for interconnection. This is one of the most significant indications that Japan needs to improve its competitive safeguards with respect to dominant carriers. In 2005, the Ministry of Internal Affairs and Communications (MIC) implemented a more rational rate structure for wireline interconnection rates by phasing out certain fixed costs that MIC has permitted regional operators to charge competitors, a revision long sought by the United States. However, MIC's five-year transition period (until 2010) constitutes a disappointing delay in this much-needed rate reduction. MIC is expected to continue studying how to revise or replace the rate regime and the United States will continue discussions with MIC to ensure that any changes will improve the competitive environment.

Dominant Carrier Regulation: NTT, one of the most profitable companies in Asia, continues to dominate the fixed-line market and controls 95 percent of Japan's wireline infrastructure. The Government of Japan has reduced its stock in NTT to the one-third share minimum it is required by law to hold and stated its intention to consider reorganizing NTT to improve the competitive environment. A decision on this issue, however, was delayed until 2010. As Japan's broadband users turn from digital subscriber line (DSL) to optical fiber, NTT's competitors fear that NTT is trying to extend its monopoly power through domination of the FTTH (fiber-to-the-home) market and by bundling NTT fixed services with those of NTT DoCoMo, the dominant wireless operator. In September 2006, MIC published its "New Competition Promotion Program 2010" to address competition concerns as suppliers increasingly offer telecommunications services over Internet Protocol-based networks. The United States will continue to monitor developments as MIC implements the program to ensure that competitive safeguards remain strong.

Universal Service Program: In March 2006, Japan designated the NTT regional carriers, East and West, as eligible to receive funds under a universal service program. Japan approved a scheme beginning in January 2007 for major carriers to collect a universal service fee of seven yen per month for subscribers of voice services. This money is then contributed to the universal service fund, which the NTT regional carriers use to offset the cost of rural services. Doubts remain as to whether this universal service program can be considered "competitively neutral" since it effectively benefits only NTT and limits fund eligibility to wireline carriers. The United States remains concerned that NTT East's cross-subsidization of NTT West through interconnection revenue (since 2003) is a potentially anticompetitive practice. NTT's use of funds from the universal service program would appear to obviate Japan's alleged justification for this practice.

Mobile Termination: New entrants to Japan's telecommunications market have also expressed concern about the high access rates charged by NTT DoCoMo, the dominant wireless service provider. While DoCoMo reduced rates significantly in 2003, its rate reduction in 2006 was only 2.6 percent. Following reforms to the Telecommunications Business Law in 2001, DoCoMo was recognized as a dominant carrier in 2002, but MIC has not required DoCoMo to explain how its rates are calculated. The government of Japan has maintained that the introduction of mobile number portability (which started in

October 2006) will put competitive pressure on these rates and the United States will monitor this carefully.

New Mobile Wireless Licenses: For the past twelve years, MIC limited the mobile wireless market to three main operators, including NTT DoCoMo with a market share of 55 percent. In 2005, MIC took a significant step forward by making substantial blocks of spectrum available primarily for new wireless entrants, thereby creating opportunities not only for telecommunications companies wanting to expand into the wireless business in Japan, but also equipment suppliers to those companies. MIC approved licenses for three new market entrants in October 2005, although one of the companies opted to buy out the third-largest carrier rather than take up the new license. However, much work remains to be done to create a level playing field for the new market entrants, including "roaming" on incumbent networks at reasonable rates, access to towers and tower sites, and analyzing incumbents' unused spectrum to eliminate "warehousing."

Information Technologies (IT)

Since 2001, the Japanese Government has promoted the use of IT and electronic commerce in Japan in large part through the creation and implementation of successive e-Japan Strategies and Programs. Japan continues to push forward with its work in this important sector, as evidenced by the completion in 2006 of several new plans for IT-related policies, including the New IT Reform Strategy, Priority Policy Program 2006, and e-Government Promotion Plan. In addition, Japan is conducting an extensive review of its Copyright Law and continuing efforts to achieve numerous other goals related to the creation, protection, and enforcement of intellectual property rights (IPR).

The U.S. Government's December 2006 Regulatory Reform Initiative recommendations encouraged Japan to ensure its regulatory framework for IT and electronic commerce promotes competition and innovation, enhances transparency, protects users, and fosters active private sector participation in policymaking processes. The recommendations also identified steps Japan should take to effectively protect IPR in the face of challenges posed by globalization, new technologies and the digital era.

General Themes for IT and Electronic Commerce Policymaking: Japan has made considerable progress in promoting and supporting the use of IT and electronic commerce in the private and public sectors. To ensure this progress continues, the United States included recommendations on IT and electronic commerce policymaking in its 2006 Regulatory Reform Initiative submission that urged Japan to: (1) implement its plans and policies in a manner that fosters private sector leadership, self regulation, and active participation in policymaking process; (2) provide meaningful opportunities for interested parties in the private sector, both domestic and foreign, to submit views on draft rules and policies and obtain information about, and participate in, government advisory groups; (3) adhere to the principle of technology neutrality in policymaking and cooperate with the private sector in standards development activities; and (4) ensure its policies and rules are compatible with international practice.

Privacy: Japan's Law on the Protection of Personal Information (Privacy Law) went into effect in April 2005. Ministries and agencies subsequently formulated implementation guidelines to ensure the Privacy Law's effectiveness. The Cabinet Office started a process to review the implementation of the Privacy Law and will draft a report based on this review, potentially recommending revisions to improve implementation. In its 2006 Regulatory Reform Initiative recommendations, the United States urged Japan to ensure that: (1) this review, and implementation in general, be transparent; (2) the Privacy Law and implementing guidelines clearly differentiate between publicly available information and sensitive personal information; (3) implementing guidelines are standardized across Ministries except when necessary for specific sectors; and (4) any Cabinet Office recommendations regarding cross-border transfers not unduly restrict data flows, while recommending due diligence in protecting personal information.

Online Nuisance, Deceptive Practices, and Fraud: Japan has recognized the growth and impact of malicious activity and fraud propagated on the Internet, and their corresponding threat to legitimate online pursuits. In its 2006 Regulatory Reform Initiative submission, the United States urged Japan to: (1) continue to work closely with the private sector to address online fraud; (2) help U.S. entities understand Japanese laws and regulations impacting spam-filtering and blocking; and (3) implement any online fraud-related laws, regulations, and guidelines in a manner that strives not to unduly promote, mandate, or favor specific technologies. The United States also encouraged Japan to work closely to share information and collaborate to best address issues of online fraud.

Strengthening Intellectual Property Rights (IPR) Protection: The U.S. Government's 2006 Regulatory Reform Initiative submission includes a number of recommendations to Japan intended to strengthen IPR, such as: (1) extending the term of copyright for sound recording and all other subject matter protected under Japan's Copyright Law; (2) adopting a statutory damages system that would act as a deterrent against infringing activities; (3) providing for patent procedures that improve the efficacy of the application process; and (4) actively working with the United States to develop ways to promote greater protection of intellectual property rights worldwide, especially in Asia. (*See also "Intellectual Property Rights Protection" in this chapter*.)

Government IT Procurement: The United States supports Japan's efforts to reform its procedures for government IT procurements to accomplish goals such as acquiring high-quality IT systems at reasonable costs, promoting transparency and fairness, and stimulating innovation and competition. While significant progress has been made in many of these areas, much work remains. A "follow-up survey" released by the Inter-Ministerial Task Force for Information Systems Procurement (Task Force) in January 2006 indicated that many items in the Task Force's 2002 memorandum on government IT procurement reform (revised most recently in 2004) have not yet been implemented. In its study of central government computer systems released in October 2006, the Board of Audit of Japan recommended that central government procuring entities work to enhance the competitiveness and transparency of their IT procurements. In the e-Government Promotion Plan it released in August 2006, Japan's Chief Information Officers Council similarly directed ministries to vigorously promote the taking of concrete actions to move from sole source contracts to competitive contracting in procurements for IT systems.

The United States continues to urge Japan to implement all of the Task Force memorandum's reforms without delay. In particular, in its December 2006 Regulatory Reform Initiative submission, the United States encouraged Japan to: (1) clearly define and set appropriate limits on liability in all IT procurement contracts; (2) follow through on plans to submit legislation to the Diet in fiscal year (FY) 2007 that will make it possible for contractors to possess ownership rights to intellectual property created through government-sponsored development of IT systems; (3) ensure that the Japanese government's online database for IT procurements is an effective tool to enhance transparency and fairness; (4) reduce significantly the use of sole source contracting in IT procurements; (5) sign IT procurement contracts as soon as possible after winning bidders are chosen and refrain from backdating contracts; and (6) provide meaningful opportunities for interested parties to participate in the formulation of government IT procurement policies.

Medical Devices and Pharmaceuticals

The United States and Japan address regulatory and reimbursement pricing issues in the medical device and pharmaceutical sectors through the Working Group on Medical Devices and Pharmaceuticals. The Working Group meets under the Regulatory Reform Initiative and the 1986 Market-Oriented, Sector-Selective (MOSS) Agreement. In these bilateral consultations, the United States focuses on ensuring that Japan's regulatory system facilitates the introduction of advanced medical devices and pharmaceuticals and that its reimbursement system appropriately values innovation.

The U.S. Government's top regulatory priority in the medical device and pharmaceutical sectors is ensuring that Japan's regulatory system facilitates the introduction of innovative products. In 2006, the Japanese government announced plans to expedite the introduction of medical devices and drugs in response to concerns that such products typically are introduced in the United States and Europe long before their introduction in Japan. The lag in the introduction of drugs and devices in Japan is a concern of both the U.S. and Japanese governments.

The U.S. Government's December 2006 Regulatory Reform Initiative recommendations urged Japan to reform regulations and practices that impede the development and introduction of devices and drugs in Japan. Those recommendations include substantial increases in the staff of the Pharmaceuticals and Medical Devices Agency (PMDA), the regulatory authority created in 2004 to review applications for new drugs and medical technology. The United States believes PMDA must expand its staff and increase its expertise to attain its goal (to be implemented in 2009) of completing within one year the review of 90 percent of device applications and 80 percent of drug applications.

Regarding drugs, in the 2006 Regulatory Reform Initiative Report to the Leaders, the Ministry of Health, Labor and Welfare (MHLW) noted it would ensure PMDA uses performance metrics to facilitate product reviews and work with PMDA to foster the ability of companies to conduct clinical trials in Japan. The U.S. Government's December 2006 recommendations on pharmaceuticals urged Japan to facilitate the simultaneous global development of new medicines, improve the environment for clinical trials, and speed reviews. Regarding medical devices, in the 2006 Report to the Leaders, MHLW said it would ensure that it clarifies its requirements for clinical trials and that PMDA eliminates a backlog of product applications. The U.S. Government's December 2006 recommendations on devices urged Japan to eliminate a backlog of product applications by March 2007, further clarify Japan's policies on clinical trial data, and expedite approvals of minor changes in products.

As for pricing reform, the U.S. Government's top priority is to ensure that Japan's policies reward the development and introduction of innovative medical devices and pharmaceuticals. Japan has recognized that innovation can foster economic growth and improved healthcare, as noted in its so-called "Visions" policy papers, which contain plans to improve the international competitiveness of its medical device and pharmaceutical industries and markets. The United States has urged Japan to implement the Visions quickly. The U.S. Government has been encouraging Japan to ensure that any changes to its overall healthcare system result in both long-run cost savings and improved health. The United States has recommended that Japan fix inefficiencies in its healthcare system such as its excessively long hospital stays, which are triple the average of countries in the Organization for Economic Cooperation and Development. The U.S. Government also is urging Japan to consider the long-term benefits of reimbursement pricing systems that foster the development of innovative drugs and devices. Such policies will promote the speedy introduction of advanced products that not only help save and improve lives but make Japan's healthcare system more efficient by precluding the need for surgeries and reducing the lengths of hospital stays.

Regarding drug reimbursement, in the 2006 Report to the Leaders, MHLW noted that it relaxed the qualification requirements for the pricing premium for drugs that are particularly "useful" and raised the rates for several other pricing premiums. MHLW also increased industry's opportunities to provide input at certain key advisory board meetings. The U.S. Government's December 2006 recommendations on pharmaceuticals urged Japan to continue to improve transparency and industry's ability to provide input, to reverse the April 2006 revisions to the Foreign Price Adjustment rule for drugs, and to refrain from moving to annual price revisions.

Regarding medical device reimbursement, in the 2006 Report to the Leaders, MHLW noted it will study the impact of Japan's regulatory and distribution systems on the cost of medical devices in Japan and will review industry studies on the cost of doing business in that sector. MHLW also noted it increased the frequency of health insurance listings of devices classified as C2 to four times a year. The U.S. Government's December 2006 recommendations on medical devices urged Japan to replace the Foreign Average Price rule for devices by April 2008 with a system that fully reflects the value of advanced medical devices to Japan and work with industry to increase functional categories to reflect differences among products in the current functional categories.

Separately, Japan's 2002 Blood Law established a principle of "self-sufficiency" and included a Supply and Demand Plan that enables the Japanese government to manage supply and demand in the blood market. The United States has been urging Japan to ensure the Plan does not discriminate against foreign blood plasma products and is consistent with Japan's international trade obligations. The United States is also urging Japan to develop a reimbursement pricing system for blood products that accounts for the characteristics of that industry and that is not based on the pharmaceutical model.

Financial Services

Japan's financial sector has become increasingly integrated into the global financial system in recent years as Japan has strengthened its accounting and financial reporting standards and removed regulatory barriers to domestic and foreign competition. As a result, foreign financial institutions have gained market share – including through acquisitions in some cases – in securities brokerage, asset management, insurance, and banking.

Financial Instruments and Exchanges Law: On June 14, 2006, the Diet approved the Financial Instruments and Exchanges Law (FIEL), amending 89 financial laws and consolidating the remainder into a cohesive text, aimed at enhancing investor protection and the promotion of movement of financial assets into securities markets, through cross-sectoral rules for investment product sales, management, and disclosure. Given the hundreds of pages of statutes comprising the FIEL, the overall impact of the law will not be discernable until FIEL implementing regulations, interpretation and enforcement are evident, consistent, and predictable.

The transparency and predictability of Japan's financial regulatory system have improved, but further progress is needed. In particular, Japan's Financial Services Agency (FSA) could limit the scope for uncertainty as to what is legally permissible by expanding the body of written interpretations of Japan's financial laws. While supervision and disclosure have improved, Japan must continue to move forward in establishing transparency in regulation and supervision of financial institutions in line with international standards and best practices.

No Action Letters and Written Interpretations: The FSA has been making some efforts to enhance the effectiveness of the no-action letter system, including the active solicitation of input from U.S. and other foreign firms on how best to improve the system, however, the use of the system has not materially increased. The United States recommends that the FSA explore ways to expand use of the no-action letter system. The FSA should also expand the written interpretations it provides through other means, including through active use of its new "interpretive letter" system and increasing the number of "reference cases" published on the FSA web site.

Agriculture

Japan maintains many tariff and non-tariff barriers that remain obstacles to trade in the agricultural sector. The U.S. Government's December 2006 Regulatory Reform Initiative submission includes a number of recommendations to enhance the efficiency of the trading environment and the transparency of related rules and regulations. These recommendations include: 1) adopting science-based international standards in animal health and related measures; 2) completing the review of food additives recognized as safe by a Joint Food and Agriculture Organization/World Health Organization Evaluation Committee; and 3) implementing international standards in plant quarantine. (*See also "Standards, Testing, Labeling and Certification" in this chapter*.)

Plant Quarantine Issues: Japan's animal and plant quarantine system is one of the most restrictive in the world. One main impediment to trade is that Japan imposes nationwide bans instead of recognizing regions or zones. For example, when a disease or pest outbreak is reported in the United States, Japan often imposes nationwide bans on all associated U.S. animal or plant products. This is not necessary since the United States takes strict quarantine measures to control the spread of disease. A second aspect is Japan's failure to use of international standards as a basis for pest risk analysis.

Japan's Ministry of Agriculture, Forestry and Fisheries (MAFF) prohibits the entry of various fresh plant products due to the presence of pests, although some of these pests are also present in Japan. Japan has a pest forecast system that monitors certain domestic pests and alerts producers to potential increased pest damage. For decades, the Japanese government has contended that this constitutes official control under the International Plant Protection Convention (IPPC), the international standards setting body for plant protection. Japan therefore required imported commodities to have an equivalent system. Recently the Japanese government took initial steps to harmonize with international standards. In December 2004, Japan notified the World Trade Organization of its intent to relax quarantine measures for several plant pests and diseases and then again in May 2006 five additional cosmopolitan pests were added to the list. The United States welcomes these actions and urges Japan to continue regular efforts to harmonize the classification of plant pests and diseases with international standards, since there are dozens more pests that could be added to the list of cosmopolitan pests which would provide relief to U.S. exporters.

STRUCTURAL REGULATORY REFORM

Antimonopoly Law and Competition Policy

A more robust competition policy and enforcement regime that would bolster competition and improve market access would reinforce Japan's economic recovery. In particular, cartel activity, including widespread bid rigging, has been a serious problem in Japan.

Strengthening the Effectiveness of Antimonopoly Enforcement: Japan passed a critical milestone in the effort to improve its competition enforcement with the implementation in 2006 of the first significant amendments to the Antimonopoly Act (AMA) – Japan's main competition legislation – in over 25 years. Administrative surcharges increased to 10 percent of cartel sales for large manufacturers and service providers, and to 15 percent for repeat offenders. The Japan Fair Trade Commission (JFTC) introduced a corporate leniency program that eliminates administrative surcharges for the first company to report its participation in an unlawful cartel and cooperate with JFTC's investigation and reduces surcharges for up to two more companies applying for leniency. The AMA amendments also provided JFTC with criminal investigation powers, increased penalties for interference with JFTC investigations or for non-compliance with JFTC cease and desist orders, streamlined hearing procedures, and extended the statute of limitations for AMA violations to three years after the conduct stopped.

Initial indications are that the amendments to the AMA are having an effect on bid rigging activity in Japan. According to a variety of press reports, winning bids on government-tendered projects are often only 60 percent to 70 percent of the targeted maximum price, whereas previously they routinely exceeded 90 percent or more. It has been reported that JFTC received approximately 60 leniency applications – including from a number of major corporations – in the first year of the program.

Effective deterrence against hard-core cartel conduct depends on strong sanctions against both the companies and their executives that engage in that unlawful behavior. Although the AMA provides for criminal sanctions against violators, criminal prosecutions have been sporadic. The JFTC has initiated only ten criminal prosecutions of AMA violators since 1990. The United States expects that JFTC's new criminal investigation powers and the creation of a specialized criminal investigation department within JFTC will substantially increase the number of criminal AMA prosecutions. On the other hand, even when successful criminal AMA prosecutions occur, criminal penalties imposed by the courts against culpable individuals have been weak. Convicted executives have in all cases received suspended prison sentences, without fines, even for repeat offenders. The United States continues to urge Japan to take steps to maximize the effectiveness of AMA enforcement against hard-core violations of that Act, including by increasing the number of criminal prosecutions, strengthening criminal sentences of convicted individuals and maintaining the system of imposing both administrative surcharges and criminal sanctions on corporate participants in cartel and bid rigging conspiracies.

The JFTC's ability to enforce the AMA effectively has also been hindered by insufficient personnel. JFTC's total staff is expected to reach 737 by March 31, 2007, and, although further progress is needed, there has been steady improvement in the number of staff assigned to JFTC's Investigation Bureau, having increased from 154 in 1990 to 360 as of March 2006. JFTC is particularly weak, however, in the number of staff with post-graduate economics training which hurts JFTC's ability to engage in the careful economic analysis necessary to properly evaluate non-cartel behavior such as mergers, monopolization and distribution and licensing practices. The United States continues to urge JFTC to improve its economic analysis capabilities.

*Increasing the Procedural Fairness of JFTC Enforcement Activitie*s: The Japanese and foreign business community continue to raise concerns over the fairness and transparency of JFTC's investigative and hearing procedures. The JFTC introduced a system in January 2006 to allow companies subject to a proposed cease-and-desist or surcharge payment order to review the evidence relied upon by JFTC staff and to submit evidence and make arguments in their defense prior to an order being issued. A similar system was implemented for proposed recipients of public warnings for suspected violations of the AMA or the Premiums and Misrepresentations Act. Nonetheless, companies still complain that JFTC procedures lack standards of proof or a neutral arbiter to protect the rights of the firm targeted by the JFTC investigation. As a result, the United States is pressing JFTC to implement additional measures to enhance the fairness and transparency of JFTC investigatory and administrative procedures, including by establishing clear standards for granting stays of JFTC orders pending appeal, ensuring that at least a majority of JFTC hearing examiners are non-JFTC career employees, extending due process rights to recipients of recommendations and public warnings under the Subcontract Act, and introducing procedures to increase certainty in stock acquisition transactions.

Prevention of Bid Rigging: Despite the continued prevalence of bid rigging, Japanese authorities have recently been stepping up measures to address the problem. The JFTC has invoked the 2003 law against bureaucrat led bid rigging (so-called *kansei dango*) in several cases, and Japanese prosecutors have arrested and convicted several current and former officials of the Defense Facilities Administrative Agency (DFAA) involved in a bid rigging conspiracy. (One former DFAA official received an 18-month prison term, which was not suspended.) In 2006, the Ministry of Land, Infrastructure, and Transport (MLIT) strengthened administrative sanctions against companies found by JFTC to have engaged in unlawful bid rigging, doubling to 12 months the minimum period that companies that are repeat offenders will be barred from bidding on public works projects. MLIT also introduced an administrative leniency program to complement the JFTC leniency program by reducing by half the period of suspension from bidding for firms admitted to the JFTC program. In addition, following a number of high-profile bid rigging cases in 2005 and 2006, the Ministry announced a series of measures aimed at ensuring a competitive bidding process for project contracts tendered by the Ministry.

On the other hand, Japan continues to shy away from tough steps to limit or to control post-retirement employment by its officials, the so-called "descent from Heaven" (*amakudari*), which has underpinned many bid rigging conspiracies. The United States continues to urge Japan to take additional measures to combat bid rigging, including strengthening laws and rules against *amakudari* and other conflicts of interest to ensure that such practices do not facilitate government-led bid rigging, expanding MLITs administrative leniency program to other government agencies and public corporations, and further improving procurement rules to prevent bid rigging practices.

Transparency

The United States continues to urge Japan to strengthen measures that achieve a high degree of transparency in governmental regulatory and policy making processes. Improving regulatory predictability, ensuring access to information about pending policy changes, and allowing greater participation by interested parties as changes to regulations and policies are planned helps ensure fairness and accountability and greatly contributes to fostering a positive business climate. Japan has made some progress in expanding meaningful public participation, but additional measures are needed. The United States also looks to Japan to act as a strong partner in promoting similar practices in the Asia-Pacific region. In its December 2006 Regulatory Reform submission, the United States urged Japan to take additional steps to increase transparency.

Public Comment Procedures: Japan's Public Comment Procedures (PCP) were strengthened with the amendment to the Administrative Procedure Law which came into effect in April 2006. According to a May 2006 survey of PCP implementation released by the Ministry of Internal Affairs and Communications, 65 percent of the public comment periods for regulatory revisions requiring Cabinet decisions were longer than 30 days, an improvement over Japan FY 2005. The report, however, does not identify how often ministries incorporated comments provided by interested parties into their decision making process. The United States recommends that Japan fully implement the PCP and commit to making further revisions to the system to provide truly meaningful opportunities for public input into policy-making and regulatory reform processes.

Public Participation in the Development of Legislation: The United States encourages Japan's ministries and agencies to accelerate the practice of providing greater opportunities for the public to comment on legislation in the early stages of its formation.

Advisory Groups: Advisory councils and other government-commissioned study groups are often accorded a significant role in Japanese policy development. While membership lists and meeting minutes may be publicly available, the process of creating these councils and study groups remains opaque and non-members are not uniformly offered meaningful opportunities to provide input into these groups' decision-making processes. The United States urges Japan to increase the transparency of advisory councils and other government-sponsored working groups by openly publishing lists of these councils and their members and by allowing ample and meaningful opportunities for all interested parties, as appropriate, to participate in and provide input to these councils' policymaking formulations.

Privatization

The Japanese government's effort to restructure and privatize Japan's public corporations has made important progress. The U.S. Government recognizes that these reforms, if implemented in a fully market-oriented manner, can have an important impact on the Japanese economy by stimulating competition and leading to a more productive use of resources.

The U.S. Government has a particular interest in the initiative to reform and privatize Japan Post, which has large banking and insurance businesses in addition to its mail and parcel delivery operations. The U.S. Government has long called on the Japanese government to eliminate the tax, regulatory, and other advantages Japan Post has over U.S. and other private companies. With the passage of related legislation by the Diet in October 2005, Japan established a framework to make important progress in this direction. As the scheduled beginning of the privatization process in October 2007 approaches, the U.S. Government continues to carefully monitor the implementation of these reforms and continues to call on the Japanese government to ensure all necessary measures are taken to achieve a truly level playing field between Japan Post and the private sector in Japan's banking, insurance, and express delivery markets. The U.S. Government also continues to look to Japan to ensure that a level playing field is in fact created before the postal financial institutions are permitted to introduce new lending services, underwrite new or altered insurance products, or originate non-principal-guaranteed investment products. The U.S. Government also urges the Japanese government to ensure that the process by which this reform proceeds is made fully transparent, including by full and meaningful use of Public Comment Procedures and through opportunities for interested parties to express views to related officials and advisory bodies before decisions are made. (*For detailed discussion of Japan Post privatization and postal financial institutions, see "Insurance" under the Services Barriers section.*)

Commercial Law

Japan recently undertook a major reform of its commercial law enacting legislation to modernize its Corporate Code, which entered into force on May 1, 2006. Among other provisions, the new code permits the use of modern merger techniques, including domestic and cross-border triangular mergers. Under pressure from business groups, however, the Japanese government delayed implementation of certain provisions, including those relating to the use of foreign stock as consideration in cross-border triangular mergers, until May 2007. Moreover, as of the end of 2006, it was not clear whether rules implementing the introduction of triangular mergers, in particular tax deferral rules, would be sufficiently flexible to effectively facilitate foreign merger and acquisition activities in Japan.

In its December 2006 Regulatory Reform submission, the United States continued to urge Japan to build on past reforms by further improving its commercial law and corporate governance systems and to reject efforts to protect entrenched management and impede foreign investment in Japan. Specifically, the United States is urging Japan to implement the new triangular merger provisions on schedule and in a manner that does not impose significant restrictions on the use of foreign company shares in cross-border transactions and that facilitates tax deferral benefits in such transactions in appropriate cases.

Japan amended its Securities and Exchange Law in June 2006 to allow companies making tender offers to withdraw or adjust such offers in response to stock splits, stock allocations and other poison pill defensive measures. The increasing number of high profile tender offers in Japan demonstrates the importance of improved corporate governance aimed at protecting shareholder, rather than entrenched management, interests. The United States continues to press Japan to further strengthen corporate governance mechanisms, including by facilitating and encouraging active proxy voting by institutional investors such as pension and mutual funds, requiring authorization of anti-takeover measures by a company committee composed of a majority of outside directors, and encouraging the major Japanese stock exchanges to adopt listing rules or guidelines that encourage best corporate governance practices in the protection of shareholder interests.

Article 821 of the new Company Law continues to create great uncertainty among foreign corporations that conduct their primary business in Japan through their Japanese branch offices. As written, Article 821 appears to prohibit such branches from engaging in transactions in Japan on a continuous basis. An internal notification (*tsutatsu*) was issued by Japan's Ministry of Justice in 2006 clarifying the interpretation of that Article to ensure that it does not adversely affect the operation of foreign companies operating in Japan in a lawful manner; the House of Councillors also adopted a supplementary resolution reaffirming that interpretation. The United States, however, continues to request that Japan amend Article 821 to ensure that it does not apply to U.S. companies operating or desiring to operate in Japan through branch offices that are duly registered and that comply with applicable regulatory and tax laws.

Legal System Reform

Continued reform of the Japanese legal system to foster the efficient provision of international legal services and to promote alternative dispute resolution mechanisms is essential to the establishment of an environment in Japan that is conducive to international business and investment and that supports deregulation and structural reform. After more than 15 years of urging by the United States and the foreign legal community, Japan enacted legislation in 2003 that substantially eliminates restrictions on the freedom of association between foreign and Japanese lawyers, effectively permitting partnership and employment relationships between them.

The United States continues to recommend that Japan further liberalize the legal services market by allowing foreign lawyers to form professional corporations and establish multiple branch offices in Japan and by counting all of the time foreign lawyers spend practicing law in Japan toward the three-year experience requirement for licensure as a foreign legal consultant. In addition, the United States has requested Japan to confirm that Japanese lawyers may become members of international partnerships with lawyers outside Japan without restriction,

The United States is also urging Japan to promote arbitration and other alternative dispute resolution (ADR) procedures, including by allowing foreign lawyers and non-lawyers to act as neutrals in any international ADR proceedings taking place in Japan and to make clear that foreign lawyers may represent parties in any such international ADR proceedings.

Distribution and Customs Clearance

The efficiency of Japan's distribution system is hampered by high airport user fees, relatively inefficient and costly customs procedures, low credit card acceptance at traditional merchants and Automated Teller Machines (ATMs), and excessive rules on the activities of private express delivery companies. The government of Japan has streamlined the registration of fleet vehicles that was cited as an issue in the 2006 NTE report, although implementation is expected to take another two to five years. The United

States urges that implementation be enjoined more quickly to ease the burden on both domestic and international vehicle fleet providers.

While some progress has been made, further action is needed to fully realize efficiencies in this segment. In its December 2006 Regulatory Reform Initiative recommendations, the United States is urging Japan to make further reforms in the distribution sector, including: (1) reduce airport fees and assure transparency in the setting of those fees at Japan's international airports; (2) streamline customs procedures; (3) implement new parking solutions that facilitate smooth and timely distribution of packages and other items by express and other distribution vehicles; and (4) ensure new regulations do not impede the ability of large-scale retailers to open stores in Japan.

The United States further urges Japan to promote fair and free competition in the express delivery services sector as the privatization of Japan Post continues by ensuring the establishment of a level playing field among competitors. Currently, Japan Post's Express Mail Service (EMS) enjoys numerous regulatory advantages over competing services offered by private firms – most notably in the area of customs clearance.

IMPORT POLICIES

Rice Import System

Although Japan has generally met import volume commitments made during the Uruguay Round and subsequent negotiations, Japan's highly regulated and non-transparent distribution system for imported rice limits meaningful access of U.S. high-quality rice to Japanese consumers. U.S. rice exports to Japan from January-December 2006 were valued just under $169 million, representing 330,453 metric tons of rice or about 48.5 percent of Japan's minimum access requirement. Less than one-half of 1 percent of rice imported from the United States reaches Japanese consumers, and what does reach them cannot be easily identified as a U.S. product or a product containing U.S. rice. Industry research shows Japanese consumers would choose to buy U.S. high quality rice if it was made available on the Japanese market.

In 1999, Japan established a tariff-rate quota (TRQ) of 682,000 metric tons (milled basis) for imported rice. The Japan Food Department (JFD) of the Ministry of Agriculture, Forestry, and Fisheries (MAFF), manages imports within the TRQ through periodic minimum market access (MMA) tenders for imported rice and through the simultaneous buy-sell system. Imports of U.S. rice under the periodic MMA tenders are destined almost exclusively for government stocks or re-exported as food aid. A small share of U.S. rice imported under these tenders is released from JFD stocks and permitted to enter the industrial food-processing sector. The U.S. rice industry has been disappointed by the JFD's record of buying U.S. high quality medium-grain (Calrose) rice for industrial use, food aid, and blending, rather than premium-quality rice for table use.

Recent stepped-up testing requirements for rice imports have hampered trade of U.S. rice to the Japanese market. In December 2005, MAFF began to impose strict testing requirements on rice imports, ostensibly to ensure compliance with the Japanese government's new Maximum Residue Limits policy. However, rice is the only commodity requiring multiple testing, including a test by the industry which has resulted in a disproportionate increase in the cost of bringing U.S. rice to market.

Rice Stocks Release Program

On July 29, 2005, in an effort to reduce Japan's stocks of rice imported under its WTO Minimum Market Access (MMA) commitment, the Ministry of Agriculture, Forestry and Fisheries introduced a new program under which a certain quantity of MMA rice stocks is released to certain rice-flour producers via Japanese flour millers. Although the stated purpose of this policy is to reduce stock levels of U.S. rice, this program in effect channels the release of imported rice stocks from the domestic whole kernel or 'table' market to industrial use, which in turn has displaced imports of rice-flour cake mixes which are made with rice-flour, sugar and/or starch. Japanese data shows that rice-flour based cake mix imports from the United States during the January-December 2006 period were down 14 percent by quantity and nearly 8 percent by value compared with the same period in 2005. The United States is concerned this policy potentially raises national treatment concerns as it only applies to imports.

Wheat Import System

Japan requires that wheat be imported through the Ministry of Agriculture, Forestry and Fishery's Food Department, which then releases wheat to Japanese flour millers at prices that are substantially above import prices. These high wheat prices discourage wheat consumption by increasing the cost of wheat-based foods in Japan. The United States remains concerned by the operation of a state trading entity for wheat and its potential to distort trade beyond simple tariff measures.

Corn for Industrial Use

Japan's domestic potato starch blending requirement is scheduled to be abolished at the start of Japan FY 2007 (April 2007). While the United States views this as a positive step, the reforms do not go far enough to be truly market based. In part, the current system will be replaced with a levy or tax payment arrangement on the cornstarch industry to help support the domestic potato industry. As a consequence, the United States intends to carefully monitor the administration of this new system for any market distorting activities.

Pork Import Regime

Japan is the world's largest importer of pork, importing a record 880,000 tons in Japan FY 2005. U.S. pork exports to Japan that period were valued at $1.0 billion.

Japan's pork import system includes a gate price and a safeguard negotiated during the Uruguay Round which automatically raises tariffs if imports are 19 percent or more above the average level of imports during the previous three years. The gate price system distorts pork trade by encouraging Japanese importers to buy mixed shipments of different cuts of pork (rather than the cuts the market would otherwise demand) to minimize tariffs by keeping the average cost, insurance, and freight (CIF) price of their shipments at or below the gate price.

The United States is intent on negotiating a change in the pork import regime in the Doha Development Agenda.

Beef Safeguard

Once Japan fully opens its beef market, the United States is concerned about the possibility that Japan's beef safeguards will be triggered, which could hamper the United States' ability to regain historical export levels in the near future (*see the section titled, "Beef" under the "Standards, Testing, Labeling and Certification" heading for context*).

Japan's beef safeguard was negotiated during the Uruguay Round to afford protection to domestic producers in the event of an import surge. The safeguard is triggered when imports increase by more than

17 percent from the previous Japanese fiscal year on a cumulative quarterly basis. Once triggered, the safeguard remains in place for the rest of the fiscal year. If triggered, beef tariffs will rise to 50 percent (from 38.5 percent).

The United States is seeking a change in the beef safeguard in the Doha Development Agenda negotiations.

Fish Products

Although Japan has been the most important export market for U.S. fish and seafood products for over 30 years (with a peak of 73 percent of seafood exports going to Japan in 1988), in 2005, U.S. seafood exports to Japan fell to 27 percent of U.S. seafood exports and in 2006 will have decreased to approximately 23 percent. Based on November 2006 statistics, Japan may drop to become the second place export destination for U.S. seafood products for the first time in many years, with the European Union just slightly ahead.

Tariffs on Japanese seafood imports are generally low; however, tariffs on a number of products (e.g. cod, Pollock surimi, herring, squid, and sardines) make it difficult for U.S. exporters to sell to the Japanese market and for Japanese processors to import raw materials necessary to sustain their processing industry. Japan also maintains several species-specific import quotas on fish products. U.S. fish and fish products subject to import quotas include pollock, surimi, pollock roe, herring, Pacific cod, mackerel, Pacific whiting, squid and sardines.

During the Uruguay Round, Japan agreed to cut tariffs by about one-third on a number of fishery items, but avoided commitments to modify or eliminate import quotas. As part of ongoing WTO Doha negotiations, WTO Members including the United States and Japan have committed to clarify and improve rules on fisheries subsidies in the WTO Negotiating Group on Rules.

High Tariffs on Beef, Citrus, Dairy, and Processed Food Products

Japan maintains high tariffs on a number of food products that are important exports for the United States, including red meat, citrus, wine and a variety of processed foods. Examples of double-digit import tariffs include a 38 percent tariff on beef, a 32 percent tariff on oranges, a 40 percent tariff on processed cheese, 30 percent tariff on natural cheese, a 17 percent tariff on apples, and a 15 to 29 percent tariff on wine depending on the HTS classification. These high tariffs generally apply to food products where Japan is protecting domestic producers.

High tariffs have discouraged the import of these products. Tariff reductions are therefore a high priority for the United States in the Doha Development Agenda agriculture negotiations.

Propriety Ingredient Information Disclosure Requirement for Import

Japan requires commercial shipments of new-to-market products to disclose the names and percentages of all ingredients, names, and percentages of all food additives, and a description of the manufacturing process as part of its product classification process. This process is overly burdensome and runs the risk of making public proprietary information to potential competitors.

Wood Products, Housing, and Building Materials

U.S. exports of wood products, housing and building materials to Japan from January-August 2006 were valued at $474 million. Japan continues to restrict the importation of U.S. manufactured wood products through tariff escalation (i.e., progressively higher tariffs depending on the level of processing of the wood product in question). The elimination of tariffs on wood products has been a long standing U.S. objective, although Japan remains one of the most prominent countries to resist the U.S. Government's initiative to further liberalize global tariffs on wood products.

In 2001, the United States and Japan agreed that future discussions on wood/building products issues would be pursued under the government auspices of the Wood Products Subcommittee and its two technical committees, the Building Experts Committee (BEC) and JAS Technical Committee (JTC).

Marine Craft

Japan continues to maintain an inspection system for new boats and marine engines that is unique in the world in its severity and complexity. Japan's regulations, written and administered by the Ministry of Land, Infrastructure and Transport (MLIT) and the Japan Craft Inspection Organization, are complicated, vague and subject to arbitrary and inconsistent interpretation and contain many rules and requirements that no other country considers necessary. These unusual rules and the requirement that each and every imported boat be individually inspected place an enormous burden on Japanese importers and American boat manufacturers and effectively constitute a significant barrier.

In the United States-Japan Small Craft Working Group meetings held between 2002 and 2004 and in other fora going back to 1999, the U.S. marine industry and the U.S. Government have repeatedly expressed concerns to Japan's regulatory authorities about the negative effects that Japan's small craft inspection system has on U.S. boat imports. However, to date only limited measures have been taken in response.

The United States and Japan agreed at the Trade Forum in December 2005 that the United States would offer a proposal for Japan to exempt recreational craft having CE certification from the Japanese inspection system. Subsequent discussions confirmed that Japanese officials were willing to discuss the CE mark issue. In September 2006, U.S. industry made such a proposal to MLIT but the proposal was quickly rejected and there has been no offer to discuss any of its details.

The United States urges Japan to adopt internationally accepted regulations, particularly with regard to certification of international standards, which ensure a high level of boater safety without imposing overly burdensome requirements on manufacturers and importers.

Leather/Footwear

When Japan originally liberalized treatment of footwear imports, its footwear quota stood at 2.4 million pairs per year. By Japan FY 1998, it had raised this quota to roughly 12 million pairs per year. In the Uruguay Round, Japan agreed to reduce tariffs over an eight-year period on under-quota imports of leather footwear, crust leather and other categories.

The process by which the Japanese government establishes quotas lacks transparency. U.S. industry reports that there is no consultation with leather shoe importers to determine anticipated import levels. Indeed, Japanese authorities make no effort to limit quota allocations to firms that plan to use them. The U.S. Government will continue to seek elimination of these quotas.

Above-quota imports of footwear still face market access barriers, despite the fact that Japan has met its Uruguay Round agreements to lower the *ad valorem* ceiling rate by 50 percent and the alternative "per pair" or specific-rate ceiling by 10 percent. According to the latest Japanese government customs tariff schedule, the above-quota rates have declined to the higher duty of either 30 percent *ad valorem* or 4,300 yen per pair. Japan is entitled to apply the higher of the two rates.

U.S. industry has expressed concern that the quota on leather footwear imports effectively bars U.S. footwear manufacturers and U.S. brands from the Japanese market, one of the largest consumer markets in the world. According to the industry, the only way U.S. footwear companies can penetrate the Japanese market is through licensing arrangements where footwear is produced in Japan under a licensee. Many U.S. companies, however, have avoided this option because of the potential threat to the reputation of their brands by uncontrollable licensees that may not uphold the brand's quality or effectively market the brand's name.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Japan applies several standards that limit trade in farm, forest and industrial products. In particular, there has been a noticeable increase in Japan's use of standards and other administrative requirements to limit imports of agricultural goods.

U.S. industry has commented that Japan's stringent testing methods and low tolerances for preservatives and heavy metals in plant products make it nearly impossible to satisfy import requirements for those products. The United States is urging Japan to establish appropriate quantitative limits for preservatives and heavy metals in plant products, which are both safe and practical.

Beef

On July 27, 2006, Japan partially reopened its market to U.S. beef. Except for an approximate one month period from December 2005 to January 2006, Japan's market had been effectively closed since the December 2003 detection of a single cow with Bovine Spongiform Encephalopathy (BSE) in Washington State.

Japan allows the import of U.S. beef from animals aged 20 months or younger. This policy, however, has prevented the United States from regaining all but a small portion of its historic level of exports to the Japanese market. Before the ban, Japan was the largest export market for U.S. beef and beef products, totaling roughly $1.4 billion annually.

The United States has urged Japan to bring its BSE measures in line with international guidelines set by the World Animal Health Organization (OIE) by allowing imports of all beef and beef products deemed safe. The United States will work vigorously toward achieving this important objective through use of various bilateral and multilateral fora.

Enforcement of Maximum Residue Limits (MRLs)

New Japanese regulatory requirements specify that foods containing pesticide residues will not be allowed on the Japanese market unless residue levels conform to national Maximum Residue Limit (MRL) standards. These new regulations, known as the "Positive List", became effective on May 29, 2006. The United States worked closely with the Ministry of Health, Labor, and Welfare (MHLW) to ensure that potentially trade restrictive measures relating to the new positive list were addressed to minimize disruptions to U.S. agricultural trade with Japan. However, several outstanding issues remain, including MHLW's MRL enforcement policy that predates the implementation of the new positive list.

A major U.S. concern is that import violations may be treated more harshly than domestic violations. When an MRL violation is detected in a shipment of food, MHLW indiscriminately takes action against the entire industry of the country where the food product was sourced. Domestic violations, however, are addressed on a company-by-company basis. As a result, domestic violations are treated much more favorably, raising potential national treatment concerns. Trade for a country can be severely impacted by just two violations, regardless of the level of the violation or the degree of the threat to health. To address these concerns, the United States is urging MHLW, through the United States-Japan Regulatory Reform Initiative, to implement a regime that is the least trade restrictive possible, provides national treatment to imports, and is in accordance with international practices.

Phytosanitary Issues

Since Japan opened its market in 1978, the Pacific Northwest has exported over 9 million cartons of fresh cherries to Japan. Cherries exported to Japan must be fumigated with methyl bromide to address Japan's alleged concerns regarding codling moth.

Based on U.S. Department of Agriculture research that demonstrates that cherries are not a suitable host for codling moth, the U.S. Government has requested that Japan remove the specific treatment requirement for sweet cherries. In its place, the U.S. Government has submitted a systems approach to the Japanese government for consideration, which combines post harvest commodity inspection with good orchard pest management practices. The industry has supplied documentation that the proposed systems approach provides quarantine security, which is equivalent or better than that provided by methyl bromide fumigation. Pilot programs conducted in the Pacific Northwest and California demonstrated that the systems approach is effective.

Based on the current market conditions in Japan, U.S. industry expects a substantial increase in export sales once methyl bromide fumigation is replaced by a systems approach. The U.S. Government will continue to work with Japan to remove its fumigation requirement.

Labeling of Beef

The Ministry of Agriculture, Forestry, and Fisheries proposed guidelines regarding the labeling of "wagyu" beef that, if adopted, would bar use of the term "wagyu" on cattle that was not born and raised in Japan. The United States is concerned by the proposed regulation and is monitoring this situation closely.

Building Size, Designs and Wood Products

The Japanese government has adopted and implemented regulations with respect to indoor air quality and the emission of certain volatile organic compounds, including formaldehyde, which are found in some building materials. Regulations on indoor air quality covering volatile organic compounds appear to be overly restrictive for some products such as wall coverings. The United States also has concerns about guidelines for other chemicals, especially if those guidelines become mandatory as well.

Biotechnology

Japan is one of the largest importers of bioengineered grains, including about 15 million metric tons of U.S. corn and 4.5 million metric tons of U.S. soybeans worth several billion dollars.

Japan has implemented an advanced biotechnology regulatory system which now requires mandatory food, feed and environmental approvals. A new Food Safety Commission established in 2003 conducts many risk assessment duties to support product evaluations by the Ministry of Health, Labor and Welfare and Ministry of Agriculture, Forestry and Fisheries.

Biotechnology developers are facing growing constraints to meet Japan's requirements for feed and environmental review. Irregular meetings of the Feed Subcommittee, the absence of standard operating procedures, and an overall lack of transparency and predictability have significantly delayed feed approvals. In addition, a combination of local regulations and public pressure on research institutions (which often conduct field testing under contract) have made it increasingly difficult to secure sites for mandatory field trials for environmental reviews. Addressing these key administrative aspects of Japan's feed and environmental approval process is important to ensuring the large number of products in the development pipeline, including several new nutritional and performance traits, are reviewed in an efficient manner.

The United States hopes Japan will continue to participate in discussions on biotechnology advancement and regulation in international fora, such as the WTO, the Codex Alimentarius Commission, the Organization for Economic Cooperation and Development (OECD), and the Asia Pacific Economic Cooperation (APEC) forum. Given the continuous development of new biotechnologically-produced food products, the United States and Japan share a common interest in working together to promote effective biotechnology approval and regulatory policies – aspects the United States urges Japan to consider under the Regulatory Reform Initiative.

Restrictive Food Additive List

Japan's list of food additives restricts imports of several U.S. food products, especially processed foods. The list, which limits the use of specific food additives on a product-by-product basis, is out of step with international practice. For example, the list effectively prohibits the importation of light mayonnaise, creamy mustard, or figs containing potassium sorbate, a food additive evaluated and accepted by numerous national and international standard-setting organizations, including the Joint FAO/WHO Experts Committee on Food Additives. In spite of this prohibition on imports, Japan allows the use of potassium sorbate in 36 other foods, most of which are traditional Japanese food products not normally produced outside Japan.

U.S. manufacturers have also complained that the process for gaining approval for indirect food additives (which do not remain on food), such as solvents, is slow and lacks transparency.

In 2002, Japan created a list of 46 food additives for expedited review. The United States and many of Japan's other trading partners have been disappointed by the lack of progress by the Ministry of Health, Labor, and Welfare and the Food Safety Commission in finalizing reviews and approving many of these additives, despite in several cases having been provided with extensive safety data. In addition, Japan classifies post-harvest fungicides as food additives (involving a separate registration process), even though the international community, including Codex, classifies them as pesticides. To address some of these concerns, the United States has urged Japan through the Regulatory Reform Initiative to complete its review of food additives in an expedited fashion.

Microbial Content Standards

Japan's standards under the Food Sanitation Law for microbial content on frozen foods are, in certain instances, impractical and overly restrictive, particularly for foods that require cooking before consumption.

Nutritional Supplements

Although Japan has taken steps toward liberalization of its $11.7 billion nutritional supplements market, many barriers to market access remain. Restrictions on health and nutrition claims are a major concern. In Japan, nutritional supplements are classified as food. Only foods that are approved as Foods for Specific Health Uses (FOSHU) or Foods with Nutritional Function Claims (FNFC) are allowed to have health or nutrition claims. However, because of the costly and time-consuming approval process for FOSHU and the limited range of vitamins and minerals that qualify for FNFC, producers are not able to obtain FOSHU or FNFC approval for a majority of nutritional supplements. This limits the information available to consumers at the point of sale and hinders the ability of producers to differentiate their products. Other issues of concern include restrictions on food additives, enforcement of maximum residue levels, a lack of standard forms and procedures among import quarantine offices, and the high level of import duties for nutritional supplements compared to those for pharmaceuticals containing the same ingredient. The U.S. Government continues to address these issues through the Regulatory Reform and Competition Policy Initiative.

Poultry

Since 2002, Japan has imposed a number of national and statewide bans on the import of U.S. poultry meat due to the detection of both high pathogenic notifiable avian influenza (HPNAI) and low pathogenic notifiable avian influenza (LPNAI) in United States poultry. These bans run counter to international guidelines and have unnecessarily disrupted millions of dollars in the U.S. poultry trade.

According to international guidelines, recently revised by the World Animal Health Organization (OIE), countries must report any findings in domestic poultry of HPNAI and subtypes (H5 and H7) of the avian influenza, regardless of its pathogenicity. These guidelines also provide for importers from these countries to impose certain national or regional restrictions where HPNAI is reported, but not where LPNAI is reported. Instead, where HPNAI is reported, the guidelines provide for banning on a limited basis, preferably to zones where the HPNAI has occurred in domestic poultry, while allowing imports from other regions in the exporting country so long as the exporting country has effective controls and surveillance measures in place to quarantine the affected region. As a result of these bans as well as other factors, U.S. poultry meat exports to Japan have decreased substantially from roughly $81 million in 2001 to $45 million in 2002, and between $29 to $30 million in 2003, 2004, and 2005.

Cosmetics and Quasi-Drugs

Japan is the second-largest market in the world for cosmetics after the United States, but regulatory barriers limit consumer access to safe and innovative products. Unlike the U.S. over-the-counter drug monograph system, Japan requires pre-market approval for products that are classified as quasi-drugs under the Pharmaceutical Affairs Law. The approval process has burdensome and nontransparent requirements that to do enhance product safety, quality, or efficacy. In addition, certain advertising claims for cosmetics and quasi-drugs may not be made even though these claims are based on verifiable data. Allowing these claims would enable companies to provide consumers with information that would help them make sound choices. Other concerns related to cosmetics and quasi-drugs include a lack of information on regulations and guidance available in a timely and accessible manner on the website of the Ministry of Health, Labor and Welfare; unpredictable time frames for product standard revisions; and long lead times for importation and approval.

GOVERNMENT PROCUREMENT

Japan is a signatory to the WTO Agreement on Government Procurement (GPA). Under the GPA, Japan covers the procurement of a number of central government agencies, all of its prefectures and several large cities, and a number of government enterprises. For procurement of construction services by sub-central and most government enterprises covered under the GPA, Japan applies a threshold of $22 million, which is three times the threshold applied by the United States and most other GPA Parties. The U.S. Government seeks to expand access to Japan's government procurement market, in particular through the reduction of its construction services thresholds.

Construction, Architecture and Engineering

Although Japan has the second-largest public works market in the world ($156 billion for 2006), U.S. firms annually obtain far less than 1 percent of projects awarded. Two public works agreements are in effect: the 1988 U.S.-Japan Major Projects Arrangements (MPA) (updated in 1991) and the 1994 U.S.-Japan Public Works Agreement, which includes the "Action Plan on Reform of the Bidding and Contracting Procedures for Public Works" (Action Plan). The MPA included a list of 42 projects in which international participation is encouraged. Under the Action Plan, Japan must use open and competitive procedures for procurements valued at or above the thresholds established in the WTO Agreement on Government Procurement (WTO/GPA), to which Japan is also a party. Public works issues are raised in the Trade Forum under the U.S.-Japan Economic Partnership for Growth.

U.S. companies continue to face obstacles when trying to maneuver Japan's complex regulatory system. Problematic practices that continue to inhibit the full involvement of U.S. design/consulting and construction firms in Japan's public works sector include bid-rigging (*dango*), under which companies consult and prearrange a bid winner. Numerous instances of government-initiated collusive bidding (*kansei dango*) at the prefectural level in 2006 highlighted the lack of a truly fair market environment for U.S. firms. The United States has asked Japan to continue to address this problem.

Another problematic practice is the use of excessively narrow, Japan-specific qualification and evaluation criteria that exclude U.S. firms from competing for projects. The United States has asked Japan to develop procedures to simplify the qualification process for foreign firms that have experience outside of Japan similar to that required by the qualification criteria. The United States also has asked Japan to ensure that procurements list all of the qualifying criteria for a project. The Action Plan requires that definitive criteria be published in a concrete manner so that firms can judge if they can qualify for projects. Other concerns include the use of excessively high Business Evaluation scores, unreasonable restrictions on the formation of joint ventures, unclear or conflicting bid/contract procedures, extremely low design fees, and excessive and costly documentation requirements for design bids.

The United States is pressing Japan to commission more Project Management (PM) and Construction Management (CM) projects during this fiscal year and structure procurements in such a way that foreign firms with appropriate expertise are able to compete. (CM and PM are advanced project delivery and management systems that maximize the efficiency of a project.) The United States is also promoting U.S. firms' participation in new types of public works projects in Japan such as Urban Renewal, Private Finance Initiative (PFI) and Local Area Renewal projects.

The United States is paying special attention to several major projects covered by the public works agreements of particular interest to U.S. companies. These projects include: Okinawa Institute of Science and Technology; Haneda Airport development and expansion; Kansai International Airport; Central Japan International Airport; Kyushu University Relocation Project; Gaikan Expressway Project; Metropolitan Expressway Shinagawa Route Projects; major public buildings, large-scale hospital building projects, urban development and redevelopment projects; major PFI projects; and remaining MPA projects. The United States believes the MPA continues to apply to the Central Japan International Airport project.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The United States continues to pursue its intellectual property rights (IPR) protection agenda with Japan through bilateral consultations and effective coordination in multilateral and regional fora. For its part, Japan continues to make progress in improving the protection of IPR and, relative to other countries, piracy is not a major problem. Several key issues remain, however, including the need to improve Japan's legal and administrative intellectual property framework to protect copyrights in the digital age. The United States has identified a number of areas where further action by Japan is needed, including: (1) addressing persistent patent-related problems; (2) improving and expanding protection of copyrighted works, particularly on the Internet; (3) providing effective protection for well-known trademarks; (4) providing protection for geographical indications; (5) affording greater protection of trade secret information; and (6) continuing to improve border enforcement mechanisms.

Patents

In July 2006, the U.S. Patent Office (USPTO) and Japan Patent Office (JPO) began a pilot project, the "Patent Prosecution Highway," that allows prompt examination of corresponding patent applications of companies of the other country. Under this framework, an applicant whose claims are determined to be allowable/patentable in the office where it was first filed can request that its corresponding application filed in the second office be promptly examined provided certain conditions are met. The second office would also be able to utilize much of the work by the first office. The two sides have agreed to a goal of issuing a first office action within 9 months of the request.

Despite improving cooperation on patent issues bilaterally and internationally, the United States remains concerned with several aspects of Japan's patent administration, including the relatively slow process of patent litigation in Japanese courts, the lack of an effective means to compel compliance with discovery procedures, the practice of affording only narrow patent claim interpretation, and the lack of adequate protection for confidential information produced relative to discovery.

In recent years, Japan has taken a number of steps to address these issues. A revised patent law took effect on January 1, 2000. This law was designed to make it easier for plaintiffs to prove patent infringement in courts. Key provisions include requiring defendants to justify their actions, obligating defendants to cooperate with calculation experts, giving judges discretion over the amount of damages, increasing the penalty in cases where patents were obtained fraudulently and allowing courts to seek technical advice from JPO. The United States will continue to monitor closely whether these revisions reduce the cost of access to Japanese courts that has been particularly onerous to foreign patent owners in the past. In 2005, an Intellectual Property High Court was established with specially trained judges to review IPR cases. The United States welcomes these steps to improve the level of patent protection in Japan and will continue working with Japan to strengthen its patent laws in several fora, including the Regulatory Reform Initiative, where the United States urged Japan in its recommendations to reconsider usage of the 3-year deferred examination system and adopt procedures to avoid "piecemeal" examinations.

Copyrights

The increasing use of the Internet and explosive growth of high-speed broadband in Japan has presented new challenges for protecting IPR, especially for copyrighted materials. The protection of this material is critical for electronic commerce to flourish and for the continued development of content-related industries such as games, music, film, and software. The United States continues to be concerned that Japan's Internet Service Provider liability law does not provide adequate protection for the works of rights holders on the Internet or the appropriate and necessary balance of interests among telecommunications carriers, service providers, rights holders and website owners. The United States urges Japan to use all the opportunities available to improve these shortcomings in the law. The scope of protection for temporary copies remains vague in Japan, which could erode the ability to protect copyrighted materials. The United States will continue to monitor developments in this area.

Concerning Internet Protocol (IP) multicasting and/or rebroadcasting of television programs over the Internet, the United States also urges Japan to ensure that changes to Japan's measures foster market-based solutions and comport with international obligations.

The United States is also urging Japan to reduce the piracy rate, especially in light of the growing threat of online piracy. A notable step toward creating an effective deterrent against piracy, providing compensation to rights holders, and improving the efficiency of copyright cases in Japan's courts would be amending Japan's Civil Procedures Act to provide for an award of statutory damages at the election of the rights holders as an alternative to actual damages. In order to address movie piracy in particular, the enactment of effective anti-camcording legislation against the use of recording devices in movie theaters would also prove beneficial. In addition, the granting of *ex officio* authority to police and prosecutors to enable these officials to investigate and prosecute crimes on their own initiative by removing the requirement of right holder consent for prosecutions would further contribute to increasing protections of copyrights. Furthermore, as a means to set an example for the private sector, the United States urges Japan to make public and issue regulations and a decree forbidding any copyright infringement in its government operations.

The United States is also concerned about the personal use exception both as it applies to the Internet and to students and book piracy. Japan should make its law clear that the use of peer-to-peer networks to download and copy copyrighted works without the rights holder's authorization is not permitted under the personal use exception. The personal use exception also appears to allow students to copy entire textbooks for personal use as long as they do not distribute copies. The United States urges Japan to explicitly incorporate the three-part test from international treaties into the Copyright Law to address both these problems.

The United States is concerned about the provision on in Japan's Copyright Act for protection of effective technological measures used by copyright owners to protect their works. The provision applies only to devices the principal function of which is circumvention, and it does not protect access controls against circumvention.

In recent years, Japan put into effect an extension of the term of copyright protection for cinematographic works, animation and video games to bring the term of protection closer to the growing international trend. The United States continues to urge the Japanese government to extend the term of protection for all the subject matter of copyright and related rights to life plus 70 years, or where the term of protection of a work (including a photographic work), performance or phonogram is to be calculated on a basis other than the life of a natural person, to 95 years. The Japanese government is planning a major revision of its copyrights laws in FY 2007, which the United States hopes will address many of the concerns raised with Japan in its December 2006 Regulatory Reform Initiative recommendations.

Trademarks

Trademarks must be registered in Japan to ensure enforcement. Thus, any delays in the registration process make it difficult for foreign parties to enforce their marks. Legislation passed in preparation for Japan's ratification of the Madrid Protocol in March 2000 contains several useful provisions. Effective January 1, 2000, Japan began establishing a system to notify the public of trademark applications received. Effective March 14, 2000, trademark holders are entitled to compensation for damages for the period from application until registration of the trademark.

In spite of the existence of provisions in Japan's Unfair Competition Law designed to afford greater protection to well-known marks, protection of such marks remains weak in some respects, such as in its registration or designation.

Geographical Indications (GIs)

Articles 22 to 24 of the TRIPS Agreement set forth the obligations of WTO Members with respect to GIs and their relationships to trademarks. It is unclear whether Japan currently provides interested parties with the legal means to prevent misuse of a GI or whether Japan provides trademark owners with the legal means for resolving conflicts between trademarks and asserted GIs. The United States understands the Japanese government is currently studying the issue of GI protection and fully supports that effort. Outstanding concerns remain, since it is unclear whether Japan maintains an undisclosed list of protected GIs against which applications for trademark registration are reviewed. Reports have indicated that the Japanese government is considering the use of GIs to protect the identity of traditional food products from well-known production areas in Japan, but it is unclear how Japan would implement such protection. Japan has recently announced that it has three new Japanese terms which have been designated as GIs for wines and spirits by the Commissioner of the National Tax Agency through its Labeling Standard Concerning Geographical Indications, "to be protected in the territories of WTO Members." The United States is concerned as to why the Japanese Tax Commissioner is designating GIs to be protected outside of Japan, and whether foreign GIs are directly registrable under the Japanese GI system without intervention by a foreign government. The United States looks forward to receiving further information on these concerns.

Trade Secrets

Although Japan amended its Civil Procedures Act to improve the protection of trade secrets in Japanese courts by excluding court records containing trade secrets from public access, the law is inadequate. Because Japan’s Constitution prohibits closed trials, the owner of a trade secret seeking redress for misappropriation of that secret in a Japanese court is forced to disclose elements of the trade secret in seeking protection. Because of this, and the fact that court discussions of trade secrets remain open to the public with no attendant confidentiality obligation on either the parties or their attorneys, protection of trade secrets in Japan’s courts will continue to be considerably weaker than in the courts of the United States and other developed countries. The Diet passed a bill to partially amend the Unfair Competition Prevention Law in May 2003. The bill contains a provision that states that a person who illegally acquires, uses, and discloses corporate secrets is subject to criminal sanctions. The scope of the amendment, however, is limited. The United States continues to urge Japan to undertake further reform.

Border Enforcement

The United States continues to monitor implementation by the Japan Customs and Tariff Bureau (JCTB) of a policy to allow parallel imports of patented products based on a 1997 Japan Supreme Court ruling. Further, insofar as Japan provides *ex officio* border enforcement of trademarks and copyrights through the JCTB, efforts should be made to enhance such enforcement through aggressive interdiction of infringing articles. In an effort to bolster Japan's border control measures, the United States has urged Japan to improve its application, inspection, and detention procedures to make it easier for foreign rights holders to obtain effective protection against infringed intellectual property rights at the border. Although Japan increased the amount of resources devoted to enforcement during 2004, the United States urges Japan to continue to improve and tighten its border enforcement to ensure effective implementation of its TRIPS obligations.

SERVICES BARRIERS

Insurance

Japan's private insurance market is the second-largest in the world, after that of the United States, with direct net premiums of an estimated 36.9 trillion yen (over $300 billion) in Japan FY 2005. In addition to the offerings of Japanese and foreign private insurers, substantial amounts of insurance are also provided to Japanese consumers by the large life insurance unit (Kampo) of government-owned Japan Post, the National Public Health Insurance System, and a web of insurance cooperatives (*kyosai*).

Insurance Agreements were concluded between the United States and Japan in 1994 and 1996. These agreements greatly facilitated growth in the presence of foreign insurance companies in Japan's market since that time. As of Japan FY 2005, foreign insurers held an estimated 25.7 percent of the private life insurance market (total market excluding Kampo and *kyosai*) and a 5.16 percent share of the private non-life insurance market. In the third sector, foreign firms have approximately 57 percent of the private sector life medical/nursing care insurance market and an approximate 75 percent share of the private sector medical/cancer market in Japan FY 2005.

Given the size and importance of Japan's private insurance market as well as the scope of the obstacles that remain, the U.S. Government continues to place a high priority on ensuring the Japanese government's regulatory framework fosters an open, fair, and competitive insurance market.

Postal Insurance: Japan Post's insurance business, or Kampo, continues to be the largest player by far in Japan's insurance market, which is larger than the four largest private sector Japanese life insurers combined. In Japan FY 2005, there were 61 million Kampo-issued life insurance policies in force compared to 125 million for all private life insurance companies combined. The U.S. Government has long-standing concerns about tax, regulatory, and other advantages given to Kampo over its private sector competitors as well as over the impact these advantages have had on competition in Japan's insurance market. It remains vital that Japan eliminate these advantages and create a level playing field.

The U.S. Government is closely monitoring the Japanese government's initiative to privatize and reform Japan Post. The Japan Post reform framework established by Japan's Diet in 2005 includes a number of key measures that, if implemented fully, will represent long-awaited progress in areas of concern to U.S. and other insurers in the market. Importantly, the legislation also included the establishment of equivalent conditions of competition between Japan Post and the private sector as a basic principle of the reforms.

In addition to eliminating Japan Post's tax and regulatory advantages and ensuring equal supervisory treatment, the U.S. Government continues to look to Japan to take other steps necessary to achieve a level playing field. Among those steps, the U.S. Government urges that adequate measures are implemented to ensure cross-subsidization does not take place among the newly created Japan Post businesses and related entities, including by ensuring Japan Post's strict compliance with the Insurance Business Law's arms-length rule and requiring adequate financial disclosures to demonstrate that cross-subsidization is in fact not occurring. The U.S. Government also continues, for example, to emphasize importance of ensuring the new company established to manage Japan's post office network will transparently and fairly select insurance products of private providers for distribution throughout the network.

The U.S. Government continues to call on Japan's government to ensure that a level playing field is actually created between the postal insurance institutions (both the existing Kampo business and, from October 2007, the new postal insurance business) and private insurers before the postal insurance institutions are permitted to underwrite and introduce new or altered insurance products. Approval of any proposed new products by the new postal insurance company, according to the new laws, will shift in October 2007 from Diet approval to a new process whereby decisions are made by the Prime Minister (with the Commissioner of the Financial Services Agency acting as proxy) and Minister of Internal Affairs and Communications, after hearing the opinion of an appointed government advisory body. This new process should be fair and open to all parties. It is also critical that this process include careful analysis of, and full consideration given to, actual competitive conditions in the market, and that private sector views are actively solicited and considered before decisions are made.

As modifications to the postal financial system could have a significant impact on competition in Japan's insurance market, adequate transparency in the process of implementing the reforms passed by the Diet remains key, both prior to the start of the privatization process in October 2007 and after. The U.S. Government has urged that Japan continue to take a variety of steps that ensure adequate transparency, including: (1) providing meaningful opportunities for interested parties to exchange views with related government officials as well as members of government-commissioned advisory committees and groups before decisions, including those on new products, are made; and (2) fully utilizing Public Comment Procedures with respect to implementing regulations, guidelines, Cabinet and other orders, and other measures.

The U.S. Government continues to carefully monitor developments as the Japan Post reform process unfolds and express views through regularly scheduled Working Groups under the U.S.-Japan Regulatory Reform Initiative, bilateral insurance consultations, and at other opportunities. The U.S. Government also continues to closely monitor the performance of a new Kampo insurance product (including a rider providing for supplemental health coverage) which the U.S. Government and others strongly objected to when introduced in January 2004.

Kyosai: Insurance businesses run by cooperatives, or *kyosai*, occupy a substantial presence in Japan's insurance market. According to the Japan Cooperative Insurance Association, *kyosai*-issued policies amounted to more than 20 percent of all in-force life policies in the market and 35 percent of all in-force non-life policies in 2002, the last year for which statistics are available.

Some *kyosai* are regulated by their respective agencies of jurisdiction (the Ministry of Agriculture, Forestry and Fisheries, or the Ministry of Health, Labor and Welfare, for example) instead of by the Financial Services Agency (FSA), while others have been allowed to operate without any regulatory supervision at all. These separate regulatory schemes undermine the ability of the Japanese government to provide companies and policyholders a sound, transparent regulatory environment, and afford *kyosai* critical business, regulatory, and tax advantages over their private sector competitors. The U.S.

Government has stated its position that all *kyosai* should be subject to the same regulatory standards and oversight as their private sector counterparts to ensure a level playing field and to protect consumers.

The Japanese government took some important steps in 2006 to bring more oversight scrutiny to unregulated kyosai. Under changes being phased in through 2008, a new "small-amount, short-term" kyosai provider category has been created, and previously unregulated kyosai that meet the criteria for selling small-amount and short-term insurance policies to customers were required to register with the FSA. Those previously unregulated kyosai will be supervised by the FSA and held to some of the same regulatory standards as private sector insurers. Previously unregulated kyosai that do not meet these criteria will be required to meet the same license requirements as private insurers. Other kyosai, including public welfare cooperatives and cooperatives run by workers within private corporations, will continue to be allowed to operate with a minimum of regulatory supervision. As the Japanese government implements this new system and reviews its operation as required under the amended law, the U.S. Government urges that additional steps be taken to hold kyosai to the same regulations and FSA supervision as are applied to private companies.

With respect to kyosai regulated by ministries and agencies other than the FSA, the U.S. Government is greatly concerned by their continued expansion in Japan's insurance market. This is particularly the case in light of the differences in regulatory treatment and other requirements that continue to give these kyosai inherent advantages over private sector companies. The U.S. Government continues to call on Japan to bring regulated kyosai under the same regulatory obligations and FSA supervision as that applied to the private sector.

Policyholder Protection Corporations: The Life and Non-life Policyholder Protection Corporations (PPCs) are mandatory policyholder protection systems created in 1998 to provide capital and management support to insolvent insurers. As a result of subsequent industry failures, private sector insurers have been called upon to contribute considerable sums to the PPC since that time. U.S. industry, particularly life insurers, has expressed serious concern over the burden of these contributions. The U.S. Government has stressed the need for a sustainable funding framework that does not unfairly burden private companies.

Japan's Diet passed legislation in 2005 to renew the PPC system starting in April 2006. While some improvements were made on the previous system under the legislation, the PPC system nonetheless continues to rely upon pre-funding by its members, instead of adopting a system of funding to follow an insolvency that results in a draw of funds from the PPC (post-funding). The U.S. Government continues to urge Japan to adopt more fundamental changes in the PPC systems, including the post-funding approach, when the next renewal of the system is enacted.

Bank Sales: Initial steps taken in 2001 and in 2002 to allow for limited sales of insurance products through banks were augmented with a new step, effective December 2005, to further liberalize this sales channel. Although this new step is welcome, the range of products now available through banks nonetheless represents a small percentage of the universe of private insurance products that could be made available to Japanese consumers through banks.

A key advisory body to the Japanese government, in its 2004 report, recommended that full liberalization of bank sales of insurance be accomplished within three years at the latest. The U.S. Government continues to urge the Japanese government to completely liberalize the bank sales channel, within a time period no later than the period identified by this advisory body, to allow banks to sell all types of insurance offered by any regulated private insurer.

Professional Services

U.S. and other foreign firms and individuals are hampered in providing professional services in Japan by a complex network of legal, regulatory, and commercial practice barriers. U.S. professional services providers are highly competitive. Their services also help facilitate access for U.S. exporters of other services and goods, and contribute valuable expertise to the economies they serve. The availability of such services can be a key factor in U.S. firms' decisions whether to invest, and thus is central to improving the environment for foreign direct investment in Japan.

Accounting and Auditing Services: U.S. providers of accounting and auditing services face regulatory and market access barriers in Japan that impede their ability to serve this important market. Only Certified Public Accountants (CPAs) or Audit Corporations (made up of five or more Japanese CPAs) can offer accounting services. Foreigners must pass a national examination to qualify, and this examination is offered annually. The United States will continue to urge Japan to remove restrictions on accounting services.

Legal Services: As noted above in the Legal System Reform portion of the Regulatory Reform Initiative section, 2003 and 2004 brought sweeping reform in the area of association between Japanese and foreign lawyers, and the new system of Joint Law Firms (*kyodo jigyo*) was implemented on April 1, 2005.

Medical Services: Restrictive regulation limits foreign access to the medical services market. In the U.S.-Japan Investment Initiative, the United States has advocated allowing commercial entities to provide for-profit medical services and allowing more outsourcing of certain medical services, such as diagnostic and chronic care services (advanced imaging, maintenance dialysis, rehabilitation, etc.) to open this sector to foreign capital-affiliated providers.

Educational Services: Excessive regulation has discouraged foreign universities from operating branch campuses in Japan, presenting obstacles in the form of both administrative requirements and restrictions on pedagogical choices. The U.S.-Japan Investment Initiative has taken up these issues, and the Japanese government has established a new category of “Foreign University - Japan Campus” for accredited institutions of higher education whose home campus is in the United States or elsewhere. Four U.S. institutions have been granted this status as of September 2006. This designation has provided these campuses with a number of important benefits (such as student rail passes and the authority to issue student visas) similar to those accorded Japanese educational institutions. However, the new status for foreign universities does not yet grant the tax benefits enjoyed by Japanese institutions and their students. The United States continues to urge Japan’s Ministry of Education, Culture, Sports, Science and Technology to work with these foreign universities to find a nationwide solution that grants these institutions the appropriate tax status and allows them to continue to provide their unique contributions to Japan's educational environment.

INVESTMENT BARRIERS

Despite being the world's second-largest economy, Japan continues to have the lowest inward foreign direct investment (FDI) as a proportion of total output of any major OECD nation. Foreign participation in mergers and acquisitions (M&A) activity, which accounts for some 80 percent of FDI in other OECD countries, also lags in Japan, although it is on an upward trend. This relative lack of foreign investment can act as a restraint on the expansion of imports.

Much of the recent increase in FDI flows reflects restructuring in the financial services and telecommunications sectors. The Japanese government has recognized the importance of FDI in revitalizing its economy. Former Prime Minister Koizumi, for example, vowed in January 2003 to double the stock of FDI in Japan in five years. Although that goal was not fully achieved, Prime Minister Abe, in his first policy speech before the Diet in September, reaffirmed the government's goal of further doubling the stock of FDI in Japan to the equivalent of 5 percent of Gross Domestic Product (GDP) by 2010. Japan has taken several recent steps to improve the FDI environment, including revision of the Corporate Code to permit the use of triangular stock swaps for international M&A deals. However, full implementation was postponed until April 2007. U.S. businesses have applauded steps taken thus far but continue to urge that full liberalization of M&A rules be implemented as scheduled and that tax rules be clarified and amended to facilitate use of modern merger techniques.

Cross-border M&A is more difficult in Japan than in other countries, partly because of conservative attitudes towards outside investors and partly because of differing management techniques and the relative lack of financial transparency and disclosure. The scarcity of qualified lawyers, auditors, and accountants is another impediment. There have, however, been growing numbers of M&A deals, the majority of which are between fully domestic companies, a development that is slowly breaking down the traditional antipathy toward such deals and toward FDI in general. But this has only highlighted the remaining legal and regulatory hurdles in the way of such deals, not the least of which are remaining weaknesses in corporate governance. In its December 2006 Regulatory Reform Initiative submission, the United States again urged Japan to facilitate such deals by promulgating regulations to require companies to disclose to shareholders any anti-takeover measures they adopt and provide an explanation of why such measures are necessary. The United States also urges Japan to take measures to promote active proxy voting by institutional investors and encourage the Investment Trust Association to adopt rules on proxy voting and disclosure of voting policies and voting records by mutual fund and other investment trust managers.

The U.S.-Japan Investment Initiative, co-chaired by the U.S. Department of State and Japan's Ministry of Economy, Trade and Industry (METI), was established in 2001 to encourage policy changes that improve the overall environment for foreign (and domestic) investment and to focus on specific barriers in certain sectors, including educational and medical services. The Investment Initiative Working Group holds semi-annual meetings and sponsors investment promotion seminars with active private sector participation in Japan and the United States.

ANTICOMPETITIVE PRACTICES

There are detailed discussions related to anticompetitive practices and Antimonopoly Act (AMA) enforcement in several other parts of this report, particularly under the Regulatory Reform section.

Law against Unjustified Premiums and Misleading Representations: Foreign companies looking to enter the Japanese market, who depend on innovative sales techniques to promote their company names and products, face a substantial obstacle in the Japan Fair Trade Commission’s (JFTC) restrictions on premiums. Although the Japanese government has made nominal changes to the Law against Unjustified Premiums and Misleading Representations over the past two decades, the law itself and JFTC’s overly restrictive enforcement of its provisions block many common and legitimate sales techniques such as product giveaways and lotteries. In addition, "fair trade councils" (essentially, private trade associations) set their promotion standards through self-imposed "fair competition codes" that are recognized by the JFTC. These codes frequently impose additional standards that are stricter than required by JFTC regulations under the Premiums Law. As a result, vested manufacturing and retailing interests are protected to the detriment of new entrants to the market. As of March 31, 2006, (the end of the most recent Japanese fiscal year), there were still 40 JFTC-authorized premium codes.

ELECTRONIC COMMERCE

The United States continues to urge Japan through the Regulatory Reform Initiative to take measures that maximize the adoption and use of information technology (IT) and electronic commerce, including: (1) removing regulatory and non-regulatory barriers; (2) strengthening the protection of intellectual property rights; (3) implementing the review of the Privacy Law in a transparent, manner effectively promoting the free flow of information and privacy protection; and (4) ensuring effective network and online security. The United States is engaged with Japan on these and other electronic commerce issues in the Regulatory Reform Initiative's IT Working Group (*see the "Information Technologies" section under Regulatory Reform*).

OTHER BARRIERS

Aerospace

Japan has been the largest foreign market for U.S. aircraft and aerospace products in recent years. The civil aerospace market in Japan is generally open to foreign firms, and some Japanese firms have entered into long-term relationships with American aerospace firms. The U.S. Government continues to monitor Japan's funding for the development of an indigenous small aircraft.

Military procurement by the Japan Defense Agency (JDA) accounts for over half of the domestic production of aircraft and aircraft parts and continues to offer the largest source of demand in the aircraft industry. Although U.S. firms have frequently won contracts to supply defense equipment to Japan (over 90 percent of the annual foreign defense procurement is from the United States), the JDA has a general preference for domestic production or the licensing of U.S. technology for production in Japan to support the domestic defense industry.

Japanese defense projects are carried out according to the Mid-Term Defense Program (Japan FY 2005-2009), which began in April 2005, and has a projected budget of $224 billion over this five-year period. Major projects include ground and maritime ballistic missile defense systems, new maritime patrol aircraft, and new transport and tanker aircraft.

Although Japan has considered its main space launch vehicle programs as indigenous for many years, U.S. firms continue to participate actively in those space systems, including Japan's primary space launch vehicle, the HII-A. The U.S. Government has welcomed Japan's plans to develop a supplementary GPS navigation satellite constellation known as the "quasi-zenith" system.

The United States is working very closely at the technical level with Japanese counterparts to ensure the Japanese system remains compatible with the U.S. system and anticipates that U.S. companies will have the opportunity to supply major components of this system. The United States will continue to promote expanded access by U.S. companies to commercial opportunities in Japan's domestic space programs as appropriate.

Autos and Automotive Parts

Further opening of Japan's automobile and automotive parts markets remains an important U.S. Government objective. A variety of non-tariff barriers have impeded access to Japan's automotive market. While there has been a trend toward closer integration and important technological advancements in the global automotive industry over the past several years, the actual effect of these changes on access to Japan's market remains unclear.

The overall U.S. automotive trade imbalance with Japan stood at $56.8 billion in 2006 ($43.2 billion deficit in autos and $13.6 billion deficit in automotive parts). Meanwhile, overall sales of North American-made vehicles and parts in Japan remain low. Even as U.S. automakers have invested in Japanese automobile manufacturers, foreign access to Japan's automotive distribution network remains troubling to U.S. automobile companies. According to the most recent import statistics available from Japan Automobile Importers Association (JAIA), sales of U.S. produced motor vehicles in Japan decreased in 2005 to 19,130 units.

Under the United States-Japan Economic Partnership for Growth, the United States continues to address crosscutting structural and regulatory reform issues affecting the automotive sector, including expanding opportunities for foreign investment, strengthening competition policy, and increasing transparency in rule making.

Civil Aviation

Although market access for U.S. air carriers in Japan was improved significantly by an agreement reached in 1998, U.S. carriers remain constrained by enduring restrictions on traffic rights, operational flexibility, and pricing, and by extremely high airport costs in Japan.

Since the 1998 agreement was signed, the two sides have held several rounds of formal and informal talks aimed at further liberalization, but have been unable to make any progress. Key U.S. concerns include restrictions on operating rights for non-incumbent cargo carriers, limitations on same country carrier code-sharing, change of gauge limitations, and restrictive pricing practice.

Due to its geographic location as the closest landing point in Asia from the United States, U.S. carriers have maintained large hub operations at Narita International Airport. Nonetheless, in comparison to similar international airports in other countries, movements at Narita fall well below potential airport capacity, unnecessarily limiting slot availability. In periods of high demand, U.S. non-incumbent combination carriers have been unable to operate routes made available under the 1998 Memorandum of Understanding. A second runway opened in April 2002 provides additional slots, but at less than 2500 meters, the runway cannot accommodate most long-haul operations. An extension project to allow use of this runway for long-haul routes is underway, but this project is bundled with other capital upgrades and the overall budget tops 33 billion yen. At this point it is not clear this project will be able to pay for itself, and it is possible an increase in the already high user-fees will be used to finance it. Recently lowered landing fees at Narita were offset in part by raising other fees and introducing new ones. The issue of excessively high landing fees at Narita, Kansai and Central Japan International Airport (Centrair) airports continues to be raised in the United States-Japan Regulatory Reform Initiative and in bilateral aviation discussions.

The international business and tourism sector in Japan is constrained by the high landing and users fees at Narita, Kansai, and Centrair Airports. Opening the formula used to calculate landing fees at Japan's international airports to public comment and ensuring the landing fee calculation at all airports is transparent both for domestic and international flights and based on international standards would benefit both Japanese consumers and the civil aviation industry. In the United States-Japan Regulatory Reform Initiative, the U.S. Government recommends that an independent economic regulator for "corporatized" airports, such as Narita Airport, should be part of system that would ensure fees are set transparently and fairly.

The United States will continue to press for further liberalization consistent with its global policy to promote competition and market access in civil aviation.

Business Aviation

Japan's regulatory framework impedes the development of business aviation. The regulations for commercial airline safety, maintenance, and repair regulations administered by the Japan Civil Aviation Bureau (JCAB) of the Ministry of Land, Infrastructure, and Transport (MLIT) also apply to business aircraft, thus raising the costs of qualification, operation, and maintenance. Landing business planes is difficult due to rules that hamper flexible scheduling, especially near Tokyo. The result of such regulatory burdens is that Japanese companies, foreign companies in Japan, and foreign companies interested in doing business with Japan currently cannot use business aviation effectively and economically. Further, these burdens are a barrier to foreign direct investment since investors cannot easily land at Japanese airports. U.S. aircraft manufacturers believe that the regulatory burden has limited sales of their planes to Japanese companies that would greatly benefit from their use.

Multiple airports in the Chubu and Kansai regions now welcome business aircraft, providing many of the same services that business aircraft operators receive in the United States and Europe. Since April 2005, regional (non-designated) airports may also accept landings of international charter and business aviation flights with only three days notice, provided that customs, immigration, and quarantine (CIQ) are available. But airports in the Tokyo metropolitan area, namely Narita and Haneda, remain extremely difficult to use for business flights. Moreover, severely restricted hours for landings and take-offs at Haneda and the lack of services at Narita and Haneda significantly limit travel on business aircraft to and within Japan.

Based on the growing needs of business aircraft owners and operators, the United States recommends that JCAB reexamine the application of these civil aviation regulations to business aviation and develop appropriate regulations specific to the business aviation industry. The United States encourages JCAB to consider the regulatory reform requests submitted by United States and Japanese industry. In advance of the opening of the additional runway at Haneda planned for 2009, the United States urges Japan to make immediate improvements in the overall regulatory framework.

Electric Utilities

The United States continues to stress that by introducing genuine competition into non-fuel procurement (valued at approximately $10 billion annually), Japan can effectively reduce the cost of its electric power, which remains among the highest in the industrialized world. U.S. exports should rise significantly if barriers are lifted. U.S. exports currently account for approximately 3.5 percent of Japanese electric utility procurements, or around $350 million per year. Japan's utilities actively participate in the New Orleans Association, a U.S. Embassy-sponsored forum that enhances communication between Japanese electric power utilities and U.S. suppliers of non-fuel materials, equipment, and services. The United States continues to urge Japanese utilities to further increase procurement of foreign products and services (which are often more economical) and ensure transparency and fairness in the procurement process.

Foreign firms face barriers due to standards and specifications used by Japanese utilities that often discriminate against or disproportionately burden foreign suppliers. Problems remain in the use of narrow, dimension-based technical standards rather than performance-based technical standards, and requirements that suppliers provide detailed information for spare parts originating from outside sources. In addition, because each utility uses its own specifications (in some cases, different departments of a utility use their own specifications), suppliers must prepare more than ten production lines in order to sell to Japan's ten electric power companies. The United States thus urges Japanese firms to simplify and streamline their procurement guidelines while continuing their efforts to expand bidding opportunities for foreign firms.

Transport/Ports

U.S. carriers serving Japanese ports have long encountered a restrictive, inefficient and discriminatory system of port transportation services. In October 1997, after repeated diplomatic efforts to remove these restrictions, the U.S. Federal Maritime Commission (FMC) assessed a $100,000 fee on each ocean voyage to the United States by Japanese shipping lines. This prompted Japan to agree in October 1997 to substantial regulatory reform of its ports sector and the fees were suspended in November 1997. The U.S.-Japan understanding also noted side agreements designed to reduce the power of the Japan Harbor Transport Association (JHTA) from deterring competition in the sector. Japan amended its Port Transportation Business Law (effective November 2000) to eliminate the need for new entrants to prove there is surplus demand. Charges for harbor services in nine large ports are subject to a prior notification requirement and there is an approval requirement for other ports by the Ministry of Land, Infrastructure and Transport (MLIT). The nine large ports are Keihin (Tokyo, Yokohama and Kawasaki), Chiba, Shimizu, Nagoya, Yokkaichi, Osaka, Kobe, Kanmon (Shimonoseki and Kitakyushu) and Hakata. In May 1999, the FMC removed its rule imposing the fees, and imposed a semi-annual reporting requirement on two U.S. and three Japanese shipping lines.

Since 1999, the United States has expressed its concern that reforms have not lessened JHTA's ability to deter new entry and restructuring in the ports sector. The United States has noted that the revised Port Transportation Business Law did eliminate the economic needs test and licensing requirement at the nine large ports, although the amended law still maintains a permission system for new entrants to port services operations in those ports. The Port Transportation Business Law introduces new requirements that run counter to the need for efficient port operations and discriminate against new entrants wishing to offer port services. For example, minimum manning levels for new entrants was set at 150 percent; new terminal operators are required to conduct all terminal operations as a joint venture or under a close ties relationship with established Japanese operators; a new licensing rule was introduced, requiring excessive and unnecessary information such as business plans; and the Japanese government now has the authority to disallow rates for port services found to be anticompetitive. In addition, MLIT has not addressed concerns about the prior consultation process conducted by the JHTA nor about the apparent threat of illegal strikes against foreign carriers who obtain permission to operate their own container terminals.

In August 2001, citing its continuing concern that these issues had not been resolved, the FMC ordered the five U.S. and Japanese carriers and several other major shipping lines serving the United States-Japan trade to report detailed information on the effects of recent changes in Japanese port laws and ordinances. The ongoing semi-annual reporting requirements continue only for the two U.S. carriers and the three Japanese lines named in the original proceeding. The United States will continue to closely monitor how these changes affect port operations and to urge faster regulatory reform in the port sector. Both the Japanese and U.S. positions, however, have solidified over the years. The U.S. Government continues to reiterate its position that the Japanese government has failed to implement important aspects of the wide-ranging port deregulation promised in 1997.

JORDAN

TRADE SUMMARY

The U.S. goods trade deficit with Jordan was $772 million in 2006, an increase of $149 million from $623 million in 2005. U.S. goods exports in 2006 were $650 million, up 0.9 percent from the previous year. Corresponding U.S. imports from Jordan were $1.4 billion, up 12.2 percent. Jordan is currently the 74th largest export market for U.S. goods.

The United States-Jordan Free Trade Area Agreement

Under the terms of the United States-Jordan Free Trade Area Agreement (FTA) which entered into force on December 17, 2001, the United States and Jordan agreed to phased tariff reductions culminating in the complete elimination of duties on all products by 2010.

IMPORT POLICIES

Tariffs

Jordan's simple average applied tariff is approximately 13 percent, with a maximum rate of 180 percent on certain agricultural products. Tariffs between the United States and Jordan are being eliminated as per the terms of the FTA.

The Jordan General Sales Tax law allows the government to impose a "Special Tax" at the time of importation or local production.

Agriculture

U.S agricultural exports to Jordan were $89.2 million in 2005. Top U.S. agricultural exports consist of grains (wheat, corn, and rice), vegetable oil, almonds and vegetable seeds. Under the terms of FTA, import duties and other trade barriers between Jordan and the United States must be phased out by 2010. Tariffs less than 5 percent have already been eliminated.

Certain non-tariff barriers impact U.S. exports to Jordan. Jordan excludes certain imports from the FTA's direct customs tariff relief, notably poultry, dairy products and apples. Jordan selectively imposes sanitary and phytosanitary measures on fruits, vegetables and beef, effectively creating non-tariff barriers on imports of these products.

Import licenses, or advance approvals to import goods, are required for specific food and agricultural goods. The authorities granting such licenses and approvals include the Ministry of Industry and Trade, the Ministry of Agriculture and the Ministry of Health.

Last year, Jordan banned the importation of beef and live bovine animals from all U.S. states after the announcement of the discovery of a single case of Bovine Spongiform Encephalopathy (BSE) in Alabama. The subsequent partial lifting of the ban was accompanied by strict conditions that have proven difficult to meet by both U.S exporters and Jordanian importers, particularly for non-boneless meat.

Import License and Pre-Shipment Inspection

In addition to the special requirements for certain agricultural products, Jordan requires that importers of commercial goods be registered traders or commercial entities. The Ministry of Industry and Trade occasionally issues directives requiring import licenses for certain goods or categories of goods.

Jordan, through the Jordan Institute of Standards and Metrology (JISM), currently applies a pre-shipment inspection program (the Daman Program) which the United States considers to be a non-tariff trade barrier. The Daman Program is scheduled to end by September 2007.

STANDARDS, TESTING, LABELING AND CERTIFICATION

JISM plans to shift all of its compliance inspection activities for imported and locally-produced goods from ports of entry to a market surveillance system. JISM issues and routinely updates standards for approximately 1,300 products. JISM has licensed several laboratories to test for compliance with applicable standards.

JISM's current product standards reflect existing U.S. standards. Although JISM is working with EU agencies to review its current standards and incorporate new sets of standards, JISM's director has assured the United States that any changes would not be biased against U.S. standards, which would also be considered international standards.

JISM also issues and enforces labeling requirements.

GOVERNMENT PROCUREMENT

In 2002, Jordan commenced its accession to the WTO Government Procurement Agreement (GPA), with the submission of its initial entity offer. Subsequently, Jordan submitted revised entity offers in 2004 and 2006. Currently, foreign investors can bid on government-commissioned research and development programs for which international or mixed bidders are eligible. Alternatively, foreign bidders can bid on such programs with a Jordanian partner. This requirement will be dropped when Jordan accedes to the GPA.

EXPORT SUBSIDIES

All exporters are granted the following incentives:

- Net profits generated from most export revenues are fully exempt from income tax. The mining sector is excluded, as are exports governed by specific trade protocols and foreign debt repayment schemes. Under the WTO, this exemption currently is permitted until the end of 2007. Jordan has requested another extension.

- Foreign inputs used in the production of exports are exempt from customs duties and all additional import fees are assessed on a reimbursable basis.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Prior to its accession to the WTO, Jordan passed several new laws to improve protection of intellectual property rights (IPR), patents, copyrights, and trademarks. These laws, which were passed to implement the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), now protect trade secrets, plant varieties and semiconductor chip designs. The IPR regime requires registration of copyrights, patents and trademarks. Copyrights must be registered with the National Library, a part of the Ministry of Culture. Patents must be registered with the Registrar of Patents and Trademarks at the Ministry of Industry and Trade. Jordan has signed the Patent Cooperation Treaty and the protocol relating to the Madrid Agreement Concerning the Registration of Marks, but ratification is still pending. Jordan's pharmaceutical industry generally abides by the new Patent Law. In addition, by signing the FTA, Jordan committed to even stronger enforcement of IPR. It acceded to the World Intellectual Property Organization (WIPO) treaties on copyrights (WCT) and performances and phonographs (WPPT). The United States is working together with Jordan to address concerns that Jordan needs to strengthen its protection of undisclosed information against unfair commercial use for pharmaceutical products, as well as other U.S. concerns regarding Jordan's implementation of its FTA commitments.

Jordan's record on IPR enforcement has improved. However, enforcement mechanisms and legal procedures are still not fully effective and are in need of further refinement. As a result, the government's record on IPR protection remains mixed. A sizeable portion of videos and software sold in the marketplace are pirated. Enforcement action against audio/video and software piracy is growing in quantity and improving in its targeting capability, but successful prosecution of piracy cases remains inconsistent. Two government committees convened in 2006 are examining means to provide more comprehensive protections to IPR, including through more stringent enforcement of existing laws, introduction of new regulations based on existing laws, and the creation of an independent intellectual property body.

SERVICES BARRIERS

As part of its WTO commitments, Jordan agreed to allow unlimited market access in telecommunications services no later than January 1, 2005. However, one trade association has reported that Jordan's Telecommunications Regulatory Commission (TRC) ordered ISPs to block access to a VoIP website in September 2006. The order was subsequently reversed, but the trade association asserts that its members still encounter difficulties in providing VoIP services in the country.

INVESTMENT BARRIERS

The government is revamping the investment promotion system in Jordan. It is re-examining investment incentives with the consolidation of all investment promotion activities under a renewed Jordan Investment Board (JIB). These developments will likely lead to expanded investment opportunities in Jordan for U.S. investors.

Jordan's investment laws treat foreign and local investors equally, with the following exceptions (as per regulation No. 54 of 2000, entitled "Non Jordanian Investments Promotion Regulation"):

- Under the terms of the United States-Jordan FTA, ownership of periodical publications is restricted to Jordanian natural persons or Jordanian juridical entities wholly owned by Jordanians;
- Under the same agreement, foreign investors are limited to 60 percent ownership in printing/publishing and in aircraft or vessel maintenance and repair services; and
- Also under the FTA, foreign investors are limited to 50 percent ownership in a specified list of businesses and services.

In general, foreign investors may not have whole or partial ownership of investigation and security services, sports clubs (except for health clubs), stone quarrying for construction purposes, customs clearance services, and land transportation of passengers and cargo using trucks, buses and taxis.

While Jordanian laws set limitations on foreign ownership in certain sectors, the laws also allow for the government to grant exceptions to these limitations where it deems appropriate. This exception policy is viewed as being too selective by some potential U.S. investors.

The FTA Annex 3.1 has a complete listing of limitations on investments and may be found at the following Internet address: http://www.ustr.gov/Trade_Agreements/Bilateral/Jordan/Section_Index.html

ELECTRONIC COMMERCE

Jordan has some legislation regulating electronic commerce, although there has yet to emerge a clear body of regulations and tax laws covering electronic commerce transactions. Legislation that allows for and regulates electronic signatures is still needed. Jordan does not impose tariffs on electronic transactions.

KAZAKHSTAN

TRADE SUMMARY

The U.S. goods trade deficit with Kazakhstan was $315 million in 2006, a decrease of $248 million from $563 million in 2005. U.S. goods exports in 2006 were $646 million, up 20.0 percent from the previous year. Corresponding U.S. imports from Kazakhstan were $961 million, down 12.8 percent. Kazakhstan is currently the 75th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Kazakhstan in 2005 was $3.9 billion (latest data available), down from $4.7 billion in 2004.

Kazakhstan has been negotiating membership in the WTO since January 29, 1996. Kazakhstan is still negotiating bilateral agreements with a number of WTO Members, including the United States, the European Union and Australia. In 2006, Kazakhstan signed protocols with Honduras, Dominican Republic, Bulgaria and Norway. Currently, 14 countries out of 39 members of the Working Party for Kazakhstan have signed bilateral protocols. While progress has been made in 2006 in implementing WTO-consistent legislation, more work remains in a number of areas, including reforming customs practices, Sanitary and Phytosanitary (SPS) regulation, Technical Barriers to Trade (TBT), government procurement, and taxation.

The United States-Kazakhstan Bilateral Trade Agreement, which came into force in 1993, grants reciprocal, normal trade relations treatment. A bilateral investment treaty (BIT) came into force in January 1994.

IMPORT POLICIES

Kazakhstan is a member of the Eurasian Economic Community (EAEC), along with Russia, Kyrgyzstan, Belarus, Tajikistan and Uzbekistan. Armenia, Moldova and Ukraine currently have observer status. In 2006, Kazakhstan, Russia, and Belarus announced the formation of a trilateral customs union. There are plans to bring the customs union into force in 2007 and to eventually expand it to include other EAEC countries. The customs union aims to bring about coordinated customs procedures and a high degree of uniformity in its members' external tariffs.

The weighted-average applied import tariff in Kazakhstan is approximately 7.5 percent. Goods imported for short-term use in Kazakhstan under a temporary import regime can be fully or partially exempt from duties, taxes and non-tariff regulations. The government has the right to issue a list of goods that cannot be temporarily imported into Kazakhstan. Typical examples of articles not eligible for duty exemptions are food products, industrial waste, and consumables.

The Law on Investments, enacted in January 2003, provides customs duty exemptions for imported equipment and spare parts, but only if Kazakhstan-produced stocks are unavailable or not up to international standards. Kazakhstan's new Customs Code became effective on May 1, 2003, superseding the previous law which had been in effect since 1995. There are positive changes in the Code, such as provision for WTO-compliant customs valuation methodologies. In practice, however, customs administration remains a problematic aspect of trade. In addition, key provisions for such practices as voluntary disclosure are not included in the Code.

U.S. exporters to Kazakhstan have consistently identified the requirement to obtain a "transaction passport" to clear imported goods through customs as a significant barrier to trade. This regulation is designed to stem capital outflows and money laundering by requiring importers to show copies of contracts and other documentation to legitimize and verify the pricing of import/export transactions. The practice retards the growth of trade, as the regulations place relatively tight restrictions on transaction parameters. For example, the regulations allow a maximum financing term for imports of 120 days, after which time the transaction passport lapses; extending it requires the approval of the National Bank. This requirement limits the range of business activity and creates a potential bias toward short-term financing in the economy.

There is a simplified customs regime for small entrepreneurs and individuals carrying cargo valued up to $10,000. This provision favors “shuttle” traders bringing in goods from neighboring countries and may contribute to Kazakhstan’s “shadow economy.” Amendments to the Customs Code, aimed at bringing Kazakhstani legislation further into compliance with the WTO standards, are currently in the works. Among the proposed changes is the simplification of the transaction passport requirement. The government hopes to enact the new statutes in 2007.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Between 2004 and 2006, the Kazakhstani government adopted the following laws in furtherance of its efforts to develop a national system of standardization and certification: “On Technical Regulation”; “On Ensuring Uniformity of Measurement;” “On Supporting Government Regulations;” and “On the Mandatory Confirmation of Compliance of Products in the Republic of Kazakhstan.”

The Kazakhstani Law on Technical Regulation distinguishes the state’s responsibilities from those of the private sector. The government is responsible for product safety but delegates quality control responsibilities to authorized private institutions. A wide range of goods are subject to mandatory certification requirements which apply to both domestically-produced and imported goods. A related regulation lists the specific categories of products subject to certification, including machines, cars, agricultural and telecommunications equipment, construction materials, fuel, clothes, toys, food and drugs.

Standards for imported goods are addressed further in the Law on Technical Regulation which specifies that contracts for the delivery of imported goods subject to mandatory certification should be required to confirm compliance with Kazakhstani mandatory certification requirements. Delivery contracts must also be accompanied by documents describing the products and listing the country of origin, the producer, the expiration date, any storage requirements as well as the code of use in both the Kazakh and Russian languages. In addition, the law states that foreign certificates, testing protocols and compliance indicators must be in accordance with international treaties.

In lieu of requiring re-labeling of imported products, the Kazahkstani government accepts the addition of Kazakh language stickers on those products. Kazakhstan has also issued a wide-ranging regulation exempting pharmaceutical products and several other categories of goods from the Kazakh labeling requirement.

Kazakhstan intends to accede to the International Laboratory Accreditation Conference (ILAC) and the International Accreditation Forum (IAF). This step would automatically make Kazakhstan a party to a number of international treaties on metrology and standards.

The government has opened an Information Center to provide information on technical regulations to foreign companies and governments. A variety of information, including information on technical regulations, is available on the Information Center's website, but only in Russian and Kazakh.

New legislation aimed at bringing the legal environment into compliance with the WTO Agreement on Technical Barriers to Trade is in the course of being developed. New draft laws and amendments, such as statutes dealing with product safety, are being considered by the Parliament.

GOVERNMENT PROCUREMENT

Kazakhstan is reforming and harmonizing its system of state procurement. Some potential U.S. suppliers have raised concerns about the transparency and efficiency of Kazakhstan's government tender process. The "Regulation on the State Procurement Agency" was approved in March 1999. In October 2004, the State Procurement Agency was merged with the Committee on Financial Control and subordinated to the Ministry of Finance. The procurement process in Kazakhstan is regulated by the law "On State Procurement" and by the Budget Code.

The government has taken steps to improve the transparency of the procurement process. In particular, the Committee on Financial Control has published on its website the list of agencies and state enterprises that are subject to state procurement regulations (the "Rules of Inclusion and Exclusion") and a blacklist of unfair and unreliable suppliers of goods and services. However, the government procurement situation remains problematic. Further legislative improvement in this area is needed. The government is currently developing new procurement legislation, which it hopes to adopt in 2007.

The "Rules on Oil and Gas Procurement" give significant preferences to local suppliers, and establish what many firms, foreign and domestic, consider unwarranted state interference in even small tenders.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The government's effort to diversify the economy away from the energy sector and spur the growth of a domestic high technology industry, along with the WTO accession process, has led to a strong emphasis on IPR protection. The progress achieved on the legislative front as well as in enforcement was reflected in the May 2006 removal of Kazakhstan from the USTR's Special 301 Watchlist. Although pirated films and music are still widely available, the vast majority are believed to be imported, not produced domestically. Armed with November 2005 statutes authorizing stiffer penalties for violators, the authorities have conducted numerous raids against distributors of pirated recordings.

The government's efforts have greatly helped to expand the Kazakhstani market for licensed goods. Still, much remains to be done, particularly in making the customs controls a more effective line of defense against incoming infringing goods. Legislation granting customs officials *ex officio* powers is reportedly under development. Further progress is also needed in the realm of civil adjudication, where an increasing number of IPR disputes are being settled. Although civil courts have been used effectively to stem IPR infringement, judges often lack expertise in the area of IPR.

SERVICES BARRIERS

The Oil and Gas Procurement Regulations stipulate that oil companies must purchase services only from Kazakhstan-based companies unless the required service is unavailable in Kazakhstan.

Concerns have been raised about possible preferential treatment for Kazakhstan's recently launched domestic satellite (KazSat 1), which could result in competitive disadvantages for U.S. satellite operators serving the Kazakhstan market.

INVESTMENT BARRIERS

Kazakhstan's 2003 Law on Investments provides the legal basis for foreign investment in Kazakhstan. In general, investors have concerns about the law's narrow definition of investment disputes, its lack of clear provisions for access to international arbitration, and certain aspects of investment contract stability guarantees.

Most foreign investment in Kazakhstan is attracted to the oil and gas sector. One notable aspect of this sector is the State's active promotion of "local content" in purchases of goods and services for petroleum operations. (Such requirements may raise concerns with respect to the performance requirements obligation of the United States-Kazakhstan Bilateral Investment Treaty (BIT), which entered into force in 1994.) For example, the 1999 amendments to the Oil and Gas Law required mining and oil companies to favor local goods and services. The rules implementing these legal provisions were enacted in June 2002 (Decree 612). The decree has had an onerous effect on investors by also requiring government involvement in, and approval at, each stage of private procurement.

Amendments to the Law on Subsurface Use, adopted in December 2004, require investors to state in their tender proposals what affirmative actions they will take to satisfy local content requirements. Operations can be suspended for up to six months if a company is found to have failed consistently to meet the requirements.

In addition, the July 2005 Law on Production-Sharing Agreements (PSAs) contains explicit requirements regarding the local purchase of goods and services and the hiring of Kazakh nationals, and applies to all investment in offshore oil and gas exploration and production. The new law also requires that KazMunayGas, the national oil company, have a minimum 50 percent share in offshore projects, and it creates a new means by which the national oil company may obtain field rights outside of a tender process. Taken together, these clauses establish KazMunayGas as a necessary partner for international oil companies investing offshore, at least in the initial stages of an agreement.

In 2005, Kazakhstan added a controversial "pre-emption" amendment to its Law on Subsurface Use. The amendment guarantees the state the right of first refusal when a party seeks to sell any part of its stake in a mineral resource extraction project. The state claims this preeminent right even in cases where the controlling agreement assigns pre-emptive rights elsewhere (*e.g.*, to other investors in a consortium). The amendment applies the pre-eminent right retroactively. This amendment raises serious questions about the government's respect for contract sanctity.

In October 2005, the government asserted even broader pre-emption rights under national law by claiming for itself pre-emptive rights when an investor seeks to purchase a company that possesses drilling rights. Theoretically, this latest assertion of pre-emptive rights (which has not yet been tested in court) could be read as a statement that the government of Kazakhstan has a preferential right to purchase or prevent the sale of stock in any company that is involved in the oil, gas or mining sectors in Kazakhstan.

The Law on Subsurface Use prohibits gas flaring except in emergency cases. Amendments adopted in October 2005 mitigated this requirement, providing for a transition period up to July 1, 2006, for subsurface users to draft and present to the government a program for gas utilization.

Kazakhstani law allows citizens of Kazakhstan and foreigners to own land under commercial and non-commercial buildings, including dwellings and associated land. Such land may also be leased for up to 49 years. The new land code, which came into effect in June 2003, for the first time allowed the private ownership by Kazakhstanis of agricultural land, in addition to industrial, commercial, and residential land. Foreign individuals and companies may still only lease agricultural land for up to 10 years, however, and the wording of the law is unclear with regard to the purchase of such land by local legal entities, either wholly-owned or joint ventures. Kazakhstani authorities often require, as part of a foreign firm's contract with the government, that the firm contribute to social programs for local communities.

Foreign ownership of individual mass media companies is limited to 20 percent. Foreign insurance companies are limited to operating in Kazakhstan through joint ventures with Kazakhstani companies. Overall capital of all foreign insurance companies may not exceed 25 percent of the non-life insurance market and 50 percent of the life insurance market. Legislation that lifted the restrictions on foreign participation in the registered capital of Kazakhstani banks was approved and came into force in December 2005. However, some restrictions on non-residents' activity in the financial sector still remain. Limitations on foreign ownership in the banking and insurance sectors may raise concerns with respect to the national treatment obligation of the United States-Kazakhstan BIT.

Foreign investors continue to have difficulty obtaining work permits for employees who are not Kazakhstani nationals. The quota is set each year, based on a percentage of foreign labor as a share of the total national work force. Many companies report that permits for key managers and technicians are routinely rejected or granted for unreasonably short periods or are conditioned upon demands for additional local hires. Companies also note that hiring regulations are confusing and interpreted inconsistently by local officials and by the Ministry of Labor and Social Protection.

The government, however, has been steadily increasing the number of work permits available. In 2004, the number of permits was limited to 0.21 percent of the economically active population (estimated at about 8 million people). The figure increased to 0.32 percent in 2005 and to 0.55 percent in 2006. For 2006, the quota for the first and second categories (managers and professionals) was increased from 0.21 percent to 0.24 percent. For the third category (skilled workers), the quota rose from 0.11 percent to 0.18 percent. For the fourth category (seasonal farm workers), the quota remains unchanged at 0.13 percent.

Kazakhstan adopted a new international commercial arbitration law in late 2004. The law defines the role for international arbitration institutions in Kazakhstan at all stages, from the adoption of an arbitration clause in a contract through the execution of an arbitral decision. The law defines the organizational and legal elements of arbitral proceedings in Kazakhstan, and the conditions for recognition and execution of arbitral decisions made in foreign states. In practice, the government of Kazakhstan has not consistently observed international practices relating to the enforcement and recognition of arbitral awards.

OTHER BARRIERS

There are other structural barriers to investment in Kazakhstan, including a weak system of business law, a lack of an effective judicial system for breach-of-contract resolution and an unwieldy government bureaucracy. Many companies serving the Kazakhstani market report significant logistical difficulties. In addition, there is a burdensome tax monitoring system for all companies operating in Kazakhstan. Many companies report the need to maintain excessively large staffs in Kazakhstan to deal with the cumbersome tax system and frequent inspections. The tax authorities have, on occasion, initiated criminal cases against local employees of foreign firms.

KENYA

TRADE SUMMARY

The U.S. goods trade surplus with Kenya was $172 million in 2006, a decrease of $112 million from $284 million in 2005. U.S. goods exports in 2006 were $526 million, down 16.8 percent from the previous year. Corresponding U.S. imports from Kenya were $354 million, up 1.6 percent. Kenya is currently the 82nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Kenya in 2005 was $89 million (latest data available), up from $86 million.

IMPORT POLICIES

Tariffs

Kenya is a Member of the World Trade Organization (WTO), the Free Trade Area of the Common Market for Eastern and Southern Africa (COMESA), and the East African Community (EAC). High import duties and Kenya's value-added tax (VAT) pose trade barriers, especially in the agricultural sector. Kenya's import regulations on agricultural products are sometimes altered to reflect fluctuations in domestic supply and demand as well as political factors. The government continues to carefully control imports of seed corn by subjecting hybrid varieties to a certification process that effectively restricts trade.

With the establishment on January 1, 2005 of the EAC Customs Union (between Kenya, Uganda, and Tanzania), the government established three tariff bands: zero duty for raw materials and inputs; 10 percent for processed or manufactured inputs; and 25 percent for finished products. According to the WTO, the move from national tariffs to a common external tariff under the EAC reduced average tariff protection in Kenya. A selected list of sensitive items, comprising 58 tariff lines, was assigned rates above 25 percent, including milk and milk products, corn, rice, wheat and wheat flour. (Wheat flour is imported duty-free from member states of COMESA and the EAC.) Tree nuts, including almonds, are not classified under the sensitive products list but experienced an increase in duty. The tariff on unshelled almonds increased from zero percent to 10 percent, and shelled almonds and other nuts increased from 15 percent to 25 percent. The duty on used clothing, a major U.S. export to the EAC region, was increased to 45 percent or $0.30 per kilogram, whichever is higher. While the U.S. Government welcomed the simplification of the tariff system that came about as a result of the EAC Customs Union, it has raised concerns with Kenya and other EAC members about exceptional tariff increases on used clothing, as well as higher tariffs on almonds and some other U.S. exports to the region.

In 2004, the government introduced an export tax on hides, skins, and scrap metal to encourage local processing rather than the export of these items. Refrigerated trucks and hotel equipment received duty exemptions.

In June 2006 the government eliminated import duties on solar equipment and accessories, bicycle kits, kaolin and kaolinic clays, coke fuel, filter paper, wire of stainless steel and nickel bars, and circular interwoven discs and netting glass fiber. Additionally, import duties were reduced from 25 percent to 10 percent for unassembled kits for motorcycles and unprinted aluminum foil, while duties were increased from 10 percent to 25 percent for floor coverings and mats and from 35 percent to 50 percent on matches.

The government sometimes appears to use the VAT to support policy priorities, both to protect "strategic" sectors such as transportation and agriculture and to address short-term needs. For example, in June 2006, Kenya eliminated the VAT on pharmaceuticals; wheat flour; computer equipment, parts and accessories; liquid petroleum and coal; sanitary pads, baby diapers, napkins, and feeding bottles; supply and treatment of natural water; tractor tires, agricultural tractors, and semi-trailers; and transportation of unprocessed agricultural produce and raw materials such as cut flowers, unroasted coffee, green tea, raw sugar cane, cereals, un-ginned cotton, raw or smoked tobacco and raw pyrethrum.

Non-Tariff Measures

Kenya has removed most non-tariff measures. Those import controls still in existence are based on health, environmental, and security concerns. All Kenyan imports are required to have the following documents: import declaration forms (IDF), a clean report of findings from the Pre-shipment Verification of Conformity agent for regulated products (see Standards section), and valid *pro forma* invoices from the exporting firm.

Kenyan law limits the importation of refined petroleum products by stipulating that any consignment of oil that a company imports for the domestic market be 70 percent crude, thus requiring that it be refined by the Kenya Petroleum Refineries. A senior private sector manager estimates the cost of petroleum products refined in Kenya is about $0.14/gallon higher than imported products, costing Kenyan consumers almost $70 million per year. Oil imports en route to other countries are not affected by this requirement.

Customs Procedures

Kenya is a party to the WTO Customs Valuation Agreement and uses the transaction value for valuation of goods imported from other WTO signatories. Concerns have been raised, however, that this system is not applied consistently. Kenya's customs procedures are detailed and rigidly implemented, often leading to delays in clearance of both imports and exports. In September 2005, the Kenya Revenue Authority (KRA) introduced a new electronic clearing system at the Port of Mombasa, Kenya's major port of entry for imports. Initially, poor implementation, capacity constraints, and information sharing problems created significant delays for some importers. The two private sector firms that administer Kenya's Pre-shipment Verification of Conformity regime (Intertek Testing International and Societe Generale de Surveillance) have been charged with ensuring that up-to-date customs valuation and risk assessment methods are applied.

STANDARDS, TESTING, LABELING AND CERTIFICATION

On September 29, 2005, the government introduced a new Pre-shipment Verification of Conformity (PVC) program. Under the new system, all goods entering the country require a Certificate of Conformity from the country of origin, demonstrating conformity to Kenyan standards. For consignments shipped without inspections, importers may apply for a destination inspection subject to acceptance by the Kenya Bureau of Standards' (KEBS). KEBS is a regulatory body under the Ministry of Trade and Industry. For destination inspection, Kenya requires the importer to pay a 15 percent penalty charge and post a 15 percent bond on the CIF (cost, insurance, freight) value in addition to paying the costs of the test.

Commercial and research applications of agricultural biotechnology in Kenya are currently regulated through guidelines that are neither formal regulations nor enacted law. The guidelines, initially published in 1998 and reviewed yearly, describe a committee-based approach for review and approval of agricultural biotechnology imports, including specific review of end uses (e.g., planting seeds for trials). Substantial quantities of agricultural biotechnology products have been imported into Kenya for food aid purposes since the establishment of the National Biosafety Committee, and significant volumes of food products derived from agricultural biotechnology crops are available commercially. Kenya also imports maize from South Africa, where biotechnology varieties are commercially available.

On September 28, 2006, the Cabinet approved a "National Biotechnology Development Policy 2006" document, which signaled the government's positive attitude toward the use of biotechnology. A draft Biosafety Bill has also been presented to the Cabinet and signed by the Minister of Science and Technology. Although there is momentum in favor of the bill, its actual enactment remains uncertain. As of mid-March 2007, it had yet to be brought before Parliament for debate. Kenya is a party to the Cartagena Protocol on Biosafety.

The Kenya Plant Health Inspectorate Service (KEPHIS), a regulatory agency for quality control, subjects certain imported agricultural goods to further inspection. The Inspectorate also regulates the import and export of plant materials and trade in biotechnology items that require special handling to ensure they are not accidentally released into the environment. KEPHIS evaluates commercial hybrid grain seeds for a period of three years before the seeds can be released to market. According to industry representatives, the certification process can be tedious and restrictive, and the three-year period needed for the government to approve or reject a variety is burdensome. The Ministry of Agriculture restricts cereal seed imports by setting quantitative ceilings. However, once a variety is certified, the quantitative restrictions are lifted.

Any plant consignment arriving in Kenya should have a copy of the plant import permit provided by KEPHIS and an additional health certificate (a phytosanitary certificate), international model, or its equivalent. U.S.-origin genetically modified products must indicate genetic modification status as an additional declaration, with the details stated on the phytosanitary certificate, or they must have a certificate of analysis from a credible laboratory.

GOVERNMENT PROCUREMENT

Kenya is not a signatory to the WTO Agreement on Government Procurement. However, in 2005, Kenya enacted the Public Procurement and Disposal Act, which provides for a Public Procurement Oversight Authority. The Authority entered into force on January 1, 2006, but certain elements of its implementation remain uncertain. Its nine-member Oversight Advisory Board is appointed by the Minister of Finance.

The Public Procurement and Disposal Act is designed to make procurement more transparent and accountable, requiring procurement agencies to carry out an annual update of pre-qualified firms, especially when dealing with restricted tenders, such as security-related tenders. The act establishes penalties for violations of the law, with penalties for individuals up to Ksh4 million (approximately $53,000) in fines, or imprisonment for three years, or both; and for corporations, fines of up to Ksh10 million (approximately $133,300). The Act gives exclusive preferences to Kenyan citizens where the funding is 100 percent from the government of Kenya or a Kenyan body and the amounts are below a yet-to-be determined threshold. The law allows for restricted tendering under certain conditions, such as when the complex or specialized nature of the goods or services limits the competition to pre-qualified contractors. Restrictions can also be imposed if the time and costs required to examine and evaluate a large number of tenders would be disproportionate to the value of the tender. It is uncertain whether the new law will enhance the transparency of national security-related procurements, which have been the subject of a number of high-profile corruption cases in recent years.

The government has taken steps to increase transparency in its public procurement process by removing from its tender documentation a clause that read: "The government reserves the right to accept or reject any bid and is not obliged to give any reasons for its decisions." The Central Tender Board now publishes its decisions and, if a bidder asks, provides the reasons for rejecting certain bids.

In May 2006, the Supplies Management and Practitioners Bill of 2006 was tabled in Parliament for debate. The bill, yet to be passed, aims to complement the Public Procurement and Disposal Act of 2005 by specifying that only a procurement professional may be entrusted with the responsibility of procurement in any public entity.

The World Bank, International Monetary Fund, European Union, and other donors have conditioned some of their official assistance programs, including direct budget support, on reform of public procurement. The donor community hopes the revised public procurement laws will improve Kenya's public procurement system, which has been frequently marred by flawed contracts, awards to noncompetitive firms, and awards to firms in which government officials have a significant interest. Kenya's conflict-of-interest regulations are often compromised and rarely enforced.

EXPORT SUBSIDIES

Kenya maintains a Manufacturing Under Bond (MUB) program that is designed to encourage manufacturing for export. MUB goods are expected to be exported. If not, they are subject to a surcharge of 2.5 percent and are subject to all other duties. The program is open to both local and foreign investors. Enterprises operating under the program are exempted from duty and VAT on imported raw materials and other imported inputs and have a 100 percent investment allowance on plant, machinery, equipment, and buildings. The Kenyan Export Processing Zones (EPZs) offer a variety of fiscal and in-kind incentives such as tax holidays, less red tape, administrative shortcuts, and superior infrastructure not found anywhere else in the country. Firms operating in EPZs are exempted from all withholding taxes on dividends and other payments to non-residents during the first 10 years. They are also exempted from import duties on machinery, raw materials, and intermediate inputs. There are no restrictions on management or technical arrangements, and EPZ companies have access to expedited licensing procedures. Kenya's EPZs have become the center of Kenya's successful garment and apparel sector.

EPZ firms are allowed to sell up to 20 percent of their output on the domestic market. However, they are liable for all taxes on products sold domestically plus a 2.5 percent penalty. There is no general system of preferential financing, although sectoral government development agencies in areas such as tourism and tea are supposed to provide funds at below-market rates to promote investment and exports.

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INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Kenya is a member of most major international and regional intellectual property conventions including the World Intellectual Property Organization (WIPO), the African Regional Industrial Property Organization, the Paris Convention for the Protection of Industrial Property, and the Berne Convention on the Protection of Literary and Artistic Works. The Kenya Industrial Property Act (as amended) is the implementing legislation for Kenya's obligations under the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. U.S. industry has called on the Kenyan government to take a more active role in enforcing intellectual property protection and combating the spread of counterfeit and pirated goods. Pirated and counterfeit products in Kenya, mostly from South Asia and East Asia, present a major impediment to U.S. business interests in the country. Industry estimates that copyright piracy of business software, records, and music in Kenya cost U.S. firms $25 million in lost sales in 2005.

Patents and Trademarks

Patent protections are enshrined in Kenya's Trademarks Act, which established the Kenya Industrial Property Institute (KIPI). KIPI considers applications for and grants industrial property rights and privileges that are valid for 10 years on a renewable basis. The Amendments to the Act -- designed to bring Kenya into conformity with the Madrid Agreement and Protocol as well as the TRIPS Agreement -- were passed and came into force in 2004. The act provides protection for registered trade and service marks and entitles foreign investors to national treatment and priority right recognition for their patents' and trademarks' filing dates.

Copyrights

Computer programs, sound recordings, broadcasts, and literary, musical, artistic, and audiovisual works are protected under the Copyright Act. The Kenya Copyright Board (KCB) is charged with coordinating all licensing and treaty activity and has the authority to inspect, seize, and detain suspect articles and to prosecute offenses. In June 2006, the Attorney General appointed the first KCB executive director. The KCB established an IPR enforcement unit in October 2006. The KCB has minimal staff and has not, to date, effectively carried out its mandate. Infringement of copyright, especially on music and films, is pervasive, and enforcement remains sporadic at best.

Kenyan artists have formed organizations to raise awareness of intellectual property rights and to lobby the government for better enforcement, but merchants are still free to peddle pirated versions of Kenyan and international works without fear of arrest or prosecution. Pirated materials and counterfeit goods produced in other countries are readily available in all major towns. These materials include pre-recorded audiocassette tapes, DVDs, CDs, and consumer products. General understanding of the importance of intellectual property is limited. In October 2005, however, the High Court ruled in favor of the plaintiff in a copyright infringement case (Alternative Media Limited vs. Safaricom Limited). In November 2006, the American Chamber of Commerce of Kenya, in conjunction with the Ministry of Trade and Industry and the Kenya Association of Manufacturers, held a pioneering regional IPR conference in Nairobi.

Enforcement

In July 2006, the Ministry of Trade and Industry reported that Kenyan manufacturers incur a net loss of Ksh30 billion (over $400 million) due to counterfeit products, while the government loses Ksh6 billion (approximately $80 million) in potential tax revenue annually due to counterfeit products. Imported drugs, shoes, textile products, office supplies, tubes and tires, batteries, shoe polish, soaps, and detergents are the most commonly counterfeited items. Historically, penalties and enforcement for copyright infringement have been low. The Attorney General has yet to introduce before Parliament a proposed Counterfeit Goods Bill that would strengthen the ability of law enforcement agencies to investigate and prosecute manufacturers and distributors of counterfeit and pirated goods. In December 2006, the Minister of Trade and Industry presided over the destruction of 3.2 million counterfeit Bic pens that the Kenya Revenue Authority had confiscated.

SERVICES BARRIERS

In general, individuals and companies supplying services, whether local or foreign, are accorded the same treatment.

Telecommunications

Kenyan telecommunications are dominated by three state bodies: Telkom Kenya, the monopoly fixed-line services provider; the Communications Commission of Kenya (CCK), the regulatory body; and the Postal Corporation of Kenya. Kenya has witnessed significant growth in the information, communication, and technology sector in terms of telephones lines, Internet Service Providers (ISPs), and the number of Internet users and broadcasting stations.

The government has liberalized the mobile telephone market. In January 2005, the government ended Telkom Kenya's monopoly on Very Small Aperture Terminals (VSATs) and Internet bandwidth, and subsequently licensed a number of competing firms. In August 2005, CCK issued guidelines on the provision of Voice-Over-Internet Protocol (VoIP) and to date there are a number of licensed VoIP providers operating in the country.

In February 2006, the CCK de-registered 30 Internet Service Providers (ISPs). By June 2006, there were 53 registered ISPs in operation, 19 public data network operators, and six commercial VSAT hub operators. There were also two licensed call centers, but only one was in operation. Foreign ownership of an ISP is restricted to 40 percent.

Since 2004, Kenya's updated regulatory framework includes:

-- Permitting mobile operators (GSM) to construct and operate their own international gateways;

-- Issuing additional licenses to provide Internet backbone and gateway, broadcast signal distribution, and commercial VSAT services on a first-come, first-served basis;

-- Allowing public data network operators (PDNOs) to establish international gateways for data communication services; and

-- Allowing Internet backbone and gateway operators, broadcast signal distributors, commercial VSAT operators, and public data network operators to carry any form of multimedia traffic.

In a new National Information and Communication Technology Policy released in late 2005, the government proposed major changes in the sector, including a further restructuring of Telkom Kenya. The telecommunications parastatal's privatization is now scheduled for April 2007.

In September 2006, the government announced the results of a pre-qualification exercise for a second national operator (SNO) for fixed-line telephone services in which seven firms/consortia were selected. In late October 2006, the press announced that CCK had offered the SNO license to operate both fixed and mobile telephone services to a Dubai-based company. However, the deal fell apart and the second-highest bidder, an Indian company, was offered the license and, reportedly, has accepted.

In September 2006, a Kenyan court ruling ended an ownership dispute that had prevented Econet Wireless from exercising its rights to roll out a new mobile network under a license it had won in 2004. As of the end of 2006, however, the CCK still had not provided the company with the network codes necessary to begin its roll-out, and the company publicly accused government officials of corruption in the matter.

To date, the deficiency of competition has contributed to increased costs of doing business. Consumers complain that Telkom Kenya's land lines are often down and that cell phone service is too expensive. Like the fixed-line market, cellular service provides consumers with few options. Currently only two mobile phone firms, Safaricom (a joint venture of Telkom Kenya and Vodafone) and Celtel (a joint venture of Vivendi and Sameer Investments), are licensed to provide mobile telecommunications. As of June 2006, Safaricom and Celtel had over 6.5 million subscribers, up from 4.6 million from June 2005. Safaricom commands over 66 percent of the market share. The government intends to sell 34 percent of the Safaricom shares it holds through Telkom Kenya through an initial public offer (IPO) on the Nairobi Stock Exchange while selling 26 percent to a strategic investor. In the current arrangement, 9 percent of the Safaricom shareholding will be sold to finance the sale of Telkom Kenya. Under the existing shareholders' agreement signed in 1999, the government cannot sell its shares of Vodafone, which has pre-emptive rights over the shares.

INVESTMENT BARRIERS

Kenya revised its investment promotion laws in late 2005. Foreign investors who seek to benefit from incentive programs under the Investment Promotion Act of 2004, as amended, must obtain a certificate from the newly established Kenya Investment Authority and confirm that the amount to be invested is equivalent to at least $100,000. Domestic investors are required to invest a minimum of Ksh5 million (approximately $70,000) to qualify. The Investment Promotion Act, as amended, reduces the number of required licenses from 71 to 18. The holder of an investment certificate immediately qualifies for all the required licenses listed in the Second Schedule of the Act. For a maximum period of 12 months after the issuance of an investment certificate, the licenses are deemed to have been issued, subject to the submission of appropriate forms and fees. According to the Ministry of Trade and Industry, with the establishment of the Kenya Investment Authority, the registration of foreign firms now involves a simple five-step process.

A Foreign Investment Advisory Service (FIAS) report found that many regulatory systems are outdated, do not serve an identifiable purpose, and are exploited by low-level officials to extract bribes. The report also found that the current business registration system in Kenya is archaic, inefficient and unreliable. Starting a business takes on average over 54 days, lower than the regional average of 61.8 days but significantly higher than EAC neighbors Uganda and Tanzania (30 days). A private sector initiative found that the government maintained 1,300 license and fee requirements that have a direct or indirect impact on trade and investment. However, in June 2006, the government abolished 37 licenses and appointed a commission to eliminate or simplify an additional 700 licenses that directly affect trade and investment in the country. Reviews of the legal sector found that the court system is in disarray, with a huge and growing backlog of cases. Corruption and inefficiency further reduce the credibility of the legal and judicial systems in Kenya. These deficiencies continue to be an obstacle to investment, especially since they make financial institutions reluctant to make loans and increase the risk premium.

The Kenyan government allows up to 75 percent foreign ownership (personal or corporate) of firms listed on the Nairobi Stock Exchange (NSE). If foreign ownership in a company is 75 percent at the time of listing on the NSE, the foreign owner is allowed to maintain (or reduce) but not to increase its share. Foreign investors may be allowed to increase their investment with prior written approval from the Capital Market Authority if the shares reserved for local investors are not fully subscribed. Foreign brokerage companies and fund management firms must be locally registered companies, with Kenyan ownership of at least 30 percent and 51 percent, respectively. Foreign ownership of equity in insurance, telecommunications, and companies listed on the Nairobi Stock Exchange is restricted to 66.7 percent, 70 percent, and 75 percent respectively. Foreign equity in companies engaged in fishing activities is restricted to 49 percent of the voting shares as stipulated by the Fisheries Act of 1991.

Foreigners are not permitted to hold a freehold land title anywhere in the country, but can be granted leasehold titles -- normally 99 years for land in towns and coastal beachfronts, and 999 years elsewhere. Investors in Kenya are required to comply with environmental standards that are enforced through the licensing regime. The cumbersome and opaque process required to purchase land, and concerns about security of title because of past abuses relating to distribution of public land, constitute serious impediments to new investment. An investment guide to Kenya, published by the United Nations and International Chamber of Commerce in June 2005, asserts that individuals and companies involved in business disputes routinely turn to the courts for redress of grievances. Although arbitration and alternative dispute resolution are becoming increasingly popular, most disputes are still resolved through litigation in the courts. Lack of confidence in the speedy and fair resolution of disputes, and requests from officials for illicit payments, continue to dampen the country's ability to attract more foreign investment.

Kenya has been slow to open public infrastructure to competition because the state-owned companies that control infrastructure are considered "strategic" enterprises. The reform and partial privatization of the telecommunications, power, and rail sectors has fallen behind schedule, but is proceeding. The Kenyan Parliament passed a Privatization Law in 2005 that outlines how the government will divest its shares in the state corporations. In May 2006, the government-owned Kenya Electricity Company sold 30 percent of its shares. The Mumias Sugar Company and Kenya Commercial Bank, among other entities previously considered "strategic parastatals," are lined up for privatization in the coming year. In November 2006, the Kenyan and Ugandan governments entered into a 25-year concession agreement with "Rift Valley Railways," a consortium led by a South African firm to run the Kenya-Uganda railroad. The Kenya Port Authority plans to privatize some of its functions in the Port of Mombasa.

Kenya applies fees and security bonds in an attempt to discourage the employment of foreign labor. New foreign investors with expatriate staff are required to submit plans for the gradual phasing out of non-Kenyan employees. Some investors continue to complain that it is difficult to obtain work permits for expatriate staff.

OTHER BARRIERS

Customs Clearance

Recent changes by the Kenya Revenue Authority for electronic customs clearances have created some confusion and delays at Kenya's ports of entry. Until the program is improved, revised, or eliminated in favor of port of entry inspections, it will pose an added expense and administrative burden on exporters to Kenya. Also, allegations of corruption and on-going delays in cargo handling at the Port of Mombasa, the region's major trade hub, continue to add unnecessary costs for exporters. In response to demands from Kenyan exporters and the Kenya Association of Manufacturers (KAM), in October 2006 the government vowed to begin 24-hour, round-the-clock customs services at the port, but is still working out the operational and budget details.

Corruption

Corruption remains a major deterrent to greater investment, both foreign and domestic, and government officials bemoaned the lack of foreign direct investment in 2005-2006. Transparency International's 2005 Corruption Perceptions Index places Kenya 145th among 159 countries surveyed. According to the International Finance Corporation's Investment Climate Assessment for Kenya, corruption was rated as a severe or major obstacle by three-quarters of firms surveyed, with two-thirds of respondents stating they were expected to pay bribes for government contracts. In late 2005 and early 2006 there were public disclosures of high-level, grand-scale graft in both the previous and current administrations. Calls for greater accountability on the part of the media, civil society, and donors led to the unprecedented resignation of three cabinet ministers in early 2006, generating hopes that such activities may at last be on the wane. The Kenya Anti-Corruption Commission launched several investigations in 2006 against senior government officials. However, none of these cases has been successfully prosecuted, in large part due to bottlenecks in the Attorney General's Office and loopholes in the judiciary.

KOREA

TRADE SUMMARY

The U.S. goods trade deficit with Korea was $13.4 billion in 2006, a decrease of $2.6 billion from $16 billion in 2005. U.S. goods exports in 2006 were $32.5 billion, up 16.9 percent from the previous year. Corresponding U.S. imports from Korea were $45.8 billion, up 4.7 percent. Korea is currently the 7th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Korea were $10.3 billion in 2005 (latest data available), and U.S. imports were $6.3 billion. Sales of services in Korea by majority U.S.-owned affiliates were $4.3 billion in 2004 (latest data available), while sales of services in the United States by majority Korea-owned firms were $378 million.

The stock of U.S. foreign direct investment (FDI) in Korea in 2005 was $18.8 billion (latest data available), up from $16.8 billion in 2004. U.S. FDI in Korea is concentrated largely in the manufacturing, banking, finance, and wholesale trade sectors.

FREE TRADE AGREEMENT (FTA) NEGOTIATIONS

USTR notified Congress of the President's intent to negotiate a United States-Korea Free Trade Agreement (KORUS FTA) on February 2, 2006. If successfully concluded, the KORUS FTA will have significant economic, political, and strategic benefits for both countries. It will be the most commercially-significant FTA the United States has completed in 15 years. Two-way trade between the United States and Korea is valued at $78.3 billion and should grow once an FTA is concluded. An FTA with Korea will likely produce gains from increased services trade, increased agriculture and industrial goods trade, enhanced transparency in Korea's regulatory system, improvements in intellectual property protection in Korea and the promotion of bilateral investment.

Building on the close cooperation between the United States and Korea in the Asia-Pacific Economic Cooperation (APEC) forum and the Doha Development Agenda (DDA) negotiations in the World Trade Organization (WTO), an FTA will help strengthen Korea's partnership with the United States in multilateral and regional fora. The KORUS FTA will also further deepen a 50 year-old plus economic and strategic relationship with Korea. In addition, as the United States' first FTA negotiation with a North Asian partner, conclusion of this agreement would underscore the U.S. commitment to deepening and strengthening trade ties with the many dynamic and fast-growing countries in the region.

IMPORT POLICIES

Tariffs and Taxes

Korea's average applied tariff rate is 11.2 percent for all products and the simple average of Korea's WTO bound tariffs on all agricultural products is 52 percent. Although Korea bound 94.5 percent of its tariff lines in the WTO Uruguay Round negotiations, tariffs on most fishery products are not bound.

Korea's tariffs on many high-value agricultural and fishery products are very high. Korea imposes tariff rates of 30 percent or higher on most fruits and nuts, many fresh vegetables, starches, peanuts, peanut butter, various vegetable oils, juices, jams, beer and some dairy products. Many products of interest to U.S. suppliers, including apples, beef, certain cheeses, grape juice and grape juice concentrate, herbal teas, pears, table grapes, and a variety of citrus fruits are subject to tariff rates of 35 percent or higher.

Other products of interest to U.S. industry on which Korea imposes high tariffs include cherries, distilled spirits, frozen corn, frozen french fries, frozen uncooked and fully cooked poultry, pepperoni, prepared or mashed potatoes, soups, spicy pork, mixed vegetable juices and fruit wine. In many instances, Korea applies prohibitively high tariffs despite the absence of domestic production of certain agriculture products.

Korea also has established tariff-rate quotas (TRQs) intended to provide minimum access to previously closed markets or to maintain pre-Uruguay Round access. In-quota tariff rates may be very low or zero, but the over-quota tariff rates for some products, mostly agricultural and fishery, are prohibitive. For example, natural and artificial honey are subject to an over-quota tariff rate of 243 percent; skim and whole milk powder, 176 percent; barley, 324 percent; malting barley, 513 percent; potatoes and potato preparations, more than 304 percent; and popcorn, 630 percent. In addition, for some agricultural products such as corn grits, popcorn, and soy flakes, Korea aggregates raw and value-added products under the same quota. Domestic producer groups, which administer the quotas, invariably allocate the more favorable in-quota tariff rate to their larger members, who import raw ingredients.

In order to protect domestic agricultural, fishery and plywood producers, Korea also uses "adjustment tariffs" and compounded taxes to boost applied tariff rates. Most of the adjustment tariffs are imposed on agricultural and seafood products, including frozen croaker and skate, which are products of interest to U.S. exporters. In 2006, Korea renewed adjustment tariffs on 18 items, and reduced the tariff rates for eight of these 18 items.

As a result of its Uruguay Round commitments, Korea has eliminated tariffs on most or all products in the following sectors: paper, toys, steel, furniture and farm equipment. Korea has harmonized its chemical tariffs to final rates of zero percent, 5.5 percent, or 6.5 percent, depending on the product. However, industry reports that Korea does not apply these tariff rates to soda ash, which is dutiable at 8 percent. In addition, tariffs on scientific equipment have been reduced by 65 percent from pre-Uruguay Round levels. However, on textile and apparel products, Korea's bound tariffs are relatively high: 30 percent on several man-made fibers and yarns, 30 percent on many fabrics and most made-up and miscellaneous goods (for example, pillow cases and floor coverings) and 35 percent on most apparel items.

Quantitative Restrictions

Korea implements quantitative restrictions through its import licensing system which is administered by domestic producer groups or government buying agencies such as the Korea Agro-Fisheries Trade Corporation and the Public Procurement Services. The restricted products are listed on a Korean government export-import notice.

Rice

In the Uruguay Round, Korea received a ten year exception to tariffication of rice imports in return for establishing a Minimum Market Access (MMA) quota. This arrangement expired at the end of 2004, but Korea negotiated a ten year extension of the MMA arrangement. The extension called for Korea to double its total rice imports over the next ten years, increasing the MMA quota from 225,575 metric tons in 2005 to 408,698 metric tons in 2014. Along with the Country-Specific Quota (CSQ) commitments to purchase minimum amounts of imports from China, Thailand and Australia, Korea also agreed to purchase at least 50,076 metric tons annually from the United States until 2014. In addition, the quality of access has improved as rice marketed to consumers as table rice was for the first time included as a portion of the MMA quota. The table rice portion increases from 10 percent of the quota in 2005 to 30 percent in 2010. Korea's rice MMA quota has been in effect since 2005 and tendering commitments for 2007 are currently underway.

Customs Procedures

The Korea Customs Service frequently classifies "blended products" under the Harmonized System (HS) heading for the major ingredient of that product, rather than under the HS heading for the blended product itself, which usually has a lower tariff rate. Changes in classification are often based on seemingly arbitrary standards and are at odds with practices followed by other OECD members. For example, in order for dehydrated potato flakes to be classified as a blended product, they must include at least 10 percent non-potato ingredients. Blended products disadvantaged by this practice also include soybean flakes, flavored popcorn, and peanut butter chips.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Standards and Conformity Assessment Procedures (Sampling, Inspection, Testing and Certification)

Korea maintains certain standards, technical regulations, and conformity assessment procedures which are burdensome and have a disproportionate impact on imports. Certain Korean standards are more restrictive than international standards. For example, food that is "generally recognized as safe" in the United States is frequently detained when imported into Korea. The Korean Food and Drug Administration (KFDA) defines product categories for specific food additives narrowly, making it more difficult to obtain approval for microbial standards and food additives. Additionally, KFDA's determination that a product is new if formula ratios are changed, or if substitute ingredients are used, sets its procedures apart from other OECD countries.

Korean government agencies require prior approval to import pharmaceuticals, chemicals, cosmetics, computers, medical devices, telecommunications equipment, and other products. While many other countries require prior approval for some products, Korea's requirements cover a much broader range of products.

Korea's regulation of cosmetics includes burdensome requirements that do not appear to enhance product safety, quality, or efficacy. These burdensome requirements and a general lack of transparency in the regulatory system impede the ability of U.S. companies and products to compete in the Korean market.

Beef

Korea's market has been closed to imports of U.S. beef since the December 2003 detection of a single cow with Bovine Spongiform Encephalopathy (BSE) in the state of Washington. Before the ban, Korea was the third-largest export market for U.S. beef and beef products and other ruminants, with annual exports valued at $1.3 billion in 2003.

On January 13, 2006, the United States and Korea reached an initial agreement allowing resumption of U.S. "deboned" beef imports from cattle aged 30 months or less under a Beef Export Verification Program. However, three subsequent shipments of U.S. beef to Korea have been rejected by the Korean government due to the presence of "bone chips." The U.S. Government continues to consult with Korean government officials and has urged Korea to bring its BSE measures in line with international guidelines set by the World Organization for Animal Health (OIE) by allowing imports of all beef products deemed safe. The United States will continue to work vigorously toward achieving this important objective.

Throughout the ban on beef products, Korea continued to permit the imports of certain products containing ruminant ingredients, such as pharmaceuticals and cosmetics. However, U.S. exporters of those products have noted that since the ban on Korean beef was imposed, Korea's requirements for BSE-free certification have become increasingly burdensome and have begun to impede the flow of U.S. exports of these products to Korea.

Poultry

The U.S. Government has requested that Korea accept the "regionalization" concept to ensure that U.S. poultry is not completely banned should there be another outbreak of highly pathogenic avian influenza (HPAI). The U.S. Government continues to consult with Korea on this matter.

Convention on Biological Diversity

Korea has stated its intention to ratify and implement the Cartagena Protocol on Biosafety to the Convention on Biological Diversity (CPB) in 2007. Environmental risk assessments for biotechnology crops will become mandatory when the CPB is implemented in Korea. To date, 27 applications have been submitted for voluntary environmental assessments (13 for corn, one for soybeans, six for cotton, one for alfafa, and six for canola) and 18 of those have been completed to date. The U.S. Government continues to urge Korea to notify the appropriate WTO Committee of new requirements resulting from the implementation of the CPB in a timely manner and to implement minimally restrictive requirements.

Functional Foods

The United States continues to urge the KFDA to provide for sport nutrition or herbal products in Korea's functional food categories, as these categories are widely accepted in other countries. For instance, according to industry, sports nutrition products, such as glutamine and creatine powder, and herbal ingredients, such as milk thistle, bilberry and garlic, are not permitted by KFDA for use in making functional foods although these ingredients are widely used in sports nutrition or herbal products in the United States. Further, according to KFDA requirements, only tablets, capsules, granules, liquids and powders may be marketed as functional foods although sports nutrition products also come in other forms such as nutrition bars.

Organic Foods

KFDA only accepts copies of USDA National Organic Program (NOP) certificates issued to producers, manufacturers, or processors even though certificates issued to brokers or other handlers also meet the NOP requirements. Also, insufficient communication between KFDA headquarters and regional offices about changes in required import clearance documents, and the arbitrary interpretation of Korean regulations by KFDA field inspectors, continue to cause delayed clearance for imported organic products. The U.S. Government has expressed its concern with these practices and delays and urged the KFDA to take steps to eliminate them.

KFDA maintains a policy of zero tolerance for the presence of biotechnology products in processed food that is labeled as organic. In many countries, including the United States, Japan, and the European Union, organic standards are process-based (i.e. agriculture products must be produced and handled in certain ways in order to be certified as organic). As a result, the United States, Japan, the European Union and others have established regulations that allow for trace levels of biotechnology products in certified organic products. The United States will continue to urge KFDA to recognize this system-based approach and to reconsider its zero tolerance policy for presence of biotechnology products in foods that are labeled as organic.

Telecommunications Standards

The Korean government has been an active participant in the development of its telecommunications equipment market, both directly, through licensing conditions that mandate particular technology standards or require the use of particular technologies, and indirectly, through industry associations and quasi-governmental organizations such as government-affiliated research institutes. The U.S. Government has urged the Korean government to adhere to a policy of technology neutrality and to refrain from imposing mandatory standards or requiring the use of particular technologies that unnecessarily restrict trade or discriminate against U.S. suppliers of telecommunications or broadcast technologies or services. (*See also "Telecommunications"*)

Labeling Requirements

U.S. exporters cite Korea's non-transparent and burdensome labeling requirements as barriers to entry for a variety of goods. In particular, the distilled spirits industry has raised concerns with the cost of complying with both existing and constantly changing labeling requirements. Korea has recently indicated it is changing its requirements for end-use labeling of distilled spirits in order to minimize the burden of storing inventory for importers.

Korea has mandatory labeling requirements for biotechnology corn, soybeans, soybean sprouts, and fresh potatoes, and for processed foods containing biotechnology enhanced corn and soybeans. The United States has expressed concern to Korea that these labeling requirements appear more burdensome than necessary to achieve their stated goal of providing Korean consumers clear information. As a result, MAF officials have indicated to the U.S. Government that fresh potatoes are exempt from biotechnology labeling requirements and that any extra documentation is not necessary as long as no biotechnology potatoes are produced in the United States. Korea also accepts a notarized self-declaration as certification that products meet the criteria for exemption from biotechnology labeling.

In 2006, the U.S. apparel industry raised concerns about new labeling rules proposed by Korea for apparel. The new rules would require the name of the importer on some form of label or hangtag on every single garment. According to industry, providing such information is particularly onerous, especially when supplying thousands of individual garments to multiple importers. The United States continues to discuss this issue in the context of Doha Development Agenda negotiations in the WTO.

GOVERNMENT PROCUREMENT

Korea is a signatory to the WTO Agreement on Government Procurement (GPA). Under the GPA, Korea covers the procurement of a number of Korean central government agencies, several provincial and city governments and approximately two dozen government-invested companies. For procurement of construction services by sub-central and government enterprises covered under the GPA, Korea has a threshold of $22 million. The U.S. Government seeks to expand access to Korea’s government procurement market for U.S. goods and services providers in both market access negotiations under the GPA and in bilateral negotiations.

In response to concerns expressed by U.S. industry, the Korean National Intelligence Service (NIS) eliminated its required disclosure of source code in the procurement of certain information technology security products. However, the U.S. Government is continuing to work with Korea to address remaining concerns with the documentation that NIS requires related to the certification of such products.

INDUSTRIAL SUBSIDY POLICY

The U.S. Government has been concerned with Korean government assistance to targeted industries through its industrial policies and will continue to consult closely with U.S. industry to determine if these policies raise competitiveness concerns. Korea's past promotion and support for its semiconductor industry, which eventually resulted in the imposition of countervailing duties by the United States (as well as by the EU and Japan) is emblematic of our concerns in this area.

More specifically, the U.S. Government has expressed concerns about the role played by the government-owned Korea Development Bank (KDB) in supporting certain Korean industries. Historically, the KDB, which as a government-owned entity is not necessarily bound by the same constraints as commercial institutions, has been one of the government's main sources for policy-directed lending to favored industries. U.S. industries have reported that lending and equity investments by the KDB have contributed to overcapacity in certain Korean industries. The U.S. Government will continue to monitor the lending policies of the KDB and other government-owned or affiliated financial institutions.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The importance of IPR protection has increased in recent years as the digitization of Korea's economy has significantly increased the opportunity for unauthorized reproductions of copyrighted material. With Korean films and music increasing in popularity throughout the world and Korea's industrial products and trademarks enjoying global success, Korean creators of intellectual property would benefit from improvements in Korea's intellectual property regime.

The U.S. Government continues to urge Korea to strengthen its legal regime to protect intellectual property with respect to issues such as the following: protection of temporary copies, technological protection measures, Internet Service Providers' (ISP) liability, and copyright term extension. In addition, concerns remain on book piracy in universities, street vendor sales of illegally copied DVDs, counterfeiting of consumer products, protection of pharmaceutical test data and a lack of coordination between Korean health and IPR authorities to prevent marketing approvals for patent-infringing products.

IPR Enforcement

According to Korean government data on investigations, trials and convictions in IPR cases, there were a total of 26,741 indictments issued and 2,022 people were arrested for a variety of IPR violations during the first ten months of 2006. The bulk of indictments (19,832) were for violations of the Sound Recordings and Video Products Act. The majority of the remaining indictments (4,637) were for violations of the Trademark and Unfair Competition Prevention Acts. No information was available for convictions or penalties for these cases.

The Standing Inspection Team (SIT) of the Ministry of Information and Communication has police powers and is authorized to conduct raids on commercial firms and other institutions suspected of using illegal software. Korean police and prosecutors' raids against software end-users have become more consistent and are more frequently based on leads provided by the software industry. The United States remains concerned, however, about the lack of transparency regarding the Standing Inspection Team's enforcement process, including whether the SIT acts on leads provided by industry and whether rights holders will be able to participate in raids and be notified about all SIT raids, even when discovered infringements are minor.

Temporary Copies

Currently, Korean law does not extend the reproduction right to cover copies made in the temporary memory of a computer. The United States continues to urge Korea to strengthen the Copyright Act and Computer Program Protection Act, Korea's two principal copyright laws, by revising the laws to clarify that the copyright owner has the exclusive right to make copies, temporary or permanent, of a work or phonogram.

Copyright Act

The United States continues to press for stronger provisions in Korea's Copyright Act. For instance, the current Act does not appear to include technological protection measures (TPMs) that control who can access a work, nor does it prohibit the act of circumventing TPMs, only prohibiting the creation or distribution of circumvention tools. Secondly, while certain provisions of the Copyright Act that define Internet Service Provider (ISP) liability were harmonized with the Computer Program Protection Act (CPPA) in 2003, further clarification is required. The Copyright Act amendments still leave unclear the scope of the underlying liability of service providers and the limitations on, and exceptions from, liability. In addition, there are concerns that the documentation requirements for the rights holders in a "takedown" request are too burdensome.

The U.S. Government has informed the Korean government that the private copy exceptions in Article 27 and Article 71 of the Copyright Act should be re-examined in light of the growth of digital technologies. These exceptions generally should not be applicable to the Internet environment, which by its very nature extends far beyond private home use. In the digital environment, the market harm threatened by the unauthorized creation of easily transmittable perfect digital copies far exceeds the harm threatened by analog personal copying.

Korea currently provides copyright protection for the life of the author plus 50 years. In line with international trends, the United States is urging Korea to extend the term of copyright protection for works and sound recordings to the life of the author plus 70 years or 95 years from date of first publication where the author is a legal entity.

In December 2006, Korea passed a new copyright law that will come into force in June 2007. The new law is still being analyzed but it does appear to contain some improvements. In particular the new law introduces an obligation requiring peer-to-peer network operators to apply measures against the distribution of infringing copies on their networks when requested by the rights holder. The new law, however, does not address previous shortcomings in sound recording protections and private copying exceptions. Producers' rights for digital sound transmission are limited to remuneration rights, rather than exclusive rights. Additionally, the new law provides for broad copying exceptions at the university level.

Computer Program Protection Act (CPPA)

Korea's Computer Program Protection Act (CPPA) was amended in October 2006 to meet current challenges as well as to comply with new global norms. This amended CPPA increases the power of the Program Deliberation and Mediation Committee (PDMC) and increases penalties for assorted violations of Korean IPR-related laws. The U.S. Government continues to urge the Ministry of Information and Communications (MIC) to further amend the CPPA to provide for protection of temporary copies and improved protection for technological protection measures. It is also important that the dispute mediation function of the PDMC be performed only when all parties to the dispute have voluntarily agreed to subject themselves to the judgment of the PDMC. Moreover, it is important that mediation by the PDMC not be a prerequisite for any civil, administrative, or criminal adjudication of rights. The U.S. Government also believes that the amendments should include minimum penalties for offenses under the CPPA. The United States has also recommended that the Korean government clarify the availability of injunctive relief in civil enforcement actions under the CPPA, as required under the TRIPS Agreement.

Data Protection

KFDA decided on March 31, 2005 that slightly altered versions (such as using a different “salt”) of original drugs undergoing post-marketing surveillance (PMS) in Korea are subject to Korea's data protection regulations. This means that the manufacturers of the altered version have to supply a full portfolio of clinical data in order to obtain market approval if they intend to market their drug while the original drug is still under PMS, in line with Article 39.3 of the WTO TRIPS Agreement. This interpretation of the law, however, is not clearly delineated in Korea’s laws and industry has expressed concern about KFDA taking a different interpretation at a later time.

Book and Video-DVD Piracy

The Publication and Printing Business Promotion Act allows private sector involvement in enforcement measures against book piracy. The U.S. Government has urged Korean authorities to coordinate with foreign book publishers and rights holders in order to provide effective enforcement against book piracy, especially textbooks, and will continue to monitor implementation of this law.

Pirated audio-visual DVDs, sold on the street by unlicensed vendors, continue to be a problem in Korea. This type of piracy is increasing due to the growing sophistication of illegal production facilities and advanced distribution technologies. The U.S. Government has urged the Korean government to meet this digital piracy challenge with stronger enforcement efforts and deterrent penalties.

Patent and Trademark Acts, and Trade Secrets

The Korean Intellectual Property Office (KIPO) has amended relevant laws to address U.S. concerns regarding restrictions on patent term extension for certain pharmaceutical, agrochemical and animal health products (which are subject to lengthy clinical trials and domestic testing requirements, see *"Standards, Testing, Labeling and Certification"*). An issue of continuing concern, however, has been the lack of coordination with the Korean Food and Drug Administration and the KIPO, which results in the granting of marketing approval for products that may infringe on existing patents. U.S. firms have also identified concerns with the Korean courts’ apparent unwillingness to provide injunctive relief in cases where a rights holder’s patent has been infringed, allowing the infringing products to remain on the market until a final determination has been made. Although Korean civil courts have the authority to issue injunctive relief, in practice they rarely, if ever, do so in patent-related cases.

Korea’s Trademark Act has been amended over the years to strengthen provisions that prohibit the registration of trademarks without the authorization of foreign trademark holders by allowing examiners to reject any registrations made in "bad faith." Despite this change, the complex legal procedures that U.S. companies must follow to seek cancellation discourages U.S. companies from pursuing legal remedies. In particular, problems still arise with respect to "sleeper" trademark registrations filed and registered in

Korea without authorization in the late 1980s and early 1990s, when KIPO was still developing a more effective and accurate trademark examination and screening process.

Korean laws on unfair competition and trade secrets provide a basic level of trade secret protection in Korea, but are insufficient in some instances. For example, some U.S. firms, particularly certain manufacturers of chemicals, pet food, and food products, face continuing problems with government regulations requiring submission of very detailed product information, such as formula or blueprints, as part of registration or certification procedures. U.S. firms report that, although the release of business confidential information is forbidden by Korean law, in some instances, government officials do not sufficiently protect this proprietary information and the trade secrets that were made available to Korean competitors or to their trade associations.

SERVICES BARRIERS

Korea continues to maintain restrictions on some service sectors. In these sectors, foreign investment is prohibited or severely circumscribed through equity or other restrictions. (*See also "Investment Barriers"*)

Advertising

Korea is among the world's top twelve largest advertising markets; however, the market remains highly restricted. Because broadcast advertising time is still sold exclusively through the state-sponsored Korea Broadcast Advertising Corporation (KOBACO), advertisers and their agencies must work through KOBACO to advertise on broadcast television. Further, U.S. industry has noted its concerns with Korean restrictions on broadcast advertising of beverage products containing 17 percent or greater alcohol by volume.

Screen Quota

On July 1, 2006, the Korean government reduced its screen quota requirement to 73 days of the year. Korea had previously required that domestic films be shown on each cinema screen for a minimum of 146 days of the year, corresponding to a 40 percent market share. The domestic market share for Korean films has, for the last several years, far surpassed 40 percent. In 2006, for instance, Korean films achieved a 60 percent market share in Seoul.

Foreign Content Quota for Broadcast Television

Korea restricts foreign activities in broadcast television by limiting the percentage of monthly broadcasting time (not to exceed 20 percent) that may be devoted to foreign programs. Annual quotas also limit broadcasts of foreign programming to a maximum of 75 percent for motion pictures, 55 percent for animation, and 40 percent for popular music. Foreign investment is not permitted for broadcast television operations.

Foreign Content Quota for Cable Television

Korea restricts foreign participation in the cable television sector by limiting per channel airtime for most foreign programming to 50 percent. Annual quotas limit foreign motion pictures to 75 percent and foreign animation to 65 percent. In addition, according to the industry, Korea implemented a rule in 2002 limiting the content by any one country to 60 percent of the quota, thus the maximum U.S. programming is limited to 45 percent and 39 percent, respectively. The Korean government also restricts foreign ownership of cable television-related system operators, network operators, and program providers to 49 percent. For satellite broadcasts, foreign participation is limited to 33 percent.

Satellite Re-Transmission

The Integrated Broadcast Law mandates that Korean firms that wish to re-broadcast satellite transmissions of foreign programmers must have a contract with the foreign program provider in order to obtain approval from the Korean Broadcasting Commission (KBC). Foreign re-transmission channels are limited to 20 percent of the total number of operating channels. This restriction limits the amount of international broadcasting that could otherwise be made available to Korean consumers and limits foreign investment in the broadcasting sector.

Restrictions on Voice-overs and Local Advertisements

Presently, the Korean Broadcasting Commission's guidelines for implementation of the Broadcasting Act contain restrictions on voice-overs (dubbing) and local advertising for foreign re-transmission channels. Allowing Korean language voice-overs would make broadcasts more accessible to Korean consumers (especially for breaking news and children's cartoons); it would also benefit the Korean economy by creating more studio-production jobs and attracting foreign investment. The prohibition on local advertising for foreign re-transmission channels restricts the long-term viability of these channels in the Korean market.

Legal Services

The Korean government plans to open its legal services market in stages. The first step would be to regularize the legal status of foreign legal consultants. The U.S. Government has also been informed that the law would allow foreign law firms to open offices in Korea, although they would not be allowed to hire Korean attorneys or advise on domestic law. As of the publication of this report, the Korean government has not submitted draft legislation to its National Assembly. The U.S. Government continues to urge the Korean government to allow foreign law firms to practice law in Korea.

Insurance

Korea is the second-largest insurance market in Asia and seventh-largest in the world. Korea's laws and regulations do not restrict foreign entry into insurance markets.

Korean and foreign companies (including U.S. firms) active in Korea's insurance and savings markets are concerned about the supply of insurance services by Korea Post, a government agency, the National Agricultural Cooperative Federation (NACF), and the National Federation of Fisheries Cooperative (NFFC). These entities are not regulated by the Korean Financial Supervisory Commission (FSC) or the Financial Supervisory Service (FSS) as are private insurers. U.S. companies recognize that changing the regulation of these entities is difficult but seek a mechanism that would begin to address this concern. The U.S. Government has urged the Korean government to consider ways to bring these entities under the regulatory authority of the FSC and FSS. In response, the Korean government appears to be considering ways to improve the regulation of Korea Post's and the cooperatives' financial activities. The U.S. Government will continue to raise these issues with Korea.

Banking

The Korean government-controlled Korea Deposit Insurance Corporation still owns nearly 79 percent of Woori Financial Holdings which fully controls Woori Bank, the country's second-largest bank. The Korea Deposit Insurance Corporation also directly owns 67.7 percent of the Industrial Bank of Korea, the fourth-largest bank in Korea.

Foreign banks are permitted to establish as subsidiaries or branches. Capital markets are open to foreigners, permitting foreign financial institutions to engage in non-hostile mergers and acquisitions of domestic financial institutions. Korea allows foreign bank branches to borrow from their head offices and to include the net borrowing as "Class B capital." However, the Korean government does not allow foreign branches to use capital from head offices to meet regulatory lending limit requirements and continues to restrict the operations of foreign bank branches based on branch capital requirements. These restrictions limit: (1) loans to individual customers; (2) foreign exchange trading; and (3) foreign bank capital adequacy and liquidity requirements. Foreign banks are subject to the same lending ratios as Korean banks, which require them to allocate a certain share of their loan portfolios to Korean companies that are not one of the top four *chaebol* conglomerates and to small and medium-sized enterprises.

Korea continues to suffer from a lack of transparency in the financial regulatory system and all banks must seek approval before introducing new products and services. Korea has largely deregulated foreign exchange and capital account transactions for individuals, but a few restrictions (applied to both domestic and foreign institutions) on foreign exchange transactions and derivatives trading by corporations and financial institutions still remain.

Telecommunications

Korea maintains a 49 percent limit on foreign shareholdings of facilities-based telecommunications operators. In addition, Korea affords non-facilities based carriers less rights in terms of access to, and use of, the telecommunications network (e.g., with respect to interconnection) as compared with facility-based competitors.

INVESTMENT BARRIERS

The Roh Administration has continued Korean government support for the establishment of a more favorable investment climate in order to facilitate foreign investment in Korea. The positive attitude toward foreign investment on the part of the Korean government, many in private industry and by a growing number of Koreans is helping to open the Korean economy. The United States is working to build on the progress made in recent years by seeking to improve regulatory transparency, ensure that U.S. investors are not treated less favorably than Korean investors or investors from third countries and lock in other internationally-accepted investor protections.

Capital market reforms have eliminated or raised ceilings on aggregate foreign equity ownership, individual foreign ownership and foreign investment in the government, corporate and special bond markets. These reforms have also liberalized foreign purchases of short-term financial instruments issued by corporate and financial institutions. The United States is pressing the Korean government to liberalize foreign equity restrictions with respect to investments in various state-owned firms and many types of media, including basic telecommunications service providers, cable and satellite television services and channel operators.

Although the Korean government has taken several important steps to privatize state-owned corporations, no new privatizations took place in 2006. In addition, on November 30, 2005, the government announced that it would seek to more tightly control state-run companies and no longer has immediate plans to privatize Korea Gas Corporation. As noted in the "Banking" section of this report, the Korean government has also postponed any announcement of a definitive schedule for the privatization of its nearly 79 percent share in Woori Financial Holdings, which owns the country's second-largest bank.

The Korean government also has opened Free Economic Zones (FEZs) with an extensive range of incentives including tax breaks, tariff-free importation, relaxed labor rules, and improved living conditions for expatriates in areas such as housing, education, and medical services. Establishing these zones is an important step in making Korea's business environment more open, liberal, and responsive to economic needs, in conjunction with encouraging Korea to reform other key areas of its regulatory structure to enhance additional foreign investment into Korea.

ANTICOMPETITIVE PRACTICES

Competition Policy

The Korea Fair Trade Commission (KFTC) has been playing an increasingly active role in enforcing Korea's competition law and in advocating for regulatory reform and corporate restructuring. In addition to KFTC's authority to conduct investigations and to impose penalties, including broad authority over corporate and financial restructuring, KFTC can levy heavy administrative fines for violations or for failure to cooperate with investigations.

A number of U.S. companies have expressed concerns that respondents in KFTC investigations have not been afforded a sufficient opportunity to review and respond to the evidence against them, including an opportunity to cross-examine those who testify in KFTC investigatory hearings. Concerns have also been raised that procedural rules for KFTC hearings have not been sufficiently transparent and that KFTC lacks the authority to enter into settlement agreements with respondents by mutual agreement. In response to the concerns raised by U.S. companies, the U.S. Government is monitoring KFTC activities closely and has encouraged it to develop a balanced approach in a manner that affords appropriate transparency and other procedural protections without imposing unnecessary restrictions on commercial activity.

ELECTRONIC COMMERCE

Korea is considered to be a global leader in technology. Korea has more high-speed Internet connections per household than any other country in the world and the government has actively pursued legislation to encourage electronic commerce.

The Korean National Assembly has been working to address data privacy issues by drafting a Personal Information Protection Act, formerly the Basic Privacy Act, and revising or adding sector-specific laws. Industry-specific issues will be addressed separately by regulations to be put in place over a period of six months to two years following the passage of the Act. The U.S. Government looks forward to working with Korea to ensure that resulting regulations do not inhibit the cross-border flow of information, which would negatively impact Korean and American companies and would limit consumer choice.

Numerous privacy issues have been discussed on the margins of the APEC Privacy Framework, an initiative to which Korea has contributed. Non-governmental organizations in Korea are asking for stricter requirements in a number of areas which may impact cross-border data flows, thus hindering electronic commerce. Korea is also considering establishment of a central point of contact responsible for data privacy, similar to data protection authorities that exist in other countries.

OTHER BARRIERS

Regulatory Reform and Transparency

A general lack of transparency in Korea's rule-making and regulatory system is a cross-cutting issue affecting U.S. firms in many different sectors, including the automotive, pharmaceutical, agricultural, financial services and telecommunications sectors, and continues to be one of the principal problems cited by U.S. traders and investors seeking to compete in the Korean market.

Korean laws, regulations, and rules often lack specificity, and Korean officials exercise a great deal of discretion in applying broadly drafted laws and regulations. This can result in the inconsistent application of regulations and uncertainty for businesses on how to fully comply with them. Just as importantly, the jurisdictions and regimes of several authorities (notably the Korea Fair Trade Commission and the Financial Supervisory Service) overlap, constituting a heavy regulatory burden for firms doing business in Korea.

Korea's Administrative Procedures Act (APA) stipulates that the public comment period for draft regulations that are subject to the APA shall be no less than 20 days. However, in many cases, the 20 day time minimum is insufficient. In addition, in many instances the final versions of regulations do not reflect the comments provided.

Motor Vehicles

Increased access to Korea's automotive market for U.S. suppliers remains a key priority for the U.S. Government. As a result, the U.S. Government continues to urge the Korean government to address concerns in Korea's automotive sector including its 8 percent tariff and a range of non-tariff barriers, such as discriminatory taxes based on engine size, standards and regulatory matters, and consumer perception (anti-import bias).

The United States has urged the Korean government to eliminate Korea's 8 percent tariff on imported automobiles, which is more than three times the U.S. tariff, and eliminate the discriminatory element of Korea's engine displacement taxes. The effect of the tariff, compounded by the cascading effect of multiple automotive taxes, raises the effective rate to above 12 percent.

The U.S. Government is also urging Korea to create a formal mechanism to consult on automotive regulatory and standards issues in order to enhance transparency and provide early input into the development of these regulations and standards in Korea. In addition, the U.S. Government continues to urge the Korean government to address specific issues of concern in the area of automotive emissions and safety standards.

In the past, U.S. automotive companies have experienced problems with anti-import campaigns, with imported vehicles often listed as specific targets. The United States is seeking ways to ensure no future anti-import incidents occur.

Motorcycles

Although progress was made over the past several years to resolve U.S. concerns over Korea's noise standard on motorcycles, several market access issues remain including a highway ban, tariff and tax levels, and absence of ownership titles. Korea's ban on driving motorcycles on expressways and on designated bridges restricts the market potential for heavyweight motorcycles even though they are designed for safe highway use.

Pharmaceuticals

On December 29, 2006, the Korean Ministry of Health and Welfare announced that the regulations to implement its Drug Expenditure Rationalization Plan (DERP) had taken effect. The main elements of the DERP include a shift from a negative to a positive list system for drug reimbursement (pharmaceuticals with marketing approval had previously qualified automatically for reimbursement unless specifically disallowed; under the "positive list" system, pharmaceuticals will only be reimbursed if specifically allowed) and the introduction of a negotiation procedure for setting the amount of reimbursement for drugs. The U.S. Government will continue to work with the Korean government to ensure that the DERP will be implemented in a fair, transparent, reasonable, and non-discriminatory manner and will adequately reward innovation.

Corruption in the Healthcare System

Corruption continues to be a widespread problem in the Korean healthcare system. The complex distribution system and lack of transparency in the government decision-making process are large contributors to this problem. The U.S. Government will continue to work with the Korean government to control improper practices by wholesalers and distributors and provide predictability for U.S. companies in pharmaceutical pricing, reimbursement guideline setting, and regulatory affairs.

Medical Devices

KFDA requires re-registration of all products transferred to a manufacturing site outside its original country of origin. This re-registration is equivalent to a new registration. The U.S. Government would like to expand existing licenses to cover dual sites and permit notification of the change to KFDA without the need for re-registration; this may be possible if a verifiable and enforceable Good Manufacturing Practices paradigm consistent with international best practices is introduced and adopted, which the United States hopes would happen sometime in 2007.

KFDA requires medical devices to include Directions For Use (DFUs) in the local language. The industry accepts this burden, as this practice better insures patient safety. It is currently accepted practice in many other regions to provide an electronic version of a DFU. The product package references a Website or CD-ROM containing the proper DFU. The U.S. Government has urged that KFDA formally create, publish, and implement guidelines that define how manufacturers can provide DFUs and required labeling in an electronic format.

KUWAIT

TRADE SUMMARY

The U.S. goods trade deficit with Kuwait was $1.8 billion in 2006, a decrease of $514 million from $2.4 billion in 2005. U.S. goods exports in 2006 were $2.1 billion, up 8.1 percent from the previous year. Corresponding U.S. imports from Kuwait were $4.0 billion, down 8.2 percent. Kuwait is currently the 52nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Kuwait was not available in 2005 ($380 million in 2001) (latest data available).

The United States and Kuwait signed a Trade and Investment Framework Agreement (TIFA) in February 2004, providing a forum to address U.S. concerns and needed economic reforms.

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), Kuwait applies the GCC common external tariff of 5 percent for most products, with a limited number of country-specific exceptions. Kuwait's exceptions include 417 food and agriculture items, which remain duty-free, as well as tobacco products, which are subject to a 100 percent tariff.

Import Licensing

Kuwait prohibits the importation of alcohol and pork products, and requires a special import license for firearms. Used medical equipment and automobiles over five years old cannot be imported. Also prohibited are any books, periodicals, or movies that insult religion and public morals, and all materials that promote political ideology.

Documentation Requirements

In Kuwait, the import clearing process has historically been time-consuming, requiring numerous transfers, large quantities of paperwork and numerous redundancies. However, the Customs Department is currently undergoing a major privatization effort, contracting with a private company to provide customs support services. The implementation of a state-of-the-art computer system has made the import process less complicated and more efficient. In October 2005, Customs began implementation of the Micro-Clear system at the Kuwait airport and completed implementation at all ports of entry in early 2006.

Customs Valuation

Kuwait began implementation of the WTO Customs Valuation Agreement in September 2003.

Textiles and Apparel

Textiles and apparel products (dutiable at 5 percent) accounted for approximately 6 percent of Kuwait's imports in 2005.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Kuwait maintains restrictive standards that impede the marketing of some products. Kuwait strictly enforces government-mandated shelf life standards on 44 of 75 food products listed in Gulf Standard 150/1993, but recognizes the shelf-life established by manufacturers on all other food products. Shelf-life requirements for processed foods are far shorter than necessary to preserve freshness and result in processed U.S. goods being non-competitive with products shipped from countries geographically closer to Kuwait. Standards for medical, telecommunications and computer equipment tend to lag behind technological developments, with the result that government tenders frequently specify the purchase of obsolete, often more costly items.

In March 2003, Kuwait implemented an International Conformity Certification Program (ICCP) requiring that covered products be tested and certified by a single private company before being exported to Kuwait. The program applied to imports of: (1) household appliances and electronics; (2) new and used cars and vehicles; (3) chemicals, including motor oil and paint; (4) building materials, including cement, gypsum and bricks; and (5) paper and plastic items. In July 2004, the Public Authority for Industry (PAI), the regulatory authority responsible for the ICCP, held a one-year review of the program. At that time, the PAI said that over 30,000 individual products had been issued ICCP certificates, and that it was considering expanding the types of products requiring certification. Importers and representatives of foreign businesses voiced serious concerns with the program. The United States and other WTO Members raised concerns about the ICCP bilaterally and during meetings of the WTO Technical Barriers to Trade Committee. In November 2004, the PAI indicated that it would introduce changes to the ICCP and transition to a new Kuwait Conformity Assessment Scheme (KUCAS). The KUCAS does not appear to differ substantially from the ICCP. The United States is evaluating the impact of KUCAS in order to determine whether it has alleviated previous concerns.

GOVERNMENT PROCUREMENT

Kuwait's government procurement policies require the purchase of local products when available and prescribe a 10 percent price advantage for local firms in government tenders. In 2004, the Council of Ministers agreed to increase this price advantage to 15 percent. However, implementation of this increase will require amendment of the GCC countries' unified agreement, which has not yet occurred.

In January 2002, the Kuwaiti government transformed its offset program into a mechanism for promoting foreign investment in Kuwait. The program was briefly suspended in September 2004 in order to study its effectiveness, but in August 2005 the Ministry of Finance announced that Kuwait would reactivate its offset regime for both civil and defense contracts. In April 2006, Kuwait established the National Offset Company, which has been charged with managing, enforcing and reviewing all offset proposals. The company is designed to be a one-stop shop for all matters related to offsets.

Offset obligations will be established for military contracts of a value equal to or above KD3 million (about $10 million), civil/government contracts of a value equal to or above KD10 million (about $34 million) and oil/gas contracts. Oil and gas exploration and production contracts are excluded from the offset program. Offset obligations amount to 35 percent of contract value with offset multipliers being established to target investment into determined sectors of the Kuwaiti economy. The foreign contractor will be subject to an unconditional financial guarantee equal to 6 percent of the contract value.

Kuwait is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Kuwait is drafting amendments to its copyright law to implement the WTO TRIPS Agreement, but has not yet submitted them to the National Assembly. Kuwait's revised patent and trademark legislation took effect on January 14, 2001. It appears that Kuwait does not provide for the protection of geographical indications.

Following Kuwait's elevation to the U.S. Government's Special 301 Priority Watch List in 2004, the Ministry of Commerce and the General Administration of Customs increased their efforts to protect intellectual property rights by conducting more frequent raids. These raids have decreased the number of retail vendors openly selling pirated and counterfeit goods, but have not curbed their growth. The Ministry of Information (which is statutorily responsible for ensuring intellectual property rights) has started to place a higher priority on IPR protection. Kuwait Customs is now more aggressive and effective in enforcing IPR. Kuwait's renewed vigor in protecting IPR, and its success in decreasing the visibility and availability of pirated material through targeted raids and effective Customs enforcement, led to Kuwait being lowered from the Priority Watch List to the Watch List in 2006.

Notwithstanding these efforts, sales of pirated and counterfeit goods remain high in Kuwait, and the use of unauthorized computer software continues in private enterprises. Uncertain and slow judicial action remains a hurdle, and penalties, when imposed, generally are inadequate to deter future crimes. In August 2004, the government submitted a draft law to the National Assembly that would increase penalties for those convicted of infringing intellectual property rights, but the Assembly has not approved the law.

SERVICES BARRIERS

Banking

Under Kuwait's 2001 Foreign Direct Investment law, foreigners could own up to 49 percent of existing or newly formed Kuwaiti banks, subject to approval by the Central Bank. In January 2004, the National Assembly gave final approval to a bill permitting 100 percent foreign ownership of banks. However, foreign-owned banks are restricted to opening only one branch, can only offer investment banking services and are prohibited from competing in the retail banking sector. In August 2004, BNP Paribas was the first foreign bank granted a license to operate in Kuwait, followed by approvals in 2005 for HSBC and Citibank; HSBC opened its branch in October 2005, and Citibank in late 2006.

Agent and Distributor Rules

According to Kuwait's Commercial Agencies Law of 1964, only Kuwaiti nationals and corporations may act as agents and distributors for foreign companies and exporters.

INVESTMENT BARRIERS

Kuwait currently maintains a variety of restrictions on foreign direct investment and applies discriminatory taxation policies. In May 2000, Kuwait's National Assembly approved legislation that allows foreign nationals to own up to 100 percent of all companies listed on Kuwait's stock exchange except banks.

The foreign direct investment law that took effect in February 2003 authorizes majority foreign ownership in new investment projects and 100 percent foreign ownership in the following sectors: infrastructure projects such as water, power, waste water treatment or communications; investment and exchange companies; insurance companies; information technology and software development; hospitals and pharmaceuticals; air, land and sea freight; tourism, hotels and entertainment; and housing projects and urban development. The law also authorizes tax holidays of up to ten years for new investors. Despite the new law, foreign companies still report numerous delays in getting approval to operate in Kuwait and the law left in place several important investment restrictions. For example, foreign firms still may not invest in the upstream petroleum sector, although they are permitted to invest in petrochemical joint ventures. Legislation introduced in Parliament in January 2004 would allow for limited, controlled investment in the petroleum sector, but it has not been passed. The legislation specifically authorizes investment in and development of Kuwait's northern oilfields, but, if enacted, it may cover other investment in the petroleum sector in the future.

OTHER BARRIERS

Corporate Tax Policies

Foreign firms are subject to a maximum income tax rate of 55 percent, although the government is currently drafting a new law that would reduce the tax rate.

In 2005, a number of corporations received income tax bills from Kuwaiti tax authorities although the companies had no commercial presence in Kuwait. Bills were typically sent to the companies' Kuwaiti distributors and often included years of back taxes. Some companies have challenged the tax in court, and others are working with the U.S. and Kuwaiti governments to seek a legislative or regulatory solution.

LAOS

TRADE SUMMARY

The U.S. goods trade balance with Laos went from a trade surplus of $6 million in 2005 to a trade deficit of $2 million in 2006. U.S. goods exports in 2006 were $7 million, down 29.1 percent from the previous year. Corresponding U.S. imports from Laos were $9 million, up 108.8 percent. Laos is currently the 198th largest export market for U.S. goods.

IMPORT POLICIES

Tariffs

The United States-Laos Bilateral Trade Agreement (BTA) entered into force on February 4, 2005. Under the terms of the BTA, the United States granted normal trade relations (NTR) treatment to products of Laos and Laos committed to implement a variety of market access concessions and trade rules, which are discussed in more detail below. Laos is currently in the early stages of WTO accession negotiations. Implementation of the BTA, which is proceeding slowly, will help Laos prepare to undertake the necessary WTO obligations.

Under the United States-Laos BTA, Laos reduced tariffs on a variety of products of U.S. origin. However most trade in Laos still requires authorization from several national and provincial authorities, creating opportunities for widespread corruption. In Laos, provinces collect customs levies at international border crossings in their respective provinces, only a portion of which is rendered to the central government.

Laos has implemented the ASEAN Harmonized Tariff Nomenclature (AHTN), in which about half of the 10,689 lines are four or six digits. The remaining are eight-digit lines. The average tariff on ASEAN-origin products is 5 percent. As 80 percent of Laos' external trade is with ASEAN countries, its participation in the ASEAN Free Trade Area (AFTA) is a significant liberalizing step. However, Laos retains 88 items of special concern on which tariffs remain high – the highest number of such special status products in ASEAN.

Non-Tariff Barriers

Import Prohibitions: Lao law prohibits the importation of weapons, illegal drugs, toxic chemicals, hazardous materials and pornographic materials. It also prohibits the importation of agricultural products which are grown domestically in quantities sufficient to meet demand. The list of goods subject to import and export prohibitions is set out in Notification of Ministry of Commerce No. 284/MOC.FTD dated March 17, 2004.

Import Licensing: All importers must submit an annual importation plan to the Ministry of Commerce or to relevant provincial authorities and may only import against the plan during the following year. In addition, Laos also requires import licenses for certain other products as listed in Notification of the Ministry of Commerce No. 285/MOC.FTD dated March 17, 2004.

Foreign exchange system: There are no restrictions on foreign exchange within Laos, nor are there any legal limits on remitting foreign exchange abroad. There are practical limitations, however, in that the availability of foreign exchange is sometimes limited, which inconveniences large single-sale and large-volume businesses, such as those selling heavy equipment or fuel and petroleum products, both areas in which American businesses currently operate.

Customs: Border control is weak throughout the country, and border trade is poorly controlled. Almost every container that enters Laos at a formal border checkpoint is inspected, leading to complaints of corruption. Customs procedures in Laos have improved since the introduction of the ASEAN harmonized tariff system. However, a large number of approvals and informal payments are still required to get those approvals. Laos does not have a system of entry under bond. Laos is obligated under the terms of the BTA to use the transaction value for customs valuation purposes and the United States continues to closely monitor implementation of this obligation.

Taxes: All goods and services are subject to a turnover tax of either 5 percent or 10 percent. Laos appears to apply the turnover tax in a discriminatory manner with lower rates or exemptions applied to many domestic products. The United States has made it clear to the Lao government that the BTA requires national treatment in the application of all internal taxes and it continues to work with Laos to ensure its tax regime complies with its BTA obligations. In addition to the turnover tax, certain goods are subjected to an additional excise tax including: distilled spirits and beer (50 percent to 70 percent); soft drink and beverages (30 percent); cigarettes (55 percent); perfume and other cosmetic products (30 percent); and vehicles (65 percent to 90 percent).

STANDARDS, TESTING, LABELING AND CERTIFICATION

Laos has no specific law on standards for imported or exported goods. Imported goods are allowed to enter based on the certification of the country of export. Laos has no special labeling or marking requirements.

GOVERNMENT PROCUREMENT

Government procurement policy and practices are administered nationally by the Ministry of Finance. The Lao government's published budget and leading prospectus for the following fiscal year serve as a rough guide to procurement expenditure levels, though procurements by ministry are not clearly provided. International aid donors provide nearly all capital goods and equipment and most commodities as outright gifts. For goods purchased with Official Development Assistance (ODA), donors typically require a public bidding process for contractors. The individual line ministries therefore routinely publish tenders on development projects.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

IPR protection in Laos is under the purview of the Science, Technology, and Environment Agency (STEA). The STEA is a ministry-level organization within the Office of the Prime Minister with 30 employees in its IPR department. While the STEA personnel are well-trained, they have little authority, and IPR enforcement is weak. In particular, STEA lacks the power to arrest and does not effectively coordinate with the police. Effective IPR enforcement at the border is lacking due to the porous nature of the border areas.

Laos became a member of the World Intellectual Property Organization (WIPO) in 1995 and a member of the Paris Convention in 1998, and subsequently accepted international assistance in drafting an IPR law. The IPR law has not yet been completed. Laos has not yet acceded to the Berne Convention. In general, implementing regulations are still lacking. Laos issued a trademark decree in 1995. STEA controls the issuance of trademarks on a first-come, first-registered basis. Applicants do not have to demonstrate prior use. There are currently about 14,000 trademarks registered in Laos.

As a member of ASEAN, Laos has acceded to all of ASEAN's framework agreements, including the ASEAN Framework Agreement on Intellectual Property Cooperation. A decree protecting patents, petty patents, and industrial designs was approved in January 2002. No system yet exists to actually protect copyrights. A draft copyright law was developed in 2005 but it has not yet been enacted.

SERVICES BARRIERS

Banking

The Lao financial sector is dominated by the Central Bank of the Lao PDR (BOL) and two state-owned commercial banks, which to varying degrees all serve as policy implementation banks. Foreign banks, including six which are actively represented in Laos, offer limited services primarily to foreigners. Foreign banks had previously been restricted to the capital, Vientiane, which severely limited their competitiveness in providing financial services to the southern part of the country where business is concentrated. The new Law on Commercial Banking passed in December 2006, provides new procedures for the establishment, management and auditing of commercial banks and removes the geographic restrictions on bank operations.

Legal

Foreign attorneys are not permitted to represent clients in Lao courts.

Insurance

Foreign insurance companies can operate in Laos; at present, only one does.

Education

Foreign entities are technically prohibited from teaching in Laos. The Ministry of Education maintains a close watch over the ideological content of curricula.

Engineering/construction/architectural

Foreign engineering, construction and architectural entities may operate in Laos in support of internationally-funded development (ODA) projects or foreign-invested enterprises deemed to be in the national interest.

Telecommunications

Although it is listed as a sector of strategic and national security interest, in practice, telecommunications is the most open and competitive services sector in Laos.

INVESTMENT BARRIERS

Laos has a challenging investment environment due to the lack of the rule of law, opaque regulations, and inefficient infrastructure and services, particularly in financial services. Laos is one of the most difficult countries in the world in which to set up a business, with licenses routinely taking up to a year to acquire.

Foreign direct investment (FDI) in Laos is not accurately reported by the Lao government (the official figures show approved, not actual investments), and real investment levels are therefore difficult to estimate. Thai, French, and Australian companies appear to be the source of most of the FDI in Laos, though, as in trade, the level of Chinese investment is growing. The current stock of U.S. investment is officially (though of questionable reliability) listed at $15.2 million, consisting chiefly of small family-level business investments, some agricultural activities, and a partial interest in a mining venture. The real level of U.S. investment is probably well below $10 million.

The Law on the Promotion and Management of Foreign Investment is the basic law governing FDI in Laos and divides FDI into two categories: joint-venture companies and wholly-owned companies. The sole investment advantage that Laos has over its neighbors is that foreign firms may wholly own and operate a business.

Required documentation for foreign businesses remains relatively onerous and effectively separates business activity into foreign and domestic categories. The United States has urged Laos to move from a business licensing to a business registration system, chiefly through repeal of the Industrial Processes Law, which requires manufacturers to apply for permission to make even minor changes to their methods of production, and which has never been augmented with clear implementing regulations. Laos still requires a feasibility study for investment by foreign businesses, a requirement better suited to development projects.

The required annual renewal of a Lao business license is contingent upon certification that all taxes have been paid. Due to the lack of clarity in the tax law, foreign investors complain that taxes are often assessed in an inconsistent and nontransparent manner. Lao officials acknowledge ambiguities in the law. The tax code was streamlined and simplified in January 1999, and again in 2002-03, but some investors still report significant difficulties in obtaining tax certifications and clearances in a timely manner.

ELECTRONIC COMMERCE

The Internet is available in all of the major towns in Laos, though electronic commerce is not yet widely used in the country. There is no body of law governing electronic commerce nor does the Lao government appear to recognize the need for constructing a venue for dispute resolution in Internet/electronic commerce transactions.

OTHER BARRIERS

Corruption: Both giving and accepting bribes are criminal acts in Laos, theoretically punishable by fine and/or imprisonment. The Prime Minister’s Office issued an anti-corruption decree in November 1999, and at least one official has been arrested for corruption since that time, but implementation remains uneven. The Counter-Corruption Committee in the Prime Minister’s Office is the Lao government agency responsible for combating corruption. Nonetheless, corruption in Laos continues to be a serious concern. Bribes to low-level officials to expedite time-sensitive applications, such as for business licenses or importation of perishable items, are known to occur and some say the problem could be growing due to increased investment in extractive industries. Despite recent cases of suspected corruption, Laos has not prosecuted officials for corruption.

MALAYSIA

TRADE SUMMARY

The U.S. goods trade deficit with Malaysia was $24.0 billion in 2006, an increase of $758 million from $23.2 billion in 2005. U.S. goods exports in 2006 were $12.6 billion, up 20.0 percent from the previous year. Corresponding U.S. imports from Malaysia were $36.5 billion, up 8.5 percent. Malaysia is currently the 18th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Malaysia were $1.4 billion in 2005 (latest data available), and U.S. imports were $708 million. Sales of services in Malaysia by majority U.S.-owned affiliates were $1.3 billion in 2004 (latest data available), while sales of services in the United States by majority Malaysia-owned firms were not available in 2004 ($292 million in 1998).

The stock of U.S. foreign direct investment (FDI) in Malaysia in 2005 was $10.0 billion (latest data available), up from $8.1 billion in 2004. U.S. FDI in Malaysia is concentrated largely in the manufacturing, and mining sectors.

FREE TRADE AGREEMENT NEGOTIATIONS

The United States and Malaysia initiated negotiations on a Free Trade Agreement (FTA) in June 2006 with a common commitment to conclude a comprehensive, high-quality FTA. Malaysia is our 10th largest trading partner with more than $49.1 billion in total trade during 2006. Increased access to Malaysia's market that an FTA would provide would boost trade in a wide range of both industrial and agricultural goods and services, enhancing employment opportunities in both countries. An FTA with Malaysia also would advance President Bush's Enterprise for ASEAN Initiative, under which the United States hopes to enhance U.S. trade and economic ties to ASEAN countries, reinforcing a strong U.S.-ASEAN relationship, which is a force for stability and development in the Southeast Asian region. Finally, an FTA with Malaysia would deepen the relationship between the two countries and support our cooperative efforts on key economic, political and security issues.

After the last round of negotiations in February 2007, Malaysia informed us that it needed to seek a political consensus within its Cabinet on how to proceed on these issues. Resolution of that process is a necessary step before the negotiations can continue. The U.S. Government made clear to the Malaysian government the requirements of Trade Promotion Authority (TPA) and, at this point, submission of the FTA under this TPA is improbable. Nonetheless, we continue to believe that reaching a high-quality, comprehensive FTA would benefit both economies and the United States and Malaysia have agreed to continue working toward this goal. When an agreement is within reach, the United States would seek to work with Malaysia to find a mutually acceptable way to conclude and seek legislative approval of such an agreement.

IMPORT POLICIES

Tariffs

Tariffs are the main instrument used to regulate the importation of goods in Malaysia. The simple average applied normal trade relations/most-favored nation tariff rate is approximately 8.1 percent, but duties for tariff lines where there is significant local production are often higher.

The level of tariff protection is generally lower on raw materials than for those goods that have value-added content. In addition to import duties, a sales tax of 10 percent is levied on most goods. Neither import duties nor this sales tax is applied to raw materials or machinery used in export production. Beverage alcohol and wine are subject to an effective tariff of up to 500 percent when import duties and excise taxes are combined. Adjustments to excise taxes made each year as part of the budget process can sharply raise costs (as in FY 2006) and make it difficult for U.S. companies to negotiate long-term supply contracts in this sector or market strategically. Bound tariffs range up to 434 percent on imported spirits, 148 percent on beer and 115 percent on wines and sparkling wines.

Twenty-seven percent of Malaysia's tariff lines (principally in the construction equipment, agricultural, mineral, and motor vehicle sectors) are also subject to non-automatic import licensing designed to protect import-sensitive or strategic industries.

Import Restrictions on Motor Vehicles

Malaysia has long protected its automobile manufacturing industry from foreign competition using high tariffs and non-tariff trade barriers. Malaysian government policies also distinguish between "national" cars (*i.e.,* domestic producers Proton and Perodua) and "non-national" cars, which include most vehicles manufactured in Malaysia by non-Malaysian owned firms. Significant barriers including highway bans also exist to the importation, sale and usage of large foreign motorcycles.

The Malaysian government has slowly started to dismantle some of its protections in order to meet its commitments under the WTO and the ASEAN Free Trade Agreement (AFTA). In January 2004, it eliminated local content requirements that were inconsistent with its obligations under the WTO TRIMS Agreement. In March 2006, the Malaysian government issued a new National Auto Policy (NAP) that paves the way for further sectoral liberalization.

Nonetheless, certain government policies continue to block open trade in the automotive and motorcycle sectors. The Ministry of International Trade and Industry oversees a system of approved permits (APs) that allows the holder to import cars and motorcycles and distribute them locally. The AP system was designed to provide *bumiputera* (ethnic Malay) companies easy entry into the automobile and motorcycle distribution and service sector. The AP system acts as a quota by restricting the total number of vehicles that can be imported in a given year. APs continue to be capped at an estimated 10 percent of the domestic market. Under the National Automotive Policy (NAP), no new APs will be issued to any existing or new company until the AP system is eliminated. In addition to restricting market access for imports, many of the permits are sold for profit, with the associated costs passed on to consumers, further raising the cost of imported vehicles. The 2006 NAP proposes the elimination of the AP system by 2010.

The Malaysian government has amended the automotive tax regime several times from 2004 to 2006 to meet its commitments under AFTA. The import duty rate for vehicles with at least 40 percent ASEAN content was set at 20 percent in October 2005 but was lowered to 5 percent in 2006 with the NAP launch. To compensate for the revenue lost by cutting import tariffs, the Malaysian government, since 2004, has imposed steep automobile excise taxes. The high tax rates continue to excessively burden automakers; however, a 50-percent rebate on excise taxes that was available to domestic car manufacturers Proton and Perodua, plus two locally incorporated joint ventures assembling imported kits, was eliminated by the NAP.

The NAP implemented a support mechanism for locally assembled vehicles. Components sourced from locally-registered components manufacturing companies are eligible to be deducted from the taxable base of locally assembled vehicles for the purpose of calculating excise and sales taxes. Foreign automakers have complained that the new mechanism essentially revives the local content program that had been abolished in 2004.

The import duty/excise tax schedule is complex. In general, the current applied import tariffs and excise tax rates for completely built-up (CBU) and completely knocked-down (CKD) vehicles are as follows:

	ASEAN Tariff (%)	**NonASEAN Tariff (%)**	**Excise (%)**
Automobiles (CBU)	5	30	75-125
Automobile (CKD)	0	10	75-125
Multipurpose Vehicles (CBU)	5	30	60-125
Multipurpose Vehicles (CKD)	0	0-10	60-125
4WD (CBU)	5	30	65-125
4WD (CKD)	0	10	65-125
Motorcycles (CBU)	5	30	20-50
Motorcycles (CKD)	0	0-10	20-50

Textiles

Import duties on textiles and apparel range between zero percent and 30 percent. Malaysia does not require import licenses or impose burdensome labeling requirements on the import of textiles.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Nutritional labeling

Malaysia requires that certain processed, packaged food products commonly consumed by Malaysians are labeled with nutritional information. These items include cereals, breads, milk, canned meat, canned fish, canned fruits and canned vegetables, fruit juices, soft drinks and salad dressings. Regulations on Nutrition Labeling and Claims issued in March 2003 outline what type of nutritional information is required and the format in which the information is to appear on the package. The regulations limit the kinds of nutritional claims, such as “reduced sodium,” “low cholesterol,” or “high fiber,” that can appear on food packaging. Effective July 1, 2005, more than 50 food products must meet these labeling requirements. To comply with these regulations, U.S. food product importers must affix separate labels at ports of entry, a labor intensive and costly task.

Meat Import Licenses and Halal Certification

Malaysia requires that all meat, processed meat products, poultry, eggs and egg products originate from plants inspected and approved by the Ministry of Agriculture’s Department of Veterinary Services (DVS). The U.S. Food Safety and Inspection Service (FSIS) made a formal request to DVS for equivalence, which, if approved, would obviate the need for plant-by-plant food safety approval. However, *halal* (produced in accordance with Islamic practices) approval is required on a plant-by-plant basis.

All meat (except pork), processed meat, poultry, egg, and egg product imports require import licenses issued by DVS. DVS often restricts imports of chicken parts through this import licensing requirement, especially when local producers believe they are facing low prices. Similarly, the State of Sarawak has put in place package-size restrictions that have effectively banned imports. (The States of Sarawak and Sabah on the island of Borneo maintain separate quarantine restrictions from those of Peninsular Malaysia.)

All meat, processed meat products, poultry, eggs, and egg products must receive *halal* certification from an approved Islamic Center. Slaughterhouses, meat processors and egg processors must also be inspected and approved by the Department of Islamic Development (JAKIM) for *halal* beef, lamb, poultry and egg exports. Officials from DVS and JAKIM travel together on the inspection visits. U.S. *halal* product suppliers must be under the supervision of an approved U.S. Islamic Center. Each individual product, rather than the plant, must receive *halal* certification. U.S. producers have expressed concern that the *halal* certification process is confusing and non-transparent. Malaysia’s *halal* requirements are considered relatively strict compared to other countries.

The plant/product approval is issued on the joint recommendation of DVS and JAKIM following an on-site inspection. The government of Malaysia has the right to re-inspect approved plants after one year. In practice, three or more years may elapse between visits to the United States by a Malaysian inspection team, which limits the opportunities for new products to obtain certification as well as for companies to reapply or correct problems if they fail the first inspection.

On February 16, 2006, Malaysia announced it would resume U.S. boneless beef imports from cattle under 30 months of age, lifting a ban which had been imposed since the December 2003 announcement of a case of Bovine Spongiform Encephalophathy (BSE) in the United States. U.S. officials are working with DVS to widen the range of beef and beef products eligible for export to Malaysia.

Pork imports are also controlled by licensing and by restrictions on the types of cuts that can be imported. Import levels of chicken meat generally exceed the minimum access commitments of 6,552.5 tons established during the Uruguay Round of Multilateral Trade Negotiations. In the Uruguay Round, Malaysia negotiated for a number of tariff-rate quotas (TRQs), but has never implemented them. Ministry of Agriculture officials have indicated that TRQs will be implemented in 2007.

Biotechnology

Malaysia is currently in the process of drafting a biosafety law which would require mandatory labeling for products developed through biotechnology. The United States and Malaysia have been working together to ensure that any approach taken does not mislead consumers or result in unjustified trade restrictions.

EXPORT TAXES

Malaysia is the second-largest producer and largest exporter of palm oil and products made from palm oil, accounting for approximately 15 percent of world production and 30 percent of world trade in vegetable oils. Malaysia uses export taxes to discourage the export of crude palm oil, taxing it at 10 percent to 30 percent *ad valorem*, and to encourage development of the local refinery sector. Refined palm oil and products are currently not subject to export taxes. The Malaysian government waives export taxes on exports of crude palm oil to Malaysia-invested foreign vegetable oil refineries that include investment by Malaysian persons, giving Malaysia-invested plants a decided competitive advantage in foreign markets, including the United States.

GOVERNMENT PROCUREMENT

Malaysia is not a party to the WTO Government Procurement Agreement. Malaysia's official policy calls for procurement to be used to support national public policy objectives. These objectives include encouraging greater participation of *bumiputera* (ethnic Malays) in the economy, transferring technology to local industries, reducing the outflow of foreign exchange, creating opportunities for local companies in the services sector, and enhancing Malaysia's export capabilities. Generally, international tenders are invited only where domestic goods and services are not available. In domestic tenders, preferences are provided for *bumiputera* suppliers and other domestic suppliers. In most procurements, foreign companies are required to take on a local partner before their bids will be considered.

Malaysia's government procurement system lacks transparency and competitive bidding. In October 2003, Prime Minister Abdullah Badawi announced that the Malaysian government would introduce open tenders for government procurements and major projects, with direct negotiations limited to special cases. U.S. companies have voiced concerns about the non-transparent nature of the procurement process in Malaysia. The Malaysian government's new central tender website provides links to other ministries' websites, but not all of them provide user-friendly information on government tenders. In September 2005, the Ministry of Finance announced that the purchase of roadway, decorative, and outdoor lighting fittings, together with equipment and accessories for all government projects, must be sourced from one of three local *bumiputera* manufacturers.

U.S. firms have also expressed concern about bias in the Malaysian government's software procurement policy. A 2004 policy established a preference in government procurement for Open Source Software "in situations where the advantages and disadvantages of Open Source Software and proprietary software are equal." In 2006, the Malaysian government modified its software procurement policy to remove this preference.

EXPORT SUBSIDIES

Malaysia offers several export allowances. Under the export credit-refinancing scheme operated by the Central Bank, commercial banks and other lenders provide financing to all exporters at a preferential rate for both pre-shipment and post-shipment. Malaysia also provides tax incentives to exporters, including double deduction of expenses for overseas advertising and travel, supply of free samples abroad, promotion of exports, maintaining sales offices overseas, and research on export markets.

In addition, Malaysia provides investment incentives through the Pioneer States and Investment Tax Allowance programs. Malaysia has not submitted a notification of its subsidies to the WTO Committee on Subsidies and Countervailing Measures since 1995. As a consequence, the United States recently submitted questions to Malaysia, pursuant to Article 25.8 of the WTO Subsidies Agreement, requesting that Malaysia provide further information regarding these programs.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Malaysia is a member of the World Intellectual Property Organization (WIPO) and is a party to the Berne Convention for the Protection of Literary and Artistic Works and the Paris Convention for the Protection of Industrial Property. In 2006 Malaysia acceded to the Patent Cooperation Treaty. Malaysia has not ratified the WIPO Copyright Treaty or the WIPO Performance and Phonograms Treaty, which extend traditional copyright principles to the digital environment.

In 2000, Malaysia's parliament amended the Copyright Act, the Patents Act, and the Trademarks Act, as well as legislation on layout designs of integrated circuits and geographical indications, in order to bring Malaysia into compliance with its obligations under the WTO TRIPS Agreement. In 2004, Malaysia passed the "Protection of New Plant Varieties Act 2004" in line with the requirements of Article 27.3 (b) of the TRIPS Agreement. Enabling regulations for this law are expected to be implemented in early 2007. Malaysia does not prohibit other companies from relying on test and other undisclosed information submitted by another company to the government to obtain marketing approval of pharmaceuticals and agricultural chemicals, as called for under TRIPS Article 39.3.

Optical Media Piracy

The piracy of copyrighted materials, particularly those stored on optical media are a serious concern in Malaysia. Malaysia's production capacity for CDs and DVDs significantly exceeds local demand plus legitimate exports. U.S. industry estimates Malaysia's excess capacity is between ten to twenty times that needed for the legitimate market. The resulting surplus is exported globally. Pirated products believed to have originated in Malaysia have been identified throughout the Asia-Pacific region, North America, South America, Europe, and Africa.

The International Intellectual Property Association estimates 2006 industry losses in Malaysia due to piracy at $59 million. IIPA estimates 2006 piracy rates at 61 percent for business software and 45 percent for music. Malaysia has remained on the Special 301 Watch List since October 2001, specifically because of its failure to substantially reduce pirated optical disc production and export.

Malaysia sought to strengthen its intellectual property regime over the past several years and has tightened its laws. The Optical Disc Act of 2000 established a licensing and regulatory framework to control the manufacture of optical discs and to fight piracy. Under the Act, manufacturers are required to obtain licenses from both the Ministry of International Trade and Industry and the Ministry of Domestic Trade and Consumer Affairs (MDTCA), to place source identification (SID) codes on each disc and to allow regular inspections of their operations. U.S. industry is seeking changes in the law to ensure inspection authority covers all locations where optical media production may occur and also include as offenses acts such as ”gouging” or tampering with the SID codes and “burning” of recordable discs.

In 2006, the Malaysian government continued to make progress in IPR enforcement The MDTCA reported in 2005 that it had revoked the licenses of six CD factories found to have been involved in piracy activities. It also reported that in the first half of 2006 MDTCA enforcement officials had conducted 179,195 raids throughout Malaysia; initiated 39,346 prosecutions; and had arrested 1,948 vendors for selling pirated discs worth 475 million ringgit (approximately $130 million). Prosecution continues to be an ongoing challenge, but the Malaysian government made some headway in tackling the judicial backlog for infringement cases. Malaysia’s courts have imposed sentences of imprisonment and/or fines for the offenders. The MDTCA continues to pledge the creation of a specialized IP court, but it is not expected to be in place before mid-2007.

The Malaysian government is making further efforts to reduce trade in pirated goods. A special task force, chaired by the Minister of Domestic Trade and Consumer Affairs and including representatives from all ministries and agencies with responsibility for IPR, has overseen the expansion of enforcement staff and a more vigorous program of raids on sellers of pirated products. The Ministry added over 700 more enforcement officers in 2006 to complement the existing 1400 officers.

Malaysia continues to impose a hologram-labeling requirement for optical discs containing copyrighted material.

Pharmaceuticals

Sales of counterfeit pharmaceuticals are a continuing concern in Malaysia. Counterfeit medicines that have been identified include drugs with the wrong ingredients, insufficient active ingredients, and those with fake packaging. Most of the copied drugs are believed to originate in China. Unregistered generic copies of patented products, primarily imported from India, also are available in Malaysia. Both street vendors and health professionals sell the counterfeit products. The counterfeit medicines may create risks for consumers’ health, reduce sales by legitimate manufacturers, and leave legitimate companies vulnerable to lawsuits from patients who may have adverse reactions to the counterfeit products. The Ministry of Health and the MDTCA have sought to improve their enforcement efforts, sharing information and collaborating with industry in their efforts. Legal prosecution of counterfeit pharmaceuticals remains weak, however, with an inefficient court system plagued by delay and by lenient penalties for convictions.

Malaysia continues to consider the implementation of data exclusivity provisions and is working with industry as it formulates a position. The Malaysian government does not have an effective patent linkage mechanism to prevent the regulatory approval of copied versions of pharmaceuticals that are still patented; U.S. industry has reported several cases of the registration of generic versions of pharmaceuticals which are still under patent protection.

Trademarked Consumer Products

A number of U.S. consumer product companies have also suffered significant losses due to the manufacture and sale of counterfeit trademarked products. The volume is difficult to determine because of the broad scope of products involved. Counterfeiting in Malaysia goes beyond the counterfeiting of luxury branded products to include printer cartridges, plastic container systems, motor oil, household cleaning agents, shampoo and skin care items, herbicides, and penlight batteries. Counterfeiters have improved the quality of packaging and marketing so that consumers are misled into purchasing the products. The products have caused harm to individuals and damage to automobiles and household goods. Some of the counterfeit goods are produced in Malaysia, while many are brought into the country from China, Thailand, and India.

Enforcement by the local government is hampered by the lack of training and scarcity of information about ongoing counterfeit activities. Complicating enforcement of trademark-related violations is a Malaysian Court of Appeals interpretation of the trademark law that requires enforcement officials to have a “Trade Description Order” to conduct criminal raids when the counterfeit product seized is not identical to the trademarked original. High specificity requirements necessary to seize a shipment suspected of containing pirated or counterfeit products also represent an enforcement obstacle to U.S. industry.

SERVICES BARRIERS

Malaysia’s services sector constitutes about 58.1 percent of the national economy and remains highly protected.

Telecommunications

Under the WTO Agreement, Malaysia made limited commitments on most basic telecommunications services and partially adopted the reference paper on regulatory commitments. Foreign companies are entitled to acquire only up to a 30 percent equity stake in existing licensed public telecommunications operators, and is limited to facilities-based suppliers.

In December 2005, Malaysia issued its revised WTO services offer, which contains marginal improvements to its existing commitments by allowing foreign shareholdings up to 49 percent in "application service providers." On the other hand, foreign ownership of "network facilities providers" and "network service providers" (NSP) would be limited to 30 percent under the revised offer. This NSP ownership limitation is actually more restrictive than the limitation currently in existence under Malaysian regulations. Those regulations allow individual foreign licensees to own up to 61 percent of a network service provider, subject to a requirement that the foreign equity holding be reduced to 49 percent over a 5 year period commencing on the date of incorporation.

Distribution Services, including Direct Selling

Malaysia’s requirements for the licensing and operation of direct selling companies include a provision that a locally incorporated direct selling company must allow for 30 percent *bumiputera* equity. The MDTCA also “recommends” local content targets. Local companies that seek direct selling licenses require paid-in capital of RM1.5 million (approximately $397,000), while companies with foreign shareholders must have paid-in capital of RM5 million (approximately $1.3 million).

The Malaysian government also included local content requirements in new "Guidelines on Foreign

Participation in the Distributive Trade Services" that came into effect in December 2004. Among other provisions, department stores, supermarkets and hypermarkets must reserve at least 30 percent of shelf space in their premises for goods and products manufactured by *bumiputera*-owned small and medium size industries. The guidelines also require that at least 30 percent of a store's sales consist of *bumiputera* products. The Malaysian government continues to consider changes to these guidelines, in large part due to complaints from both domestic and foreign business interests.

Legal Services

Foreign lawyers may not practice Malaysian law, nor may they affiliate with local firms or use the name of an international firm. Foreign law firms may not operate in Malaysia except as minority partners with local law firms and their stake in any partnership is limited to 30 percent. Under the Legal Profession Act of 1976, the practice of Malaysian law is normally restricted to Malaysian citizens or permanent residents who have apprenticed with a Malaysian lawyer, are competent in *Bahasa* Malaysia (the official language), and have a local law degree or are accredited British Barristers at Law. The Attorney General has authority to grant limited exceptions on a case-by-case basis, provided the applicant has seven years of legal experience. Malaysian law does not allow for foreign legal consultancy except on a limited basis in the Labuan International Offshore Financial Center (see "Banking" below). Malaysia limits such foreign attorneys' scope of services to advice concerning home country and international law. Persons not licensed as lawyers are subject to criminal penalties if they directly or indirectly undertake activities relating to the Malaysian legal system, including drafting documents.

Architectural Services

A foreign architectural firm may operate in Malaysia only as a joint-venture participant in a specific project with the approval of the Board of Architects. Malaysian architectural firms may not have foreign architectural firms as registered partners. Foreign architects may not be licensed in Malaysia but are allowed to be managers, shareholders, or employees of Malaysian firms. Only licensed architects may submit architectural plans.

Engineering Services

Foreign engineers may be licensed by the Board of Engineers only for specific projects and must be sponsored by the Malaysian company carrying out the project. The license is only valid for the duration of a specific project. In general, a foreign engineer must be registered as a professional engineer in his or her home country, have a minimum of 10 years experience and have a physical presence in Malaysia of at least 180 days in one calendar year. To obtain temporary licensing for a foreign engineer, a Malaysian company often must demonstrate to the Board that they cannot find a Malaysian engineer for the job. Foreign engineers are not allowed to operate independently of Malaysian partners or serve as directors or shareholders of an engineering consulting company. A foreign engineering firm may establish a non-temporary commercial presence if all directors and shareholders are Malaysian. Foreign engineering companies may collaborate with a Malaysian firm but only the Malaysian company may submit the plans for domestic approval.

Accounting and Taxation Services

Foreign accounting firms may provide accounting and taxation services in Malaysia only through affiliates. All accountants who wish to provide auditing and taxation services in Malaysia must register with the Malaysian Institute of Accountants (MIA) before they may apply for a license from the Ministry of Finance. Citizenship or permanent residency is required for registration with MIA. Malaysian citizens or permanent residents who received degrees from local universities or are members of at least one of the 11 overseas professional bodies recognized by Commonwealth countries may apply for registration. The American Institute of Certified Public Accountants is not recognized by Commonwealth countries.

Banking

The Malaysian government limits foreign participation in financial services to encourage the development of domestic financial services providers. Its policies are guided by the Banking and Financial Institutions Act of 1989 and the ten-year Financial Sector Master plan, unveiled in 2001, which sets out a three-phase strategy for developing the Malaysian banking sector. Phase I focused on developing a core set of domestic banking institutions, in large part through encouraging consolidation. The Malaysian government encourages the establishment of these institutions through mergers of commercial banks with merchant banks, discount houses and stock brokerage firms. The Plan set out "building blocks" to be implemented within the first two years to four years, with the goal of consolidating the existing financial institutions down to nine. This goal has now been reached. According to the Plan, Phase II would include the gradual removal of some restrictions on incumbent foreign financial institutions, and during Phase III the Malaysian government would "consider" introducing new foreign competition. Malaysia is expected to enter Phase II during 2007.

Foreign institutions are allowed to hold an equity stake in investment banks of up to 49 percent. Currently, foreign participation in commercial banks is still restricted to an aggregate maximum stake of 30 percent. In 1994 Bank Negara revoked authorization of foreign banks to operate in Malaysia unless they incorporated locally. Foreign banks currently operate in Malaysia under a grandfathering provision, albeit with all-Malaysian Boards of Directors. No new licenses are being granted to either local or foreign banks. Bank Negara also announced that it would require all banks, including U.S. banks, to maintain their back office and computer operations in Malaysia, claiming that any operations outside of Malaysia are "outsourcing," even for foreign banks based elsewhere. This decision prevented some foreign banks from keeping up with global trends in Internet banking, but Bank Negara has waived the requirement on a case-by-case basis for foreign banks willing to reinvest sufficiently in Malaysia.

On December 28, 2005, Bank Negara announced that locally incorporated foreign banking institutions currently operating in Malaysia would be allowed to open four additional branches in 2006, with one branch in a market center, two in semi-urban centers, and one in a non-urban center. Each location must be approved by Bank Negara. Some foreign banks have obtained permission to open more than four, particularly if the new branches will be in underserved areas. Standard Chartered, for example announced its intention to open six more.

On October 14, 2004, Bank Negara completed the issuance of three Islamic banking licenses to three Middle Eastern Islamic banks. Bank Negara encourages all commercial banks operating in Malaysia to set up full-fledged Islamic banking subsidiaries in which foreigners may take a 49 percent equity stake. The government of Malaysia continues to offer various tax incentives and other measures to achieve its stated goal of becoming a global hub for Islamic Banking. In June 2005, Bank Negara established the Fund for Shariah Scholars in Islamic Finance to provide funding for research grants and scholarships. In August 2006, Bank Negara announced the launch of its three-pronged Malaysia International Islamic Financial Center Initiative, including special tax and regulatory treatment, scholarships, and efforts to work toward global harmonization of Islamic banking and insurance practices. This was acted upon in part in the Malaysian government's 2007 budget, released September 1, 2006, which proposes a ten-year tax exemption on Islamic financial products in foreign currencies and tax relief for persons engaged in Islamic Finance studies.

On April 1, 2005, the Malaysian government abolished the requirement imposed on foreign-controlled companies for domestic borrowing. It has also allowed foreign-controlled companies to seek any amount of ringgit credit without Bank Negara's approval.

The Federal Territory of Labuan was established as an International Offshore Financial Center in October 1990. Businesses receive preferential tax treatment for offshore banking activities, trust and fund management, offshore insurance and offshore insurance-related businesses, and offshore investment holding businesses. On September 16, Bank Negara lifted the requirement to maintain a physical presence in Labuan for existing and new financial institutions licensed to conduct Islamic financial business in international currencies. Islamic banks and insurance companies will be given greater flexibility to open operation offices anywhere in Malaysia. They will remain subject to regulation by the Labuan Offshore Financial Services Authority and will retain the favored tax treatment extended to offshore businesses in Labuan, 3 percent or RM20,000 (approximately $5,460), whether or not they maintain a physical presence there.

The Malaysia Deposit Insurance Corporation (MDIC) was established in August 2005. Membership is compulsory for commercial banks licensed under the Banking and Financial Institutions Act of 1989 and Islamic banking institutions licensed under the Islamic Banking Act of 1983. Eligible deposits are insured for up to RM60,000 (approximately $16,500). The MDIC maintains and administers two separate deposit insurance funds for conventional and Islamic deposits. Investments held in the Islamic Deposit Insurance Fund are made in accordance with Shariah principles.

Insurance

The 2001 Financial Sector Masterplan recommends phased liberalization of the insurance industry, including increasing caps on foreign equity, fully opening the reinsurance industry to foreign competition, and lifting existing restrictions on employment of expatriate specialists. In August 2006, foreign equity caps for insurance companies were raised from 30 percent to 49 percent. Branches of foreign insurance companies were required to incorporate locally under Malaysian law by June 30, 1998, although a few companies still enjoy extensions granted by Malaysia. Foreign shareholding exceeding 49 percent is permitted only with Malaysian government approval. As part of the 1997 WTO Financial Services Agreement, Malaysia agreed to allow existing foreign shareholders of locally incorporated insurance companies to increase their shareholding to 51 percent. New entry by foreign insurance companies is limited to equity participation in locally incorporated insurance companies and aggregate foreign shareholding in such companies may not exceed 30 percent. However, this limit has been subject to negotiation.

The Malaysian government continues to promote Islamic insurance (*"takaful"*) as part of its strategy to make Malaysia a global hub for Islamic financial services, including through new tax breaks announced in the 2007 budget. On September 16, 2006 Bank Negara announced that international *takaful* operators, both domestic and foreign, would be licensed to conduct business in international currencies as either incorporated entities or branches. Operations would receive a full tax exemption for ten years beginning in 2007. International *takaful* operators will not be subject to foreign equity caps.

Securities

Malaysia currently allows 49 percent foreign ownership in stock brokerage firms and a 30 percent foreign stake in unit trusts. The Securities Commission's ten-year Capital Market Masterplan, released in February 2001, proposed liberalizing foreign participation limits by 2003, at which time foreigners would be permitted to purchase a limited number of existing stock-broking licenses and to take a majority stake in unit trust management companies. Fund management companies may be 100 percent foreign-owned if they provide services only to foreigners, but they are limited to 70 percent foreign ownership if they provide services to both foreign and local investors. On March 22, 2005, the Malaysian government allowed five foreign stock brokerages and a foreign fund management company to set up operations in Malaysia. More foreign fund management companies are expected to utilize four of the remaining licenses. In September 2003, the Securities Commission began allowing foreign firms operating in Malaysia to seek listing on the Kuala Lumpur stock exchange (Bursa Malaysia). Futures brokerage firms may now be 100 percent foreign-owned.

Advertising

Only 20 percent of commercials in Malaysia can include foreign content. The Malaysian government recently relaxed enforcement of regulations governing the appearance of foreign actors in commercials shown in Malaysia. The government of Malaysia has an informal and vague guideline that commercials cannot “promote a foreign lifestyle.”

Audio-Visual and Broadcasting

The Malaysian government maintains broadcast content quotas on both radio and television programming. Eighty percent of television programming is required to originate from local production companies owned by ethnic Malays. However, in practice, local stations have been granted substantial latitude in programming due to a lack of local programming. Sixty percent of radio programming must be of local origin. Foreign investment in terrestrial broadcast networks is prohibited. As a condition for obtaining a license to operate, video rental establishments are required to have 30 percent local content in their inventories. Malaysia regularly censors movies and television shows deemed offensive on religious or sexual grounds.

INVESTMENT BARRIERS

Malaysia encourages foreign direct investment (FDI) in export-oriented manufacturing and high-technology industries, but retains considerable discretionary authority over individual investments and restricts foreign investment in other sectors. Especially in the case of investments focused on producing goods or services for the domestic market, the Malaysian government has used its authority to restrict foreign equity (normally to 30 percent) and to require foreign firms to enter into joint ventures with local partners. As noted above, foreign investment in the financial services industry is restricted; foreign investment in terrestrial broadcasting is prohibited. To alleviate the effects of the regional economic crisis, Malaysia in 1998 temporarily relaxed foreign ownership and export requirements in the manufacturing sector for those companies that did not directly compete with local producers. In June 2003, the government permitted 100 percent foreign ownership of new investments aimed at expanding existing investments in manufacturing concerns. In September 2004, the government announced that venture capital firms could be 100 percent foreign owned.

Malaysia’s announced goal with regard to attracting and retaining FDI is to “move up the value chain.” It is renewing tax abatements primarily for manufacturers of higher-technology products and other targeted industries, but not for manufacturers of more labor intensive products, some of which have moved to China or elsewhere. FDI in Malaysia continues to decline. While the Malaysian government has been successful in attracting lower-wage, labor intensive manufacturing, improvements in the business climate needed to attract higher value manufacturers have not kept pace. According to UNCTAD’s World Investment Report, FDI inflows to Malaysia in 2005 declined 14 percent, while inflows to Southeast Asia as a whole increased 45 percent.

Shortages of skilled and technical employees remain, particularly in the electronics sector. Most foreign firms face restrictions in the number of expatriate workers they are allowed to employ. In June 2003, the Malaysian government released new guidelines liberalizing the policy on employment of expatriates in the manufacturing sector. In its proposed 2007 budget released September 1, 2006 it announced that it will establish four additional immigration units intended to expedite visa approvals for expatriates, and it will allow professional spouses of expatriates to work. Manufacturing companies with foreign paid-up capital of at least $2 million receive automatic approval for up to 10 expatriate posts.

ELECTRONIC COMMERCE

Malaysia applies no onerous restrictions on products or services traded via electronic commerce. Products that are ordered via the Internet and physically delivered are subject to applicable import duties. Engineering services may not be provided via the Internet unless the engineer is properly licensed.

OTHER BARRIERS

Transparency

U.S. companies have raised concerns regarding transparency in government decision-making and procedures, and anticompetitive practices in Malaysia. The Malaysian government has taken steps to fight corruption, including through the Anti-Corruption Agency (ACA) which is part of the Office of the Prime Minister. The ACA has the independent power to conduct investigations and is able to prosecute cases with the approval of the Attorney General. However, relatively few senior officials or politicians have been prosecuted for corruption, despite the fact that Malaysia has slipped in its ranking on Transparency International's corruption perceptions index from 33 in 2002 to 44 in 2006. Malaysia has signed but not yet ratified the UN Convention Against Bribery and Corruption.

MEXICO

TRADE SUMMARY

The U.S. goods trade deficit with Mexico was $64.1 billion in 2006, an increase of $14.3 billion from $49.7 billion in 2005. U.S. goods exports in 2006 were $134.2 billion, up 11.5 percent from the previous year. Corresponding U.S. imports from Mexico were $198.3 billion, up 16.5 percent. Mexico is currently the 2nd largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Mexico were $20.6 billion in 2005 (latest data available), and U.S. imports were $14.7 billion. Sales of services in Mexico by majority U.S.-owned affiliates were $8.9 billion in 2004 (latest data available), while sales of services in the United States by majority Mexico-owned firms were $1.2 billion.

The stock of U.S. foreign direct investment in Mexico in 2005 was $71.4 billion, up from $63.5 billion in 2004. U.S. FDI in Mexico is concentrated largely in the manufacturing, banking and finance sectors.

North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA), signed by the United States, Canada and Mexico, entered into force on January 1, 1994. This free trade agreement progressively eliminates tariffs and non-tariff barriers to trade in goods; improves access for services trade; establishes rules on investment; strengthens protection of intellectual property rights; and creates an effective dispute settlement mechanism. The NAFTA is accompanied by supplemental agreements that provide for cooperation to enhance and enforce labor standards and to encourage environmentally friendly practices and bolster environmental protection in North America.

IMPORT POLICIES

Tariffs and Market Access

Under the terms of the NAFTA, Mexico eliminated tariffs on all remaining industrial and most agricultural products imported from the United States on January 1, 2003. As of January 1, 2006, Mexico applies tariffs or tariff-rate quotas on corn, sugar, dry beans, orange juice, chicken leg quarters, high fructose corn syrup (HFCS) and milk powder. All tariffs and tariff-rate quotas are scheduled to be eliminated on January 1, 2008. (See the section on agriculture below for additional details on HFCS and chicken leg quarter actions.)

Trade growth in agricultural products has been balanced since the NAFTA entered into force, with U.S. exports to Mexico having increased by $7.3 billion from 1993 to 2006, and U.S. imports from Mexico having increased by $7.5 billion. The statistics are less balanced, however, when considering non-agricultural trade. U.S. non-agricultural imports from Mexico grew $188 billion compared with U.S. export growth to Mexico of $123 billion from 1993 to 2006.

A number of U.S. exports, both agricultural and non-agricultural, are subject to antidumping duties that limit access to the Mexican market. Products subject to these duties currently include beef, hydrogen peroxide, epoxidized soy oil, apples, liquid caustic soda, ammonium sulfate, polyvinyl chloride, bond paper, industrial fatty acids, stearic acid, ethylene glycol monobutyl ether, and carbon steel pipe and tube. In 2006, Mexico terminated antidumping duties on rice.

Agricultural Products

The United States exported $10.9 billion in agricultural products to Mexico in 2006, compared to $9.4 billion in 2005. Since 2004, Mexico has become the United States' second-largest agricultural market.

During the past year, Mexico's Secretariat of Economy (SECON) issued a number of decisions relating to antidumping cases affecting U.S. agricultural products. In January 2006, SECON officially announced the resolution of the investigation of dumping charges it had filed on behalf of the Mexican Pork Council against importers and exporters of U.S. pork, deeming that there was not sufficient evidence to impose antidumping duties.

In April 2006, SECON decided to continue antidumping duties on U.S. beef and beef by-products after completing a sunset review investigation. On April 24, 2006, SECON announced that it would continue to apply the antidumping duties imposed on imports of U.S. beef and beef by-products from certain U.S. exporters and producers for another five years. In addition, Mexico's modification of the beef dumping duties in 2004 in response to the findings of a NAFTA Chapter 19 panel, which determined that SECON did not sufficiently demonstrate that U.S. beef imports had damaged Mexico's beef industry, is still pending the Chapter 19 panel's approval. Mexican policies in this area have reduced the number of U.S. suppliers and altered product trading patterns. Industry representatives assert that $100 million to $500 million in revenue is lost each year due to antidumping duties in the beef sector.

On September 11, 2006, SECON published the final resolution of Mexico's antidumping investigation on U.S. long-grain white rice. Mexico undertook the investigation after the December 2005 World Trade Organization (WTO) ruling that Mexico had not properly conducted its previous investigation that had resulted in SECON's June 5, 2002 finding that assessed compensatory duties against U.S. rice exporters. In the September 2006 final resolution, SECON terminated the measures, concluding that the imports during the reference period did not constitute price discrimination and thus did not cause damage to the domestic rice sector.

SECON continues to assess antidumping duties on U.S. imports of red and golden delicious apples. On December 29, 2004, SECON suspended the application of the 46.58 percent antidumping duty on U.S. red and golden delicious apples exported by members of the Northwest Fruit Exporters (NFE) and established a reference price system for NFE members. In February 2005, a Mexican court nullified the reference price system, and on May 26, 2005, in response to an order from a Mexican court, SECON announced the elimination of the 46.58 percent antidumping duty for NFE members and the beginning of a new antidumping investigation on U.S. red and golden delicious apples exported by NFE members. On November 2, 2006, SECON announced the final results of its investigation and imposed final duties ranging from 6.4 percent to 47.05 percent on red and golden delicious apples from NFE members. The original antidumping duty of 46.58 percent still applies to red and golden delicious apples from exporters who are not NFE members.

In July 2003, Mexico put in place an industry-negotiated NAFTA safeguard on U.S. chicken leg quarters that will remain in effect until December 31, 2007. The safeguard takes the form of a tariff-rate quota (TRQ) on chicken leg quarters. The TRQ preserves market access for U.S. exporters at levels achieved in recent years. Pursuant to the NAFTA, Mexico agreed to provide compensation to the United States, including a commitment not to impose any additional import restrictions on U.S. poultry products and to eliminate certain sanitary restrictions on U.S. poultry products.

On December 22, 2006, the Mexican Congress approved legislation repealing the 20 percent tax on certain beverages or products made with sweeteners other than cane sugar, including HFCS (beverage tax). Mexico had imposed the beverage tax on January 1, 2002. As a result of the tax, HFCS sales fell dramatically and industry estimated that the annual cost of the beverage tax was roughly $944 million in lost U.S. HFCS sales, in addition to sizeable investment losses. The Mexican Congress had renewed the beverage tax each year since 2002, including for 2006. The new legislation repealed the beverage tax effective January 1, 2007. Mexico agreed to eliminate the tax in response to findings by a WTO panel and the Appellate Body that vindicated the U.S. position that the beverage tax was inconsistent with Mexico's WTO obligations.

On July 27, 2006, the United States and Mexico concluded an agreement on market access for sweeteners through January 1, 2008, when, under the NAFTA, all remaining duties on agricultural goods will be eliminated. The sweeteners agreement provides Mexico duty-free access to the U.S. market for 250,000 metric tons raw value of raw or refined sugar in Fiscal Year (FY) 2007 and at least 175,000 metric tons raw value of raw or refined sugar for the first three months of FY 2008 (October 1, 2007 through December 31, 2007). Under the agreement, Mexico will provide reciprocal access for U.S. HFCS: 250,000 metric tons in FY 2007 and at least 175,000 metric tons for the first three months of FY 2008 (October 1, 2007 through December 31, 2007). Mexico will also provide, for the first time, duty-free access for U.S. sugar of not less than 7,258 metric tons raw value for each of the marketing years 2006, 2007 and 2008. Mexico had previously opposed the establishment of such a quota due to the longstanding trade dispute over sugar.

On August 18, 2006, Mexico removed duties that had initially been placed on imports of several U.S. agricultural products on August 18, 2005. Tariffs ranging from 9 percent to 30 percent had been imposed on chewing gum, other confectionaries, certain fortified milk products and certain wines. However, on September 14, 2006, SECON announced the imposition of a 110 percent tariff on dairy blends for a period of 48 calendar days, from September 14, 2006 to October 31, 2006. Mexico took these actions based on its view that the United States had failed to comply with a WTO recommendation that the Continued Dumping and Subsidy Offset Act (CDSOA), known as the "Byrd Amendment," be brought into conformity with U.S. WTO obligations. The President signed legislation in February 2006 to repeal the CDSOA. The duties were ended on November 1, 2006.

Sanitary and Phytosanitary Issues

In recent years, Mexican sanitary and phytosanitary measures have created barriers to exports of certain U.S. agricultural goods, including grains, seed products, apples, stone fruit, pork, beef, poultry, citrus, wood and wood products, dry beans, avocados, potatoes and eggs. In addition, procedural requirements regarding sanitary and phytosanitary inspections at port of entry do not always reflect agreements reached between U.S. Department of Agriculture officials and the Mexican Secretariat of Agriculture, resulting in unnecessary delays at border points of entry, seaports and airports. While this situation improved during 2006, significant quantities of U.S. agricultural goods were still subject to rejection or delays at the Mexican border.

Mexico banned imports of U.S. beef in December 2003, following the detection of a positive case of Bovine Spongiform Encephalopathy (BSE) in Washington state. In March 2004, Mexico announced that it would accept U.S. boneless beef from cattle less than 30 months of age and it subsequently lifted restrictions on a number of offals and processed boneless beef products. In early 2006, Mexico lifted its ban on U.S. bone-in beef and in October 2006 the United States and Mexico reached an agreement allowing the import of U.S. dairy breeder cattle into Mexico. Mexico currently bans or restricts U.S.

exports of some live cattle, ground beef and certain offals. The United States is working intensively to reopen the market as quickly as possible.

In June 2004, despite the lack of a protocol for returning live animals or adequate inspection facilities in Mexico, the Mexican Congress approved a measure requiring that the inspection of imported live animals take place in Mexico. The lack of adequate inspection facilities has hampered the importation of live animals. While Mexico's Congress appears to agree that the law should be changed, the provision remains in place pending agreement upon other modifications to the Animal Health Law.

In September 2005, Mexico's Secretariat of Health implemented a rule regulating the meat sector, establishing a zero-tolerance for the presence of salmonella in raw meat. This standard could lead to unnecessary product recalls and export restrictions for U.S. meat exporters.

In October 2005, Mexico lifted its Low Pathogenic Avian Influenza (LPAI) restrictions on poultry imports from nine U.S. states, but restrictions on eleven counties in Texas remain in place following a 2004 detection of High Pathogenic Avian Influenza. In August 2006, Mexico briefly closed its border to poultry shipments from the state of Michigan due to a LPAI finding in wild birds, but swiftly removed the restriction after receiving additional information from U.S. officials demonstrating that there was no danger to commercial poultry operations. U.S. officials continue to work with Mexican officials to ensure that no unnecessary measures or restrictions are taken.

Administrative Procedures and Customs Practices

U.S. exporters continue to be concerned about Mexican customs administrative procedures, including: insufficient prior notification of procedural changes; inconsistent interpretation of regulatory requirements at different border posts; and uneven enforcement of Mexican standards and labeling rules. There have been relatively few specific complaints, however, and Mexican customs has been putting procedures in place to address issues of non-uniformity at border ports of entry. Agricultural exporters note that Mexican inspection and clearance procedures for some agricultural goods are long, burdensome, non-transparent, and unreliable. Customs procedures for express packages continue to be burdensome, although Mexico has raised the *de minimis* level from $1 to $50. However, Mexican regulations still hold the courier 100 percent liable for the contents of shipments. U.S. exporters have highlighted the benefits if the hours of customs operation on the U.S. and Mexican sides of the border were harmonized. Similarly, they cite the delays stemming from the lack of pre-clearance procedures, which the Mexican government claims are not permitted under current law.

To be eligible to import well over 400 different items, including agricultural products, textiles, chemicals, electronics and automotive parts, Mexican importers must apply to the Secretariat of Finance and Public Credit and be listed on a special industry sector registry. U.S. exporters complain that registering is bureaucratically difficult, and this requirement sometimes causes costly customs clearance delays when new products are added to the list of subject items with immediate effect, thereby denying importers sufficient notice to apply. They also report that certain importers have been summarily dropped from the registry without prior notice or subsequent explanation, effectively preventing U.S. exporters from shipping goods to Mexico.

Mexico requires import licenses for a number of commercially sensitive products. It also uses estimated prices for customs valuation of a wide range of products imported from the United States and other countries, including apples, milled rice, beer, distilled spirits, chemicals, wood, paper and paperboard products, textiles, apparel, toys, tools and appliances.

Since October 2000, the Mexican government has imposed a burdensome guarantee system for goods subject to estimated prices. Importers cannot post bonds to guarantee the difference in duties and taxes if the declared value of an entering good is less than the official estimated price. Instead they must deposit the difference in cash at a designated Mexican financial institution or arrange one of two alternative sureties (a trust or line of credit). The cash deposit is not returned for three months and is only returned if the Mexican government has not initiated an investigation and if the supplier in the country of exportation has provided an invoice certified by its local chamber of commerce. Mexican banks charge as much as $500 to open an account for this purpose and $50 for each transaction, making this a burdensome and costly regulation for businesses on both sides of the border. The governments of the United States and Mexico are discussing an exchange of customs data that would result in the elimination of the estimated pricing regime.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Under the NAFTA, Mexico is required to recognize conformity assessment bodies (i.e., certification bodies or testing laboratories) in the United States and Canada on terms no less favorable than those applied to conformity assessment bodies in Mexico. Mexico claims that there must be a need for additional bodies before it will recognize additional bodies. In January 2005, Mexico published a *convocatoria* (formal announcement, or "call") stating that one or more Mexican government agencies are requesting applications from certification bodies for recognition with respect to electrical goods and electronics.

Applications by two U.S. certification bodies for accreditation by the Entidad Mexicana de Acreditacion (EMA), the body responsible for accrediting conformity assessment bodies for Mexican Official Standards, are still pending. The publication of the *convocatoria* was a positive first step, suggesting a willingness on the part of the Mexican government to consider additional certification bodies in the electrical and electronics sectors. Unfortunately, EMA has strongly resisted entry by non-Mexican certification bodies, both prior to and since the publication of the *convocatoria.* If U.S. certification bodies were able to certify products for the Mexican market, the potential increase in U.S. exports could be significant. There are estimates that the two U.S. companies with pending applications could generate $2 million to $3 million each annually in the product certification business in the electrical and electronic sectors.

In the telecommunications sector, Mexico initially indicated that it could be ready to begin implementation of Phase I of the Inter-American Telecommunications Commission's (CITEL) Mutual Recognition Agreement (MRA) by June 2006 and possibly implementation of Phase II by March 2008. Phase I of the CITEL MRA provides for the mutual acceptance of test results while Phase II provides for the mutual acceptance of certifications concerning conformity of equipment with technical regulations. Mexico's implementation of Phase I would allow recognized U.S. testing laboratories to test equipment for compliance with Mexican technical requirements, whereas implementation of Phase II would allow recognized U.S. certification bodies to certify equipment as meeting Mexican technical requirements. Mexico, however, did not meet the June 2006 goal and now estimates that it will not be ready to implement Phase I until the second quarter of 2007. Mexican implementation of Phase I and II of the CITEL MRA remains a key issue for U.S. testing and certification bodies, as well as for U.S. exports to Mexico, and the United States will continue to push the Mexican government on this issue.

Mexico has over 700 technical regulations called Normas Oficiales Mexicanas (NOMs) issued by a number of different agencies, each with its own conformity assessment procedures. While the Secretariat of Economy, the Secretariat of Agriculture (for a limited sub-set of its NOMs), the Secretariat of

Communications and Transport (for one of its NOMs), and the Secretariat of Environment and Natural Resources have published some of the conformity assessment procedures, they have not published others.

On January 17, 2006, in Washington, D.C., then U.S. Trade Representative Portman and Mexican Secretary of Economy Sergio García de Alba signed an agreement on trade in tequila. Under the agreement, exports of tequila from Mexico to the United States will continue without interruption. Key elements include: a prohibition on restrictions of bulk tequila exports to the United States; a prohibition on Mexican regulation of tequila labeling or marketing outside of Mexico; a prohibition on Mexican regulation of the labeling, formulation, and marketing of products containing tequila outside of Mexico; creation of a "tequila bottlers registry" that identifies approved bottlers of tequila; continuation of current practice with respect to addressing Mexican concerns regarding the bottling of tequila in the United States; and establishment of a working group to monitor the implementation of the agreement. The working group met on November 15, 2006 to review the operation of the agreement.

GOVERNMENT PROCUREMENT

Mexico's efforts to make its government procurement regime more transparent through policy reform and the application of technology have resulted in increased competition as well as savings for the government. The Mexican government has established several "e-government" Internet sites to increase transparency of government processes and establish guidelines for the conduct of government officials. "Compranet" allows on-line processing of government procurement and contracting. While implementation has been successful, there is still a need for further regulatory and technological improvements throughout the Mexican government.

As of January 1, 2003, NAFTA limits the total value of contracts that Mexico's parastatal petroleum and electricity monopolies, PEMEX and the Federal Electricity Commission, respectively, may remove from coverage under NAFTA. Mexico provides an annual notice of the set-aside calculation, along with the methodology used in the calculation, to the United States and Canada. The 2006 value of the set aside for these entities was $380 million.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Under NAFTA and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Mexico is obligated to implement certain standards and procedures for the protection of intellectual property, including procedures and penalties to be applied in certain cases of copyright piracy and trademark counterfeiting. Despite a fairly extensive set of IPR laws and an increase in the number of seizures and arrests during 2005 and 2006, the extent of IPR violations in Mexico remains dramatic. Monetary sanctions and other penalties, when imposed, are minimal and largely targeted at the bottom-tier of the piracy chain, for example, the small-scale vendors of infringing materials, who are numerous and easily replaced. In 2005, seizures of pirated goods increased 19 percent over 2004 (from 108.8 million articles seized to 129.5 million), and the number of articles seized in 2006 rose another 155 percent over 2005 to a total of 331 million articles seized. However, in 2005, only four people were sentenced to imprisonment for IPR violations. Three were sentenced to three years in prison, and another to one and a half years. In 2006, only one person was sentenced to prison for IPR crimes. Unfortunately, pirates and counterfeiters are often released and return to their illegal activities. The United States remains concerned about the continuing high levels of piracy and counterfeiting in Mexico and closely monitors how the Mexican government is addressing these problems. Mexico was taken off the Special 301 "Watch List" in 2000, but returned to the list in 2003, where it has remained to date due to enforcement deficiencies.

A concerted intelligence and enforcement effort to target organized crime, which is increasingly behind commercial piracy and counterfeiting in Mexico, is necessary to deter large-scale infringement activity, which is facilitated by the proliferation of Mexico's informal economy. Well-known markets selling pirated and counterfeit goods, such as Tepito in Mexico City, San Juan de Dios in Guadalajara, and some others in Monterrey and San Luis Potosi, continue to operate openly. Currently, it is estimated that six out of every ten new jobs generated in Mexico are in the informal sector. In 2003, the Procuratorate General of the Republic (PGR) created a dedicated IPR unit, which combines federal prosecutors and police, to make the enforcement regime more effective and efficient. In 2004, PGR authorized its Organized Crime Division to investigate cases of piracy and counterfeiting. In September 2006, PGR took the first step in combating organized crime related to intellectual property infringement by apprehending eight leaders of criminal gangs.

In June 2006, several Mexican federal agencies, one state government, civil society groups and concerned industries signed a National Agreement in which all committed to cooperation in combating intellectual property infringement. The Calderón administration is expected to adopt the National Agreement's principles and put in place a Policy of State to combat intellectual property crimes.

On the legislative front, an initiative to give PGR the power to prosecute intellectual property crimes without first receiving a complaint from intellectual property holders or legal representatives has remained stalled in the Mexican Congress for more than two years. In May 2006, a law approved by the Legislative Assembly of the Federal District that would have allowed local authorities to close commercial establishments selling pirated or counterfeit goods was vetoed by Mexico City's mayor.

Copyright Protection

Copyright piracy remains a major problem in Mexico, with U.S. industry loss estimates growing each year. Although enforcement efforts by the Mexican government seem to be improving, piracy levels continue to rise, resulting in closures of legitimate copyright-related businesses, according to industry sources. Pirated sound and motion picture recordings are widely available throughout Mexico, where piracy has shifted from traditional formats to optical discs (CD, DVD, CD-ROM). The International Intellectual Property Alliance estimates that trade losses due to copyright piracy in Mexico totaled $1.3 billion in 2005, with pirated products taking 65 percent of the total music market; 64 percent of the business software market; 62 percent of the motion picture market; and 75 percent of the entertainment software market. In July 2003, the Mexican Congress amended the 1996 Mexican copyright law, and in September 2005 published the implementing regulations, thereby bringing the law into effect. Industry associations and Indautor, the Mexican government agency that regulates copyrights, claim that, in general, the new legislation brings Mexico into compliance with its obligations under the NAFTA IPR Chapter and the WTO TRIPS Agreement. Industry associations remain concerned, however, about exclusive rights to the public performance and exhibition of audio-visual works; Mexican contract formalities that could restrict the exercise of rights; and the requirement that publishing contracts include certain obligations (e.g., the number of editions; the number of copies or reproductions of each edition; whether the material delivery is or is not exclusive; and the remuneration that the author or copyright holder should receive). The amendment also did not raise the minimum amount that an infringer has to pay to a rights holder to compensate for the injury caused by infringement. The law provides that the indemnification for moral and economic damages cannot be lower than 40 percent of a work's sale price.

Patent, Trademark, Pharmaceutical and Agricultural Chemical Data Protection

Patents and trademarks are under the jurisdiction of the Mexican Institute of Industrial Property (IMPI), an independent agency that operates under the auspices of the Secretariat of Economy.

U.S. pharmaceutical and agricultural chemical companies are concerned about the lack of coordination between IMPI and other Mexican agencies with regard to government procurement of unauthorized copies of patented pharmaceuticals. In 2003, the Secretariat of Health modified Mexican health regulations to require that, starting with purchases scheduled for delivery on January 1, 2003, IMSS (Mexican Social Security Institute) and ISSSTE (Social Security Institute for Government Workers) would purchase only legitimate versions of products patented in Mexico. Unfortunately, it appears the new regulations are not being fully implemented because of financial constraints at IMSS and ISSSTE.

In September 2003, the Secretariats of Health and Economy implemented a Presidential decree regarding cooperation between the two agencies. According to the decree, IMPI is required to publish a list of pharmaceuticals covered by a patent in Mexico. A company applying to the Secretariat of Health for safety and health registrations for sale of pharmaceutical products must show proof of patent and proof that test data was obtained in a legitimate matter. According to the regulation, failure to present proof of patent and test data will result in denial of the registration. Also, if a company provides false information, it is now subject to both civil and criminal proceedings. Implementation remains weak, however. U.S. industry reports that the Federal Commission for Protection from Sanitary Risks, which handles drug registration, still continues to authorize the manufacture of pharmaceutical products by unauthorized companies. Stricter compliance with the 2003 decree would also help eliminate unauthorized copies of patented pharmaceuticals from the supply chain for IMSS and ISSSTE.

Mexico took a step forward when it published a Presidential decree in May 2006 that amends the Mexican Health Law and the Mexican Penal Code to raise to the felony level the act of selling, distributing, or transporting counterfeit pharmaceuticals, or fostering the forgery, of or tampering with, pharmaceuticals, medicines, active ingredients, raw materials, or additives used in products for human consumption. This law also applies felony status to committing or fostering the forgery of, or tampering with, the packaging of such products, as well as to the selling, distributing, or transporting of such forged or tampered packaging.

U.S. companies holding trademarks in Mexico have cited problems with trademark enforcement and administration. Although Mexican federal administrative actions are supposed to be completed within four months, actions related to trademark enforcement often take as long as 18 months. The time can be lengthened by jurisdictional and procedural disputes within the Mexican government, as well as by internal coordination problems within the Mexican Institute of Industrial Property (IMPI) and between IMPI and the Procuratorate General of the Republic.

Border Enforcement of Intellectual Property Rights (IPR)

NAFTA Article 1718 and Article 51 of the TRIPS Agreement obligate Mexico to allow U.S. IPR holders to apply to Mexican authorities for suspension of release of counterfeit trademark or pirated copyright goods. IPR holders seeking to use the procedure must obtain an order from IMPI that directs customs officials to detain the merchandise. Companies requesting such actions generally report positive outcomes. However, U.S. industry has sought increased cooperation and communication between IMPI and Mexican customs in order to prevent the release of counterfeit goods into the Mexican market.

SERVICES BARRIERS

Telecommunications

The 2005-2006 Global Information Technology Report's Networked Readiness Index of 115 nations ranked Mexico number 55, up from 60 the year before, on a scale measuring the degree of information and communication technology development. Mexico ranked well in the readiness and usage indices, but poorly in the environment component index, earning especially low scores in the effectiveness of law-making bodies and burden of government regulation. The report cites the Mexican government's passivity in dealing with this sector and Mexico's consequent lack of competitiveness in telecommunications. It calls for a more independent Federal Telecommunications Commission (COFETEL) to foster increased competition. An October 2006 OECD report entitled *ICT Diffusion to Business: Peer Review Country Report Mexico* singled Mexico out as being the second most expensive country as far as residential telephone rates are concerned, and the most expensive for business charges, due to the continuing low levels of competition in the domestic telephony market. The report recommended that the regulatory environment in communications be strengthened in order to allow markets to operate more effectively, thereby helping to reduce communications prices and improve services.

Promoting competitiveness in the telecommunications market continues to be an enormous challenge for Mexico. Although the Fox Administration initially identified this as a priority goal for Mexico, virtually no progress was made in its six years in office, and hopes that the new administration can do better are high.

Telmex dominates the market and is perceived to exercise influence over the legislative process, the courts, governmental policy departments (in particular the Secretariat of Communications and Transport, or SCT), and the telecommunications regulatory agency COFETEL. (For example, Telmex successfully lobbied SCT for several years to deny cable television operators concessions to enter the telephone business until SCT assured Telmex that it would have the right to also provide video services).

In March 2006, Mexico's Congress passed the Radio and Television Law, which, among other things, granted COFETEL stronger regulatory powers (see television below regarding other effects of the law). COFETEL subsequently underwent a complete change in commissioners in July 2006. These enhanced powers are welcome, but it remains to be seen whether COFETEL will have the political muster to use them. The United States will monitor to see whether COFETEL will be able, and willing, to use such enhanced powers to improve the competitive environment in the Mexican telecommunications market.

The recent debate over the "Convergence Accord," SCT's proposal to allow telecommunications companies to provide so-called triple-play services (voice, data and video), highlighted the degree to which COFETEL and the Federal Competition Commission (COFECO) are asserting their independence with regard to concerns over Telmex's market dominance. Soon after SCT released its "convergence" plan, COFECO voiced support for the claims of cable companies that the accord would unfairly advantage Telmex. COFETEL also voiced opposition, asserting that "triple play" was already possible under existing legislation. The final version of the Convergence Accord, published on October 3, 2006, took into account some of the concerns raised and did impose some limits on Telmex's ability to use its market dominance for anticompetitive purposes. For example, it establishes a committee to ensure that Telmex complies within 200 days with the requirements that it guarantee interconnection, interoperability, and number portability before allowing Telmex to change its concession to allow video services. It also gives power to COFETEL and Hacienda (Mexico's finance ministry) to determine whether Telmex should pay a fee to modify its license to provide video services. The provisions of the published accord also allow mobile phone companies, radio communications systems and satellite TV providers to expand their portfolio of services.

After an almost two year delay, in September 2006 COFETEL attempted to take a first step in resolving a dispute between fixed and mobile carriers by announcing termination rates for fixed-to-cellular calls. This was also designed to pave the way to implement a long distance "calling party pays" ("CPP") system for wireless services that will shift all interconnection charges to the company (and ultimately the customer) from whence calls originate. The announced rates were set to start (retroactively) from 2005 at 1.71 pesos/minute (about 16 U.S. cents) and gradually decreased to .90 pesos/minute (about 8 U.S. cents) by 2010. COFETEL claims that the rates, plus rounding and billing fees, are cost-oriented, although it has not responded to the U.S. Government request for information on the basis used for calculating the per minute rates. The announced rates, however, have not taken effect due to injunctions filed against COFETEL, both by Telcel asserting that the rates are too low and by long-distance carriers asserting the opposite. In the meantime, Telcel and some fixed and wireless companies notified COFETEL that they had reached an agreement on a termination rate of 1.54 pesos/minute (14 U.S. cents) for 2006. COFETEL accepted this arrangement, and the CPP system for international calls entered into effect on November 4, 2006. Several carriers have already negotiated rates through 2010, with only a handful not yet having agreed to implement CPP**.** There are U.S. industry estimates that the higher interconnection rates agreed upon between the companies will cost U.S. industry and consumers hundreds of millions of dollars.

U.S. companies who form joint ventures with Mexican partners to obtain authorizations (called "concessions" under Mexican law) to provide public network and satellite-based services routinely face delays in obtaining their authorizations, with time frames extending far beyond the four-month period established in COFETEL's Satellite Communication Regulations. The lack of clarity regarding the roles of COFETEL and the SCT in granting the authorizations makes it difficult for the companies to seek help in resolving delays.

COFETEL has made headway on approving the petition of the Federal Electronics Commission to allow data service to be provided over electric lines ("broadband over powerline").

Television and Radio

As in telecommunications, there are concerns that the two dominant television companies, Televisa and TV Azteca, who share duopoly status in the sector, continue to exercise influence over Mexican legislative, policy, and regulatory bodies to prevent competition. The Radio and Television Law passed in March 2006 (mentioned above with regard to telecommunications) has been criticized as catering to the interests of dominant industry players by imposing permanent disadvantages on new entrants as compared to the current dominant duopoly.

U.S. firms remain unable to penetrate the Mexican television broadcast market, despite the fact that both Televisa and TV Azteca benefit from access to the U.S. market. TV Azteca has used the Mexican legal system against a U.S. firm trying to enter this sector. Such actions have included TV Azteca personnel directing a raid, with the support of Mexico City auxiliary police, on production facilities to stop production of a show in Mexico and thereby hinder or discourage additional work. Mexico's television advertising market is estimated to be worth in excess of $2.5 billion annually.

Competition

Mexico passed a new competition law in June 2006 that gave COFECO additional authority to regulate market concentration and anticompetitive behavior in both the private and public sectors. There have been calls, including by key members of the Calderon transition team, to open up sectors of the Mexican economy currently dominated by monopolies or duopolies, though doubts remain over whether the new law and the new administration will be able to make these sectors truly competitive.

INVESTMENT BARRIERS

Ownership Reservations

Mexico's oil and gas policy is highly restrictive with regard to private equity investment. The sector remains closed to foreign investment, with the exceptions of the Liquefied Natural Gas sector and in the marketing of petroleum products. Only Mexican nationals may own gas stations.

The Mexican constitution mandates state ownership of hydrocarbons and provides that no concessions or other types of production-sharing agreements or risk contracts shall be granted in regard to hydrocarbon exploitation.

Mexico was able to meet its energy needs for many years under this restriction. Recently, the Mexican government has explored ways of allowing additional foreign investment in the energy sector that are consistent with its constitution, hoping to attract capital that will strengthen the highly-leveraged national oil company, Pemex. So far the reform efforts have had little success.

Other laws limit participation in certain sectors or activities (e.g., forestry exploitation) to Mexican nationals. Investment restrictions prohibit foreign ownership of residential real property within 50 kilometers of the nation's coasts and 100 kilometers of its land borders. However, foreigners may acquire the effective use of residential property in the restricted zones through trusts administered by Mexican banks. A national foreign investment commission reviews foreign investment in Mexico's restricted sectors, as well as investments in non-restricted sectors that exceed a 49 percent share of an investment with a value greater than $150 million (as adjusted each year for growth in Mexico's nominal GDP). All of these restrictions are incorporated into the NAFTA.

MOROCCO

TRADE SUMMARY

The U.S. goods trade surplus with Morocco was $354 million in 2006, an increase of $275 million from $79 million in 2005. U.S. goods exports in 2006 were $876 million, up 66.8 percent from the previous year. Corresponding U.S. imports from Morocco were $521 million, up 16.9 percent. Morocco is currently the 69th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Morocco in 2005 was $285 million (latest data available), down from $293 million in 2004.

FREE TRADE AGREEMENT

The United States – Morocco Free Trade Agreement (FTA), which entered into force on January 1, 2006, will improve the competitiveness of U.S. exporters' goods and services in the Moroccan market. In addition to the high standard obligations that Morocco adopted in the FTA, the United States is helping to ensure continued legal and regulatory reform through targeted technical assistance.

IMPORT POLICIES

Morocco also has an Association Agreement with the European Union (EU) that provides preferential tariff treatment for most exports of industrial and some agricultural goods from the EU to Morocco. The U.S.-Morocco FTA has helped to remove any competitive disadvantages for U.S. firms. Morocco has also concluded a free trade agreement with Turkey, and has concluded a regional free trade agreement with Jordan, Egypt and Tunisia (the Aghadir Agreement) that entered into force in July 2006 but has not yet been fully implemented, as implementing regulations for the new Customs rates will not be circulated until early 2007.

Tariffs

Prior to the FTA, U.S. goods entering into Morocco faced an average tariff of over 20 percent. Under the FTA, more than 95 percent of bilateral trade in consumer and industrial products has become duty-free, with all remaining tariffs to be eliminated within nine years. Exports by key U.S. sectors such as information technologies, machinery, construction equipment and chemicals now enter Morocco duty-free.

U.S. textile and apparel products have also gained enhanced access to the Moroccan market. For certain originating products, trade between the two countries is subject to tariff-rate quotas (TRQs), and the quota will expand in the future. These goods now receive duty-free treatment up to a limited annual quantity for the first five years of the Agreement. Other qualifying originating textile and apparel goods will receive preferential duty treatment over a time frame ranging from immediately to 10 years.

In late 2006, the Moroccan government indicated that it would move unilaterally to reduce its maximum tariff level on many products, including goods ranging from sports shoes to fruit juices. Officials explain that the modifications are intended to increase the competitiveness of Moroccan sectors that rely on imported inputs and also to reduce the amount of contraband on the Moroccan market. Customs officials estimate that the reform will enter into force by the beginning of 2007.

Agriculture

The Moroccan agriculture sector is dominated by traditional small-scale farmers, many of whom focus on growing wheat. The Moroccan trade regime is designed to maintain this status quo, particularly through the imposition of prohibitively high tariffs. Those tariffs have created significant barriers for U.S. exporters. For example, applied tariffs on poultry and beef products range up to 124 percent and 275 percent, respectively.

The FTA provides for substantial new market access for U.S. agricultural exporters through elimination of tariffs. For goods such as sorghum, soybeans, and soybean meal, Moroccan tariffs were eliminated immediately or will be eliminated within a short time frame. Moroccan tariffs on corn and corn products have been reduced by 50 percent and will be eliminated within five years of the entry into force of the FTA. The FTA also provides for TRQs for sensitive products such as beef, poultry and wheat. U.S. producers of poultry and beef (products that have been kept out of the market due to high tariffs) will benefit from new TRQs that expand over time, upon negotiation of health certificates for meat and poultry. In the first year of the Agreement, only a small percentage of Morocco's FTA TRQs on durum and common wheat were filled due to issues related to Morocco's administration of these TRQs. The U.S. Government is working with the Moroccan government to address these and other implementation issues.

Customs

The FTA requires improvement in the transparency, efficiency and administration of the Moroccan customs regime, thereby improving access to the Moroccan market for U.S. exports. The FTA requires rapid customs clearance of express delivery shipments. The FTA's rules of origin are designed both to ensure that only U.S. and Moroccan goods benefit from the increased access under the FTA and for ease of administration. These rules are consistent with those of other U.S. free trade agreements in the region. In a number of cases in 2006, Morocco did not allow U.S. goods that transited a third country to benefit from the agreement, despite provisions permitting transshipment. U.S. and Moroccan customs and trade officials are working to address this issue.

STANDARDS, TESTING, LABELING AND CERTIFICATION

In the past, Morocco generally has not provided adequate notice of new proposals or changes to standards, technical regulations, and conformity assessment procedures, thereby denying the opportunity for interested U.S. parties to comment on them before they are finalized. The FTA builds on WTO obligations that require Morocco to make its system more transparent and open. In particular, the FTA secures eventual foreign participation in the development of standards, technical regulations, and conformity assessment procedures; creates opportunities for interested U.S. persons to provide comments on draft measures; and requires Morocco to explain how comments have been taken into account in the final drafting.

EXPORT SUBSIDIES

Morocco had provided export subsidies to reduce transportation costs for tomatoes. The FTA required the Moroccan government to end this practice and otherwise not to provide export subsidies.

SERVICES BARRIERS

Morocco in the past has effectively prevented U.S. services firms from competing in large segments of its services sector. The government has either stipulated outright bans on foreign participation in the domestic services market and/or included onerous ownership requirements and business operating practices.

The FTA accords U.S. firms substantial market access across Morocco's entire services sector, subject to a very few exceptions. Key services sectors covered by the agreement include audiovisual, express delivery, telecommunications, computer and related services, distribution, mining, construction, and engineering.

The FTA provides benefits for businesses wishing to supply cross-border services, as well as businesses wishing to establish a local presence in the other country.

Under the agreement, Morocco is also required to permit U.S. financial service firms to establish subsidiaries and joint ventures in Morocco. In addition, banks and insurance companies will be permitted to establish branches, subject to a four-year phase-in for most insurance services.

The United States also gained enhanced access to the telecommunications market, including the right to interconnect with a dominant carrier in Morocco at non-discriminatory, cost-based rates. U.S. firms seeking to build a physical network in Morocco will have non-discriminatory access to key telecommunications facilities and are able to lease lines from Morocco's dominant carrier and resell telecommunications services to build a customer base.

INVESTMENT BARRIERS

The United States and Morocco negotiated a Bilateral Investment Treaty (BIT), which entered into force in 1991. The BIT was largely superseded by the FTA, which updates the legal framework for U.S. investors operating in Morocco. All forms of investment are protected under the FTA, such as enterprises, debt, concessions, contracts, and intellectual property. The FTA removes certain restrictions and prohibits the imposition of other restrictions on U.S. investors, such as requirements to buy Moroccan (rather than non-Moroccan) inputs for goods manufactured in Morocco.

A few restrictions do remain, however. For example, foreigners may not purchase agricultural land in Morocco unless they intend to use such land for non-agricultural purposes. There are no restrictions on leasing agricultural land for either agricultural or non-agricultural purposes.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Moroccan intellectual property rights (IPR) laws and enforcement of those laws in the past have been insufficient to combat intellectual property theft. Enforcement resources have been inadequate, and civil and criminal penalties have not been stiff enough to provide sufficient deterrence.

The FTA addresses many of the United States' IPR concerns. The agreement's strong anti-piracy provisions mandate both statutory and actual damages under Moroccan law for IPR infringement. Under these anti-piracy provisions, monetary damages can be awarded even when it is difficult to determine the actual amount of economic harm. Each government also commits to granting and maintaining the right for authorities to seize, forfeit, and destroy counterfeit and pirated goods and the equipment used to make them. The agreement also requires each government to provide criminal liability for Internet piracy, even if there is no motivation of financial gain.

The FTA further expands the protection of trademarks, copyrights, patents, and undisclosed test data. The state-of-the-art protection includes provisions concerning disputes over Internet domain names, strong anti-circumvention provisions to prohibit tampering with technologies designed to prevent copyright infringement, and specific protections for temporary copies, which is critical in the digital environment. Under its FTA obligations, Morocco will offer increased IPR protection and enforcement for copyrights, trademarks, geographical indications, patents, and undisclosed test data.

Morocco passed comprehensive IPR legislation in December 2005 to implement its FTA obligations.

OTHER BARRIERS

Lack of transparency and regulatory unpredictability has inhibited U.S. access to the Moroccan market. Under the FTA, each government must publish its laws and regulations governing trade and investment, and, beginning within one year of entry into force, publish proposed regulations in advance and provide an opportunity for public comment on them. The Moroccan government has committed to apply fair procedures in administrative proceedings covering trade and investment matters directly affecting companies from the other country.

NEW ZEALAND

TRADE SUMMARY

The U.S. goods trade deficit with New Zealand was $188 million in 2006, a decrease of $315 million from $503 million in 2005. U.S. goods exports in 2006 were $2.9 billion, up 10.4 percent from the previous year. Corresponding U.S. imports from New Zealand were $3.1 billion, down 1.2 percent. New Zealand is currently the 42nd largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to New Zealand were $1.3 billion in 2005 (latest data available), and U.S. imports were $1.5 billion. Sales of services in New Zealand by majority U.S.-owned affiliates were not available in 2004 ($1.9 billion in 2003) (latest data available), while sales of services in the United States by majority New Zealand-owned firms were not available in 2004 ($16 million in 2002).

The stock of U.S. foreign direct investment (FDI) in New Zealand in 2005 was $4.8 billion (latest data available), up from $4.7 billion in 2004. U.S. FDI in New Zealand is concentrated largely in the non-bank holding companies, finance, manufacturing and wholesale sectors.

The United States and New Zealand concluded a bilateral Trade and Investment Framework Agreement (TIFA) in 1992. The United States and New Zealand have held regular meetings under the TIFA, most recently in June 2006. The agenda encompassed all aspects of the bilateral partnership, and identified areas the country will continue to discuss including agriculture (SPS, biotechnology), intellectual property, pharmaceutical policy, customs cooperation, government procurement, visa procedures, telecommunications and electronic commerce.

IMPORT POLICIES

In general, tariff rates in New Zealand are low as a result of several rounds of unilateral tariff cuts that began in the mid-1980s and continued until the current Labour government, elected in 1999, froze further reductions until July 2005. The New Zealand government announced in September 2003 that it would resume unilateral tariff reductions starting July 1, 2006. Under this unilateral tariff reduction program New Zealand has begun implementing gradual reductions of its highest tariff rates (currently 17 percent), which will reduce tariffs to 10 percent by July 1, 2009. These top rates apply mostly to clothing, footwear and carpet. *Ad valorem* tariffs on all other dutiable goods will be reduced to 5 percent by July 1, 2008.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Biotechnology Regulations

New Zealand's Environmental Risk Management Authority (ERMA), an independent body, reviews applications for the release of new organisms, including biotechnology products that contain living organisms. ERMA assesses applications on a case-by-case basis and can issue three types of approvals: contained field test, conditional release, and full, unconditional release. The Ministry of Agriculture and Forestry (MAF) enforces compliance of field tests and conditional release approvals. To date, ERMA has only approved a small number of contained field tests. There have been no applications for either a conditional or a full release of products derived by the use of biotechnology in New Zealand.

Containment approvals include those conducted in enclosed laboratories, glasshouses and outdoors in field test situations. When assessing an application for a containment approval, ERMA focuses on the adequacy of containment and, if an escape should occur, the effect of the organism on the environment. ERMA recently received an application from Crop and Food Research to conduct a contained field test for broccoli, cabbage and cauliflower derived by the use of biotechnology engineered for pest resistance. Three years ago, ERMA approved an application from the same organization to field test onions derived by the use of biotechnology.

Release approvals include both conditional release, where controls can be placed on the organism to manage risks, and full release where no controls are imposed. The process for biotechnology derived field test or release applications is much more onerous than for a full, non-field test containment application. Among other things, applicants for a conditional or full release must provide ERMA with detailed information and analysis that enables them to conduct a full scale risk assessment that takes into account a broad range of scientific and economic factors in the decision making process. This includes the possible impact of a release on New Zealand's green image and the organic sector.

Until October 2003, New Zealand maintained a voluntary two-year moratorium on the introduction of all biotechnology products, which precluded applications for the commercial planting of biotechnology crops, the commercial importation of seeds derived by the use of biotechnology, the release into the environment of animals derived by the use of biotechnology and, to a lesser extent, some human and veterinary medicines containing biotechnology products. The moratorium, however, did not apply to the use and sale of processed foods and ingredients derived by the use of biotechnology. With the moratorium's expiration and the report of the Royal Commission on Genetic Modification, Parliament amended the Hazardous Substances and New Organisms Act 1996 to make the regulation of biotechnological research more workable and to facilitate controlled release of biotechnology products. The amendment, the New Organisms and Other Matters Bill of 2003, introduced the conditional release category for approval of new organisms.

Biotechnology Food Approval

Imported foods derived by the use of biotechnology for sale in New Zealand must be assessed and approved by Food Standards Australia New Zealand (FSANZ), which is the bi-national food regulatory authority for New Zealand and Australia. FSANZ is responsible for the development of regulations in the Australia – New Zealand Food Standards Code (Code). The New Zealand Food Safety Authority (NZFSA) is responsible for implementation and enforcement of the Code within New Zealand.

A mandatory standard for foods produced using modern biotechnology came into effect in mid-1999. The standard, which was established under the Food Act of 1981, prohibits the sale of food produced using biotechnology unless such food has been assessed by FSANZ and listed in the food code standard. As of November 2006, FSANZ has received a total of 38 applications for assessment of bioengineered foods. Of these, thirty-one applications had been approved and five are under assessment. Two requests had been withdrawn.

Biotechnology Food Labeling

Mandatory labeling requirements for foods produced using gene technology took effect in December 2001. With few exceptions, a food in its final form that contains detectable DNA or protein derived by the use of biotechnology must be so labeled. Meeting New Zealand's biotechnology food labeling regulations can be extremely burdensome and is especially relevant for U.S. agricultural exporters who deal primarily in processed food. New Zealand wholesalers and retailers frequently demand biotechnology-free declarations from their suppliers. This effectively places liability for any biotechnology labeling non-compliance on the importer. New Zealand food legislation requires businesses to exercise due diligence in complying with food standards, which usually is defined as maintaining a paper or audit trail similar to a quality assurance system.

The NZFSA conducts periodic compliance audits. Violators of food labeling requirements can be assessed penalties under the Food Act 1981. The New Zealand government is reviewing penalties stipulated under the Act to ensure that they represent an adequate economic deterrent. The effect of these regulations is to discourage New Zealand food retailers from carrying biotechnology food products.

Sanitary and Phytosanitary Measures

New Zealand maintains a strict regimen of sanitary and phytosanitary (SPS) controls for virtually all imported agricultural products. The United States and New Zealand continue to discuss specific SPS issues that negatively impact trade in products supplied by the United States as part of our annual Trade and Investment Framework Agreement (TIFA) dialogue and in other fora.

In 2006, New Zealand implemented new processes for undertaking risk analyses and developing import health standards. This initiative is intended to streamline existing processes and provide consistency in the way New Zealand undertakes these tasks.

As of July 1, 2006, New Zealand also implemented a new system for funding and managing the development of import health standards. The new system is intended to be more transparent, direct government resources to the highest priorities and increase the resources available for developing import health standards.

During the 2006 U.S.-New Zealand TIFA discussions, the United States Government requested that New Zealand develop an import standard for Pacific Northwest stone fruit (plums, peaches, nectarines and apricots). In response to the U.S. request, New Zealand has added Pacific Northwest stone fruit to its 2006-2007 import health standard development work program. Details on the timing for issuing the import health standard will be confirmed once the work has commenced. The 2006-07 work program also includes a review of import requirements for citrus from the United States.

New Zealand recently completed a risk assessment of U.S. chilled pork. To date, this product has been subject to a pre-cooking requirement because of the presence of Porcine Reproductive and Respiratory Syndrome (PRRS) in the United States. While the analysis confirmed that there is a risk of PRRS disease entering New Zealand, the Ministry of Agriculture and Forestry (MAF) is recommending that high value chilled cuts of pork be allowed entry without any sanitary treatment. To date, MAF has received forty-four submissions, including two from the United States. All submissions must be reviewed and considered before MAF can move to the next phase, which is drafting an import health standard.

New Zealand's import health standard for wood packaging material came into effect in May 2006 and enforcement of the standard was phased in over the following two months. However, New Zealand retained a pre-existing requirement that all wood packaging materials be bark-free. The United States has requested that New Zealand suspend the implementation of the bark-free requirement until the findings of on-going international research on the risk of pest transmission through bark is released. However, New Zealand maintains that the requirement for freedom from bark needs to be met to gain biosecurity clearance, which could take the form of debarking at destination. The United States Government continues to seek to address this issue with New Zealand under our TIFA and in other fora.

The New Zealand Food Safety Authority (NZFSA) requires case-by-case assessment of U.S. bovine products before importation due to concerns over Bovine Spongiform Encephalopathy (BSE). NZFSA has completed an assessment of the U.S. BSE regime and has indicated that it will lift that restriction once both sides agree on certification language that must accompany meat imports. Discussions are currently underway on the revised certification language.

New Zealand continues to suspend imports of U.S. poultry meat (except canned product) due to its restrictions on countries that have infectious bursal disease.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The New Zealand government has proposed amendments to strengthen its copyright and patent laws and enhance the country's IPR protection. With proposed amendments to the Copyright Act, the New Zealand government aims to address developments in digital technologies and international developments in copyright law and to bring New Zealand law into closer conformity with the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). The New Zealand government introduced the legislation at the end of 2006 and has had a first reading. When the Parliament reconvenes in early 2007 the legislation will pass to a Select Committee for a comment period. The legislation is expected to go to second reading without major modification.

The Ministry of Economic Development released for public comment in December 2004 the draft Patents Bill intended to replace the Patents Act 1953 and to bring New Zealand's patent law into closer conformity with international standards. This draft would keep the maximum patent term at 20 years, but would tighten the criteria for granting a patent to require that the invention be new anywhere in the world and involve an inventive step from the previous standard that a patentable invention be new in New Zealand. The bill is expected to be introduced in mid-2007 and will then pass to the Commerce Select Committee for a six month comment period.

The U.S. music industry opposes a proposed amendment to the New Zealand Copyright Act that would legalize the duplication of sound recordings in other formats for a purchaser's private use. The New Zealand government says this would enable consumers to employ new digital technologies and would legalize what already is common practice. The New Zealand government also notes the amendment would limit copying to one copy per format, specify that the original sound recording must be legitimate, and exclude making copies from borrowed or rented recordings. The music industry warns that such an exception to copyright protection would make copyright infringement difficult to enforce, send the wrong message to consumers and cost the industry in sales revenue and profits. The industry adds that the exception would discourage the development of music products that would permit home copying under contractual arrangements between the consumer and the provider.

The Ministry of Commerce has been engaged in an on-going dialogue with the industry. The New Zealand government showed flexibility on the drafting of the proposed exception and added a sunset clause and a condition that the exception would be overridden by any license provision in an attempt to address industry concerns.

Additionally, industry has expressed support for a wider approach to technological protection measures (TPMs) than that provided in the New Zealand government’s proposed amendments, reflecting U.S. law. The New Zealand government's proposal would prohibit the supply of devices or the means or information to circumvent TPMs that would result in infringing any of the copyright owner's exclusive rights, and not just copying as now specified in the legislation. The industry argues that the proposal is inadequate and that the act of circumventing a TPM also should be illegal. It also wants protection against the circumvention of TPMs that control access to copyright material, in addition to TPMs that control copying.

U.S. industry also has expressed concern over a proposal to amend the Copyright Act which it believes would discourage rights holders from developing new approaches to meeting consumer demand for electronically delivered materials and reduce access and choice for New Zealand consumers to these materials. The Act currently provides an exception (section 84) for time shifting of broadcasts or cable programs for private and domestic use and solely for the purpose of watching or listening at a more convenient time. The New Zealand government has decided that, in line with the policy of technological neutrality, this section should be amended to cover all communication works, except those available on demand. The exception explicitly relates only to watching or listening at a more convenient time. It does not allow home users to build up a collection or "library" of films or music for ongoing and repeated use.

The October 2003 legislation, which amended the Copyright Act of 1994, also made it easier to challenge copyright violations in court by shifting the burden of proof in certain copyright infringement cases to the defendant, who must prove that an imported film, sound recording or computer software is not a pirated copy.

United States pharmaceutical companies have expressed concerns about a prohibition of patents for methods of medical treatment in New Zealand's draft patents legislation. The industry also is concerned by the Cabinet's decision in mid-2004 to halt a study on the economic impact of extending patent terms for pharmaceuticals. The draft patents bill fails to address the issue of patent term restoration for pharmaceuticals. The pharmaceutical industry group, Researched Medicines Industry Association of New Zealand, contends that New Zealand's effective patent life for pharmaceuticals has been substantially eroded as a result of the regulatory approval process. It asserts that patent term restoration would be in line with international best practices.

SERVICES BARRIERS

Local Content Quotas

Radio and television broadcasters have adopted voluntary local content targets, but only after the New Zealand government made it clear that it would otherwise pursue mandatory quotas. Although New Zealand government officials have said they are sensitive to the implications of quotas under the WTO General Agreement on Trade in Services (GATS), they reserve the right to impose them.

Telecommunications

U.S. industry has expressed concern about the fees charged for completing calls using mobile networks in New Zealand, which are among the highest in the world. After a year-long investigation into mobile termination rates, the New Zealand regulating authority (the Commerce Commission) determined in June 2005 that mobile network operators were able to set unreasonably high rates because of limited market competition, and called for such charges to be regulated. In April 2006, the Minister received the commission's reconsideration final report, which maintained its recommendation to regulate the termination of voice calls made from fixed home or business phone lines to all mobile networks, including those using 3G technologies. The Economic Development Minister is expected to make a final decision on how to address these rates in early 2007. The United States will continue to monitor these developments.

In May 2006 the New Zealand Minister of Communications announced a comprehensive package of reforms to improve the telecommunications regulatory environment and improve broadband access. The government of New Zealand introduced a Telecommunications Amendment Bill in June 2006 that proposed wide-ranging powers for the Communications Minister and the Commerce Commission to monitor and enforce regulations that curb anticompetitive behavior. It also provided a process for implementing the three-way operational split of Telecom New Zealand into retail, wholesale and network arms. The bill, which passed in December 2006, clarified that Telecom New Zealand must unbundle the local loop and ensure access to "naked DSL" so that its competitors can sell broadband access without phone service. The United States commends New Zealand for taking positive actions towards enhancing the competitive environment, which may lead to increased opportunities for U.S. service providers and equipment manufacturers in New Zealand's market.

INVESTMENT BARRIERS

Investment Screening

New Zealand's Overseas Investment Office (OIO) screens foreign investments that exceed specified value thresholds as well as foreign investments in land. Amid growing public concern about purchases of coastal properties by foreigners, the New Zealand government enacted legislation in August 2005 that increased screening and monitoring of land purchases, but raised the minimum threshold for scrutiny of proposed business purchases. Under the legislation, the threshold for screening non-land business assets was increased from NZ$50 million to NZ$100 million where a foreigner proposes to take ownership or control of 25 percent or more of a business. New Zealand government approval is required for purchases of land larger than 5 hectares (12.35 acres) and of land in certain sensitive or protected areas. For land purchases, foreigners who do not intend to live in New Zealand must provide a management proposal covering any historic, heritage, conservation or public access matters and any economic development planned. That proposal must be approved and generally made a condition of consent. In addition, investors are required to report regularly on their compliance with the terms of the consent. Overseas persons also must demonstrate the necessary experience to manage the investment. The OIO, part of Land Information New Zealand, took over the functions of the Overseas Investment Commission in August 2005. The United States has raised concerns about the continued use of this screening mechanism. New Zealand's commitments under the WTO General Agreement on Trade in Services reflect New Zealand's screening program.

OTHER BARRIERS

Pharmaceuticals

The U.S. Government continued to raise concerns about New Zealand's support for innovation in the research and development of innovative pharmaceutical products. New Zealand's Pharmaceutical Management Agency (PHARMAC), a stand-alone Crown entity, administers a Pharmaceutical Schedule that lists medicines subsidized by the New Zealand government. The schedule also specifies conditions for prescribing a product listed for reimbursement. PHARMAC accounts for 73 percent of New Zealand's expenditures on prescription drugs. The New Zealand government also supports hospitals' pharmaceutical expenditures, bringing its share of total spending on prescription drugs in the country to about 80 percent.

New Zealand does not restrict the sale of non-subsidized pharmaceuticals in the country. However, private medical insurance companies will not cover the cost of non-subsidized medicines and doctors are often reluctant to prescribe them to patients who would have to pay the cost themselves. Thus, PHARMAC's decisions have a major impact on the availability and price of non-subsidized medicines and the ability of pharmaceutical companies to sell their products in the New Zealand market.

The U.S. Government has serious concerns regarding the transparency, predictability and accountability of PHARMAC's operations and decision-making. U.S. pharmaceutical suppliers maintain that the methodology used to determine Pharmaceutical Schedule decisions lacks transparency. PHARMAC is reviewing the way it decides funding for high-cost medicines and some other aspects of its listing procedures and methodology.

In October 2005 the Labour Party, in an agreement to form a new government and with support from the United Future party, agreed to review the nation's long-term medicines strategy, including PHARMAC's role. The next stage of this work is the post-Cabinet release of a consultation document, with changes expected in 2008.

The New Zealand and Australian governments signed a treaty on December 10, 2003, to create a joint agency to regulate medical devices, prescription and over-the-counter medicines, dietary and nutritional supplements, and cosmetics such as sun creams. Aside from prescription pharmaceuticals, New Zealand does not currently regulate market entry of these products, but will do so under the new regulations. Implementing legislation known as the Therapeutic Products and Medicines Bill was introduced at the end of 2006 and passed the first reading. The bill is with the Government Administrations Committee for comment. It is expected that it will pass to the second reading with amendments. The bill is expected to grandfather products that are already lawfully on the market at the time of the implementation of the legislation. The bill would grant an interim license valid for a transition period of three years. Discussion is ongoing as to possibly extending the term of transition to five years. It is expected that the new agency will charge full cost-recovery fees to register products and require additional documentation and assessments for certain products, even if they already have U.S. Food and Drug Administration approval. Each country's government will continue to separately determine funding of prescription medicines. U.S. manufacturers and distributors of non-pharmaceutical therapeutic products in New Zealand have expressed concerns that these new requirements will be overly burdensome and costly, and could serve to discourage exports of their products from the United States to New Zealand.

GOVERNMENT PROCUREMENT

New Zealand is not a signatory to the WTO Government Procurement Agreement and is not an observer to the Committee on Government Procurement.

NICARAGUA

TRADE SUMMARY

The U.S. goods trade deficit with Nicaragua was $771 million in 2006, an increase of $215 million from $555 million in 2005. U.S. goods exports in 2006 were $755 million, up 20.7 percent from the previous year. Corresponding U.S. imports from Nicaragua were $1.5 billion, up 29.2 percent. Nicaragua is currently the 73rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Nicaragua in 2005 was $245 million (latest data available), up from $215 million in 2004.

IMPORT POLICIES

Free Trade Agreement

The United States concluded free trade agreement negotiations with El Salvador, Guatemala, Honduras and Nicaragua in December 2003 and with Costa Rica in January 2004. In May 2004, the six countries signed the United States–Central America Free Trade Agreement. During 2004, the United States and the Central American countries integrated the Dominican Republic into the free trade agreement. On August 5, 2004, the seven countries signed the Dominican Republic–Central America–United States Free Trade Agreement (CAFTA-DR).

All of the signatory countries have ratified the agreement, with the exception of Costa Rica. The CAFTA-DR entered into force for Nicaragua on April 1, 2006. The agreement also has entered into force for the Dominican Republic, El Salvador, Guatemala and Honduras.

The agreement removes barriers to trade and investment in the region and will further regional economic integration. The CAFTA-DR also requires the Central American countries and the Dominican Republic to undertake needed reforms to provide market liberalization as well as greater transparency and certainty in a number of areas, including: customs administration, protection of intellectual property rights, services, investment, financial services, government procurement, and sanitary and phytosanitary (SPS) measures.

Tariffs

As a member of the Central American Common Market (CACM), most of Nicaragua's tariffs do not exceed the maximum common external tariff of 15 percent. Nicaragua imposes regular import duties of 10 percent or 15 percent on many final consumer goods, a duty of zero percent to 5 percent on most primary goods, and a duty of 5 percent to 10 percent on intermediate goods from outside CACM that compete with products produced by CACM countries. The tariff is assessed on the cost, insurance and freight (CIF) value of a good.

Under the CAFTA-DR, about 80 percent of U.S. industrial and consumer goods now enter Nicaragua duty-free, with remaining tariffs phased-out over ten years. Nearly all textile and apparel goods that meet the agreement's rules of origin are now traded duty-free and quota-free, promoting new opportunities for

U.S. and regional fiber, yarn, fabric and apparel manufacturing companies. The agreement's tariff treatment for textile and apparel goods is retroactive to January 1, 2004.

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter Nicaragua duty-free. Nicaragua will eliminate its remaining tariffs on nearly all agricultural products within 15 years, including its tariffs on rice and yellow corn. Nicaragua will eliminate its tariffs on chicken leg quarters within 18 years and on dairy products within 20 years. For the most sensitive products, tariff-rate quotas (TRQs) will permit some immediate duty-free access for specified quantities during the tariff phase-out period, with the duty-free amount expanding during that period. Nicaragua will liberalize trade in white corn through expansion of a TRQ, rather than by tariff reductions.

Non-Tariff Measures

A "selective consumption tax" on luxury items is levied on a limited number of items. The tax is generally lower than 15 percent, with a few exceptions. The tax is not applied exclusively to imports; however, domestic goods are taxed according to the manufacturer's price while imports are taxed according CIF value. Alcoholic beverages and tobacco products are taxed according to the price charged to the retailer.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Consumer products must be labeled in Spanish, except for products destined for the Atlantic region of Nicaragua, where English may be required. Importers may translate labels into Spanish. The government of Nicaragua accepts a sticker with a Spanish translation.

When the United States and Central America launched free trade agreement negotiations, they initiated a working group on sanitary/phytosanitary barriers to agricultural trade to facilitate market access. As a result of the work of this group, Nicaragua committed to resolve specific measures affecting U.S. exports to Nicaragua. On February 18, 2005, the President of Nicaragua issued a decree that authorized the agriculture ministry to recognize the equivalency of foreign meat and poultry inspection systems. After auditing the U.S. meat and poultry inspection system, the government of Nicaragua recognized the equivalence of the U.S. food safety and inspection system for meat and poultry, thereby eliminating the need for plant-by-plant inspections.

The U.S. Animal and Plant Health Inspection Service negotiated protocols with Nicaragua for the importation of U.S. rice, wheat, yellow corn, and seed potatoes. All packaged food products must be registered with the Ministry of Development, Industry and Trade. If a product is imported in bulk and packaged in Nicaragua, a phyto/zoosanitary certificate is required from the country of origin and from the Nicaraguan Ministry of Health. A phyto/zoosanitary certificate issued by Nicaragua is not required for products packaged in the United States.

Under the CAFTA-DR, Nicaragua reaffirmed its commitment to abide by the terms of the World Trade Organization's (WTO) Import Licensing Agreement. Import licenses are required to import alcoholic beverages and all brands of alcoholic beverages must be registered annually with the Ministry of Health. U.S. industry has expressed concern about Nicaragua's proposed standards for rum and *agua ardiente*. The five Central American countries, including Nicaragua, are in the process of developing common standards for the importation of several products, including distilled spirits, which should facilitate trade.

Law 291 regulates the importation of products of agricultural biotechnology. The law was approved in 1998 and modified in 2003 to require that products of agricultural biotechnology undergo a risk analysis prior to importation. The risk analysis must be performed by the Commission on Risk Analysis for Genetically Modified Organisms (CONARGEN), which makes a recommendation concerning importation to the Minister of Agriculture and Forestry, who then issues a final decision. CONARGEN is comprised of officials from the Ministry of Agriculture and Forestry, the Nicaraguan Institute for Agricultural Technology, the Ministry of Environment and Natural Resources, the Ministry of Health, the National Autonomous University of Nicaragua in León, the National Agrarian University and the Central American University in Managua. After reaching consensus with anti-biotechnology organizations in 2005, the government submitted a compromise science-based biotechnology bill to the National Assembly for approval. As of March 2007, passage was still pending.

Nicaragua is in the process of implementing the provisions of the Cartagena Protocol, of which it is a signatory. As part of the process, in 2005 the government of Nicaragua began to require notifications and risk analyses as preconditions for the import of living modified organisms (LMOs). CONARGEN has conducted risk analyses on all genetic events authorized by the United States for yellow corn destined for processing and for animal feed. Nicaragua and the United States signed an agreement on the transboundary movement of LMOs destined for food, feed or processing that entered into force on February 18, 2005. The agreement articulates a practical definition for LMO and non-LMO shipments for purposes of applying the "may contain" documentation requirement consistent with the Cartagena Protocol on Biosafety, which requires that shipments of LMOs intended for direct use as food or feed, or for processing, contain a statement that they "may contain" LMOs. The agreement also recognizes that non-LMO shipments must be defined in a sales contract as having 95 percent or greater non-LMO content.

GOVERNMENT PROCUREMENT

Nicaragua is not a signatory to the WTO Agreement on Government Procurement. Nicaragua's procurement law applies to all branches of government as well as to the autonomous regional governments, municipalities, universities and other institutions that receive government funds or where the state is a shareholder. It sets general standards and procedures regulating public procurement of goods and services, including construction services, and leasing.

The CAFTA-DR requires the use of fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the agreement. Under the CAFTA-DR, U.S. suppliers will be permitted to bid on procurements of most Nicaraguan government entities, including key ministries and state-owned enterprises, on the same basis as Nicaraguan suppliers. To make its bidding process more transparent and efficient, Nicaragua launched a computer-based procurement system in November 2006. The anti-corruption provisions in the CAFTA-DR require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including government procurement, is treated as a criminal offense, or is subject to comparable penalties.

EXPORT SUBSIDIES

Nicaragua does not provide export financing. However, all exporters receive tax benefit certificates equivalent to 1.5 percent of the free on board port of exit value of the exported goods.

Under the CAFTA-DR, Nicaragua may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement (e.g., the exportation of a given level or percentage of goods). Nicaragua may maintain existing duty waiver measures for such time as it is an Annex VII country for the purposes of the WTO Agreement on Subsidies and Countervailing Measures

(SCM). Thereafter, Nicaragua shall maintain any such measures in accordance with Article 27.4 of the SCM Agreement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In March 2006, Nicaragua strengthened its legal framework for the protection of intellectual property rights (IPR) with the passage of five new laws in preparation for the entry into force of the CAFTA-DR. CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of intellectual property rights, which are consistent with U.S. standards of protection and enforcement and with emerging international standards. Such improvements include state-of-the-art protections for digital products such as U.S. software, music, text and videos; stronger protection for U.S. patents, trademarks and test data, including an electronic system for the registration and maintenance of trademarks; and further deterrence of piracy and counterfeiting.

Although, historically, Nicaraguan IPR enforcement has been weak, the U.S. Government and industry are working with the Nicaraguan government to provide training to improve enforcement efforts. In an April 2006 raid, police took custody of 13,000 pirated CDs and DVDs, but made no arrests. In October 2006, the government scored a prosecutorial victory when a court convicted a local vendor of selling 400 pirated videos. The vendor was fined $1,500 and sentenced to two years in prison. Weeks later, however, the conviction was overturned by an appeals court for lack of evidence. In coming months, the government plans to prosecute its first copyright and trademark infringement case under the new IPR law.

SERVICES BARRIERS

Financial Services

Nicaragua has ratified its commitments under the 1997 WTO Financial Services Agreement. Its commitments cover most banking services, including the acceptance of deposits, lending, leasing, guarantees and foreign exchange. However, they do not cover the management of assets or securities. Nicaragua allows foreign banks to operate either as 100 percent-owned subsidiaries or as branches. The CAFTA-DR ensures U.S. financial service suppliers have full rights to establish subsidiaries, joint ventures or branches for banks.

The country's banking system is now stable after having undergone severe restructuring several years ago. In 2005, as part of the Poverty Reduction and Growth Facility agreement with the IMF, Nicaragua further strengthened the financial sector through reforms to its banking laws and the regulations governing the Superintendent of Banks and Other Financial Institutions and through the creation of the Guarantee of Deposits in Institutions of the Financial System. In recent years, U.S. and foreign banks have begun to re-enter the market.

The insurance sector is open to private sector participation. Several private insurance companies compete with the government-owned firm, INISER. Under the CAFTA-DR, U.S. insurance suppliers have full rights to establish subsidiaries and joint ventures with a phase-in for branches. Nicaragua allows U.S.-based firms to supply insurance on a cross-border basis, including reinsurance, reinsurance brokerage, as well as marine, aviation, and transport insurance, in addition to other insurance services. Furthermore, Nicaragua accords substantial market access in services across their entire services regime, subject to very few exceptions.

Other Services Issues

The Law on Promotion of National Artistic Expression and on Protection of Nicaraguan Artists (Law No. 215, National Gazette 134, July 17, 1996) requires that foreign production companies contribute 5 percent of total production costs to a local cultural fund. In addition, the law requires that 10 percent of the technical, creative, and/or artistic staff must be hired locally. Under the CAFTA-DR, Nicaragua does not require U.S. film productions to contribute to the cultural fund or hire locally.

Under the CAFTA-DR, Nicaragua opened its telecommunications sector to U.S. investors, service providers, and suppliers. All exports, including telecommunications equipment, receive duty-free treatment.

The telecommunications sector is fully privatized and open to competition. Enitel, the former state telephone company, is now 99.03 percent owned by a Mexican telecommunications company. The mobile industry in Nicaragua is served by only two nationwide operators. Enitel controls switching for all cellular service, and therefore may exercise leverage over companies seeking interconnection. At the end of 2004, Enitel unilaterally imposed a 100 percent increase in termination rates for calls sent to wireless networks and blocked traffic to such networks when carriers refused to pay the increase. TELCOR, the regulatory entity, was not effective in requiring Enitel to justify the increase.

TELCOR has generally encouraged competition in its licensing and regulatory practices. However, duplicate appointments to TELCOR by the executive and legislative branches have resulted in a continuing leadership stalemate for the regulatory authority.

INVESTMENT BARRIERS

The CAFTA-DR establishes a more secure and predictable legal framework for U.S. investors operating in Nicaragua. Under the CAFTA-DR, all forms of investment are protected, including enterprises, debt, concessions, contract and intellectual property. U.S. investors enjoy, in almost all circumstances, the right to establish, acquire and operate investments in Nicaragua on an equal footing with local investors. Among the rights afforded to U.S. investors are due process protections and the right to receive a fair market value for property in the event of an expropriation. Investor rights are protected under the CAFTA-DR by an effective, impartial procedure for dispute settlement that is fully transparent and open to the public. Submissions to dispute panels and dispute panel hearings will be open to the public and interested parties will have the opportunity to submit their views.

In the 1980s, the Sandinista government confiscated nearly 30,000 real properties. Since 1990, many thousands of individuals have filed claims for the return of real property or compensation. Most claimants seek compensation through low-interest bonds issued by the government. As of November 2006, the Nicaraguan government had settled nearly 4,500 U.S. citizen claims. Fewer than 700 U.S. Embassy-registered U.S. claims were outstanding. Many valuable properties remain in the hands of the Nicaraguan government or private parties. The United States continues to urge the Nicaraguan government to resolve outstanding claims.

In May 2006, the Nicaraguan Chamber of Commerce inaugurated Nicaragua’s first center for mediation and arbitration. Nicaraguan businesses may choose from a list of national and international mediators to deal with a dispute.

ELECTRONIC COMMERCE

The CAFTA-DR includes provisions on electronic commerce that reflect its importance to global trade. Under the CAFTA-DR, Nicaragua has committed to provide non-discriminatory treatment to U.S. digital products, not to impose customs duties on digital products transmitted electronically, and to work together with the United States in policy areas related to electronic commerce.

OTHER BARRIERS

The anti-corruption provisions in the CAFTA-DR require each government to ensure under its domestic law that bribery in matters affecting trade and investment is treated as a criminal offense, or is subject to comparable penalties. However, voices within and outside of Nicaragua have raised concerns that Nicaragua's legal system is weak, cumbersome, and lacks independence. Many members of the judiciary, including those at high levels, are widely believed to be corrupt or subject to outside political pressures. Enforcement of court orders is uncertain and sometimes subject to non-judicial considerations. Courts have granted a writ of shelter (called an *amparo*) to protect criminal suspects of white collar fraud by enjoining official investigatory and enforcement actions almost indefinitely. Foreign investors are not specifically targeted, but are often at a disadvantage in disputes against nationals with political connections. Recognizing Nicaragua's reputation for having problems with corruption, former President Bolaños made anti-corruption a centerpiece of his administration's domestic policy. This effort greatly contributed to Nicaragua's selection in 2004 as a country eligible for Millennium Challenge Account (MCA) assistance under a program operated by the United States. Nicaragua's MCA program requires the country to maintain progress on eligibility criteria, particularly in the areas of controlling corruption, improving government effectiveness and assuring political/civil liberties.

Law 364

U.S. multinational firms and the U.S. Chamber of Commerce have expressed concern regarding Nicaraguan Law 364, enacted in October 2000 and published in January 2001. Law 364 retroactively imposes liabilities on foreign companies that manufactured or used the chemical pesticide DBCP in Nicaragua. DBCP was banned in the United States after the Environmental Protection Agency cancelled its certificate for use (with exceptions) in 1979. U.S. multinationals have expressed concern that the law and its application under Nicaragua's judicial system lack due process, transparency and fundamental fairness. In particular, the law allows for retroactive application of no-fault liability related to a specific product, waiver of the statute of limitations, irrefutable presumption of causality, truncated judicial proceedings, imposition of a $100,000 non-refundable bond per defendant as a condition for firms to put up a defense in court, escrow requirements of approximately $20 million earmarked for payment of awards and minimum liabilities as liquidated damages (ranging from $25,000 to $100,000.) In January 2006, the National Assembly placed an embargo on the trademark rights of an American multinational because of its involvement in the production of this pesticide. Some plaintiffs seek to lay claim to U.S. company assets in other countries. The U.S. Government has been working with the affected companies and the Nicaraguan government to facilitate resolution of this issue.

NIGERIA

TRADE SUMMARY

The U.S. goods trade deficit with Nigeria was $25.7 billion in 2006, an increase of $3.1 billion from $22.6 billion in 2005. U.S. goods exports in 2006 were $2.2 billion, up 37.6 percent from the previous year. Corresponding U.S. imports from Nigeria were $27.9 billion, up 15.2 percent. Nigeria is currently the 50th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Nigeria in 2005 was $874 million (latest data available), down from $2.0 billion in 2004. U.S. FDI in Nigeria is concentrated largely in the mining, and wholesale trade sectors.

IMPORT POLICIES

Nigeria's high tariffs and numerous import bans have been a concern to many U.S. businesses and were also raised in the context of Nigeria's May 2005 Trade Policy Review in the World Trade Organization (WTO).

Tariffs

Tariffs provide the Nigerian government with its second-largest source of revenue after oil exports. In its last major tariff revision, in October 2005, the government implemented the Economic Community of West African States (ECOWAS) Common External Tariff, reducing the number of tariff bands in Nigeria from twenty to five. The five tariff bands are: zero duty on capital goods, machinery and essential drugs not produced locally; 5 percent duty on imported raw materials; 10 percent duty on intermediate goods; 20 percent duty on finished goods; and 50 percent duty on goods in the industries that the government seeks to protect. The 50 percent tariff covers many items currently subject to import bans. Items deemed to be necessities such as anti-retroviral drugs for the treatment of patients with HIV/AIDS are imported duty-free. This duty-free status will be reviewed after one year to assess its impact on the Nigerian economy and its stakeholders. The recent reforms are an effort to harmonize the trade environment in the sub-region while at the same time improving Nigeria's own trade and investment environment.

However, frequent policy changes and inconsistent duty collection make importing difficult and expensive, and occasionally create severe bottlenecks for commercial activities. This problem is aggravated by Nigeria's dependence on imported raw materials and finished goods, which affects both foreign and domestic manufacturers. Many importers resort to under-valuing and smuggling to avoid paying full tariffs.

Non-Tariff Trade Barriers

The United States continues to have serious concerns about the Nigerian government's use of non-tariff barriers to trade. Bans on the importation of a variety of items (sorghum, millet, wheat flour, cassava, frozen meat and poultry products, biscuits, bottled water, fruit juice in retail packs, beer, certain textile products, used clothing, used cars more than eight years old, maize, cocoa butter, disinfectants and germicides, diaries, greeting cards, calendars, and facial tissues) continued into 2006. Items removed from the list in 2005 and 2006 included certain textile products (such as textile fabrics, yarn, nylon tire cord, conveyor belts, trimmings and linings, gloves for industrial use, elastic bands, mosquito nets, motifs), chocolates, white cement, linseed oils, castor oils, hydrogenated vegetable fats used as industrial raw materials, all raw materials for the manufacture of soap and detergents, safety shoes used in the oil industry, sports shoes, stadium chairs and fittings, accessories used in furniture making, and prefabricated buildings. These items remained on the list of imports allowed in 2007.

Customs Barriers

Nigerian port practices continue to present major obstacles to trade. Importers face long clearance procedures, high berthing and unloading costs, erratic application of customs regulations, and corruption. Customs exemptions granted to U.S. firms as a concession for setting up operations in Nigeria have not always been honored. In December 2005, the government released import guidelines for the implementation of a physical destination inspection regime that commenced in January 2006. Under the destination inspection scheme, all imports are inspected on arrival into Nigeria. These guidelines are implemented by the Destination Inspection Service Providers, which is a team comprised of the Customs Service and three firms that provide scanning services.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Rules concerning sanitary and phytosanitary standards, testing, and labeling are well defined, but bureaucratic hurdles slow the import approval process. Regardless of origin, all food, drug, cosmetic, and pesticide imports must be accompanied by certificates of analysis from manufacturers and appropriate national authorities and specified animal products, plants, seeds, and soils must be accompanied by proper inspection certificates. U.S. exporters may obtain these certificates from the U.S. Department of Agriculture and other relevant federal or state agencies. By law, items entering Nigeria must be labeled exclusively in the metric system. The Nigerian Customs Service is charged with preventing the entry of products with dual or multiple markings, but such items are often found in Nigerian markets.

High tariffs and uneven application of import and labeling regulations make importing high-value perishable products into Nigeria difficult. Disputes between Nigerian agencies over the interpretation of regulations often cause delays and frequent changes in customs guidelines slow the movement of goods through Nigerian ports. These factors can contribute to product deterioration and may translate into significant losses for perishable goods importers.

The National Agency for Food and Drug Administration and Control (NAFDAC) is charged with protecting Nigerian consumers from fraudulent or unhealthy products. The agency recently targeted the illicit importation of counterfeit and expired pharmaceuticals for special attention, particularly imports from East and South Asia. NAFDAC's severely limited capacity for carrying out inspections and testing contributes to what some have characterized as an occasionally heavy-handed or arbitrary approach to regulatory enforcement and the agency has occasionally challenged legitimate food imports.

GOVERNMENT PROCUREMENT

The Obasanjo administration has made modest progress on its pledge to operate an open and competitive bidding process for government procurement. Procurement and guidelines are implemented by a "due-process" office in the Budget Monitoring and Price Intelligence Unit. "Due process" certification aims at ensuring that the procurement process for public projects adheres to international standards for competitive bidding. The unit acts as a clearing house for government contracts and monitors the implementation of projects to ensure compliance with contract terms and budgetary restrictions. Procurement above 50 million naira (approximately $385,000) is subject to the "due process" review.

Foreign companies incorporated in Nigeria receive national treatment, and government tenders are published in local newspapers and a tenders journal is sold at local newspaper outlets. U.S. companies have won government contracts in several sectors. Unfortunately, many companies that have won contracts have subsequently had difficulty getting them funded, usually as a result of delays in the national budget process. Some companies that won contracts for which funds were allocated have had trouble getting paid. Nigeria is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

In August 2006, the government of Nigeria (GON) announced a new export initiative christened "Commerce 44." The export initiative aims to develop and promote duty-free export of eleven agricultural commodities; eleven manufactured products; and eleven solid mineral products with high export potential, in eleven target markets. The government's aim is to focus on eleven countries/regions of the world while taking advantage of concessions offered by the existing bilateral and multilateral agreements, as well as Memorandums of Understanding (MOUs), that will facilitate the export of Nigerian products and services into such markets.

The eleven agricultural products under the initiative include cocoa, cotton, cassava, ginger, shea nut, gum arabic, sesame seed, poultry, cashew nuts, floriculture, fruits and vegetables. The eleven solid mineral products include kaolin, tin, tantalite-colombite, wolframite, zinc, iron ore, coal, lead ore, pyrite, zircon, and gem stones. The eleven manufactured products include beverages, footwear, leather, shrimp, pharmaceuticals, rubber products, textiles, iron and steel, films and music, vegetable oil and services. The eleven target markets include the European Union, Japan, China, the United States, India, ECOWAS, Turkey, the Southern African region, the Central African region, South East Asia and the Middle East.

An implementation committee comprising the Nigerian Export Promotion Council, Ministry of Finance, Ministry of Industries, Ministry of Commerce, Nigeria Customs Services, Central Bank of Nigeria, Special Adviser to the President on Manufacturing and the Private Sector, and the Nigerian Export-Import Bank administer export incentive programs that include tax concessions, export development funds, capital asset depreciation allowances, and foreign currency retention programs. Funding constraints limit the effectiveness of these programs. In 2005, the government of Nigeria rescinded all export subsidies, arguing that the Common External Tariff (CET) it implemented in October 2005 automatically favors manufacturers through its lower tariffs on capital goods and raw materials. Some of the incentives, such as the Export Expansion Grant and the Manufacture-in-Bond scheme were modified and reintroduced in 2006.

The Nigerian Export Processing Zone Authority (NEPZA) is responsible for attracting investment in export-oriented industries. Of the five zones established under NEPZA, only the Calabar and Bonny Island (Onne) export processing zones are operational, with some difficulties reported. The Calabar export processing zone also functions as a free trade zone. NEPZA rules dictate that at least 75 percent of production in the zones be exported, but lower export levels are permitted. A third free zone, Tinapa Free Zone and Tourist Resort, is under construction and expected to commence operation during the first quarter of 2007. Tinapa is owned by the Cross-River State Government.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Nigeria is a member of the World Intellectual Property Organization (WIPO), a party to the Universal Copyright Convention (UCC), the Berne Convention, and the Paris Convention for the Protection of Industrial Property, and has signed the WIPO Copyright Treaty and the WIPO Performances and

Phonograms Treaty. Legislation pending in the National Assembly is intended to establish a legal framework for an IPR system that complies with WTO obligations.

The government's lack of institutional capacity to address IPR issues is a major constraint to enforcement. Relevant Nigerian institutions suffer from low morale, poor training, and limited resources. Fraudulent alteration of IPR documentation is common. Despite Nigeria's active participation in the conventions cited above, its reasonably comprehensive IPR laws and growing interest among Nigerians in seeing their intellectual property protected, piracy is rampant in Nigeria. Counterfeit automotive parts, pharmaceuticals, business and entertainment software, music and video recordings, and other consumer goods are sold openly throughout the country and intellectual property infringers from other countries appear increasingly to be using Nigeria as a base for the production of pirated goods. In 2004, U.S. industry reported a growth of optical disc manufacturing plants, some of which may be contributing to the production of pirated optical disc products. Additionally, book piracy remains a problem.

Patent and trademark enforcement remains weak, and judicial procedures are slow and subject to corruption. Nonetheless, recent government efforts to curtail IPR abuse have yielded results. The Federal High Court of Enugu, Nigeria, issued an interim injunction on November 23, 2004 against several firms infringing a Honeywell International trademark for spark plugs. The court warned all distributors, dealers, and retailers in Nigeria that the unauthorized use of Honeywell's "Autolite" trademark is illegal and constitutes an offense punishable by fine or imprisonment.

Nigeria's broadcast regulations do not permit rebroadcast or excerpting of foreign programs unless the station has an affiliate relationship with a foreign broadcaster. This regulation is generally respected but some cable providers illegally transmit foreign programs. The National Broadcasting Commission monitors the industry and is responsible for punishing infractions.

Almost no foreign feature films have been legally distributed in the country in the last two decades. Widespread pirating of foreign and domestic videotapes discourages the entry of licensed distributors. In 2004, the Nigerian Copyright Commission launched an anti-piracy initiative named "Strategy Against Piracy" (STRAP). The Nigerian police force, working closely with the Nigerian Copyright Commission, has raided enterprises producing and selling pirated software and videos and a number of high-profile charges have been filed against IPR violators. Unfortunately, most raids appear to target small rather than large and well-connected pirates, and very few cases involving copyright, patent, or trademark infringement have been successfully prosecuted.

SERVICES BARRIERS

Foreign participation in the services sector is generally not restricted. Regulations provide for 100 percent foreign ownership in many service sectors, including banking, insurance, telecommunications, and securities. Central Bank of Nigeria directives stipulate minimum levels of paid-up capital. At least three foreign banks operate in Nigeria and several Nigerian banks have foreign shareholders.

Professional societies in engineering, accounting, medicine, and law define minimum professional requirements. Nigeria imposes quotas on foreign employment based on the issued capital of firms. Quotas on foreign workers are especially strict in the oil and gas sector and may apply to both production and service companies. Oil and gas companies must hire Nigerian workers unless they can demonstrate that particular positions require expertise not found in the local workforce. Positions in finance and human resources are almost exclusively reserved for Nigerians. Certain geoscience and management positions may be filled by foreign workers with the approval of the National Petroleum Investment and Management Services (NAPIMS) agency. Each oil company must negotiate its foreign worker allotment with NAPIMS. Significant delays in the approval of this allotment and in subsequent approval of visas for foreign personnel present serious management challenges to the energy industry's efforts to acquire the necessary personnel and maintain their legal immigration status in Nigeria. NAPIM's approval is required for all procurement in the energy sector above $500,000. Approval processes are slow and can significantly escalate the time and cost required for a given project, as well as provide opportunities for corruption and favoritism.

INVESTMENT BARRIERS

Under the Nigerian Investment Promotion Commission (NIPC) Decree of 1995, Nigeria allows 100 percent foreign ownership of firms outside the petroleum sector. Investment in the petroleum sector is limited to existing joint ventures or production-sharing agreements. Foreign investors may buy shares of any Nigerian firm except firms on a “negative list” (such as manufacturers of firearms, ammunition, and military and paramilitary apparel). Foreign investors must register with the NIPC after incorporation under the Companies and Allied Matters Decree of 1990. The decree prohibits nationalization or expropriation of a foreign enterprise, except when necessary to protect the national interest.

Despite efforts to improve the country’s investment climate, disincentives to investing in Nigeria continue to plague foreign entrepreneurs. Potential investors must contend with poor infrastructure, complex tax administration procedures, confusing land ownership laws, arbitrary application of regulations, corruption, and extensive crime. The sanctity of contracts is often violated, and Nigeria’s court system for settling commercial disputes is weak and sometimes biased.

Foreign oil companies are under significant pressure to increase procurement from domestic firms. The government of Nigeria, through the Nigerian Content Division (NCD) of the Nigerian National Petroleum Corporation (NNPC), set a target of 45 percent local content for oil-related projects by 2006 and 70 percent by 2010. Oil companies and the NNPC appear to be working together cooperatively to meet these goals, but the extent of, and mechanisms for, enforcement of local content regulations remain unclear. In many cases, sufficiently trained personnel and physical infrastructure do not currently exist to meet the government’s local content targets. The NCD of the NNPC is working toward identifying and certifying domestic firms with specific skill sets through the Joint Qualification System (JQS). Although many domestic firms possess adequate technical expertise, managerial and financial capabilities are often lacking.

OTHER BARRIERS

The Nigerian government has increased its efforts to eliminate financial crimes such as money laundering and advance-fee fraud (or “419 fraud” named after the relevant section of the Nigerian Criminal Code). With the encouragement and cooperation of U.S. law enforcement agencies, the Nigerian government is now prosecuting more “419” perpetrators. In June 2006, the Financial Action Task Force removed Nigeria's name from the list of non-cooperating countries and territories in the fight against money laundering and other financial crimes.

International monitoring groups routinely rank Nigeria among the most corrupt countries in the world. While sales of U.S. goods and services to public- and private-sector enterprises are not restricted, some U.S. suppliers believe they lose sales when they refuse to engage in illicit or corrupt behavior. Other U.S. exporters say Nigerian businessmen and officials understand that U.S. firms must adhere to the U.S. Foreign Corrupt Practices Act, and they believe that the law’s restrictions help minimize their exposure to corruption.

NORWAY

TRADE SUMMARY

The U.S. goods trade deficit with Norway was $4.7 billion in 2006, a decrease of $152 million from $4.8 billion in 2005. U.S. goods exports in 2006 were $2.4 billion, up 23.3 percent from the previous year. Corresponding U.S. imports from Norway were $7.1 billion, up 4.5 percent. Norway is currently the 47th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Norway were $2.1 billion in 2005 (latest data available), and U.S. imports were $2.0 billion. Sales of services in Norway by majority U.S.-owned affiliates were $3.4 billion in 2004 (latest data available), while sales of services in the United States by majority Norway-owned firms were $459 million.

The stock of U.S. foreign direct investment (FDI) in Norway in 2005 was $8.8 billion (latest data available), up from $8.4 billion in 2004. U.S. FDI in Norway is concentrated largely in the mining and manufacturing sectors.

IMPORT POLICIES

Industrial Goods

Norway, along with Switzerland, Iceland and Liechtenstein, is a member of the European Free Trade Association (EFTA). EFTA members, with the exception of Switzerland, participate in the European Union (EU) single market through the European Economic Area (EEA) accord. Norway grants preferential tariff rates to EEA members. As an EEA signatory, Norway assumes most of the rights and obligations of EU member states. The principal exception is in the agricultural sector, which the EEA accord does not cover.

Although Norway maintains a liberal trade and investment regime with respect to industrial products, its agricultural sector remains highly protected. Some of Norway's trade restrictions are more severe than those of the EU, such as non-tariff barriers related to approval for agricultural products derived from biotechnology. As a general matter, Norway has implemented or is in the process of implementing most EU trade policies and regulations. Therefore, U.S. exports to Norway face many of the same trade and investment barriers that limit U.S. access to the EU, such as the ban on hormone-treated meat products. As a non-EU member, Norway's ability to influence EU decisions is limited.

Norway's market, except for agricultural products and processed foods, is generally transparent and open. Norway has continued on a unilateral basis to dismantle import tariffs on industrial products. The average most favored nation (MFN) tariff on non-agricultural products has fallen from 2.3 percent in 2000 to less than 1 percent today. More than 90 percent of industrial tariff lines are currently duty-free.

Agricultural Products

Although agriculture accounts only for about 1 percent of Gross Domestic Product (GDP), Norway maintains strict protections that shelter the sector from global competition. As justification for this policy, Norway emphasizes the importance of "non-trade concerns," which include food security, environmental protection, rural employment and the maintenance of human settlement in sparsely populated areas.

One of Norway's leading concerns in the stalled WTO Doha Development Round has been the preservation of its highly subsidized and protected agricultural sector. Norway remains committed to advocating tariff, sensitive product and special product protections for its agricultural sector.

Agricultural Tariffs

Norway bound its tariffs for agricultural commodities in 1995 as part of its WTO commitments. Tariffication of agricultural non-tariff barriers as a result of the Uruguay Round led to the replacement of quotas with high *ad valorem* product tariffs. Although Norway is only 50 percent self-sufficient in agricultural production, it maintains a protective system that assures that domestic producers – farmers and the food processing industry – have little competition until all domestic production has been consumed. Tariff rates on agricultural products currently average about 38 percent – in comparison to less than 1 percent for non-agricultural products – and can range as high as several hundred percent.

Domestic agricultural shortages and price surges have been offset by temporary tariff reductions. Lack of predictability in tariff adjustments and insufficient advance notifications – generally only two to five days before implementation – favor nearby European suppliers and make imports from the United States, especially of fruit, vegetables and other perishable horticultural products, very difficult. For a number of processed food products, tariffs are applied based on their recipes, requiring the Norwegian importer to provide a detailed disclosure of product contents. Many exporters to the Norwegian market refuse to give all requested details and their products are, as a result, subjected to maximum tariffs.

Agricultural Tariff-Rate Quotas

Norwegian tariff-rate quotas are divided into two categories – minimum access quotas and Generalized System of Preferences (GSP) quotas. Tariff-rate quotas exist for grains and a number of horticultural products. In 2001, Norway also implemented auction quotas for grain and other carbohydrate feed. All quotas are traded at auctions held by the Norwegian Agricultural Authority, a Ministry of Agriculture agency that controls all agricultural imports.

Interest in the quotas among Norwegian importers is limited, except for grain, despite the substantial reductions in duties for some products. Compared with domestic consumption and production, the quotas are very small. Most of the interest in Norway's quota auction comes from smaller importers who use their quotas for niche products or from large farmer-owned companies to block competition to their own domestically-produced products.

Auction participation is inexpensive, and those who secure a quota are not required to actually import. Although about 98 percent of the quotas each year are sold on these auctions, only 30 percent to 40 percent of the quotas auctioned are usually filled through imports. There is no system to reallocate unused import quotas, hindering foreign exporters seeking access to the Norwegian market for these products.

Raw Material Price Compensation

Though Norway uses high import tariffs to protect domestic commodities from foreign competition, the situation is more complex for certain processed goods. Although the EEA does not generally apply to agricultural products, it includes provisions on raw material price compensation that are meant to increase trade in processed food. Norway has a special agreement with the EU within the EEA framework that grants some EU processed food products a preferential duty. In 2003, the agreement extended coverage to bread and baked goods, breakfast cereals, chocolate and sweets, ice cream, pasta, pizza, soups and sauces. This scheme disadvantages U.S. exporters in the Norwegian market for the covered processed foods.

Norway also maintains a price reduction scheme that includes subsidies for using certain domestically-produced raw materials in processed foods. Products for which such subsidies are paid include chocolate, sweets and ice cream (for milk and glucose), and pizza (for cheese and meat). The purpose of the system is to help compensate the domestic food processing industry for high domestic raw material costs.

EU-Based Agricultural Regulations

In addition to its own requirements related to the import of food products, Norway has generally implemented EU regulations since 1999. Some EU regulations that Norway has adopted inhibit trade, such as EU regulations on veterinary control of animals and animal products requiring that meat products entering the country come from an EU-approved plant and be accompanied by the necessary certificates. The importer in Norway must be registered and notify authorities in advance of the arrival of any shipment (24 hours in advance for plants and 30 days in advance for animals). Except for fish products, shipments must enter through either Oslo harbor or Oslo airport. Twenty entrance locations exist for fish products.

Norway also implements EU regulations that bar imports of meat from animals treated with growth hormones. However, the market for U.S. beef for consumption on cruise ships based in, or calling on, Norwegian ports is burgeoning, as beef consumed on board is not subject to such import restrictions.

Biotechnology

Norway's strict limitations on imports of agricultural biotechnology products have had an adverse impact on U.S. producers. Before the limitations took effect in 1996, U.S. exporters usually supplied 60 percent to 80 percent of the Norwegian soybean market. As a result of the limitations, the entire market has been lost.

Although not a member of the EU, as an EEA member, Norway is required to implement EU legislation with regard to food, feed and seed produced from genetic engineering. However, the Norwegian Gene Technology Act of 1993 is more restrictive than EU legislation as it requires proof that agricultural biotechnology products were developed with an ethical justification, provide a societal benefit and accord with sustainable development goals. In 2004, the EU implemented Regulation 1829/2003 on Genetically Modified Food and Feed, as well as Regulation 1830/2003 on Traceability and Labeling of Genetically Modified Organisms and the Traceability of Food and Feed Products produced from Genetically Modified Organisms. These polices were integrated into Norwegian regulations in September 2005.

While the revised Norwegian regulations incorporated the major elements of the EU regulations, they do not represent a formal or complete implementation of EU directives. All food and feed produced from genetic engineering, including products that no longer contain detectable traces of agricultural products derived from biotechnology, must be labeled. The allowable adventitious presence level is set at 0.9 percent for EU-approved products and 0.5 percent for products that have not yet been approved but have successfully completed an EU or Norwegian risk assessment. All products testing above these levels must be labeled. The regulation does not require labeling of products that are not food ingredients, such as processing aids. Meat, milk or eggs obtained from animals fed with products derived from biotechnology or treated with medicinal products derived from biotechnology do not require additional labeling.

Wines and Spirits

The wine and spirits retail market in Norway is controlled by the government monopoly Vinmonopolet. There were 198 Vinmonopolet stores throughout Norway at the end of 2006. Wine and spirits sales through ordinary retail stores are not allowed. An approved importer/agent and distributor are required in order to enter the market. Gaining approvals to include wines and other alcoholic beverages on Vinmonopolet's retail list is cumbersome, limiting the variety of U.S. wines available to Norwegian consumers. Vinmonopolet relies on a tender system, with set specifications and conditions for quality, price and delivery, in acquiring most new products. Products chosen for sale through Vinmonopolet must meet annual minimum sales quotas or they are dropped from the inventory. Advertising of alcoholic beverages is strictly prohibited.

GOVERNMENT PROCUREMENT

Norway is a signatory to the WTO Agreement on Government Procurement (GPA). Norway's government procurement procedures are non-discriminatory and based on open, competitive bidding for procurement above certain threshold values. A similar set of national rules applies to public contract tenders below these thresholds. Exceptions for defense procurement leave a "gray area" for items such as rescue helicopters that can also be used in military operations. Although disputes may be settled by the European Surveillance Authority (ESA) or by the courts, the process can be unduly lengthy.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Internet piracy and cable/satellite decoder and smart card piracy have risen in Norway. Broadband Internet is standard, making peer-to-peer downloads of music and video easy and common. Encoding groups that release early copies of new motion pictures on the Internet are problematic. Television and cable companies are active in combating decoder and smart card piracy, and satellite operators recently introduced conditional access technologies that have mitigated the problem. Private organizations like the Motion Picture Association are attempting to raise public awareness of Internet and video piracy, for example, by running anti-pirating advertisements in movie theaters. Norwegian authorities have not undertaken any serious public relations efforts to combat Internet or other piracy of copyrighted property.

Copyright

In June 2005, Norway enacted legislation based on the EU's 2001 Copyright Directive that combats Internet piracy and addresses some gaps in Norway's IPR protections. The legislation bans unauthorized peer-to-peer file sharing and requires that creative works can be downloaded from the Internet only with the artist's prior approval. However, contrary to the EU Copyright Directive, Norway has failed to provide rights holders the ability to seek injunctive relief against Internet Service Providers who allow pirate websites to operate on their networks.

The legislation also grants legal protection to technological protection measures designed to prevent unauthorized use of a creative work. The law bars the intentional circumvention of such systems in most circumstances. However, an exception is made for "private use." Norway thus expressly allows circumvention of copy protection and other technical measures for private use of copyrighted materials other than computer software. For example, this measure allows music CD owners to breach protection measures in order to transfer copyrighted music. Although not expressly stated in the law, the legislative history of this provision suggests that "private use" also includes providing free copies to family and friends. In compensation, Norway budgeted NOK32.5 million ($5 million) in 2005 and NOK33.5 million in 2006 for payments to adversely affected music and motion picture rights holders. Norway plans to make such payments annually from future government budgets. However, the funds will be paid only to artists in the EU and EFTA countries, though copyrighted U.S. products undoubtedly comprise a high percentage of downloaded material. The funds are distributed by a non-governmental organization, the Norwegian Organization of Rightholders in Audio-visual Works (NORWACO), which uses radio air time statistics to determine their allocation among EU/EFTA artists.

The EFTA Surveillance Authority is reviewing whether Norway has correctly implemented the EU Copyright Directive.

Counterfeit and Pirated Goods

Norway does not expressly ban imports of counterfeit or pirated goods. A trademark or copyright holder must obtain a court order and have the case referred to the police before customs authorities will take action to stop entries of pirated goods. However, Norway's strict privacy laws bar customs authorities from informing rights holders when questionable shipments arrive at the border, rendering the remedy ineffective. Although counterfeit and pirated goods are not commonly available domestically, counterfeiters and intellectual property pirates use Norway as a "gateway" to third countries – importing illicit goods, paying applicable import duties and reshipping the goods to EU nations.

Enforcement

Enforcement of IPR protections is inconsistent. Norwegian police and judicial authorities are generally committed in principle to taking action against piracy and intellectual property right infringement, to the extent authorized by Norwegian law, and have successfully prosecuted a number of high-profile cases. However, the authorities lack the capability and resources to handle complaints about IPR violations effectively. Police authorities are aware of such problems as the "gateway" issue and have been working to address them, but with little result. Given limited resources, Norwegian law enforcement authorities have placed more priority on areas like computer crime than traditional IPR violations. For example, local business representatives indicate that complaints about copyright infringement usually either go unaddressed or are given low priority.

Digital Rights Management Technologies

In 2006, significant public attention developed in Norway with respect to the demands of some consumer advocates to mandate interoperability among consumer electronic devices used for downloading and playing recorded music. While it is not clear whether Norwegian law will be amended to address interoperability of digital rights management (DRM) technologies, this issue bears continued monitoring to ensure that the intellectual property rights of DRM developers and of artists whose copyrighted works are protected by DRM technologies remain fully respected.

SERVICES BARRIERS

Financial Sector

Current regulations require that the Norwegian Financial Supervisory Authority grant permission for ownership levels in local financial institutions that exceed certain thresholds. The Authority assesses the acquisitions to ensure that prospective buyers are financially stable and the acquisition does not unduly limit competition. The Authority applies national treatment to non-bank foreign financial groups and institutions, but applies nationality restrictions to bank ownership. At least half the members of the board and half the members of the corporate assembly of a financial institution must be nationals and permanent residents of Norway or another EEA nation. On January 1, 2005, Norway removed the ceiling on foreign equity in a Norwegian financial institution, provided the Authority has granted a concession. Norway grants branches of U.S. and other foreign financial institutions the same treatment as domestic institutions.

Telecommunications Sector

In 1998, Norway began to liberalize the telecommunications services sector. The former monopoly provider – Telenor – was partially privatized in December 2000, leaving the government with a stake of 78 percent. Since that time, the government's share has declined to about 54 percent, though Norway's new government has indicated it will suspend further privatization of state-controlled companies.

Telenor remains the dominant operator in the Norwegian telecommunications market. In 2005, the Norwegian Post and Telecommunications Authority (NPTA), in line with the EU's telecommunications regulatory framework, declared that Telenor had significant market power in a number of segments in the telecommunications sector including: leased lines; call origination; transit services; wholesale unbundled access to metallic loops and sub-loops for the purpose of providing broadband and voice services; wholesale broadband access; and wholesale transmission services for national radio, local television and national television on analogue terrestrial networks. New regulatory obligations have been imposed on Telenor by the NPTA in order to facilitate competitors' entry into and further access to these markets.

The introduction of Voice-over Internet Protocol (VoIP) telephone services has further encouraged competition among telecommunications operators in Norway. The NPTA released an outline of regulation on VoIP services in April 2005.

INVESTMENT BARRIERS

Norway welcomes foreign investment as a matter of policy and grants national treatment to foreign investors, except in financial services, mining, hydropower and property acquisition. Foreign companies are required to obtain concessions for the right to own or use various kinds of real property, including forests, mines, tilled land and waterfalls. However, foreign companies do not need concessions to rent real estate, provided that the rental contract is made for a period of fewer than ten years.

In the offshore petroleum sector, Norwegian authorities encourage – but do not require – the use of Norwegian goods and services. The Norwegian share of the total supply of goods and services in this sector has remained high (approximately 50 percent) over the last decade. Norway's petroleum concession process still operates on a discretionary basis, with the government awarding licenses based on subjective factors rather than competitive bidding. Though the Norwegian government has in the past shown a strong preference for Norwegian petroleum companies in awarding the most promising oil and gas exploration and development blocks, foreign companies report no discrimination on the basis of nationality in recent licensing rounds. Norway has implemented EU directives requiring equal treatment of EEA oil and gas companies.

The Norwegian government maintains monopolies for certain postal services (letters under 50 grams), railways and the retail sale of alcohol. The government rarely allows foreign investment in hydropower production, and such investments, if approved, are limited to 20 percent equity participation. Norway has fully opened the electricity distribution system to foreign participation.

State Ownership and Control of Commercial Enterprises

The government continues to play a strong role in the Norwegian economy through its ownership and/or control of many of the country's leading commercial firms. The public sector accounts for nearly 60 percent of Norway's GDP. Central or local authorities own approximately 35 percent of the companies listed on the Oslo Stock Exchange, and more than one-third of the stock exchange's capitalization is in government hands.

A 2002 government "White Paper" called for reducing and improving state ownership in the economy. Norway took steps over the last several years to implement that policy, partially privatizing some of the country's leading firms (e.g., Statoil, Norsk Hydro, Telenor and others). However, the government coalition that took office in fall 2005 has halted further privatization of state-controlled companies.

Government Pension Fund

In 2004, the Norwegian Ministry of Finance adopted ethical guidelines for the "Government Pension Fund - Global" (the Fund). The Fund is composed of 78 percent tax revenue the government of Norway receives from petroleum profits and from returns on its direct interests in petroleum production licenses; this capital is then invested entirely in foreign financial instruments. At the end of 2006, assets accumulated in the Fund stood at more than $270 billion. The ethical guidelines state that the Norwegian Central Bank, which manages the Fund, may exclude investments in, or divest itself from, companies that: (1) produce weapons, such as nuclear arms or cluster bombs, that may violate humanitarian principles; or (2) contribute to serious violations of fundamental ethical norms, such as through human rights violations, severe environmental damage or gross corruption. In 2006, the Finance Ministry, on the recommendation of the Fund's Council on Ethics, instructed the Central Bank to divest shares in a number of companies, the majority of which are from the United States. The U.S. Government has urged Norway to work toward greater transparency and more formal procedural structures for the Fund's decision-making.

OTHER SECTORAL POLICIES

Pharmaceuticals

Foreign pharmaceutical firms continue to experience difficulties in the Norwegian market. Until 1992, Norway limited patent protection for pharmaceuticals to the manufacturing process for a drug's active ingredient. Although Norway introduced product patents for pharmaceuticals in 1992, the previous system has left a difficult legacy for pharmaceutical companies as competitors claiming to use non-patented processes have recently entered the market. Several U.S. pharmaceutical companies are involved in legal actions in Norwegian courts alleging infringement by these new entrants. One U.S. company lost a preliminary injunction in a patent infringement case in 2006, which allowed the copycat drug to enter the market immediately, cost the company significant revenue, and led to layoffs of local employees. In 2006, affected multinational pharmaceutical companies, supported by the U.S. and two European embassies, advocated that Norway amend the public health care system's drug reimbursement regulations to bar pharmacies from substituting generics for branded drugs that have process patents. The Norwegian government rejected the appeals in June 2006.

Transparency on pricing, reimbursement decisions and recommendations is lacking. U.S. pharmaceutical products often face lengthy delays in securing approval for their products' inclusion in the state health care reimbursement scheme. Reimbursement and approval decisions are complex and political, with the Parliament making final decisions as part of its budget process.

The Norwegian Medicines Agency (NMA) added another potential hurdle to reimbursement approvals in 2005 by denying a U.S. pharmaceutical manufacturer's reimbursement application for lack of documentary proof – which would have taken several years to develop – that the costs of the drug in question compared reasonably with its treatment value and the costs of alternative treatments. The NMA's procedures for reviewing reimbursement applications neither require such cost-benefit data nor make them a factor in reimbursement decisions. The drug at issue is reimbursed in all EU countries except Denmark, and no other EU country requested such data as a condition of approving reimbursement. Requiring manufacturers to perform multi-year cost benefit studies of medically approved pharmaceuticals as a condition of reimbursement will result in significant additional costs and delays in bringing new drugs to the Norwegian market.

U.S. pharmaceutical manufacturers cite Norway's total prohibition of supplying product information to consumers – ranging from advertising to scientific data – as a barrier to market entry and expansion. Consumers are not fully informed about pharmaceutical innovations, sometimes delaying consumer access to the latest medicines.

The Norwegian Association of Pharmaceutical Manufacturers, which includes U.S. pharmaceutical firms, has complained about Norway's inadequate implementation of EU directives on transparency of measures regulating medicinal products for human use. Although Norway complies with the letter of EU requirements that reimbursement applications be acted on within 180 days, Norwegian authorities often reject applications as the period expires, giving them an unlimited amount of time to consider applications once appealed.

Automotive Sector

The general vehicle taxation system that Norway put into place in 1996, under which taxes are calculated progressively on the basis of vehicle weight, engine horsepower, and engine displacement, has had a strong negative impact on sales of U.S. vehicles in Norway. These parameters tend to be unfavorable to vehicles manufactured in the United States, which are generally heavier and equipped with engines with more horsepower and higher displacement than vehicles manufactured in other nations. In the year before this tax regime went into effect, approximately 9,500 American vehicles were sold in Norway, nearly 8 percent of the market. Since that time, sales of U.S. vehicles in Norway have steadily declined, to less than 1,500 in 2005 (about 1 percent of the market), most of which were light trucks. However, in its 2006 budget, the Norwegian government imposed new taxes on light trucks that, in effect, eliminated the last significant remaining market for U.S. vehicles in Norway. More than 1,000 U.S. light trucks were sold in Norway before the tax went into effect. Post-tax sales plummeted to several dozen vehicles.

Norway announced in October 2006 that it would substitute a new CO_2 emissions factor for the engine displacement parameter in its vehicle taxation regime, effective January 1, 2007. The new system is expected to encourage sales of diesel-powered passenger vehicles, which generally are not manufactured in the United States. Moreover, Norway will accept only European standards for measuring CO_2 emissions, further disadvantaging vehicles manufactured in the United States. Norway announced that it would lift the light truck tax in 2007 for trucks with cargo space above certain limits, but the space limitations deny most U.S. light trucks the benefit of the restored exemption.

OMAN

TRADE SUMMARY

The U.S. goods trade balance with Oman went from a surplus of $40 million in 2005 to a goods trade deficit of $55 million in 2006. U.S. goods exports in 2006 were $854 million, up 43.5 percent from the previous year. Corresponding U.S. imports from Oman were $909 million, up 63.7 percent. Oman is currently the 70th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Oman 2005 was $615 million (latest data available), up from $438 million in 2004.

After consultations with Congress, the United States began Free Trade Agreement (FTA) negotiations with Oman in March 2005. On January 19, 2006, U.S. Trade Representative Rob Portman and Omani Minister of Commerce and Industry Maqbool bin Ali Sultan signed the Agreement. Following Congressional approval of the FTA in September 2006, the President signed the FTA implementing legislation on September 26, 2006. The FTA will be brought into force once the governments of both the United States and Oman certify that respective regulations are in compliance with the provisions of the Agreement.

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), Oman applies the GCC common external tariff of 5 percent to most products, with a limited number of GCC-approved country-specific exceptions. Oman's exceptions to the common external tariff include 100 percent tariff rates on pork and alcohol products, 100 percent on cigarettes, a 25 percent duty on edible oils sold in retail packaging, as well as protective duties on a limited number of agricultural products such as dried lemons, bananas, dates and ghee.

Upon entry into force of the U.S.-Oman FTA, 100 percent of bilateral trade in industrial and consumer products, with the exception of certain textile and apparel products, will become duty-free. In addition, Oman will provide immediate duty-free access on virtually all products in their tariff schedule and will phase out tariffs on the remaining handful of products within 10 years. On agricultural products, Oman will provide immediate duty-free access for U.S. agricultural products in 87 percent of agricultural tariff lines. Oman will phase out tariffs on the remaining products within 10 years.

Import Licensing

In Oman, companies that import goods must be registered with the Ministry of Commerce and Industry. Importation of certain classes of goods, such as alcohol, livestock, poultry and their respective products, firearms, narcotics and explosives, requires a special license. Media imports are subject to censorship.

Documentation Requirements

Except for food products, an authentication procedure is not required if the importing company has an existing agency agreement with a U.S. exporter. In 1996, Oman began the process of simplifying customs clearance documentation to expedite the flow of goods and promote its ports and airports. Only Omani nationals and companies of WTO Members that are registered as importers are permitted to submit documents to clear shipments through customs.

Customs Valuation

Oman implemented the Customs Valuation Agreement when it joined the WTO in 2000, and is working to further enhance its customs valuation system.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Oman is working to revise its shelf-life requirements for shelf-stable foods to reflect standards developed by Codex Alimentarius. In its accession to the WTO, Oman committed to eliminate mandatory shelf-life standards for shelf-stable foods, establish regulations and procedures in line with international norms for highly perishable refrigerated food products, and replace remaining shelf-life requirements with a science-based regulatory framework. In conjunction with its GCC colleagues, Oman is finalizing a draft revision to Gulf Standard 1023/2000 ("Expiration Periods of Food Products – Part 2") and Gulf Standard 150/1993 ("Expiration Periods of Food Products – Part 1") to provide for voluntary expiration guidelines for shelf-stable foods, while retaining expiration standards for perishable items. This revision is expected to be enacted in 2007. In 2000, Oman announced by Royal Decree its intention to adopt internationally recognized standards for the labeling of prepackaged food.

GOVERNMENT PROCUREMENT

Oman provides a 10 percent price preference to tenders that contain a high content of local goods or services, including direct employment of Omanis. The government considers the quality of a product or service and support, as well as cost, in evaluating bids. For most major tenders, Oman typically invites bids from firms either already registered in Oman or pre-selected by project consultants. To increase transparency in the tendering process, Oman advertises tenders in the local press, international periodicals, and on the Tender Board's website. Also, bidders are requested to be present at the opening of bids, and interested parties may view the process on the Tender Board's website. U.S. industry has reported that bidders' costs can sometimes increase dramatically when award decisions are delayed, sometimes for years, or the bidding is reopened with modified specifications and, typically, short deadlines. Oman's Ministry of Defense may require that companies involved in defense-related transactions participate in its offset program entitled "Partnership for Development."

When the U.S.-Oman FTA enters into force, Oman will be required to conduct procurement covered by the FTA in a fair, transparent, and non-discriminatory manner. As part of its WTO accession, Oman committed to begin negotiations to join the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The U.S.-Oman FTA commits Oman to provide and enforce world-class IPR protection. Oman is finalizing revisions to its industrial property and copyright laws to implement these obligations prior to the Agreement's entry into force. Under its FTA obligations, Oman will provide increased IPR protection for copyrights, trademarks, geographical indications and patents. Oman will also improve enforcement and protection of undisclosed test data from unfair commercial use. In addition, Oman acceded to the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty in September 2005.

As part of its WTO accession, Oman adopted derogations to the GCC patent law to comply with its obligations under the TRIPS Agreement. In 2000, Oman amended its copyright protection law, and in 1999 enacted decrees banning the local sale of pirated videocassettes, sound recordings and computer software. Enforcement of the copyright protection decree by the Ministry of Heritage and Culture, the Ministry of Commerce and Industry, and the Royal Oman Police has been largely effective, as once plentiful pirated video and audiotapes and computer software have mostly disappeared from local vendors' shelves. For example, in 2006, the government conducted a series of coordinated sweeps that netted over 40,000 counterfeit media products. Nonetheless, under-the-counter sales of unauthorized software and DVDs persist in various locations, and authorities continue to grapple with effective enforcement measures against such sales. Forty Omani companies have signed the Business Software Alliance (BSA) Code of Ethics since October 2003. The Code of Ethics declares that the signatories would neither commit nor tolerate the manufacture, use, or distribution of unlicensed software and would supply only licensed software to customers. The BSA recently praised Oman for its efforts in combating software piracy and the government signed a three-year contract with Microsoft Corporation for the use of the company's licensed products in 2006. According to local satellite television representatives, the Ministry of Commerce and Industry conducts periodic raids on unlicensed distributors of pirated satellite signals in response to industry complaints.

SERVICES BARRIERS

Telecommunications

As part of its WTO commitments, Oman agreed to allow unlimited market access in telecommunications services no later than January 1, 2004, and also signed the Reference Paper on Regulatory Principles, thereby agreeing to implement a pro-competitive regulatory regime.

Additionally, through the United States-Oman FTA, Oman has committed to ensuring reasonable and non-discriminatory access to essential facilities, the ability to resell telecommunications services, and broad-based transparency and due process in the development and implementation of its telecommunications regulations.

Agent and Distributor Rules

Since 1993, Oman has permitted an importer to bring in goods without paying a commission to a registered agent, if the goods are imported through an Omani port or airport. Termination of an agency agreement can be difficult, as a supplier may not unilaterally terminate an agency agreement without justifiable cause. Since September 1996, Oman has registered non-exclusive agency agreements.

Insurance

As part of its WTO commitments, Oman allows foreign ownership of up to 100 percent in most insurance sectors, except for brokerage companies, which are restricted to a 70 percent limit.

Banking

Omani laws permit the operation of foreign banks. Although Oman has in the past barred entry of new non-GCC banks on the grounds of excess capacity in the sector, in 2004 it licensed the State Bank of India to commence operations. Oman does not permit representative offices or offshore banking.

INVESTMENT BARRIERS

The U.S.-Oman FTA establishes a secure, predictable legal framework for U.S. investors operating in Oman. Among other things, Oman will have to provide U.S. investors in Oman most-favored-nation treatment and national treatment, the right to make financial transfers freely and without delay, international law standards for expropriation and compensation cases, and access to international arbitration. All forms of investment will be protected under the FTA, including enterprises, debt, concessions, contracts and intellectual property rights. As a result, U.S. investors in almost all circumstances will be able to establish, acquire and operate investments in Oman on an equal footing with Omani investors and with investors of other countries. The FTA also prohibits the imposition of certain restrictions on U.S. investors, such as requirements to buy Omani rather than U.S. inputs for goods manufactured in Oman. Finally, U.S. investors will be permitted to purchase freehold property in designated residential areas once implementing regulations are finalized by the Ministry of Tourism.

PAKISTAN

TRADE SUMMARY

The U.S. goods trade deficit with Pakistan was $1.9 billion in 2006, a decrease of $78 million from $2.0 billion in 2005. U.S. goods exports in 2006 were $1.9 billion, up 51.6 percent from the previous year. Corresponding U.S. imports from Pakistan were $3.8 billion, up 17.5 percent. Pakistan is currently the 54th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Pakistan in 2005 was $1.1 billion (latest data available), up from $945 million in 2004.

IMPORT POLICIES

Since 1998, Pakistan has progressively and substantially reduced tariffs and liberalized imports. This effort culminated in June 2002 with the establishment of four maximum import tariff bands of 5 percent, 10 percent, 20 percent and 25 percent. Generally, Pakistan's applied tariffs are below World Trade Organization (WTO)-bound commitments, with its simple average applied tariff at 16.5 percent.

In 2005, Pakistan further reduced duties on imported automobiles to between 50 percent and 75 percent from the previous range of 75 percent to 150 percent. It imposed a 55 percent duty on imported automotive parts that are also manufactured domestically and a 35 percent duty on those automotive parts that Pakistan does not manufacture domestically. Pakistan also further reduced duties on instant print film and instant print cameras to 5 percent from the prior 30 percent to 200 percent range in order to eliminate incentives for smuggling. In its 2006-2007 budget the government eliminated custom duties on agricultural tractors. U.S.-made textile products may be imported into Pakistan, although the tariff on certain synthetic fibers (scheduled to expire in 2008) remains relatively high.

Pakistan continues to ban the import of 30 items, mostly on religious, environmental, security and health grounds. Pakistan also allows only 1073 items to be imported from India, including 300 items that were added to the list in 2006. Pakistan says further opening of trade with India is contingent upon progress the status of Kashmir.

The government of Pakistan reserves the right to grant sector-specific duty exemptions, concessions, and protections under Statutory Regulatory Orders (SROs). The government in 2006 exempted all domestically-produced and imported pharmaceutical-related inputs from its General Sales Tax. An SRO issued in August 2002 excepted the following items from the value-added tax: imported filled infusion solution bags; scrubs, detergents and washing preparations; soft soap or no-soap soap; adhesive plaster; surgical tapes; liquid paraffin; disinfectants; cosmetics and toilet preparations; and absorbent cotton wool. In recent years, the use of SROs has decreased. SROs and other trade policy and regulatory documents are published on the Central Board of Revenues website, www.cbr.gov.pk.

In January 2000, the Pakistani government began implementing a transactional valuation system, under which 99 percent of import valuation is based on invoice value, in accordance with the WTO's Customs Valuation Agreement. Currently, about 90 percent to 95 percent of imports are assessed duties pursuant to the transactional valuation system, including Pakistan's major imports such as industrial and power equipment, petroleum and petroleum products, and chemicals. A number of traders in food and nonfood consumer products, however, report the system is not uniformly applied. These products account for close to 4 percent to 5 percent of Pakistan's imports.

A U.S. freight forwarding company reported in 2005 that Pakistan imposed a new SRO requiring that the commercial invoice and the packing list be included inside a container. The SRO is still legally valid but is not being enforced due to practical difficulties. The inclusion of invoice and packing lists is difficult in situations when shipments originate from a location that is different from where the invoice and packing list are created; when, for security, invoices are created after the shipment departs; or, when several companies are involved.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Pakistan Standards and Quality Control Authority (PSQCA) is the national standards body. As of June 30, 2006 (the end of Pakistan's fiscal year 06), PSQCA had established over 22,000 standards (including 15,500 ISO standards) for agriculture, food, chemicals, civil and mechanical engineering, electronics, weights and measures, and textile products. Current estimates indicate that there are 24 certification bodies operating in Pakistan and close to 3000 enterprises have been issued ISO 9000 certificates. All the certification bodies operating in Pakistan are foreign-based. U.S. industry contends that inconsistent application of standards occasionally results in discrimination against U.S. agricultural products. Generally, however, U.S exporters have not reported significant problems due to the application of sanitary, phytosanitary, or environmental standards. Pakistan allows the import of U.S. products that meet U.S. standards in cases where there are no Pakistani standards or where the Pakistani standards do not conflict with the U.S standards. As a result, Pakistan allows the import of the most U.S. products that meet U.S. standards. In addition, some Pakistani standards are based on U.S. standards.

The government of Pakistan approved biosafety guidelines and rules in April 2005 and also approved an action plan to implement these guidelines. As part of the action plan, the government has established a National Biosafety Committee within the Environment Ministry. The Committee has the mandate to approve applications and register biotechnology products. Currently there are no restrictions on importing genetically modified products from the United States as long as they meet U.S. standards.

GOVERNMENT PROCUREMENT

Pakistan is not a signatory to the WTO Agreement on Government Procurement. Government contracts are often awarded through publicly issued tender notices or are issued to registered suppliers. The government established the Public Procurement Regulatory Authority in May 2002 in order to strengthen procurement practices. The Public Procurement Regulatory Authority is an autonomous body responsible for prescribing regulations and procedures for public procurement by public sector entities and for monitoring procurement by such organizations. In 2004, the Authority enacted a regulatory framework for public procurement which was to establish transparent public procurement practices. Pursuant to the 2004 Regulatory Framework, international tender notices now are publicly advertised and sole source contracting using company-specific qualifications has been eliminated. There are no official "buy national" policies. More time will be needed to evaluate the effectiveness of the changes made to improve public procurement neutrality and transparency.

Political influence on procurement decisions, charges of official corruption, and long delays in bureaucratic decision-making have been common. Suppliers have reported instances when the government used the lowest bid as a basis for further negotiations, rather than accepting the lowest bid under its tender rules. The Pakistani government does not invite tenders from private-sector companies for the transportation of crude oil and requires all transport of crude oil to be conducted by the state-owned Pakistan National Shipping Corporation.

EXPORT SUBSIDIES

Pakistan actively promotes the export of Pakistani goods with measures such as tariff concessions on imported inputs and income and sales tax concessions. Subsidies in FY2006 were confined mostly to wheat and totaled roughly $15.9 million, according to government sources. The government also provides freight subsidies to some products and these subsidies totaled close to $18.3 million in FY 2006. Pakistan established its first Export Processing Zone (EPZ) in Karachi in 1989, with special fiscal and institutional incentives available to encourage the establishment of exclusively export-oriented industries. The government subsequently established additional EPZs in Risalpur, Gujranwala, and Sialkot in Punjab Province, and Saindak and Duddar in Balochistan Province. Principal government incentives for EPZ investors include an exemption from all federal, provincial, and municipal taxes for production dedicated to exports; exemption from all taxes and duties on equipment, machinery, and materials (including components, spare parts and packing material); indefinite loss carry-forward; and access to Export Processing Zone Authority "One Window" services, including facilitated issuance of import permits and export authorizations.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The government of Pakistan continued to take noticeable steps during 2006 to improve copyright enforcement, especially with respect to optical disc piracy. Nevertheless, Pakistan does not provide adequate protection of all intellectual property. Book piracy, weak trademark enforcement, lack of data protection for proprietary pharmaceutical and agricultural chemical test data, and problems with Pakistan's pharmaceutical patent protection remain serious barriers to trade and investment. The U.S. Government placed Pakistan on the Special 301 Watch List from 1989 to 2003 due to widespread piracy, and continuing IPR violations prompted the U.S. Government to place Pakistan on the Special 301 Priority Watch List in 2004 and 2005. In early 2005, Pakistan was among the world's leading producers of pirated optical discs and other copyrighted material. However, Pakistan took significant steps to shut down optical disc production and exports of pirated optical discs over the last two years. In April 2006, in recognition of the government of Pakistan's efforts, USTR lowered Pakistan from the Special 301 Priority Watch List to the Watch List. This was based, in part, on the closure of numerous pirate optical disc factories and improved centralization of enforcement efforts through the creation of the Intellectual Property Rights Organization (IPO) (see below). In 2006, Pakistan committed to formalize a system to prevent marketing approval of unauthorized copies of drugs and it pledged to provide safeguards to protect test and other data submitted by pharmaceutical companies seeking marketing approval for their products.

The government of Pakistan has identified intellectual property protection as a key area for its second generation economic reforms. Pakistan has enacted five major new laws relating to patents, copyrights, trademarks, industrial designs and layout designs for integrated circuits in the past few years, but their impact has been limited by weaknesses in the legislation and/or enforcement.

In 2005, measures were implemented that, if sustained, could lead to improvement in several longstanding IP problem areas. In August 2005, in response to longstanding domestic and international criticism of Pakistan's lack of a central IPR regulatory and enforcement authority, as well as the need to implement its obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Pakistan's President created the IPO of Pakistan. The IPO, an autonomous body under the administrative control of the Government's Cabinet Division, consolidates into one body authority over trademarks, patents, and copyrights -- areas that were previously handled by three separate ministries. The IPO is beginning to monitor the enforcement and protection of intellectual property rights through cooperation with law enforcement agencies, in addition to dealing with other IPR related issues. While establishment of the IPO represents an important milestone, its success will be gauged by measurable results in terms of increased public awareness of intellectual property rights, stepped-up enforcement, and prompt action to address specific legislative and policy weaknesses.

In August 2005, in an effort to improve the protection of intellectual property within Pakistan, the government of Pakistan transferred interagency responsibility for the enforcement of intellectual property laws to the Federal Investigation Agency (FIA). FIA staff has received specialized training in intellectual property enforcement and associated technological tools, which has enabled the agency to expand enforcement operations to target manufacturers of pirated goods. Key challenges ahead will be to expand manpower and increase training at the FIA, in particular the planned establishment of a dedicated IP enforcement unit.

Pakistan is a party to the Berne Convention for the Protection of Literary and Artistic Works and is a member of the World Intellectual Property Organization (WIPO). In July 2004, Pakistan acceded to the Paris Convention for the protection of industrial property. Pakistan has not yet ratified the WIPO Copyright Treaty nor the WIPO Performance and Phonograms Treaty. A draft law concerning plant breeders' rights that had not moved forward for the past two years is now close to approval because in 2006 the government of Pakistan obtained the approval of three of Pakistan’s four provincial governments to introduce such a law (the approval of two or more provincial governments was required). Administrative formalities are expected to take 6 months to 12 months before the law is officially enacted.

Patents

Pakistan enacted a patent law in 2000 that protects both process patents and product patents in accordance with its WTO obligations. Under this law, both the patent owner and licensees can file suit against those who infringe patent rights. Unfortunately, a Patent Ordinance passed in 2002 weakened the 2000 law by eliminating use patents, restricting patent filings to single chemical entities, limiting protection for derivatives, and introducing barriers to patenting biotechnology-based inventions. This generated great concern among U.S. pharmaceutical firms seeking to sell patented drugs in Pakistan.

Pakistan does not adequately protect against unfair commercial use of test or other data. The Pakistani government has authorized the sale of pharmaceuticals without requiring checks confirming that another firm does not hold an active patent on the compound. Although courts have issued injunctions against firms licensed by the Ministry of Health that sell drugs in violation of patent holder rights, such orders are not consistently enforced. Patent theft is exacerbated by the fact that it often takes one or two years to register drugs in Pakistan. As part of the registration process, the government also sets prices -- often at levels that do not reflect the cost of developing the product.

Trademarks

In 2000, Pakistan developed its Trademarks Ordinance, which provided for the registration and better protection of trademarks and for the prevention of the use of fraudulent marks. Implementing rules were enacted in April 2004 to enforce this Ordinance. The government has eliminated the requirement that generic names be given at least equal prominence to the brand name. Trademark infringement, however, remains widespread.

Copyrights

According to the International Intellectual Property Association, copyright piracy rates in 2005 in Pakistan remained at high levels for records, music and business software (no figures were available for motion pictures, entertainment software, or published books). Until recently, Pakistan had been a major exporter of pirated optical discs.

Pakistan significantly intensified enforcement activity against pirated optical discs in 2005 and 2006. In May 2005, Pakistan's Federal Investigation Agency (FIA) raided and closed six major illegal disc plants outside of Karachi. In June 2006, the FIA raided the first major CDR (compact disc read-only) duplication facilities in Lahore that led to the seizure of 273 CDR burners from a private apartment. More than 22,000 pirated CDRs were confiscated, and two brothers who ran a CD shop in Lahore were arrested. Additional raids on other production facilities continued throughout the year resulting in 27 registered cases, 34 arrests and over one million pirated CDs and DVDs being confiscated through October of 2006. All those arrested have been released on bail and their cases are pending before Pakistani courts. These raids correspond with anecdotal reports of fewer pirated copyright goods available in the markets of Pakistan. Book and business software piracy still remain serious problems.

SERVICES BARRIERS

Pakistan generally permits foreign investment in services, subject to certain provisions, including a minimum initial capital investment of $150,000 for most sectors except banking. Changes in 2000 to the government's investment policy permitted foreign investors to hold up to a 100 percent equity stake and allowed 100 percent repatriation of profits in most sectors. The $300,000 minimum initial capital investment requirement in the services sector was also reduced and the requirement that foreign investors accumulate 40 percent local equity within five years of initial investment was eliminated. The cap on repatriation of profits at a maximum of 60 percent of total equity or profits was also abolished. Foreign investors in services and other non-manufacturing sectors (including international food franchises) are allowed to remit royalties and technical fees, subject to certain conditions. In information technology services, including software development, foreign investors are not subject to the requirements for minimum initial investment.

Telecommunications

In July 2003, the Pakistani government announced it was deregulating the telecommunications sector in order to comply with its WTO commitments and encourage growth in the sector. Pakistan Telecommunication Company Limited (PTCL) lost its monopoly on basic telephone services and the government issued 14 licenses to long distance telephone companies (12 of which have commenced operations), 72 licenses to local loop regional telephone companies (four of which are operating) and 92 licenses to wireless local loop companies (four of which are operating). In early 2005, the government of Pakistan invited international bids on a 26 percent stake, along with management control, in PTCL. Etisalat, a UAE-based company, was named the winning bidder in July 2005. The ability of telecommunications companies to operate in Pakistan will continue to depend on access to PTCL infrastructure, however. In 2005-06 the government combined 15 value-added services including Internet service provision (ISP), vehicle tracking system, and data network operations into one license, the Class Value Added (CVA) license. The government gave those who applied prior to announcement of this policy the option either to continue their old licenses or convert to CVA licenses. To date the government has issued 56 new CVA licenses and converted 71 old licenses to CVAs. At present, the government does not issue licenses specifically for Voice-over-Internet Protocol (VoIP), but long distance telephone license holders may also provide VoIP services. Competition among service providers is already allowed in cellular telephony. The government of Pakistan permits 100 percent foreign equity in most telecommunications services, including mobile phone services, pre-paid telephone services, paging services, and voice mail services.

Limitation on Foreign Films

The government of Pakistan prohibits the importation of films that are deemed inconsistent with local religious and cultural standards. Films from neighboring India are routinely denied entry via cable transmission or video/digital media, but are widely available in pirated form.

Banking and Insurance

Pakistan improved its financial services commitments in the WTO Financial Services Agreement in December 1997. These commitments grant foreign firms the right to establish new banks as well as grandfathering acquired rights of established foreign banks and foreign securities firms. Foreign banks are permitted to open banking companies via the establishment of branches as well as wholly owned, locally incorporated subsidiaries subject to the condition that they have a global tier-1 paid up capital of $5 billion or more or they belong to countries which are part of regional groups and associations of which Pakistan is a member (e.g., the Economic Cooperation Organization (ECO) or the South Asian Association for Regional Cooperation (SAARC)). Foreign banks not meeting these conditions are capped at a 49 percent equity stake with a mandatory 51 percent local ownership. The State Bank of Pakistan (SBP), Pakistan's central bank, has changed its branch licensing policy and has eliminated restrictions on the number of branches foreign banks may have. Currently, foreign banks, like local banks, have to submit an annual branch expansion plan to the SBP for approval. The SBP approves new branch openings based on the bank's net worth, adequacy of its capital structure, future earning prospects, credit disciplines, and the needs of the local population.

Foreign brokers, like their Pakistani counterparts, must register with the Securities and Exchange Commission of Pakistan. Over the past several years, Pakistan has privatized the majority of its commercial banks (most of which previously had been nationalized). As of January 2006, 80 percent of the commercial banking sector was privately owned, and the government of Pakistan only retains an ownership stake in the National Bank of Pakistan, the nation's largest commercial bank.

The government has opened the insurance market as one of its financial sector reforms. Foreign investors are allowed to hold up to a 51 percent equity share of companies operating in the life and general insurance sectors. Foreign investors are also required to bring in a minimum of $2 million in foreign capital and raise an equal amount of equity in the local market. There are no restrictions on the repatriation of profits and capital investment made in this sector can be repatriated with the permission of the SBP. Pakistan does not regulate insurance premiums. The government issued a new insurance law in 2000 that raised capital adequacy standards and enhanced policyholder protections. The government permits only the parastatal National Insurance Company to underwrite and insure public sector firms. Private sector firms must meet their reinsurance needs within the country. Firms may seek foreign reinsurance facilities only if domestic insurance companies cannot meet these needs. Market domination in the insurance sector may pose a significant barrier to entry, as the state-owned State Life Insurance Company holds over 76 percent of this market, although that number has been declining over the past several years. Five domestically-owned companies account for 78 percent of the general insurance (property, casualty, and health) market.

Other Services

Foreign professionals may provide legal and engineering consultancy services with 100 percent equity participation. This reflects a 2004 change that eliminated the requirement that Pakistanis hold 40 percent local equity for five years and reduced the minimal capital requirement from $300,000 to $150,000. A legal consultant need not be licensed to practice law in Pakistan. Foreign lawyers, however, may not appear in court or otherwise formally litigate cases unless licensed, even if they work with local lawyers. The Islamabad-based Pakistan Bar Council licenses attorneys in Pakistan, and no *de jure* prohibition exists against the admission of foreign lawyers into the bar. Similarly, foreign doctors must, like their local counterparts, register with the Pakistan Medical and Dental Council, and foreign engineers must register with the Pakistan Engineering Council, in order to practice their respective professions in Pakistan.

INVESTMENT BARRIERS

Overall Framework

Foreign investors are generally free to establish and own business enterprises in Pakistan, with the exception of five restricted areas: arms and munitions, high explosives, currency/mint operations, radioactive substances, and new non-industrial alcohol plants. While foreign ownership of agricultural investments may not exceed 60 percent, there are no ownership limits in other sectors of the economy except for Pakistan's foreign equity limits in banking and insurance (described above). There is no minimum investment requirement for manufacturing, a $150,000 minimum foreign investment requirement in non-financial services, and a minimum investment requirement of $300,000 in agriculture, infrastructure projects, and social services (such as education and health).

The government’s investment policy allows for full repatriation of capital, capital gains, dividends, and profits with the approval of the SBP. No requirements exist for technology transfer. The law provides for expropriation only upon adequate compensation and it prohibits changes in benefits and incentives for the purpose of disadvantaging foreign investors.

To comply with its TRIMS obligations, Pakistan has eliminated all local content requirements including those in the automobile sector. The automobile sector was the only sector that was subject to the so-called deletion program mandating the use of domestic inputs. As of July 1, 2006, the deletion program for the automotive sector was replaced with the Tariff Based System (TBS). The TBS provides for the imposition of higher tariffs on imported automotive parts that are also manufactured domestically; likewise, it provides for lower tariffs on imported automotive parts that are not also manufactured in Pakistan.

Competition Policy and Privatization

Although Pakistan has enacted a Monopolies and Restrictive Trade Practices Ordinance, and established the Monopoly Control Authority (MCA), regulatory oversight suffers from resource constraints. Moreover, state-owned firms are exempt from the provisions of this law. Thus, in Pakistan, where state-owned firms dominate several sectors, competition regulation remains underdeveloped. At present, the MCA is engaged in finalizing a competition law with technical assistance from the World Bank. This will entail capacity building and creation of a new Competition Authority. The state-owned Water and Power Development Authority (WAPDA) retains control of power transmission and distribution throughout much of the country outside of Karachi and continues to be highly subsidized. In the financial year ending June 2006, the Privatization Commission privatized eight entities, including the Pakistan

Telecommunication Company (PTCL); the Karachi Electric Supply Corporation (KESC) and the United Bank Ltd (via an initial public offering). The amount earned through privatizations during this period totaled Rs.196 billion ($3.2 billion), which is 356 percent higher than in the previous year. The sale of these major state assets has reduced the government's role in power and telecommunications. The state, however, continues to hold important equity stakes in the oil and gas, civil aviation, electric power and steel sectors. In FY2007, the government of Pakistan plans to privatize 26 companies including: Sui Northern Gas Company (Pakistan's largest gas company); Sui Southern Gas Company; Pakistan State Oil (PSO) (Pakistan's largest gasoline retailer); and Pakistan Petroleum, Ltd. The government has offered the global depository receipts of the Oil and Gas Development Company (Pakistan's largest energy exploration company) in the international securities markets.

On June 24, 2006 the Supreme Court of Pakistan declared the privatization of Pakistan Steel Mills Corporation (the country's largest steel mill) unconstitutional and illegal. The Privatization Commission has filed a review petition (i.e., an appeal) in response to the Supreme Court action. The Court decision may adversely impact the privatization process by casting doubt on whether the government will be able to fully carry out its ambitious privatization agenda. Nonetheless, the government's commitment to continued privatization of its holdings appears firm.

In an effort to create market competition in former monopoly sectors, the government of Pakistan has already issued licenses to long distance and local telephone operators, as well as to cellular and wireless local loop operators, ending PTCLs monopolies. It has licensed three private airlines to compete with state-owned Pakistan International Airlines. In retail food sales, the government has used pricing in its chain of several hundred Utility Stores to create price competition in essential foodstuffs such as flour, rice and lentils. However, market leaders in the cement and sugar industries are alleged to have formed cartels.

In late 2004, the United States and Pakistan launched negotiations on a Bilateral Investment Treaty (BIT), which would provide U.S. investors in Pakistan with significant legal protections. While BIT negotiations continue, differences persist on issues of importance to the United States.

ELECTRONIC COMMERCE

There are no trade restrictions, duties, or taxes on electronic commerce in Pakistan. Electronic commerce is, however, not well developed. In 2002, the Pakistani government enacted an Electronic Transactions Ordinance that adopted international standards and provided for the establishment of a certification authority. In 2005, one certification authority began functioning (as outlined in the ordinance) in the private sector. The government of Pakistan also established a certification authority in the public sector -- the Electronic Certification and Accreditation Council -- to meet governmental needs and is working actively on an electronic crimes bill. The government blocks certain websites that contain content which it deems as conflicting with Pakistani religious and cultural norms.

OTHER BARRIERS

Businesses operating in Pakistan have repeatedly called for strengthening law and order. Corruption and a weak judicial system remain recurrent and substantial disincentives to investment. Pakistani laws targeting corruption include the 1947 Prevention of Corruption Act, the 1973 Efficiency and Discipline Rules, and most recently the 1999 National Accountability Bureau (NAB) Ordinance. Previously, the NAB, the Federal Investigation Agency (FIA), and Provincial Anti-Corruption Departments shared official responsibility for combating corruption. In October 2002, Pakistan's cabinet approved a National Anti-Corruption Strategy (NACS) that identified areas of pervasive corruption and recommended time-bound measures and reforms to combat corruption. The NACS also named the NAB as the sole anticorruption agency at the federal level.

Contract enforcement can be difficult for U.S. and other foreign investors in Pakistan. For example, a long- standing investment dispute between a major U.S. multinational company and a local partner has raised concerns about the sanctity of international arbitration awards regarding contracts between private parties. In June 2005, the Lahore Civil Court ruled in favor of the U.S. multinational company, upholding the original arbitration settlement. The local partner has exercised its right to file an appeal in the Lahore High Court, which is still pending.

In 2004, Pakistan's Cabinet approved the country's joining the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"). Pakistan's Cabinet ratified the New York Convention on July 14, 2005 and conveyed the instrument of ratification to the United Nations Secretary General, who is the depository of such instruments. To implement the Convention, Pakistan issued an ordinance, valid for only 120 days, that has been re-promulgated three times. The government intends to continue renewing the ordinance until Parliament approves implementing legislation. Legislation to implement the Convention is currently with the National Assembly, the lower house of the parliament.

Pakistan's ranking in the Transparency Internationals Corruption Perceptions Index dropped from 129th out of 145 countries in 2004, to 144th out of 158 countries listed in 2005. Pakistan scored 2.1 points (on a scale of 0-10) on Transparency Corruption Perception Index in 2005.

PANAMA

TRADE SUMMARY

The U.S. goods trade surplus with Panama was $2.3 billion in 2006, an increase of $493 million from $1.8 billion in 2005. U.S. goods exports in 2006 were $2.7 billion, up 25.2 percent from the previous year. Corresponding U.S. imports from Panama were $378 million, up 15.7 percent. Panama is currently the 45th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Panama in 2005 was $5.2 billion (latest data available), down from $5.6 billion in 2004. U.S. FDI in Panama is concentrated largely in the non-bank holding companies, finance and wholesale trade sectors.

FREE TRADE NEGOTIATIONS

The United States and Panama completed trade promotion agreement (TPA) negotiations on December 19, 2006, with the understanding that discussions would continue on labor. The agreement is subject to approval by both the U.S. Congress and Panama's Legislative Assembly. A bilateral TPA with Panama would be a natural extension of an already largely open trade and investment relationship. Panama is unique in Latin America, but like the United States, in that it is predominantly a services-based economy. Services represent about 80 percent of Panama's gross domestic product. Along with implementation of the Dominican Republic – Central America – United States Free Trade Agreement (CAFTA-DR), implementation of a bilateral TPA with Panama could further boost momentum for lowering trade and investment barriers throughout the region. The agreement will provide new economic opportunities for U.S. exporters, including significant opportunities to participate in the $5.25 billion expansion plan for the Panama Canal. The Panama Canal expansion is due to begin in 2008 and finish in 2014.

IMPORT POLICIES

Tariffs

Under the United States-Panama TPA, 88 percent of U.S. exports of consumer and industrial goods to Panama would become duty-free immediately, with remaining tariffs phased-out over ten years. The agreement would include "zero-for-zero" immediate duty-free access for key U.S. sectors and products including agricultural and construction equipment, information technology products, medical and scientific equipment, animal genetics, and oilseeds. Other key U.S. export sectors such as motor vehicles and parts, paper and wood products, and chemicals also would obtain significant access to Panama's market as duties are phased-out.

The TPA provides for immediate duty-free treatment for more than half of current U.S. agricultural exports to Panama, including high-quality beef, certain pork and poultry products, cotton, wheat, soybeans and soybean meal, most fresh fruits and tree nuts, distilled spirits and wine, and a wide assortment of processed products. The TPA also provides for expanded market access opportunities through tariff-rate quotas (TRQs) for agricultural products such as pork, chicken leg quarters, dairy products, corn, rice, refined corn oil, dried beans, frozen French fries and tomato products. Tariffs on most remaining U.S. agricultural products would be phased out within 15 years.

Apparel products made in Panama would be duty-free under the bilateral TPA if they use U.S. or Panamanian fabric and yarn, thereby supporting U.S. fabric and yarn exports and jobs. Strong customs cooperation commitments between the United States and Panama would allow for verification of claims of origin or preferential treatment, and denial of preferential treatment or entry if claims cannot be verified.

Panama's tariffs on agricultural goods range from 10 percent to more than 250 percent. In addition, Panama charges a 10 percent tax on sparkling wine and a 15 percent tax on still wines. The maximum tariff on industrial imports is 15 percent. Under the bilateral TPA, more than half of U.S. agricultural exports would enter Panama duty-free immediately. Panama would eliminate its remaining tariffs on nearly all agricultural products within 15 years. For some of Panama's most sensitive products, TRQs would permit immediate duty-free access for specified quantities, that will grow during the tariff phase-out period, while the "over-quota" tariffs are phased out.

Non-Tariff Measures

In addition to tariffs, all imports into Panama are subject to a 5 percent transfer (or ITBM) tax levied on the cost, insurance, and freight value, and other handling charges. Pharmaceuticals, foods and school supplies are exempt from the transfer tax. Currently, importing entities are required to hold a commercial or industrial license to operate in Panama, which can be time-consuming and expensive, in order to import manufactured goods into the country without an additional import license.

STANDARDS, TESTING, LABELING AND CERTIFICATION

In the past, Panama has required that its health and agriculture officials certify individual U.S. plants and/or shipments as a precondition for the importation of beef, poultry, pork, dairy, and other agricultural products. In addition, Panama has restricted imports of U.S. meat and poultry and of other U.S. agricultural products through non-science-based sanitary and phytosanitary (SPS) requirements. Certain agricultural products (*e.g.*, processed food products) also faced lengthy and costly product registration requirements.

In December of 2006, the U.S. Government and the government of Panama signed a far-reaching bilateral agreement on SPS measures and technical standards. Panama has implemented this agreement through a series of resolutions and decrees. Under this agreement, Panama has recognized the equivalence of the U.S. meat and poultry inspection systems and of the U.S. regulatory system for processed food products, thereby eliminating plant-by-plant and shipment-by-shipment inspection requirements. In addition, Panama has provided access for all U.S. beef and beef products (including pet food), and all U.S. poultry and poultry products, consistent with international standards. Panama has lifted all import certification and licensing requirements, except those agreed with the United States (specifically, sanitary certificate requirements) and formalized its recognition of the U.S. beef grading system and cuts nomenclature. Finally, Panama has eliminated its time-consuming and costly product registration procedures, and agreed to an automatic, cost-free and quick registration process for the small group of agricultural products not exempted.

GOVERNMENT PROCUREMENT

Panamanian Law 22 of 2006 regulates government procurement and other related issues. The Law was intended to streamline and modernize Panama's contracting system. It establishes, among other things, an Internet-based procurement system (www.panamacompra.gob.pa) and requires publication of all proposed government purchases. The Law also created an administrative court to handle all public contracting disputes. The rulings of this administrative court are subject to review by the Panamanian Supreme Court. The Panamanian Executive Branch is developing the regulatory framework to implement Law 22. The Panamanian government has generally handled bids in a transparent manner, although occasionally U.S. companies have complained that certain procedures have not been followed.

While Panama committed to become a party to the World Trade Organization (WTO) Government Procurement Agreement (GPA) at the time of its WTO accession, its efforts to accede to the GPA have stalled. Under the bilateral TPA, Panama would guarantee a fair and transparent process for procurement covered by the Agreement. Under the bilateral TPA, U.S. suppliers will be permitted to bid on procurement by a wide range of Panamanian government entities, including the Panama Canal Authority, on the same basis as Panamanian suppliers.

EXPORT SUBSIDIES

Panamanian law allows any company to import raw materials or semi-processed goods at a duty of 3 percent for domestic consumption or processing (pending certification that there is no national production), or duty-free for export production, except for sensitive agricultural products, such as rice, dairy, pork and tomato products. Companies not already receiving benefits under the Special Incentives Law of 1986 are allowed a tax deduction of up to 10 percent of their profits from export operations through 2007.

In the context of its WTO accession, Panama revised its export subsidy policies in 1997-98. The government originally had stated its intention to phase out its Tax Credit Certificate (CAT), which was given to firms producing certain non-traditional exports, by the end of 2001. However, during the WTO Ministerial Conference in November 2001, the government of Panama asked for and received an extension for the use of CATs. The WTO extended this waiver until December 2006, allowing exporters to receive CATs equal to 15 percent of the export's national value added. Legislation enacted in 2004 aimed at eliminating the CAT and replacing it with another form of subsidy has been repealed. The CAT program has been extended until June 2007 allowing exporters to receive CATs equal to 10 percent of the export’s value added. The certificates are transferable and may be used to pay tax obligations to the government, or they can be sold in secondary markets at a discount. The government has, however, become stricter in defining national value added, in an attempt to reduce the amount of credit claimed by exporters.

In addition, a number of export industries, such as shrimp farming and tourism, are exempt from paying certain types of taxes and import duties. The government of Panama established this policy to attract foreign investment, especially in economically depressed regions, such as the city of Colon. Companies that profit from these exemptions are not eligible to receive CATs for their exports.

Other Export-Related Items

The Tourism Law of 1994 (Law 8) allows a deduction from taxable income of 50 percent of any amount invested by Panamanian citizens in tourism development. There is currently draft legislation aimed at eliminating this benefit, but it is uncertain whether such legislation will be enacted.

Law 25 of 1996 provides for the development of export processing zones (EPZs) as part of an effort to broaden the Panamanian manufacturing sector while promoting investment, particularly in former U.S. military bases. Companies operating in these zones may import inputs duty-free if products assembled in the zones are to be exported.

The government also provides other tax incentives to EPZ companies. There are thirteen EPZs in Panama, two of which are inactive. The Panamanian government is seeking to conform the regulations governing EPZs to those of the WTO Agreement on Subsidies and Countervailing Measures.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Intellectual property policy and practice in Panama is the responsibility of an "Inter-institutional" Committee. This committee consists of representatives from six government agencies and operates under the leadership of the Ministry of Commerce and Industry. It coordinates enforcement actions and develops strategies to improve compliance with the law. The creation of a specialized prosecutor for intellectual property-related cases has strengthened the protection and enforcement of intellectual property rights (IPR) in Panama. However, given Panama's role as a transshipment point, industry is concerned Panama will become susceptible to trading in pirated and counterfeit goods.

The bilateral TPA provides for improved standards for the protection and enforcement of a broad range of intellectual property rights, which are consistent with U.S. standards of protection and enforcement and with emerging international standards. Such improvements include state-of-the-art protections for digital products such as U.S. software, music, text and videos; stronger protection for U.S. patents, trademarks and test data, including an electronic system for the registration and maintenance of trademarks; and further deterrence of piracy and counterfeiting.

Copyrights

The government of Panama is a party to the WIPO Copyright Treaty and the WIPO Performances and Phonographs Treaty, and is a member of the Berne Convention for the Protection of Literary and Artistic Works. The Copyright Office, however, has not yet promulgated the underlying regulations to the Treaties.

Though Panama's 1994 copyright law modernized copyright protection and amendments to the law in 2004 provided for a special Copyright Office with anti-piracy enforcement powers, piracy remains a significant problem. For example, although U.S. industry welcomes the effective police and legal action which have significantly reduced the rate of DVD piracy, Internet piracy is quickly emerging in Panama. Films in theatrical release are often downloaded to DVDs and videos, reproduced on optical discs, and then distributed by street vendors. Despite ongoing investigations to detect laboratory facilities, the legal framework guiding Internet use in the country remains incomplete.

Patents

Panama is a member of the Paris Convention for the Protection of Industrial Property. Panama's 1996 Industrial Property Law provides a term of 20 years of patent protection from the date of filing. However, pharmaceutical patents are granted for only 15 years and can be renewed for an additional ten years, if the patent owner licenses a national company (minimum of 30 percent Panamanian ownership) to exploit the patent. The Industrial Property Law provides specific protection for trade secrets.

Trademarks

Law 35 provides trademark protection, simplifies the process of registering trademarks and allows for renewal of a trademark for ten-year periods. An important feature of the law is the granting of *ex-officio* authority to government agencies to conduct investigations and to seize materials suspected of being counterfeited. Decrees 123 of November 1996 and 79 of August 1997 specify the procedures to be followed by Customs and Colon Free Zone (CFZ) officials in conducting investigations and confiscating merchandise. In 1997, the Customs Directorate created a special office for IPR enforcement, followed by a similar office created by the CFZ in 1998. The Trademark Registration Office has undertaken significant modernization with a searchable computerized database of registered trademarks that is open to the public as well as online registration.

SERVICES BARRIERS

In general, Panama maintains an open regulatory environment for services. For some professions, such as insurance brokers, customs brokerage, freight forwarding, architects, engineers, medical doctors, lawyers and psychologists, Panama requires that individuals hold a Panamanian technical license.

Under the bilateral TPA, Panama would accord substantial market access across its entire services regime, including financial services. Panama agreed to eliminate measures that restrict investment in retail trade to Panamanian nationals, to provide improved access in sectors like express delivery, and to grant new access in certain professional services that previously had been reserved exclusively to Panamanian nationals. Panama also agreed that portfolio managers in the United States would be able to provide portfolio management services to both mutual funds and pension funds in Panama.

INVESTMENT BARRIERS

Panama maintains an open investment regime and is receptive to foreign investment. Over the years the country has bolstered its reputation as an international trading, banking, maritime and services center.

The Panamanian government was, until recently, often unresponsive to concerns raised by U.S. investors. For example, in highly regulated sectors, or in sectors where the government grants a concession, companies have encountered a lack of cooperation from government officials and been subjected to changes to the terms of their concession contracts. One such example related to pricing changes and a cancellation of contracts without consideration for existing law.

The U.S.-Panama Bilateral Investment Treaty (BIT) entered into force in 1991 (with additional amendments in 2001). With some exceptions, the BIT ensures that U.S. investors receive fair, equitable and non-discriminatory treatment and that both Parties abide by international law standards such as for expropriation and compensation and free transfers. Under the bilateral TPA, the BIT would be suspended after a period of 10 years. Investors will continue to have important investment rights and protections under the investment provisions of the bilateral TPA.

The bilateral TPA would establish a more secure and predictable legal framework for U.S. investors operating in Panama. Under the bilateral TPA, all forms of investment would be protected, including enterprises, debt, concessions, contract and intellectual property. U.S. investors would enjoy, in almost all circumstances, the right to establish, acquire and operate investments in Panama on an equal footing with local investors. Among the rights afforded to U.S. investors are due process protections and the right to receive a fair market value for property in the event of an expropriation. Investor rights would be protected under the bilateral TPA by an effective, impartial procedure for dispute settlement that is fully transparent and open to the public. Submissions to dispute panels and, dispute panel hearings would be open to the public, and interested parties would have the opportunity to submit their views.

On July 12, 2006, Panama enacted Law 27 which allows the government of Panama to create enterprises to conduct oil and gas exploration, distribution, production, storing, industrialization, commercialization, importation, exportation and refining activities. Although the government has not yet created such an entity, U.S. companies have expressed concern that Law 27 is ambiguous and may result in greater government intervention and restrictions in the energy sector.

ELECTRONIC COMMERCE

In mid-2001, Panama became the first country in Central America to adopt a law specific to electronic commerce. The law was a collaborative effort between the public and private sectors, resulting from several months of detailed discussions and broad consultations. Panama's electronic commerce law has several important features: it gives legal force to any transaction or contract completed electronically; it creates the National Directorate of Electronic Commerce to oversee the enforcement of the law; and it defines certification organizations and establishes a voluntary registration regime. In addition, in August 2004 partial regulations regarding the 2001 law were issued to facilitate the registration of certification organizations. The law is expected to have a favorable impact on many sectors of Panama's services dominated economy, particularly the maritime sector.

Under the bilateral TPA, Panama would provide non-discriminatory treatment of digital products, would not impose customs duties on digital products transmitted electronically, and would cooperate in numerous policy areas related to electronic commerce. Additionally, the agreement would require procedures for resolving disputes about trademarks used in Internet domain names.

OTHER BARRIERS

Corruption

The judicial system can pose a problem for investors due to poorly trained personnel, huge case backlogs and a lack of independence from political influence. Amid persistent allegations of corruption in the government, particularly in the judiciary, the Torrijos administration campaigned in 2004 on a promise to "eradicate corruption." Although the government continues to assert its commitment to combating corruption as part of its overall agenda of institutional reform, it has been slow to deliver concrete results. The anti-corruption provisions in the bilateral TPA would require Panama to ensure that bribery in trade-related matters is treated as a criminal offense, or is subject to comparable penalties, under its law.

PARAGUAY

TRADE SUMMARY

The U.S. goods trade surplus with Paraguay was $852 million in 2006, an increase of $8 million from $844 million in 2005. U.S. goods exports in 2006 were $911 million, up 1.7 percent from the previous year. Corresponding U.S. imports from Paraguay were $58 million, up 13.0 percent. Paraguay is currently the 68th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Paraguay in 2005 was not available ($115 million in 2003) (latest data available).

IMPORT POLICIES

Tariffs

Paraguay is a member of MERCOSUR, a customs union comprising Argentina, Brazil, Paraguay and Uruguay, with several associate members including Chile, Bolivia, Peru and Colombia. In July 2006, Venezuela became a full member of MERCOSUR. Full Common External Tariff (CET) product coverage is scheduled for implementation in 2007, although Paraguay enjoys certain exceptions through 2010. CET tariffs range from zero percent to 20 percent, with a limited number of country-specific exceptions. Currently, Paraguay maintains 399 exceptions to the CET.

Customs Procedures

For exports to Paraguay, a Paraguayan consulate in the country of export must certify specific documentation, such as the commercial receipt, certificate of origin and cargo manifest. If there is no Paraguayan consulate in the country of export, the documents can be certified in the nearest country with a consulate or in the border consulate office in the country from which the exports enter Paraguay (in the case of ground or river shipments). Multiple changes in procedures make it difficult for exporters to ensure they are following the most current procedures, which can delay shipments and lead to unexpected costs. The burden of compliance is most often borne by importers. Some of the changes implemented in 2005 resulted from the January 2005 adoption of a new customs code.

Customs Valuation

On September 21, 2004, Paraguay notified the World Trade Organization (WTO) of its legislation and checklist for implementing the WTO Agreement on Customs Valuation.

GOVERNMENT PROCUREMENT

The Duarte government's highly successful implementation of the Law of Public Contracting, which came into force in July 2003, has been an important reform. While there continues to be some concern about collusion and attempts by contracting agencies to favor preferred bidders, the new Directorate General of Public Contracting has greatly increased transparency and has become a legitimate arbiter of disputed awards. Since March 3, 2004, all public contracting in Paraguay with a value over 20 daily minimum wages (about $176.40) must be publicized on the website of the Director General of Public Contracting, which is http://www.contratacionesparaguay.gov.py. The Law of Public Contracting applies to the central government as well as to state and local entities and state-owned enterprises. The contracting office screens tenders to identify and eliminate preferential specifications in an effort to avoid issuing tenders biased in favor of a particular bidder. All tender documents are made available electronically and, once contracts are awarded, information on the winner and the final price is made publicly available on the website. Complaints are channeled through the Directorate rather than submitted directly to the contracting entity. Most of the complaints that have been submitted so far have been adjudicated in favor of bidders. Foreign firms may bid on tenders deemed "international," which accounted for about 60 percent of total tenders in 2004. Foreign firms may also bid on "national" tenders through a local representative. Paraguay is not a member of the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The Duarte Administration has been particularly active and focused in its fight against piracy, counterfeiting and contraband, declaring the fight a national priority. However, serious concerns over the lack of effective border enforcement remain, most notably because Paraguay continues to be a transshipment point for pirated and counterfeit goods to Brazil and other neighboring markets. The International Intellectual Property Association estimated that losses to industry in Paraguay's domestic market due to the piracy of copyrighted material such as movies, music, books, and entertainment and business software, totaled $137.3 million in 2005.

Paraguay's efforts to improve IPR performance are guided in part by a Memorandum of Understanding (MOU) with the United States, concluded following Paraguay's 1998 designation as a Priority Foreign Country under the Special 301 provisions of the Trade Act of 1974. Implementation of the MOU, which has been revised and extended through 2007, is currently subject to ongoing monitoring under U.S. trade law. The MOU details Paraguayan commitments to implement institutional and legal reforms and to strengthen intellectual property rights enforcement and prosecution. In addition, Paraguay agreed to ensure that its government ministries use only authorized software.

While the Paraguayan government has made important efforts to implement the MOU and has met regularly with U.S. Government officials to review and discuss the progress achieved in addressing IPR-related concerns, additional progress is needed in order to address significant challenges, particularly in the area of enforcement against this transshipment of pirated and counterfeit goods. The United States will continue to work closely with Paraguay to address remaining IPR-related concerns, particularly with regard to increasing the penalties for IPR infringement as called for in the MOU, strengthening border and other enforcement measures to combat piracy and counterfeiting activities, and providing information and assistance to Paraguay with its MOU obligations concerning geographical indications. The United States is also concerned about the protection of undisclosed pharmaceutical test data submitted for the drug marketing approval process.

OTHER BARRIERS

Law 194/93 establishes the legal framework governing relationships between foreign companies and their Paraguayan representatives. Modeled after Puerto Rico's Dealers Act, this law requires that foreign companies prove just cause in a Paraguayan court to terminate, modify or fail to renew contracts with Paraguayan distributors. Severe penalties and high fines may result if the court determines that the foreign company ended the relationship with its distributor without just cause, which often leads to expensive out-of-court settlements. In a few cases, the courts have upheld rights of foreign companies to terminate representation agreements after just cause was established, mainly on the basis of lack of sales performance by local representatives. This law may discourage U.S. investment through fear of potential lawsuits.

For virtually all textile and apparel products and footwear, Paraguay requires that in addition to the name of the manufacturer, the name and fiscal number of the importer also be included on the label. Industry reports that such information is difficult, if not impossible, to know during the construction process when permanent labels are attached. Re-labeling of products upon entry to meet these requirements results in additional costs and delays. Additionally, in 2000, Paraguay promulgated Decree 7084/00, which explicitly prohibits the importation of used clothing. Previously, used clothing could be imported with a certification notarized in the place of origin showing that the used clothing had been sanitized.

Privatization

Paraguay has an uneven record on privatization. Political pressures have impeded the privatization process as large state-run companies most attractive to foreign buyers (such as telecommunications, water/sewage and electrical companies) employ thousands of potential voters and are outlets for political patronage. An effort to privatize the telecommunications company failed in 2002, due to intense political pressure and amid allegations of mishandling. In May 2004 and again in May 2005, efforts by some in Congress to revive the privatization process were thwarted, in part due to public outcry. As part of its Stand-By Arrangement with the International Monetary Fund, the government committed to undertake independent audits of state-owned firms and develop business plans for them with the aim of eventually increasing private sector involvement in the management and ownership of the companies. The audits have been completed and the government has moved to establish performance criteria for the countries in order to increase efficiency. The government has suggested that some form of private sector participation, whether through management contracts or equity participation, will be considered in the future.

PERU

TRADE SUMMARY

The U.S. goods trade deficit with Peru was $2.9 billion in 2006, an increase of $140 million from $2.8 billion in 2005. U.S. goods exports in 2006 were $2.9 billion, up 26.8 percent from the previous year. Corresponding U.S. imports from Peru were $5.9 billion, up 14.8 percent. Peru is currently the 43rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Peru in 2005 was $3.9 billion (latest data available), up from $3.4 billion in 2004. U.S. FDI in Peru is concentrated largely in the mining sector.

United States-Peru Trade Promotion Agreement (PTPA)

In May 2004, the United States entered into free trade negotiations with Colombia, Ecuador and Peru. To date, the United States has concluded free trade agreements with Peru and Colombia. The United States-Peru Trade Promotion Agreement (PTPA) was signed on April 12, 2006. The Peruvian Congress approved the PTPA by a vote of 79 to 14 on June 28, 2006. The United States will seek bipartisan congressional support for the agreement in 2007.

IMPORT POLICIES

Tariffs

Peru applies tariffs to virtually all goods exported from the United States with an average applied rate of 10 percent. Most imported goods are subject to tariff rates which range from 4 percent to 20 percent. There is an additional 5 percent "temporary" tariff surcharge on many agricultural goods. Peru has also applied a "price band" or variable levy on the following sensitive agricultural products: rice, corn, sugar, and dairy products.

Under the PTPA, 80 percent of U.S. exports of consumer and industrial products will become duty-free immediately upon entry into force of the agreement. Within five years, an additional 6 percent will become duty-free and another 4 percent within seven years. Duties on the remaining 10 percent will be phased out over 10 years. Peru also agreed to join the World Trade Organization (WTO) Information Technology Agreement, removing tariffs and non-tariff barriers to information technology products. In addition, more than two-thirds of current U.S. farm exports to Peru will become duty-free immediately. Peru will also immediately eliminate its price band system on trade with the United States, which will enable the United States to compete with regional and MERCOSUR countries. Tariffs on other agricultural products will be eliminated gradually, most within 5 years to 15 years. Within 17 years, all U.S. agricultural exports will enter the Peruvian market duty-free.

Non-Tariff Measures

The government of Peru has eliminated many non-tariff barriers, and under the PTPA will subject remaining measures including subsidies and import licensing requirements to agreed disciplines. Peru currently restricts imports of certain used goods, including used clothing and shoes (except as charitable donations, which are subject to the 19 percent value added tax), used tires, cars over 5 years old and heavy trucks (weighing three tons or more) over 8 years old. Used cars and trucks that are granted import permits must pay a 45 percent excise tax – compared to 20 percent for a new car – unless they are refurbished in an industrial center in the south of the country upon entry, in which case they are exempted entirely from the excise tax. Additionally, Peru's prohibitions on the importation of used goods apply to U.S. remanufactured goods. Under the PTPA, Peru affirmed that it would not adopt or maintain prohibitions or restrictions on trade in remanufactured goods, and those certain existing prohibitions on trade in used goods would not apply to remanufactured goods. Upon entry into force of the agreement, this commitment will provide new and significant export opportunities for firms involved in remanufactured products such as engines, automotive parts, mining and construction equipment, transportation machinery, medical equipment and computers.

For textile and apparel products and footwear, Peru requires that in addition to the name of the manufacturer, the label must also include the name and address of the importer or distributor. Industry reports that such information is difficult if not impossible to know during the construction process when permanent labels are attached. The re-labeling of products upon entry to meet these requirements results in additional costs and delays.

SENASA (Servicio Nacional de Sanidad Agraria), the national plant and animal health agency, is responsible for protecting Peru from the introduction of non-native animal and plant health diseases. SENASA establishes the import requirements for agricultural products including meat, live animals and animal genetics. U.S. exports are eligible for entry into Peru provided that proper certification is obtained and accompanies each shipment.

In 2006, the United States Government and the government of Peru resolved a number of significant sanitary and phytosanitary (SPS) and technical standards issues. Specifically, the two governments reached agreements addressing Peru's bans or restrictions on imports of U.S. beef and beef products (related to Bovine Spongiform Encephalopathy), poultry and poultry products (related to avian influenza), pork and pork products, and rice. The government of Peru has implemented these agreements through a series of resolutions and decrees. For example, in October 2006, Peru issued a Supreme Decree permitting the importation of all U.S. beef and beef products, except high risk materials, when accompanied by a sanitary certificate issued by the U.S. Department of Agriculture's Food Safety and Inspection Service. In addition, Peru formalized its recognition of the equivalence of the U.S. meat and poultry inspection systems, and eliminated a rice quality standard that discriminated against imports of U.S. rice.

With regard to Peru's importation of U.S. paddy rice, the government of Peru is nearing completion of its pest risk assessment on this product.

GOVERNMENT PROCUREMENT

In 2002, in an effort to support national companies, Peru began adding 20 points (on its rating scale of 100) to bids by Peruvian firms on government procurement contracts. U.S. pharmaceutical and medical equipment firms raised concerns about this practice with regard to bidding on Health Ministry purchases, as did companies operating in other sectors. U.S. firms contended that the 20-point margin was excessive, giving unfair advantage to Peruvian competitors that would otherwise lose these bids on cost or technical grounds. Once the PTPA enters into force, Peru will not be able to apply preferences to procurement covered by the PTPA.

The PTPA will provide for fair, non-discriminatory, and transparent opportunities for U.S. companies to bid on contracts from Peruvian government procurement contracts. The PTPA covers the purchases of most Peruvian central government entities, including state owned enterprises, Peru's oil company, and its public health insurance agency.

Peru is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Concerns remain about the adequacy of IPR law enforcement in Peru, particularly with respect to the relatively weak penalties imposed on IPR violators. At the end of 2006, the Peruvian government assigned intellectual property case responsibilities to four national courts and one appeals court. Peru also now has three special prosecutors' offices that handle intellectual property issues. Public awareness of the importance of IPR protection must be increased.

The provisions agreed to in the PTPA's IPR chapter will bring about a number of important improvements in Peru's protection of IPR, including with respect to: protection of trademarks used in Internet domain names; strengthened measures to prevent the circumvention of technological devices for preventing Internet-based copyright piracy; protection of test data and trade secrets submitted in connection with regulatory approval for pharmaceutical and agricultural chemical products; and provision of deterrent penalties against piracy and counterfeiting.

Copyrights

Peru's 1996 Copyright Law is generally in line with international standards. Peru joined the World Intellectual Property Organization (WIPO) Copyright Treaty in July 2001 and the WIPO Performances and Phonograms Treaty in February 2002. Although most of the provisions of these two WIPO treaties are included in Peru's 1996 Copyright Law, officials at Indecopi **(**the IPR administrative agency**)** have acknowledged the need for additional legislation in order to clarify the rights of artists and producers.

In July 2004, the Peruvian government published a Supreme Decree establishing the Law of Artists, Interpreters, and Music to protect the interests and rights of those involved in the creative arts, including performers and producers of musical recordings and motion pictures, from acts of piracy. The decree stated that blank optical media was being used for "private copies," and piracy of media and software, violating copyright laws. Under the law, the Peruvian Artists Association applies a levy on all blank optical discs, which is paid by the manufacturers of blank recording media. The level of pirated software used by government agencies is estimated to reach about 75 percent.

According to the International Intellectual Property Alliance's 2006 estimates, 98 percent of sound recordings and 70 percent of business software in Peru were pirated, representing a loss of $80.5 million. According to the Business Software Alliance, Peru is in the middle of the pack among Latin American countries in terms of software piracy. According to the Peruvian government, the percentage of central government computers carrying pirated software had been reduced to 41 percent as of the end of 2006. The audiovisual industry estimates a 75 percent piracy rate. Indecopi's Copyrights Office conducted 270 inspections in 2006, 155 of which involved music CDs.

Patents and Trademarks

Peru's 1996 Industrial Property Rights Law provides the framework for patent protection. In 1997, based on an agreement reached with the U.S. Government, Peru addressed several inconsistencies with the WTO TRIPS Agreement provisions on patent protection and most favored nation treatment for patents. U.S. industry representatives are pleased that Indecopi has shifted the burden of proof in patent infringement cases from the patent holder to the alleged copier. Indecopi has issued preliminary injunctions against presumably illegal copies, and in 2006 U.S. pharmaceutical companies won several important patent infringement court cases. However, the U.S. pharmaceutical and agrochemical industries continue to have concerns about Peru's protection of confidential test data submitted in connection with marketing approval procedures. The PTPA contains provisions intended to address these concerns.

Indecopi's Trademarks Office opened 477 infringement cases in 2006 (67 of them *ex officio*), and conducted 423 inspections (30 of them outside of Lima). During the year, the Trademarks Office found that 224 charges were well-founded, issuing 174 fines (totaling almost $500,000, the highest total ever) and 44 cautions.

Enforcement

Despite some Peruvian government efforts to improve enforcement, including increased raids on large-scale distributors and users of pirated material, piracy remains widespread, due notably to a failure to apply vigorously deterrent penalties. The judicial problems should improve now that Peru has five courts and three prosecutors' offices that can specialize in IPR cases.

SERVICES BARRIERS

Under the services chapter of the PTPA, Peru will assume commitments to provide non-discriminatory treatment and market access in a substantial number of services sectors. These commitments significantly improve upon Peru's WTO commitments in terms of sectors covered and elimination of restrictions in sectors such as advertising, construction and engineering, energy, information, express delivery, and entertainment, including audiovisual and broadcasting. The chapter also commits Peru to increased regulatory transparency and to free transfers associated with the supply of a service.

Financial Services

The financial services chapter also provides secure access and nondiscriminatory treatment across most banking, insurance and securities sectors, and improves U.S. companies' ability to provide portfolio advice and certain kinds of insurance on a cross-border basis.

Telecommunications

Peru is continuing the process of developing a competitive telecommunications market. OSIPTEL, Peru's telecommunications regulator, has established a time frame to lower average mobile termination rates by more than half over a period of four years, from 2005 levels of roughly $0.21 to under $0.10 by January 2009. Suppliers claim that unconstrained pricing by the dominant supplier has created significant barriers to competition in the wireless sector. Continued oversight and review of these rates by OSIPTEL will be important to achieving progress in addressing concerns raised by suppliers.

INVESTMENT BARRIERS

National treatment for foreign investors is guaranteed under Peru's 1993 constitution. There are no limitations on the repatriation of capital or profits. Domestic and, increasingly, international arbitration are available for disputes between foreign investors and the government of Peru. Several U.S. companies have chosen to pursue claims through domestic arbitration with mixed results. Under the investment chapter of the PTPA, Peru will assume obligations relating to national treatment and most favored nation treatment; the right of U.S. investors to make financial transfers freely and without delay; international law standards for expropriation and compensation; and access to binding international arbitration.

Peruvian law restricts majority ownership of broadcast media to Peruvian citizens. Foreigners are also restricted from owning land or investing in natural resources within 50 kilometers of a border, but they can operate within those areas with special authorization. Foreign carriers can participate in national air and water transportation only if they establish a company within Peru whose initial capital stock is at least 51 percent Peruvian. Under current law, foreign employees may not comprise more than 20 percent of the total number of employees of a local company (whether owned by foreign or Peruvian persons) or more than 30 percent of the total company payroll. Under the PTPA, Peru has agreed not to apply most of its nationality-based hiring requirements to U.S. professionals and specialty personnel.

U.S. firms sometimes complain that executive branch ministries, regulatory agencies, the tax agency, and the judiciary often lack the resources, expertise, or impartiality necessary to carry out their respective mandates. Peru's weak judicial branch is a particular problem. The resolution of commercial disputes that end up in Peruvian courts is often delayed, and judicial proceedings can yield results that are not foreseeable based on a review of relevant precedents. U.S. investors have also complained about the reinterpretation of rules and the imposition of disproportionate fines by the tax agency.

The Peruvian government has tried to address institutional weaknesses in the executive branch and has also offered plans for judicial reform. In July 2005, the Supreme Court issued an edict stating that final binding arbitration awards cannot be disputed in the domestic judicial system. The U.S. Government has worked with the government of Peru both before and in parallel with the PTPA negotiations to ensure the fair resolution of U.S. investor disputes, consistent with Peruvian law. All of the outstanding major disputes have either been resolved or are pending final judicial or arbitration rulings.

ELECTRONIC COMMERCE

The Peruvian government has taken steps to facilitate electronic commerce, including passing laws giving legal status to digital signatures, creating a framework for electronic contracts, and making it illegal to tamper, destroy, or interfere with computer systems or data. The PTPA provides additional commitments Peru will undertake in numerous policy areas related to electronic commerce including rules prohibiting discriminatory treatment of digital products based on their country of origin or the nationality of the firms or persons making them, and the imposition of customs duties on digital products, such as computer programs, videos, images, and sound recordings.

PHILIPPINES

TRADE SUMMARY

The U.S. goods trade deficit with Philippines was $2.1 billion in 2006, a decrease of $277 million from $2.4 billion in 2005. U.S. goods exports in 2006 were $7.6 billion, up 10.5 percent from the previous year. Corresponding U.S. imports from Philippines were $9.7 billion, up 4.8 percent. Philippines is currently the 26th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Philippines were $1.7 billion in 2005 (latest data available), and U.S. imports were $1.7 billion. Sales of services in Philippines by majority U.S.-owned affiliates were $1.8 billion in 2004 (latest data available), while sales of services in the United States by majority Philippines-owned firms were $19 million.

The stock of U.S. foreign direct investment (FDI) in Philippines in 2005 was $6.6 billion (latest data available), up from $6.0 billion in 2004. U.S. FDI in Philippines is concentrated largely in the manufacturing, finance, and non-bank holding companies sectors.

The United States and the Philippines concluded a bilateral Trade and Investment Framework Agreement (TIFA) in 1989. In recent years, the United States and the Philippines have held regular meetings under the TIFA. The United States has used the TIFA to discuss and seek resolution of many issues that threaten to inhibit bilateral trade and investment. The United States-Philippines TIFA is a component in the Enterprise for ASEAN Initiative, which was launched by President Bush in October 2002.

IMPORT POLICIES

Tariffs

In January 2003, the Philippine government announced that it would undertake a comprehensive review of all tariff lines. The Tariff Commission issued recommendations for increased tariffs in several sectors and a slowdown of its tariff reduction plans in others. While the increased tariffs, which took effect in 2004, remain below the WTO bound rates, they represent a reversal of the hard fought reforms of successive previous Philippine administrations during the 1990s. According to the WTO, in 2005 the Philippines simple average bound tariff for all goods was 25.6 percent, while its simple average applied tariff for all goods was 6.3 percent.

Previous progress on tariff liberalization took shape through a series of reform programs beginning in 1995. Normal trade relations/most favored nation tariff rates on all goods (except sensitive agricultural products) were to be gradually reduced to the following target rates: 3 percent for raw materials and 10 percent for finished products by January 2003, and a uniform 5 percent tariff rate for all remaining products by January 2004. Executive Orders 241 and 264, signed by Philippine President Arroyo in October and December 2003, respectively, raised tariff rates on more than 1,000 product lines and maintained 2002 rate levels for an even greater number of product lines. Affected products include industrial goods produced domestically, such as chemical fertilizers, cement, and consumer products, including apparel and footwear. The orders raised rates on these products from the previous rates of between 3 percent and 10 percent to between 5 percent and 20 percent.

The Philippine government is currently reviewing the tariff program and had expected to publish a five-year (2006 to 2010) tariff program schedule via executive order before the end of 2006, though it had not done so as of March 2007. With regard to the classification of products within tariff codes, at least one major U.S. company has reported inconsistency by the Bureau of Customs in the application of tariff classifications.

The Common Effective Preferential Tariff (CEPT) Agreement for the ASEAN Free Trade Area (AFTA) requires that tariff rates among the original six ASEAN members, including the Philippines, on a broad range of products be reduced to between zero percent and 5 percent or below by end-2003, while quantitative restrictions and other non-tariff barriers were to be eliminated. ASEAN members agreed on a firm timetable leading up to the full realization of this initial stage of AFTA by the end of 2003. The Philippines has reduced duties to 5 percent or below on 99 percent of all tariff lines under the AFTA-CEPT. Moreover, as a result of the November 2004 ASEAN Summit, members agreed to implement the ASEAN Sectoral Integration Protocols, which legally bind them to undertake accelerated integration measures in 11 priority sectors. In January 2007 ASEAN leaders added Information and Communications Technology as the 12th priority sector for liberalization. These sectors account for 71 percent of 2003 intra-ASEAN trade and include electronics, E-ASEAN (electronic commerce/usage/connectivity among ASEAN countries), health care, wood-based products, automotive products, rubber-based products, textiles and apparel, agri-based products, fisheries, air travel, and tourism.

Automobile Sector Tariffs

Executive Order 264 in 2003 specifically lowered the tariff on automotive vehicle components from 10 percent to 3 percent under the Philippine government's Motor Vehicle Development Program (MVDP), a program meant to rationalize the automotive industry and transform the Philippines into a regional hub for automotive production. To promote local assembly under the program, imports of finished automobiles (completely built-up units) and motorcycles have been subject to the highest duty rate applied to non-agricultural products, resulting in a high rate of effective protection in the automotive sector. Under the MVDP, completely-knocked down (CKD) kits can be imported at preferential tariff rates if they “promote efficiency in the domestic industry.” increase value-added, create jobs, and transfer technology. The tariff rate on CKD ranges between 1 percent and 3 percent.

Executive Orders 418 and 419 of April 2005 increased the tariff rates on certain types of automobiles. Executive Order 418 imposed a specific duty of 500,000 pesos (approximately $10,000 per vehicle) on top of the *ad valorem* duty on used vehicles. However, the high tariff imposed on the importation of used vehicles has yet to be implemented since a temporary restraining order was initiated shortly after the passing of EO 418. EO 419 increased from 30 percent to 35 percent the duties on high engine displacement vehicles under a stated pretext as an energy conservation and environmental measure. Under AFTA-CEPT, the tariffs on automobile components are set at 3 percent and 5 percent on passenger cars.

Excise Tax on Automotive Vehicles

In August 2003, the Philippine Congress passed legislation changing the automotive excise tax structure from one based on engine displacement to a system based on vehicle value. The old system generally discouraged imported vehicles with large engine displacement, including those from the United States. The August 2003 law covers most types of imported and locally manufactured vehicles, except for some trucks defined as motor vehicles designed for cargo and buses, which are classified by their tonnage. Vehicles that had been tax-exempt under the “10-seater rule” that applied to vehicles containing at least

10 seats including Asian utility vehicles (AUVs, a small version of the sport utility vehicle sold in Asian countries including the Philippines), are now taxed under the new system.

Under the revised excise tax scheme, vehicles are divided into four brackets based on their price: (1) for vehicles with a manufacturer's price of 600,000 pesos and below, the tax is 2 percent; (2) for those priced over 0.6 million to 1.1 million pesos, the tax is 12,000 pesos plus 20 percent of the amount in excess of 600,000 pesos; (3) for those priced over 1.1 million to 2.1 million pesos, the tax is 112,000 pesos plus 40 percent of the amount in excess of 1.1 million pesos; and (4) for those over 2.1 million pesos, the tax is 512,000 pesos plus 60 percent of the amount in excess of 2.1 million pesos.

Safeguards

The Safeguard Measures Act (Republic Act 8800), enacted in 2000, authorizes the Secretary of Trade and Industry or the Secretary of Agriculture to impose safeguard measures in order to remedy injury due to a sudden and sharp increase in imports and facilitate the structural adjustments for domestic industry to be competitive with other markets. The U.S. Government has expressed reservations concerning the Philippine safeguards legislation, noting in particular that the five days afforded to foreign industry to comment on proposed safeguards is not a reasonable period of time as provided for in the WTO Agreement on Safeguards. The U.S. Government has requested that the Philippines lengthen the statutorily mandated period. The Philippines has drafted amendments to the Safeguards Measures Act extending the period to file answers by interested parties from five days to 30 days. The said draft was submitted to Congress for approval, but Congress had not acted as of March 2007.

In November 2001, the Philippine government put in place a safeguard to protect local cement producers from imports. The Secretary of Trade and Industry imposed the safeguard duty despite the finding of the interagency Tariff Commission that there was no merit to the cement producers' case. This decision was brought to the Philippine Supreme Court and in July 2004, the Court ruled that the safeguard duty was illegal and overturned the safeguard. The Philippine government continues to levy safeguard duties on imported ceramic floor and wall tiles, float glass, figured glass and glass mirrors, and provisional safeguard duties on sodium tripolyphosphates (technical grade).

Agriculture Tariffs and Import Licensing

The average nominal tariffs on agricultural products remained at 11.3 percent in 2005. High tariffs are still maintained on politically sensitive agricultural products, such as grains, livestock, poultry and meat products, sugar, frozen and processed potatoes, onions, coffee, and fresh citrus, including oranges, lemons, and grapefruit.

In 2002, the Philippines issued several executive orders that provided for tariff reductions for most agricultural products through 2004. However, in January 2003, the Philippines reversed this policy by issuing Executive Order 164, which set tariff rates for most agricultural products at their generally higher 2002 levels with the exception of pork, poultry, processed meats, corn, coffee and vegetables. Executive Order 264, issued in 2003, raised tariff rates on some product lines. These rates have been extended to an even greater number of food and agricultural products, including those for which the United States has a substantial market share.

The U.S. Government continues to monitor the operation of the Philippine tariff-rate quota (TRQ) system closely, including the allocation and distribution of import licenses. In particular, the U.S. Government is monitoring the Philippine government's application of its Veterinary Quarantine Clearance (VQC) certificates for meat and poultry imports, as well as its import permit system for fresh vegetables. In response to pressure from domestic producers to limit imports as well as to crack down on illegal importation of meat and poultry into the country, the Philippine Department of Agriculture (DA) maintains a VQC import-licensing scheme for imported meat and poultry. The amended meat import regulation under the Administrative Order (AO) 26 series of 2005 (AO26) reiterates the need for an accredited importer to obtain a VQC certificate prior to the importation of meat and meat products. A VQC will now be valid for 60 days from the date of issuance, within which the meat or meat products are to be shipped from the country of origin, and may no longer be extended beyond that. The regulation still requires a one-time use of a VQC, meaning that each VQC must be surrendered upon arrival of a shipment of a covered product. When the quantity allowed on a VQC is insufficient to cover the amount in a container, the importer must supply an additional VQC to cover the difference. Any remaining tonnage from that second VQC is subsequently forfeited rather than the importer being given credit for the unused tonnage. This practice creates the appearance of discretionary licensing and fosters imprecision in this statistical tracking of import volumes.

Although the U.S. Government has registered its concern with the Philippine government regarding the VQC process and has requested that its application be made more flexible, transparent and WTO consistent, these concerns have not been addressed. The DA Bureau of Plant Industry (BPI) also regulates imports of fresh fruits and vegetables. All imports of fresh produce require phytosanitary clearances from BPI which also serve as import licenses. These permits are applied for by the Philippine importer for each shipment. Like meat and meat products, import permits for fruits and vegetables need to be secured prior to exportation from the United States. The date of shipment cannot be earlier than that of the import permit.

The Philippine Fisheries Code permits importation of fresh, chilled, or frozen fish and fish products only when certified as necessary by the Secretary of Agriculture and upon issuance of an import permit by the Department of Agriculture. The Secretary issues a certificate of necessity when he deems import is essential for achieving food security and the import will not cause serious injury or threat of injury to a domestic industry that produces like or directly competitive products. This process appears to be a discretionary application of import licensing.

Excise Tax on Distilled Spirits and Tobacco Products

Republic Act 9334 of December 2004 raised the taxes on alcohol and tobacco products and stipulated further biennial increases until 2011. The law maintained the preferential treatment the Philippines gives to distilled spirits produced from indigenous raw materials in its excise tax regime, which is a tiered tax structure based on net retail price. This tax regime continues to impede access to the Philippine market for U.S. exports of higher-value distilled spirits and is a primary reason why U.S. exports to this potentially significant market remain quite small.

The December 2004 legislation increased the excise tax by 30 percent for distilled spirits produced from indigenous sources, raising the tax from 8.96 pesos to 11.65 pesos on every liter of distilled spirits made from raw materials such as coconut palm, cane, and certain root crops. It also increased the excise tax by 50 percent on distilled spirits made from other materials (which would apply to most imports) and on fortified wines (wines containing more than 25 percent alcohol content) from a range of 84 pesos to 336 pesos per 750 ml bottle to a range of 126 pesos to 504 pesos per bottle. The legislation also increased the excise tax on fermented liquor by 20 percent to a range of 8.27 pesos to 16.33 pesos per liter of volume capacity. Still wines with an alcohol content of 14 percent or less by volume were assessed an excise tax of 17.47 pesos per liter of volume capacity, while still wines with an alcoholic content greater than 14 percent but less than 25 percent alcohol content were charged an excise tax of 34.94 pesos per liter of volume capacity. Depending on the net retail price per bottle, an excise tax ranging from 145.60 pesos to

436.80 pesos per liter of volume capacity was assessed on sparkling wines and champagnes. Republic Act 9334 increases these rates on alcohol products by 8 percent every other year until 2011. In 2007, excise taxes therefore will rise to 12.58 pesos per proof liter of distilled spirits made from indigenous ingredients; to between 136.08 pesos to 544.32 per 750 ml bottle for other distilled spirits and fortified wines; to between 8.93 pesos to 17.64 pesos per liter of volume capacity for fermented liquors; to between 18.87 pesos to 37.74 pesos per liter of volume capacity for still wines; and, to 157.25 pesos per liter of volume capacity for sparkling wines and champagnes.

The Philippines also maintains a multi-tiered excise tax system based on the retail prices of cigarettes, with Republic Act 9334 stipulating biennial increases until 2011. Low-priced machine-packed cigarettes with a retail price below 5 pesos per pack and hand-rolled cigarettes were assessed a tax of 2 pesos in 2005, rising every other year to 2.72 pesos by 2011. Medium-priced machine-packed cigarettes with a net retail price between 5 pesos and 6.50 pesos per pack were assessed a tax of 6.35 pesos in 2005, rising every other year to 7.16 pesos by 2011. High-priced cigarettes with net retail prices above 6.50 pesos up to 10 pesos per pack were charged a tax of 10.35 pesos in 2005, rising every other year to 12 pesos by 2011. Premium cigarettes with net retail prices above 10 pesos per pack were charged a tax of 25 pesos in 2005, rising every other year to 28.30 pesos by 2011. In 2007, the excise tax on cigarettes increases to 2.23 pesos per pack for hand-rolled and low-end machine-packed cigarettes; 6.74 pesos per pack for medium-priced cigarettes; 10.88 pesos per pack for high-priced cigarettes; and, 26.06 pesos per pack for premium cigarettes. The legislation assessed an *ad valorem* tax of 10 percent per cigar with a net retail price of 500 pesos or lower, and a tax of 50 pesos plus 15 percent of net retail prices in excess of 500 pesos.

Republic Act 9334 also provides that alcohol and cigarette brands sold in the domestic market as of October 1996 be classified according to their 1996 net retail prices for excise tax purposes. Brands introduced between January 1997 and December 2003 are classified according to their net retail prices as of the end of 2003. This provision effectively provides existing (mostly domestic) brands with preferential excise tax treatment relative to new brands/entrants.

U.S. firms have noted that the Documentary Stamp Tax involves a denial of national treatment with respect to cigarettes. Although the National Internal Revenue Code requires that tax stamps be affixed to all cigarettes sold in the Philippines, it is only effectively enforced on imported cigarettes. Because of lax enforcement, domestically-produced cigarettes are often shipped to outlets without the stamps and without paying the connected taxes.

Quantitative Restrictions

The National Food Authority, a state trading enterprise, controls rice imports and administers an import quota. It imports any shortfall in rice production under the import quota. The 2006 minimum access volume (quota) for rice was set at 238,000 metric tons, unchanged from the previous year's level. The tariff on imported rice, whether in or out of quota, is 50 percent. Rice import demand is expected to continue growing in the Philippines due to persistent shortfalls in local production and a high population growth rate (1.95 percent annually). Rice is illegally imported into the country on a regular basis from various rice-producing countries in the region.

Among sensitive agricultural products, 15 items are subject to a minimum access volume administered through tariff-rate quotas (TRQs). The Philippines' 10-year minimum access commitments under the Uruguay Round expired in June 2005. Final-year TRQ commitments are being maintained until such time as the products are liberalized or new commitments are negotiated under the Doha Development Agenda. For rice, a commodity for which the Philippines receives special treatment under Annex 5 of the

Uruguay Round Agricultural Agreement, the Philippine government petitioned WTO Members for an extension until 2012. In return for various agricultural concessions, nine countries (Thailand, Pakistan, Egypt, China, Argentina, the United States, Canada, India, and Australia) have provisionally accepted the Philippines' extension. Several other products with significant market potential for the United States are also subject to TRQs. These include: corn, with an in-quota tariff rate of 35 percent and an out-of-quota tariff rate of 50 percent for 2006; chicken meat, with an equalized in-quota and out-of-quota tariff rate of 40 percent; turkey meat, with an in-quota tariff of 30 percent and out-of quota tariff of 35 percent to 40 percent; and pork, with an in-quota rate of 30 percent and out-of-quota rate of 40 percent.

Other Import Restrictions

The Philippines maintains import restrictions on a number of goods on the grounds of public health, morals, national security, and meeting international treaty obligations regulating certain products. Imports require clearances and permits from appropriate government agencies. Among the regulated commodities are essential and precursor chemicals included in the U.N. Convention Against Illicit Drug Trafficking; penicillin and its derivatives; sodium cyanide, chlorofluorocarbons and other ozone depleting substances; coal and its derivatives; color reproduction machines; various chemicals for the manufacture of explosives, fireworks and firearms; pesticides including agricultural chemicals; used motor vehicle parts and motorcycle components; warships of all kinds; radioactive materials; used clothing and rags; used tires; toy firearms and explosives; laundry and industrial detergents containing hard surfactants; all government importation; and Philippine currency in amounts exceeding P10,000,000 coin blanks and bank notes. Also subject to government regulation are industrial products subject to mandatory standards: aircraft; telecommunications; video tapes, VCDs, DVDs, tobacco, cigars and cigarettes.

Customs Barriers

The Philippine government has made some progress during the last several years toward bringing its customs regime into compliance with its WTO obligations, but corruption and other irregularities remain commonplace. Republic Acts 8181 (1996) and 9135 (2001), with supporting regulations, implemented the WTO Agreement on Customs Valuation. The Philippines discontinued the use of Home Consumption Value and adopted transaction value for the purpose of calculating *ad valorem* rates of duty. Supporting regulations also provided the Bureau of Customs (BOC) with the authority to create a post-entry audit unit, a risk management unit and a border control unit charged with enforcement of intellectual property rights.

Currently, all importers or their agents must file import declarations with the BOC, which it then processes through its Automated Customs Operating System (ACOS). ACOS uses its selectivity system to classify shipments as low-risk (green lane), moderate-risk (yellow lane), or high-risk (red lane). All shipments channeled through the yellow lane require a documentary review, while red lane shipments require both documentary review and physical inspection at the port. Green lane shipments are not subject to any documentary or inspection requirements. In early 2002, the BOC also announced the addition of a "Super Green Lane" facility for importers acknowledged as the lowest risk. The import transactions of Super Green Lane importers are not covered by the selectivity system and are exempt from documentary and physical examination. Because of low use during implementation which took place in December 2003, the BOC lowered the cost to companies of accessing the facility. By the end of 2004, 86 firms were using these facilities.

Republic Act 9135 eliminated private sector involvement in the valuation process. It also clarified that reference values may be used as a risk management tool, but not as a substitute for valuation. The U.S. Government remains concerned, however, about reports of continued private sector involvement in the valuation process, particularly in the activities of BOC's Import Specialist Team, which has the authority to review all green lane entries for possible valuation-related offenses. The Philippines has made improvements to the valuation system, but periodic procedural irregularities continue to occur, including requests by Customs officials for the payment of unrecorded facilitation fees. The U.S. Government has raised this issue during bilateral trade discussions during the past several years.

The U.S. Government continues to have concerns about inconsistent application of customs rules and procedures, undue and costly processing delays, and corruption. The United States has regularly urged the Philippine government to improve the administration of its customs regime. Customs administration could be strengthened by improving classification of entries and providing precise descriptions of imported articles to reduce discretionary authority of customs officials. Reform and modernization within the BOC is being supported through technical assistance by USAID and several other donor organizations, including the Millennium Challenge Account Threshold Program.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Industrial Goods

Local inspection for compliance with mandatory Philippine national standards is required for 91 products, including automotive and motorcycle batteries, cosmetics, medical equipment, lighting fixtures, fire extinguishers, electrical wires and cables, cement, pneumatic tires, sanitary wares, and household appliances. For goods not subject to such standards, U.S. manufacturers' self-certification of conformity is accepted. Labeling is mandatory for textile fabrics, ready-made garments, household and institutional linens, and garment accessories. Mislabeling, misrepresentation, or misbranding may subject an entire shipment, rather than just the offending goods, to seizure and disposal. The Generic Act of 1988 aims to encourage the use of generic drugs by requiring that the generic name of a pharmaceutical appear above its brand name on all packaging.

Agricultural Goods

The Philippine Department of Agriculture (DA) established plant health regulations in 1995 that allow the import of U.S. apples, grapes, oranges, potatoes, onions, and garlic, provided these products, when necessary, undergo a specified cold treatment to control targeted pests. Importation of Florida grapefruit, oranges, and tangerines into the Philippines is permitted under a March 2000 protocol between the Philippines and the United States. Similarly, under a July 2004 protocol, importation of cherries from the United States is permitted.

The United States and the Philippines are currently negotiating the import protocols for broccoli, cauliflower, lettuce, carrots, cabbage, and celery produced in the United States. The target date for completion of the pest risk analysis for the vegetables is in early 2007. In the interim, the Philippines has continued to allow these products to enter into the country provided that they are intended for “high-end markets” only.

In January 2004, the DA issued Memorandum Order No. 33 (MO 33), which imposed new requirements for beef and beef products imported from the United States. This was in response to the detection of Bovine Spongiform Encephalopathy in a single imported dairy cow in the State of Washington in December 2003. Only deboned and deglanded beef and beef products derived from cattle 30 months of age or less are allowed entry into the country. Other specified requirements include certification that the beef comes from healthy and ambulatory cattle and is devoid of nerve tissue and any specified risk materials. Moreover, the production or slaughter date of the cattle must be provided on the packaging label. On December 19, 2006, the Bureau of Animal Industry of the Philippine Department of Agriculture formally allowed the importation of heart, liver and cheek meat of U.S. beef cattle subject to requirements stated in DA Memorandum Order No. 33.

On December 23, 2006 the DA issued new regulations on the accreditation of foreign meat establishments (FMEs) from which meat and meat products are sourced for exports to the Philippines. The new guidelines would require all exporting countries or individual FMEs to obtain either systems or individual accreditation to be eligible as legitimate suppliers. At present, all U.S. meat establishments that are regulated and inspected by the USDA Food Safety and Inspection Service are eligible to export meat and poultry to the Philippines. Countries including the United States that have traditionally exported to the Philippines under a systems accreditation approach will be subject to an audit within one year of implementation of the new regulation, which took effect on January 7, 2007.

GOVERNMENT PROCUREMENT

Although the Philippines is not a signatory to the WTO Agreement on Government Procurement (GPA), the Philippine government has taken some steps to reform its procurement process. The Government Procurement Reform Act of 2003 consolidated numerous procurement laws and issuances and standardized guidelines, procedures, and forms across Philippine government agencies, government-controlled corporations, and local government units. The law simplified pre-qualification procedures, introduced more objective, non-discretionary criteria in the selection process, and established an electronic procurement system to serve as the single portal for government procurement activities. The Government Procurement Reform Act also mandated public monitoring of the procurement process to promote greater transparency and competition, enhance the flow of information, and lessen discretion among agencies.

Nevertheless, the Government Procurement Reform Act's Implementing Rules and Regulations (IRRs) for locally funded government projects continue to favor purchases from Filipinos and Filipino-controlled companies. As a general rule, goods and supplies for locally funded projects must be purchased from enterprises that are at least 60 percent Philippine-owned, infrastructure services from enterprises with at least 75 percent Philippine ownership, and consulting services with at least 60 percent Filipino-controlled entities. For infrastructure projects, the law also provides that, for five years from the effective date of the law, contractors whose head office is located in the province where the project will take place have the right to match the lowest offer by a non-province-based bidder.

The Philippine government, in consultation with foreign donors, has yet to issue implementing rules and regulations covering procurement for projects involving foreign financing or assistance, reportedly because of strong pressure to favor local suppliers (which may contradict donor procurement policies). The Official Development Assistance (ODA) Act (Republic Act 8182, as amended in February 1998 by Republic Act 8555) waived the preference for local suppliers for projects involving ODA. Foreign donors have been able to implement their procurement regulations under the provisions of the ODA Act. The Build Operate Transfer (BOT) Law (Republic Act 6957 of July 1990, as amended in May 1994 by Republic Act 7718) allowed investors in BOT projects to engage the services of Philippine or foreign firms for the construction of BOT infrastructure projects.

In 2004, President Arroyo issued Executive Order 278, which provides for preferential treatment for Filipino consultants in public sector infrastructure projects. The Executive Order stipulates that, as much as possible, the government should fund consultancy services for its infrastructure projects with local funds, using local resources and expertise. When Filipino capability is determined to be insufficient, Filipino consultants may hire or work with foreign consultants, but must be the lead consultants. Where foreign funding is indispensable, foreign consultants are required to enter into joint ventures with Filipinos. Foreign donors have so far been able to comply with their respective procurement guidelines without violating Executive Order 278. However, because an executive order has the force of law, the specter of problems arising in the future remains. In addition to concerns about discriminatory treatment against foreign firms, U.S. companies continue to raise concerns about corruption in government procurement.

The Philippine government issued Executive Order 120 in 1993 mandating a countertrade requirement for procurements by government agencies and government-owned or controlled corporations that entail the payment of at least $1 million in foreign currency. Implementing regulations set the level of counter trade obligations at a minimum of 50 percent of the import price and set penalties for nonperformance of countertrade obligations.

EXPORT SUBSIDIES

Enterprises and exporters engaged in activities under the Philippine government's Investment Priorities Plan may register with the Board of Investments (BOI) for fiscal incentives, including four- to six-year income tax holidays, a tax deduction equivalent to 50 percent of the wages of direct-hire workers, and tax and duty exemptions for the importation of breeding stock and genetic materials. BOI-registered firms that locate in less developed areas may be eligible to claim a tax deduction of up to 100 percent of outlays for infrastructure works and 100 percent of incremental labor expenses. As a general rule, an enterprise must be at least 60 percent Filipino-owned and, if export-oriented, export at least 50 percent of its production to qualify for BOI incentives. Enterprises with less than 60 percent Filipino equity may qualify provided they engage in projects listed as “pioneer” under the IPP or they export at least 70 percent of production. Firms in government-administered export processing zones, free trade zones, and other special industrial estates registered with the Philippine Economic Zone Authority (PEZA) enjoy similar incentives, as well as tax and duty-free imports of capital equipment and raw materials, and exemption from customs inspection. In lieu of national and local taxes, PEZA-registered firms are subject to a 5 percent tax on gross income. Firms that earn at least 50 percent of their income from exports may register with BOI or PEZA for certain tax credits under the Philippines’ Export Development Act, including a tax credit on incremental annual export revenue.

Automotive Export Subsidies

With the intention of promoting the local assembly and export of vehicles from the Philippines, President Arroyo signed Executive Order 244 in October 2003, which launched the Philippine Automotive Export Program (AEP), subsequently modified by Executive Order 312, issued in 2004. The export incentives program offers automobile manufacturers registered under the AEP preferential tariff rates in their importation of finished automobiles on the basis of equivalent net foreign exchange earnings (NFEE) from their finished vehicle exports. An equivalent NFEE, $400 per unit exported for year one to two of the program, $300 for year three, phased down to $100 by year five, will be credited. The benefit of availing of preferential tariff rates is contingent upon export performance. The net foreign exchange earning chargeable against imports is on a per unit basis and continues until the credit has been exhausted, after which the manufacturer pays the normal tariff rates on its imports. The reduced tariff rates are: MFN rates of 30 percent will become to 20 percent of the CIF value of importation; MFN rates of 20 percent will become 10 percent of the CIF value of importation; and, the ASEAN Common External Preferential Tariff (CEPT) rate of 5 percent will become 4 percent of the CIF value for imports from the other ASEAN countries.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In February 2006, the United States moved the Philippines from the Special 301 "Priority Watch List" (where it had been listed for five consecutive years) to the "Watch List" to acknowledge the steps the Philippines has to take to strengthen its IPR regime. Following the announcement, President Arroyo and other senior government officials pledged continued momentum and increased effort on IPR initiatives.

Despite the general improvement in the IPR protection regime, the U.S. Government continues to have serious concerns about the consistency and effectiveness of IPR protection in the Philippines. Significant problems remain in ensuring consistent and effective IPR protection. U.S. distributors continued to report high levels of pirated optical discs as well as widespread unauthorized transmissions of motion pictures and other programming on cable television systems. Counterfeit goods such as brand name and designer clothing, handbags, cigarettes, and other consumer goods are widely available. Optical media piracy, including piracy of DVDs and CD-Rs, also continues to be a problem. Although some improvement is visible in select shopping malls, it is unclear yet whether this represents a long-term trend.

President Arroyo signed into law the Optical Media Act (OMA) on February 10, 2004. The OMA is intended to regulate the import, export and production of optical discs, including tools and materials involved in their manufacture. In addition, the OMA created the Optical Media Board as a replacement for the Videogram Regulatory Board. On February 1, 2005, the Congressional Oversight Committee approved implementing regulations for the Optical Media Act. Full implementation and enforcement of this law and regulations, including prosecution of IPR violators, will be critical to strengthening the Philippines' IPR regime.

While the Philippines has made progress in combating optical media piracy through passage of the OMA, it has generally failed to improve the prosecution and conviction of IPR violators to create a credible deterrent. Print piracy and end-user piracy of business and entertainment software also are serious problems. The United States has encouraged the Philippines to further improve and sustain enforcement efforts and to take steps to enhance judicial capacity.

IPR protection is a special concern for the textile and apparel sectors. U.S. apparel companies spend large amounts of money on brand protection and vigorously engage the Philippines on IPR enforcement. Clothing with counterfeit brand labels is routinely available in Philippine shopping areas, much of which is reportedly imported.

Intellectual Property Laws

The 1997 Intellectual Property Code provides the basic legal framework for IPR protection in the Philippines. The 2000 Electronic Commerce Act extends this framework to the Internet. However, the Code contains ambiguous provisions relating to the rights of copyright owners over broadcast, rebroadcast, cable retransmission, or satellite retransmission of their works, and burdensome restrictions affecting contracts to license software and other technology. The Philippine government has nonetheless taken positive steps in recent years to address legislative deficiencies in its IPR regime. In 2001, the Philippines enacted a new law to protect layout designs (topographies) of integrated circuits. In January 2002, the Philippine Supreme Court adopted rules establishing *ex parte* seizure authority in civil cases of IPR infringement (*i.e.,* seizure without notice to the suspected infringer).

In June 2002, President Arroyo approved legislation designed to comply with WTO Trade Related Aspects of Intellectual Property Rights (TRIPS) Article 27.3(b) requirements on the protection of the exclusive rights of breeders with respect to their new plant varieties. However, U.S. seed company representatives have expressed concern about the vagueness of key provisions of the law, particularly relating to a provision exempting local farmers from licensing requirements.

In addition to adhering to the TRIPS Agreement, the Philippines is a party to the Paris Convention, the Berne Convention, the Budapest Treaty, the Patent Cooperation Treaty, and the Rome Convention. The Philippines, as a member of the World Intellectual Property Organization (WIPO), ratified the WIPO Performances and Phonograms Treaty and the WIPO Copyright Treaty in March 2002. The treaties took effect in October 2002. However, the Philippine government has not yet enacted necessary amendments to its copyright law that would fully implement the requirements of these WIPO treaties into domestic law. The U.S. Government continues to urge the Philippines to enact this needed legislation.

As of December 2006, the Philippine Congress was considering legislation to reduce patent protection for pharmaceutical products. If passed, this legislation could weaken some patent protection provisions in the Intellectual Property Code related to pharmaceutical products.

IPR Enforcement

The United States continues to have serious concerns regarding the lack of consistent, effective and sustained IPR enforcement in the Philippines. U.S. industry estimated the annual losses due to copyright piracy in the Philippines in 2005 at around $123.6 million. In 2006, U.S. distributors continued to report high levels of piracy of optical disks of films and musical works, computer games, and business software, as well as widespread unauthorized transmissions of motion pictures and other programming on cable television systems. Trademark infringement in a variety of product lines is also widespread, with counterfeit or pirated merchandise openly available in both legitimate and illegitimate venues.

The U.S. Government continues to encourage effective action and full funding support for IPR enforcement efforts and judicial capacity building. The U.S. Government also has called for the closure of malls and other outlets where pirated optical discs are the primary products being offered. The U.S. Government has urged the Philippines to adopt laws that would extend further IPR protection to the Internet by accommodating electronic commerce and outlawing online piracy, and to take further steps to combat piracy of textbooks and other printed materials. The U.S. Government continues to provide technical assistance and training to strengthen capacity within Philippine agencies responsible for IPR protection.

Serious problems nonetheless continue to hamper the effective operation of agencies tasked with IPR enforcement. Interagency coordination is improving within the Philippine government, but many enforcement agencies continue to suffer from a lack of resources. Enforcement efforts such as raids and seizures have increased in frequency over the past two years. The Optical Media Board (OMB) continues to work towards full operational capability in its efforts to combat domestic production of pirated optical media. The OMB continues to conduct numerous raids against optical media production lines and retail outlets, resulting in increasing seizures of production equipment and finished product. Yet the legal system in the Philippines continues to undermine the best enforcement efforts and courts often release suspects picked up in OMB raids and drop their cases on questionable technical grounds.

The Philippine government has taken some administrative steps intended to strengthen enforcement. The Intellectual Property Code of the Philippines stipulates that the Intellectual Property Office (IPO) has jurisdiction to resolve disputes concerning alleged infringement and licensing. The IPO has implemented a more robust leadership role on enforcement issues in the Philippines, and, in February 2006, was granted oversight authority over law enforcement efforts. Components of the IPO's strategy include a greater emphasis on interagency coordination, enforcement campaigns in partnership with private industry, and sustained outreach efforts to inform the public on IPR issues.

A Bureau of Customs (BOC) administrative order in September 2002 strengthened the ability of the BOC to prohibit the importation of pirated products, and created an Intellectual Property Unit within the BOC. The BOC maintains an IPR registry where property holders may record their rights and other information to facilitate enforcement. However, the IP Unit is an *ad hoc* entity and does not have adequate institutional or resource support to fulfill its mandate effectively. The Unit is handicapped by inadequate staffing, few resources, and lack of access to critical Customs computer information systems.

In late 2005, the Supreme Court created a Task Force on Intellectual Property Rights, which identified three judges and a team of prosecutors who will focus on IPR cases and receive specialized training. The Task Force was reorganized in July 2006 and is composed of entirely new personnel. In 2006, fifteen judges were identified for specialized IPR training. These judges handle other commercial and criminal cases such as money laundering, but their primary responsibility is for IPR cases. Frequent changes in personnel and structure have limited the effectiveness of this mechanism. If appealed, IPR cases would still go through the current appellate system, which permits numerous interlocutory appeals and can result in long delays.

Among those cases that have made it to court, there have been relatively few successful prosecutions. While companies have invested significant resources in investigations and litigation, some cases remain unresolved as long as two decades after the initial complaint. The Philippines has failed to establish punitive sanctions sufficient enough to serve as a deterrent to IPR violators. The nominal damages awarded by the Philippine courts in IPR cases add little to the cost of doing business for IPR pirates, and thus far there has been no risk of imprisonment for offenders.

SERVICES BARRIERS

Basic Telecommunications

The Philippine Constitution of 1987 defined telecommunication services as a public utility and limited foreign ownership to 40 percent. This restricts market entry, especially in more capital-intensive applications, such as broadband, where foreign firms are reluctant to invest without majority control. In addition, foreigners are restricted from serving as executives or managers and the number of foreign directors in telecommunication companies must be proportionate to its aggregate share of foreign capital. Foreign equity in the private radio communications network is constitutionally limited to 20 percent. Operation of cable television and other forms of broadcasting and media are also reserved for Filipinos.

Voice-Over-Internet Protocol (VOIP) Rules

The National Telecommunications Commission (NTC) issued a ruling (Memorandum Circular No. 3-11-2005) in 2005 that removes uncertainty over the status of VoIP services, as these services were not easily categorized by the 1995 Public Telecommunications Policy Act (Republic Act 7925). This law limits the provision of traditional telephone services to “Public Telecommunications Entities” holding a congressional franchise, but exempted value added service (VAS) providers from the franchise requirement.

The Memorandum Circular defined VoIP as a value added service, removing the requirement for a legislative franchise to offer service. Any entity who wishes to offer VoIP must register as VAS provider.

The VoIP registration fee is P50,000 per year, with a filing fee of P180. There is a minimum required capital of P10,000,000 and a performance bond of P5,000,000 to register as a VAS provider.

There are two levels of VoIP service: provider and reseller. Resellers operate Public Calling Offices while VoIP providers offer access via broadband Internet connections. VoIP providers must have interconnection agreements with a public telecommunications entity providing local exchange carrier service to a fixed telephone service network operator, while a reseller simply sells access to the service of a VoIP provider. A reseller need not comply with the minimum capital requirement of P10 million. The registration fee is P5000 per year, the filing fee is P180 per year, and a performance bond of P1 million is required for a reseller.

During the WTO negotiations on basic telecommunications services, the Philippine government made commitments on most basic telecommunications services and adopted some pro-competitive regulatory principles contained in the WTO Reference Paper. It did not provide market access or national treatment for satellite services (which remain subject to discriminatory rules) and did not allow resale of private leased lines.

Digital Terrestrial Television

In November 2006, the NTC published a draft Memorandum Circular for Digital Terrestrial Television (DTT). The draft, if finalized without changes, would adopt the European Digital Video Broadcast – Terrestrial standard for the delivery of DTT services in the Philippines. If unchanged, the delivery standard will also have implications for the products designed to transmit digital broadcasts. The draft Memorandum envisions a transition period from analog transmissions to DTT transmission through December 31, 2015.

Financial Services

The Philippines also has yet to ratify the Fifth Protocol to GATS, embodying its obligations under the WTO Financial Services Agreement.

Insurance

Although current regulations permit up to 100 percent foreign ownership in the insurance sector, the Philippines only committed in the GATS to a maximum of 51 percent equity participation and grandfathered existing insurers with more than 51 percent foreign equity. Under current regulations, minimum capitalization requirements increase with the degree of foreign equity. As a general rule, only the state-owned Government Service Insurance System (GSIS) may provide coverage for government-funded projects. Administrative Order 141, issued in August 1994, also required proponents and implementers of Build-Operate-Transfer projects and privatized government corporations to secure their insurance and bonding from the GSIS at least to the extent of the government's interests. Private insurance firms, both domestic and foreign, regard this as a significant trade barrier. Current regulations require all insurance/professional reinsurance companies operating in the Philippines to cede to the industry-owned National Reinsurance Corporation of the Philippines at least 10 percent of outward reinsurance placements.

Banking

Per the Foreign Bank Liberalization Act of 1994, 10 foreign banks were permitted to open full service branches in the Philippines or to own up to 60 percent of a new or existing local subsidiary. Foreign banks are limited to six branches each. Four foreign-owned banks that had been operating in the Philippines prior to 1948 were each allowed to operate up to six additional branches. The Philippines only committed to foreign ownership at a 51 percent level in its 1997 WTO financial services offer and included a reciprocity test for authorization to establish a commercial presence. The General Banking Law of 2000 (signed in May 2000 to succeed the 1948 General Banking Act) created a seven-year window during which foreign banks may acquire up to 100 percent of one locally incorporated commercial or thrift bank (up from the previous 60 percent foreign equity ceiling). Such investments can be made only in existing banks since the Bangko Sentral ng Pilipinas (the central bank) imposed a moratorium on the issuance of new bank licenses in September 1999 to encourage consolidation in the banking system. Current regulations mandate that majority Filipino-owned domestic banks should, at all times, control at least 70 percent of total banking system assets. Rural banking remains completely closed to foreigners.

Pre-1997 legislation exempted banks' Foreign Currency Deposit Units (FCDUs) as well as Offshore Banking Units (OBUs) from certain non-income taxes (*i.e.,* gross receipts tax, documentary stamp tax, and branch profit remittance tax). In 1997, a Comprehensive Tax Reform Program (CTRP) was signed into law to broaden the tax base. The final version of the CTRP, due to faulty drafting, inadvertently withdrew these tax exemptions by leaving out the phrase "exempt from all taxes." May 2004 legislation subsequently restored the tax exemptions enjoyed by FCDUs and OBUs but the Bureau of Internal Revenue (BIR) subsequently started to assess back taxes and penalties for the intervening period (1998-2004). Even though one bank has paid the taxes assessed by the BIR, other members of the Bankers Association of the Philippines are still pursuing exemption from these taxes. Philippine legislators have indicated that there was no intention to rescind the exemptions in the CTRP.

Securities and Other Financial Services

Membership in the Philippine Stock Exchange is open to foreign-controlled stock brokerages that are incorporated under Philippine law. Foreign equity in securities underwriting companies is limited to 60 percent. Securities underwriting companies not established under Philippine law may underwrite Philippine issues for foreign markets, but not for the domestic market. Although there are no foreign ownership restrictions governing acquisition of shares of mutual funds, current law restricts membership on a board of directors to Philippine citizens. The Philippines took an MFN exemption on foreign equity participation in securities firms, stating that Philippine regulators would approve applications for foreign equity only if Philippine companies enjoy similar rights in the foreign investor's country of origin.

Advertising

The Philippine Constitution limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers of advertising agencies must be Philippine citizens.

Public Utilities

The Philippine Constitution specifically limits the operation of certain utilities (water and sewage, electricity transmission and distribution, telecommunications, and public transport) to firms with at least 60 percent ownership by Philippine citizens. All executive and managing officers of such enterprises must be Philippine citizens. These limitations also apply to the operation of public utilities under Build-Operate-Transfer and similar arrangements.

The June 2001 Electric Power Industry Reform Act mandated the privatization of the generation and transmission assets of the National Power Corporation. The privatization and restructuring of the sector is considered critical to attracting additional foreign investment, but so far few assets have been sold. Transmission and distribution require a public utility franchise under the Act, which would be subject to a 40 percent foreign ownership ceiling (1987 Constitution). After a series of failed offerings, the government decided to privatize the national transmission grid, known as Transco, by awarding a 25 year concession, renewable for another 25 years. The Philippine government will seek a congressional franchise after the concession is awarded. Though stated to be a top priority, only seven small hydroelectric generating stations have been sold, which represent a mere 3 percent of total generating assets.

Practice of Professions

As a general rule, the Philippine Constitution reserves the practice of licensed professions (*e.g.,* law, medicine, nursing, accountancy, and engineering, architecture, and customs brokerage services) to Philippine citizens.

Shipping

Under Philippine cabotage laws, foreign-flagged vessels cannot engage in the carriage of domestic trade cargoes. In specific cases, Philippine-registered ships engaged in international trade may be issued a special permit to engage temporarily in domestic trade services. These permits can only be issued if: there is no existing Philippine-flagged vessel operating on the proposed route; there is no suitable local vessel available; the vessel is contracted by private or public utilities; and it involves tourist passenger vessels, when the itinerary includes calls at domestic ports. Philippine government cargo is reserved to Philippine-flagged vessels, though exemptions are permitted if these vessels are unavailable at "reasonable" freight rates. Only Filipino nationals or locally incorporated entities authorized to engage in overseas shipping and with a maximum of 40 percent foreign equity may register a vessel. Philippine-registered vessels must be completely manned by Filipino crews, except as supernumerary for up to six months.

Express Delivery Services

Foreign air express couriers and airfreight forwarding firms must either contract with a 100 percent Philippine-owned business to provide local delivery services, or establish a domestic company with a minimum of 60 percent Philippine equity. While there has been some liberalization of international cargo services, U.S. carriers already benefited from cargo provisions in the U.S. - Philippines Air Transport Agreement that allowed them to establish hub operations in the Philippines. However, one major U.S. carrier with a cargo hub in the Philippines has announced that it is moving its Asian hub at Subic Bay to China.

The Civil Aeronautics Board (CAB) sought to expand international scheduled and chartered services for specific airports through CAB Resolution No. 23 (series of 2005) to allow unlimited flight frequencies over and above the existing entitlement provided in bilateral air services agreements. This resolution applies to Diosdado Macapagal International Airport, Subic Bay International Airport, Davao International Airport, Mactan, Cebu International Airport, Laoag International Airport, Zamboanga International Airport, and other developmental gateways.

INVESTMENT BARRIERS

The 1991 Foreign Investment Act contains two "negative lists," collectively called the "Foreign Investment Negative List" (FINL), enumerating areas where foreign investment is restricted. The Foreign

Investment Act requires the Philippine government to update and publish the FINL every two-years. The most recent FINL was released in November 2004.

List A restricts foreign investment in certain sectors by mandate of the Constitution and specific laws. For example, enterprises engaged in retail trade (with paid-up capital of less than $2.5 million, or less than $250,000 for retailers of luxury goods), mass media, small-scale mining, private security, cock fighting, utilization of certain marine resources, and manufacture of firecrackers and pyrotechnic devices are reserved for Filipino nationals.

The Philippine government allows up to 25 percent foreign ownership for enterprises engaged in employee recruitment and for public works construction and repair, with the exception of Build-Operate-Transfer and foreign-funded or foreign-assisted projects (that is, projects that benefit from foreign aid, for which there is no upper limit on foreign ownership). Foreign ownership of 30 percent is allowed for advertising agencies, while 40 percent foreign participation is allowed in natural resource extraction (although the President may authorize 100 percent foreign ownership for large-scale projects), educational institutions, public utilities, commercial deep sea fishing, certain government procurement contracts, ownership of condominium units, and rice and corn production and processing. Full foreign participation is allowed for retail trade enterprises with paid-up capital of $2.5 million or more, provided that investment for establishing each store is not less than $830,000, or specializing in high-end or luxury products, provided that the paid-up capital per store is not less than $250,000. Financing companies and investment houses are limited to 60 percent foreign ownership.

List B restricts foreign ownership (generally to 40 percent) for reasons of national security, defense, public health, safety, and morals. Sectors covered include explosives, firearms, military hardware, massage clinics, and gaming activities. This list also addresses local small- and medium-sized firms by restricting foreign ownership to no more than 40 percent in non-export firms capitalized at less than $200,000.

In addition to the restrictions noted in lists "A" and "B", firms with more than 40 percent foreign equity that qualify for Board of Investment (BOI) incentives must divest to the 40 percent level within 30 years from registration date or within a longer period determined by the BOI. Foreign-controlled companies that export 100 percent of production are exempt from this divestment requirement. As a general policy, the Philippine Department of Labor and Employment allows the employment of foreigners, provided there are no qualified Philippine citizens who can fill the position. BOI-registered companies may employ foreign nationals in supervisory, technical, or advisory positions for five years from registration, extendable for limited periods at the discretion of the BOI. The positions of elective officers of majority foreign-owned enterprises (*i.e.,* president, general manager, and treasurer or their equivalents) are not subject to this limitation.

The Philippine Constitution of 1987 bans foreigners from owning land in the Philippines. The 1994 Investors' Lease Act allows foreign companies investing in the Philippines to lease land for 50 years, renewable once for another 25 years, for a maximum 75 years. Deeds are often difficult to establish and are poorly reported and regulated. The deeds and property infrastructure is full of ambiguities, which makes it difficult to establish clear ownership. The court system does not settle cases in a timely manner. Land ownership issues such as these need to be clarified for domestic landowners before foreign land ownership can become viable.

Trade Related Investment Measures (TRIMS)

The BOI-imposed, industry-wide local content requirements under the Motor Vehicle Development Program were eliminated in July 2003. In 1995, pursuant to the WTO TRIMS Agreement, the Philippines notified the WTO of its maintenance of local content and foreign exchange balancing requirements. Proper notification allowed the Philippines to maintain such measures for a five-year transitional period, ending January 1, 2000. In October 1999, the Philippines requested a five-year extension for the measures in the motor vehicle sector. After extensive consultations on this issue with the United States, the Philippines agreed in November 2001 that it would discontinue the exchange balancing requirements immediately and remove all local content requirements in the motor vehicle sector by July 1, 2003, following the implementation of a phase out program begun in January 2002. The final phase out of the local content and foreign exchange requirements was completed in 2003. The U.S. Government is continuing to monitor Philippine implementation of this WTO commitment closely.

Under a 1987 Executive Order, the soap and detergent industry is required to use a minimum of 60 percent locally-produced raw materials that do not endanger the environment. The intent of the law is to compel soap and detergent manufacturers to use coconut-based surface-active agents (soft surfactants) of Philippine origin. In 1999, the Philippine Department of Justice determined that this Executive Order conflicts with the Philippines' obligations under the WTO TRIMS. Subsequent to the ruling, the order has not been enforced, but it has not been repealed. Moreover, a 1990 law (Republic Act 8970) prohibits manufacture, importation, distribution, and sale of laundry and industrial detergents containing hard surfactants. Only natural oleo chemicals, including those derived from coconut, palm, palm kernel, sunflower, and rapeseed oils are allowed.

The United States continues to monitor the Philippines' compliance with other TRIMS requirements. Regulations governing the provision of BOI-administered incentives impose a higher export performance requirement for foreign owned enterprises (70 percent of production should be exported) than for Philippine-owned companies (50 percent). A 1984 measure, which requires mining firms to prioritize the sale of copper concentrates to the then government-controlled Philippine Associated Smelting and Refining Company (PASAR), has yet to be repealed despite PASAR's privatization in 1998. In addition, there appear to be unwritten "trade balancing" requirements for firms applying for approval of ventures under the ASEAN Industrial Cooperation scheme. Under a 1982 executive order (EO 776), the Bureau of Foods and Drugs requires pharmaceutical firms to purchase semi-synthetic antibiotics from a specific local company, except when these firms can show that the landed cost of imports are at least 20 percent cheaper.

Retail Trade

The Retail Trade Liberalization Act (Republic Act 8762) of February 2000 requires that foreign retailers, for 10 years after the bill's enactment, source at least 30 percent (for retail enterprises capitalized at no less than $2.5 million) or 10 percent (for retail enterprises specializing in luxury goods) of their inventory, by value, in the Philippines. Foreign retailers are likewise prohibited from engaging in trade outside their accredited stores. At the same time, retail enterprises with foreign ownership exceeding 80 percent of equity are required to offer 30 percent of their shares to the public within eight years after the start of operations. In addition, prospective investors in the retail sector face a reciprocity requirement. The Retail Trade Liberalization Act states that only nationals from, or juridical entities formed or incorporated in, countries that allow the entry of Filipino retailers, shall be allowed to engage in retail trade in the Philippines.

Public Utilities

The Philippine government's most important privatization effort, the June 2001 Electric Power Industry Reform Act, provided that the National Power Corporation (NPC) should privatize at least 70 percent of its generating assets located in Luzon and Visayas within three years. Privatization stalled and no asset has been privatized since December 2004 when five small hydroelectric and one large coal-fired power plant were sold. Bidding for a 225 MW Bataan thermal and a 600 MW Calaca coal-fired power plant is ongoing. Seventy-five percent of the funds used to acquire NPC assets must be inwardly remitted and registered with the BSP (central bank). However, foreign participation may be restricted pursuant to a constitutional provision regarding utilization of certain natural resources (such as water and geothermal resources) and power generation as well as provisions requiring a minimum of 60 percent Filipino ownership to obtain water rights for hydropower generation under the implementing rules of the 1976 Water Code of the Philippines.

Licensing of Technology

The Philippine government defines technology transfer arrangements as: (1) contracts involving the transfer of systematic knowledge for the manufacture of a product; (2) the application of a process, or rendering of a service including management contracts; and, (3) the transfer, assignment, or licensing of all forms of intellectual property rights, including computer software (except for software developed for the mass market). The Intellectual Property Office requires that all technology transfer arrangements comply with provisions outlined in R.A. 8293, including the prohibition of the use of certain clauses in such arrangements. The scope of these provisions is extremely broad and serves to obstruct the normal contracting process between unrelated parties or as part of intra-company business.

Mining

The Philippine Supreme Court, in a decision issued in December 2004, reversed its January 2004 ruling that declared key provisions of the Mining Act of 1995 unconstitutional and prohibited majority foreign-owned firms from mining in the Philippines. The reversal opened the sector to direct foreign investment. As such, mineral exploration and processing licenses are open to full foreign equity participation for large projects valued at over $50 million; small and medium-scale mining is reserved for Filipinos. The country’s unexploited mineral wealth is estimated at $840 billion. The Philippines has some of the richest deposits of metallic and non-metallic minerals in the world (especially copper and gold). Mining output is currently about $500 million per year. There are nine million hectares where mineral deposits may be found, although the Philippine government has issued permits for only 1.4 percent of those lands. Significant barriers to investment remain, such as unresolved disputes regarding land claims and a paucity of progress in implementing key regulatory and administrative reforms.

Other Investment Issues

The Supreme Court disallowed the Clark Special Economic Zone fiscal incentives provided under the Bases Conversion Development Act, although the underlying court case has been appealed. Over 350 investors, including 10 U.S. firms, maintain investments at Clark. Nonetheless, unforeseen taxes, including retroactive taxation, may lead to investor withdrawals from Clark and discourage new investment.

ANTICOMPETITIVE PRACTICES

The Philippine Constitution provided the Philippine government with the authority to regulate or prohibit monopolies, and it also banned combinations of entities in restraint of trade and unfair competition. However, the Philippines has no comprehensive competition law to implement this constitutional provision. Instead, there are a number of laws dealing with competition, including the 1930 Revised Penal Code 1932 Consumer Act, the 1961 Act to Prohibit Monopolies and Combinations in Restraint of Trade, 1949 Civil Code, the 1980 Corporation Code, and the 1991 Price Act. Enforcement agencies do not effectively enforce these laws, as they do not have the resources or capability to challenge entrenched economic and political interests.

ELECTRONIC COMMERCE

The Electronic Commerce Law, signed in June 2000, provides that business transactions through an automated electronic system such as the Internet are functionally and legally equivalent to a written document governed by existing laws on commerce. Business-to-business transactions include domestic and international exchange of information, arrangements, and contracts for procurement, payments, supply management, transportation, and facility operations. An Internet Service Provider (ISP) generally is not criminally liable for unlawful activities conducted using its services if the ISP does not directly commit any infringement or other unlawful activities or does not cause another party to commit any unlawful act. The law includes provisions to penalize, among other offenses, hacking or cracking (unauthorized access into or interference in a communications system) and piracy (or the unauthorized reproduction, distribution, importation, use, removal, alteration, downloading, or broadcasting of copyrighted works including legally protected sound recordings). Electronic transactions are not currently subject to any tax measures. However, a reciprocity clause specifies that all benefits, privileges, and advantages established under the act will be enjoyed only by parties whose country of origin grants the same benefits and privileges or advantages to Philippine citizens.

OTHER BARRIERS

Corruption is pervasive and a longstanding problem in the Philippines. The Philippines' score in Transparency International's annual Corruption Perceptions Index survey has averaged 2.5 to 2.6 (out of a best score of 10) since 2002, down from 3.6 in 1999. The Philippine Revised Penal Code, the Anti-Graft and Corrupt Practices Act, and the Code of Ethical Conduct for public officials are intended to combat corruption and related anticompetitive business practices. The Office of the Ombudsman investigates cases of alleged graft and corruption involving public officials. The Sandiganbayan (anti-graft court) prosecutes and adjudicates cases filed by the Ombudsman. In addition, a Presidential Anti-Graft Commission is tasked with investigating and hearing administrative cases of presidential appointees in the executive branch and government-owned and controlled corporations.

Soliciting or accepting any offering or giving a bribe are criminal offenses, punishable by imprisonment of between six and 15 years, a fine, and/or disqualification from public office or business dealings with the government. As with many other laws, however, enforcement of anti-corruption laws has been inconsistent. The Philippine government launched an initiative to strengthen public and private governance, including anti-corruption efforts, in cooperation with bilateral and multilateral aid donors in May 2000. Results of this initiative have been mixed and have not reached a critical mass to improve public perception appreciably.

The Philippine government has worked in recent years to re-invigorate its anti-corruption drive. In December 2003, the President issued an executive order creating an anti-corruption watchdog - the

Revenue Integrity Protection Service (RIPS) - in the Department of Finance that has worked closely with the Ombudsman to help curb corruption in revenue collection agencies. President Arroyo has articulated her desire to strengthen the Office of the Ombudsman to become as efficient as Hong Kong's Independent Commission Against Corruption, and each year since 2005, has made significantly higher budget requests for this office. In November 2004, the Philippines became eligible for the Millennium Challenge Account Threshold Program. In June 2006, the Millennium Challenge Corporation approved a two-year $21 million grant to implement the Philippines Threshold Country Plan which focuses on strengthening the anti-corruption capabilities of the Office of the Ombudsman and tax collection agencies, including RIPS.

Both foreign and domestic investors express concern over the propensity of Philippine courts and regulators to stray beyond matters of legal interpretation into policymaking functions and about the lack of transparency in these decision-making processes. In addition, there are many reports that courts influenced by bribery improperly issue temporary restraining orders impeding the conduct of legitimate commerce. Investors also have raised concerns that regulators rarely have any background in economics, business, or a competitive economic system, which enables entrenched interests to manipulate the legal system and regulatory process, whether by bribery or through exploiting the lack of expertise among regulators, to protect market positions.

QATAR

TRADE SUMMARY

The U.S. goods trade surplus with Qatar was $1.1 billion in 2006, an increase of $530 million from $539 million in 2005. U.S. goods exports in 2006 were $1.3 billion, up 34.9 percent from the previous year. Corresponding U.S. imports from Qatar were $262 million, down 41.6 percent. Qatar is currently the 62nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Qatar in 2005 was $5.4 billion (latest data available), up from $4.4 billion in 2004.

The United States and Qatar signed a Trade and Investment Framework Agreement (TIFA) in March 2004, providing a forum to address U.S. concerns.

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), Qatar applies the GCC common external tariff of 5 percent for most products, with a limited number of country-specific exceptions. Qatar's exceptions to the common external tariff include duty exemptions for basic food products such as wheat, flour, rice, feed grains and powdered milk. The tariff on alcoholic beverages and tobacco products is 100 percent. Qatar also has a 20 percent tariff on iron bars and rods, non-alloy hot-rolled steel and 12 millimeter steel bars. Projects funded by the Qatar Industrial Development Bank (QIDB) can be granted a customs duty waiver for the import of machinery, raw materials and other industrial inputs. Qatar is not a signatory to the WTO Information Technology Agreement.

Import Licensing

Qatar requires importers to have a license for most products, and only issues import licenses to Qatari nationals. Only authorized local agents are allowed to import goods produced by the foreign firms they represent in the local market. However, this requirement may be waived if the local agent fails to provide the necessary spare parts and backup services for the product. Pork and pork derivatives may not be imported.

Documentation Requirements

In Qatar, a letter of credit is the most common instrument for controlling exports and imports. When a letter of credit is opened, the supplier is required to provide a certificate of origin. The Qatari embassy, consulate or chamber of commerce should notarize the certificate of origin in the United States.

To clear goods from customs zones at ports or land boundaries in Qatar, importers must submit a variety of documents, including a bill of lading, certificate of origin, *pro forma* invoice and an import license.

All imported beef and poultry products require a health certificate from the United States and a *halal* slaughter certificate issued by an approved Islamic center in the United States. The Qatari embassy, consulate or chamber of commerce in the United States must approve all shipping documents.

STANDARDS, TESTING, LABELING AND CERTIFICATION

In October 2002, Qatar established a General Authority for Standards and Specification. However, most Qatari standards are derived from standards developed by the GCC. The National Health Authority (NHA) provides input on standards related to public health issues. Qatar enforces government-mandated shelf-life standards for about 75 food products, and although never officially endorsed, requires importers to comply with shelf-life standards defined in Gulf Standard 150/1993, Part II. Food products must arrive at the destination with at least half the shelf-life remaining, and the shelf-life validity of all food products should not be less than six months at the time of entry of the products into Qatar. All food products are examined at government central laboratories before they are distributed to consumers.

Qatar still imposes a ban on imports of U.S. beef in response to the discovery of Bovine Spongiform Encephalopathy (BSE) in a single dairy cow in Washington State. However, NHA officials now indicate that they have agreed to lift the BSE ban in principle, but are still working out the details of what their requirements will be. The latest information indicates that the NHA will adopt International Animal Health Organization (OIE) guidelines.

In February 2004, Qatar also banned imports of all U.S. poultry due to the discovery of low pathogenic avian influenza in a flock of chickens in Delaware and high pathogenic avian influenza in a flock of chickens in Texas. In May 2004, Qatar modified its policy to only ban fresh poultry from Delaware and Texas.

GOVERNMENT PROCUREMENT

Qatar gives preferential treatment to contractors that include high local content in bids for government tenders. As a rule, Qatar requires that suppliers be 51 percent Qatari-owned or that foreign firms have a local agent when submitting tenders, though in practice certain exceptions exist. Qatar gives a 10 percent price preference to local firms and a 5 percent price preference to GCC firms in all government procurement. Qatar is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Qatar was removed from the Special 301 "Watch List" in 2003 in recognition of the passage of the 2002 Copyright Law and the government's improved, sustained enforcement actions against copyright infringement. The copyright law provides a series of important changes to Qatar's legal framework. However, the law does not provide explicitly for national treatment or coverage of unpublished works and does not criminalize end-user piracy. In 2003, Qatar authorized government officials responsible for IPR enforcement to independently conduct raids and seize pirated material without Ministry of Interior officials, and the Copyright Office continues to prosecute resellers of unlicensed video and software. Successful raids, seizures and prosecutions of IPR violators have increased substantially in recent years and these efforts have significantly helped to reduce piracy in Qatar.

In recent years, the government of Qatar has committed to enforcing IPR pursuant to its WIPO and WTO obligations. Before 2006, the Ministry of Economy and Commerce submitted many cases to the Attorney General, but most were dismissed or never made it to court. However, that has now changed. Since January 2006, the Copyright Office has conducted approximately 60 raids on suspected IPR violators and forwarded 20 of these cases for prosecution.

Qatar joined the WIPO Copyright Treaty and Performances and Phonograms Treaty in April 2005 and is drafting the necessary implementing legislation and regulations.

Qatar uses the GCC patent law with derogations as needed to comply with its obligations under the TRIPS Agreement. It also established a joint committee between the Ministry of Economy and Commerce and the National Health Authority to coordinate their efforts and ensure that only patented products or authorized copies of pharmaceutical products are registered for sale. In 2006, an Emiri Decree on patents was issued requiring that: (1) only inventions of industrial use can be registered as a patent; (2) an industrial product or means or process of production must have something innovative about it to merit patent registration; (3) inventions in health, agriculture, plants and software development are not eligible for patent; (4) only Qatari citizens or foreigners of WTO signatory countries will be allowed to register a patent; (5) the Ministry of Economy and Commerce will frame and implement executive regulations to help enforce the law; and (6) the Ministry of Economy and Commerce will set up a patent registration office.

SERVICES BARRIERS

Agent and Distributor Rules

With the exception of 100 percent foreign-owned firms in the agriculture, industry, tourism, education and health sectors, all foreign firms operating in Qatar are required to engage local agents. Qatari laws state that only Qatari nationals can act as local agents, distributors or sponsors. Although the 2002 Commercial Agents Law grants agents and distributors exclusive rights to import, market and distribute particular goods and services, it allows individuals other than exclusive agents to import products provided they pay up to a 5 percent commission to the registered agent or distributor. In practice, some Qatari ministries waive the local agent requirement for foreign companies that have contracts directly with the government of Qatar. The Qatar Distribution Company (QDC) has the exclusive right to import and distribute alcohol.

Banking

In 2003, the Qatar Central Bank allowed foreign banks to establish representational offices and the existing foreign banks in Qatar to open new branches through a case-by-case waiver by Emiri Decree. In 2004, Law No. 31/2004 amended the Organization of Foreign Capital Investment Law to allow foreign investment in the banking sector with approval by decree from the Cabinet of Ministers. Qatari regulations for local and foreign bank practices are the same, with new licenses available through the Qatar Central Bank application process. In 2005, Qatar authorized foreign banks to open branches in the Qatar Financial Center (QFC), a virtual free zone for financial services. Foreign banks are authorized to conduct all types of business out of the QFC, but are informally “advised” to stay out of the retail banking business. Laws and regulations applied to foreign banks registered in the QFC are different and more progressive than the ones adopted by the Qatar Central Bank.

Insurance

In 2004, Law No. 31 amended the Organization of Foreign Capital Investment Law to allow foreign investment in the insurance sector with approval by decree from the Cabinet of Ministers. Foreign insurance companies wishing to operate in Qatar are subject to the same laws that apply to foreign firms in all other sectors. The QFC can also accommodate insurance companies, but not retail insurance.

Telecommunications

Although the Organization of Foreign Capital Investment Law (Law No. 13/2000) prohibits foreign direct investment in the telecommunications sector, foreign nationals are allowed to buy a limited quantity of stock in Qatar Telecommunications (Q-Tel) Company, which is majority-owned (55 percent) by the government of Qatar. Q-Tel had been granted a license to operate as the monopoly telecommunications provider in Qatar until 2013. However, Law No. 34 issued by Amiri decree in November 2006 eliminates Q-Tel's monopoly status and will allow foreign telecommunications companies to enter the local market as Internet Service Providers, mobile phone networks and cable television providers. The law further restructures the telecommunications industry by providing authority to the Supreme Council for Communications and Information Technology (ictQatar) to issue, amend, cancel, or renew all individual licenses in this sector. ictQatar is also responsible for adopting and implementing a comprehensive national plan for the telecommunications sector.

INVESTMENT BARRIERS

The Organization of Foreign Capital Investment Law (Law No. 13/2000) allows foreign investors, upon advance government approval, to own up to 100 percent of projects in the agriculture, tourism, education, industry, health and energy sectors. Foreign equity is limited to 49 percent in other sectors. Qatar amended the law in 2004 to allow foreign investment in the banking and insurance sectors upon approval by a decree from the Cabinet of Ministers. The investment law permits foreign investors to lease land for up to 50 years, renewable upon government approval. A law enacted in 2004 allows foreigners to own residential property in select projects in the Pearl of the Gulf Real Estate Development Project. In 2006, foreigners were also given rights to full ownership of property in the Pearl of the Gulf, Qatar Island, West Bay Lagoon, and Al Khor. Properties in high-rise buildings in residential areas and in government designated "Investment Districts" are covered by 99-year leases.

OTHER BARRIERS

Corporate Tax Policies

Qatar levies corporate income taxes on foreign firms at rates from 5 percent to 35 percent of net profits, including profits from majority-owned Qatari joint ventures exceeding 100,000 Qatari riyals ($27,000). All Qatari owned firms and joint ventures are exempt from corporate income taxes. Under Law No. 13 of 2002, the Ministry of Finance may grant a tax holiday of up to 10 years for new foreign investments in key sectors. Other foreign companies may be granted tax exemptions on a case-by-case basis by Emiri Decree.

RUSSIA

TRADE SUMMARY

The U.S. goods trade deficit with Russia was $15.1 billion in 2006, an increase of $3.7 billion from $11.3 billion in 2005. U.S. goods exports in 2006 were $4.7 billion, up 19.1 percent from the previous year. Corresponding U.S. imports from Russia were $19.8 billion, up 29.3 percent. Russia is currently the 33rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Russia in 2005 was $5.5 billion (latest data available), up from $3.8 billion in 2004. This number does not yet reflect substantial U.S. investments in Russia during 2006 in the energy, automotive, food-processing, consumer goods, information technology and banking sectors.

Russia is in the process of negotiating terms of accession to the World Trade Organization (WTO). On November 19, 2006, the United States and the Russian government signed a WTO bilateral market access agreement. The terms of that agreement are on USTR's website at :http://www.ustr.gov/World_Regions/Europe_Middle_East/Russia_the_NIS/Section_Index.html. The Russian government has completed its bilateral market access negotiations with most other interested WTO Members, and is now focused on multilateral negotiations regarding its terms for accession, as well as completing its implementation of WTO provisions, from the rules agreements covering areas such as non-tariff barriers and intellectual property rights to ensuring that state-owned and state-trading enterprises operate solely on commercial terms when they are engaged in commercial activity. To enter the WTO, the Russian government must also complete negotiations with WTO Members on the levels of funding for certain programs supporting its agriculture sector.

IMPORT POLICIES

Russia continues to maintain a number of barriers with respect to imports, including tariffs and tariff-rate quotas, charges and fees, and licensing, registration and certification regimes. Discussions continue within the context of Russia's WTO accession to eliminate these measures or modify them so that they are consistent with internationally accepted practices.

Quotas

In January 2003, the Russian government announced the imposition of a quota for poultry and tariff-rate quotas (TRQs) for pork and beef. These quotas became effective in April 2003 and May 2003, respectively. A United States – Russia Bilateral Meat Agreement (Meat Agreement) was signed in June 2005, establishing TRQs for beef, poultry, and pork, and a 15 percent tariff for U.S. high quality beef. It also calls for bilateral negotiations in 2009 to determine whether the TRQs will remain or whether Russia will provide tariff-only treatment for these products. Quota allocations under the Meat Agreement are based on historical export levels. The United States was actively engaged with the Russian government throughout 2006 to ensure that U.S. producers of poultry, pork, and beef continued to have access to the Russian market and that Russia implemented its obligations under the Meat Agreement. The WTO bilateral market access agreement with the United States sets out a framework, including the time schedule, for WTO negotiations on how such goods will be treated post-2009.

Import and Activity Licenses

Import licenses and activity licenses required for wholesale and manufacturing activities are necessary to import products such as alcoholic beverages, pharmaceuticals, products containing encryption technology, explosive substances, drugs, nuclear substances, hazardous wastes, and some food products.

The 2005 Law on Spirits eliminated some licensing requirements and discriminatory fees applied to imported spirits, but it established the requirement that importers must register with the Ministry of Economic Development and Trade (MEDT) and obtain a general activity license from the Federal Tax Service, Ministry of Finance. The fee for obtaining the wholesale license, which is valid for five years and is subject to annual inspections, is approximately $9,500.

As part of the bilateral WTO market access agreement with the United States, the Russian government agreed to set up a streamlined system for the import of goods containing encryption technology with transparent, nondiscriminatory and WTO-consistent procedures. The Russian government also agreed to allow the importation of most commercially-traded information technology and telecommunications goods after a one-time notification, or in some cases, with no licensing or evaluation requirements at all. The U.S. Government will continue to work on addressing the licensing barriers to trade in goods containing encryption technology and other products subject to licensing requirements. The system will operate on an interim basis in 2007.

Customs Issues, Taxes and Tariffs

In addition to tariffs, there are two types of charges applied to imports: the Value Added Tax (VAT) and selective excise taxes. The universal VAT rate was reduced from 20 percent to 18 percent in 2004, with the exception of foodstuffs, pharmaceuticals and medical supplies, for which the VAT is 10 percent. Some medical equipment is totally exempted from the VAT. Pharmaceutical importers have complained that new pharmaceuticals imported in the clinical trial stage (prior to registration) were improperly assessed the VAT because they could not produce a certificate of registration. There are ongoing discussions within the Russian government to lower the VAT further to 15 percent or 16 percent. However, no such proposals were included in the 2007 government budget law passed by Russia's parliament, the Duma.

The excise tax applies to a number of luxury goods, such as alcohol and cigarettes. Excise taxes for wine and spirits are 19.5 rubles per liter of ethyl alcohol and up to 108 rubles per liter for some wines. U.S. companies have faced significant obstacles trying to comply with the requirement to affix an excise stamp on bottles of spirits for which the excise tax has been paid (see Non-Tariff Barriers section). Excise taxes on other goods can total as much as 570 percent *ad valorem*.

U.S. industries complain of high tariffs on agricultural products such as sugar, distilled spirits, wine, fruit, processed food and forest products. As part of its WTO accession, Russia has agreed to bind its tariffs on all agricultural products, thereby providing more predictability on its tariff rates when Russia joins the WTO.

Russian import tariffs on automobiles, aircraft, and aircraft parts have presented particular obstacles to U.S. exports to Russia. The effect of the tariff, VAT and customs handling fees on aircraft was equivalent to a tax of 40 percent, making it virtually impossible for Russian airlines to afford to purchase foreign planes. The bilateral WTO market access agreement with the United States on tariffs and the bilateral agreement on leased aircraft will yield significant market access opportunities. When Russia joins the WTO, tariffs on aircraft will be substantially reduced. Tariffs on civil aircraft parts, including engines, will be reduced to an average of 5 percent. An agreement on leased aircraft, which entered into force on November 19, 2006, will immediately reduce tariffs on narrow body leased aircraft.

The current import duty on new passenger vehicles is 25 percent, to which an excise tax based on engine displacement and a VAT tax are added. The combination of these charges can increase import prices by 70 percent for larger U.S. passenger cars and sport utility vehicles. For motorcycles, Russia imposes a 20 percent special duty on large motorcycles, plus an additional 18 percent VAT, significantly increasing prices on imported large motorcycles.

In October 2006, Russia extended for 10 months an increase in the import duties to 15 percent on combine harvesters and threshers. Under the bilateral market access agreement on Russia's accession to the WTO, Russia agreed to rescind this increase by no later than July 2007, after which time duties will remain at 5 percent and will be bound upon accession.

As part of the bilateral market access agreement, tariffs on other key U.S. industrial exports will be cut substantially as well. Once Russia joins the WTO and the U.S. Congress grants Permanent Normal Trade Relations (PNTR) status to Russia, Russian tariffs on industrial products will be bound at an average of 8 percent, a reduction of approximately 36 percent from the rates applied in 2000.

A new Customs Code, intended to bring Russia’s customs regime into compliance with WTO requirements, came into force in 2004. It simplified customs processes and established specific procedures for the application and payment of tariffs. Russia also amended its Customs Tariff Law to update its Customs Valuation practices in line with WTO provisions. However, significant problems remain. The Russian government issues unpublished recommendations on import valuations to customs posts to help to combat undervaluation of imports by importers. However, these recommendations can also be applied as reference prices for customs valuation or substituted for the invoice value of the imports, making the practice WTO inconsistent. Russia also has not fully implemented the WTO Customs Valuation Agreement in its laws, and must issue additional regulations to complete the process prior to its WTO accession. In addition, Russia’s current customs clearance fees are not compatible with WTO obligations and will have to be revised. In terms of systemic concerns, U.S. exporters to Russia report that customs enforcement varies by region and port of entry and that frequent changes in regulations are unpredictable, adding to costs and delays at the border. Russia does not provide for the right to appeal customs decisions without penalty to a judicial authority, and, as in the case of the valuation recommendations, does not publish all laws, regulations, judicial decisions, and administrative rulings of general application to customs matters. The United States is working with Russia to make substantial improvements on these customs issues in the multilateral WTO Working Party process as part of its accession to the WTO.

Non-Tariff Barriers

U.S. companies continue to face a number of non-tariff trade barriers when exporting to Russia. Non-tariff barriers are a topic of detailed discussions in Russia’s WTO negotiations.

Pharmaceuticals

Decisions by the Russian government regarding which pharmaceutical products to place on reimbursement lists for state-provided healthcare are having an adverse impact on U.S. exports to Russia. U.S. industry reports that higher-priced imports, which are often safer and of a higher quality than locally-produced pharmaceuticals, are often absent from reimbursement lists and state purchases because the government focuses more on price concerns than on the quality and safety of the products.

Alcohol

As part of Law FZ 171, the “Law on Production and Turnover of Alcohol,” which went into force in April 2006, all customs duties, excise taxes and the VAT on alcohol now must be paid in advance of application for customs stamps, using a bank guarantee and deposit. The new regulatory regime relies on an information management system (UFAIS) for importers to print Universal Product Code (UPC) data on a stamp. This system, comprising both hardware and software, is expensive to purchase, difficult to use and has failed thus far to fulfill its purpose to track alcohol from manufacture or import to the retail sales point. There is no way to stamp miniature, food service-sized bottles (the stamps are too big). Businesses have experienced difficulties in re-stamping product imported prior to the new law’s introduction, and software glitches have caused importers’ data to be corrupted, costing them time and money.

The logistical and administrative problems above created a situation in 2006 where companies that wanted to comply with the Law’s stamping requirement could not comply. For much of 2006, the new stamps were not available and then the stamping machinery did not work. As a result a large volume of spirits was not re-stamped in time and had to be removed from retail shelves and relocated in warehouses in July 2006. Many bottles of spirits remain in wholesale warehouses because the appropriate legal provisions have not been established for wholesalers to apply for and obtain stamps. Approximately $60 million in U.S.-origin products for which the excise taxes and associated fees have already been paid remain in warehouses. Meanwhile, wholesalers are not legally allowed to apply the stamps on behalf of importers. Although in early 2007 the Russian government extended further the deadline for the bottles to remain in wholesale without facing confiscation or destruction, the underlying problems have not been addressed. The United States and other foreign governments are pressing the Russian government bilaterally and in the WTO multilateral process to find a long-term solution to these problems on an urgent basis.

The new requirements on spirits alcohol – information reporting requirements, usage of the UFAIS system, payment of the excise tax, application of the excise stamp, and import and licensing requirements – are also imposed on products such as perfumes, cosmetics, household cleaners and solvents containing more than 1.5 percent alcohol. The implementation of these rules in April 2006 severely disrupted trade. Such goods were eventually given a temporary extension from the application of the UFAIS reporting requirement, a significant burden for the small retailers of such goods, until December 31, 2006. At the end of 2006, the Duma amended the law to extend this temporary exemption until July 2007. In addition, it permanently exempted products in aerosol cans from the alcohol-related requirements. The United States is encouraging further amendment of the law to permanently exempt all non-food goods containing alcohol from the alcohol-related requirements above.

Development of Nuclear Power Generation

In October 2006, Prime Minister Fradkov signed a decree officially approving the Federal Targeted Program (FTP) on "Development of Russian nuclear power and industry complex for years 2007-2010 and further until 2015." The major goal is to accelerate the development of Russia's nuclear power industry. In accordance with the program, the total capacity of Russia's nuclear power plants (NPP) should reach more than 33 gigawatts (GW) by 2015. If FTP is successfully completed, Russia will have commissioned 10 new power units with a total capacity over 11 GW, and 10 additional power units will be in various phases of construction. The export arm of Russia’s nuclear power sector, Atomstroyexport, is a significant competitor to U.S. companies. Furthermore, Russia's lack of a nuclear liability law to provide adequate legal protection for U.S. firms creates a prohibitive risk to U.S. suppliers of equipment, fuel and nuclear energy services to Russia.

EXPORT POLICIES

The subsidy-like effect of Russia's current domestic gas pricing policy is a key issue due to the potentially adverse impact this policy may have on certain U.S. industries. The price of gas for Russian industrial consumers is artificially low and, according to numerous reports, prices are well below the full cost of production. The downstream effects of this pricing policy are significant, because gas sells on Russia's domestic market for approximately $40-$45/tcm, while estimates of cost-recovery levels are at roughly $35-$40/tcm, with gas exported to Europe fluctuating between $230 and $350/tcm over the past year. The Russian government recently approved a plan to increase domestic prices to European levels by 2011. Over time, this should provide an incentive for producers to adopt more efficient production practices and greater energy efficiency. The gas sector and Gazprom, Russia's near-monopoly supplier, play a significant role in Russia's economy. The Russian government is proceeding slowly and cautiously with reform of the sector.

Russia maintains export duties on approximately 460 types of products. The Russian government intends to gradually eliminate such duties, except for products deemed as strategic, such as hydrocarbons and scrap metals, although it introduced such duties on lumber in early 2007. In May 1999, Russia imposed a 15 percent export duty on ferrous steel scrap, which remained in effect in 2006. These export duties create distortions in ferrous scrap trade, an important input to steel. However, Russia has agreed to reduce this duty rate to one-third of current levels within five years of acceding to the WTO. Russia also currently maintains a 10 percent export duty on copper cathode while no export duty is charged on copper wire rod. These two export duties together have created a market distortion, which is promoting vertical integration within the Russian copper industry: Russian copper wire rod producers can obtain favorable prices on copper cathode inputs, since Russian cathode producers cannot export their product for its fair market value. As a result, it is advantageous to export the higher value-added product (copper wire rod). As part of the bilateral WTO market access agreement, however, Russia has agreed to eliminate its export duty on copper cathode within four years of its accession to the WTO.

A variety of agricultural products are subject to export licensing and/or tariffs, such as some fish products, cereals, oilseeds and wood products. Russia was not permitted to export beluga caviar in 2006, but a limited quota was approved under the Convention on the International Trade in Endangered Species (CITES) for 2007. No export quota was approved for certain other types of Russia caviar.

STANDARDS, TESTING, LABELING AND CERTIFICATION

U.S. companies cite technical regulations and related product testing and certification requirements as major obstacles to U.S. exports of industrial goods to Russia. Russian authorities require product testing and certification as a key element of the product approval process. Opportunities for testing and certification performed by competent bodies outside Russia to be recognized by Russian authorities for purposes of demonstrating compliance to their regulations are limited, and some view procedures associated with Russia's approach to "supplier's declaration of conformity" as unnecessarily burdensome. Manufacturers of telecommunications equipment, oil and gas equipment, and construction materials and equipment, in particular, have reported serious difficulties in obtaining product approvals within Russia. The current classification and approval system for food supplement and dietetic products is costly and lengthy. Food and dietetic products that are legally sold in the United States and the European Union are subject to an expensive and lengthy certification process in Russia that takes between three and five months. Products are also subject to redundant technical reviews conducted by both the Nutrition Institute and Ministry of Health, which take between six and twelve months.

The United States continues to work with the Russian government to bring its product regulations and certification requirements into conformity with international standards and practices. The Russian government is attempting to put in place the necessary legal and administrative framework to establish transparent procedures for developing and applying standards, technical regulations, and conformity assessment procedures to accomplish this goal. The December 2002 "Law on Technical Regulation" provides a framework for the development of specific requirements for industrial goods, as well as sanitary and phytosanitary requirements for agricultural commodities, processed foods, and plants. In early 2007, the Duma began the process of amending this key framework law. It remains unclear what the final changes will be and how those changes will affect: 1) the scope of coverage of the law; 2) the legal procedures that will be used to develop technical regulations within Russia; and 3) how stakeholders will be able to participate in the development of technical regulations in Russia.

In 2006, the Russian government took a decision on fees for the certification of products and services and issued a decree on the list of the goods as subject to mandatory certifications. It also continued implementing a program to develop or amend some 84 technical regulations that began in 2004. While drafts of some technical regulations have made their way to the Duma for approval, many remain to be completed and approved.

The Russian government has required imported pharmaceutical products to complete a complex certification process, but has said that it would move to a system of self-certification for pharmaceutical products. At the end of 2006, the first details about this contemplated new approach became available. On December 20, 2006, a lengthy list was published of documents and their related approvals and measures that are needed for registration of pharmaceuticals. While industry and the U.S. Government are still analyzing the impact of the new requirements, they do not appear to be an improvement over the existing practice, and do not appear to constitute a true self-certification process.

Sanitary and phytosanitary (SPS) restrictions have had a major negative effect on U.S. trade, with products deemed as "sensitive" by Russia being blocked, seemingly without a scientific basis. In early 2006, in the context of U.S. bilateral negotiations on Russia's accession to the WTO, the Russian government issued a decree allowing the adoption of international standards, guidelines and recommendations, such as those set by internationally recognized bodies such as Codex Alimentarius and the Office of International Epizootics (OIE). These international standards, guidelines, and recommendations formed the basis for addressing specific SPS issues. At the same time that the United States and Russia concluded the bilateral WTO market access agreement, Russia and the United States signed bilateral agreements to address SPS issues related to: trade in frozen pork; the certification of pork and poultry facilities for exporting products to Russia; trade in beef and beef by-products; and trade in products of modern biotechnology. The details of these agreements are set out below.

Pork

Historically, Russia has only accepted freezing as mitigation for trichinae for U.S. frozen pork destined for further processing. Costly testing for trichinae was required for all U.S. pork imported for retail sale. Russia has now agreed to accept freezing as mitigation for trichinae for U.S. pork for retail sale as well as for further processing. As a result, imports from certified plants are now permitted when accompanied by the export certificate that was agreed between Russia's veterinary service and the U.S. Department of Agriculture's Food Safety and Inspection Services (FSIS). These commitments went into effect on November 19, 2006.

Inspection of Facilities Producing Pork and Poultry

Previously, Russian and U.S. officials jointly inspected all pork or poultry facilities that wanted to export product to Russia. This onerous process delayed exports from new plants or plants needing to remedy a deficiency found during the joint audit until a joint inspection occurred. U.S. exporters also noted concerns about the time it took Russian officials to provide formal approval for facilities after the inspection and to provide an updated list of approved facilities to its customs officials so trade could begin. The WTO bilateral market access agreement authorizes FSIS to certify new facilities and/or facilities needing to remedy a deficiency found in the annual joint audit by Russian and FSIS officials. The Russian government also agreed to specific time frames to respond to requests to list the facilities approved by FSIS and to a new process for annual joint audits.

Export of Beef and Beef By-Products

U.S. exports of beef and beef by-products to Russia have been restricted since a case of bovine spongiform encephalopathy (BSE) was discovered in the United States in 2003. Russia immediately banned all imports of beef and beef by-products from the United States, thereby closing the largest U.S. export market for frozen livers. Pursuant to the terms of the WTO bilateral market access agreement, the Russian government will immediately open its market to de-boned beef, bone-in beef and beef by-products from cattle under 30 months of age. Once the OIE takes a decision on the U.S. risk status with regard to BSE, the Russian government will permit U.S. exports based on that risk status. This decision would open Russia's market to U.S. beef of all ages (excluding specified risk materials that the OIE requires to be removed).

Products of Modern Biotechnology

U.S. suppliers of products of modern biotechnology have faced an unpredictable regulatory environment in Russia. For example, Russian officials halted product registrations and approvals in the area of feeds in 2004, initiated legislative reforms and began work on the development of a new permanent regulatory system for all products of modern biotechnology. In accordance with the WTO bilateral market access agreement with the United States, Russia will maintain an interim approval and registration system for products of modern biotechnology that is science-based, transparent, predictable, and consistent with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (WTO SPS Agreement). In addition, Russia will establish a permanent biosafety regulatory system for products of modern biotechnology that is science-based, transparent, predictable, and consistent with the WTO SPS Agreement. The United States will have an opportunity to comment on the interim and permanent approval and registration systems for these products, and Russian officials will take U.S. comments into account. Although Russia agreed to register products covered by all pending applications that have received a favorable science-based risk assessment by November 15, 2006, the U.S. Government is continuing to follow-up on the registration process to ensure that all pending applications are addressed. Russia and the United States agreed to hold annual consultations on the status of applications for re-registration of products whose registrations have expired during the year and to establish an ongoing bilateral consultative mechanism to discuss issues of regulatory development in the area of agricultural biotechnology. The United States also continues to work with the Russian government on the significant reservations that U.S. industry has expressed regarding Russia's food labeling policy, including the substance of draft legislation on that subject.

In addition to these specific issues, exporters of agricultural goods face systemic concerns related to the certification of agricultural products. Russian authorities require phytosanitary and/or veterinary certificates for nearly all agricultural and processed food products. Russian authorities require that producers seek certificates from their domestic regulatory authorities for some products for which Russia has not provided scientific evidence of an alleged risk. For example, Russia requires certificates for roasted coffee, which due to the nature of the processing process, does not present a pest risk (and therefore, the United States does not issue a phytosanitary certification for roasted coffee). Russian authorities also require a sanitary-epidemiological certificate or certificate of state registration for the importation of non-food items such as styrofoam cups and furniture.

Also related to biotechnology, a ban by Russia on all U.S. rice imports was imposed in late September 2006, citing the discovery of genetically modified rice seeds in shipments of U.S. long grain rice. . This calls into question whether Russia observed WTO requirements as the ban was imposed without prior notice or sufficient justification. Furthermore, the ban was imposed on both biotechnology and conventional varieties of rice. In December 2006, Russia also imposed a ban on all origins of rice noting a variety of sanitary and phytosanitary concerns. Since the bans were imposed, the United States has been working both bilaterally and multilaterally to resolve this issue.

GOVERNMENT PROCUREMENT

The Russian government spends over a third of its budget on procurement; it spent more than $30 billion in 2005 on government procurement (2006 figures are not yet available). A new law on government procurement, (federal law "On Placement of Orders for Delivery of Goods, Performances of Works and Provision of Services for State and Municipal Needs") entered into force on January 1, 2006. It regulates tenders on all government purchases over $8,000 (except for those made in commodity exchanges). To improve transparency in the procurement process, tenders must be advertised on agency websites as well as on a consolidated government procurement website. The new law eliminates some restrictions on the participation of foreign suppliers, although it permits exceptions for reasons of national security or defense.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

U.S. industry continues to be concerned about the IPR situation in Russia. U.S. copyright industries estimate they lost in excess of $1.9 billion in 2005 due to copyright piracy in Russia (business software - $894 million; records and music - $475 million; motion pictures - $266 million; entertainment software - $224 million; and books - $42 million).

In 2006, Russia's optical disc production capacity continued to be far in excess of domestic demand, with pirated products apparently intended not only for domestic consumption, but also for export. The U.S. film industry estimates that more than 80 percent of all DVDs and approximately 66 percent of music CDs on the Russian market are pirated. However, legitimate DVD sales are on the rise, in part due to increased law enforcement action against pirates and a growing preference by the middle class for high quality products. Internet piracy continued to be a serious concern. Criminal investigations are ongoing against operators of the Russia-based download website www.allofmp3.com, which offers global distribution of pirated music and is the most notorious of several problem websites operating within Russia.

U.S. and multinational companies continue to report patent infringement and counterfeiting of trademarked goods as a problem, especially for consumer goods, wine, distilled spirits and pharmaceuticals. Several U.S. firms have experienced problems with trademark counterfeiting, with Russian enterprises attempting to appropriate well-known foreign trademarks not currently active in

Russia, although rights holders have been moderately successful in countering these schemes through the Russian court system or with the Russian Federal Service for Intellectual Property, Patents and Trademarks (Rospatent). U.S. firms should proactively take steps to protect their intellectual property in Russia, including registering their trademarks with Rospatent.

The United States is working to ensure that Russia takes appropriate actions to protect intellectual property rights. On November 19, 2006, as part of the WTO bilateral agreement, the U.S. Government and the Russian government concluded an agreement that sets out a blueprint for actions that Russia will take to address piracy and counterfeiting and improve protection and enforcement of intellectual property rights, both stated priorities of the Russian government. As part of the agreement, the Russian government has committed to fight optical disc and Internet piracy, protect pharmaceutical test data, deter piracy and counterfeiting through criminal penalties, strengthen border enforcement, and bring Russian laws into compliance with WTO and international IPR norms. This binding agreement is an integral part of the bilateral WTO market access agreement between the United States and Russia, and Russia's implementation of the commitments on IPR will be essential to completing the final multilateral negotiations on the overall accession package. In addition, the United States is reviewing Russia's status as a beneficiary country under the U.S. Generalized System of Preferences (GSP) Program. Russia has also been on the Special 301 Priority Watch List since 1997.

The most significant legislative development in 2006 was the Duma's consideration and adoption of Part IV of the Civil Code, which will replace most of Russia's IPR legislation with a single code. The Code and implementing regulations to be developed over the next year will go into effect on January 1, 2008. While Russian government ministries and the Duma took steps to address some concerns of certain rights holders and the U.S. Government regarding the new legislation, Part IV still contains provisions that raise concerns regarding consistency with WTO and other international agreements. The Russian government has pledged to ensure that Part IV and other IPR measures will be fully consistent with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) upon Russia's accession to the WTO.

In September 2006, amendments to the Law on Copyright and Related Rights came into effect, providing rights holders control over Internet distribution of their work.

Russia continues to deny national treatment for protection of geographical indications. As well, under Article 39.3 of the TRIPS Agreement, Russia must protect against unfair commercial use of undisclosed data submitted to government authorities to obtain marketing approval of pharmaceutical and agricultural chemical products. Russia currently does not provide such protection for pharmaceutical products. In late 2005, the Russian government proposed legislative changes to address these concerns. Unfortunately, these changes were not considered by the Duma in 2006. Russia committed in the November 2006 bilateral WTO agreement with the United States to work with the Duma to enact legislation to implement Article 39.3 of TRIPS by June 1, 2007.

Enforcement

Poor enforcement of IPR is a pervasive problem. The prosecution and adjudication of intellectual property cases remains sporadic and inadequate; there is a lack of transparency and a failure to impose deterrent penalties. Russia's customs administration also needs to significantly strengthen its enforcement efforts. Russian authorities initiated some enforcement actions in 2006, including raids on some optical disc production facilities and investigation of Internet sites. The November 2006 bilateral WTO agreement with the United States calls for specific actions to improve IPR enforcement.

Statistics provided by the Russian government indicate that Russian law enforcement has started to take action against pirate optical disk producers in the last few years. According to the Ministry of Internal Affairs and Rosokhrankultura, the agency responsible for implementing Russia's 2001 Licensing Law for optical media producers, raids during the first nine months of 2006 resulted in seven license suspensions and eight criminal prosecutions of plant operators. The Russian government committed in the November 2006 bilateral WTO agreement with the United States to strengthen the licensing regime for optical media plants. Necessary changes include denying new licenses to applicants known to have been engaged in piracy.

In the area of copyright infringement, 2,924 criminal cases were initiated in 2005. In 2006, 6,432 cases were initiated as of November 1. Russian authorities reported that 1,615 individuals were convicted of copyright offenses in the first nine months of 2006, as compared to 1,450 in the entire year of 2005. In trademark protection, whereas 545 criminal cases were initiated in 2005, over 500 were initiated in the first half of 2006. In 2005, 78 people were convicted of trademark offenses. In the first half of 2006, 95 were convicted. Finally, with regard to Internet piracy, Russian authorities claim to have initiated criminal cases against eight Internet sites distributing illegal software or counterfeit audiovisual products. Investigation and prosecution of the operators of the pirate website www.allofmp3.com are also ongoing, although progress is slow and their prospects are uncertain. Meanwhile, the site continues to operate.

Judicial System

While the Russian government has intensified the investigation and criminal prosecution of intellectual property rights infringers, cases often fail at the prosecution stage and few convictions for IPR violations ever result in prison sentences. Even where Russian law provides for serious penalties such as the destruction of counterfeit or pirated goods, products seized during enforcement actions often are not destroyed and consequently may return to the stream of commerce even if they are found to be illegal. In addition, production lines and equipment used for IP infringing activities are rarely seized, allowing pirates to continue their illegal activities either elsewhere or under a different corporate entity. In the vast majority of cases, alleged infringers receive small fines or suspended prison sentences. As part of the November 2006 bilateral WTO agreement with the United States, the Russian government made a commitment to take criminal actions against commercial scale piracy, with the objective of permanently closing down the production of optical media containing pirated and counterfeit material. It has also undertaken commitments to enact legislative amendments to provide broader authority to order the seizure and destruction of machinery and materials used in the production of infringing goods, and to make other improvements to the IPR legislative framework.

Russian administrative and judicial review bodies are beginning to become active in protecting IPR, and the number of police and judges with relevant expertise, though still small, is expanding. At the prosecutorial and judicial levels, many officials still do not consider IPR infringement a serious offense when compared to other crimes, although an increasing number of prosecutors are willing to file cases related to copyright infringements. On June 19, 2006, the Russian Supreme Court Plenum adopted a long-awaited resolution issuing guidelines on the application of civil IPR legislation on copyright and neighboring rights. In the November 2006 agreement, the Russian government agreed to propose to Russia's Supreme Court that it clarify practices relating to the imposition of penalties for IPR crimes, including imposition of penalties that take into account the high degree of public harm from IPR infringement and the objective of preventing future crimes.

U.S. investors generally consider the Russian court system ill-prepared to handle sophisticated patent cases. However, a specialized higher patent chamber has been established at Rospatent, which has brought greater expertise and efficiency to the adjudication of patent and trademark disputes.

SERVICES BARRIERS

Reforms in Russia's economy during the last decade allowed new service sectors to emerge and contributed to the further development of existing sectors. Services providers often operated without sufficient regulatory and institutional framework, yet, in recent years, Russia's legislation and regulations have begun to catch up with the market. Russia's services market is relatively open to U.S. service suppliers in areas such as professional services and distribution, but specific problems remain in particular areas. The ability to provide services to public utilities and certain energy-related services (see section on energy), remains limited. The process for an individual or a company to obtain a license to provide a service remains difficult.

As part of the bilateral WTO market access agreement with the United States, Russia has committed to liberalization in a broad range of service sectors. Once Russia is a WTO Member and has Permanent Normal Trade Relations status, U.S. firms will have further improved access to service sectors including banking and securities, insurance, telecommunications, audio-visual services, distribution, express delivery, energy services, environmental services and professional services.

Financial Services and Insurance

The 1996 federal law "On Banks and Banking Activity" permits foreign banks to establish subsidiaries in Russia. As part of its bilateral WTO accession agreement with the United States, Russia has agreed to allow 100 percent foreign ownership in the banking sector. It has also agreed to allow the cross-border supply of services, such as financial leasing, financial information and data processing, credit cards and other types of payments, and advisory services. Starting in January 1, 2008, foreign-invested companies will be allowed to provide asset management services to investors. With respect to permitting banks to establish branches in Russia from abroad, the Russian government has indicated it will return to consideration of this issue upon joining the OECD or in the next multilateral round of WTO negotiations, whichever comes first.

While foreign-source banking capital in Russia now accounts for between 12 percent to 15 percent of aggregate banking capital, the Russian government retains the prerogative to limit the foreign-sourced element of charter capital to 50 percent of the total charter capital. Calculation of the foreign-sourced element of the cap, however, is subject to several exclusions. If the ratio of foreign-sourced to total charter capital ever exceeds the 50 percent cap, Russia's regulators have the discretion to take only those actions specified in Russia's WTO commitments.

In the insurance sector, foreign insurance companies have been allowed to operate in Russia since 1999, but are subject to a 49 percent equity restriction. Foreign firms that were active in Russia when this requirement came into effect, however, were grandfathered and are not subject to the foreign equity limit. In January 2004, a law came into effect that, based on a 1994 Russia-EU treaty, effectively exempts EU-based insurance companies from the 49 percent foreign equity limitation. This exemption also applies to insurance companies based in the EU that have since been purchased by non-EU foreign companies. The 2004 law retains the requirement that chief executives and chief accountants of foreign insurers operating in Russia be Russian citizens.

Total foreign capital in the Russian insurance sector is currently limited to 25 percent. The Russian government has agreed to a significant level of market access and national treatment for foreign insurance companies upon its accession to the WTO. As part of its bilateral WTO market access agreement with the United States, Russia will allow foreign insurance companies to operate through subsidiaries, including 100 percent foreign-owned non-life insurance companies, upon its accession to the WTO. The government of Russia has also agreed to allow insurance branching from abroad at the end of a nine-year transition period. As in the banking sector, Russia will maintain the discretion to limit foreign-sourced charter capital in the insurance sector. Exclusions from the ratio and limits on actions that Russia's regulators can take also apply to the insurance sector.

Telecommunications

In the telecommunications sector, the 2004 Law on Communications was amended in July 2006 by the law "On Information, Information Technologies and Information Protection." The 2006 law's impact on competitive alternative (non-incumbent) telecommunications operators, many of which enjoy large foreign investment, has been substantial, since these companies now fall under tight government regulation. In particular, regulations on interconnection – the process by which alternative operators connect their networks to the Russian public telephone network – place interconnection contracts and fees under the regulatory authority of the Ministry for Information Technologies and Communications. Alternative operators fear that these fees will be raised to subsidize network upgrades of government-owned and ministry-controlled local and long distance operators.

Many in the telecommunications industry have been disappointed that the new law has not improved transparency in the licensing process, and have criticized the five- to ten-year license validity, which they argue do not allow them sufficient time to recoup their investment. The Federal Anti-Monopoly Service has challenged in court the manner in which the Ministry for Information Technologies and Communications issues licenses to Russian mobile phone operators. As a result, the Ministry has been ordered to issue licenses on a non-discriminatory basis for all operators, which may benefit companies with foreign investment.

The Federal Anti-Monopoly Service, in September 2006, also cited the three largest mobile phone operating companies as charging discriminatory rates to other operators. Two of the three companies subsequently revised their rate schedules, but the third, allegedly linked to the Ministry for Information Technologies and Communications, has resisted.

The State Radio Frequency Commission (under the Ministry for Information Technologies and Communications) intends to allocate radio frequencies in the 1935-1980 MHz, 2010-2025 MHz and 2125-2170 MHz bands for the development of mobile IMT-2000/UMTS standard networks in Russia. As of January 16, 2007, Russia's Federal Communications Agency (Rossvyaz) began accepting bids through February 26, 2007 for three 3G licenses, on frequencies formerly reserved for military or government use but now being opened for commercial use. The license fees have been set at 2.64 million rubles (roughly US$100,000), but criteria for the winning bidder(s) will include significant investment in network infrastructure development under certain deadlines and successful bidders will be required to begin offering commercial 3G services within two years of gaining their licenses. Potential opportunities for

U.S. companies will most likely be as subcontract suppliers to the successful bidders. In 2006, the Federal Agency for Networks started granting WiMAX licenses in the 2.5-2.7 GHz range.

Certification of new products in the telecommunications industry takes an average of two months, down from four months a few years ago, but the process still suffers from a lack of transparency.

There are significant barriers in the provision of satellite telecommunications services in Russia. In particular, satellite regulation is not transparent. The legal requirements and administrative responsibilities associated with the provision of these services appear to be discriminatory, with the Russian government demonstrating a preference for Russian satellite communications systems, which puts competing satellite systems at a disadvantage.

The satellite industry reports that there is a burdensome certification process in place, and a local presence requirement further creates barriers to doing business in Russia. Telecommunications and media services companies also report investment restrictions. Russian entities with more than 50 percent foreign ownership are prohibited from sponsoring television and video programs or from establishing television organizations capable of being received in more than 50 percent of Russia's territory or by more than 50 percent of the population.

INVESTMENT BARRIERS

Despite the passage of a law regulating foreign investment in June 1999, Russian foreign investment regulations and notification requirements can be confusing and contradictory. Corruption in commercial and bureaucratic transactions and problems with the implementation of customs regulations also inhibit investment. U.S. trade and investment in Russia would benefit from improved dispute resolution mechanisms, better protection of minority stockholder rights, the adoption of international accounting standards, and the adherence by companies to business codes of conduct. Initiatives to address these shortcomings, either through regulation, administrative reform, or government-sponsored voluntary codes of conduct, have made little headway in countering endemic corruption. More transparent implementation of customs, taxation, licensing and other administrative regulations is necessary.

National Treatment

The 1999 Investment Law codifies principles of national treatment for foreign investors, including the right to purchase securities, transfer property rights, pursue rights in Russian courts, repatriate funds abroad after payment of duties and taxes, and receive compensation for nationalizations or illegal acts of Russian government bodies. However, the law goes on to state that federal law may provide for a number of exceptions, including, where necessary, for “the protection of the constitution, public morals and health, and the rights and lawful interest of other persons and the defense of the state.” Thus, a large number of broadly-defined exceptions give the Russian government considerable discretion in prohibiting or inhibiting foreign investment. The law provides a “grandfather clause” that stipulates that existing ‘priority’ foreign investment projects with foreign participation of over 25 percent be protected from unforeseeable changes in the tax regime or new limitations on foreign investment. The law defines “priority” projects as those with a foreign charter capital of more than $4.1 million and with a total investment of more than $41 million. However, the lack of corresponding tax and customs regulations means that any protection afforded investors by this clause is only theoretical.

Foreign investment in businesses engaged in production and distribution of distilled spirits is limited to 49 percent. Foreign investment in the electrical power giant, Unified Energy Systems (UES), is limited to 25 percent. In practice, these limits have been exceeded, and there is discussion of whether to eliminate or raise the limits. The sale of UES subsidiaries began with the first Wholesale Generating Company selling 14.4 percent of its shares in November 2006. UES officials say that foreign companies are welcome to participate in the tenders as more power generation assets are put on the market in 2007.

Drafts of a new Law on Strategic Sectors have shown that foreign investment in the following sectors may be subject to prohibition and/or more burdensome approval requirements: enterprises in the nuclear industry or involved in handling radioactive materials; enterprises involved in work on infectious diseases; arms, munitions and military equipment production, maintenance or repair; the aviation and space industries; data-transmission infrastructure; production and distribution of encryption technologies and equipment; and production and sales of goods and providing services under conditions of a "natural monopoly" (e.g., activities such as operating certain gas networks); among others sectors. This draft law may be submitted to the Duma in 2007.

Taxes

In response to investor concerns over the arbitrary and heavy-handed application of the tax code, the Russian government initiated a package of tax reforms in 2005 that was designed to limit aggressive tax collection practices while lowering the overall tax burden. The Duma continues to work on a series of measures that are expected to introduce tax benefits for the high technology sector, protect the rights of investors with licenses to work in the energy sector, and raise the transparency of the tax audit process. The corporate profit tax has been 24 percent since 2002.

Regions and municipalities have the authority to grant exemptions to the regional portion of profits taxes. Regions are not able to grant individual tax exemptions.

Companies report that VAT refunds to a Russia-based exporter, which should be provided within three months after a claim is submitted, often do not occur on time, with customs and tax authorities applying a number of burdensome additional requirements. In addition, input VAT is often not refunded for a number of reasons, forcing exporters to seek court enforcement VAT refunds on exports are also the source of significant fraud, making it that much more difficult for legitimate exporters to obtain refunds. Legislation to simplify VAT reimbursements took effect on January 1, 2007. Under the new law, VAT refund processing time is expected to fall from three months to two weeks. In addition, during the course of their audits, Federal Tax Service officials will have the authority to confiscate improperly disbursed VAT refunds, with penalties.

Duties on the production and export of oil, which are generally quite high, have been adjusted several times over the past few years. In 2003, new legislation restored full discretion to the Russian government in establishing export duties on refined petroleum products. Changes in the tax code in 2004 shifted the burden away from manufacturing and services and towards the energy sector. In 2006, the Russian government passed legislation that will put into place a differentiated tax regime on oil production for certain regions to help address the recent trend of slowing growth in oil production.

Energy Sector

In 2006, the Russian government decided to initiate amendments to the current Law on Subsoil Use rather than pursue the entirely new law it had been working on for several years. In these amendments, the Russian government may include language that would restrict foreign company participation to minority stakes in certain "strategic" fields, including the activity of natural resource extraction. The proposed amendments indicate that foreigners can only participate as a minority in a strategic field development.

The Russian government recently opened up its two key energy firms – Gazprom and Rosneft – to wider participation by non-state investors. In December 2005, the government eliminated the Gazprom "ring-fence" – the cap on foreign share ownership in the company. Gazprom has been acquiring other assets in related industries (electrical generation and oil) and has teamed up with Russia's largest coal producer in what appears to be an effort to create a national champion in the energy sector. In addition, several major oil companies are working out the terms for joint exploration and development of large gas fields under Gazprom's control. In July 2006, the Russian government held an initial public offering on the London Exchange for the oil company, Rosneft.

The Russian government will not enter into any further Production Sharing Agreements (PSAs - designed for energy projects that require high capital expenditure and a long period before profits or significant tax revenues are generated). Prior to 2003, three PSA regimes were in place: the Sakhalin I and II consortia, and Kharyaga. This year, the operator of Sakhalin II, Sakhalin Energy, has been subject to criticism by the government for alleged environmental violations that occurred during pipeline construction. The members of the Sakhalin Energy consortium (led by Royal Dutch Shell) entered into discussions with the Russian government which resulted in the consortium agreeing to reduce its stake and giving Gazprom a controlling share.

In addition, the Caspian Pipeline Consortium (CPC) project, operational as of 2001, continues to seek authorization from the Russian government to allow expansion of the pipeline's capacity. (Pipeline expansion requires unanimous approval from the 11 shareholders in the consortium.) Final agreement could come in 2007.

Aviation

Many of the Russian-flagged carriers have aging fleets and use outmoded avionics and engines, but several are seriously considering significant purchases or wet-leases of foreign aircraft in an attempt to be more competitive with Western airlines. Russia's aircraft manufacturers only produce ten planes per year on average and therefore cannot keep up with Russian airlines' projected demand for 1500 additional planes in the next twenty years.

Current Russian law stipulates preferential treatment (tax holidays, guarantees on investment, etc.) for Russian and foreign investors in aviation-related research and manufacturing ventures. However, it limits the share of foreign capital in aviation enterprises to less than 25 percent and requires that board members and senior management staff be Russian citizens. There is speculation that the 25 percent limit could be raised or eliminated to make way for further investment.

The government is also looking to reorganize and revitalize Russia's aircraft industry in the context of a larger restructuring plan for Russia's defense industry. Civil aviation and the aircraft manufacturing industry are under considerable Russian government scrutiny following three major airplane crashes in 2006. Large-scale consolidation of the aircraft industry took place with the government creation of the Unified Aircraft Corporation (UAC). The Russian government expects the UAC to fulfill no fewer than twenty contracts in the next year for helicopters, sports planes and engines (worth approximately $380 million). The UAC is already negotiating with European Aeronautic Defence and Space Company (EADS) for long term design contract work and a possible joint-venture on the next generation of Airbus jets, and in 2006, the Russian government acquired 5 percent of EADS.

Capital Flows

On July 1, 2006, Russia began allowing the free flow of capital into and out of its financial system. The Central Bank no longer maintains either minimum-time requirements on capital flows or mandatory reserve requirements on the movement of capital.

ELECTRONIC COMMERCE

Electronic commerce exceeded forecasted growth in 2006, increasing from approximately $1 billion in 2005 to over $1.2 billion in the first six months of 2006. The volume is growing at a brisk pace and is expected to continue, though in comparison to many other countries, electronic commerce remains an embryonic market in Russia. The number of stores on the Russian Internet is estimated at only 2,000 to 4,000, and many do not accept on-line payments, merely using their websites for cash on delivery requests. Although Internet access in Russia is growing steadily, penetration is less than 20 percent of the population, with over 30 percent of these users located in the Moscow and St. Petersburg regions.

On January 1, 2005, the "Law on the Protection of Consumer Rights" took effect, which allows consumers a seven-day period to return goods purchased online. The "Law on Personal Data" came into effect in July 2006, and provides for the protection of consumer information. A draft law on electronic trade has been stalled in the Duma for several years. While closely following an International Chamber of Commerce model bill, it has significant problems, including the fact that it limits electronic transactions to the sale and purchase of moveable goods, services agreements, and shipments.

Russian law does not currently provide identical legislative protection for both electronic and paper documents. Because of this discrepancy, electronic settlement of outstanding charges is problematic, and currency control provisions may apply when paying in a currency other than rubles. The tax effect of electronic commerce is virtually unexplored, and this area of the law is still developing.

Registered trademarks are not recognized in Russia as entailing rights to the equivalent domain names. This has led to cases of cyber-squatting where intellectual property rights infringers register domain names that are identical or similar to established trademarks in hopes of illicit financial gain. The courts have taken divergent approaches to litigation arising from such disputes. The new Part IV of the Civil Code, which will replace the existing Russian intellectual property rights laws after January 1, 2008, contains provisions that address this issue, although it is difficult to tell at this juncture whether it may indeed correct the problem.

A law on electronic digital signatures went into effect on January 14, 2002. This law does not follow the Model Law on Electronic Signatures of the U.N. Commission on International Trade Law, but rather defines electronic signatures strictly, making public-key technology the sole acceptable digital signature technology. It also requires that hardware and software used in digital signature authentication programs be certified in Russia. This gives the Russian government the right to insist on the decompilation of electronic signature programs. These requirements, in addition to the aforementioned licensing requirements related to goods with encryption technology, present serious obstacles to trade in goods that Russia requires for further development of electronic commerce.

OTHER BARRIERS

The U.S. logging industry reports that illegal logging accounts for as much as 20 percent to 30 percent of Russia's timber harvest. Illegal wood supplies have begun to appear in China, hurting U.S. exports to that market. Illegal logging continues to increase, particularly in the Far East due to its proximity to China.

According to World Wildlife Fund data, the share of unregistered wood to total volume of timber consumption is 53 percent in Chita region, 34 percent in Primorskiy kray, 33 percent in Khabarovsk kray, 17 percent in Vologda region, and 10 percent in Krasnoyarsk kray.

SOUTHERN AFRICAN CUSTOMS UNION

TRADE SUMMARY

The U.S. goods trade deficit with Southern African Customs Union (SACU) countries was $3.8 billion in 2006, an increase of $1.1 billion from $2.7 billion in 2005. U.S. goods exports in 2006 were $4.6 billion, up 12.9 percent from the previous year. Corresponding U.S. imports from SACU countries were $8.5 billion, up 24.5 percent.

The stock of U.S. foreign direct investment (FDI) in SACU countries in 2005 was $3.7 billion, up from $3.5 billion in 2004.

OVERVIEW

The Southern African Customs Union links the trade regimes of Botswana, Lesotho, Namibia, South Africa and Swaziland. The South African economy dominates SACU, representing approximately 91 percent of SACU's 2003 gross domestic product of $175 billion. There are currently no internal tariff barriers among SACU members. All SACU members except Botswana are members of the Common Monetary Area, with currencies pegged to the South African rand. Imports from outside SACU are subject to a common external tariff. The 2002 SACU Agreement, which became fully operational in 2004, provided for a more democratic structure that reduces reliance on South Africa for administrative decisions. The agreement set up a Council of Ministers (COM) as the supreme decision making body for SACU. The COM is supported by the Commission of Senior Officials (a group of technical experts) and a SACU Secretariat located in Windhoek, Namibia. A SACU Tariff Board formulates and implements tariff policy; it reports directly to the COM.

The United States began free trade agreement (FTA) negotiations with the five SACU countries in June 2003, but active negotiations were suspended in April 2006. As a way forward in the U.S.-SACU FTA negotiations, the United States has proposed the development of a new type of agreement (called a Trade and Investment Cooperation Agreement or "TICA"). The proposed U.S.-SACU TICA would be a framework for trade and investment promoting activities that could provide the "building blocks" for the future resumption of FTA negotiations, while allowing the United States and SACU to take meaningful interim steps towards improving their trade and investment relationship.

The U.S.-SACU TICA would establish a forum for consultative discussions on a wide range of trade and investment issues, including, but not limited to, FTA issues. The proposed TICA would establish a Consultative Council that would oversee the implementation of the TICA, set up working groups and monitor progress towards the negotiation of various trade- and investment-related agreements. The TICA provides an opportunity to address trade constraints on U.S. exports to SACU countries, including relatively high tariffs and import restrictions on certain U.S. exports; insufficient copyright protection for software, films and music; and barriers in telecommunications and other key service sectors. SACU countries have recently negotiated free trade agreements with MERCOSUR and the European Free Trade Association.

IMPORT POLICIES

Tariffs and Non-Tariff Barriers

Nearly all intra-SACU trade in goods is free of barriers. Imports from the rest of the world face a common external tariff and a common excise tax. Revenue flows into a common consolidated revenue fund controlled by South Africa. Since the completion of the World Trade Organization (WTO) Uruguay Round in 1994, SACU countries, led by South Africa, have reformed and simplified their common tariff structure. Tariff rates have been reduced from a simple average of more than 20 percent to 5.8 percent. Notwithstanding these reforms, importers have complained that the SACU tariff schedule remains complex and can create uncertainty. In addition, tariff rates mostly fall within eight levels ranging from zero percent to 30 percent, but some are higher, such as those for most apparel products. Many of South Africa's specific and composite duties were converted to *ad valorem* rates, with a few exceptions remaining in a limited number of sectors, including textiles and apparel products. In the Uruguay Round, South Africa agreed to a twelve-year phase-down of duties on textiles and apparel, but unilaterally moved to expedite its phase-down process. As of September 1, 2002, the following SACU rates, which are also the final phase-down rates, apply: apparel - 40 percent; yarns - 15 percent; fabrics - 22 percent; finished goods - 30 percent; and fibers - 7.5 percent. Tariff rates on cars, light trucks, and vans are still at the high level of 36 percent, while the rate of duty on new automobile parts is 28 percent.

Country-specific information on the five SACU Members follows.

1. SOUTH AFRICA

IMPORT POLICIES

The International Trade Administration Commission (ITAC) is tasked with administering South African trade laws. Its specific responsibilities include:

- Tariff Administration: ITAC administers tariff-related programs, including the Motor Industry Development Program (MIDP) and the Duty Credit Certificate System (DCCS). In addition, interested parties may petition ITAC to review tariffs with the purpose of reducing or increasing them;

- Trade Remedies: ITAC administers the antidumping and countervailing duty and safeguard laws. The textiles and apparel industry was the first to utilize the ITAC safeguard procedures introduced in 2004 when it filed petitions for protection against rising Chinese imports. In response, the government imposed a quota system limiting certain Chinese textile and apparel imports, which became effective January 1, 2007; and

- Import and Export Control: ITAC issues import and export permits for certain items designated by the Minister of Trade and Industry under the authority of the International Trade Administration Act of 2002 (which replaced the Import and Export Control Act of 1963).

Tariffs

ITAC continues to receive requests for tariff protection from a number of industries, and U.S. companies have cited protective tariffs as a barrier to trade. Under SACU, products from Botswana, Lesotho, Swaziland and Namibia enter South Africa duty-free. In a few cases, products from these countries compete directly with U.S. goods that are subject to duties. One example is soda ash imported from Botswana at a zero duty, while soda ash from the United States faces a 5.5 percent duty. If tariffs on U.S. soda ash were removed, U.S. industry estimates that U.S. exports of high quality soda ash to South Africa could increase from less than $8 million to $25 million, closer to its historical level. The soda ash duty benefits Botswana, the only producer of soda ash within SACU. A longstanding complaint from this Botswana producer to South Africa's Competition Commission law could result in a prohibition of U.S. exports of soda ash. Initially, the Competition Commission accepted the complaint as a "per se" offense, but a recent decision by the South African Supreme Court of Appeal remanded the case to the Competition Commission to confirm that U.S. exports have actually damaged the South African market. The Commission's appellate division will proceed on the merits of the case following a procedural hearing.

Non-Tariff Measures

The Minister of Trade and Industry may, by notice in the Government Gazette, prescribe that no goods of a specified class or kind be imported into South Africa, except under the authority of and in accordance with the conditions stated in a permit issued by ITAC. The main categories of controlled imports are as follows:

- Used goods: ITAC may require import permits on used goods or substitutes if such goods are not manufactured domestically, thus creating a *de facto* ban on most used goods. While designed to protect the domestic manufacture of clothing, motor vehicles, machinery and plastics, these restrictions limit imports of a variety of low-cost used goods from the United States and Europe;

- Waste, scrap, ashes and residues;

- Other harmful substances;

- Goods subject to quality specifications: This restriction permits the monitoring of manufacturing specifications that enhance vehicle safety (such as in the case of tires) or protect human life.

Other often-cited non-tariff barriers to trade include port congestion, customs valuation above invoice prices, theft of goods, import permits, antidumping measures, IPR violations, an inefficient bureaucracy and excessive regulation.

ANTIDUMPING AND COUNTERVAILING DUTIES

The government promulgated antidumping regulations in 2003, and countervailing duty regulations in 2005. Although South Africa initiated 22 antidumping investigations in 2005, it has only initiated three new antidumping investigations in 2006. Exports from China, India and Korea are most frequently involved in South African investigations, while there have been nine investigations of U.S. exports since 1995. Transparency and due process remain issues regarding the actions of the ITAC and its administration of South Africa's antidumping laws and regulations.

During 2006, ITAC initiated an antidumping investigation into the alleged dumping of white self-copy paper imported from the United States. ITAC also completed a sunset review of antidumping duties on frozen chicken meat portions imported from the United States, which resulted in the continuation of the antidumping duties imposed on this product. In addition to frozen chicken meat portions, South Africa imposes anti-dumping duties on U.S.-origin suspension PVC, roller bearings, l-lysine feed supplements and acetaminophenol.

Free Trade Agreement with the European Union

In 2000, South Africa and the European Union (EU) began to implement provisions of their Trade, Development, and Cooperation Agreement (TDCA). Under the TDCA, South Africa and the EU agreed to establish a free trade area over a transitional period of up to 12 years for South Africa, and 10 years for the EU. The agreement provides for the reduction and eventual elimination of duties on approximately 85 percent of the products imported by South Africa from the EU, and 95 percent of the products exported by South Africa to the EU. The agreement exempts certain agricultural products from liberalization. Some U.S. businesses exporting to South Africa are concerned that their products will be less competitive because of preferences for EU products that the TDCA provides. An example includes the tariff differential between EU and U.S. bottled and bulk distilled spirits; another example is automobiles.

In November 2005, South Africa and the EU completed a work program on automobile trade as part of the TDCA. The EU agreed to phase out all tariffs on South African automotive imports by 2010. South Africa agreed to reduce tariffs on European car imports from 25 percent to 18 percent by 2012. Currently, 51 percent of South Africa's vehicle and component exports go to the EU.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The South African Bureau of Standards (SABS) often adopts European Union standards rather than U.S. or other international standards. The U.S. Government is working with SABS to consider standardization policies, which would allow for adoption of standards that continue market access for U.S. products.

Apparel, Textiles, Shoes and Leather Goods

The Minister of Trade and Industry published regulations in 2005 that would have prohibited the importation or sale of textiles, apparel, shoes and leather goods in South Africa unless they are labeled in such a way that it is clear which country produced the goods. These regulations would have required the inclusion of the South African importer's registration code on the label of each item. U.S. industry members found this regulation to be particularly burdensome and submitted comments to the World Trade Organization (WTO) to this effect. Due in part to U.S. industry concern and intervention, South Africa revised its original labeling regulation. The new regulation, published on December 14, 2006, no longer requires a permanent label identifying the importer registration code for imported goods.

Biotechnology

The South African government generally supports biotechnology: transgenic varieties of cotton, corn and soy are approved for commercial planting and account for approximately 92 percent of South Africa's cotton, 29 percent of its corn and 59 percent of its soybeans.

U.S. agricultural interests in South Africa are wide-ranging and diverse. Wheat is the main U.S. export, followed by many other bulk, intermediate and consumer-ready products. Those affected by biotechnology issues are corn, soybeans and seeds (corn, cotton and soybeans). Food aid passage through South Africa to other destinations can also be affected by South Africa's genetically-modified organism (GMO) policies.

South African biotechnology regulatory matters are discussed and decided by an Executive Council with representatives from eight departments. An Advisory Committee consisting of experts from around the nation carry out risk analysis on biotechnology products and give their recommendations to the Council for the final approval of any biotechnology product, e.g. opposition to the use of genetically modified grapes at Stellenbosch University. The Advisory Committee and the Council do not meet frequently, so decisions are often delayed. Still, the regulatory structure in general is very progressive and several genetic transformation events have received approval for commercial planting. However, recently there have been some public objections from groups opposed to biotechnology products. These groups are demanding unscientific information from the GMO Registrar's office of the National Department of Agriculture and have effectively slowed the process for new approvals.

South African farmers plant biotechnology products such as corn, cotton and soybeans. According to the International Service for the Acquisition of Agri-Biotech Application (ISAAA), South Africa's acreage of biotechnology product crops rose to 500,000 hectares in 2005, placing the country third among the top fifteen growers of biotechnology products varieties. The plantings for 2006 are expected to be between 700,000 and 1million hectares.

Industry analysts estimate that cotton has seen the highest rate of adoption with 92 of the local crop now utilizing biotechnology. South African industry was also quick to adopt a new genetically modified (GM) cotton seed with traits of both insect resistance and herbicide tolerance that was approved in September 2005. Those varieties constituted 40 percent of the cotton planted last year, while varieties with only insect resistance constituted 39 percent and those with herbicide tolerance 13 percent.

U.S. grain producers raised concerns about the treatment of "stacked events" when it comes to import approval for biotechnology products. Although the U.S. Government considers products containing a combination of two previously approved genetic modifications (such as for insect resistance and herbicide tolerance) as "conventional," only encouraging producers to notify the U.S. Government of such "stacked events," South Africa – like the EU – considers "stacked events" to constitute a completely new event, thus requiring a *de novo* review for registration purposes. This requirement creates significant delays in registering products, causing U.S. exporters to lose export opportunities.

The South African government has not approved U.S. yellow corn for importation because many more yellow corn biotechnology events have been approved for use in the United States than in South Africa. As it stands, if yellow corn were in short supply in South Africa, importers would have to apply to the government for a special waiver to import it, with the guarantee that the corn would be milled near the port to ensure that seeds from such imports could not be planted.

South African cultivation of biotechnology corn increased from 14.6 percent of total maize planted in 2005 to 29.4 percent in 2006. Of this, 72 percent was corn with insect resistance, with herbicide-tolerant maize making up the remaining 28 percent. Actual hectares planted with modified corn increased by 11 percent to 455,287 hectares despite the total maize area decreasing by 45 percent. White biotechnology maize increased dramatically from 8.6 percent in 2005 to 28.8 percent in 2006, while the yellow biotechnology maize area planted grew from 24 percent to 30.5 percent. About 59 percent of the local soy bean crop is biotechnology.

A South African product manager for a U.S. biotechnology company in South Africa reports that about 8,000 commercial and about 2.4 million subsistence farmers in South Africa currently plant GM corn and will continue to do so.

In September 2003, countries of the Southern African Development Community (SADC), including South Africa, developed common guidelines on the regulation of products resulting from biotechnology. The guidelines conclude that the region should develop common policy and regulatory systems based on either the Cartagena Protocol or the African Model Law on Biosafety. The leaders of SADC member states also agreed to develop national biotechnology policies and strategies, and to increase their efforts to establish national biosafety regulatory systems. Leaders urged member states to commission studies on the implications of biotechnology for agriculture, the environment, public health and socio-economics.

South Africa can play a vital role as other countries in Africa develop biotechnology policies because it has the most resources, such as scientific expertise and financial support, as well as a progressive regulatory system. Without the South African government's leadership role in the region, the progress in agricultural biotechnology could advance more slowly or be stifled.

Agricultural Standards

The South African government requires prospective importers to apply for an import permit for certain controlled products. Public health officials still ban the importation of irradiated meat from any source. U.S. horticultural producers have complained about various South African sanitary or phytosanitary barriers when it comes to the importation of apples, cherries and pears from the United States. They estimate that, if these barriers were removed, U.S. exports of these fruits to South Africa could potentially reach $25 million in annual sales. U.S. producers have also expressed concern about unnecessary sanitary and phytosanitary requirements for some grains, pork, poultry, and horticultural products.

In September 2006, the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service sponsored a trip by two inspection officials from the South African Department of Agriculture (DOA) to the Pacific Northwest to visit orchards and packing houses in order to liberalize the DOA's requirements for importing U.S. apples.

To fulfill South Africa's commitment under the WTO Marrakesh Agreement on market access, the National Department of Agriculture (NDA) published the rules and procedures regarding the application for market access permits for agricultural products on October 24, 2003. The NDA issues permits to importers registered with the South African Revenue Service (SARS) and the Department of Trade and Industry (DTI) for agricultural products listed in the Table of Import Arrangements. Ten percent of such permits are reserved for "new importers" (those who have not imported within the past three years), and 10 percent are reserved for small, medium and micro-enterprises.

In response to the Bovine Spongiform Encephalopathy case in Washington State announced by the USDA on December 23, 2003, South Africa banned all ruminant animals and products originating in the United States. By January 15, 2004, South Africa, in accordance with World Organization for Animal Health (OIE) standards, exempted non-risk products such as hides, skins, wool and mohair from the ban. On May 8, 2006 the Chief Veterinary Officer of the USDA sent his South African counterpart a full report detailing USDA's surveillance program.

GOVERNMENT PROCUREMENT

Government purchases are by competitive tender for goods, services and construction contracts. The government uses its position as both buyer and lawmaker to promote the empowerment of the historically disadvantaged majority population in South Africa through its Black Economic Empowerment (BEE) policy.

South Africa's Preferential Procurement Policy Framework Act of 2000 (the Framework Act) and its implementing regulations created the legal framework and set forth a formula for evaluating tenders on government contracts. To augment this, the DTI has been working on regulations to clarify the Framework Act and to incorporate the intentions of the Broad-Based BEE Act of 2003. The new regulations give greater preference to bidders according to their compliance with BEE objectives. The regulations include BEE thresholds for tender qualification. Companies bidding on procurement valued up to 1 million rand earn 80 percent of their points from their bid price and 20 percent from their commitment to BEE objectives. For tenders valued over 1 million rand, companies earn 90 percent of their points from their bid price, and 10 percent from their commitment to BEE objectives.

The National Treasury is working with the DTI to align preferential procurement regulations with the BEE Codes of Good Practice on Procurement. The Codes will help standardize how firms are evaluated on their compliance with industry BEE scorecards.

South Africa's National Industrial Participation Program (NIPP) program, introduced in 1996, subjects all government and parastatal purchases or lease contracts for goods, equipment or services with an imported content equal to or exceeding $10 million (or the rand equivalent thereof) to an industrial participation obligation. This obligation requires the seller/supplier to engage in local commercial or industrial activity valued at 30 percent or more of the value of the imported content of total goods purchased or leased under government tender. The intent of the program is to benefit South African industry by generating new or additional business.

In August 2004, the Minister of Finance issued the BEE Code of Good Practice for Public Private Partnerships (PPPs). The Code sets out BEE targets for PPPs and provides greater clarity for private sector participants. In October 2005, the Minister of Trade and Industry issued final Codes of Good Practice on BEE Equity and BEE Management. The remaining Codes of Good Practice were promulgated in the Government Gazette in February 2007.

South Africa is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

South Africa is a member of the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, and is a party to the UPOV Convention and the WIPO Convention. South Africa is a signatory to the Trademark Law Treaty, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

Legal Regime

South Africa's intellectual property laws and practices generally conform to those of developed countries, except in the area of geographical indications where there are notable deficiencies. There are, however, issues with enforcement and in guaranteeing the protections afforded under these laws. The U.S. Government has raised its concerns with the South African government. The United States has also provided training on IPR enforcement to South African government and private sector representatives.

In 2001, the South African government introduced measures to enhance enforcement of the 1997 Counterfeit Goods Act. The government appointed more inspectors, designated more warehouses for counterfeit goods, destroyed counterfeit goods, and improved the training of customs, border police, and police officials. Although law enforcement authorities often cooperate with the private sector in investigating allegations of trade in pirated or counterfeit goods, there are concerns about lax enforcement of IPR laws against imports of infringing goods, as well as slow and cumbersome court proceedings.

Under South African law, complainants can take both civil and criminal action against IPR offenders. In 2006, the number of arrests for trading in pirated or counterfeit goods was double that of 2005. South Africa has taken some positive steps with the creation of the Department of Trade and Industry's enforcement unit and the establishment of Commercial Crime Courts in several cities. The appointment of two senior prosecutors focusing on intellectual property offenses and operating within the Commercial Crime Court also increases the capacity to prosecute intellectual property cases. However, a 2006 decision within the Commercial Crime Court called into question the police's power of arrest under the Counterfeit Goods Act. The decision is currently on appeal to the South African High Court.

Despite efforts to improve IPR enforcement, monetary losses from trademark counterfeiting and copyright piracy remain high. U.S. industry is increasingly concerned about illegal commercial photocopying, especially at universities, libraries and other on-campus venues. U.S. industry has also expressed concern about Internet piracy, advertisements of "burn-to-order" services and the unwillingness of South African Internet Service Providers (ISPs) to shut down infringing sites or access thereto. In addition, counterfeit medicines are also a growing problem. U.S. industry reports that South Africa is also becoming a transshipment point for pirated and counterfeit goods into the rest of Africa, adding that South African Customs has the power to interdict such shipments and should exercise that power.

U.S. firms have complained that South Africa does not adequately protect safety and efficacy studies (also called "registration data") submitted to national authorities with applications for product approval. U.S. firms have claimed that these studies are unfairly "referenced" by competitors for the purposes of registering competing products.

Software/Audio Visual IPR Issues

Software piracy still occurs frequently in South Africa. In 2006, the Business Software Alliance (BSA) estimated that the piracy rate was 35 percent and that U.S. industry in South Africa lost an estimated $119 million in sales.

Piracy in the video and sound industry also continues to be a concern. In 2004, piracy rates in the audiovisual industry were 40 percent; with estimated losses of $35 million. According to the industry, the market share of pirated DVDs in 2005 continued to grow and exceeds 50 percent.

SERVICES BARRIERS

Telecommunications

Despite South Africa's WTO commitments to the reference paper on pro-competitive regulatory principles and market access commitments for value-added telecommunications and basic telecommunications services, South Africa's main telecommunication provider, Telkom, continues to maintain a monopoly on these services, presenting difficulties in this sector. Many businesses have complained about high telecommunications prices, many of which are a result of control of the underlying network by Telkom. In 2004, Telkom was cited by the South African Competition Commission for anticompetitive conduct with respect to Value Added Network Services (VANS). A new complaint was filed by the South African Internet Service Provider Association alleging further abusive practices by Telkom. In addition to such practices, one U.S. company has pursued extensive legal remedies against Telkom to honor the results of binding arbitration regarding a multi-million dollar contract. Instead of honoring the arbitrator's findings, Telkom took steps to block the arbitral award and appealed the award to a local trial court. In November 2006, the South African Supreme Court of Appeal found in favor of the U.S. company; an arbitration panel is to decide the actual payment in 2007. By March 2005, Telkom had parlayed its market dominance into $1.7 billion in operating profits on $6.5 billion in sales. In 2005, the Department of Communications (DOC) sponsored two colloquiums to discuss measures to lower telecommunications prices. At the conclusion of the second colloquium the DOC promised to release an action plan in early 2006, but that plan has not been produced.

In its WTO commitments, South Africa committed to license a second national operator (SNO) to compete in long-distance, data, telex, fax and privately leased circuit services no later than January 1, 2004. The Minister of Communications conditionally approved a license for the SNO in September 2004, but disagreements among SNO shareholders over operational control and allocation of equity stakes delayed the launch until 2006. The result has been that Telkom has enjoyed monopoly privileges well beyond its period of exclusivity, which ended in May 2002. The SNO was licensed by ICASA (Independent Communications Authority of South Africa) in December 2005. It began operations on August 30, 2006 under the name “Neotel”, which is 26 percent owned by Videsh Sanchar Nigam (controlled by Indian industrial giant Tata). Neotel has also entered the business-to-business market and plans to enter the residential market in April 2007.

Some of the problems facing VANS and Internet service providers may be addressed by new telecommunications policies and regulations. On February 1, 2005, the Minister of Communications implemented sweeping liberalization in the telecommunications sector. Because of this liberalization, mobile operators are allowed to use any fixed lines in the provision of their service, VANS can be offered through infrastructure other than that which is owned by Telkom, and VANS providers are allowed to employ Voice-Over-Internet Protocols. In addition, private telecommunications network operators are allowed to sell spare capacity. On May 20, 2005, the Minister approved additional regulations for the licensing of VANS.

While a new direction in telecommunications may resolve some of the shortcomings in this sector, some of the problems relate to legislative efforts dating back to 2003. In that year, the DOC released a draft Convergence Bill that industry analysts hoped would simplify the existing legislative framework, empower the regulator, and open the telecommunications industry to greater competition. Comments received during a public comment period were highly critical of the draft bill and, as a result, the DOC revised the bill. In 2005, the DOC released for comment its modified version, the Electronic Telecommunications Bill. In December 2005, the bill was sent to the president for signature. He refused to sign it, citing that the bill gave too much control to the DOC at the expense of ICASA. The president requested a constitutional review of the bill and its companion legislation, the ICASA Amendment. Ultimately, the bill and amendment passed in June 2006 in a compromise that allows ICASA to maintain some independence. DOC, however, maintains a strong grip on ICASA, as it approves ICASA funding. Critics believe that ICASA should be strengthened to better carry out its regulatory mandate. Three of the seven ICASA councilors left in July 2006 and four out of five senior manager positions are vacant. The U.S. Federal Communications Commission provided two rounds of technical consultations in 2005/2006 in an effort to strengthen the regulator’s capacity. A third round is planned for early 2007.

Other Services

The U.S. and the South African governments met in August 2005 to discuss a possible Open Skies Agreement. Open Skies agreements allow air carriers to make decisions on routes, capacity and pricing based on commercial, market-based considerations, as well as to liberalize operating conditions for aviation activities, including code-sharing opportunities. At the talks, South Africa argued for incremental liberalization of the existing 1996 bilateral Air Transport Agreement. At this time, the two sides have no discussions scheduled.

U.S. financial services providers have expressed ongoing concerns about the implementation of the Black Economic Empowerment (BEE) charter for the financial services sector. In 2003 and 2004, several of these providers participated in the negotiations with government, labor, and industry stakeholders that resulted in the drafting of the BEE Financial Services Charter. Since then, the Department of Trade and Industry (DTI) has released generic scorecard targets, including a 25 percent equity ownership target. In February 2007, DTI published a revised Financial Services Charter in the Government Gazette, which permits foreign financial institutions to substitute equity ownership with financing and/or investing in BEE companies or projects.

INVESTMENT BARRIERS

Uncertain Implementation of the BEE Act

In January 2004, President Mbeki signed into law the Broad-Based Black Economic Empowerment (BEE) Act of 2003, giving the force of law to the government's Black Economic Empowerment strategy. The intention of black economic empowerment is to move the historically disadvantaged majority population in South Africa into the mainstream of the economy. U.S. businesses strongly support the goals of BEE, and many have a long history of instituting human resource management, procurement, and enterprise development policies in South Africa that are consistent with BEE objectives. These U.S. businesses hope BEE implementation will allow them to continue these policies and to participate fully in South Africa's economy. However, the government's BEE strategy has been evolving slowly. Twenty-nine industry charters have been negotiated or are being negotiated with the government in areas such as accounting, agriculture, chemicals, cosmetics, clothing and footwear, construction, engineering services, financial services, forestry, health, information and communications technology (ICT), liquid fuels, mining, property, tourism, marketing, transportation, liquor, and wine. Conflicting provisions among these charters and questions about implementation and verification programs have created considerable uncertainty for both local and foreign firms.

The BEE Act directs the Minister of Trade and Industry to develop a national strategy for BEE, issue implementing guidelines in the form of Codes of Good Practice, encourage the development of industry-specific BEE charters, and establish a National BEE Advisory Council to review progress in achieving BEE objectives. Codes of Good Practice, formulated by the DTI, are intended to harmonize existing and future industry BEE charters. On October 31, 2005, the Minister released the final version of the first-phase Codes of Good Practice for Broad-Based Black Economic Empowerment. These include codes on the BEE framework, BEE in equity ownership, and BEE in management. The codes include a new generic scorecard with suggested BEE targets for equity ownership, management, purchasing, and employment. Questions remain about the interpretation of the codes and the measurement and verification of BEE adherence. The draft Codes of Good Practice on multinational companies and BEE purchasing were distributed in December 2005, along with draft Codes of Good Practice on employment equity, skills development, and enterprise development. Companies submitted comments on the draft Codes, and in February 2007, DTI published in the Government Gazette new Codes of Good Practice that incorporated some of those comments.

Because of their corporate structure, most U.S. businesses cannot easily transfer equity to BEE shareholders. U.S. firms are concerned that mandatory equity transfers could – for very practical reasons – put the future of their South African operations in doubt and/or deter further investment. U.S. businesses also have concerns about aspects of the implementation of BEE, especially with regard to the issue of equity ownership. U.S. Government agencies and the U.S. Embassy in Pretoria have been closely monitoring the ongoing development and implementation of South Africa's BEE policies and have maintained a continuous dialogue with the South African government and U.S. industry on BEE.

ANTICOMPETITIVE PRACTICES

Ownership Patterns

There is a historical legacy of concentrated ownership in some sectors of the South African economy. Between 1961 and 1994, the apartheid government prevented a large portion of the South African population from participating actively in the economy by disallowing them the opportunity to gain higher education and managerial experience or to take advantage of entrepreneurial and investment opportunities. Apartheid policies also prohibited successful companies such as South African Breweries, Anglo American, DeBeers, and SASOL from investing abroad. Therefore, these enterprises expanded their businesses domestically in horizontal and vertical conglomerates. As a result, major South African companies entangled themselves into complex ownership structures and a series of crossholdings that resulted in the concentration of considerable power in the South African marketplace. This situation has changed considerably since 1994, as many of the major players have disentangled their businesses, focused on core businesses, expanded internationally, and even listed on foreign stock exchanges. Together with more effective competition laws and BEE initiatives to enlarge the share of black participation in the economy, South Africa's business environment has become more transparent, more competitive, and more open to new entrants (including U.S. companies) than it was ten years ago. The exceptions have been the energy, transportation, and telecommunications sectors, which are still dominated by state-owned or state-controlled monopolies.

ELECTRONIC COMMERCE

The Electronic Communications and Transactions Law, effective July 31, 2002, governs all companies that conduct electronic commerce in South Africa. The law was designed to facilitate electronic commerce, but may instead increase the regulatory burden and introduce an unacceptable level of uncertainty for some businesses. The law requires government accreditation for certain electronic signatures, takes government control of the ".za" domain name, and requires a long list of disclosures for web sites that sell via the Internet.

The South African Law Reform Commission submitted draft legislation and discussion documents on privacy and data protection for public comment by February 28, 2006. The South African Law Reform Commission held a series of workshops on the legislation in February 2006. Numerous public submissions were received, and the Commission is currently preparing its report with recommendations on the draft legislation. Legislation may negatively impact the ability of South African and foreign companies to receive and send trans-border flows of personally identifiable data.

OTHER BARRIERS

Transparency, Corruption and Crime

South African law provides for prosecution of government officials who solicit or accept bribes. Penalties for offering or accepting a bribe may include criminal prosecution, monetary fines, dismissal from government employment, or deportation (for foreign citizens). South Africa has no fewer than ten agencies engaged in anti-corruption activities. Some, like the Public Service Commission, Office of the Public Protector, and Office of the Auditor-General, are constitutionally mandated to address corruption as only part of their responsibilities. Others, like the South African Police Anti-Corruption Unit and the Directorate for Special Operations (more popularly known as the "Scorpions"), are dedicated to combating crime and corruption. High rates of violent crime, however, are a strain on capacity and make it difficult for South African criminal and judicial entities to dedicate adequate resources to anti-corruption efforts.

During the last few years, crime has been a far more serious problem than either corruption or political violence when it comes to being an impediment to or raising the cost of doing business in South Africa. The South African Police have not been effective or well accepted in many communities because of their historical role in enforcing minority rule. The lack of training and internal crime and corruption within the police force has only compounded the situation. Although statistics show a decline in violent crime in recent years, the perception that crime is a serious problem remains high. The level of crime has deterred some U.S. companies from doing business in South Africa.

New laws, such as the Promotion of Access to Information Act, signed into law in February 2000, have helped to increase transparency in government during the last few years. The Public Finance Management Act, which became effective on April 1, 2000, helped to raise the level of oversight and control over public funds and to improve transparency in government spending, especially with regard to off-budget agencies and state-owned enterprises. These efforts notwithstanding, businesses complain about the lack of certainty and consistency in interpreting and implementing some government policies.

On April 28, 2004, President Mbeki signed The South African Prevention and Combating of Corrupt Activities Act (PCCAA) into law. The PCCAA, *inter alia*, defines graft, bars the payment of bribes by South African citizens and firms to foreign public officials, and obliges public officials to report corrupt activities. One shortcoming of the Act has been its failure to protect whistleblowers against recrimination or defamation claims. This continues to receive some political attention.

Immigration Laws

For a number of years, U.S. and other foreign companies have complained that South African immigration legislation and the application of the law made it extremely difficult to get work permits for their foreign employees. Previously, South Africa relied on the apartheid-era Aliens Control Act, which did not take into account international developments and the opening up of the South African market. A new immigration law entered into force on May 31, 2002. The legislation establishes yearly quotas for granting work permits to foreigners. Local businesses have criticized the new law for creating uncertainty because the quota system sets limits on the number of skilled people that may enter the country in particular categories. Under a separate dispensation, corporate investors may make blanket applications for the people they need. It is not clear whether these corporate permits fall within the quota system. The Minister of Home Affairs has said that the new law is an enormous improvement over previous legislation and places South Africa on a par with other countries, especially with respect to investors and intra-company transfer permits.

On July 1, 2005, the Immigration Amendment Act Number 19 came into effect. The new law was expected to produce a quota system that promoted importation of workers with needed skills. The Minister of Home Affairs released the quota category schedule for skill in February 2006. Following workshops and consultation with the business community the Minister agreed that the current quota schedule should be adjusted to match the critical skills most needed in South Africa. A revised quota skill schedule, drafted in coordination with Department of Labor and Department of Trade and Investment, is expected to be published in early 2007.

2. BOTSWANA

IMPORT POLICIES

Tariffs

Botswana is a member of various regional and international economic and trade bodies including the WTO and Southern African Development Community (SADC). Botswana uses the Harmonized System of Classification and applies the SACU common external tariff (CET).

Non-Tariff Measures

Import permits are required for goods entering Botswana directly from countries outside of SACU, with the exception of Malawi, and are obtainable from the Department of Trade and Consumer Affairs in the Ministry of Trade and Industry. The import permits are not transferable and are usually granted upon request.

Prohibited imports include habit-forming drugs and objectionable literature (pornographic magazines and videotapes). Importation of certain agricultural products and plants requires approval from the Ministry of Agriculture prior to obtaining an import permit from the Department of Trade and Consumer Affairs. Imports of fresh pork are banned, but processed pork products may be imported. Imports of beef and beef products are banned. Although poultry imports are permitted when there is a domestic market deficit, the Botswana poultry sector has met all domestic demand throughout 2006. Imports of some vegetables and dairy products are seasonally banned when domestic supply is determined to be adequate, regardless of price. The government "discourages" the importation of used clothing, although there are no written regulations to this effect. The importer of used clothes is required to apply for an import permit which may be issued for a duration of six months, obtainable from the Department of Trade and Consumer Affairs. Fumigation is required.

GOVERNMENT PROCUREMENT

To comply with the Public Procurement and Asset Disposal Act of 2002, the Public Procurement and Asset Disposal Board (PPADB) was created in 2003 as an independent parastatal to take over the functions of its predecessor organization, the Central Tender Board. The PPADB is responsible for the award of all government contracts. The tender process is open. Lobbying of the PPADB or its members is strictly prohibited. The Independent Complaints Review Committee of the PPADB, established in November 2004, reviews the Board's decisions subject to challenge by stakeholders (e.g., contractors and procuring entities). Since December 2003, the PPADB has published its decisions concerning awarded tenders, prequalification lists and newly registered contractors. The PPADB Act empowers the government, under its economic and social objectives, to introduce from time to time reservation and preference schemes for the benefit of citizen and local companies. Preferences are also applied on production inputs sourced locally from qualifying firms. The government reserves certain tenders for 100 percent Botswana-owned companies, including all contracts valued at P300,000 ($50,000) or less. The PPADB has stated that it considers these schemes within the context of Botswana's obligations under the WTO, the Southern African Development Community (SADC), and SACU. Botswana is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In 1998, Botswana became a member of both the Berne and Paris Conventions. Botswana is also a party to the Patent Cooperation Treaty, the Madrid Protocol, the WIPO Copyright Treaty, and the WIPO Performances and Phonograms Treaty. Botswana's legislation is now largely in line with international IPR standards, but there are notable deficiencies with respect to geographic indications and integrated circuits, and enforcement of intellectual property rights remains a challenge. The government of Botswana has conducted comprehensive workshops on Intellectual Property in coordination with the U.S. Patent and Trademark Office.

SERVICES BARRIERS

The government is continuing to reorganize and restructure some ministries and departments to improve the efficiency and effectiveness of services delivery. It is moving towards privatizing a number of parastatal businesses, although the pace of this process is viewed by some observers as overly deliberate. One reform requires the government to establish autonomous authorities or boards, working largely on commercial principles. One such authority is the Public Enterprise Evaluation and Privatization Agency (PEEPA), which was established in 2000 to oversee the implementation of the Privatization Policy. PEEPA will ultimately determine the extent of foreign participation in the privatization process and the mechanics that will be used to promote citizen participation. The government intends to use privatization as a tool to increase foreign direct and portfolio investment in the country. The Ministry of Finance and Development Planning, to which PEEPA reports, welcomes foreign investment, but has stated that local investors may be given preference in privatization initiatives in some instances. Negotiations that are nearing completion for the privatization of Air Botswana and Botswana Telecommunications Corporation (BTC) will begin soliciting private sector bids in early 2007.

The telecommunications market was liberalized in 1996 following the adoption of the Telecommunications Policy of 1995 and enactment of the Telecommunications Act (Act No. 15 of 1996), which abolished BTC's monopoly in some segments of the market and established an independent regulator, the Botswana Telecommunications Authority (BTA). The BTA was created to safeguard competition and inter-connection to the public network. Market segments liberalized so far are mobile telephones, data communications, payphones, sale of telecommunications equipment, and Internet services. Competition in the cellular phone industry is dominated by two international firms, Mascom (Portuguese) and Orange (French), who compete for the bulk of the local market share. Voice-Over-Internet Protocol (VOIP) is not allowed (except over private networks). Universal licenses are in the process of being granted for all licensed telecommunications corporations, opening the cell phone market to parastatal BTC (although this also opens landline to Mascom and Orange, it is unlikely that these corporations will enter this shrinking market). Botswana did not participate in the WTO extended telecommunications and financial services negotiations.

INVESTMENT BARRIERS

All foreign investors wishing to invest in Botswana are required to register a company in Botswana in accordance with the Companies Act and to comply with other applicable legislation; transfer technology to Botswana, as appropriate; transfer skills to citizens of Botswana by promoting their involvement and participation in positions in the supervisory, middle and senior management levels of companies; and ultimately replace expatriate employees with Botswana citizens within an agreed period, though there are often exceptions to this rule in practice.

The Botswana Export Development and Investment Authority (BEDIA), founded in 1998, is an autonomous organization established to promote investment in Botswana with a special emphasis on export-oriented manufacturing industries. The Authority is designed to serve as the primary government contact point for both domestic and foreign investors. BEDIA maintains a One Stop Service Center to help investors secure all clearances and approvals as quickly as possible. Unfortunately, the acquisition of land, work permits, and business licenses remain encumbered by significant bureaucratic and political constraints.

ELECTRONIC COMMERCE

Internet usage is on the rise, but nationwide usage remains extremely low. According to the government, less than 10 percent of the population uses the Internet. There is a growing number of Internet Service Providers and Internet cafes, but due to the high cost of fixed-line phone charges associated with dial-up service, the cost of accessing the Internet remains prohibitive for the majority of the population.

OTHER BARRIERS

The legal system is sufficient to conduct commercial dealings, and foreign and domestic parties have equal access to, and standing under, the judicial system. Botswana courts will, in general, accept and enforce decisions of a foreign court found to have jurisdiction in a given case. However, a backlog of cases has seriously impeded international companies that have won government procurement contracts, which have subsequently been challenged in court. There is a growing concern that the backlog could deter American companies interested in competing for contracts in Botswana.

3. LESOTHO

IMPORT POLICIES

Tariffs

Lesotho applies the SACU Common External Tariff. Additional charges include clearing fees ranging from M750 to M1,000 (approximately $130 to $175). Lesotho is a Member of the WTO, the Southern Africa Development Community (SADC), and the Africa, Caribbean and Pacific-European Union (ACP-EU) Cotonou Trade Agreement.

Non-Tariff Barriers

Lesotho applies a permit system for all imports from non-SACU members. The system is applicable to all consignments imported by individual consumers and investors. Manufacturers are accorded preferential treatment through which a "Blanket Permit" is allowed with a validity of 12 months and an additional grace period of 3 months.

In recent years, the government of Lesotho (GOL) has undertaken agricultural sector structural reforms including the removal of price subsidies and import controls on maize and wheat produce in favor of market-determined prices. The 1967 Agricultural Marketing Act, however, continues to control the importation of bread, legumes, sugar, eggs, meat, dairy products, fruits, and vegetables.

With the exception of eggs, sugar and legumes, the import restrictions allow a limited exemption for consumer purchases outside the country. The Department of Marketing under the Ministry of Trade and Industry, Cooperatives and Marketing monitors the level of production of these commodities and issues import licenses in the event of short supply. However, national production has never met local demand. As a result, import permits are issued as a matter of course. Non-automatic licenses apply to import used clothing. In practice, no licenses for used clothing are issued, constituting a de facto ban.

The Ministry issues permits for the import of used vehicles from outside the SACU area.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Lesotho does not have a national standards body. The Standards and Quality Assurance section of the Ministry of Trade and Industry, Cooperatives and Marketing functions as the focal point for standards and quality assurance. No national standards have been developed to date. Industries in Lesotho have traditionally relied on the South African Bureau of Standards for voluntary standards facilities and quality assurance schemes. Local exporters have relied on traditional export markets and have developed their standards according to technical and quality requirements of importing countries, importing firms, or international standards.

Lesotho participates in a regional program on Standardization, Quality, Accreditation and Metrology for the SADC. The program aims to harmonize standards for adoption by all member states. Efforts are also underway to develop a regional accreditation authority.

GOVERNMENT PROCUREMENT

Lesotho is not a signatory to the WTO Agreement on Government Procurement.

Government procurement rules do not give Lesotho nationals preference when bidding on goods and services contracts. The Ministry of Trade and Industry encourages joint ventures.

Lesotho is working on a procurement policy intended to conform to SACU and WTO standards. New procurement guidelines are being considered which, among other things, would authorize the publication of tender notices on the Internet to increase their visibility.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Lesotho's Industrial Property Order (1989), Copyright Order (1989) and the Industrial Property Regulations (1989) are the basis for legal protection of intellectual property rights. Patents, valid for 15 years from the date of application, have rarely been issued in Lesotho, but trademark protection is widely sought and granted. Lesotho is a member of WIPO, the Berne and Paris Conventions, and the Regional Intellectual Property Organization, and is a party to the Patent Cooperation Treaty and the Madrid Protocol.

SERVICES BARRIERS

Foreign participation is not restricted in the service sector. The banking and telecommunications sectors are largely controlled by foreign ownership, in particular by South African institutions.

The Trading Enterprises Order of 1996 restricts foreigners from participating in small trading activities that are reserved for nationals only. These include butcheries, barbershops, general cafes, and hair salons.

INVESTMENT BARRIERS

Lesotho welcomes foreign investment. Foreign investors have participated in the country's privatization program without discrimination. According to the International Finance Corporation, however, it takes 73 days to start a new business in Lesotho – a consequence of significant bureaucratic impediments and inefficiencies. However, Lesotho has reduced the time needed to start a business by over 20 percent over the last year.

ELECTRONIC COMMERCE

The government of Lesotho adopted Lesotho's National Information and Communication Technology Policy in 2005. This introduced a regulatory framework for electronic commerce into Lesotho's legal system. The Ministry of Communications, Science, and Technology is responsible for its implementation.

Electronic commerce has not widely penetrated the country due to the low speed and high expense of Internet access. Telecom Lesotho, the sole fixed line Internet service provider, also holds a monopoly for international Internet access. There is no national exchange point, and peering is via South Africa, using expensive bandwidth for intra-national communication. Telecom Lesotho objects to the use of wireless connections by local Internet providers.

OTHER BARRIERS

Corruption

Business people state that solicitation of bribes in connection with government services does not occur. The government has received international accolades for its prosecution of multinational companies for corruption related to the awarding of contracts for construction of the Lesotho Highlands Development Project. In cases that have been upheld by the Lesotho Court of Appeals, the former Chief Executive of the Lesotho Highlands Development Authority (LDHA) and three multinational corporations have been convicted for fraud and bribery.

The government has established a Directorate on Corruption and Economic Offenses that continues to prosecute cases regarding the LHDA project, as well as others involving embezzlement and bribery.

4. NAMIBIA

IMPORT POLICIES

Namibia is a member of various regional and international economic and trade bodies including the WTO and the Southern African Development Community (SADC). Namibia applies the SACU common external tariff (CET).

The Directorate of International Trade of the Ministry of Trade and Industry (MTI) is responsible for coordinating the country's trade polices and overseeing Namibia's participation in international trade bodies. The Directorate is responsible for managing import/export procedures. Importers must have an import permit from the Ministry of Trade and Industry. Namibia is a party to the WTO Agreement on Import Licensing. Most non-agricultural imports require a permit issued by MTI. A limited number of products are subject to non-automatic import licensing: medicines; chemicals; frozen, chilled, fish and meat; live animals and genetic materials; controlled petroleum products; firearms and explosives;

diamonds, gold and other minerals; and seemingly all second-hand goods such as clothing and motor vehicles. In practice, however, MTI does not issue licenses for imports of used clothing, resulting in a *de facto* ban on this product. In January 2005, Namibia introduced a new regulation to ban the importation of used vehicles older than five years from non-SACU countries, as well as left-hand drive vehicles.

With respect to agricultural trade, the Namibian Agronomic Board issues permits for the import, export, and transit of controlled agronomic crops (i.e., wheat and wheat products and corn and corn products). Imports of agronomic crops and derivatives, as well as all plants and plant products, also require the issuance of a phytosanitary certificate by the Ministry of Agriculture, Water and Rural Development. The Namibian Meat Board regulates the import and export of live animals (cattle, sheep, goats and pigs) and derivative meat products. Importers of live animals and meat products must demonstrate compliance with the country's animal health standards by obtaining a veterinary import permit from the Directorate of Veterinary Services.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Namibia is a party to the Convention on Biological Diversity and a signatory to the subsequent Cartagena Protocol on Biosafety. To meet its international commitments, the government has drafted new legislation – the Biosafety Bill – which will regulate the importation, sale and use of products of agricultural biotechnology and will establish new regulatory and administrative structures. It will impose new registration obligations on facilities that use or produce agricultural biotechnology products and will require persons and companies to receive authorization prior to importing such products. It will require biotechnology products to be clearly labeled and identified for purposes of traceability. A Cabinet committee has approved the draft Biosafety Bill, which is expected to be tabled in Parliament in the near future. Pending passage of the Biosafety Act, the government has imposed a moratorium on the importation of agricultural biotechnology products.

GOVERNMENT PROCUREMENT

Most government transactions, including the awarding of contracts and the purchase of supplies, are made through the Tender Board of Namibia. The Board is comprised of representatives from various government ministries and appointed by the Minister of Finance. Government procurement tender notices are publicized in the local media. The Tender Board gives preference for goods manufactured and/or assembled in Namibia. Namibia is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Since independence in 1990, the government has pursued policies to diversify its economy and to create employment. To achieve that goal, the government has put in place tax and non-tax incentives to attract manufacturers and export-oriented businesses. The Offshore Development Company administers the country's Export Processing Zone (EPZ) regime. Companies granted EPZ status can set up operations anywhere in Namibia. There are no restrictions on the industrial sector as long as the exports are destined for markets outside the SACU region. Benefits of the EPZ regime include no corporate tax, no import duties on the importation of capital equipment or raw materials, and no VAT, stamp or transfer duties. Non-residents operating in an EPZ may hold foreign currency accounts.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Namibia is a member of the World Intellectual Property Organization, the Berne and Paris Conventions, and is a party to the Madrid Protocol and the Patent Cooperation Treaty. Namibia is a signatory to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

The responsibility for IPR protection is divided between two government ministries. The Directorate of Internal Trade of MTI oversees industrial property and is responsible for the registration of companies, private corporations, patents, trademarks and designs. The Ministry of Information and Broadcasting manages copyrights.

The government is in the process of updating copyright legislation to bring it in line with the TRIPS Agreement and the WIPO Treaties on Performance and Phonograms and Copyrights. A draft bill that was scheduled to be considered by the Namibian Parliament in 2006 has yet to be tabled, and the government is still working on incorporating proposed changes. Absent new legislation, Namibia lacks adequate legal and enforcement mechanisms to address the problems associated with piracy and copyright infringement.

SERVICES BARRIERS

Services account for nearly 60 percent of Namibia's gross domestic product, with government services representing the largest single component. Foreign participation in the services sector is generally unrestricted. Due to historical links between the two economies, South African companies dominate many commercial services in Namibia, particularly in the retail and financial sectors. Other services -- including telecommunications, water, electricity and most major transport services -- are dominated by Namibian parastatals. Many of the 41 recognized parastatals operate as "commercialized" entities, meaning they are profit-seeking and are not maintained on the national budget. There is currently little U.S. participation in the Namibian service sector.

Under the Namibia National Re-insurance Act of 1998, insurance companies are required to cede 20 percent of any policy issued or renewed to the state-owned Namibia National Reinsurance Corporation (NamibRe). In 2001, the government and private insurers reached an agreement in which the mandatory cessions clause would not be enforced for five years, though this agreement has yet to be signed.

INVESTMENT BARRIERS

Namibia's Foreign Investment Act of 1990 provides for equal treatment of domestic and foreign investors and provides non-discriminatory access to all sectors. The government guarantees foreign investors access to foreign currency, repatriation of capital, and dispute settlement through international arbitration. There are few restrictions on the establishment of private businesses or the size of an investment. The Namibian Investment Centre, which was created by the 1990 Act, is responsible for implementing the country's investment promotion policies.

There is no local participation requirement for foreign investments, but the government actively encourages partnerships with historically disadvantaged Namibians. In certain industries, such as the fishing sector, there has been a concerted campaign to "Namibianize" existing investments.

Land reform is at the forefront of public debate. The Namibian Constitution provides for the government-initiated purchase of private property in the public interest subject to the payment of "just" compensation under a "willing buyer-willing seller" system, and the government has begun to implement this program as prescribed by the Constitution. Domestic groups have criticized Namibia's government recently for the slow pace of acquiring commercial farmland and resettling Namibia's landless population. The government considers foreign-owned and non-productive farmland primary targets for expropriation. The government introduced a land tax at the beginning of April 2005 in an effort to raise money for land acquisition. Absentee landowners are subject to higher tax rates per hectare than resident farmers.

ELECTRONIC COMMERCE

Electronic commerce is still relatively unknown to Namibian consumers. Only a small percentage of Namibians enjoy access to the Internet. The government is in the early stages of formulating policies to regulate electronic commerce. MTI's Directorate of Internal Trade has included a section on electronic commerce in the new 2004 Companies Act. Implementation of the new Act is expected in 2007 after adoption of several amendments in November 2006.

OTHER BARRIERS

According to recent surveys, there is a growing public perception that official corruption is on the rise. Several presidential commissions have been established in recent years to investigate allegations of kickbacks and irregularities in Namibian parastatals.

Despite the growing perception of corruption, similar studies have shown that Namibians retain confidence in government institutions to address the problem. Anti-corruption was the centerpiece of President Pohamba's election campaign, and it is a top priority of his administration along with the elimination of mismanagement and fraud. Anti-corruption legislation is in place to combat public corruption. President Pohamba's government is actively investigating several widely publicized corruption cases, a welcomed departure from previous administrations.

Anti-corruption bodies include the Office of Ombudsman and the Office of the Auditor-General. In 2003, an Anti-Corruption Bill was passed that provides for the establishment of an independent Anti-Corruption Commission. In 2005, Prime Minister Angula appointed two candidates to head the Anti-Corruption Commission, which President Pohamba inaugurated on February 1, 2006. The challenge remains for the Commission to effectively investigate cases of corruption that culminate in successful prosecution. A few initial cases have been brought to trial. In addition, a large court backlog continues to cause lengthy delays of trials.

5. SWAZILAND

IMPORT POLICIES

Tariffs

Swaziland is a Member of the World Trade Organization (WTO), the Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA). Swaziland's continued retention of its COMESA status is uncertain as the COMESA Heads of State and government continue to give Swaziland a one-year derogation. The derogation, it is hoped, will enable Swaziland to engage its Southern African Customs Union (SACU) partners with a view to joining the COMESA Free Trade Agreement (FTA).

As a member of SACU, Swaziland applies the SACU common external tariff (CET). Swaziland has at times exercised its right under the SACU Agreement to protect infant industries such as cement and beer by applying tariff rates higher than those in the CET.

Non-Tariff Measures

There are no restrictions on imports into Swaziland and no prohibited imports (except illicit drugs, pornography and arms). Permits are required for certain imports, including all agricultural products, mineral fuels, used clothes, mineral oils, motor vehicle parts, used cars, medicinal drugs, and electrical appliances. Licensing permits issued by the Ministry of Finance are generally easy to obtain and are valid for one shipment. Goods consigned to Swaziland from outside SACU must be cleared through customs at the first port of importation into SACU.

Another cited non-tariff barrier to trade is the recently introduced Southern African Development Community (SADC) form known as a Single Administrative Document 500 (SAD 500). The Form is supposed to regularize the number of forms needed for transporting goods between SADC countries. The private sector finds the form too detailed and cumbersome.

Other non-tariff barriers to trade commonly cited are levy charges and sales tax on some products like agricultural products, mineral fuels, electronic equipment, etc.

GOVERNMENT PROCUREMENT

Although the government accords local business a 15 percent price preference in the tendering process for government contracts, it appears that this preferential treatment is not always granted. Firms from South Africa and other southern African countries fill a large portion of government contracts. However, for small- and medium-sized tenders, bidding companies must be registered in Swaziland. The government inspects the premises of all suppliers prior to awarding the tender. The government has also introduced, under Legal Notice 150 of 2005, a withholding of 10 percent tax on payments to resident contractors, subcontractors, persons supplying goods or services to government and Parastatals.

The government issues tender notices 7 days to 30 days before tenders are due, depending on the size of the contract. Potential suppliers must pay a fee to obtain tender documentation and participate in government procurements. Tenders are returned to the Central Tender Board and suppliers are invited for the opening of the tenders. In some instances, a Ministry can apply for a waiver-of-tender procedure if there are too few companies supplying a particular commodity.

In April 2006, government amended the Stores Regulations Act and included a member of the Federation of Swaziland Employers/Chamber of Commerce as the chamber's representative on the Central Tender Board.

Swaziland is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Swazi legal protection for patents, trademarks, and copyrights is inadequate. Swaziland has an intellectual property rights regime inherited from the colonial era, under which copyrights, patents, and trademarks were more or less protected under various acts promulgated by the colonial authorities.

Patents are currently protected under a 1936 act that automatically extends patent protection upon proper application to products that have been patented in either South Africa or the United Kingdom. Updated patent legislation has not yet undergone all the necessary steps for enactment. Under the new legislation, the government would grant patents with technical assistance from the African Regional Industrial

Property Organization in Harare. Protection would be extended to pharmaceutical and agricultural chemical products. Swaziland is a member of the Paris Convention for the Protection of Industrial Property and is a party to the Patent Cooperation Treaty.

Copyright protection is addressed under four statutes, enacted in 1912, 1918, 1933 and 1936. According to the Registrar General for the Ministry of Justice, the statutes have yet to be implemented and copyright protection in Swaziland is "limited." The Ministry of Justice is in the process of drafting an updated Copyright Act, based on the World Intellectual Property Rights Organization (WIPO) model. Swaziland is a member of the Berne Convention for the Protection of Literary and Artistic Works.

In 2006, according to the Ministry of Justice and Constitutional Affairs, Swaziland began the process of accession to the WIPO Internet treaties. Swaziland is also a party to the Madrid Protocol and is a signatory to the Trademark Law Treaty.

SERVICES BARRIERS

The government of the Kingdom of Swaziland (GKOS) places some restrictions on foreign participation in the services sector. The Swaziland Royal Insurance Corporation had a monopoly on insurance in the country. The Insurance Act together with the Retirement Fund Act obtained royal assent in December 2005, which removed the monopoly of the insurance industry. These acts will give direction to the deployment of institutional funds which may impact positively on capital markets development in the country.

The only mobile phone provider, MTN Swaziland, is still enjoying a monopoly. The GKOS gave MTN a 10-year monopoly that ends in 2008. There is talk of removing the monopoly at the end of the 10-year period.

Swaziland Posts and Telecommunications is the sole provider of fixed-line telephone service.

INVESTMENT BARRIERS

Swaziland does not have an investment code. Policy statements by the government and by individual ministers play a larger role in the promotion of foreign investment than do investment-related laws, regulations, and public institutions. Calls for more concerted action on investment policy have intensified in the last few years, as Swaziland has suffered from drought and economic recession.

Major legislation to support a solid investment climate is lacking in Swaziland. A Securities Bill has been proposed but has not yet been passed. A related proposal, the Financial Services Regulatory Authority Bill, has not reached Parliament. This legislation will bring under one regulatory system all non-bank financial institutions such as insurance providers, retirement funds, building societies, capital markets, and other financial intermediaries.

Companies are governed by the outdated Companies Act of 1912. A proposed Bill to replace the Companies Act would regulate the incorporation, registration, management, administration, and dissolution of companies. While foreign businesses currently operating in Swaziland complain about the lack of regulations, some also emphasize that it would be a mistake to decide against investing in Swaziland for this reason alone.

There are no formal policies or practices that discriminate against foreign-owned investors and companies in Swaziland. Foreign investors are free to invest in most sectors of the Swazi economy. Certain sectors are closed to foreign investment. Pineapple canning, the cellular telephone network, the landline phone network, electricity, and water are all state-sanctioned or state-owned monopolies. According to the Ministry of Enterprise and Employment, Parliament is considering a Trade and Business Facilitation Bill that would impose Swazi ownership requirements in certain sectors and encourage small-scale entrepreneurship in rural areas.

The Cabinet has approved the Privatization Policy and steps are now being taken to implement it. The privatization process will involve the creation of a Public Enterprise Agency to ensure that public enterprises manage their affairs efficiently and are not a drain on the nation's resources. The Swazi Post and Telecommunications Corporation (SPTC) and the Swaziland Electricity Board Key are two parastatals that are targeted for privatization, with the possibility of becoming joint ventures involving foreign investors. The Swaziland Dairy Board, the Royal Swazi National Airways, and the Swaziland Railways are regulatory bodies whose commercial activities have been privatized. The Swaziland Railways managed to raise its level of efficiency, making profits after partial privatization. A team of consultants is examining restructuring options, including the possibility of offering railway concessions to private operators.

SAUDI ARABIA

TRADE SUMMARY

The U.S. goods trade deficit with Saudi Arabia was $23.9 billion in 2006, an increase of $3.5 billion from $20.4 billion in 2005. U.S. goods exports in 2006 were $7.8 billion, up 14.6 percent from the previous year. Corresponding U.S. imports from Saudi Arabia were $31.7 billion, up 16.5 percent. Saudi Arabia is currently the 25th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Saudi Arabia were $1.9 billion in 2005 (latest data available), and U.S. imports were $390 million. Sales of services in Saudi Arabia by majority U.S.-owned affiliates were $524 million in 2004 (latest data available), while sales of services in the United States by majority Saudi Arabia-owned firms were not available in 2004 ($572 million in 2003).

The stock of U.S. foreign direct investment in Saudi Arabia in 2005 was $3.5 billion (latest data available), up from $3.2 billion 2004.

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), Saudi Arabia applies the GCC common external tariff of 5 percent for most products, with a number of country-specific exceptions. Saudi Arabia's exceptions to the common external tariff include 452 products that may be imported duty-free, including aircraft and most livestock. The Saudi government also applies a 12 percent tariff on 434 products, in some cases to protect local industries. Certain textile imports are among the products to which the 12 percent rate applies. A number of Saudi industries enjoy 20 percent tariff protection, including certain textile and apparel products, those producing sesame extract, furniture, cooking salt, edible offal, rabbit meat, mineral water and plastic pipes. In addition, long-life milk and nine other agricultural products are subject to a 25 percent tariff on a seasonal basis. Saudi Arabia imposes a 40 percent tariff on dates. Saudi Arabia also imposes a 100 percent tariff on cigarette and other tobacco imports.

Import Licensing

In Saudi Arabia, the importation of certain articles is either prohibited or requires special approval from competent authorities. Specifically, the importation of alcohol, firearms, pork products and used clothing is prohibited. Imports of agriculture seeds, live animals, fresh and frozen meat, books, periodicals, movies, tapes, religious books and materials, chemicals and harmful materials, pharmaceutical products, wireless equipment, horses, radio-controlled model airplanes, products containing alcohol, natural asphalt and archaeological artifacts require special approval.

Documentation Requirements

To export products to Saudi Arabia from the United States, the U.S. Department of State's Authentication Division and the Saudi Embassy or Consulate must authenticate the documentation. The U.S.-Saudi Arabian Business Council is not required to certify legal documents, but will do so if requested. Some products, most notably agricultural biotechnology products, need a certificate from the country of origin attesting to the product's fitness for human consumption and that it is sold widely in the country of origin. All consumer products must have a certificate of conformity issued under the guidelines of the Certificate of Conformity Program (COCP, see below) before entering the country.

STANDARDS, TESTING, LABELING AND CERTIFICATION

As of August 28, 2004, and in accordance with Ministers Decision No. 213, Saudi Arabia abolished the Saudi Arabian Standards Organization (SASO) International Conformity Certification Program (ICCP), a pre-shipment certification program initiated in 1995 to monitor and control the importation of certain products into the country. In place of ICCP, in 2006 the Ministry of Commerce implemented a Conformity Certificate Program (COCP). Guidelines for this program can be found on the website of the Ministry of Commerce and Industry, www.commerce.gov.sa/english. The new program requires all exporting companies to provide a document ("conformity certificate") with every shipment to Saudi Arabia. It applies to all products, including domestic products, except those subject to the Kingdom's sanitary and phytosanitary regulations. Certification is not required when documentation has been provided for purposes of assuring conformity with Islamic religious requirements. There are no fees for the certificate. The document may be submitted by a conformity assessment body, an accredited body, an independent third party or a manufacturer to declare compliance with the relevant Saudi Arabian technical regulation or standard. The entity submitting the document is responsible for the information contained in the certificate. The Saudi Arabian Standards Organization's (SASO) role, which previously included governance of certificates of conformity, is now limited to issuance of Saudi standards for consumer products. U.S. exporters reported continued problems with customs officers at ports of entry failing to apply the new COCP procedures and insisting instead on the previously required ICCP certificates.

In December 2005, Saudi Arabia implemented a voluntary shelf life standard (manufacturer-determined use-by dates) for most foodstuffs, with the exception of selected perishable foods (fresh or chilled meat and poultry; fresh milk and fresh milk based products; margarine; fresh fruit juice; table eggs; and baby foods) which must meet Saudi Arabian Standards Organization's (SASO) established mandatory expiration periods. The revised standard (SASO 457/2005) no longer bans imports of food products with less than half of their shelf life remaining. Saudi Arabia requires an animal protein-free certificate for imports of poultry, beef and lamb and their by-products. For beef and poultry meat imported from the United States, Saudi Arabia recognizes a two-certificate approach: (1) an official U.S. Food Safety Inspection Service (FSIS) export certificate issued for beef and poultry meat and (2) a producer or manufacturer self-certification to cover any additional requirements not related to food safety or animal health issues, such as an animal protein free feed declaration. In addition, the Saudi government bans the import of therapeutic medicines used in animal feed. These measures were taken with little to no advance notice. The United States continues to address these issues during bilateral negotiations with Saudi Arabia, and expects that Saudi Arabia's implementation of its WTO commitments will eliminate or improve many of these restrictions.

The Saudi Arabian Ministries of Agriculture (MOA) and Commerce and Industry (MOCI) implemented biotechnology-labeling decrees on animal feed and processed foodstuffs in January 2004 and December 2001, respectively. The decrees require a positive biotechnology label if a product contains more than 1 percent of genetically modified vegetable (plant) ingredients. For U.S. grains, the MOA has accepted a one-time biotechnology grains certification statement from the U.S. Grain Inspection, Packers and Stockyards Administration (GIPSA) submitted to the Ministry in 2003. The statement certifies that exported transgenic grains are the same as those consumed in the United States. The approved statement eliminates the need for a shipment-by-shipment positive biotechnology certification for corn and soybean meal exported to the Kingdom. In 2004, the MOA banned imports of all types of biotechnology seeds.

MOCI randomly samples imported foodstuffs at ports of entry for testing of undeclared biotechnology presence. According to reports from MOCI, test results thus far have been good and companies whose products test negative will not be tested again for another six months. Rarely have food products declared biotechnology free tested positive. However, there have been some cases of undeclared biotechnology presence detected in foodstuffs imported from the Asian countries and a few cases from the United States. Those companies involved in exporting biotechnology foodstuffs without proper labeling are banned from exporting food products to Saudi Arabia. Thus far, the Saudi biotechnology-labeling requirement has not drastically affected imports of U.S. agricultural products. The Kingdom is currently reviewing both Ministerial biotechnology-labeling decrees to establish a comprehensive biotechnology standard to govern imports of all agricultural products.

GOVERNMENT PROCUREMENT

When Saudi Arabia acceded to the WTO in December 2005, it committed to initiating negotiations for accession to the WTO Agreement on Government Procurement (GPA) and to complete its GPA negotiations within one year of becoming a WTO Member. However, Saudi Arabia has not begun negotiations for GPA membership, nor has it become an observer in the WTO Committee on Government Procurement.

Saudi Arabia is currently reviewing its government procurement procedures to bring them in line with WTO GPA requirements; however, it has not yet published revised procedures.

Several royal decrees that strongly favor GCC nationals apply to Saudi Arabia's government procurement. However, most Saudi defense contracts are negotiated outside these regulations on a case-by-case basis. Under a 1983 decree, contractors must subcontract 30 percent of the value of any government contract, including support services, to firms majority-owned by Saudi nationals. An exemption is granted where no Saudi-owned company can provide the goods and services necessary to fulfill the procurement requirement.

The tender regulations require that Saudi individuals and establishments be given preference over other suppliers in government procurement. However, the regulations extend the preference to other suppliers in which Saudi nationals hold at least 51 percent of the supplier's capital. The tender regulations also give a preference to products of Saudi origin that satisfy the requirements of the procurement. In addition, Saudi Arabia gives priority in government purchasing programs to GCC products. These items receive up to a 10 percent price preference over non-GCC products in all government procurements in which foreign suppliers participate.

Foreign suppliers that participate in government procurement are required to establish a training program for Saudi nationals. Some government contracts also require a minimum level of subcontracting with Saudi companies. In addition, the Saudi government may favor joint venture companies with a Saudi partner over foreign firms, and will also support companies that use Saudi goods and services. For large military projects, there is frequently an offset requirement; this is determined on a project-by-project basis.

Foreign companies providing services to the Saudi Arabian government can do so without a Saudi service agent and can market their services to various other public entities directly through an office that has been granted temporary registration. Foreign suppliers working only for the government, if not already registered to do business in Saudi Arabia, are required to obtain a temporary registration from the Ministry of Commerce and Industry within 30 days of contract signing. New foreign investment regulations also allow foreign companies to establish a branch office.

In 2003, the Saudi Council of Ministers passed a resolution calling for increased transparency in government procurement. The contract information to be made public includes: title, parties, date, financial value, brief description, duration, place of execution and point of contact information.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Saudi Arabia remained on the Special 301 Watch List in 2006. The U.S. Government initiated a Special 301 Out-of-Cycle review focusing on better IPR enforcement efforts, judicial transparency and patent protection, but the review was not complete at the time of publication of this report. As of the end of 2006, Saudi Arabia has enacted laws that cover a range of IPR issues, including patents, trademarks, copyright, trade names, commercial data, border protection of IPR and protection of undisclosed information relating to pharmaceuticals. The laws also increased penalties for IPR violators, including instituting fines and prison sentences.

Saudi Arabia has made progress on copyright enforcement over the past few years, with a steadily increasing number of raids/seizures and fines imposed. However, the international copyright industry seeks greater Saudi government enforcement action against software copiers and unauthorized end-users of software. Another area of concern involves counterfeiting of U.S. trademarked products. The Saudi government is aware of these problems and is considering options to combat them. Copyright owners have expressed frustration with the lack of transparency in the enforcement system, procedural hurdles to judicial enforcement and failure to impose punishment at the higher end of deterrent penalties.

To speed the processing of patent applications, Saudi Arabia passed new patent legislation and has taken measures to hire and train more examiners, translators and clerks to speed the processing of patent applications. However, the implementation of the Patent Law, especially in relation to the concept of novelty, is a matter of concern for the U.S. pharmaceutical industry, which has expressed concern that the new Patent Law does not provide protection to their pending patent applications that were filed under provisions of the old law. The U.S. Government and industry are working with the Saudi government to try to find solutions for these concerns.

SERVICES BARRIERS

Insurance

In the last few years, the Saudi Arabian government has implemented a series of laws giving structure to what had been an essentially unregulated sector and mandating certain types of insurance coverage within the Kingdom. In November 2002, third party motor vehicle insurance became mandatory in the Kingdom. In October 2003, the Saudi Arabian government enacted the Control Law for Co-Operative Insurance Companies. The law requires all insurance companies operating in the Kingdom to be locally registered, publicly owned firms, and to operate on a cooperative or mutual basis. Implementation of a Health Council scheme to make cooperative health insurance mandatory began in 2006, and requires employers to pay for insurance coverage of foreign workers and dependent family members. A new law requiring foreign workers in Saudi Arabia to show proof of medical insurance in order to receive or renew national identification cards will be used to enforce this legislation.

The Saudi Arabian Monetary Agency (SAMA) began accepting applications for insurance operations in November 2003. Insurance firms operating in the Kingdom may offer any insurance product in both the commercial and personal markets as long as the firm is organized consistent with the cooperative insurance structure.

On April 13, 2005, Royal Decree No. 3120/MB allowed foreign insurance companies to operate in Saudi Arabia through direct branches, which are not subject to the requirements of public ownership and cooperative form, for a transitional period of three years, pending the issuance of insurance branching regulations. Saudi Arabia committed during its WTO accession to permit insurance branching. To date Saudi Arabia has not issued regulations implementing their insurance branching commitment.

Banking

Although the Saudi Banking Control Law does not limit foreign participation, for the past twenty years the Saudi Arabian Monetary Agency has capped foreign ownership in commercial banks at 40 percent of any individual bank operation. In the last few years, the Saudi government has taken steps to increase foreign participation in its banking sector by granting operating licenses to foreign banks. Bahrain-based Gulf International Bank (GIB), Dubai-based Emirates Bank International, BNP Paribas, Germany-based Deutsche Bank and the National Bank of Kuwait, are among those that currently operate in the Kingdom. The Saudi Capital Markets Law came into effect in February 2004. The law provides for the creation of investment banks and brokerages in the Kingdom. Levels of foreign participation in these ventures have been capped at 60 percent. As capital markets regulations are finalized, Saudi Arabian investment banking will likely see significant growth.

Shipping

Saudi Arabia gives preferences to national carriers for up to 40 percent of government-related cargoes. Under these rules, the National Shipping Company of Saudi Arabia and United Arab Shipping Company receive preferences.

As a result of its WTO accession negotiations, Saudi Arabia undertook full commitments for courier services, without market access or national treatment limitations for any mode of supply, and with an additional commitment to ensure that private suppliers of express delivery services would be accorded treatment "no less favorable than that accorded to the Post Office for its activities in express delivery." However, in 2006, application of Ministerial Resolution No. 6 (dated 14.2.1422(H)) called into question Saudi Arabia's implementation of its WTO commitments for express delivery services by imposing strict nationality requirements that effectively exclude all foreign participation from the sector, and by setting prohibitions on the carrying of parcels above certain weights.

Agent and Distributor Rules

Saudi law requires that domestic distributors register with the Ministry of Commerce and Industry. Saudi Arabia's WTO commitments, which came into effect on December 11, 2005, open distribution to non-nationals on a gradual basis, up to 75 percent of total equity within three years. In July 2001, the Saudi Council of Ministers canceled the requirement for foreign companies with government contracts to have a Saudi service agent. In 2006, some foreign companies reported difficulties in obtaining licenses to provide distribution services as required by Saudi Arabia's WTO commitments.

INVESTMENT BARRIERS

In April 2000, Saudi Arabia's Council of Ministers approved a new foreign direct investment code with the goal of facilitating the establishment of foreign companies, both joint ventures and 100 percent foreign-owned enterprises, in Saudi Arabia. Key provisions allow foreign investors to transfer money freely into and out of the country, allow joint-venture companies to sponsor their foreign investors as well as their foreign employees (all foreigners in Saudi Arabia need a legal sponsor in order to reside in the country), and permit foreign investors to own real property for company activities. The government established the Saudi Arabian General Investment Authority (SAGIA) to function as a one-stop shop, where foreign investors can obtain all of the permits or authorizations necessary to make an investment. In addition to its three existing service centers (in Riyadh, Jeddah and Dammam), SAGIA opened a Women's Investment Center in March 2003 to promote the participation of Saudi women in business.

SAGIA must grant or refuse an investment license within 30 days of receiving an application and supporting documentation from the investor. Licenses are required for all foreign investments. Wholly domestic projects funded with Saudi or other GCC member money do not need licenses through SAGIA's investment services center, as it was specifically designed for foreign investors. However, many of the licenses SAGIA issues concern projects jointly owned with Saudi investors. Bureaucratic impediments arising in other ministries have sometimes delayed the application process. SAGIA continues to take steps to address these impediments and to streamline the process, including concluding 23 separate agreements relating to the processing of license applications with other ministries and government agencies. Some companies still experience bureaucratic delays after receiving licenses from SAGIA, for example, in obtaining a commercial registry or purchasing property.

Following SAGIA's recommendations in 2001, the Supreme Economic Council published a negative list of sectors in which foreign investment is prohibited (www.sagia.gov.sa). Foreign investment is currently prohibited in 18 manufacturing and service sectors and subsectors including oil exploration, drilling and production, and manufacturing and services related to military activity.

In October 2003, the Saudi government passed the Capital Markets Law, which took effect in February 2004. The law allows for the creation of financial intermediaries (stock brokerages and investment banks) and created an independent stock market and an independent stock market regulatory body. The law sets SR50 million ($13.3 million) capitalization requirements for brokerages and provides penalties for insider trading and wrongful dissemination of information. The law also allows for the development of long-term investment instruments, and limits the maximum equity share held by foreign partners in joint ventures with Saudi entities to 49 percent. Saudi Arabia agreed to raise the maximum allowable percentage of the foreign partner to 60 percent after WTO accession. The new law does not repeal the prohibition on direct foreign participation in the Saudi stock market. Foreigners can continue to purchase shares in bank operated investment funds, however. Foreign participation in these funds is limited to 10 percent of the total value of the fund.

ELECTRONIC COMMERCE

Pursuant to the Council of Ministers' decree concerning the regulation of use of the Internet in Saudi Arabia, all websites that contain content in violation of Islamic tradition or national regulations are blocked. Pornographic websites are identified and blocked through a filtering system, which does occasionally prevent access to sites that appear to fall outside stated prohibited topics. Non-pornographic sites are placed on the blocked list based upon direct requests from the security bodies within the government. The Saudi Arabian government is in the process of drafting an electronic commerce law; however, it is unclear when it will be completed.

SINGAPORE

TRADE SUMMARY

The U.S. goods trade surplus with Singapore was $6.9 billion in 2006, an increase of $1.4 billion from $5.5 billion in 2005. U.S. goods exports in 2006 were $24.7 billion, up 19.6 percent from the previous year. Corresponding U.S. imports from Singapore were $17.8 billion, up 17.7 percent. Singapore is currently the 9th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Singapore were $5.8 billion in 2005 (latest data available), and U.S. imports were $3.7 billion. Sales of services in Singapore by majority U.S.-owned affiliates were $6.2 billion in 2004 (latest data available), while sales of services in the United States by majority Singapore-owned firms were $1.6 billion.

The stock of U.S. foreign direct investment (FDI) in Singapore in 2005 was $48.1 billion (latest data available), down from $57.1 billion in 2004. U.S. FDI in Singapore is concentrated largely in the manufacturing, wholesale trade, information, and professional scientific and technical services sectors.

FREE TRADE AGREEMENT (FTA)

The United States and Singapore signed a Free Trade Agreement (FTA) on May 6, 2003, which entered into force on January 1, 2004. It was the first comprehensive FTA the United States concluded with an Asian country, eliminating most tariffs immediately upon entry into force of the FTA, and making important advances in many key areas. Among other benefits, the FTA provides strong disciplines in the most competitive U.S. service sectors, enhances protection for intellectual property, makes specific commitments regarding the conduct of Singapore's government enterprises and provides strong and transparent disciplines on government procurement. The FTA also includes commitments to prevent illegal transshipments of all traded goods and to prevent circumvention for textiles and apparel as well as requirements to effectively enforce domestic labor and environmental laws. Since the FTA was implemented, exports from the United States have increased 49 percent through 2006, with steady growth in medical devices, machinery and construction equipment exports, and significant growth in pharmaceuticals exports.

In addition to the FTA with the United States, Singapore has concluded bilateral FTAs with Australia, the European Free Trade Association, Japan, Jordan, New Zealand, South Korea, India and Panama and a quadrilateral agreement with Chile, New Zealand and Brunei. Singapore is negotiating FTAs with Bahrain, Canada, China, Egypt, Kuwait, Mexico, Pakistan, Peru, Qatar, Sri Lanka and the United Arab Emirates. Singapore also is a member of the Association of Southeast Asian Nations (ASEAN), which is negotiating FTAs with Australia, New Zealand, China, India, Japan and South Korea.

IMPORT POLICIES

Tariffs

Singapore imposes no tariffs on industrial goods. It eliminated the last four remaining tariffs (covering imports of beer and certain alcoholic beverages) for goods originating in the United States when the FTA came into force. For social and/or environmental reasons, Singapore levies high excise taxes, applicable to distilled spirits and wine, tobacco products, motor vehicles (all of which are imported) and gasoline.

Singapore does not impose any known restrictions or duties on imports or exports of textiles and apparel. Singapore has bound 70.5 percent of its tariff lines in the World Trade Organization (WTO). Singapore is a signatory to the WTO Information Technology Agreement.

Import Licenses

All imports require a permit, primarily for statistical tracking purposes. Special import licenses are required for certain goods, including designated strategic items, hazardous chemicals, radiation-emitting medical devices, films and videos, arms and ammunition, agricultural biotechnology products, food derived from agricultural biotechnology products, prescription drugs, over-the-counter drugs, vitamins with very high dosages of certain nutrients and cosmetics/skin care products. Additionally, Singapore maintains a tiered motorcycle operator licensing system based on engine displacement, which, along with a road tax based on engine size, places U.S. exports of large motorcycles at a competitive disadvantage. As a result of the FTA, Singapore now allows the importation of chewing gum with therapeutic value for sale, subject to certain requirements.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Under the 2002 Consumer Protection Regulations, 45 categories of electrical, electronic, and gas home appliances and accessories are listed as controlled goods and require a stamp of approval from the Singapore government's standards and certification authority (SPRING Singapore). SPRING Singapore recognizes test reports issued by accredited testing laboratories and certification bodies, including those in the United States. Labels conforming to standardized formats are required on imported foods, drugs, liquors, paints and solvents.

Agriculture

Singapore's food import policy is intended to guarantee a steady and sufficient supply of healthful and high-quality foods from a broad number of countries. Singapore allows meat and poultry imports solely from countries with which it has protocol agreements. Doing so preserves its rigorous food safety requirements through the integration of foreign farm accreditation, inspection and regular testing. Export health documentation endorsed by federal health institutions must accompany every shipment of imported meat and poultry. In addition, Singapore health authorities test every shipment of imported meat and poultry visually for wholesomeness and to ensure it is free from spoilage and disease. Meat and poultry product samples are regularly sent to government laboratories for evaluation to guarantee that they do not exceed the allowable microbiological specifications for raw meat and poultry products. Singapore's Agri-food and Veterinary Authority (AVA) enforces a zero tolerance policy for salmonella enteriditis and E-coli E. 0157 in raw meat products, which is not consistent with international standards and has posed some difficulties for U.S. exporters.

AVA prohibits beef imports from nations in which Bovine Spongiform Encephalopathy (BSE) has been detected, including the United States. Singapore previously required six years of non-BSE detection in a country before re-establishing trade, but has now established a minimum risk rule in line with World Organization for Animal Health (OIE) guidelines. On January 17, 2006, Singapore announced the re-opening of its market to U.S. boneless beef from animals under 30 months of age.

Fresh produce imports are tagged to secure their traceability to farms. Fresh produce is routinely tested to guarantee that it does not exceed maximum pesticide residue limits.

In September 2006, the government of Singapore (GOS) removed a requirement for a Certificate of Age/Origin (COA) for aged distilled spirits despite concerns raised by the EU, the United States and their distilled spirits industries. In many countries, the COA is a useful tool for preventing the importation of counterfeit distilled spirits. The GOS committed to use other means to prevent such illicit trade.

GOVERNMENT PROCUREMENT

Singapore is a signatory to the WTO Agreement on Government Procurement. The FTA provides increased access for U.S. firms to Singapore's central government procurement. Some U.S. and local firms have expressed concerns that government-owned and government-linked companies (GLCs) may receive preferential treatment in the government procurement process. Singapore denies that it gives any preferences to GLCs or that GLCs give preferences to other GLCs.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In line with its FTA commitments and obligations under international treaties and conventions, Singapore has developed one of the strongest IPR regimes in Asia. Amendments to the Trademarks Act, the Patents Act, the Layout Designs of Integrated Circuits Act, Registered Designs Act, and a new Plant Varieties Protection Act, and a new Manufacture of Optical Discs Act came into effect in July 2004. The amended Copyright Act and Broadcasting Act became effective in January 2005; the Copyright Act was further amended in August 2005. Singapore has implemented Article 1 through Article 6 of the World Intellectual Property Organization (WIPO) Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks of 1999. It has signed and ratified the International Convention for the Protection of New Varieties of Plants (1991); the Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite (1974); the WIPO Copyright Treaty (1996); and the WIPO Performances and Phonograms Treaty (1996). Singapore is a signatory to other international IPR agreements, including the Paris Convention, the Patent Cooperation Treaty, the Madrid Protocol and the Budapest Treaty. The WIPO Secretariat opened offices in Singapore in June 2005.

Transshipment

To implement its FTA commitments, Singapore amended Section 31 of the Import/Export Act in November 2003 to facilitate information-sharing with U.S. Customs and Border Protection and other country officials with which it has relevant trade agreements. Nonetheless, Singapore, a major transshipment and transit point for sea and air cargo, does not collect information on the contents and destinations of most transshipment and transit trade, which accounts for 80 percent of the cargo coming through the port. This lack of information makes enforcement against transshipment or transit trade in infringing products virtually impossible. In addition, goods in transit are not subject to seizure under the Copyright Act, although it may be possible if a search warrant is obtained in advance.

Internet

In accordance with the FTA, Singapore's amended Copyright Act provides improved protection for digital works, and outlines requirements and procedures for removing infringing material from Internet sites. Despite the amendment, the copyright industry maintains that the new law fails to impose full liability on service providers engaged in infringing activity. U.S. industry has raised concerns that Internet piracy in Singapore is on the rise as a result of the increasing availability of the country's broadband facilities.

Enforcement

In line with its FTA obligations, Singapore has taken steps to improve IPR enforcement, which is among the lowest in the Asia Pacific region. Singapore claims that its enforcement efforts have almost eliminated the production of pirated material and blatant storefront retail piracy.

According to industry estimates, Singapore's piracy rate averaged 5 percent for music and 12 percent for movies. Business software losses were estimated at nearly $86 million in 2005.

While a number of local educational institutions (the majority government-operated) have signed agreements to comply with their legal obligations to pay royalty fees to publishers, unlawful duplication of textbooks at some commercial copy centers continues. The police have conducted multiple raids, but, according to industry representatives, the practice is lucrative enough to continue in spite of the possibility of large fines.

SERVICES BARRIERS

Basic Telecommunications

On April 1, 2000, Singapore began removing all barriers limiting foreign entry to the telecommunications sector. Any foreign or domestic company can provide facilities-based (fixed line or mobile) or services-based (local, international, and callback) telecommunications services. Under the Telecoms Competition Code 2000 (Competition Code), the former monopoly (and 62 percent government-owned) telecommunications service provider, Singapore Telecommunications (SingTel), faces competition in all market segments, including fixed-line, mobile and paging services. Its main competitors, MobileOne and StarHub, are also GLCs. The Infocomm Development Authority (IDA) in March 2005 finalized its triennial review of the Competition Code, which aims to enhance market transparency. SingTel has implemented most provisions of the Code, including making public its prices for interconnection services.

Competitive facilities-based operators continue to be limited in their ability to take advantage of wholesale pricing for SingTel's ("last mile") local leased circuits. IDA first mandated this regulatory change in December 2003, but SingTel has repeatedly contested this directive, typically through requests for IDA to stay decisions or through appeals to the Minister for Information, Communications and the Arts (MICA). In October 2005, IDA amended SingTel's Reference Interconnection Offer to provide for a more appropriate, open-standard technical interface. SingTel appealed IDA's decision MICA upheld IDA’s original decision in May 2006. Although SingTel must now offer wholesale prices for local leased circuits at reduced rates ranging from 55 percent to 82 percent, U.S. industry is still unable to avail itself of this more competitive pricing structure due to certain uneconomical technical interconnection requirements imposed by SingTel.

The United States remains concerned about the lack of transparency in some aspects of Singapore's telecommunications regulatory and rule-making process. In particular, there is no obligation to make information publicly available concerning a company's request for a stay of decision or the filing of an appeal, to request public comments about such requests, or to publish a detailed explanation concerning final decisions made by IDA or MICA. Although this "closed-door" system does not contravene Singapore's FTA obligations, Singapore is reviewing this process at the U.S. Government's request to determine how to improve its transparency.

Under the FTA, Singapore agreed that dominant licensees (SingTel and StarHub) must offer cost-based access to submarine cable-landing stations and allow sharing of facilities. U.S. companies continue to have problems with access to facilities used to lay lines as provided for in the FTA.

Since November 2003, SingTel has been exempted from dominant licensee status for wholesale international telephone services (ITS) and tariff filing requirements for residential and commercial retail ITS. In September 2006, IDA announced its preliminary decision to exempt SingTel from dominant licensee obligations for the residential portion of the retail ITS while keeping the commercial retail ITS under dominant licensee obligations. SingTel announced in June 2006 plans to consolidate its local exchanges but failed to provide details of specific local exchanges to be closed. This has put U.S. and other carriers' expansion plans on hold. IDA has denied requests by U.S. and other companies for interconnection at a more centralized location.

Audiovisual and Media Services

Singapore's local free-to-air broadcasting, cable and newspaper sectors are effectively closed to foreign firms. Section 47 of the Broadcasting Act restricts foreign equity ownership of companies broadcasting to the Singapore domestic market to less than 49 percent, although the Act gives the Media Development Authority (MDA) the authority to waive this requirement. The Singapore government also limits individual equity stakes in broadcasting companies to no more than 5 percent of issued shares.

MediaCorp TV is the only free-to-air television broadcaster. It is 80 percent owned by the government and 20 percent by publicly listed Singapore Press Holdings (SPH). Under MDA rules, MediaCorp TV must outsource at least 285 hours of local content production to independent television production companies per year. The sole subscription TV provider, StarHub Cable Vision (SCV), is a 100 percent owned subsidiary of a majority government-owned publicly listed company. Free-to-air radio broadcasters are mainly government-owned, with MediaCorp Radio Singapore being the largest operator. BBC World Service is the only foreign free-to-air broadcaster in Singapore. In July 2005, MDA announced its intention to impose more restrictive regulations governing the relationships between content/channel providers and pay TV operators in Singapore, *i.e.,* SCV. Following industry feedback, MDA determined in May 2006 not to proceed in this direction. Singapore restricts the use of satellite dishes and has not authorized direct-to-home satellite television services. MDA must license the installation and operation of broadcast-receiving equipment, including satellite dishes. Satellite broadcasters that want to operate their own uplink facility must get a special license from MDA. Satellite broadcasters lacking their own facility are restricted to using one of four available uplink facilities.

The Newspaper and Printing Presses Act restricts equity ownership (local or foreign) to 5 percent per shareholder, unless the government approves a larger shareholding, and requires that all the directors of a newspaper company be Singapore citizens. Newspaper companies must issue two classes of shares, ordinary and management, with the latter available only to citizens of Singapore or to Singapore companies approved by the government.

Media businesses or professionals must be licensed by MDA in order to provide services or apparatus and equipment. Printed and audio material is no longer subject to prior review, but licensees are advised to abide by MDA guidelines. MDA requires all film and video material for distribution and screening to be certified and classified. The Singapore government can deny or revoke permits without warning or without giving a reason.

Distribution, importation or possession of any "offshore" or foreign newspaper must be approved by the government. Singapore significantly restricts freedom of the press, having curtailed or banned the circulation of some foreign publications. In September 2006, Singapore banned the Far Eastern Economic Review on grounds that the publisher did not comply with Section 23 of the Newspaper and Printing Presses Act, whereby the offshore publisher must appoint a person within Singapore authorized to accept service of any notice or legal process on behalf of the publisher and post a security deposit of S$200,000 ($125,000). The Singapore government has also "gazetted" foreign newspapers *i.e.*, numerically limited their circulation. Foreign publishers also face the risk of defamation suits should they be found to "interfere" with Singapore's domestic politics.

Legal Services

U.S. and other foreign law firms with offices in Singapore face certain restrictions. They cannot practice Singapore law, employ Singapore lawyers to practice Singapore law, or litigate in local courts. Since June 2004, U.S. and other foreign lawyers have been allowed to represent parties in arbitration in Singapore without the need for a Singapore attorney to be present. U.S. law firms can provide legal services with respect to Singapore law only through a Joint Law Venture (JLV) or Formal Law Alliance (FLA) with a Singapore law firm, subject to the Guidelines for Registration of Foreign Lawyers in Joint Law Ventures to Practice Singapore Law. Singapore relaxed one of these guidelines for U.S. law firms under the FTA. As of October 2005, 16 of the 64 foreign law firms in Singapore were from the United States. Additionally, there was one U.S. JLV and one FLA.

Except for law degrees from designated U.S., Australian, New Zealand and British universities, no foreign university law degrees are recognized for the purpose of admission to practice law in Singapore. Under the FTA, Singapore has recognized law degrees from Harvard University, Columbia University, New York University and the University of Michigan, effective April 7, 2006.

To address a perceived shortage of practicing lawyers, Singapore relaxed its criteria for admission of attorneys to the Singapore Bar, effective October 2006. One of the new criteria will admit to the Bar Singapore-citizen or permanent-resident law school graduates of the above-mentioned designated universities who were ranked among the top 70 percent of their graduating class or have obtained lower-second class honors (under the British system). The government also intends to allow highly skilled foreign lawyers to practice Singapore corporate, finance and banking law, and is considering possible implementation alternatives.

Engineering and Architectural Services

Engineering and architecture firms can be 100 percent foreign owned. In line with the FTA provisions, and also applicable to all foreign firms, Singapore has removed the requirement that the chairman and two-thirds of the firm's board of directors must be composed of engineers, architects or land surveyors registered with local professional bodies. Practicing engineers and architects must register with the Professional Engineers Board and the Architects Board, respectively. Under amended legislation, local and foreign job applicants, including U.S. degree-holders, will be required to have at least four years of practical experience in engineering or architectural works and pass an examination set by the respective Board.

Accounting and Tax Services

The major international accounting firms all operate in Singapore. Public accountants and at least one partner of a public accounting firm must reside in Singapore. Only public accountants who are members of the Institute of Certified Public Accountants of Singapore and registered with the Public Accountants

Board of Singapore may practice public accountancy in the country. The Board recognizes U.S. accountants registered with the American Institute of Certified Public Accountants.

Banking and Securities

Retail Banking

Singapore maintains legal distinctions between offshore and domestic banking units, and the type of license held (full, wholesale or offshore). Except in retail banking, Singapore laws do not distinguish operationally between foreign and domestic banks.

In 1999, Singapore embarked on a five-year banking liberalization program to ease restrictions on foreign banks and supplemented this with phased-in liberalization under the FTA. Since then, the Singapore government has removed a 40 percent ceiling on foreign ownership of local banks and a 20 percent aggregate foreign shareholding limit on finance companies. It has granted "qualifying full bank" or full service licenses to six foreign banks, including two U.S. banks. Since January 2004, under the FTA, U.S.-licensed full-service banks have been able to operate at up to 30 customer service locations (branches or off-premise ATMs); non-U.S. full-service foreign banks have been allowed to operate since January 2005 at up to 25 locations, compared with 15 previously. These full-service banks can freely relocate existing branches, and share ATMs among themselves. They also can provide electronic funds transfer, point-of-sale debit, and Central Provident Fund (Singapore's compulsory pension fund) related services.

Under the FTA, Singapore lifted its ban on new licenses for full-service banks in June 2005, and will do the same for wholesale banks by January 1, 2007. Since January 1, 2006, licensed full-service banks are able to operate at an unlimited number of locations. Locally incorporated subsidiaries of U.S. full-service banks have been able to apply for access to local ATM networks since June 30, 2006. Non-locally incorporated subsidiaries of U.S. full-service banks can begin doing so effective January 1, 2008.

However, foreign charge card issuers are still prohibited from allowing their local card holders to access their accounts through the local ATM networks. Customers of foreign banks are also unable to access their accounts for cash withdrawals, transfers or bill payments at ATMs operated by banks other than those within their own bank or at foreign banks' shared ATM networks.

U.S. industry advocates enhancements to Singapore's credit bureau system. The Minister of Finance must provide specific types of approval for acquisitions of 5 percent, 12 percent or 20 percent or more of the voting shares of a local bank. Although it has lifted the formal ceilings on foreign ownership of local banks and finance companies, the Singapore government has indicated that it will not allow a foreign takeover of its three major local financial institutions. While foreign penetration of the Singapore banking system is comparatively high, with foreign banks holding about 40 percent of non-bank deposits, the government has stated publicly that it wants local banks' share of total resident deposits to remain above 50 percent.

Restricted and Offshore Banking

Since 2001, Singapore's licensing regime has shifted away from distinguishing between on-shore and offshore banking activities to one that distinguishes between retail and wholesale activities. The Monetary Authority of Singapore (MAS) has issued 20 new wholesale bank licenses since 2001 as part of the liberalization program. MAS continues to upgrade certain existing offshore banks to wholesale bank status. New foreign bank entrants are also eligible to apply for wholesale banking licenses. Unless otherwise approved by MAS, wholesale banks can operate in only one location.

Restrictions on Singapore Dollar Lending

Non-residents can borrow local currency freely if the proceeds are used in Singapore. Non-resident financial entities may borrow local currency freely for their use in or outside Singapore if the amount does not exceed S$5 million (US$3.1 million); if it does, the amount must be swapped or converted into foreign currency upon drawdown. There are no controls on the borrowing of Singapore dollars by residents. MAS requires banks to report their monthly aggregate outstanding Singapore dollar lending to non-resident financial institutions.

Securities

In January 2002, Singapore removed all trading restrictions on foreign-owned stockbrokers. Aggregate investment by foreigners, however, may not exceed 70 percent of the paid-up capital of dealers that are members of the Singapore Exchange Limited. Foreign funds may be registered directly, provided the prospectus is from an entity registered as a foreign company in Singapore and the fund is approved by MAS.

Distribution Services

The Ministry of Trade and Industry implemented a Multi-Level Marketing and Pyramid Selling (Excluded Schemes and Arrangements) Order in January 2002 to clarify which kinds of multi-level and direct marketing/selling arrangements, whether local or foreign, are legal in Singapore. The order prohibits compensation for recruitment of participants. It prohibits any Singapore-registered company or citizen/resident from promoting any overseas pyramid selling marketed through the Internet. Insurance businesses licensed under the Insurance Act and its subsidiary legislation, master franchise schemes, and direct selling schemes that meet conditions listed in the Order are exempted from the Act.

INVESTMENT BARRIERS

Singapore has a generally open investment regime and no overarching screening process for foreign investment. Singapore places no restrictions on reinvestment or repatriation of earnings and capital. The investment chapter of the United States-Singapore FTA provides for national and most-favored nation treatment, the right to make financial transfers freely and without delay, disciplines on performance requirements, international law standards for expropriation and compensation, and access to binding international arbitration.

ELECTRONIC COMMERCE

Singapore has no significant barriers hindering the development and use of electronic commerce. The FTA contains state-of-the-art provisions on electronic commerce, including national treatment and most-favored nation obligations for products delivered electronically, affirmation that services disciplines cover all services delivered electronically, and permanent duty-free status of products delivered electronically.

Singapore considers the Internet to fall within the scope of its Broadcasting Act. Internet service providers must channel all Internet traffic through Internet access service providers that function as main "gateways" to the Internet. Internet service resellers, Internet content providers, individuals who put up personal web pages, software developers, providers of raw financial information and news wire services do not have to register with the Singapore Broadcasting Authority.

OTHER BARRIERS

Competition

The FTA contains specific conduct guarantees to ensure that commercial enterprises in which the Singapore government has effective influence will operate on the basis of commercial considerations and will not discriminate in their treatment of U.S. firms. In accordance with its FTA commitments, Singapore enacted the Competition Act in 2004, which is being implemented in three phases. Phase I established the Competition Commission of Singapore in January 2005. Phase II involves implementation of provisions on anticompetitive agreements, decisions and practices, abuse of dominance, enforcement, and the appeals process, which came into effect in 2006. Phase III provisions, which address mergers and acquisitions, are expected to come into effect in July 2007.

The FTA includes obligations for greater transparency among government enterprises with substantial revenues or assets. Singapore has an extensive network of government-linked corporations (GLCs) that are active in many sectors of the economy. Some sectors, notably telecommunications, power generation/distribution and financial services, are subject to sector-specific regulatory bodies and competition regulations typically less rigorous than those being implemented under the Competition Act.

U.S. industry has expressed concerns about the lack of adequate trade secrets protections under Singapore law that would provide specific legal protections for commercially sensitive proprietary information.

Transparency

In keeping with the FTA's transparency obligations Singapore has circulated more draft laws and regulations for public comment, including those relating to the implementation of the FTA.

SRI LANKA

TRADE SUMMARY

The U.S. goods trade deficit with Sri Lanka was $1.9 billion in 2006, roughly the same as in 2005. U.S. goods exports in 2006 were $237 million, up 19.7 percent from the previous year. Corresponding U.S. imports from Sri Lanka were $2.1 billion, up 3.0 percent. Sri Lanka is currently the 105th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Sri Lanka in 2005 was $40 million (latest data available), up from $37 million in 2004.

IMPORT POLICIES

Despite an economy open to foreign investment, the pace of reform in Sri Lanka has been uneven. President Rajapaksa's broad economic strategy focuses on poverty alleviation and steering investment to disadvantaged areas, developing the small and medium enterprise sector, promotion of agriculture, and expanding the already large civil service. The current government has backtracked on trade liberalization strategies followed by previous governments.

The Trade, Tariff and Investment Policy Division of the Ministry of Finance and Planning is charged with the formulation and implementation of policies in these areas. In addition, the Trade and Tariff cluster of the National Council of Economic Development (NCED) also examines trade and tariff issues and sends recommendations to the Ministry of Finance and Planning. The NCED consists of 22 clusters representing both private and public sector officials, which examine various sectors of the economy.

Import Charges

Import tariffs: Sri Lanka's main trade policy instrument – and greatest source of revenue – has been the import tariff. In 2005, Sri Lanka's average applied tariff for non-agricultural goods was 8.3 percent. However, the majority of Sri Lanka's non-agricultural tariffs are unbound under World Trade Organization (WTO) rules and can be increased at any time. Sri Lanka's average applied agricultural tariff in 2005 was 22.5 percent.

Currently in Sri Lanka, there are five tariff bands (reduced from six in November 2005) of zero percent, 2.5 percent, 6 percent, 15 percent and 28 percent. Textiles, pharmaceuticals and medical equipment are free of duty. Basic raw materials are generally assessed a 2.5 percent duty. Semi-processed raw material tariffs are 6 percent, while intermediate product tariffs are 15 percent. Most finished product tariffs are 28 percent. There are also a number of deviations from the five-band tariff policy. Tobacco and cigarette tariffs range from 75 percent to 250 percent. In addition, there are specific duties on certain items, including footwear, ceramic products and agricultural products. These specific duties are designed to protect domestic producers. Some items are subject to an *ad valorem* or a specific duty, whichever is higher, and there is intermittent use of exemptions and waivers.

Import taxes and other charges on imports: In November 2004, the Sri Lankan government introduced the Export Development Board (EDB) levy, an additional tax on a range of imports identified as "non-essential." Together with import tariffs and other charges on imports, the EDB levy effectively increases charges on most finished good imports to over 50 percent of the import value, with the highest charges on goods subject to specific duties. Despite an improvement in the foreign reserve position, the government has not revoked the tax.

Other charges on imports include:

- a 10 percent import duty surcharge on all dutiable imports;
- a 2.5 percent ports and airports development levy (PAL) on imports (increased from 1.5 percent from January 1, 2006);
- a Value Added Tax (VAT) of 0 percent, 5 percent, 15 percent and 20 percent (import prices are increased by 7 percent, adding an imputed profit margin, when calculating the VAT and excise duty);
- excise fees on some products such as aerated water, liquor, beer, motor vehicles (motor vehicle excise fees increased sharply in 2004) and cigarettes;
- a port handling charge that varies by container size; and
- a surcharge of 1 percent assessed on the import duty as a Social Responsibility Levy (to fund the National Action Plan for Children). This tax was increased from 0.25 percent from January 1, 2006.

As of October 2006, importers were required to keep a 50 percent deposit on letters of credit on non-essential imports. The requirement was introduced to discourage imports of over 40 categories of consumer items including confectionary, liquor, personal care products, footwear and tableware.

The U.S. Government engaged in bilateral Trade and Investment Framework Agreement (TIFA) talks with the Sri Lankan government in December 2006. The United States underscored that Sri Lanka's import regime, characterized by high finished goods tariffs, continues to impede significantly U.S. export opportunities to Sri Lanka. Sri Lankan government officials noted their inability to reduce these duties immediately as Sri Lanka is dependent on border tariffs for a significant portion of government revenue.

Import Licensing

Sri Lanka requires import licenses for over 300 items at the 6-digit level of the Harmonized System code, mostly for health, environment and national security reasons. Importers must pay a fee equal to 0.1 percent of the import price to receive an import license.

Customs Barriers

The government of Sri Lanka implemented the WTO Customs Valuation Agreement in January 2003 and follows the transaction value method to determine the cost, freight, insurance (CIF) value. The scheme has operated quite successfully and major companies have not faced problems. Customs is also in the process of installing an Electronic Data Interchange system to support an automated cargo clearing facility. When implemented, this system should improve customs administration and facilitate trade.

STANDARDS, TESTING, LABELING AND CERTIFICATION

At present, there are 102 items that come under the Sri Lanka Standards Institution (SLSI) mandatory import inspection scheme. The items include food, steel, electrical cables, switches, water heaters and cement. Importers of these items must obtain a clearance certificate from the SLSI to sell their goods. SLSI accepts letters of conformity from foreign laboratorie, but retains the discretion to take samples and perform tests.

The Ministry of Health, in January 2007, implemented a regulation for mandatory labeling of genetically modified food. Some large U.S. food exporters have expressed concern about this regulation. They believe the regulation is not science-based and that the proposed labeling procedure is excessively burdensome. The regulation could hinder exports of U.S. food brands to Sri Lanka. During December 2006 discussions under the U.S.-Sri Lanka Trade and Investment Framework Agreement (TIFA), the United States raised concerns regarding Sri Lanka's imposition of the new labeling requirement in the absence of clear standards and the assertion that genetically modified products pose health risks. Sri Lanka assured the United States that the new regulations would not become a trade barrier.

Sri Lanka bans some food items completely. There is a ban on chicken in order to protect the domestic industry. Due to fears of Bovine Spongiform Encephalopathy (BSE), Sri Lanka bans imports of beef from the United States and Canada. Sri Lanka does not allow imports of seed potato from the United States due to unsubstantiated fears that the Colorado Beetle will be introduced into the country. The United States and Sri Lankan Departments of Agriculture currently are in technical discussions to resolve this issue.

GOVERNMENT PROCUREMENT

Sri Lanka is not a signatory to the WTO Agreement on Government Procurement. Government procurement of goods and services is primarily undertaken through a public tender process. The government of Sri Lanka publicly subscribes to principles of international competitive bidding but charges of corruption and unfair awards continue. Some tenders are open only to registered providers. In 2004, the government created a National Procurement Agency (NPA) to introduce a more transparent procurement system. However political influence continues to hamper the new system's effectiveness. During December 2006 TIFA talks, NPA officials stated that in March 2006 Sri Lanka published new guidelines to improve the procurement process. A new manual was also published in August 2006. Changes include a requirement to have generic specifications and the opportunity for bidders to protest if the specifications are biased.

Recent examples of procurement outside the normal tender process include an agreement in 2006 with the government of China to build a coal power plant, negotiations with India to build an additional coal power plant, a memorandum of understanding in 2006 with a Chinese consortium for detailed design works for a port in Hambantota without calling for competitive bidding and the decision to grant oil exploration rights off the western coast of Sri Lanka to India and China without a competitive tender process.

U.S. pharmaceutical exports to Sri Lanka are approximately $20 million annually. The Sri Lankan government is committed to providing free health care to its people. The Sri Lankan Ministry of Health buys pharmaceuticals largely from known suppliers and determines the quality and quantity of its pharmaceutical purchases; importers registered with the Ministry can supply pharmaceuticals to the government. Unfortunately, certain clauses of the National Drug Policy (NDP) – on "need" and "cost effectiveness" – could negatively impact U.S. exports of pharmaceuticals to the Sri Lankan government. The "need" clause aims to limit the number of medicines available for a given indication, disregarding approval by leading drug authorities such as the U.S. Food and Drug Administration based on quality, safety and efficacy. The "cost effectiveness" clause may actually mean low cost and as such all research based manufacturers' products will be excluded as they will not be able to compete in price with generic manufacturers who have no burden to recover the cost of research and development that leads to finished marketable products. The U.S. Government raised this issue during the December 2006 TIFA discussions and will work with Sri Lanka to ensure that the NDP does not impede U.S. suppliers in participating in government procurement of pharmaceuticals.

EXPORT SUBSIDIES

Exporting companies approved by the Board of Investment (BOI) are generally entitled to corporate tax holidays and concessions. Exporters receive institutional support from the Export Development Board in marketing. Imports for exporting industries and BOI-approved projects usually are exempted from the payment of VAT. For others, the VAT is refunded. The airports and ports' levy on imports for export processing is 0.25 percent of the CIF value.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Sri Lanka is a party to major intellectual property agreements, including the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, the Trademark Law Treaty, and the convention establishing the World Intellectual Property Organization (WIPO). Sri Lanka and the United States signed a Bilateral Agreement for the Protection of Intellectual Property Rights in 1991 and Sri Lanka is a member of the World Trade Organization. Sri Lanka is not a signatory to the WIPO Performances and Phonograms Treaty and the WIPO Copyright Treaty.

In November 2003, a new intellectual property law – governing copyrights, patents, trademarks and industrial design – came into force that was intended to implement both the U.S.-Sri Lanka bilateral IPR agreement and WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) obligations. Infringement of IPR is a punishable offense under the new law and IPR violations are subject to both criminal and civil jurisdiction.

Copyrights

The Sri Lankan police have conducted some raids of stores selling pirated DVDs and music CDs as well counterfeit apparel. Several offenders have been charged or convicted by courts.

Nevertheless, counterfeit goods continue to be readily available. Local agents of the U.S. and other international companies representing recording, software, movie, and consumer product industries continue to complain that the lack of IPR protection is damaging their business. Piracy levels are very high for sound recordings and software, making it difficult for the legitimate industries to protect their market and realize their potential in Sri Lanka. Software companies complain of the lack of IPR enforcement within government institutions.

Enforcement

Unfortunately, enforcement against piracy and counterfeiting is inadequate, as is public awareness of IPR protection. Aggrieved parties must seek redress of any IPR violation through the courts, a frustrating and time-consuming process. As a sign of limited progress, during 2004-2006, Sri Lanka began enforcing the provisions of its new IPR law.

The government's Director of Intellectual Property and international experts have begun IPR legal and enforcement training for customs and police officials. An IPR working group of adversely affected industries led by the U.S. Embassy and American Chamber of Commerce of Sri Lanka is also working closely with the Sri Lankan government to pursue more aggressive enforcement and enhance public awareness.

These issues were discussed during the December 2006 TIFA meeting. The Sri Lankan government reported that in 2007 it will develop a national IPR strategy to increase enforcement and public awareness as well as use intellectual property for economic development. The U.S. Government will monitor implementation of this initiative.

SERVICES BARRIERS

Sri Lanka has opened its services sector to foreign investment. Foreign ownership of 100 percent equity is allowed in a range of service sectors such as banking, insurance, telecommunications, tourism, stock brokerage, the construction of residential buildings and roads, mass transportation, distribution of energy, and professional services. The establishment of liaison offices is permitted as are direct branches of foreign companies in some sectors. These services are regulated and subject to approval by various government agencies. The screening mechanism is non-discriminatory and, for the most part, routine. The regulatory agencies review investment proposals for their financial and technical viability, examine the suitability of sites (for tourism) and conduct Environmental Impact Assessments.

Banking

Foreign commercial banks are allowed to open branch offices in Sri Lanka, subject to an economic needs test and approval by the Central Bank. Foreign investors are allowed to hold 100 percent equity in local banks, subject to limits on individual share ownership. Currently, there are twelve foreign commercial banks operating in Sri Lanka, including one U.S. bank. Listed below are the main constraints faced in the commercial banking sector:

- government ministries and departments must use only state-owned banks for their banking business;
- restriction on speculative foreign exchange trading by commercial banks (banks are allowed to buy or sell foreign exchange for commercial transactions only);
- restriction on total lending by foreign banks to a single name limited to 30 percent of capital funds in Sri Lanka. (The option of a guarantee from the head office in lieu of capital was withdrawn by the Central Bank in 2006.);
- a VAT on profits before tax and salaries; and
- a mandatory lending requirement to the agricultural sector (applicable to both local and foreign banks). The Central Bank requires banks to increase lending to the agricultural sector to 10 percent of total advances by December 2009.

Insurance

One hundred percent foreign ownership is allowed in insurance. Foreign insurance companies are required, however, to incorporate in Sri Lanka to conduct insurance business. The government has recently privatized the state-owned insurance companies. Resident Sri Lankans are prohibited from obtaining foreign insurance policies except for health and travel. Sri Lanka’s insurance regulatory body retains the discretion to introduce minimum and maximum premiums for various insurance products.

Telecommunications

The telecommunications sector is the most dynamic service industry in Sri Lanka. The government of Sri Lanka maintains a majority share in Sri Lanka Telecom (SLT). Due to SLT’s past monopoly status under government control, it continues to own most of the national telephone infrastructure (including the main switches and the only two international cable landing stations) and continues to dominate the sector, affecting the competitiveness of other operators. In early 2003, the government liberalized international telecommunications and issued 33 non-facilities-based gateway licenses, ending the SLT monopoly over international telephony. Since then, international outgoing call rates have dropped sharply. All other operators are privately owned.

A key problem facing the telecommunications sector is the restriction imposed on interconnection. The regulatory authority has failed to enforce regulations provided under the Telecommunications Act to establish an efficient and transparent interconnection regime. As a result, SLT, the wireless operators and the mobile operators have effectively restricted interconnection for other operators. This has adversely affected the operations of most of the other operators and new international gateway licensees who are unable to make use of their licenses due to lack of interconnection by the local exchange operators. This situation has resulted in illegal bypassing by some operators. Spectrum management is also weak and frequencies are not properly allocated, thereby negatively affecting telecommunication operators.

Tax on foreign television programs and commercials

New barriers to trade exist in the media sector. For example, following a proposal contained in the 2006 government budget, the government imposed taxes on foreign movies and television programs as follows:

- Imported English language movies shown on television are taxed at Rs25,000 (approximately $250). Movies in other languages are taxed at Rs200,000 (approximately $2,000).
- English language television programs are taxed at Rs10,000 (approximately $100) per half hour episode. Programs in other languages are taxed at Rs75,000 (approximately $750) per half hour episode.
- Any foreign film or program dubbed in the local language Sinhala is taxed at Rs90,000 (approximately $900) per half hour.
- Documentaries of educational interest are exempted. Imported Tamil language programs are also exempted.
- Foreign television commercials are taxed at Rs500,000 (approximately $5,000) per year.
- Government approval is required for all foreign films and programs shown on television.

Sri Lankan television stations import English, Tamil and Hindi movies and programs in addition to locally made Sinhala and Tamil ones. President Rajapaksa, who is also the Finance Minister, proposing the tax on television programs, said the revenue will be used to assist the local film and teledrama industry. So far, however, no revenues have been allocated for this stated purpose.

Copies of movies and programs need to be submitted to the Ministry of Media and Information for prior approval. However, the Ministry does not ask for copies of each and every episode of long running television serials. Approval is usually given within 24 hours.

Closure of satellite television stations

Courts imposed a clampdown in June 2006 on two of the biggest companies offering pay television services in Sri Lanka. The initial reason cited for the closure of the first operator was an alleged connection to the Liberation Tigers of Tamil Eelam (LTTE), a U.S.-designated foreign terrorist organization (on the basis that they used the same commercial satellite to receive data). Later it was announced that these operators did not have proper licenses. In July 2006, the President ordered the regulators, the Ministry of Mass Media and Information and the Telecommunications Regulatory Commission of Sri Lanka, to license the operators and regulate the industry. However, the regulators failed to take action to restart the operations until October 2006. The four month closure of the two pay television services has curtailed satellite broadcasts of foreign programs, including some U.S. programs. The two affected companies were allowed to resume operations in November and December 2006, respectively.

Professional Services

There is no formal national policy on professional services. In practice, many foreign doctors, nurses, engineers, architects, and accountants work in Sri Lanka. Most of them are employed by foreign companies. Sri Lanka has not made any WTO commitments on the presence of natural persons and national treatment is not accorded to foreign nationals working in Sri Lanka. Most foreign nationals do not have statutory recognition in Sri Lanka and cannot sign documents presented to government institutions or regulatory bodies.

The Immigration Department grants resident visas for expatriates and professionals whose services are required for projects or by companies approved by the Board of Investment (BOI). The Department also grants visas for foreign professionals required for projects approved by the government. Non-BOI companies, such as banks, can also recruit expatriate staff. Sri Lanka also operates a resident guest visa program for foreign investors and professionals who are recommended by the relevant ministry.

Legal Services

A person can provide legal consultancy services without being licensed to practice law in Sri Lanka. Foreigners are not allowed to practice law (i.e., appear in courts) and do not have statutory recognition in Sri Lanka. Sri Lankan citizens with foreign qualifications need to sit for exams conducted by the Sri Lanka Law College in order to practice and register in the Supreme Court.

INVESTMENT BARRIERS

Sri Lanka welcomes foreign investment but has restrictions in specific sectors. Foreign investment is not permitted in the following areas:

- non-bank money lending;
- pawn brokering;
- retail trade with a capital investment of less than $1 million (with one notable exception: the Board of Investment (BOI) permits retail and wholesale trading by reputable international brand names and franchises with an initial investment of not less than $150,000);
- coastal fishing;
- education of students under 14 years of age for local examinations; and
- the awarding of local university degrees (note that this does not limit the awarding of degrees from overseas institutions).

Investment in the following sectors is restricted and subject to screening and approval on a case-by-case basis when foreign equity exceeds 40 percent:

- shipping and travel agencies;
- freight forwarding;
- higher education;
- mass communications;
- deep sea fishing;

- timber-based industries using local timber;
- mining and primary processing of non-renewable national resources; and
- the growing and primary processing of tea, rubber, coconut, rice, cocoa, sugar, and spices.

Foreign investment equity restrictions and government regulations also apply to air transportation, coastal shipping, lotteries, large-scale mechanized gem mining, and "sensitive" industries such as military hardware, illegal narcotics and currency.

The BOI offers a range of incentives to both local and foreign investors. To qualify for BOI incentives, investors need to meet minimum investment and minimum export requirements. In general, the treatment given to foreign investors is non-discriminatory. Even with incentives and BOI facilitation, however, foreign investors can face difficulties operating in Sri Lanka. Problems range from difficulties in clearing equipment and supplies through customs to obtaining land for factories. The BOI encourages investors to locate their factories in BOI-managed industrial processing zones to avoid land allocation problems. Investors locating in industrial zones also get access to relatively better infrastructure facilities such as improved power reliability, telecommunications, and water supplies.

Government treatment of foreign investors in the privatization process has been largely non-discriminatory, with foreigners buying controlling interests in some companies. The privatization process has not always been transparent, however. For instance, in 2003, the government sold part of the retail operations of state-owned Ceylon Petroleum Corporation (CPC) to a foreign entity without a formal tender process.

Government failure to pay, and delays in paying, agreed subsidy payments and other charges owed to foreign companies are acting as a clear barrier to foreign investment in Sri Lanka. For example, a major U.S. company has faced problems due to government failure to honor an agreement to pay for services rendered under an agreement signed between the U.S. company and a government-owned company. As a result, the state-owned entity initially owed $3 million to the U.S. company. The U.S. company has now reduced its claim substantially, although even this amount remains outstanding. In another case, a foreign majority-owned (not U.S.) retailer has suffered heavy losses due to the government failure to honor agreements with regard to the payment of subsidies to the company resulting from price controls on the company's product. The government has recently withdrawn this price control and allows the foreign company to set its own prices. The company complains, however, that it is finding it difficult to compete with its competitor, a state-owned enterprise which continues to sell at below cost. Finally, in another case, a U.S. subsidiary of a foreign firm has faced serious difficulties in obtaining access to raw materials, in contravention of a BOI agreement. The company was prepared to make a sizeable investment based upon access to local raw materials, but was blocked when the Supreme Court – contrary to the government's assurances – issued a ruling barring the company from accessing local raw materials, resulting in increased costs to the company.

In response to repeated complaints from foreign investors that BOI pledges and assurances have not been kept, the Sri Lankan president created a special committee within his office in January 2006 to take up legitimate investment complaints. The committee started functioning in March 2006. However, this committee has not adequately addressed or resolved investor complaints.

Capital Repatriation

Sri Lanka has accepted Article VIII status of the IMF and has liberalized exchange controls on current account transactions. However, in October 2006, the Central Bank introduced restrictions on import financing. Banks are required to obtain a deposit of 50 percent of the invoice value at the time of opening letters of credit for imports of non-essential consumer items. There are no surrender requirements on export receipts but exporters need to repatriate export proceeds within 120 days to settle export credit facilities. Other export proceeds can be retained abroad. Currently, contracts for forward bookings of foreign exchange are permitted for a maximum period of 360 days for the purposes of payments in trade and 720 days for the repayment of loans.

Controls on capital account (investment) transactions usually prohibit foreigners from investing in debt and fixed income securities. Since October 2006, foreign investors are allowed to invest up to 5 percent in government rupee bond issues. The Central Bank's local market dollar-denominated bond issues were opened to foreign investors in 2001, 2002, 2004 and 2006.

OTHER BARRIERS

Litigation delay is a serious problem. For example, a U.S. investor with a substantial investment in an export manufacturing company has faced lengthy delays in a court case over a large insurance claim. The company instituted legal action in June 1999 and court proceedings are still on-going, resulting in additional financial losses for the company. The government has established a commercial court to hear business litigation, but delays are common.

SWITZERLAND

TRADE SUMMARY

The U.S. goods trade balance with Switzerland went from a trade deficit of $2.3 billion in 2005 to a trade surplus of $137 million in 2006. U.S. goods exports in 2006 were $14.4 billion, up 34.1 percent from the previous year. Corresponding U.S. imports from Switzerland were $14.2 billion, up 9.5 percent. Switzerland is currently the 16th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Switzerland were $9.5 billion in 2005 (latest data available), and U.S. imports were $11.4 billion. Sales of services in Switzerland by majority U.S.-owned affiliates were $9.1 billion in 2004 (latest data available), while sales of services in the United States by majority Switzerland-owned firms were $34.4 billion.

The stock of U.S. foreign direct investment (FDI) in Switzerland in 2005 was $83.4 billion, down from $106.8 billion in 2004. U.S. FDI in Switzerland is concentrated largely in the non-bank holding companies, manufacturing, wholesale trade and banking sectors.

IMPORT POLICIES

Agricultural Products

Although agriculture retains an important role in society and a strong lobby among politicians, the sector has been losing its relative importance in the Swiss economy for some time. Preservation of the Swiss agricultural sector is largely due to governmental intervention and support. While the average tariff for manufactured products is 2.3 percent, the simple average tariff in Switzerland on imports of agricultural products ranges from 28.6 percent to 36.2 percent. Switzerland is a relatively difficult market in which few U.S. agricultural products can successfully compete. This is due to high tariffs on certain agricultural products, preferential tariff rates for other countries, and government regulation and negative public perception of agricultural products derived from biotechnology. High tariffs and quotas are a direct cause of the modest levels of U.S. wheat, corn and soybean exports. The U.S. share of the Swiss agricultural import market in 2004 was 3 percent. Imports of nearly all agriculture products, no matter the country of origin, are subject to import duties and quotas.

Agricultural tariff-rate quotas present problems for U.S. exporters, as Swiss regulations often allocate quotas and incentives to importers that use their imports as inputs for domestic products. This practice has increased protection for domestic producers and in some cases, such as potato products, has effectively blocked U.S. exports. Swiss regulations and public resistance to agricultural products derived from biotechnology or the use of growth hormones remains strong, and, partially as a result, U.S. agricultural exports to Switzerland during 2004 dropped by 29 percent by volume and by 5.9 percent by value.

Hormone-treated beef became an issue in 2006 after the Swiss State Secretariat for Economic Affairs (SECO) and the Federal Veterinary (BVET) notified the World Trade Organization (WTO) in August that Switzerland would begin requiring European Union (EU) animal health certificates for imported livestock products effective April 1, 2007. This action is tied to Switzerland’s planned harmonization of animal health rules with the EU and the future end of veterinary border controls between Switzerland and the EU. However, since hormone-treated beef is not allowed in the EU, the proposed Swiss rules would effectively end U.S. beef exports to Switzerland, estimated to have been approximately 300 tons in 2005. Switzerland has postponed implementation of this measure for the time being. The U.S. and Swiss governments are discussing the proposed Swiss harmonization with EU animal health regulations in an effort to find a solution that will allow trade in U.S. beef to continue.

As of January 2000, imports of fresh meat and eggs produced in a manner not permitted for products produced in Switzerland must be clearly labeled as such. Methods not allowed in Switzerland include the use of growth hormones, antibiotics and other substances in the raising of beef and pork, as well as the production of eggs from chickens kept in certain types of cages.

The Swiss Veterinary Agency continues to refuse to list new U.S. facilities as eligible to export beef to Switzerland and, despite repeated requests, has not produced science-based reasons for this position. Swiss inaction has blocked three facilities that the United States requested be listed since early 2002. The Swiss government has made clear that the situation is related to its dissatisfaction with current U.S. regulations that block certain Swiss processed beef exports to the United States due to concerns over Bovine Spongiform Encephalopathy (BSE) and foot-and-mouth disease.

Biotechnology

Switzerland has taken a case-by-case approach to agricultural products derived from biotechnology since voters rejected a moratorium on biotechnology research and products in 1998. Agricultural biotechnology products must be certified by the Federal Office of Public Health, and the manufacturer of such products must submit detailed information concerning the product development process. Swiss authorities review each product for toxicity, resistance to antibiotics and allergenic characteristics. However, industry has noted that the approval process is lengthy and burdensome in comparison with other countries' approval systems. Once a product is approved, its certificate for approval is valid for five years, after which a product must repeat the approval process.

Switzerland has required labeling for foods containing products derived from biotechnology since 1996. In January 2005, the federal government lowered the labeling threshold for agricultural products derived from biotechnology from 1.0 percent to 0.9 percent in order to harmonize its regulations with those of the EU. A notable exception to the labeling requirement is the use of substances such as soy oil in the production process. According to Swiss officials, these ingredients do not require a label because testing cannot show they are derived from bio-engineered commodities.

The animal feed industry has succeeded in establishing a small market in Switzerland for products derived from biotechnology. However, the planting of seed crops derived from biotechnology faces difficult environmental approval hurdles. Despite opposition by the Swiss government, voters adopted a popular initiative "Food from GMO-free Agriculture" in November 2005 that introduced a five year moratorium on commercial planting of crops derived from biotechnology. Swiss authorities have noted that requests for the commercial planting of such crops after the moratorium is over can be submitted and would be considered during the moratorium period. The initiative should have little impact on trade in agricultural products derived from biotechnology because the moratorium applies to domestic plantings; whereas existing Swiss legislation still permits their importation.

The government has stated that the five-year moratorium did not require implementing legislation and took effect immediately. The moratorium does not contain provisions on scientific research in this area; the government pledged SFr12 million ($9.1 million) for a national research program to study the uses and possible risks of agricultural products derived from biotechnology.

GOVERNMENT PROCUREMENT

Switzerland is a signatory of the WTO Government Procurement Agreement (GPA). On the cantonal and local levels, a law passed by Parliament in 1995 provides for non-discriminatory access to government procurement.

In 2004, the Swiss government initiated a series of informal consultations to amend the Swiss Federal Law on Public Procurement. Ultimately, this process should simplify the public tender procedure and harmonize the many different cantonal tender procedures. Under the GPA, Swiss cantons are allowed to implement the GPA independently from the federal government, which sometimes leads to different procedures among cantons.

In general, quality and technical criteria are as important as price in the evaluation of tenders. Cantons and communes usually prefer local suppliers because they can recover part of their outlays through income taxes paid by the suppliers. Foreign firms may be required to guarantee technical support and after-sale service if they have no local office or representation.

Notices of Swiss government tenders at the federal level are published in the Swiss Official Gazette of Commerce and on the on-line Swiss government procurement website. There is no requirement that bids be submitted by a local agent.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In general, Switzerland maintains exceptionally high standards of protection of intellectual property rights. Certain concerns have been expressed, however, with respect to the development of revised copyright legislation that would, among other purposes, conclude Switzerland's accession to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. These concerns have focused on the potential for this revised legislation to allow an overly broad ability to circumvent technological protection measures intended to protect copyrighted material. The United States will continue to monitor this legislation.

SERVICES BARRIERS

Telecommunications

The 1998 Telecommunications Act brought liberalization and privatization to the Swiss telecommunications sector, opening the market to investment and competition from foreign firms. More than 50 Swiss and foreign companies now offer fixed line services. Three different operators, Swisscom, Sunrise (TeleDanmark), and Orange (France Telecom) provide mobile telephone services, and each company also owns third-generation mobile telephony licenses. Until 2005, SBC Communications' 9.5 percent stake in Sunrise's parent company represented the only significant U.S. presence in the Swiss telecommunications market.

In October 2005, U.S. Liberty Global purchased 100 percent of the shares of Cablecom, the largest cable (phone and Internet) operator in Switzerland and second-largest Internet service provider behind Swisscom – the incumbent state monopoly. Stiff competition between the two operators has already led to a sharp drop in fixed line rates.

Swisscom continues to use litigation to block the Swiss government's efforts to open the telecommunications market to competition. For example, Swisscom has successfully fought efforts by the Competition Commission and the Federal Communications Commission (ComCom) to unbundle the local loop and provide leased lines at cost-oriented prices. In response, the government is in the process of creating additional legal authority for the regulator to implement these initiatives. In October 2004, the lower house of the Parliament began work on amending the Telecom Act to give the regulator explicit authority to force Swisscom to unbundle its local loop, effectively fixing the "flaw" cited by the federal court. The reform will cover only fixed line services and will not extend to other technologies, such as mobile and WiFi. The bill also requires that broadband access be offered to Swisscom competitors at cost-oriented prices over a period of six years, after which all operators are expected to have broadband investments themselves. In 2005, Swisscom lowered its interconnection prices by 7 percent and announced a further 5 percent drop for 2006.

In October 2004, ComCom opened an investigation into Swisscom's broadband access pricing on the grounds that it might give preferential rates to its Internet subsidiary "Bluewin" in comparison with its competitors. This is not the first time the competition watchdog has investigated Swisscom's broadband practices. In 2003, it ordered Swisscom to stop giving preferential discounts to Bluewin. Because of Swisscom's monopoly on the last mile, fixed-line competitors have no choice but to deal with the company if they desire to enter the Swiss market.

Audiovisual Services

Switzerland has no limitations on the amount of non-Swiss or non-European origin programming that can be broadcast, but film distributors and cinema companies must maintain, through self-regulatory solutions, an "appropriate diversity" – not currently defined – in the products offered within a region. The government may levy a nominal development tax on movie theater tickets if the Swiss government determines the appropriate diversity is not being met. The development tax receipts will be used to finance new theaters that could offer greater diversity in the films being shown within a region. Switzerland is a signatory of the October 2005 UNESCO Convention on Cultural Diversity.

Postal Services

The Postal Act divides the Swiss postal market into two segments – universal services and competitive services. Competitive services, which include express delivery, are unrestricted. Universal services are divided into reserved and non-reserved services. Only Swiss Post is required to provide universal service. Swiss Post is the exclusive provider of reserved services, while it competes with private postal operators for the provision of non-reserved services. Private postal operators are allowed to provide specific non-reserved services (shipment and handling of out-bound international mail, and of addressed packages of up to 20 kg) subject to a license, provided they can ensure regular and professional shipment of mail and parcels and reach a turnover, subject to value-added tax, of at least SFr100,000. PostReg, the regulatory authority, exercises market supervision, ensures the functioning and fair competition in the postal market, and enables the proper implementation of applicable regulations. Postal restrictions on parcel deliveries were lifted in 2004, and letters sent abroad or for which the delivery costs were more than SFr5 ($4) could also be sent by other companies.

In April 2006, the Swiss government reduced Swiss Post's monopoly from the current 350-gram threshold to 100 grams. The government's decision to liberalize the market further was based on an independent study which confirmed that a further liberalization of letter delivery services would not disrupt the country's mail distribution, a key issue for voters. Efforts by the Swiss business community to lower Swiss Post's monopoly to 50 grams or grant unlimited access to competitors failed to reach a consensus in the Swiss parliament. The government is expected to publish a report in 2007 on ways to liberalize further the letter delivery service. Swiss trade unions have warned that any further opening of the market should not go beyond what was approved by parliament three years ago.

Insurance

With the highest per capita insurance expenditure in the world, Switzerland's insurance market is extremely appealing to foreign competitors. Of the 198 insurance companies currently operating in the Swiss market, at least 40 are foreign subsidiaries. Of the 198 companies, 26 offer life insurance, 117 offer non-life insurance and approximately 55 offer reinsurance. Foreign companies offering only reinsurance are not subject to oversight by the supervisory body, the Federal Office of Private Insurance (FOPI).

However, barriers to foreign insurance entry still persist. Foreign insurers attempting to do business in Switzerland are required to establish a subsidiary or a branch and cannot sell their entire product line cross-border or through a representative office. Foreign insurers operating in Switzerland are limited to those types of insurance for which they are licensed in their home countries. The manager of the foreign-owned branch must be resident in Switzerland and the majority of the board of directors of the Swiss subsidiary must have citizenship in the European Free Trade Association (Switzerland, Norway, Iceland and Liechtenstein). Public monopolies exist for fire and natural damage insurance in 19 cantons, and for the insurance of workplace accidents in certain industries. Private insurance firms must establish a fund – amounting to between 20 percent and 50 percent of their minimum capital requirement – available at short notice to cover potential losses. A new insurance law took effect on January 1, 2006, that increases the solvency requirements of all insurance companies operating in Switzerland. As part of a bilateral agreement with the European Union, EU non-life insurers are not required to deposit a certain percentage of their assets with the Swiss National Bank (SNB). However, non-EU life-insurers are required to do so.

INVESTMENT BARRIERS

Switzerland welcomes foreign investment and accords national treatment to all foreign investors. The federal government's approach is to create and maintain general conditions that are favorable both to Swiss and foreign investors. Swiss banking laws encourage the formation of abundant pools of capital from overseas investors. Some cantons have income tax incentive programs to encourage foreign investment.

There is no screening of foreign investment, except for investments in land ownership and national security investments, nor are there any sectoral or geographical preferences or restrictions. Cantons have been granted extensive decision-making powers with respect to foreigners' purchases of land. Investment restrictions related to national security apply to hydroelectric and nuclear power, operation of oil pipelines, transportation of explosive materials, operation of airlines and marine navigation.

ANTICOMPETITIVE PRACTICES

The Swiss economy has long been characterized by a high degree of cartelization, primarily among domestically-oriented firms and industries. In June 2003, the Swiss parliament adopted a revised competition bill, which took effect on April 1, 2004. The most significant improvement is authority to prosecute anticompetitive behavior without prior warning, with a maximum fine of 10 percent of a firm's total combined revenue for the past three years. Companies that cooperate with regulators are eligible for a reduced fine.

Electricity

Electricity production is competitive, but local public monopolies dominate electricity transmission and distribution within Switzerland. Several cantons have attempted to prevent other providers from serving their areas, but those efforts were ruled illegal under the Cartel Law. Local communities as a result have tried to bypass the federal court ruling by cementing their dominant position through cantonal legislative changes or "gentlemen's agreements" with large customers.

During a referendum initiated by Swiss labor unions in 2002, the population rejected a bill aimed at permitting third party access throughout the grid. But experts argue that lower energy power prices in neighboring countries will at some point force Switzerland to adapt. The Swiss government has recently proposed another electricity bill to liberalize the market. The first phase – scheduled to start in 2007 – will allow commercial users to choose their electricity supplier. The bill provides for the unbundling of transmission from commercial activities, the merger of transmission operators into a single system knows as "Swissgrid," and establishes an independent regulatory agency for the electricity sector. A second phase will provide for full market liberalization in 2012.

TAIWAN

TRADE SUMMARY

The U.S. goods trade deficit with Taiwan was $15.2 billion in 2006, an increase of $2.4 billion from $12.8 billion in 2005. U.S. goods exports in 2006 were $23.0 billion, up 4.3 percent from the previous year. Corresponding U.S. imports from Taiwan were $38.2 billion, up 9.7 percent. Taiwan is currently the 11th largest export market for U.S. goods.

U.S. exports of private commercial services (excluding military and government) to Taiwan were $6.4 billion in 2005 (latest data available), and U.S. imports were $6.4 billion. Sales of services in Taiwan by majority U.S.-owned affiliates were $10.2 billion in 2004 (latest data available), while sales of services in the United States by majority Taiwan-owned firms were $475 million.

The stock of U.S. foreign direct investment (FDI) in Taiwan was $13.4 billion in 2005. U.S. FDI in Taiwan is concentrated largely in the finance, manufacturing and wholesale trade sectors.

The United States and Taiwan continued to work together to enhance economic cooperation through our bilateral Trade and Investment Framework Agreement (TIFA) process. The TIFA, which was established in 1994, is an important mechanism for both parties to resolve bilateral trade issues and to address the concerns of the U.S. business community. The United States and Taiwan held a productive meeting of the fifth meeting of the TIFA Joint Council in Taipei, May 25-26, 2006, covering issues related to agricultural trade, intellectual property rights, pharmaceuticals, government procurement and investment, as well as other areas.

IMPORT POLICIES

Tariffs

Taiwan promulgated a comprehensive revised tariff schedule on July 1, 2006, in compliance with Taiwan’s Free Trade Agreement with Guatemala, as well as Taiwan's unilateral improvement to its tariff structure on finished goods and raw materials. Tariffs on parts and components for plastics and rubber processing machinery and trailers and semi-trailers dropped from 5 percent and 7.5 percent, respectively, to 2.5 percent. Additionally, tariffs on 12 fertilizers were eliminated. As a result, the average nominal tariff-rate on imported goods in 2006 will be approximately 5.6 percent and is expected to fall marginally to 5.56 percent by 2007. Taiwan is working on a new version of its tariff schedule to meet the World Customs Organization's Harmonized System (HS) requirements which are expected to be implemented in 2007. Taiwan estimates more than 11 percent of its tariff lines need to be reclassified. U.S. industry continues to request that Taiwan lower tariffs on many goods, including large motorcycles, wine, canned soups, cookies (sweet biscuits), savory snack foods, vegetable juices, potato and potato products, table grapes, apples, fresh vegetables and citrus products.

Upon Taiwan’s accession to the WTO in January 2002, Taiwan implemented tariff-rate quotas (TRQs) on small passenger cars, three categories of fish and fish products and a number of other agricultural products. On January 1, 2004, in accordance with its WTO accession commitments, Taiwan made additional tariff cuts and increased TRQ amounts on these products. Taiwan will fully eliminate TRQs on small passenger cars by 2011.

Taiwan maintains Special Safeguards (SSGs) for a number of agricultural products covered by TRQs. SSGs, permitted under Article 5 of the Agreement on Agriculture, allows Taiwan to impose additional duties when import quantities exceed SSG trigger volumes or import prices fall below SSG trigger prices.

As Taiwan has not imported many of these products previously, SSG trigger volumes are relatively low. SSGs were triggered on eight agricultural products in 2006. Products generally continue to be imported in spite of the safeguard, provided domestic demand is strong.

To meet WTO commitments, Taiwan has eliminated more than 99 percent of its import controls on 10,880 official import categories. Currently, there are 80 product categories facing import restrictions. Of those categories, 24 require import permits from the Board of Foreign Trade (BOFT) and 56 are prohibited. Most of the permit-required categories are related to public sanitation and national defense concerns and include ammunition and some agricultural products. In addition, Taiwan maintains a lengthy list of products that are banned if made in China, including chocolate confectionery and blood glucose meters. The Ministry of Economic Affairs in April 2006 lifted the ban on certain unfilled chocolate from China.

Agricultural and Fish Products

Prior to its WTO accession, Taiwan banned or restricted imports of 42 agricultural and fish items. In January 2002, Taiwan liberalized imports of 18 of these agricultural and fish categories and implemented TRQs on the remaining 24 items. TRQs on a number of products of interest to the United States (chicken meat, pork bellies and offal and poultry offal) were eliminated on January 1, 2005.

Beef

On January 25, 2006, Taiwan again lifted its ban on U.S. boneless beef from cattle less than 30 months of age with labels of approval from the USDA. After reopening the market to U.S. beef in April of 2005, Taiwan had reinstated its import suspension in June 2005, after the discovery of a second case of Bovine Spongiform Encephalopathy (BSE) in the United States. Specified risk materials identified by the World Organization for Animal Health (OIE) like brains, spinal cords, and certain bones are prohibited entry. Non-ruminant products for feed use, such as tallow, lard, poultry and porcine meal are banned, while limited exceptions for pet food have been approved after a thorough case-by-case review or plant clearance process. The United States is continuing to work with Taiwan to achieve market access for the full range of beef and beef products.

Rice

In 2006, the United States and Taiwan made substantial progress in resolving outstanding differences on Taiwan’s rice procurement arrangements. However, certain other countries that also supply rice to the Taiwan market have not yet agreed to the proposed modifications to Taiwan’s rice import system. As a result, Taiwan will continue its current system while working toward final resolution of this issue. Taiwan is a leading Asian market for U.S. rice exports. Despite concerns associated with the rice tender process, U.S. suppliers won a majority of the tenders conducted in 2006. The United States will continue to work with Taiwan and other interested suppliers to the Taiwan market to achieve improvements to the rice import system. At present, Taiwan and the United States are discussing the process by which an acceptable import regime will be notified to the WTO. Until that process is agreed upon, Taiwan will continue its current system while working toward final resolution of the rice import issue.

Tobacco and Alcohol Products

As a condition of Taiwan's WTO accession, a new tobacco and alcohol management and tax system went into effect on January 1, 2002. In place of the previous tax on imports administered by the former monopoly authority, the Taiwan Tobacco and Wine Monopoly Bureau (TTWMB), Taiwan agreed to impose an excise tax and to eliminate tariffs on imports of most spirits. Taiwan also liberalized private alcohol production upon its accession to the WTO and private cigarette manufacturing in 2004. TTWMB became a state-owned corporation, Taiwan Tobacco and Liquor Corporation (TTLC), in July 2002.

Primarily due to resistance by organized labor, the privatization of TTLC has been repeatedly postponed. The Ministry of Finance had targeted the end of 2006 for selling off a 20 percent stake TTLC and listing on the local stock market, but this target has again been delayed.

Wood Products

Taiwan has revised building codes in line with international standards. However, Taiwan has not yet completed a companion fire code. This delay means that while a wood frame structure may be built, approval by fire inspection authorities is contingent on review and comment by a special committee on details, such as design and usage – making insurance and financing difficult to obtain even if fire inspection authorities approve plans. U.S. wood products companies have raised concerns that this practice is restrictive and discourages wood use in construction. The continued use of a special committee rather than finalizing a fire code unnecessarily delays construction of wood structures and raises the cost of using wood materials significantly beyond that of other materials such as concrete and steel.

Automobiles and Motorcycles

Local content requirements in the automobile and motorcycle industries were lifted as part of Taiwan's WTO accession. Importation of motorcycles with engines larger than 150cc was liberalized in July 2002 as part of Taiwan's WTO commitments. In mid 2003, Taiwan agreed to set emissions standards for motorcycles over 700cc in line with international standards, a step the U.S. motorcycle industry supported. Small motorcycles (below 250cc) are prohibited on expressways. Larger motorcycles are restricted from most expressways, but are allowed on two national highways and two of fourteen expressways. The United States remains concerned with Taiwan's tariffs and other taxes on large motorcycles as well as Taiwan's restrictions on motorcycle access to highways.

STANDARDS, TESTING, LABELING AND CERTIFICATION

As of December 31, 2005, the Bureau of Standards, Metrology & Inspection (BSMI) had 15,843 separate existing standards. Manufacturers rely on national standards to establish the criteria for producing and selling their products. BSMI is actively harmonizing its national standards with international norms to reduce technical barriers.

Industrial and Home Appliance Products

Industrial and home appliance products (such as air-conditioning and refrigeration equipment) are subject to safety and Electromagnetic Compatibility (EMC) requirements before clearing customs. There are two conformity assessment procedures for product approval: "batch-by-batch inspection" (BBI) with Type Approval and "registration of product certification" (RPC). Taiwan announced that electrical and electronic products would be included under the RPC Scheme starting from January 2000. A three-year transitional period, which ended on December 31, 2002, was provided to allow industry to adapt to the new system. Under the RPC scheme, different manufacturing stage requirements are mandated depending on the characteristics and potential risks of the product involved. For some products (e.g. washing machines, refrigerators, and dishwashers), Taiwan requires that manufacturing facilities must have implemented certified ISO 9000 quality management systems, or alternatively, have implemented quality systems that comply with BSMI requirements and have obtained a factory inspections report issued by BSMI or an inspection body recognized by BSMI.

Several new standards were announced in 2005 for electronic and household appliances and toys. The revised Chinese National Standards (CNS) 12574 on household pressure-cooking pots was published on September 27, 2004 and implemented in May 2005. Starting August 1, 2005, 18 additional types of toys were required to pass inspection before entering the market. This makes a total of 38 types of toys requiring inspection. In July 2005, The Ministry of Economic Affairs proposed that television receivers must include the capability to receive over-the-air digital television (DTV) broadcast signals, in addition to the existing EMC and safety requirements for television receivers already subject to inspection. The DTV receiving capability schedule is based on screen size: televisions with screens larger than 29 inches by January 1, 2006, 21 inches to 29 inches by January 1, 2007, and televisions under 21 inches by January 1, 2008.

Sanitary and Phytosanitary Measures

As a Member of the WTO, Taiwan is bound by the Agreement on the Application of Sanitary and Phytosanitary Measures (including notification of such measures). In 1998, Taiwan agreed to accept meat and poultry imports from plants approved by the USDA Food Safety Inspection Service. In 1999 and 2000, Taiwan agreed to accept Codex Alimentarius or U.S. pesticide residue standards for a limited number of chemicals used on imported fruits and vegetables. The approval of new maximum residue limits for chemical/product combinations is slow and cumbersome and the lack of such limits poses a potential threat to U.S. fresh produce and grain shipments. Moreover, the United States continues to be concerned that some Taiwan plant and animal quarantine measures are not always based on sound science and are more trade restrictive than necessary.

Alcoholic Beverage Products

On January 1, 2006, Taiwan implemented new "Regulations Governing the Inspection of Imported Alcohol" for fermented beverages with the exception of grape wine; and on July 1, 2006 for distilled spirits and grape wine. Importers of alcoholic beverages can submit documentation of sanitary inspection or safety assurance issued by officials in charge of alcohol product inspection or professional alcohol associations of exporting countries to replace product inspection upon customs clearance.

Agricultural Biotechnology Products

Taiwan authorities generally have taken a cautious, but fairly rational approach to trade in agricultural biotechnology products. Risk assessment documentation on agricultural biotechnology corn and soybeans was required to be submitted to the Department of Health (DOH) before April 30, 2002, and mandatory labeling on certain corn and soybean products commenced in 2003. In October 2003, DOH announced its intention to require registration of agricultural biotechnology products other than corn and soybeans in 2004, but announced a process for life science companies to obtain interim approval for those products currently commercialized. No disruptions to trade have resulted from Taiwan's biotechnology regulations. However, with a number of products entering the regulatory approval pipeline and a lack of investment in a strong domestic regulatory infrastructure, delays in approvals have become more frequent. A draft basic law on biotechnology has been under review by Taiwan officials for more than two years and has yet to be submitted to the Legislative Yuan.

Labeling of Biotechnology Food

Taiwan requires labels on foods containing biotechnology corn or soybeans. All food products containing 5 percent or more bioengineered soybean or corn ingredients by weight must be labeled as "Genetically Modified (GM)" or "Containing Genetically Modified."

Medical Devices

Registration and approval procedures for medical device imports are complex and time-consuming, and have been the subject of longstanding complaints by U.S. firms. The registration process requires extensive documentation, sometimes arbitrary demands for additional information and redundant testing. Changes in the registration requirements made in 2005 mean manufacturers must register Class 1 devices for the first time and re-register previously approved products. In most cases, this requires companies to submit additional documentation, even when products are based on previously approved devices, are identical products made in different quality system documentation (QSD) manufacturing sites, or even if the product's outer packaging changes. Regulations are vague regarding when local clinical trials are required for the review process or whether industry is allowed to provide additional input in response to questions posed by DOH officials reviewing the clinical trial submissions. In addition, Taiwan has identified both the medical device and pharmaceutical sectors as priorities for local development, resulting in Taiwan agencies often favoring the interests of local companies over foreign firms.

Pharmaceuticals

A continuing concern in the pharmaceutical sector in Taiwan involves pharmaceutical pricing and management. Through the TIFA process, the United States has been encouraging Taiwan to adopt a system of actual transaction pricing in order to address the significant gap between the amount that the Taiwan government reimburses for a pharmaceutical product and the price actually paid to the provider of that product. This gap distorts pharmaceutical trade and prescription patterns in Taiwan. These distortions are compounded by another aspect of the Taiwan health care system which permits doctors to both prescribe and dispense pharmaceuticals. Research-based pharmaceutical companies see separating these functions as essential to resolving the long-term pricing problem.

Taiwan's lengthy pharmaceutical registration process slows market entry for new drugs that have already received regulatory approval in advanced economy markets and imposes unnecessary costs. Taiwan's draft regulation for the registration of new chemical entities appears to lack sufficient clarity. Pharmaceutical piracy in Taiwan also remains a concern. The United States is encouraging Taiwan's Ministry of Justice and the Department of Health to work together to take action to resolve this problem.

GOVERNMENT PROCUREMENT

Taiwan committed to accede to the WTO Agreement on Government Procurement (GPA) as part of its WTO accession. While Taiwan has applied for accession, the process has not been completed due to differences regarding nomenclature issues. To prepare for accession, Taiwan implemented a new Government Procurement Law in mid-1999. This was an important first step toward establishing a transparent and predictable environment for Taiwan's multi-billion dollar public procurement market.

In August 2001, Taiwan and the United States signed a Memorandum of Understanding on Government Procurement. The MOU calls for Taiwan to implement certain procedural commitments immediately, while others will be implemented upon Taiwan's accession to the GPA. U.S. participation in Taiwan's government procurement projects is discouraged by clauses in some contracts that exclude foreign tenders as well as Taiwan's refusal to implement liability caps and exclusions for consequential damages. The Public Construction Commission often requests U.S. firms to provide evidence of work in the United States or internationally as reference. The United States continues to encourage the Taiwan government to abide by the provisions of the GPA in spite of difficulties in accession. The United States continues to support Taiwan's accession to the WTO GPA, and the United States and Taiwan are exploring ways to deepen bilateral cooperation on procurement issues.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

IPR protection continues to be an important issue in the U.S.-Taiwan trade relationship. In December 2004, Taiwan was moved from the Special 301 Priority Watch List to the Watch List after an out-of-cycle review determined that Taiwan had made sufficient progress to warrant an improved status. The United States recognizes Taiwan's continuing efforts to take measures to improve enforcement of IPR in 2006, including intensifying raids against manufacturers and retailers. After falling for the past few years, counterfeit goods of Taiwan origin seized by U.S. Customs increased from $1.1 million in FY2005 to $1.8 million in FY 2006. The Business Software Alliance (BSA) also estimates the software piracy rate in Taiwan decreased steadily from 72 percent in 1994 to 43 percent in 2002, but has remained basically unchanged for the past four years.

Following these improvements, the United States will continue to monitor further developments in this area. The current "IPR Action Plan 2006-2008" of the Taiwan government focuses on combating Internet infringement and campus piracy. Chief among these developments should be the passage and implementation of effective legislation to address the liability of Internet Service Providers (ISP) as well as unauthorized peer-to-peer (P2P) file sharing, which is expected to occur in 2007. Internet piracy and illegal peer-to-peer downloading have been serious concerns.

Adequate resources, particularly at the Ministry of Education, must also be devoted to improve enforcement against the unauthorized use of copyright material that occurs on and around university campuses and the Internet piracy that is endemic on the university networks.

U.S. industry has also complained about delays in court cases and the Taiwan judiciary's difficulty in handling technical cases. The Legislative Yuan has passed the necessary legislation to create a specialized Intellectual Property Court and has already begun training judges for this new court. The new court will hear civil IPR cases at both the trial and appellate levels. Unfortunately, under the current legislation, criminal IPR cases still must first be heard in local district courts; the Intellectual Property Court will hear only criminal appeals. The Legislative Yuan is also considering amendments to the Patent Act.

The U.S. Government also continues to be concerned with the prevalence of counterfeit pharmaceuticals in Taiwan despite the establishment of an interagency Illegal Drug Committee by the Department of Health (DOH) and the passage of amendments in 2004 to strengthen the pharmaceutical law.

Trademark infringements, particularly of clothing and luxury goods, are also a growing concern. Many of the fakes are allegedly smuggled from China. Rights holders state that Taiwan is both a transshipment point and a market for this material. Taiwan Customs makes regular seizures of counterfeit apparel and handbags, but rights holders complain that investigation and prosecution remain hampered by an overworked and disinterested bureaucracy and that light sentences are inadequate to deter trademark counterfeiters.

SERVICES BARRIERS

Financial Services

Taiwan continues to make progress in liberalizing its financial services markets. In January 2001, the Securities and Futures Exchange Commission (SFEC) lifted the restriction on employment of foreigners by domestic securities firms. Also in January 2001, the SFEC removed the 50 percent foreign ownership limit on listed companies. In June 2003, the SFEC phased out a minimum two-year period for foreign holders of global depository receipts (GDRs) to exchange GDRs for equity stocks after a GDR is issued. In July 2003, the SFEC lifted the ceiling limit of $3 billion on inward remittances by a qualified foreign institutional investor (QFII). It also abolished the requirement for a QFII to inwardly remit its investment fund within two years after it receives approval. In early October 2003, the Taiwan government voluntarily abolished the QFII system. The SFEC was renamed as the Securities and Futures Bureau (SFB) in July 2004.

Foreign portfolio investors are required to complete registration rather than seek advance approval, and since December 2003, registration can be done online. In late 2003, Taiwan allowed foreign portfolio investors to trade in the futures and money markets as a part of financial management prior to actual portfolio investment. Domestic currency-denominated futures, money market funds and bank deposits are subject to a limit of 30 percent of total inward remittances. In March 2006, Taiwan launched a U.S. dollar-denominated futures market trading gold, as well as domestic stock price index options and futures. No inward remittance limits are applied to foreign investors participating in this U.S. dollar-denominated market. All offshore foreign portfolio investors may trade in Taiwan's stock market regardless of their size, except for investors from the People's Republic of China. However, foreign individual investors are still subject to an investment limit. Onshore foreign individuals and institutional investors are also subject to annual inward/outward limits. In November 2006, Taiwan began trading in foreign currency denominated bonds as Deutsch Bank issued $250 million in Taiwan's domestic market.

Taiwan continues to work towards fulfilling its May 1997 commitment to liberalize insurance premium rates and policy clauses. It voluntarily opened the reinsurance market. In November 2001, Taiwan permitted life insurance companies to sell investment-linked products. Taiwan began to allow life insurance companies to set their own premium rates in January 2002 if the companies had their own actuaries to determine such rates. In 2002, Taiwan adopted a three-stage premium deregulation program. During the first stage of deregulation (from April 2002 to March 2005), Taiwan permitted insurance companies to set loading (or operating) expenses, one of the two components of the premiums, within a range between 5 percent above and 5 percent below standards set by the regulatory authorities. (Note: the second component of the premium (known as the "tariff rate") is the risk (or "pure") premium.) During the second stage of insurance deregulation from April 2005 to March 2008, Taiwan is permitting non-life insurance firms to set risk premiums for motor and fire insurance. Beginning in April 2008, Taiwan will completely deregulate premium rate setting, except for compulsory insurance. After that time, there will be no ceiling or lower limits on loading expenses and insurance companies will be required to demonstrate their capability to control loading expenses.

In the second half of 2006, Taiwan streamlined policy filing procedures to shorten the processing time for the introduction of insurance products. Prior approval is not required, except for the following: (1) three categories of life insurance products (annuity insurance under the new labor pension plan, investment-linked insurance with guarantee benefits and new insurance products); and (2) three categories of non-life insurance products (motor and fire insurance covered by the premium deregulation program, policies with a coverage period exceeding three years, and new types of personal line insurance). The insurance regulatory agency is required to respond within 40 working days and approve or reject the filing within 90 working days from receiving filing documents. For other products, prior approval is not required although insurance companies are required to register the products with the FSC.

In June 2006, Taiwan began to permit insurance companies to use derivatives to build "long" positions in different asset classes to enhance investment yields. In the past, derivatives could only be used to build "short" positions for hedging cash positions. However, insurance companies are required to strengthen their internal risk management controls, internal auditing and critical reporting systems. In addition, Taiwan has permitted insurance companies to lend foreign securities in order to gain higher investment income and take greater advantage of foreign assets already held by insurance companies. Taiwan is considering a proposal to build a set of self-supervisory standards on asset management by insurance companies. The standards are based on the framework set out in the International Association of Insurance Supervisors (IAIS).

Taiwan's insurance regulator is planning to propose an amendment to the Insurance Law that will permit insurance companies to take out loans and operate insurance trusts. Non-life insurance companies will be allowed to conduct health insurance business and life insurance companies will be permitted to operate internal funds. All Taiwan insurance companies will be required to be publicly traded, but foreign insurance firms are not subject to this planned requirement.

Taiwan’s Insurance Bureau has allowed competition in Taiwan’s reinsurance market, and the Central Reinsurance Corporation Statute was revoked in June 2004. The Central Reinsurance Corporation, the only local reinsurance firm in Taiwan, was privatized in July 2002. In August 2002, the Bureau lowered the capital requirement for entering the reinsurance market. In response to the liberalization, the Swiss Reinsurance Co. became the first foreign reinsurance firm to set up a branch in Taiwan in early 2004.

Telecommunications Services

Following the issuance of licenses to three fixed-line telecommunications service providers in 2000, the Directorate General of Telecommunications (DGT) again opened applications for integrated network licenses in September 2004. The capital requirement for integrated network services was reduced to NT$16 billion from NT$40 billion and system capacity requirements were lowered from one million to 400,000 subscriber lines. DGT also opened the local, long-distance and international call markets to new entrants in March 2005. A new formula based on local population will be used to calculate the capital requirements for each of the new service licenses. For instance, NT$1.2 billion may be required for a local call license in Taipei City and NT$2 billion for long-distance and international service licenses. Since September 2004, only one bidder applied for a license to provide international call business. The National Communication Commission (NCC), an independent agency established in February 2006 to replace the DGT in telecommunications administration, is in the process of reviewing market access regulations for the local, long-distance, international call business, and integrated service market. Once the review is complete the agency plans to issue amended regulations by 2008.

Existing fixed-line operators still face serious difficulties in negotiating reasonable interconnection arrangements at technically feasible points in the network of the dominant carrier, Chunghwa Telecom (CHT). Despite its announcement in May 2004 that it would share the local loop with three private providers, non-CHT service provider access to CHT’s local loop can only be initiated by end-users. Taiwan has embarked on a multi-year plan to invest NT$30 million to help local governments resolve "last mile" problems for telecommunications end-users. This plan, part of a number of telecommunications-related investment proposals called “Mobile Taiwan,” also includes the construction of a second broadband network around Taiwan to be jointly used by telecommunications service companies. These new investment projects are expected to help break the monopoly of the telecommunications network by formerly state-owned CHT.

Until 2005, Taiwan’s telecommunications regulator (DGT) and the largest telecommunications operator (CHT) were both under the control of the Ministry of Transportation and Communication (MOTC), creating an obvious conflict of interest. Privatizing CHT and establishing an independent regulator were two of Taiwan’s WTO accession commitments. In August 2005, MOTC officially privatized CHT and, after sales of additional shares in September 2006, state ownership has been reduced to 34 percent. CHT still retains close ties to the government, however. In November 2005, for example, Taiwan’s Premier announced a CHT rate cut on the floor of the Legislative Yuan, calling into question CHT’s independence.

The National Communications Commission (NCC), the new regulatory body established in 2006, is led by a group of commissioners and staffed by employees of the former DGT and Government Information Office. Taiwan's high court ruled that the selection process for the commissioners was unconstitutional and in its decision allowed a grace period until the end of 2008 during which time the NCC continues to function in its current form. Current commissioners have also stated that they will resign *en masse* if the constitutional question is not resolved by the end of 2007. These developments have given the agency an uncertain beginning and weakened its authority.

In August 2003, DGT amended regulations to open Taiwan’s mobile virtual network operator (MVNO) market and began licensing in September 2003. The MVNO market opening offers an alternative third-generation (3G) wireless service to local consumers and allows service providers to operate without a 3G license by partnering with existing 3G operators. To enhance MVNO development, the authorities have approved 10 experimental WiMAX applications and will award six trial licenses for handheld television projects. Taiwan's mobile service market is divided among FarEasTone, CHT and Taiwan Cellular. In November 2003, DGT announced the regulations governing number portability service, enabling subscribers to retain their existing telephone numbers when switching from their original Type I enterprise to another Type I enterprise engaging in the same business. Actual implementation of the number-portability service started October 15, 2005. DGT further opened Voice over Internet Protocol (VoIP) Services in November 2005.

INVESTMENT BARRIERS

Taiwan continues to relax investment restrictions in a host of areas, but foreign investment remains prohibited in a handful of industries such as agriculture, public utilities and postal services. Taiwan dropped oil exploration from the list of industries in which foreign investment is prohibited in May 2004. Foreign investors in the telecommunications sector are subject to a 60 percent (combination of direct and indirect) ownership limit, with the limit on direct foreign investment raised from 20 percent to 49 percent in 2002. Foreign investors can own up to a 60 percent stake in cable and 50 percent in satellite broadcasters, but are prohibited from owning terrestrial broadcasters. In February 2003, Taiwan lifted its ban on foreign investment in liquor production, although prior approval is required. Similarly, in January 2004, foreign investment restrictions on cigarette production were removed, although prior approval is required. The 50 percent foreign ownership limit on air cargo forwarders and air cargo terminals was eliminated when Taiwan became a WTO Member. The limit on foreign ownership of power plants has been removed, while foreign investment in electricity transmission and distribution remains subject to a 50 percent ownership limit and approval by the Executive Yuan. In October 2003, Taiwan set a foreign ownership limit of 49 percent on high-speed railway transportation.

ANTICOMPETITIVE PRACTICES

In the cable TV market, U.S. program providers contend that the island's three dominant multi-system operators (MSOs) frequently collude to inhibit fair competition. Control by the MSOs of upstream program distribution deterred U.S. program providers from negotiating reasonable program fees. In December 2003, Taiwan's legislature passed a new broadcasting law combining the Radio and Television Broadcasting Law, the Cable Television Broadcasting Law, and the Satellite Television Broadcasting Law. Taiwan officials are working to eliminate political interference in the television broadcasting industry by monitoring public releases of state-owned and party-owned equity shares in broadcast media.

ELECTRONIC COMMERCE

Taiwan's approach to electronic commerce and related issues is still evolving. According to the Institute for Information Industry, over 90 percent of Taiwan's companies have corporate networks and a network infrastructure, while 5.3 million, or 72.1 percent, of households in Taiwan link their computer to networks – mainly by broadband digital subscriber line (DSL). Taiwan has passed legislation and implemented regulations protecting personal on-line data. The Electronic Signature Law, passed by the Legislative Yuan in late October 2001, adopts the principles of the United Nations Commission on International Trade Law's Model Law on Electronic Commerce and recognizes the legal validity of electronic contracts, records, and signatures. The Taiwan government has passed several laws and regulations governing electronic commerce since 2003. In May 2005, the Ministry of Finance announced a guideline to impose a business tax on Internet vendors who sell products for profit and have monthly sales over NT$60,000. In the Doha Declaration, WTO Members stated that they would maintain their current practice of not imposing customs duties on electronic transmissions until 2003 and, in the Hong Kong Declaration, renewed that commitment until 2007. Taiwan has refused to join the United States at APEC in advocating for a permanent moratorium on taxation of Internet transactions.

THAILAND

TRADE SUMMARY

The U.S. goods trade deficit with Thailand was $14.3 billion in 2006, an increase of $1.7 billion from $12.6 billion in 2005. U.S. goods exports in 2006 were $8.2 billion, up 12.4 percent from the previous year. Corresponding U.S. imports from Thailand were $22.5 billion, up 13.0 percent. Thailand is currently the 24th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Thailand were $1.5 billion in 2005 (latest data available), and U.S. imports were $1.1 billion. Sales of services in Thailand by majority U.S.-owned affiliates were $3.0 billion in 2004 (latest data available), while sales of services in the United States by majority Thailand-owned firms were $3 million.

The stock of U.S. foreign direct investment (FDI) in Thailand in 2005 was $8.6 billion (latest data available), up from $7.6 billion in 2004. U.S. FDI in Thailand is concentrated largely in the manufacturing, finance, professional, scientific, and technical services, and wholesale trade sectors.

FREE TRADE AGREEMENT (FTA) NEGOTIATIONS

The U.S. Government began FTA negotiations with Thailand in June 2004, and conducted seven rounds of discussions through 2006. The negotiations were suspended indefinitely following a military-led coup against the Thaksin government in September 2006. The United States is prepared to continue FTA negotiations with Thailand once democracy is restored, and will continue to strongly urge Thailand to lift martial law, restore civil liberties and maintain its current timeline regarding constitutional reform and elections.

IMPORT POLICIES

Thailand's tariff structure remains an impediment to market access in many sectors. The country's average applied MFN tariff rate is 10.9 percent, but some tariffs are as high as 80 percent. The highest tariff rates apply to imports competing with locally-produced goods, including agricultural products, automobiles and automotive parts, motorcycles, alcoholic beverages, fabrics, paper and paperboard products, and restaurant equipment. The Thai government is in the process of unilaterally streamlining its tariff schedule. Tariffs are being reduced to zero or to one of three rates: 1 percent for raw materials; 5 percent for intermediate goods; and 10 percent for finished goods. The Thai government has so far completed restructuring approximately 70 percent of the tariff lines, and plans to restructure another 10 percent soon. In 2006 the government eliminated tariffs on 768 items related to electronics and electrical appliances and 105 products in the printing industry. Further tariff reductions on some automobile and food products are also planned. Tariffs remaining to be restructured are primarily agricultural and luxury products.

Taxation

Thailand's tax administration generally is complicated and non-transparent. Excise taxes are high on some items, such as unleaded gasoline, beer, wine, and distilled spirits. When import duties, excise taxes, and other surcharges are calculated, the cumulative tax burden on most imported spirits is approximately 284 percent. In 1999, as part of an economic stimulus package, the value-added tax (VAT) was temporarily reduced from 10 percent to 7 percent and the excise tax on fuel oil was reduced from 17.5 percent to 5 percent. The Thai government frequently has announced its intention to restore the VAT to 10 percent, but has not yet done so. The most recent effort to restore the VAT to 10 percent was delayed until September 30, 2007.

Agriculture and Food Products

High duties on agriculture and food products and arbitrary management of import licenses and application of sanitary and phytosanitary (SPS) measures (see section below on Standards, Testing, Labeling, and Certification) remain the primary impediments to U.S. exports of high-value fresh and processed foods. Under its WTO Uruguay Round agriculture obligations, Thailand committed to reduce its import duties, but agriculture is scheduled to be among the last sectors targeted under the Thai government's plan.

Duties on imported consumer-ready food products typically range between 30 percent and 50 percent – the highest in the ASEAN region – with some as high as 90 percent (*e.g.,* coffee). Tariffs on meats, fresh fruits (including citrus fruit and table grapes) and vegetables, fresh cheese and pulses (*e.g.*, dry peas, lentils, and chickpeas) are similarly high, even for products for which there is little domestic production. Frozen french fries, for example, are not produced in Thailand, yet face a tariff of 30 percent. When import duties, excise taxes, and other surcharges are calculated, imported wines face a total tax of nearly 400 percent. The excise tax on wine (made of grapes) is 60 percent of value or 100 baht per liter of pure alcohol, whichever is higher. Fermented spirits made from fruits other than grapes, *e.g.*, mangosteen, are subject to an excise tax of 25 percent of value or 70 baht per liter of pure alcohol, whichever is higher.

With the exception of wine and spirits, Thailand no longer applies "specific" duties on most agricultural and food products, and *ad valorem* rates are declining in accordance with Thailand's WTO commitments. Nevertheless, import duties on some agricultural and processed food goods have an average tariff rate of 25.4 percent. Moreover, bound duties on many high-value fresh and processed food products will remain high, from 30 percent to 40 percent, even after Thailand implements reductions required under its WTO commitments. Tariffs on apples are at 10 percent, while duties on pears and cherries remain as high as 30 percent to 40 percent. U.S. fruit growers estimate lost sales of up to $25 million annually from the combined effect of Thailand's high tariffs, surcharges, and a customs reference price system that often disregards the declared transaction price of these products (see "Customs Barriers" section below).

Thailand's overall import policy is directed at protecting domestic producers, and the Thai government has implemented non-transparent price controls on some products and maintains significant quantitative restrictions that impede market access. The United States is concerned that access to tariff-rate quotas for agricultural products is often managed in an arbitrary and non-transparent manner. Although Thailand has been relatively open to imports of feed ingredients, including corn, soybeans, and soymeal, in recent years, the Thai government maintains excessively burdensome requirements associated with the issuance of import permits for feed ingredients. For example, corn imports enjoy liberalized tariff rates, but the benefit of this tariff reduction has been offset by a Thai government requirement that corn imports arrive between March and June, a seasonal limitation not provided for in Thailand's WTO schedule. This requirement places U.S. suppliers at a disadvantage and gives most of the market to corn from the southern hemisphere. Corn is also subject to a tariff-rate quota (TRQ); in-quota corn imports (54,700 mt) are subject to a 20 percent tariff rate, while out-of-quota corn imports are subject to a 73 percent tariff. There are import quotas for soybeans, for which the import duty is 5 percent. However, Thailand requires that importers purchase a certain amount of domestically-produced product before being granted licenses for imported products. Importers of skim milk powder report that import quota allocations are often released late, which sometimes causes interruptions in trade flows.

In addition, the Thai government requires import license fees for meat products of approximately $114 per ton on beef and pork, $227 per ton for poultry, and $114 per ton on offal that do not appear to reflect the costs of import administration. SPS standards for certain agricultural products also often appear to be applied arbitrarily and without prior notification. The Thai government is implementing a long-dormant requirement of inspecting individual slaughterhouse or farm facilities that export animals and animal products into Thailand. Efforts have been made to negotiate a system audit, as opposed to a plant by plant audit the Thai government is seeking.

U.S. agricultural exports to Thailand, including fish and forestry products, which dropped dramatically in the aftermath of the 1997 financial crisis to $440 million in 1998, have recovered and approached $750 million for the past three years. According to U.S. industry estimates, potential exports to Thailand could reach as much as $1.5 billion annually if Thailand's tariffs and other trade-distorting measures are substantially reduced or eliminated and the economy recovers to pre-crisis levels.

Automotive Sector

Thailand’s import duties and taxes on vehicles are among the highest in ASEAN. In response to the 1997 financial crisis, the Thai government raised tariffs on Completely Built Up (CBU) passenger cars and sport utility vehicles to 80 percent, up from 42 percent and 68 percent, respectively and they remain at that level today. Thailand negotiated an FTA with Japan during 2005, but it remains unsigned. If ratified among other tariff cuts, the agreement will phase in over four years a reduction of tariffs to 60 percent on Japanese vehicles with engines greater than 3000 cc.

Excise taxes in Thailand are based on various vehicle characteristics, such as engine size, weight and wheelbase. In July 2004, Thailand revised its excise tax structure, but it remains complex and heavily favors domestically manufactured vehicles. Taxes on passenger vehicles range from 30 percent to 50 percent, while pickup trucks are taxed at a rate of 3 percent. As a result, pickups account for more than 50 percent of total vehicle sales in Thailand.

The Thai government administers several incentive measures that benefit automotive exports. These include tax reimbursements on imported materials for export production; tax redemption on exported parts and vehicles; tax reduction on imported materials. Additionally, Thailand has established a Free Trade Zone Area (FTZ) in order to support export-related investments. In the FTZ area, the Thai government provides services to facilitate customs processing and production.

Customs valuation issues have been particularly acute in the automotive sector (see "Customs Barriers" section below).

Textiles

Thailand's tariff rates for U.S. textile exports are high, ranging from 20 percent to 30 percent for most fabrics and 30 percent for most clothing and other made-up textile products. In addition, Thailand applies specific unit duties on more than one-third of all textile tariff lines, which make effective rates even higher. Furthermore, on the APEC website, Thailand’s applied tariffs for certain clothing are incorrectly listed as 60 percent. Thailand has not yet addressed United States’ concerns that these higher published tariffs could be misleading and discourage potential United States exporters.

Quantitative Restrictions and Import Licensing

Thailand is still in the process of changing its import licensing procedures to comply with its WTO obligations. Import licenses are required for at least 26 categories of items, including many raw materials, petroleum, industrial materials, textiles, pharmaceuticals, and agricultural items. Import procedures for jute and marble will soon be brought into line with WTO requirements.

Imports of used motorcycles and parts and gaming machines are prohibited. Imports of other products must meet burdensome regulatory requirements, including extra fees and certificate-of-origin requirements. Thailand does not have specific measures of general application relating to non-preferential rules of origin.

Imports of food, pharmaceuticals, certain minerals, arms and ammunition, and art objects require special permits from relevant ministries. Thailand requires that detailed and often proprietary business information about the manufacturing process and composition of food be provided in applications for food product registration.

Customs Barriers

Thailand continues to take steps to improve its customs practices, building on the U.S.-Thai bilateral dialogue held over the past five years. While the international business community maintains that some positive customs policy changes are slow in filtering down through the bureaucracy, most acknowledge the progress to date.

The lack of transparency and efficiency of the Thai customs regime remain a concern. In July 2003, Thailand formally notified the WTO of legislation passed in 2000 implementing the WTO Customs Valuation Agreement. Meanwhile, Thailand has drafted, but not yet submitted to Parliament, legislation limiting the discretion of the Customs Director General to arbitrarily increase the customs value of imports (though in practice, the Director General has not made use of that discretion). Some industry representatives continue to report inconsistent application of the WTO transaction valuation methodology and repeated use of arbitrary values. Industry representatives have asked that Thai Customs publish proposals for changes in customs laws, regulations, and notifications and allow time for comments on these proposals. They have also requested that Customs impose a time limit on the issuance of rulings, respond to appeals within an established time period, provide a full explanation of its decisions regarding appeals, establish a reasonable time period at the beginning of an audit or an investigation for their completion and provide a written report of the findings of the audit or investigation.

In addition, as is the case with some Thai agencies, Customs has an incentives program rewarding officials for identifying violators based on a percentage of the recovered revenues. This practice encourages revenue maximization rather than compliance with legal requirements. Corruption in the Customs Department reportedly remains a serious problem.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Thailand's Food and Drug Administration (TFDA) imposes standards, testing, and labeling requirements, and requires certification permits for the importation of all food and pharmaceutical products, as well as certain medical devices. Many U.S. companies have raised concerns that the cost, duration, and complexity of the permitting processes are overly burdensome and are concerned about the periodic demands for disclosure of proprietary information. TFDA has streamlined its procedures somewhat, but U.S. companies still report delays of up to a year. All processed foods must be accompanied by a detailed list of ingredients and a manufacturing process description, disclosure of which could potentially jeopardize an applicant's trade secrets. A labeling regime for foods derived by the use of biotechnology, modeled on the Japanese system, was put into effect in May 2003. In 2004, the Ministry of Public Health (MOPH) introduced new regulations on food safety testing, known as Ministerial Decree 11, requiring that many imported food products undergo testing and certification for a number of chemical additives. Decree 11's implementation has been delayed as MOPH has undertaken revisions of the guidelines but these guidelines have yet to be finalized.

In August 2006, the Department of Agriculture in the Ministry of Agriculture and Cooperatives, notified the WTO of its proposed new rules on Thai quarantine practices on certain imported fruits and vegetables from all exporting countries. Under these rules, all imported relevant commodities will be subject to pest risk assessment (PRA) prior to importation. While commodities that have a record of export can be allowed to ship during the PRA review, other products will be prohibited.

The Thailand Industrial Standards Institute (TISI) is the national standards organization under the Ministry of Industry. TISI is empowered to provide product certifications according to established Thai standards and is an accredited body for International Standards Organization (ISO) and other certifications in Thailand. The Thai government requires the certification of 60 products in ten sectors, including agriculture, construction materials, consumer goods, electrical appliances and accessories, PVC pipe, medical equipment, LPG gas containers, surface coatings, and vehicles. In the case of medical equipment, Thailand requires product approval in the country of origin before it can be registered, which disadvantages products that have already received regulatory approval in other countries (usually the EU) before receiving U.S. FDA approval. Uninterruptible power supply product imports must meet a more stringent radio signal emissions standard that appears to favor local suppliers.

Thailand prohibits motorcycle traffic from its expressways, including large-engine motorcycles that are sufficiently powerful and intended for expressways and do not pose the same safety risk to other travelers as underpowered motorcycles. Thailand's motorcycle emissions regulations are an amalgamation of standards and tests used elsewhere in the world, resulting in standards that reportedly are among the most stringent in the world. Enforcement of these standards has been non-transparent so that even producers utilizing advanced low-emission technology have difficulty meeting these standards.

GOVERNMENT PROCUREMENT

Thailand is not a signatory to the WTO Agreement on Government Procurement. A specific set of rules, commonly referred to as the Prime Minister's Procurement Regulations, governs public-sector procurement for ministries and state-owned enterprises. While these regulations require that nondiscriminatory treatment and open competition be accorded to all potential bidders, different state enterprises and ministries typically have their own individual procurement policies and practices. Preferential treatment is provided to domestic suppliers (including subsidiaries of U.S. firms registered as Thai companies), which receive an automatic 7 percent price advantage over foreign bidders in initial bid round evaluations.

A "Buy Thai" directive from the Prime Minister's office issued in 2001 has raised additional concerns about the Thai government procurement policies. While Thailand denies that the "Buy Thai" policy discriminates against foreign producers, specific language used in government instructions on some procurement tenders explicitly excludes foreign-made, non-Thai products from the bidding process.

Government agencies and state enterprises reserve the right to accept or reject any or all bids at any time and may also modify the technical requirements during the bidding process. The latter provision allows considerable leeway to government agencies and state-owned enterprises in managing tenders, while denying bidders any recourse to challenge procedures. Allegations that changes are made for special considerations frequently surface, including charges of bias on major procurements. Despite an official commitment to transparency in government procurement, U.S. companies and Thai media have reported allegations of irregularities. In addition, private sector representatives have expressed concern regarding a Thai government decision to no longer include arbitration clauses in concessions and government contracts.

Regulations promulgated in May 2000 formalized a Thai government practice requiring a countertrade transaction on government procurement contracts valued at more than 300 million baht, on a case-by-case basis. A counterpurchase of Thai commodities valued at not less than 50 percent of the value of the principal contract may be required. As part of a countertrade deal, the Thai government also may specify markets into which commodities may not be sold; these are usually markets where Thai commodities already enjoy significant access. From 1994 through August 2006, 309 countertrade agreements were signed, resulting in exports valued at over 74 billion baht. The Thai government is reviewing its countertrade policies due to concerns about delays and the management of these transactions. The United States is monitoring this issue.

EXPORT SUBSIDIES

Thailand maintains programs to support trade in certain manufactured products and processed agricultural products, which may constitute export subsidies. These include various tax benefits, import duty reductions, credit at below-market rates on some government-to-government sales of Thai rice (established on a case-by-case basis), and preferential financing for exporters. The Thai government terminated its packing credit program in compliance with WTO commitments but received an extension of its WTO exemption period for the Industrial Estate Authority of Thailand and the Board of Investment. Low interest loans provided under the Export Market Diversification Promotion Program to exporters targeting new markets ended in December 2003.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Widespread commercial IPR counterfeiting and piracy continue. U.S. copyright industries reported an estimated annual trade loss of more than $308 million in 2005 from IPR infringement in Thailand. An increasing volume of pirated and counterfeited products manufactured in Thailand is exported. Thailand has been on the U.S. Special 301 Watch List since November 1994.

The United States and Thailand held extensive consultations on IPR issues under the TIFA and during the FTA negotiations aimed at strengthening Thailand's regime. During the FTA negotiations, Thailand enacted optical disc legislation but it lacked many key elements, and U.S. officials continue to press Thailand to address these deficiencies. The Copyright Act amendments have not been enacted and lack of sustained, aggressive, and coordinated enforcement remains a substantial problem.

On January 30, the Ministry of Public Health issued implementing regulations for the 2002 Trade Secrets Act. The regulations restrict the government from releasing protected data for a period of five years, but do not provide data exclusivity that would prevent unfair commercial use.

The Geographical Indications Act was passed by the Thai Parliament in September 2003 and went into effect in April 2004. This legislation allows rights holders to seek protection for indications which identify a good as originating in the territory of a member or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographic origin.

Registration of new plant varieties under the Plant Variety Protection Act began in April 2006. Private sector representatives have expressed concern about the implementation and enforcement of the Act, noting the wide availability of pirated counterfeit seeds and other products in Thailand. The United States urged Thailand to strengthen the 1999 Act to make it consistent with the 1991 International Convention for the Protection of New Varieties of Plants (UPOV) and to accede to this convention.

Thailand's IPR enforcement efforts have been inconsistent. Although conviction rates are high, corruption and a cultural climate of leniency can complicate prosecution of cases. The frequency of raids compromised by leaks from police sources remains a concern. Pirates, including those associated with transnational crime syndicates, have responded to intensified levels of enforcement with intimidation against rights holders' representatives and enforcement authorities. The Ministry of Commerce has the lead in promoting interagency cooperation on IPR enforcement issues. In August 2006, the Ministry concluded a Memorandum of Understanding (MOU) between enforcement authorities, retail establishments and rights holders to better coordinate operations. While the MOU is an important step, the Thai government has yet to ensure sustained enforcement actions against retailers, distributors, and manufacturers of pirated and counterfeit goods.

The Department of Special Investigations (DSI) was established in 2004 and took on an IPR enforcement role, focusing on major infringing production, warehousing and trafficking operations, as well as those activities associated with organized crime. In January 2006, the threshold for cases to be referred to DSI was lowered to 500,000 baht ($13,400), promising stronger investigative action into more cases. In December 2003, the Thai Cabinet approved in principle draft amendments to the Anti-Money Laundering Act, one of which makes IPR crimes a "predicate" offense. These amendments would allow police and other law enforcement officials to seize and investigate funds and suspected bank accounts. However, in July 2004, the Council of State, which reviews pending legislation, rejected the inclusion of IPR crimes as a predicate offense, citing concerns that IPR violations are "commercial disputes."

The Thai government established a specialized intellectual property court in 1997, which has improved judicial procedures and imposed tougher penalties. Criminal cases generally are disposed of within 6 months to 12 months from the time of a raid to the rendering of a conviction. However, courts frequently hand down light sentences that are not considered a deterrent to criminal behavior. Thai officials generally lack sufficient resources to undertake enforcement actions apart from those initiated by rights holders. Effective prosecutions can be labor intensive for rights holders, who often investigate, participate in raids, and assist in the preparation of documentation for prosecution.

Patents

Thailand's patent regime generally provides adequate protection for most innovations. However, U.S. industry has expressed concerns that the legislation that Thailand enacted to implement its data protection obligations under the TRIPS Agreement would not provide adequate protection of confidential information from disclosure. U.S. industry is also concerned that Thailand does not have a formal patent linkage system to prevent the regulatory approval of copies of pharmaceuticals that are still patented. There has been a recent increase in the number of such copies receiving Thai FDA approval while the original product is still under patent. Thailand's patent office lacks sufficient resources to keep up with the volume of applications, and patent examinations can take more than five years. The Department of Intellectual Property is seeking to contract out to academic institutions some parts of patent search for novelty and preparation of applications in order to speed up the registration process. In 2005 Thailand began preparations to accede to the Paris Convention and the Patent Cooperation Treaty.

Thailand's Ministry of Public Health has pursued the issuance of compulsory licenses on certain patented drugs and has indicated it may consider using compulsory licensing with respect to drugs for treating a broad range of medical conditions. The United States acknowledges Thailand's ability to issue compulsory licenses to address public health emergencies, subject to its own law and its obligations as a member of the WTO. At the same time, the United States has expressed concern regarding a lack of transparency and consultation in the Thai government's pursuit of this policy and about the potentially expansive use of compulsory licenses. The United States has also raised concerns about the potential impact of this and other recent actions by the Thai government on the broader trade and investment climate in Thailand. The United States has urged Thailand to address judiciously the complex intersection between health and intellectual property policy, and to do so in ways that recognize the role of intellectual property in the development of new drugs.

Copyrights

Thailand's copyright law, intended to bring Thailand into conformity with international standards under TRIPS and the Berne Convention, became effective in March 1995. Despite efforts by Thai police at the retail, distribution, and production levels and by corporate end users, piracy remains a serious concern. The Copyright Law is ambiguous regarding decompilation and regulations for enforcement procedures leave loopholes that frustrate effective enforcement.

The Thai government is in the process of amending the Copyright Law in order to bring it in line with two 1996 World Intellectual Property Organization (WIPO) treaties, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. The draft amendments to the Copyright Law have been approved by the Cabinet, but await legislative consideration.

Cable piracy continues to be a major problem throughout Thailand, as pirate providers expand their reach in the provinces. In December 2003, the Thai government initiated a new policy offering amnesty to operators who agree to cease infringing actions under threat of legal action. This policy is intended as a temporary measure pending the establishment of a National Broadcasting Commission and new regulations for cable operators. However, the Thai government has failed to initiate enforcement operations.

U.S. copyright industries continue to express serious concerns over the rapid and unchecked growth of optical media piracy in Thailand. In August 2005, the Optical Disk Manufacturing Control Act went into force. This Act is designed to enhance the authority and capabilities of the Thai government to act against operators of illicit optical disc factories and to control the production materials and machines of legal producers. U.S. copyright industries are concerned that the Optical Disk Act is deficient in several respects, including that penalties are not high enough to deter pirates and do not enhance the Thai government's enforcement and oversight powers sufficiently.

Book publishers have raised concerns that the existing copyright law is being interpreted in a manner that is allowing extensive book piracy, especially in the form of illegal photocopying, to go unchecked. According to industry, annual losses are estimated at about approximately $30 million.

Trademarks

The Thai government amended its trademark law in 1992, increasing penalties for infringement and extending protection to service, certification, and collective marks. The Thai government also streamlined trademark application procedures, addressing issues raised by the U.S. Government. Additional amendments designed to bring Thailand's trademark law into compliance with the TRIPS Agreement were enacted in June 2000, broadening the legal definition of a mark. While these developments have created a viable legal framework and have led to some improvements in enforcement, especially for clothing, accessories, and plush toys, trademark infringement remains a serious problem.

U.S. companies with an established presence in Thailand and a record of sustained cooperation with Thai law enforcement officials have had some success in defending trademarks, but the process remains time-consuming and costly. Penalties for proven trademark violations are insufficiently high to have a deterrent effect.

SERVICES BARRIERS

Telecommunications Services

Thailand has made substantial progress toward reforming its telecommunications regulatory regime during the past year, but several controversial issues remain unresolved and significant obstacles to foreign investment in the sector remain in place. While Thailand is still working to liberalize its basic telecommunications services, new technologies such as mobile telephony and broadband Internet services have transformed the telecommunications sector in the intervening period.

The seven-member National Telecommunications Commission (NTC) -- the independent regulator mandated by the 1997 constitution responsible for licensing, spectrum management, and supervision of telecommunications operators — began its operations in November 2004. The creation of the NTC follows reorganization with respect to ministerial oversight of the telecommunications sector in 2002. While the new Ministry of Information and Communication Technology (MICT) is responsible for overall telecommunications policy, including such major initiatives as privatization of the state-owned telecommunications firms, the initiative for liberalization of the sector clearly rests with the industry regulator, the NTC.

The NTC formulated a Telecom Master Plan for 2005-2007, to guide the development of the telecommunications sector. It established licensing criteria for the three types of telecommunications licenses it may issue: Type I (without network); Type II (with or without network for specific groups or users); and Type III (with network for public telecommunication services). The NTC has set criteria for the allocation of telephone numbers. It has set temporary measures for radio and frequency allocation. The NTC has issued six Type I and Type III telecommunications licenses to state-owned telecommunications providers TOT and CAT. The licenses granted cover the existing telecommunications services operated by the two incumbent operators.

Since the NTC began its work in November 2004, a clearer regulatory framework for the operation of Internet Service Providers (ISPs) has emerged. The NTC has established licensing criteria, license fees, and interconnection charges for ISPs. The NTC issued the first Type I telecommunications license (for an operator without its own network) in June 2005. As of this writing, the NTC has issued Type I licenses to a total of 44 ISPs.

A March 2006 study by the World Bank noted complaints by many local ISPs that "prices charged for international bandwidth and access to international Internet gateway services are extremely high; there is a critical shortage of international data capacity; and the quality of service, including the lack of redundancy is very poor, leading to frequent, long and unplanned service outages."

The NTC has also begun to move forward with licenses for satellite services. The three types of licenses will be: Type I for Satellite Operators (the licensing principles for Type III telecommunications licenses will apply); Type II for Earth-station Operators (the licensing principles for Type II telecommunications licenses will apply); and Type III for Satellite Service Re-Sellers (the licensing principles for Type I telecommunications licenses will apply).

NTC plans to issue licenses for third-generation (3G) mobile telephone services have been delayed. By law, allocation of frequencies requires participation by both the NTC and a National Broadcast Commission (NBC), which is still not yet operational. It remains unclear how frequencies will be allocated and whether allocation must await the formation of the NBC.

An amendment to the Telecommunications Business Law went into effect in December 2005 that raised the limit of allowable foreign ownership from 25 percent to 49 percent. State-owned enterprises continue to control large segments of the market, particularly in fixed-line and international long-distance services. With the growth of new markets such as mobile phone and satellite services in recent years, however, the role of private companies in this dynamic sector has grown accordingly. The two largest mobile service operators have pursued controversial tie-ups with foreign telecommunications firms. In January 2006, Singapore-based Temasek bought a controlling interest in Shin Corporation, the parent of mobile provider AIS, and in October 2005, Norway's Telenor AS bought out both TAC and its parent company UCOM. The Ministry of Commerce initiated an investigation into foreign ownership of Shin Corporation that may force Temasek to divest some of its ownership to comply with the law.

Thailand's telecommunications operators have historically operated as state-owned enterprises and the legacy of state ownership continues to affect the business environment in this sector. The two outstanding issues are concession conversion and privatization. Beginning in the mid-1980s, the Thai government introduced competition into the telecommunications sector to increase capacity so as to meet the booming economy's demand for telecommunications services. The state-owned telecommunications companies, now TOT and CAT Telecom, granted several concessions to private companies on a Build-Transfer-Operate (BTO) contract basis. Under the BTO contracts, the private contracting party established telecommunications networks at their own expense. Upon completion of the concession period, all assets are to be transferred to the concession grantor. Revenue sharing payments for each concession have differed. A dual structure in the sector resulted, where the concessionaires both compete with TOT and CAT Telecom while at the same time submitting to their regulation and making revenue sharing payments to them. While early plans for reform of the sector called for concession conversion, the NTC decided not to interfere in the concessions but to begin issuing licenses to provide telecommunications services. Concessions are thus expected to expire gradually as the private operators migrate subscribers for mobile services from 2G to 3G services, which will bring their operations under the purview of the NTC and free them from revenue sharing payments.

The Thai government is also planning to partially privatize TOT and CAT Telecom, but the privatization has met resistance. Regulatory uncertainty on such issues as interconnection charges complicates the task of determining the companies' market value.

Legal Services

Current Thai law prohibits foreign equity participation in Thai law firms in excess of 49 percent, and foreign nationals are prohibited from practicing law in Thailand. However, under the U.S.-Thailand Treaty of Amity and Economic Relations (AER Treaty), U.S. investments are exempted from the general restriction on foreign equity participation in law firms. U.S. investors may own law firms in Thailand; but U.S. citizens and other foreign nationals (with the exception of "grandfathered" non-citizens) may not provide legal services. In certain circumstances, foreign attorneys may act in a consultative capacity.

Financial Services

After the 1997-98 financial crisis, the Thai government liberalized foreign firms' access to the financial sector. However, significant restrictions remain on foreign participation in the sector. While aliens have been allowed to engage in brokerage services since 1997, for example, foreign firms are allowed to own shares greater than 49 percent of Thai securities firms only on a case-by-case basis.

Foreigners are permitted to hold a maximum of 25 percent of the equity in Thai banks. Within the "Financial Sector Master Plan" drafted by the Bank of Thailand and approved by Parliament, this percentage may be increased to 49 percent at such time as the Central Bank deems appropriate. The Master Plan requires all Thai deposit-taking institutions to become either a retail or commercial bank with differing minimum capital requirements. The Bank of Thailand has indicated that no new banking licenses will be issued until "economic conditions" permit greater competition in the Thai banking market.

Foreign banks currently operating in Thailand are disadvantaged in their ability to compete. Most notably, they are limited to one branch, and are not permitted to operate off-site ATM machines, which are considered as branches. Foreign banks must maintain minimum capital funds of 125 million baht ($3.1 million) invested in government or state-enterprise securities or deposited directly with the Bank of Thailand. Expatriate management personnel are limited to six professionals in full branches and two professionals in Bangkok International Banking Facility operations, although exceptions are often granted.

Charged with helping to restructure the financial sectors' non-performing loans, the government-owned Thai Asset Management Corporation gives priority to Thai nationals when contracting for management, technical, and advisory services. Foreigners may be hired, however, in the absence of qualified Thai nationals.

Construction, Architecture, and Engineering

Foreigners are prohibited from working as engineers or architects, but in practice, they can work as consultants in these fields. Construction firms must also be registered in Thailand (*i.e.*, establish a commercial presence). Under the U.S.-Thailand AER Treaty, American firms may establish companies in Thailand that provide construction, architectural, and engineering services. The Thai government regulates the billing rates of foreign construction, architectural, and engineering firms. Current practice places a ceiling on billing for these services by foreign firms.

Accounting Services

Foreigners cannot be licensed as Certified Public Accountants and therefore cannot practice accounting in Thailand. Foreign accountants may only serve as business consultants.

Transport Services, including Express Delivery Services

The passage of the Multimodal Transport Act of July 2005 represents a new barrier to trade in the transport services sector. While the full impact of the law remains unclear, it introduces new uncertainty into the treatment of operations of foreign shipping companies. Political difficulties in 2006 delayed approval of implementing regulations. While the text of the law itself appears to require foreign shipping companies performing multimodal services in Thailand to either incorporate in Thailand or appoint a Thai agent (as opposed to operating out of their branch offices in Thailand as they have to date), the draft ministerial regulations implementing the law provide that the law shall not apply to foreign shipping companies transporting goods under bills of lading governed by international convention. In view of the severe penalties for non-compliance (including a retroactive fine of Baht 50,000 per contract), international shipping firms have sought to contain their downside risk by either incorporating in

Thailand or appointing an agent, passing the attendant costs on to customers. In addition, private express companies must pay postal "fines" and penalties in Thailand that can amount to an average of 37 baht per item.

The 49 percent limit on foreign ownership in land transport (trucking) hampers investment in the growth of express delivery services. Express delivery firms prefer to have the option to control items throughout the supply of the service, including both air and ground-based operations in order to speed the movement of goods.

The United States and Thailand signed a comprehensive bilateral Open Skies Agreement in September 2005 that provides for full liberalization by 2010. The agreement includes phase-in periods with respect to pricing and fifth freedom rights.

Healthcare Services

Thai government policy is highly restrictive in the healthcare services sector (*e.g.*, hospital, dental, physician services), particularly regarding the lack of transparency relating to hospitals and the possibility of foreign ownership, administration, and equity shares in treatment facilities. Thailand has offered no medical services commitments in the current General Agreement on Trade in Services (GATS) negotiations.

Retail Services

The Ministry of Commerce is finalizing a draft Retail Act that will regulate retail business. In September, the Thai government requested major foreign and domestic retailers to voluntarily freeze their expansion plans while regulations were drawn up to protect smaller retailers. In October 2006, the Thai government issued guidelines, under the Trade Competition Act (1999) to prevent retailers from setting "unfair practices" such as: pricing goods lower than costs; requesting discounts from suppliers; charging high introduction fees for new products; and returning products to the supplier without valid reasons.

Advertising

The Ministry of Public Health proposed a new law in October 2006 that would ban advertising for alcohol products in all media. Thai law prohibits advertising on pay television. There are no regulations on foreign participation in the advertising sector.

INVESTMENT BARRIERS

The Alien Business Act lays out the overall framework governing foreign investment and employment in Thailand. Although the Act prohibits foreign investment in most sectors, Thailand makes an exception for U.S. investors pursuant to the AER Treaty. Under the AER Treaty, Thailand may discriminate against U.S. investors only in the following sectors: communications, transportation, fiduciary functions, banking involving depository functions, the exploitation of land or other natural resources, and domestic trade in indigenous agricultural products. Moreover, Thailand's obligation to accord national treatment to U.S. investors in all other sectors does not extend to "the practice of professions, or callings reserved for [Thai] nationals."

The Alien Business Act's prohibitions on foreign investment generally do not affect projects established by Board of Investment promotion privileges or export businesses authorized under the Industrial Estate Authority of Thailand law.

In January 2006, the Thai Cabinet approved amendments to the Foreign Business Act. The United States has expressed serious concerns to the Thai government about the restrictions that these amendments would impose on certain investments in Thailand and about the implications that these amendments would have for Thailand's international legal obligations and for the investment environment in Thailand. These amendments were sent to the Council of State for legal review. When this review is completed, the Thai Cabinet is expected to send the proposed amendments to the National Legislative Assembly. In response to the strong interest expressed in this proposed legislation by the foreign business community and foreign governments, the Thai government has indicated its willingness to engage in a dialogue with all interested parties and consider changes to these amendments.

Trade-Related Investment Measures

In 1995, pursuant to the WTO Agreement on Trade-Related Investment Measures (TRIMS), Thailand notified the WTO that it would maintain local content requirements to promote investment in a variety of sectors, including milk and dairy processing, and the motor vehicle assembly and parts industries. Thailand eliminated the measures in the automotive sector by the January 1, 2000, deadline established by the TRIMS Agreement. In 2001, along with several other developing countries, Thailand received an extension for its milk and dairy processing measures. It eliminated those measures at the end of 2003.

ELECTRONIC COMMERCE

Thailand lacks a complete legal framework to support electronic commerce, and the business community has been unable to fully take advantage of electronic commerce opportunities. Most electronic commerce takes place business-to-business. Internet penetration and computer usage are still relatively low but have increased markedly in recent years. A survey by the National Statistics Office in 2005 found that 14.5 million Thais (25 percent) over the age of six used computers, and seven million (12 percent) use the Internet.

The Thai government enacted the Electronic Transactions Act (ETA) in April 2002 to govern civil and commercial transactions made electronically. A royal decree on transactions excluded from enforcement of the Electronic Transactions Act became effective in March 2006. Three other decrees necessary to fully implement the ETA have been approved in principle but await final Cabinet approval and submission to the King. Four pieces of legislation relating to electronic commerce are nearing final stages. A cyber-crime bill, an electronic funds transfer bill, and a national information infrastructure bill to facilitate universal service are expected to be enacted in 2007. A data protection bill is still under review by the Council of State and will require Cabinet and parliament approval. An undeveloped legal framework nevertheless continues to constrain the development of electronic commerce.

OTHER BARRIERS

Several government firms are protected from foreign competition in Thailand. In the pharmaceutical sector, the Government Pharmaceutical Organization is not subject to requirements faced by the private sector on registration. In addition, it can produce and market generic formulations of drugs marketed in foreign countries irrespective of safety monitoring program protection. Thai government requirements limiting government hospitals' procurement and dispensing of drugs not on the national list of essential drugs significantly constrain the availability of many imported products.

The Thai government retains authority to set *de facto* price ceilings for 33 goods and two services, including staple agricultural outputs, liquefied petroleum gas, medicines, sound recordings and student uniforms. Under the 1999 “Act Relating to Price of Merchandise and Service” a government committee headed by the Minister of Commerce has the authority to “Prescribe the purchase price or distribution price of merchandise or service…”, “prescribe maximum profit per unit…” and set the terms and conditions – including maximum permissible volumes – of any goods and service in the Kingdom. The law was amended in 1999 with the advent of a Competition Law and was meant to be phased out. However, with several critical aspects of Competition Law still undefined, the old law continues in place with no expiration under current consideration by the Thai government. Price control review mechanisms are non-transparent. Price control determinations are sometimes based on outdated assumptions, including with respect to exchange rates, and go for long periods without review, even upon repeated petition for review by affected parties. Only sugar currently is subject to a retail price ceiling. In practice, the Thai government also uses its control of major suppliers of products and services under state monopoly, such as the petroleum, aviation, and telecommunication sectors, to influence prices in the local market.

The Thai government has made some efforts to counter official corruption. The Thai Constitution of 1997 contains provisions to combat corruption, including enhancement of the status and powers of the Office of the Counter Corruption Commission (OCCC), which is independent from other branches of government. Persons holding high political office and members of their immediate families now are required to disclose their assets and liabilities before assuming and upon leaving office. Moreover, a law regulating the bidding process for government contracts both clarifies actionable anti-corruption offenses and increases penalties for violations. Nonetheless, counter-corruption mechanisms continue to be employed unevenly. The lack of transparency in administrative procedures also contributes to perceptions of corruption in Thailand. Prescribed comment periods for new legislation and regulations are sometimes not honored, and implementing regulations can be unclear, causing uncertainty among companies about the interpretation of the provisions.

TURKEY

TRADE SUMMARY

The U.S. goods trade balance with Turkey went from a trade deficit of $913 million in 2005 to a trade surplus of $366 million in 2006. U.S. goods exports in 2006 were $5.7 billion, up 34.2 percent from the previous year. Corresponding U.S. imports from Turkey were $5.4 billion, up 3.5 percent. Turkey is currently the 30th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Turkey in 2005 was $2.4 billion (latest data available), the same as in 2004. U.S. FDI in Turkey is concentrated largely in the banking, wholesale and manufacturing sectors.

IMPORT POLICIES

Tariffs and Quantitative Restrictions

Turkey applies the EU's common external customs tariff to third-country (including the United States) non-agricultural imports and imposes no duty on non-agricultural items from EU and European Free Trade Association (EFTA) countries.

Turkey maintains high tariff rates (25 percent average most-favored-nation rate) on many food and agricultural product imports. The Turkish government often increases tariffs on grains during the domestic harvest. High feed prices harm Turkish livestock industries, particularly for beef and poultry. Duties on fresh fruits range from 15.4 percent to 145.8 percent. Tariffs on processed fruit, fruit juice, and vegetables range between 19.5 percent and 130 percent. The Turkish government also levies high duties, excise taxes and other domestic charges on imported alcoholic beverages that increase wholesale prices by more than 200 percent.

Import Licenses and Other Restrictions

Import licenses are required for products that need after-sales service (e.g., photocopiers, advanced data processing equipment and diesel generators), distilled spirits and agricultural products. Lack of transparency in Turkey's import licensing system can result in costly delays, demurrage charges and other uncertainties that stifle trade for many agricultural products and for distilled spirits. In November 2005, the United States brought a dispute against Turkey in the World Trade Organization (WTO) arguing that, *inter alia*, Turkey's tariff-rate quota (TRQ) scheme, which contains an onerous domestic purchase requirement, and its refusal to issue import licenses outside the TRQ, are inconsistent with Turkey's WTO obligations. This case is proceeding through WTO dispute settlement.

In some cases, notably for meat and poultry (not to mention over-quota imports of rice), the Turkish government simply does not issue licenses, thereby creating a *de facto* ban on imports of these products. Turkey has not allowed livestock for slaughter or meat imports from any foreign country since 1996 and has not established any public health requirements for the entry of meat. Outbreaks of Bovine Spongiform Encephalopathy (BSE) and foot and mouth disease (FMD) in Europe strengthened Turkey's resolve to keep livestock and meat products out of its market. The United States is currently not able to export breeding livestock to Turkey since the EU placed the United States in the third BSE risk category. Turkey's BSE Committee has decided not to import any breeding cattle from category 3 countries (based on the EU system). The United States is also unable to export poultry meat for consumption within Turkey because the government of Turkey requires its officials to inspect and approve all foreign processing facilities and expects inspection costs to be covered by Turkish importers.

Due to the EU accession process, Turkey is in the process of rewriting its agriculture import regulations in order to harmonize them with the EU. Some new regulations, especially sanitary and phytosanitary measures and reference price systems, do not appear to be applied in an EU-consistent manner.

Despite liberalization of the spirits and tobacco markets, including a completed privatization of the state-owned alcoholic beverage company and plans to privatize the state-owned tobacco company, as well as privatization of imports of wine and alcoholic beverages, increases in consumption have been inhibited by inordinately high tariffs (85 percent - 100 percent) and special consumption taxes (275 percent), along with the value-added-tax (VAT). In 2006, legislation was introduced to reduce the number of control certificates required to import distilled spirits from two to one.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Turkish government has a poor track record of notifying WTO Members of proposed technical regulations and phytosanitary requirements, and implementation can appear to be arbitrary. Importers report increasing difficulty in obtaining information on sanitary and phytosanitary certifications. The Turkish government often requires laboratory testing on items not normally subject to testing by trading partners. U.S. imports could increase by an estimated $10 million to $25 million if these procedures were regularized.

U.S. companies have reported that products with the EU certificate of conformity (CE mark), particularly medical devices, have been detained by Turkish customs authorities for inspection. In some cases, U.S. products apparently have been subjected to additional tests, despite their CE marks. The Turkish government believes that it has addressed these complaints. For importation of distilled spirits, Customs requires that between 2 and 4 bottles per consignment be submitted for unspecified analysis, raising the cost of importing.

GOVERNMENT PROCUREMENT

Turkey is not a signatory to the WTO Agreement on Government Procurement; however, it is an observer to the WTO Committee on Government Procurement. Although Turkey’s laws require competitive bidding procedures for tenders, U.S. companies have complained that they can be lengthy and overly complicated.

Turkey's public tender law established an independent board to oversee public tenders. Foreign companies can participate in state tenders that are above an established threshold. The law provides a price preference of up to 15 percent for domestic bidders, which is not available if they form a joint venture with foreign bidders. Turkey has expanded the definition of domestic bidder to include foreign-owned corporate entities established under Turkish law.

Military procurement generally includes an offset requirement in the tender specifications. The offset guidelines were recently modified to encourage foreign direct investment and technology transfer.

EXPORT SUBSIDIES

Turkey employs a number of incentives to promote exports, although programs have been scaled back in recent years to comply with EU directives and WTO commitments. Historically, wheat and sugar have been Turkey's main subsidized commodities. Export subsidies, ranging from 10 percent to 20 percent of export values, are granted to 16 agricultural or processed agricultural products. In 2004, the Turkish Grain Board (TMO) sold domestic wheat at world prices (well below domestic prices) to Turkish flour and pasta manufacturers based upon their exports of flour and pasta. The Turkish Export-Import Bank provides exporters with credits, guarantees and insurance programs. Certain tax credits also are available to exporters.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Turkey's intellectual property rights regime has improved in recent years, but still contains serious problems. Turkey remained on the Special 301 "Priority Watch List" in 2006 due to concerns about the lack of protection for confidential test data submitted by pharmaceutical companies against unfair commercial use and continued high levels of piracy and counterfeiting of copyright and trademark materials. Turkey is a signatory to a number of international conventions, including the Stockholm Act of the Paris Convention, the Patent Cooperation Treaty and the Strasbourg Agreement.

Turkey's copyright law provides deterrent penalties for infringement. It does not, however, prohibit circumvention of technical protection measures, a key feature of the World Intellectual Property Organization (WIPO) "Internet" treaties. Generally, Turkish courts have not imposed deterrent penalties on pirates as provided in the copyright law but have instead applied the Turkish Cinema Law, which has much lower penalties. More recently, Turkish courts have issued increasingly severe sentences for copyright infringers, but significant backlogs in the courts slow redress. Recently enacted legislation contains several strong anti-piracy provisions, including a ban on street sales of all copyright products and authorization for law enforcement authorities to take action without a complaint by the rights holder. But the law also reduces potential prison sentences for piracy convictions.

In accordance with the 1995 patent law and a Turkish agreement with the EU, patent protection for pharmaceuticals began on January 1, 1999. Turkey has been accepting patent applications since 1996 in compliance with the TRIPS agreement "mailbox" provisions. The patent law does not, however, contain interim protection for pharmaceuticals in the research and development "pipeline."

Turkey's recently amended Patent Law provides for penalties for infringement of up to three years in prison, or approximately $32,000 in fines, or both, and closure of the business for up to one year. Research-based companies in the pharmaceuticals sector are concerned about provisions that delay the initiation of infringement suits until after the patent is approved and published, permit use of a patented invention to generate data needed for the marketing approval of generic pharmaceutical products and give judges wider discretion over penalties in infringement cases. Turkey does not currently have a system for patent linkage; the lack of such a system could create confusion and possibly allow generic pharmaceutical manufacturers to obtain marketing approval for a patent-infringing copy of a brand name drug.

The Ministry of Health introduced limited protection for undisclosed test data against unfair commercial use in a regulation issued in January 2005 and revised in June 2005. However, several of the regulation's provisions severely undermine protection for confidential test data. Data protection is limited to original products licensed in a European Union member country after January 1, 2001, for which no generic manufacturers had applied for licenses in Turkey as of January 1, 2005. The term of exclusivity is limited to the duration of the drug patent or to six years after the date of licensing in a European Customs Union country, implying a shorter term of protection because of the length of the marketing approval process in Turkey. Research-based companies estimate that, due to the prolonged regulatory review, on average the period of data protection is diminished by 20 percent to 25 percent.

Trademark holders also contend that there is widespread and often sophisticated counterfeiting of their marks in Turkey, especially in apparel, film, cosmetics, detergent and other products.

SERVICES BARRIERS

Telecommunications Services

In 2005, Turkey committed to end Turk Telecom's exclusive rights on phone telephony and other basic telecommunications services by 2006. It also made a commitment to provide immediate market access for data transmission services. In line with earlier commitments to WTO, Turkey opened its cellular mobile services and paging to competition.

In November 2005, 55 percent of the government-owned Turk Telecom was sold to a foreign investor. Turk Telecom still dominates the markets for value-added services, including Internet services. The Telecommunications Authority (TK), which reports to the Ministry of Transport, is slowly gaining experience and greater authority. Applicable licensing regulations are published on the Authority's website.

Other Services Barriers

There are restrictions on establishment in financial services, the petroleum sector, broadcasting and maritime transportation (see Investment Barriers section). Turkey restricts the ability of doctors, attorneys and other professionals to practice their professions. Legislation awaiting final approval by Parliament would permit foreign doctors to work in Turkey.

INVESTMENT BARRIERS

The United States-Turkey Bilateral Investment Treaty (BIT) entered into force in May 1990. Turkey has a liberal investment regime, but private investment has historically been hindered by excessive bureaucracy, political and macroeconomic uncertainty, a weak judicial system, high tax rates, a weak framework for corporate governance, and frequent changes in the legal and regulatory environment. Turkey has enjoyed several successive years of economic growth and stability which has contributed to a substantial increase in foreign direct investment. The corporate tax rate was reduced from 30 percent to 20 percent and new regulations were enacted that make it possible to establish a business in Turkey in one day. Turkish government policy is to encourage foreign direct investment.

Almost all areas open to investment by the Turkish private sector are fully open to foreign participation without screening or prior approval, although establishment in the financial and petroleum sectors requires special permission. Foreign equity ownership is limited to 25 percent in broadcasting and 49 percent in maritime transportation. Parliament is considering draft legislation easing restrictions on foreign ownership in the media sector. Once investors have committed to the Turkish market, they have sometimes found their investments undermined by legislative action, such as the imposition of production limits. One example of such limitations is the sugar law, which sets the price for domestically-produced sugar well above the world market price, limits the domestic production of fructose and, thus, creates a shortage of domestically-produced fructose. The law also sets a duty on imported fructose of 135 percent.

The Turkish government accepts binding international arbitration of investment disputes between foreign investors and the state. A recent law expanded the scope of international arbitration in contracts with the Turkish government. Investors continue to have concerns about the government's recognition and enforcement of arbitral awards against public entities, and at least one American company reports that the judicial system in Turkey has not recognized foreign arbitral awards. Turkey is a party to both the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the ICSID Convention.

Turkish law calls for a liberalized energy market in which private firms are able to develop projects with the approval of the Energy Market Regulatory Authority, an independent regulatory body. The state electricity utility has been unbundled into production, transmission, distribution and trading companies, but little progress has been made in privatizing power generation and distribution. The Privatization Agency announced a tender for three electricity distribution regions in late August 2006, however the privatization was postponed in January 2007 until after the November parliamentary elections. Liberalization in the natural gas sector has also faced delays. The state pipeline company, BOTAS, will remain dominant, but legislation requires a phased transfer of 80 percent of its gas purchase contracts.

As the result of a 1997 court decision, the Turkish government has blocked full repatriation of profits by oil companies under Article 116 of the 1954 Petroleum Law, which protected foreign investors from the impact of lira depreciation. Affected companies have challenged the 1997 decision. The judgments in almost all such lawsuits have been against the claimant companies. A new petroleum law that seeks to provide greater investment incentives and protections still awaits passage in the parliament.

OTHER BARRIERS

Corruption

Turkey has ratified the OECD antibribery convention and passed implementing legislation providing that makes bribes of foreign officials, as well as domestic officials illegal and not tax deductible. Corruption is perceived to be a major problem in Turkey by private enterprises and the public at large, particularly by government officials and politicians. The judicial system is also perceived to be susceptible to external influence and to be biased against outsiders to some degree.

Energy

In 2001, the Turkish government cancelled 46 contracted power projects based on the Build-Operate-Transfer (BOT) and transfer-of-operating-rights models. Turkey's constitutional court ruled in 2002 that the government would have to either honor the contracts or compensate the companies involved. One of those companies has launched an international arbitration case. In 2002, the government requested BOT projects already in operation, which include U.S.-owned companies and/or creditors, to apply for new licenses from the new Energy Market Regulatory Authority (EMRA). Negotiations between the Turkish government and the relevant companies concerning the request of the Turkish government to reduce the electricity sale tariffs are continuing while the license application process is still underway. Despite lack of action on new licenses, the Turkish government has continued to purchase electricity produced under the existing contracts.

Taxes

Taxation of all cola drinks (raised in 2002 to 47.5 percent under Turkey's "Special Consumption Tax") discourages investment by major U.S. cola producers. Turkey assesses a special consumption tax of 27 percent to 50 percent on all motor vehicles based on engine size, which has a disproportionate effect on U.S. automobiles.

Corporate Governance

A recent OECD report stated that Turkey's overall corporate governance outlook is positive because the authorities have already adopted, or are introducing, high quality corporate governance standards (including audit standards) and because transparency has improved significantly. The report cautions, however, that it is important for Turkey to improve further in the areas of control and disclosure of related party transactions and self-dealing, the protection of minority shareholders, and the role of the board in overseeing not only management but also controlling shareholders.

Pharmaceuticals

Besides their intellectual property concerns detailed above, the pharmaceutical industry's sales have been affected by government price controls. Research-based industry is also concerned about achieving transparent and equitable treatment in upcoming reforms of the government's health care and pension system.

UNITED ARAB EMIRATES

TRADE SUMMARY

The U.S. goods trade surplus with the United Arab Emirates (UAE) was $10.5 billion in 2006, an increase of $3.5 billion from $7.0 billion in 2005. U.S. goods exports in 2006 were $11.9 billion, up 40.5 percent from the previous year. Corresponding U.S. imports from the UAE were $1.4 billion, down 5.7 percent. United Arab Emirates is currently the 19th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in United Arab Emirates in 2005 was $2.7 billion, up from $2.3 billion in 2004.

FREE TRADE AGREEMENT

After consultations with Congress, the United States began Free Trade Agreement (FTA) negotiations with the UAE in March 2005. Negotiations were ongoing in 2006. An important objective of these negotiations is the removal of trade barriers for U.S. goods and services providers. In early 2007, the United States and the UAE announced that they would not be able to complete FTA negotiations under the existing timeframe for trade promotion authority, but that both sides remain committed to completing FTA negotiations at some later date.

IMPORT POLICIES

The UAE is a federation of seven emirates (Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al-Qaiwain, Fujairah and Ras Al-Khaimah). The UAE is part of the Gulf Cooperation Council (GCC), an economic and political policy-coordinating forum for the six member states (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE). The individual emirates founded the UAE in December 1971. Over the last 33 years, the UAE has developed into the second-largest economy in the Arab world, with an estimated 2005 gross domestic product (GDP) of about $132 billion (at current prices). The UAE has pursued free market, trade liberalizing policies to diversify its economy away from a dependence on oil. Despite possessing around 9 percent of the world's proven oil reserves and the fourth-largest proven gas reserves in the world, rapid growth in the non-oil economy reduced oil's share of GDP from 60 percent in 1980 to 35 percent currently.

Tariffs

At a December 2001 Summit, GCC Heads of State adopted an across-the-board common external tariff of 5 percent for most products. The new tariff regime was implemented in January 2003 as part of the GCC Customs Union agreement. The GCC states also agreed to develop a list of products to which a higher tariff would apply. Currently, the UAE's exceptions to the 5 percent tariff are a 50 percent tariff on alcohol, a 100 percent tariff on tobacco, and duty exemptions for 53 food and agricultural items.

Import Licensing

Only firms with an appropriate trade license can engage in importation, and only UAE registered companies, which must have at least 51 percent ownership by a UAE national can obtain such a license (this licensing provision is not applicable to goods imported into free zones). In addition, not all goods require an import license.

Documentation Requirements

Since July 1998, the UAE has required that documentation for all imported products be authenticated by the UAE Embassy in the exporting country. There is an established fee schedule for this authentication. For U.S. exports, if validation is not obtained in the United States, customs authorities will apply the fee schedule when the goods arrive in the UAE.

Customs Valuation

The UAE notified the WTO Customs Valuation Committee in October 2004 of its customs valuation scheme.

STANDARDS, TESTING, LABELING AND CERTIFICATION

As part of the GCC Customs Union, member countries are working toward unifying their standards and conformity assessment systems, and have progressed considerably towards the goal of a more comprehensive unified food standard, a process which could take a few more years to complete. Each country currently applies either its own standard or a GCC standard, causing confusion among some U.S. businesses.

In October 2002, the UAE created the Emirates Authority for Standardization and Metrology (ESMA), established under the auspices of the Ministry of Finance and Industry to manage issues of standardization arising from the GCC Customs Union. As of early 2006, ESMA had 1,810 standards. Ninety-five percent are based on GCC standards and 5 percent are based on UAE standards. In the absence of national standards, suppliers may follow international standards. In addition, ESMA launched its own conformity assessment program, the Emirates Conformity Assessment Scheme (ECAS) on selected products that currently applies to toys, detergents, paints, lubricants, oils and automobile batteries. ECAS assesses whether domestically manufactured products meet national or GCC standards, or international standards if neither national nor GCC standards exist. The UAE asserts that the ECAS is a voluntary program and is only applicable to domestically-produced goods, but the scope and parameters of ECAS lack clarity and transparency.

Not all UAE national and GCC food standards are consistent with international standards published through the Codex Alimentarius Commission (CODEX), Office of Epizootics (OIE) and International Plant Protection Convention (IPPC) organizations. In addition, the UAE requires that all consumer-ready food products carry both production and expiration dates and stipulates that at least one-half of a product's shelf-life must be valid when a product reaches the port of entry. For red meat and poultry, the product must arrive at the point of entry within four months of production. The UAE lifted its import bans on U.S. poultry in April 2005 and on U.S. beef in June 2005. The fact that the GCC requires both a production date and an expiration date on non-perishable food items continues to be an additional problem for U.S. producers of these products since they must re-label their products exported to the GCC at an additional cost. If the production date labeling requirement were eliminated it would save $1.50 per case on these products according to U.S. Embassy officials. The GCC has recently drafted a proposal that would standardize shelf life requirements for food products by requiring a "best by" or "use by" date. If finalized, the rule would simplify labeling requirements for food exporters and extend the permissible shelf life of imported food products in GCC countries. Given the volume of products coming into the

UAE, the Embassy estimates U.S. consumer-ready food product exports to the UAE would increase between 5 percent and 10 percent or about $15 million to $30 million.

Control of the country's food standards resides in the General Secretariat of Municipalities (GSM) and the Emirates Authority for Standardization and Metrology. These two entities develop food standards through a technical advisory committee, although, on occasion, individual municipalities or Emirate-level authorities still apply food and non-food standards independent of broader national authorities. Previous examples include the labeling of foods with biotechnology enhanced ingredients, the prohibition of foods labeled as Kosher-prepared and standards for pet foods. While these differing local standards can cause confusion among exporters and importers, few new standards have been developed recently. The GSM is unable to control such actions by individual municipalities which, when taken, sometimes cause confusion among U.S. suppliers.

GOVERNMENT PROCUREMENT

The UAE grants a 10 percent price preference for local firms in government procurement. The UAE requires companies to register with the government before they can participate in government procurements. To be eligible for registration, a company must have at least 51 percent UAE-ownership. This rule does not apply to major projects or defense contracts where there is no local company able to provide the goods or services required. Established in 1990, the UAE's offset program requires defense contractors that are awarded contracts valued at more than $10 million to establish commercially viable joint ventures with local business partners that yield profits equivalent to 60 percent of the contract value within a specified period (usually seven years). There are also reports, as well as anecdotal evidence, indicating that defense contractors can sometimes satisfy their offset obligations through an up-front, lump-sum payment directly to the UAE Offsets Group. This requirement is designed to further the UAE objective of diversifying its economy. To date, more than 40 such joint-venture projects have been launched, including, *inter alia*, a hospital, an imaging and geological information facility, a leasing company, a cooling system manufacturing company, an aquiculture enterprise, Berlitz Abu Dhabi and a firefighting equipment production facility. Two of the largest offset ventures are an international gas pipeline project (Dolphin) and the Oasis International Leasing Company, a British Aerospace offsets venture. The UAE is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The UAE has made the protection of intellectual property a priority in recent years. The UAE repealed previous copyright, trademark, and patent laws and issued improved legislation in 2002, providing high levels of protection for U.S. intellectual property. In addition, an agreement between the UAE and U.S. pharmaceutical companies provides for *de facto* patent protection for a number of U.S. patent-protected medicines.

The 2002 copyright law grants protections to authors of creative works and expands the categories of protected works to include computer programs, software, databases and other digital works. Efforts to combat computer software piracy in the UAE have been successful. According to 2006 industry estimates, the rate of software piracy in the UAE is the lowest in the Middle East, estimated to be 34 percent. The UAE is recognized as the regional leader in fighting computer software piracy, although industry stakeholders believe the UAE could be doing more to combat piracy.

The UAE also revised its Trademark Law in 2002. The law confirms that the UAE will follow the International Classification System and that one trademark can be registered in a number of classes. The law provides that the owner of the registration shall enjoy exclusive rights to the use of the trademark as registered and can prevent others from using an identical or similar mark on similar, identical or related products and services if it causes confusion among consumers. It remains unclear, however, how the UAE provides for the protection of geographical indications required by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

The UAE published the official and final version of its long-awaited Patent Law in November 2002. The Patent Law provides for national treatment for intellectual property owners from other WTO Members, product and process patent protection, and enforcement of intellectual property rights utilizing civil and criminal procedures and remedies. In October 2003, the Ministry of Health issued a circular providing protection of test and other data against unfair commercial use in the UAE for pharmaceutical products for up to five years or until a patent is granted or rejected in the UAE, whichever period is shorter. This is an improvement over the previous situation, but protection of test data should not be dependent on patent protection.

In 2004, the now defunct Ministry of Information issued regulations allowing for specialized collecting societies as a practical way for sound recording companies to collect royalties on the broadcast and performance of copyrighted material. The UAE is also considering legislation for data protection, privacy and other IP-related issues and has consolidated its Intellectual Property Rights offices into the Ministry of Economy.

SERVICES BARRIERS

Insurance

About half of the current 47 insurance companies in the UAE are foreign owned. In 1989, the UAE government banned additional foreign insurance companies from opening due to a perception that the market was saturated. In 2004, the Ministry of Economy and Planning announced that it would open its insurance sector to new foreign insurance companies and in June 2005, the UAE submitted a proposal to the World Trade Organization allowing new foreign insurance companies to open a branch – not a subsidiary – in the UAE. Any new foreign insurance companies will be required to meet high international rating criteria and to offer new products to the market. As of March 2007, no new foreign insurance companies had entered the market.

In 2006, the UAE President issued Federal Law No. 16 of 2006 amending some provisions of Federal Law No. 9 of 1984 on insurance companies and agents. The new amendments stipulate that established insurance companies in the UAE, or those which shall be incorporated, must take the form of a public joint stock company. At least 75 percent of the capital in such companies must be owned by UAE nationals and the other 25 percent may be owned by a foreigner.

Banking

The UAE has 21 national and 25 foreign banks. Following a banking crisis caused by accumulated bad debts after the oil boom in the mid 1980s, the Central Bank stopped granting licenses to new foreign banks. In September 2003, however, the UAE Central Bank announced that it would allow the operation of more banks from other countries on a reciprocal basis. The Central Bank is also considering allowing foreign banks operating in the UAE to set up new branches provided that they employ UAE nationals. Figures by the Central Bank show national banks enjoy a stronger financial position than foreign banks, with national banks' assets at nearly $164.16 billion compared with foreign banks' assets of around $39.8 billion in March 2006. Banks operating in the Dubai International Free Zone, which opened in 2004, operate under a different civil and commercial law regime, and are not subject to the above restriction on new banks, but are subject to UAE criminal law. The UAE opened the Dubai International Financial Exchange in 2005.

Agent and Distributor Rules

The UAE's Commercial Agencies Law changed substantially in 2006. As originally written, it required that all commercial agents be either UAE nationals or companies wholly-owned by UAE nationals. The foreign principal was allowed to appoint one agent for the entire UAE or for a particular emirate or group of emirates. Once chosen, agents/distributors had exclusive rights and the law provided that an agent could be terminated only by mutual agreement of the foreign principal and the local agent. In 2006, the UAE made important changes to the Agencies Law. The amendments include: (1) limiting an agency contract to a fixed time period; (2) requiring mutual consent to renew an agency agreement; (3) allowing either party to file for damages; (4) eliminating the Ministry of Economy's Trade Agencies Committee, which handles agency disputes; and (5) allowing the import of "liberalized goods" without the agent's approval. One of the most important changes of the amended law for foreign investors is that now either party can terminate an agency agreement at the end of the contract. Since 1996, the UAE has not recognized new agency agreements in the food sector. In an effort to curb price manipulation and allow unrestricted imports of basic food products, the UAE eliminated trading agency requirements for basic food products in August 2006. The food products covered by the decision include milk, frozen vegetables, baby formula, chicken, cooking oil, noodles, rice, flour, fish products, tea, coffee, cheese, pastries and diapers. For some food products deemed non-essential, agency agreements in existence prior to this period are still recognized. The restrictive laws currently governing agency relationships are under discussion in the proposed United States-UAE Free Trade Agreement.

Telecommunications

As of January 1, 2005, the UAE revoked the monopoly rights of the Emirates Telecommunications Corporation (Etisalat) and allowed for the creation of a second telecommunications company. On May 6, 2005, the Telecommunications Regulatory Authority (TRA) announced that it had approved the establishment of a second, largely government-owned, telecommunications company, Emirates Integrated Technology Company, which will operate under the trade name Du. The UAE government currently owns 40 percent of Du. The rest of the company is held equally by Mubadala Development Company (20 percent), TECOM Investment (20 percent) and by the UAE public (20 percent). Neither foreign nor local telecommunications companies are allowed to own shares in Du; nor are companies whose foreign ownership exceeds 50 percent. As of February 2007, Du has yet to begin offering services in the open market. Local press reports have quoted the TRA Director General as stating that the duopoly will continue until 2015 when the market will be further liberalized.

INVESTMENT BARRIERS

Except for companies located in one of the free zones, at least 51 percent of a business established in the UAE must be owned by a UAE national. A business engaged in importing and distributing a product must be either a 100 percent UAE-owned agency/distributorship or a 51 percent UAE-owned/49 percent foreign-owned limited liability company. Subsidies for manufacturing firms are only available to those companies with at least 51 percent of the capital owned by a UAE national.

The laws and regulations governing foreign investment in the UAE are evolving slowly. There is currently no national treatment for investors in the UAE. Non-GCC nationals cannot own land, but the Emirates of Dubai and Ras al Khaimah are currently offering so-called freehold real estate ownership to non-GCC nationals within certain areas. However, the legal status of this scheme is still uncertain. In

August 2005, UAE President Sheikh Khalifa bin Zayed Al-Nahyan, acting in his role as the ruler of the Emirate of Abu Dhabi, signed Abu Dhabi law number 19 of 2005 concerning real property, which was published in the Abu Dhabi Gazette in September 2005. The law provides that UAE nationals may own land and interests in land throughout the Emirate of Abu Dhabi. GCC citizens will be able to own land within designated investment areas. Non-GCC nationals will have the right to own buildings, but not the land, in investment areas. Investors must enter into a leasehold arrangement to rent buildings. Foreign investors may purchase 22 of the 53 issues on the UAE stock market.

Under UAE law, foreign investors are allowed to own up to 49 percent of a company. However, company by-laws in many cases prohibit foreign ownership. Specific sectors where there is a need for foreign expertise or where local investments are insufficient will be liberalized to allow 100 percent foreign ownership. Some of the sectors which may be liberalized are education, health, professional services and computer-related services.

Dispute resolution continues to be a problem due to foreign investors' concerns that pursuing international arbitration may jeopardize the investor's business activities in the UAE and a reluctance to take disputes to the domestic court system.

ELECTRONIC COMMERCE

In 2002, the Emirate of Dubai passed The Law of Electronic Transactions and Commerce, which protects certain electronic records and signatures, and some electronic communications. This law also provides penalties for any person who knowingly creates, publishes, or otherwise makes available a false e-signature or certificate, or provides false statements online for fraudulent or any other unlawful purpose. The Emirate of Dubai has established the Dubai Technology, Electronic Commerce and Media Free Zone (TECOM), which houses both Internet City and Media City, two subdivisions which cater, respectively, to the information technology and media sectors.

UKRAINE

TRADE SUMMARY

The U.S. goods trade deficit with Ukraine was $883 million in 2006, an increase of $318 million from $565 million in 2005. U.S. goods exports in 2006 were $756 million, up 41.9 percent from the previous year. Corresponding U.S. imports from Ukraine were $1.6 billion, up 49.3 percent. Ukraine is currently the 72nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ukraine in 2005 was $356 million (latest data available), up from $256 million in 2004.

WTO Accession

Ukraine is in the process of negotiating terms of accession to the World Trade Organization (WTO). On March 6, 2006, the United States and Ukraine signed a WTO bilateral market access agreement. Later that month, the United States terminated the application of the Jackson-Vanik amendment to the Trade Act of 1974 to Ukraine, providing Ukraine permanent normal trade relations (PNTR) status. The Ukrainian government has completed its bilateral market access negotiations with most other interested WTO Members, and is now focused on completing its implementation of WTO provisions and resolving remaining outstanding issues involving WTO rules. Ukraine must also complete negotiations on the levels of funding for certain programs supporting its agriculture sector. Ukraine made significant progress during 2006 in passing legislation needed for compliance with WTO requirements, enacting some 20 WTO-related laws in the fall of 2006 and adding to its steady progress in this area in the previous two years. Members of Ukraine's WTO accession Working Party, including the United States, are planning onward steps in the multilateral Working Party process for Ukraine's WTO accession.

IMPORT POLICIES

Ukraine continues to maintain fees and licensing requirements on certain imports. Ukraine imposes several duties and taxes on imported goods: customs/import tariffs, value-added-tax (VAT) and excise duties. Additionally, imports into Ukraine are subject to customs processing fees, a unified fee on vehicles crossing Ukraine's borders and port fees.

Customs/Import Tariffs

Ukraine's tariff schedule provides for two rates of import duty: full rates and Most Favored Nation (MFN) rates. The full rate of import duty can be from two to ten times higher than the MFN rate; it is applied to goods from 81 countries. Imports from the United States are subject to the MFN rate. Upon accession, Ukraine would apply the MFN rate to all goods originating from WTO Members, in accordance with Article I of the GATT 1994.

Import duties are calculated in accordance with the law "On the Customs Tariff of Ukraine" introduced in 2001, although their levels currently undergo frequent changes as a result of Ukraine's ongoing negotiations on WTO accession. The current customs tariff schedule comprises approximately 11,000 tariff lines. Most customs tariffs are levied at *ad valorem* rates, but 1,655 tariff line items (about 15 percent) are subject to specific and combined rates of duty. These specific and combined rates apply to approximately one-third of tariff-lines for agricultural goods, primarily those that are produced in

Ukraine. These protected goods include grains, poultry products, sugar, and vegetables such as carrots and potatoes. In 2005, the Ukrainian Parliament, the Rada, passed amendments to the Customs Code of Ukraine, which decreased tariff rates in an effort to meet WTO accession requirements. The average applied tariff rate for all goods is now 6.5 percent. For agricultural goods, the average applied rate is 13.8 percent (down from 19.7 percent) and for industrial goods the average applied rate is 4.4 percent (down from 8.3 percent). Import tariffs were particularly high with respect to petroleum products; they were reduced, however, to zero during a summer 2005 shortage of gasoline and diesel fuel and have not increased again despite a number of proposals in the Rada.

High import tariffs on goods such as poultry act as a barrier to U.S. exports. As a result of the March 2006 WTO bilateral market access agreement with the United States, tariffs on poultry and many other goods will be reduced significantly when Ukraine joins the WTO.

In terms of customs-related issues affecting trade, imports of U.S. salmon roe (red caviar HS Code 0303 or 0305) were delayed when, early in 2005, the Ukrainian State Customs Service reclassified the products as fish roe substitute (HS Code 1604), which would require payment of a higher customs tariff. The State Customs Service requires court decisions to clear the products under the correct category, causing delays and leading to diminished U.S. exports of this highly perishable product.

Excise Duties

Ukraine applies excise duties to a limited set of goods imported into Ukraine, such as alcoholic beverages, non-filter cigarettes, motor vehicles and petroleum products. Most of the excise duties that established lower rates for domestically-produced goods than for imported goods were eliminated in 2005, but discriminatory excise duties still hinder U.S. exports of wine and grape spirits and automobiles to Ukraine. The excise duty rate on imported wine and grape spirits is 12 and 13 times higher, respectively, than on domestically-produced products, and is likely to remain at that level until Ukraine accedes to the WTO and excise rates on imported and domestic goods are unified. VAT and excise tax exemptions for locally-produced vehicles were eliminated on March 29, 2005. Excise taxes on automobiles remain high, ranging from 0.2 euros/cc for automobiles with smaller engines to 3 euros/cc for those with larger engines. Since the excise tax rate is based on the cubic capacity of the engine, it is biased against automobiles with larger engines. The import tariff on fully assembled automobiles was raised from 15 percent to 25 percent during 2005 to compensate local producers for the loss of VAT and excise privileges. This increase has negatively impacted importers of fully assembled automobiles, who are also disadvantaged since the tariff on semi-knocked down vehicles is lower.

Import Licenses

Import licenses are required for some goods, including pesticides, alcohol products, optical media production inputs, some industrial chemical products and equipment containing them, official foreign postage stamps, excise marks, officially stamped/headed paper, checks and securities, some goods that contain sensitive encryption technologies, and ozone-depleting substances. An importer is required to receive prior approval from the relevant administrative agency before receiving the necessary import license from the Ministry of Economy. Pursuant to the March 2006 U.S. bilateral market access agreement, Ukraine will not impose import licenses on imports of mass-market, commercially-traded goods containing encryption that are covered by the Information Technology Agreement. Additionally, in 2006, the Rada added fresh, chilled, or frozen beef and pork and related live animals to the list of goods subject to a form of automatic import licensing, where the requirement for prior approval from an administrative agency is waived. Poultry imports are already subject to such licensing.

For some goods, product certification is a prerequisite for an import license. Importers can certify the compliance of a foreign facility to Ukraine's technical regulations applied to imports. The U.S. distilled spirits industry reports that this option usually involves a burdensome visit and costly inspection by Ukrainian government officials. If approved, the supplier receives a certificate of conformity valid for two to three years, which avoids the burden of certification of each shipment, subjecting goods to mandatory laboratory tests upon arrival in Ukraine.

STANDARDS, TESTING, LABELING AND CERTIFICATION

For a number of years, U.S. investors regarded Ukraine's product certification system as a significant obstacle to trade and investment. U.S. businesses have complained that standards and certification requirements adversely affect their consumer goods exports. In January 2006, however, Ukraine's Parliament passed two new laws aimed at bringing Ukrainian practices in this area into line with the WTO Agreement on Technical Barriers to Trade. As of April 2006, more than 3,100 Ukrainian standards were harmonized with international standards, and approximately 8,000 remained to be harmonized.

Standardization and Certification

Mandatory certification is required in Ukraine for many products. The State Committee for Technical Regulation and Consumer Policy (DerzhSpozhyvStandard) is the standardization and certification body in Ukraine. DerzhSpozhyvStandard has a network of 115 accredited product certifying bodies including 53 accredited certifying bodies for quality management systems, as well as about 780 testing laboratories throughout Ukraine. Appropriate resources, such as modern analytical equipment and reactants, are not available in most laboratories. DerzhSpozhynStandard's system includes 27 territorial departments for consumer protection and 28 state centers for standardization, systematizing weights and measures, and certification. Depending on the type of product, testing and applicable certification scheme, the certification process can take from three days to one month.

Numerous certification bodies in Ukraine effectively operate as independent, often monopolistic, entities on a profit-making basis, returning just 20 percent of their fees to the state. Consequently, certification agencies do much of their regulatory work with little or no coordination with other Ukrainian bodies performing similar tests. Many products require multiple certificates from different agencies, with local, regional and municipal authorities often requesting additional documentation beyond that required by central bodies. According to industry sources, access to the Ukrainian market is impeded by numerous burdensome certification and licensing procedures for equipment. These issues are being addressed during Ukraine's WTO accession negotiations, and in recent years, Ukraine has reduced the number of products subject to mandatory certification. When Ukraine completes its implementation of the WTO Agreement on Technical Barriers to Trade when it accedes to the WTO, it will be obliged to apply such mandatory requirements only in conformity with WTO provisions on technical regulations (i.e., only in defense of human, animal and plant health and safety), and only based on sound science.

Sanitary and Phytosanitary (SPS) Measures

Ukraine has, in the past, applied a range of SPS measures that restrict imports of a number of U.S. agricultural products, among them, pork, beef and poultry. Ukraine's certification and approval process is lengthy, duplicative and expensive. In 2005, amendments to several laws, including the law "On Veterinary Medicine," and law "Quality and Safety of Food Products and Food Raw Materials," were made to bring Ukrainian legislation into compliance with requirements of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. Further, legislation to bring Ukrainian law into compliance with international norms regarding veterinary medicine, standards, conformity assessment procedures and other sanitary and phytosanitary measures remain at various stages of drafting and consideration by Ukraine's Parliament. The following issues are subjects of discussion between the United States and Ukraine as part of Ukraine's accession to the WTO:

Beef, Beef Products and Pork: The March 2006 WTO bilateral market access agreement with the United States addresses the terms of U.S. exports of beef, beef products and pork to Ukraine. The two sides signed detailed veterinary certificates related to such goods. As agreed, Ukraine will allow the entry of certified U.S. beef and pork that meets veterinary certificate requirements. The United States is currently monitoring whether trade will be allowed to clear customs, as this is required for Ukraine to adhere to the bilateral commitments mentioned above.

In the past, Ukraine blocked the importation of beef and beef products due to concerns over the use of growth promoting hormones as well as bovine spongiform encephalopathy (BSE). The United States is working with Ukraine to ensure that any measures undertaken by Ukraine are consistent with World Organization for Animal Health (OIE) guidelines. Ukraine's Law of Veterinary Medicine is expected to address this issue.

U.S pork exports to Ukraine have been hampered by regulations concerning trichinae. The United States is working with Ukraine so that it takes the necessary steps to align Ukrainian standards for trichinae with international norms.

Biotechnology: Ukraine's biotechnology approval process has been inoperative for some time. This has resulted in unpredictable sales conditions for corn products, soybeans and meal. The United States is working with Ukraine to establish procedures regarding biotechnology that are based on modern, science-based risk assessment principles and guidelines, including those of the WTO SPS and Technical Barriers to Trade (TBT) Agreements, the Codex Alimentarius, and the International Plant Protection Convention (IPPC).

Fish Shelflife: As part of the bilateral WTO market access agreement with the United States, the Ukrainian government agreed in March 2006 to approve changes to Ukraine's technical regulation on shelflife for fish such as salmon, sardines and roe to bring it into conformity with the CODEX Alimentarius guidelines on the labeling of prepackaged food products and to repeal the previous technical regulation. The government of Ukraine agreed to accept use-by/sell-by dates that are determined solely by the manufacturer.

GOVERNMENT PROCUREMENT

Ukraine is not currently a signatory to the WTO Agreement on Government Procurement (GPA) but will negotiate for membership after it joins the WTO. Ukraine's total government procurement stood at $4.1 billion in 2005 and $3.1 billion for the first half of 2006. Foreign companies generally win only a tiny fraction of the total tenders (0.01 percent during the first half of 2006).

In March 2006, Ukraine promulgated amendments to the law "On Procurement of Goods, Works and Services Using State Funds" of February 22, 2000. The amendments transferred the authority to coordinate government procurement from the Ministry of Economy to the Antimonopoly Committee of Ukraine. The amendments also distributed the authority to oversee government procurement among a range of the governmental agencies, including the Antimonopoly Committee, the Accounting Chamber of

Ukraine, and the Tender Chamber of Ukraine. The amendments have been criticized for creating an overlap in authority of various regulatory agencies and decreasing the transparency of the system.

The 2006 amendments also granted the Tender Chamber of Ukraine, a non-governmental organization (NGO), exclusive authority to consider claims of tender participants and issue conclusions. At the same time, this association of public organizations is granted administrative powers characteristic of a state administration agency. The amendments also introduce burdensome and lengthy procurement procedures, and require all tender proposals to be secured by collateral, which limits the number of tender participants and increases the cost of participation.

All government procurement of goods and services valued at more than 2,000 euros and works valued at more than 100,000 euros must be procured through competitive tenders. Open international tenders must be used when procurement is financed by any entity outside of Ukraine. The Tender Chamber of Ukraine publishes information on government procurement in the "State Procurement Bulletin."

Among the problems faced by foreign firms, particularly in smaller procurements, are: (1) the lack of public notice of tender rules and requirements; (2) covert preferences in tender awards; (3) subjecting awards to conditions that were not part of the original tender requirements; and (4) the lack of effective grievance and dispute resolution mechanisms. Although the law prohibits discrimination based on national affiliation, U.S. pharmaceutical companies cite instances where local firms have won government tenders even where the U.S. firms provided the most competitive offer. The law favors local tender participants for purchases of goods not exceeding 200,000 euros, of services not exceeding 300,000 euros, and of works not exceeding 4 million euros. The preference is applied as long as the price differential does not exceed 10 percent. When Ukraine negotiates for membership in WTO Agreement on Government Procurement, many of these issues can be addressed.

EXPORT BARRIERS

Exports for some categories of products are subject to registration by the Ministry of Economy. Products that must be registered prior to export from Ukraine include: precious metals and stones, rolled metal products exported to the United States, textile products exported to the United States, scrap metal, printer's ink and paper with watermarks. The government has eliminated most export duties, with the prominent exceptions of natural gas, livestock, raw hides, some oil seeds and scrap metal.

Export Restrictions on Grains

Ukraine is the sixth-largest wheat exporter in the world. The United States remains very concerned about the export quotas and licenses that Ukraine imposed on food and feed grain exports beginning at the end of September, 2006. To date, Ukraine has not adequately justified the measures taken, i.e., it has not made the case that it faces a "critical shortage," as required under the General Agreement on Tariffs and Trade of 1994. Several studies point to the contrary. The World Bank's November 2006 report titled "The Quotas on Grain Exports in Ukraine: ineffective, inefficient, and non-transparent" states that the introduction of the quota was not justified, as domestic grain supply was amply adequate to cover all domestic needs. Data from the Food and Agriculture Organization of the United Nations and industry confirm this finding. Further questions are raised by the scope of the measures: the quotas and licenses are being applied to corn and barley, which are not being used for the production of bread in Ukraine, and to corn, barley and wheat used as feedstock.

Meanwhile, the small volumes of licenses that have been issued by the Ukrainian government in late December fall very short of historical trade, especially for wheat. The mismanagement of the issuance of licenses has compounded the problem, leaving a large volume of grain in storage in Ukraine's ports, where in some cases it is deteriorating past the point where it can be used for human consumption, or even animal feedstock.

It is estimated that the costs to grain traders of demurrage and losses from rotting or otherwise compromised grain that has not been able to leave Ukraine's ports will exceed $200 million. The Ukrainian economy is sustaining some of these losses, including lost export opportunities. Ukraine's reputation as a reliable grain exporter, a country that upholds contracts and a good place to invest, is tarnished by these measures. Further, the measures have begun to have a negative impact on Ukraine's farmers themselves, as they have difficulty financing, planning and selling their current and future products.

Live cattle, sheep, hides, and skins

Export duties have been in place on live cattle, sheep, hides and skins since 1996. For live calves the duty is 75 percent of the customs value (but no less than 1500 euros/ton of live weight); for live cows it is 55 percent (but no less than 540 euros/ton of live weight); and for live sheep it is 50 percent (but no less than 390 euros/ton of live weight). For raw hides of cattle the duty is 30 percent (but no less than 400 euros/ton of live weight); for sheep hides it is 30 percent (but no less than 1 euro/hide); and for pigskins the duty is 27 percent (but no less than 170 euros/ton of live weight). The Ukrainian government has committed to lowering these export duties gradually upon WTO accession.

Scrap Metal

Since January 2003, Ukraine has imposed an export duty of 30 euros/metric ton on ferrous steel scrap and has had, in effect, a ban on exports of non-ferrous metals. The ferrous scrap export duty contributed to a decline in scrap exports from Ukraine, when global demand and prices for steel scrap were rising. Ukrainian metallurgical producers benefited from scrap inputs at prices lower than world levels. As part of its March 2006 bilateral WTO market access agreement with the United States, Ukraine agreed to significantly lower these export duties. Laws passed in the fall of 2006 provide for staged duty reductions to 10 euros/metric ton over a period for six years for ferrous metals and reductions to 15 percent *ad valorem* over a period of five years for non-ferrous metals.

Sunflower Seeds

Sunflower seeds have been subject to an export duty since June 2001, to the benefit of local sunflower oil producers. In July 2005, the export duty on sunflower seeds was lowered to 16 percent of its customs value with further 1 percent annual reductions, to start in 2007, reaching a final duty of 10 percent six years after WTO accession.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The United States withdrew Ukraine's benefits under the Generalized System of Preferences (GSP) program in 2001 and imposed trade sanctions and elevated Ukraine to the Special 301 Priority Watch List in 2002 as a result of Ukraine's record of not protecting intellectual property, such as widespread piracy of copyrighted goods such as compact discs (CDs) and digital video discs (DVDs). The United States lifted sanctions on August 30, 2005, after the Ukrainian government made significant improvements to IPR protection over a number of years, culminating in the passing of amendments to the "Laser-Readable Disk Law" in July 2005. In recognition of Ukraine's efforts to improve the enforcement and protection of intellectual property rights, on January 23, 2006, the United States also reinstated GSP benefits for

Ukraine and lowered Ukraine's designation under Special 301 from Priority Foreign Country to Priority Watch List.

Optical Media

The establishment of a regulatory regime for the production, distribution and export/import of optical media several years ago was a major advance. Many of the deficiencies in Ukraine's early laws, which failed to stem the commercial-scale pirate production of CDs, CD-ROMs and DVDs, were addressed by the amendments to the "Laser-Readable Disk Law," which was enacted in July 2005. These new amendments, drafted in close consultation with U.S. industry and the U.S. Government, enhanced law enforcement's role and lowered the threshold for imposing penalties and sanctions. These amendments related to issues such as: (1) establishing a system for monitoring raw materials (optical grade polycarbonate) for optical media production; (2) creating a clear obligation to engrave all manufacturing equipment and molds with SID Codes; (3) expanding non-compliance penalties to include plant closures and deterrent criminal penalties; and (4) stronger enforcement authority to seize infringing machinery and products. Industry recently has identified a problem area with optical disk regulation: alleged counterfeiting of the holograms that legitimate producers are to use, the sale of such holograms on the black market in Ukraine, and their application to pirated CDs and DVDs to circumvent enforcement efforts. The United States has encouraged Ukraine to continue to conduct surprise inspections of optical disc manufacturing facilities, to aggressively prosecute any offenders and shut down pirating plants, and to continue its enforcement efforts at the retail level.

In the first eight months of 2006, the State Department for Intellectual Property (SDIP), the agency responsible for the formulation and implementation of Ukraine's intellectual property laws, and the Ministry of Interior conducted 544 inspections of plants and retail establishments resulting in 101 criminal cases and the seizure of 231,000 units of pirated products valued at more than $1.28 million. All of these numbers exceed the totals for 2005. Furthermore, the Ministry of Internal Affairs, Ministry of Culture, the General Prosecutors' office and the State Security, Tax and Customs Administration have developed a joint program to coordinate their enforcement efforts. In September 2006, Ukraine was notified that it would receive $150,000 in U.S. Government funding to continue efforts to improve prosecution of optical media piracy cases through a grant administered by U.S. Embassy Kyiv, the Ukrainian Ministry of Internal Affairs and SDIP.

Despite the reduction, or near elimination, of illegal production of optical discs, retail sale of copyrighted goods in large markets – especially the notorious Petrivka market – continues to be rampant. Counterfeit hologram stickers complicate enforcement efforts at the retail effort; industry generally regards the hologram sticker system as flawed if not broken. The transit of pirated goods also remains a large problem.

Internet Piracy

In January 2006, the government of Ukraine agreed to work with the U.S. Government and with the U.S. copyright industry to monitor the progress of future enforcement efforts through the Enforcement Cooperation Group (ECG). This bilateral group conducted a successful dialogue in June 2006 that brought additional IPR concerns to Ukraine's attention, particularly the non-transparent operation of copyright royalty collecting societies in Ukraine. In these cases, collecting societies claim to represent performers and rights holders and try to legitimize websites that are allegedly selling pirated music and films. Meanwhile, certain collecting societies have no such arrangements with rights holders or do not remit royalties and fees to them. The United States looks forward to Ukraine amending its Law "On Copyright" to better address the role of collecting societies. The United States continues to monitor the spread of Internet piracy in Ukraine and to work with the Ukrainian government to ensure that its gains on IPR are not reversed. The two governments have agreed to begin joint monitoring of suspected pirate websites.

Business Software

In addition, industry is concerned with growing ‘at-source’ pre-loaded business software piracy. U.S. industry reports $290 million in losses in Ukraine in 2006 due to business software piracy, and singles out the Ukrainian government as a source of piracy. In June 2006, Microsoft canceled a software legalization agreement with the government of Ukraine due to lack of compliance.

Compliance with Trade-Related Aspects of Intellectual Property Rights (TRIPS)

Ukraine's efforts to accede to the WTO have required it to make some important revisions to its IPR laws. The Rada passed amendments to its Customs Code in November 2006 that provide customs officials the ability to use *ex officio* authority to seize suspected pirated or counterfeit goods. As a result of commitments agreed to as part of its March 2006 WTO bilateral market access agreement with the United States, Ukraine amended its Law “On Medicinal Drugs” to provide a five-year period for the protection of pharmaceutical test data that is submitted to government authorities to obtain marketing approval. This “data exclusivity” protection enters into force in February 2007. The Rada also passed an amendment to the Law “On Pesticides and Agrochemicals” that provides a ten-year period of protection for agricultural chemicals and an amendment to the Law “On Protection of Rights for Indications of Origin of Goods,” which sought to improve Ukraine’s geographical indications legislation. Further amendments to its legislation related to geographic indications are necessary to bring Ukraine’s legislation into full compliance with TRIPS provisions.

Patent and Trademark

The government of Ukraine acknowledges that patent and trademark violations are a problem. Holders of patents or trademarks must often engage with the Ministry of Internal Affairs or the State Customs Service to obtain protection of their rights. Trademarked and copyrighted goods must be registered for a fee ($400 for the first good for the first year; $200 for every next new good; $100 for extension of the registration for the next year) in the Customs Authorities’ rights holder database in order to be guaranteed protection. Industry has reported instances of production of counterfeit cigarettes within Ukraine as well as the growth in the amount of counterfeit pesticides and apparel.

The Ukrainian Ministry of Health does not routinely check the validity of patents when it permits pharmaceutical sales in Ukraine. In one case, the Ministry of Health allowed a European company to register the same drug for which a U.S. company held a valid patent. Legal experts and government officials have called for the formation of a special patent court in Ukraine to adjudicate patent cases, but no action has yet been taken to establish the court.

Judicial System

As a result of the low number of judges trained in IPR law and a lack of confidence in the Ukrainian judicial system, civil IPR lawsuits are almost non-existent. The Ukrainian government, however, has brought to court a number of criminal cases related to trademark and copyright violations and the retail sale of pirated goods. The Ministry of Internal Affairs reported that in the first eight months of 2006, 639 crimes in violation of intellectual property rights were detected; of those, 293 were brought to court, and 40 resulted in sentencing of some form, including fines or imprisonment.

SERVICES BARRIERS

Ukraine has few explicit restrictions on services, but they do exist in areas such as insurance, banking activities, auditing, legal services, television and radio broadcasting, and information agencies. As a result of the March 2006 bilateral WTO agreement with the United States, U.S. service providers will benefit from more open access in the areas of energy services, branching in banking and insurance, professional services, express delivery, and telecommunications, among others.

In 2005, the Ukrainian Parliament adopted legislation that will, within five years after WTO accession, permit foreign insurance companies to open branches in Ukraine. In the fall of 2006, it adopted amendments to the law on "Banks and Banking" that would permit foreign banks to open subsidiaries, and adopted a law "On Advocacy" that eliminates the nationality requirements for legal services.

Foreign professionals are permitted to work in Ukraine, but the lack of transparency and the multiplicity of licensing authorities hinder foreign access to the Ukrainian services market. A local content requirement exists for radio and television broadcasting, although it has not been stringently enforced in most cases. Additionally, in January 2006 Ukraine's Parliament adopted a new law on television and radio broadcasting that eliminated restrictions on the share of foreign capital in the charter funds of television and radio broadcasting companies.

U.S. industry identified efforts in Ukraine in 2006 to limit the ability of foreign credit and debit card service providers to provide their services to clients of national electronic payments systems. Ukraine has taken on services commitments in the context of WTO negotiations to maintain an open and competitive banking system, including credit and debit cards, with full market access to electronic payments services. At present, there are no formal restrictions. The United States continues to monitor Ukraine's compliance in this important area.

INVESTMENT BARRIERS

An underdeveloped banking system, poor communications networks, a difficult and frequently changing tax and regulatory climate, crime and corruption, and a weak legal system create obstacles to U.S. investment in Ukraine. The government is working to streamline regulations and eliminate duplicative and confusing laws regarding investment and business. In 2005, Ukraine created several agencies in order to attract investment to Ukraine, including the State Center for Foreign Investment Promotion within the Ministry of Economy, the State Agency for Investment and Innovation, and the State Agency for Investment and Innovation under the President.

The United States has a Bilateral Investment Treaty (BIT) with Ukraine, which took effect in 1996. The BIT guarantees U.S. investors the better of national and MFN treatment, the right to make financial transfers freely and without delay, international legal standards for expropriation and compensation, and access to international arbitration. Despite the BIT, there are a number of longstanding investment disputes faced by several U.S. companies. These disputes mainly date from the early 1990s and the initial opening of the Ukrainian economy to foreign investors. In most cases, however, there has been little progress toward resolution of these cases under subsequent Ukrainian governments.

Taxation

In 2003, Ukraine passed legislation on tax reform, establishing a flat tax on personal income of 13 percent, which will be raised to 15 percent as of January 1, 2007, in accordance with new legislation. In

2003, the Ukrainian government lowered the enterprise profit tax from 27 percent to 25 percent. Arrears in the payment of VAT refunds to exporters has also been a serious problem. Although some improvement in arrears was observed in late 2005 and early 2006, in August 2006, the government of Ukraine decreased the pace of VAT refunds, reimbursing only 76 percent of verified claims, down from 87 percent refunded in 2005. Currently, the process for obtaining a refund of VAT payments can take from 3 to 18 months for foreign companies. In March 2005, the government of Ukraine extended to foreign companies the right to use promissory notes for the payment of VAT on inputs to goods destined for export.

Employees currently pay 3.5 percent of their salaries to state social insurance funds and a 13 percent personal income tax. Additionally, employers pay 38 percent to various state social insurance funds, primarily for pensions. The 2007 draft budget lowers the pension fund tax on salaries by 0.5 percent, but increases payroll tax to the State Pension Fund by 1.4 percent. The 2007 draft budget is heavily criticized for its failure to address payroll deductions to social funds, which is the most burdensome tax. The high payroll taxes are the main reason why shadow wage payments remain common in Ukraine.

Special Economic Zones (SEZs)

Ukraine has in the past maintained two forms of special economic zone (SEZs): Free Economic Zones (FEZs) and Priority Development Territories (PDTs). In April 2005, Ukraine canceled all tax exemptions (i.e., from land tax, corporate income tax, import duty and VAT on imports) to investors in all SEZs to stop large-scale misuse of these zones for tax evasion and smuggling. While the step reduced corruption and expanded the tax base, the abrupt cancellation of privileges and lack of compensatory provisions caused substantial losses to some legitimate investors. Plans to renew tax privileges granted to businesses operating in some SEZs and a compensation mechanism for investors are under consideration by the Ukrainian government. The Ukrainian government also claims that the newly-constituted SEZs will operate in compliance with WTO provisions. On November 15, 2005, the Parliament adopted legislation to create technology parks, providing for some government financial support, targeted subsidies and tax privileges for a list of 16 technoparks based on existing scientific and research institutes.

Privatization

The State Property Fund oversees the privatization process in Ukraine. Privatization rules generally apply to both foreign and domestic investors, and, in theory, a relatively level playing field exists. In contrast to the privatization rush in 2004, few major, new privatizations were conducted in 2005 or 2006. As of October 2006, only 15 percent ($64 million) of this year’s target for privatization has been transferred to the budget. Following a difficult reversal of the non-transparent privatization of Ukraine's major steel plant Krivorizhstal, which was subsequently sold in a transparent, well-run tender to Mittal Steel in 2005, the Ukrainian government stated that it had no further plans to reverse previous privatizations.

Ukraine’s Parliament amended the Land Code of Ukraine in October 2006, extending a moratorium on the sale of farmland until January 1, 2008. This provision blocks private investors from purchasing some of the 33 million hectares of arable land in Ukraine and will likely constitute a serious obstacle to the development of the agricultural sector.

Corporate Hijacking

Currently, several companies in Ukraine are experiencing an escalation in corporate hijacking activity. These hijackers take advantage of deficient legislation, corrupt courts and a weak regulatory system to gain control of companies at the expense of rightful shareholders. This development harms investors, including U.S. companies and shareholders, and has damaged the image of Ukraine among foreign investors. The Ukrainian government has recognized the seriousness of this problem but has yet to effectively address it.

ELECTRONIC COMMERCE

Electronic commerce is underdeveloped in Ukraine, particularly in the areas outside of Kyiv, where active Internet users number only 7.5 percent of the total population. There is a higher level of usage in Kyiv, where 60 percent of city residents are reportedly active Internet users and where Internet commerce, while small in total volume, is experiencing strong annual growth. Many of the elements needed for thriving electronic commerce, such as high consumer demand for goods and services, capable software engineers to design websites and availability of credit cards are present in Ukraine. However, the low levels of usage, limited services by retailers and a general distrust among the population prevent electronic commerce from gaining popularity. The more than 100 Internet retailers that exist in Ukraine are almost entirely based in Kyiv. Most Ukrainian Internet retailer sites consist of price lists or advertising with an option to place an order that later could be delivered after a cash payment, card payment or bank transfer is received. In some instances, Internet shops accept online payments from clients of their partner banks only. The main products sold via the Internet are home appliances and electronics, especially mobile phones, while the main services include Internet banking and online bill payment for utilities.

In 2003, the Ukrainian parliament adopted three laws regulating the Internet and establishing a framework for the telecommunications market. The National Council on Communications is entrusted with monitoring the telecommunications market. The Internet in Ukraine remains mostly unregulated. In April 2005, the Ministry of Transport and Communication introduced a controversial regulation forcing registration of Internet websites in Ukraine. The law was cancelled in October 2005, however, after a public outcry labeled the measure a violation of freedom of speech and expression.

OTHER BARRIERS

Problematic Legal Framework

A sound legal system and properly running judiciary system are critical for sustainable economic growth, reducing the cost and risk of doing business, and attracting FDI. Unfortunately, the Commercial and Civil Codes, a foundation for the entire legal system in Ukraine, are full of discrepancies and conflicting provisions. Both codes became effective in January 2004, but their approaches to the regulation of business activities (i.e., issues related to regulation of bank accounts, securities, contracts, etc.) are contradictory. The Commercial Code has a number of provisions considered to be incompatible with market economics, and most experts believe it should be eliminated entirely.

Inspections

The frequency of inspections by regulatory agencies is one of the major hindrances to business development in Ukraine. The annual number of inspections conducted throughout the country exceeds 1.5 million. According to a recent study, 57 percent of the private businesses in Ukraine consider inspections to be unclear, complicated and non-transparent. Ukraine's system of inspections does not fulfill its main purpose of preventing legal abuses, but is primarily punitive in nature.

UZBEKISTAN

TRADE SUMMARY

The U.S. goods trade deficit with Uzbekistan was $97 million in 2006, an increase of $76 million from $22 million in 2005. U.S. goods exports in 2006 were $54 million, down 26.9 percent from the previous year. Corresponding U.S. imports from Uzbekistan were $151 million, up 58.4 percent. Uzbekistan is currently the 148th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Uzbekistan in 2005 was $114 million (latest data available), up from $107 million in 2004.

The U.S.-Uzbekistan Bilateral Trade Agreement, which entered into force in 1994, provides for normal trade relations (NTR) between the United States and Uzbekistan and governs other aspects of the bilateral trade relationship. The U.S. Government, however, has not acted to bring this agreement into force, and is unlikely to do so until the investment climate in Uzbekistan significantly improves. In 2004, the Uzbeks signed the regional Trade Investment Framework Agreement (TIFA) with the U.S. Trade Representative's Office and its four Central Asian neighbors. Uzbekistan is still negotiating terms of accession to the World Trade Organization (WTO).

IMPORT POLICIES

The government of Uzbekistan restricts imports in many ways, including through high import duties, licensing requirements for importers and wholesale traders, restricted access for sellers of imported items to retail space, and limited access to hard currency and the local currency (the soum).

Uzbekistan's trade policy is based on import substitution. The multiple exchange rate system and the highly over-regulated trade regime have led to both import and export declines since 1996, although imports have declined more than exports, as the government squeezed imports to maintain hard currency reserves. Draconian tariffs, sporadic border closures and crossing "fees" decrease imports of both consumer products and capital equipment.

Highly discriminatory excise taxes exist to protect locally-produced goods. Unofficial payments to customs officials are a normal part of trans-border trade. Imports are prohibitively expensive for the majority of Uzbeks, due to duties on products such as cars, electronics, appliances, foodstuffs and textiles. The government claims the duties are a temporary measure to prevent a surge in imports while it gradually eliminates barriers to trade, such as hard currency quotas, as part of the economic reform process.

Excise tax, charged as a percentage of the declared customs value, must be paid on certain products, such as cigarettes, vodka, ice-cream, oil and gas condensate, fuels, cars and carpets. Excise tax rates vary depending on the type of imported good and may deviate significantly. In 2005, the government raised excise taxes between 30 percent and 70 percent on a number of meat products. On December 18, 2006, new excise taxes were introduced for basic consumer items, varying from 5 percent to 200 percent depending on local production of like goods. In 2006, excise taxes accounted for approximately 12.6 percent of the total Uzbek budget revenue. The U.S. Embassy estimates the average increase in excise taxes for 2007 is 15 percent.

According to reports from foreign investors, "unofficial duties" combined with other tariffs and taxes can cost as much as 100 percent to 150 percent of the amount of the actual value of the product, making the product unaffordable for virtually everyone in the country. For example, imported liquor is subject to an excise tax of 70 percent to 85 percent (depending on type) versus 40 percent to 65 percent for domestic liquors. Additionally, at the retail level, imported automobiles have been subjected to duties and taxes totaling approximately 100 percent. Tariffs are officially 30 percent for most textile products, home furnishings and essentially all other fabrics and apparel, and 90 percent for carpets and rugs.

The government also requires retailers to present certificates of origin and customs receipts for imported products upon the request of tax or customs authorities. The Uzbek government often confiscates goods found without such certificates. A decree enacted in August 2004 imposed further bureaucratic restrictions on traders. In addition to demanding that all individual traders be registered with the local authorities and the Ministry for Foreign Economic Relations, Investment and Trade, traders will have to prove that they have a commercial bank account and imported the goods themselves from the originating country. Surveys of foreign companies consistently conclude that restrictions on access to local currency in order to transact business and pay employees is one of the worst of the many serious obstacles to doing business in Uzbekistan.

In 2005 and 2006 the Uzbekistan government continued to restrict imports by limiting access to hard currency for private importers. Uzbekistan introduced currency convertibility in October 2003. Although the government committed itself to the provisions of IMF's Article VIII on currency convertibility, multiple restrictions remain in place. All legal entities, including those with foreign investments, must have the Central Bank's permission to deal in foreign currency.

The government continues to restrict consumer goods imports in order to prevent hard currency flows and curb the threat of devaluation of the soum. In both 2005 and 2006, private businesses reported regular conversion delays of three months from August through December.

Although clearance of import contracts with the state-controlled clearing company is no longer needed for customs registration, the regulation requiring the registration has not been abolished. The State Customs Committee still turns down about 5 percent of contracts submitted for registration, purportedly due to mistakes in documents. The companies entitled to convert local currency under import contracts encounter problems with arbitrary requests for documentation by banks. While the required documents are outlined in the instructions issued by the relevant bank, these instructions are often amended without any prior notice. As a result, documents are often rejected on disputable grounds and conversion can be delayed, which results in devaluation losses for the importer. Businesses must deposit the funds to be converted with the Central Bank for the entire duration of the Committee's review of the request. Bank dealers have reported cases in which the Central Bank did not approve applications for conversion for some of their clients who needed large sums of hard currency.

In addition to official barriers, the customs clearance process is overburdened with unofficial bureaucratic obstacles leading to significant processing delays of two to three months, even for U.S.-Uzbek joint ventures. Problems include the arbitrary seizure of goods, as well as frequent official and unofficial changes in customs procedures without prior notification. Excessive documentation also makes the Uzbek importing process costly and time consuming. The lack of proper equipment and legislative regulations creates an environment in which the customs official on duty can arbitrarily apply his or her own case-by-case search and seizure procedures. In 2004, the government of Uzbekistan made an effort to increase the transparency of regulations used at customs border posts, primarily by posting all relevant regulations and decrees where traders can review them.

Surveys of foreign companies consistently conclude that trade/border/customs restrictions are the worst of many serious obstacles to doing business in Uzbekistan. Despite the fact that there is a law legalizing duty-free imports for foreign investors, it is mandatory to have a legally binding agreement with the government that waives customs fees and other duties when importing goods for investment purposes.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The system of standardization, accreditation, certification and application of sanitary and phytosanitary (SPS) standards presents significant barriers to trade. Uzbekistan accepts U.S. manufacturers' self-certification of conformity with Uzbek foreign product standards and environmental regulations. All foreign products must be labeled in Russian and Uzbek. Domestic entities, including government enterprises, must also meet these mandatory-labeling requirements. The National Agency of Standards (Uzstandard) is in charge of certification and accreditation. The government is still in the process of drafting a new law on technical regulations.

In August 2004, Uzbekistan's Parliament ratified a decision to join the International Union on Plants Variety Protection, which has been in force since November 11, 2004.

GOVERNMENT PROCUREMENT

There is no systematic approach to government procurement in Uzbekistan. Instead, procurement decisions are generally made on a decentralized and *ad hoc* basis. Often, the procurement practices of the central government are similar to those of many countries, incorporating tenders, bid documents, bids and a formal contract award. A law enacted in 2002 created more transparency in the procurement process by mandating that all government procurement over $100,000 be completed on a tender basis. However, many tenders are announced with short deadlines and are awarded to companies in a non-transparent manner. Uzbekistan is in the process of modifying its trade regime to become a member of the WTO, and it is not yet a signatory of the WTO Agreement on Government Procurement. However, government entities are more frequently announcing tenders in local newspapers and magazines.

The most serious barrier to trade with respect to government procurement is in the field of contract obligations. There are numerous cases in which the Uzbek government is not complying with contract obligations in relation to procuring equipment, equipment pricing and payment guarantees. Further, there are several cases in which a U.S. company provided product for a government tender and then was not paid.

EXPORT SUBSIDIES

The government of Uzbekistan provides agricultural subsidies on cotton in the form of heavily subsidized inputs, such as electricity, water and fertilizer, to farmers who can then sell their cotton directly to the government. This creates an end product that can be sold more cheaply in the international market. Moreover, in December 2002, the government issued regulations allowing cotton farmers to sell half of their actual harvest, most often to the government, at more favorable prices than those allowed in the state order system. It is unclear, however, how well the new regulation is being enforced by the end consumer, which in 90 percent of cases is still the Uzbek government.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Significant deficiencies remain in Uzbekistan's intellectual property protection regime. Due to these deficiencies, there is an ongoing review of Uzbekistan's status as a beneficiary country under the U.S. Generalized System of Preferences (GSP) Program. Uzbekistan has been on the Special 301 Watch List since 2000.

The government adopted the "Law on Copyright and Related Rights" in 2006. The law provides comprehensive definitions of terms, addresses collective rights management and compulsory licensing to the producers of phonograms, authors, performers and subjects of related rights. In 2005, Uzbekistan joined the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention), but the government declared an exception to Article 18, which requires that signatory countries extend copyright protection to pre-existing works.

It is a challenge to purchase legal recordings in Uzbekistan. Current border enforcement is weak. As a result, illegal recordings freely cross into Uzbekistan for sale. Additional personnel and training courses are needed for more effective border enforcement. Uzbekistan does not provide for either civil or criminal *ex parte* search procedures needed for effective anti-piracy enforcement.

SERVICES BARRIERS

The government has created an insurance supervisory board and a licensing system for insurance companies. Uzbekistan imposes a 10 percent withholding tax on reinsurance premiums for policies with reinsurers from countries that do not have a double taxation treaty with Uzbekistan. As the United States and Uzbekistan do not have such a treaty, U.S. reinsurers must add the 10 percent charge to their premiums.

Uzbek law grants state-owned companies a monopoly over certain forms of mandatory state insurance (i.e., mandatory insurance paid for out of the state budget). Foreign banks may not operate in Uzbekistan except in a subsidiary status, which makes the banks subject to Uzbek laws, including the requirement of a charter capitalization fund of $20 million. This is a common requirement in other Commonwealth of Independent States (CIS) countries as well. The $20 million fund requirement does not apply to Uzbek firms. The government determines the required size of the charter funds for Uzbek firms on a case-by-case basis.

The government has granted exclusive control over all international telecommunications services to the Uzbektelekom Company, the largest national telecommunications operator owned by the state. All international voice and data transmission services, including Internet and IP-telephony, must be provided over Uzbektelekom's network. All national data transmission services must be provided by UZNET, a branch of Uzbektelecom.

INVESTMENT BARRIERS

According to official statistics, foreign investment for the first nine months of 2006 totaled $545.9 million. However, the Uzbeks classify foreign loans for goods and services as foreign investment. Uzbekistan says it plans to attract $1.22 billion dollars of foreign investment in 2007.

Under two laws implemented in 1998, to be considered "an enterprise with foreign investment" a firm must be at least 30 percent foreign-owned and have initial foreign equity of $150,000; otherwise, a firm is treated as a domestic enterprise. Normally this equity is "hidden" through assets such as equipment or technical expertise. Although reduced from previous levels, these ownership and capital requirements are still high enough to discourage foreign investment by small companies. U.S.-owned companies in Uzbekistan also face cumbersome regulations and licensing requirements. Profit repatriation remains extremely difficult for foreign-owned companies due to frequent government interference and restrictions on currency conversion.

In the past, businesses wishing to initiate operations in Uzbekistan were required to register and obtain licenses from several different government entities. In 2001, the government introduced legislation to create a "one-stop shop" to make the registration process easier. These one-stop shops, which are located in local government offices (hokimiyats) throughout Uzbekistan, have reportedly made it easier to start a new business. But even with the new regulations, businesses often must satisfy bureaucratic requirements in multiple government offices.

Uzbekistan's Tax Code, introduced for the first time in 1998, lacks provisions that are key parts of the tax regime in most countries. For example, unless a company receives permission through a special presidential decree, Uzbekistan allows no credit for VAT on capital imports, including plant, machinery, and buildings. This practice puts firms operating in Uzbekistan at a competitive disadvantage compared to those in countries that do allow such credits. In addition, earnings of foreign-owned enterprises are subject to double taxation.

Another significant problem in the Uzbek Tax Code relates to the classification of expenses. Many expenses that are normally deductible for purposes of calculating taxable profits are not deductible under the Tax Code, thereby increasing the effective tax burden in comparison to other countries. In most countries, for example, expenses such as advertising and business travel are not subject to taxation. In Uzbekistan, however, travel is not deductible and the deductibility of advertising is linked to an archaic and onerous formula. In 2005, the government initiated a major revision of the tax code. The changes, however, have yet to be officially announced or implemented. The government continues to work with local tax experts and the United Nations Development Program to complete its revision of the tax code.

Foreign firms in Uzbekistan face higher than average labor costs. The corporate income tax rate has been lowered to 10 percent over the past two years, but firms must also make a mandatory contribution for insurance of 24 percent. While most Uzbek companies evade their tax obligations, foreign investors generally adhere to the law. U.S. companies have also complained that Uzbek laws are not interpreted or applied in a consistent manner. On many occasions, local officials have interpreted laws in a manner that is harmful to individual private investors or to the business community more broadly. Companies are particularly concerned about the lack of consistency and fairness in the application of the Foreign Investment Law, which contains a number of specific protections for foreign investors.

Due to the burdensome, unstable tax and regulatory environment, foreign investors in Uzbekistan often seek special tax and regulatory abatements in the form of Cabinet of Ministers decrees, which must be signed by the President in order to be approved. Such decrees have been helpful to foreign investors in certain strategic industries (e.g., mining, oil and gas, and large manufacturing). The process of requesting tax or regulatory abatements is lengthy and unpredictable, however, and lacks the necessary transparency required to attract significant investment over the longer term. Despite the protections that such decrees are meant to provide, investors working under Cabinet of Ministers decrees still face significant regulatory and bureaucratic impediments.

Persons doing business in Uzbekistan note that if they are engaged in a sector in which either the government or an Uzbek-controlled firm is a competitor, they face higher bureaucratic hurdles and currency conversion problems. Potential competitors are often not allowed to invest in such sectors. The regulatory framework for joint ventures in Uzbekistan is extremely burdensome. Many international corporations complain that the government demands more financial reports than are necessary from shareholders.

The judiciary in Uzbekistan is not independent. In the event of disputes, courts usually favor firms that are controlled or owned by the state. Disputes involving foreign-owned businesses are common and have proven difficult to resolve even with high-level intervention from senior U.S. officials.

Investors cannot count on the government to honor an international arbitration award in favor of a foreign plaintiff. A late 2006 government court reinterpretation of Uzbek arbitration regulations states that unless both Uzbek and foreign partners agree in writing to conduct a specific arbitration, the government will not honor an arbitral award. Contractual provisions for international arbitration are insufficient. If international arbitration is permitted, awards can be challenged in domestic courts. The Ministry of Justice is responsible for the resolution of all international commercial disputes, but the Ministry's power is limited and frequently co-opted by more influential powers within the government. A number of foreign companies have not received full payment even after being awarded monetary damages in international arbitration. Others have pursued claims and won in the Uzbek courts, only to have the government refuse to enforce the award. There are several cases, however, in which international arbitration awards have been successfully enforced.

Another barrier to investment is the perception that Uzbekistan will not consistently implement its international obligations. One long-standing case involves a decision in favor of an international grain company by the Grain and Feed Trade Association in London, the arbiter agreed to by Uzbekistan when the contract was signed. Uzbekistan has indicated that it will not honor the arbitral award.

OTHER BARRIERS

Much of the Soviet-era economic system remains today, needlessly complicating simple transactions and costing businesses time and money to overcome. Uzbekistan's extensive trade barriers encourage consumers to buy domestically-produced goods. High duties, taxes and tariffs price the majority of imported consumer goods out of reach for the average Uzbek who earns $50-80/month. Corruption at all levels of government creates non-transparent, often kleptocratic, tender processes. Local enforcement of international and domestic rule of law is unreliable; special decrees for business tax benefits can be, and are, capriciously revoked. With so many overlapping, and somewhat intangible trade barriers, it is difficult to gauge the specific monetary impact a barrier has on the U.S.-Uzbek trade balance. The removal, or softening, of one barrier would likely cause another's augmentation, if not the creation of an entirely new barrier. The overall poor political climate between the United States and Uzbekistan has also been a formidable barrier to trade.

American investors unanimously complain that they do not control their corporate bank accounts in Uzbekistan. The main problem involves restrictions on businesses' access to, and use of, cash in their accounts. Every routine banking operation requires official permission. As a result, businesses expend an enormous amount of senior staff time on simple transactions. A March 24, 2000, decree improved this situation by allowing many farms, restaurants, cafes and other small and medium enterprises with foreign investment ($150,000 or more in foreign capital) to access their own funds in commercial bank accounts, so long as those funds were received and deposited within the previous 90 days.

Most other businesses may hold cash for only a small number of permitted purposes, such as paying salaries and travel expenses. All other money must be held in the bank. Cash receipts must be deposited on the day in which they are received. Even small purchases, such as office supplies, must be paid for using a bank transfer. Uzbek companies handle this problem by making salary withdrawals for non-existent staff. Western accounting practices prevent U.S. companies from using these deceptive practices, and instead, companies are required to wait for as long as a week or more for a wire transfer to arrive before purchases of any kind can be made.

Local and international entrepreneurs face payoff-seeking officials due to pervasive corruption, exacerbated by low salaries for officials and an opaque, cumbersome, and internally contradictory legal regime that makes it difficult for business owners to comply with Uzbek regulations. It is reported that local, regional, and national officials, police officers, as well as tax, customs, fire, health, safety, and labor inspectors are all susceptible to bribery and other corrupt practices.

VENEZUELA

TRADE SUMMARY

The U.S. goods trade deficit with Venezuela was $28.2 billion in 2006, an increase of $596 million from $27.6 billion in 2005. U.S. goods exports in 2006 were $9.0 billion, up 40.4 percent from the previous year. Corresponding U.S. imports from Venezuela were $37.2 billion, up 9.4 percent. Venezuela is currently the 22nd largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Venezuela were $2.6 billion in 2005 (latest data available), and U.S. imports were $580 million. Sales of services in Venezuela by majority U.S.-owned affiliates were $3.9 billion in 2004 (latest data available), while sales of services in the United States by majority Venezuela-owned firms were $159 million.

The stock of U.S. foreign direct investment (FDI) in Venezuela in 2005 was $9.6 billion, up from $8.0 billion in 2004. U.S. FDI in Venezuela is concentrated largely in the manufacturing and mining sectors.

IMPORT POLICIES

Venezuela officially withdrew from the Andean Community (CAN) in April 2006. President Chavez stated publicly that the reason for the withdrawal was the entry of other member countries into free trade agreements with the United States, which, according to the Venezuelan government, changed the essence of the pact and posed potential risks to local production through subsidized imports from the United States. Article 135 of the CAN stipulates that, with the exception of preferences related to the liberalization program of the union (which have a phase-out period of five years from the date of withdrawal from the treaty), all rights and obligations cease to exist after the formal withdrawal from the organization by any member country. The Venezuelan government has requested a reduction of the phase-out period from five to two years.

In August 2006, CAN and Venezuela formed a working group to establish a transitional mechanism for the application of rights and obligations for the phase-out period on issues relating to safeguards, rules of origin, dispute settlement, sanitary and phytosanitary measures, and technical barriers to trade. The signing of the agreement that incorporates the results of the working group had been postponed to November 2006 (originally set for October), and the technical group was broken into five different groups in search of specificity. As of mid-March 2007, the working group had not reached an agreement regarding the established five year phase-out period, as Venezuela has requested this period to be only two years. Andean Community members conduct intra-zone trade at zero percent while extra-zone trade is governed by a common external tariff (CET) that currently covers approximately 62 percent of all traded goods. CAN's average external tariff currently stands at approximately 13 percent.

Over the years, CAN norms, which cover a wide range of disciplines, have become local law. It remains unclear whether these will continue to apply following Venezuela's withdrawal from the pact, and the Venezuelan government has not pronounced on the matter. In November 2006, Venezuela's Supreme Court accepted a petition requesting interpretation of the current validity of CAN norms. As of March 2007, the Court had not issued a ruling on the matter.

Tariffs

In July 2006, Venezuela became a full member of the Southern Cone Common Market (MERCOSUR). Under the terms of accession, Venezuela has four years to adopt the MERCOSUR Common External Tariff (CET), and to provide duty-free treatment to its four MERCOSUR partners by January 2012 on all goods, with sensitive products allowed an extension to January 2014. Exceptions to the CET exist on a product-specific or sector-specific basis, mainly for goods not produced within the union or those which potentially affect the production capacity of the members. MERCOSUR's average external tariff is approximately 14 percent, except for capital goods, which were recently reduced to zero.

While CAN offers higher protection levels to fisheries, textiles and agriculture, MERCOSUR applies higher protection levels to vehicles, parts, leather, textiles and shoes. Under the Andean Community's Common Automotive Policy (CAP), assembled passenger vehicles constitute an exception to the 20 percent maximum tariff and are subject to 35 percent import duties. The CAP will remain effective until 2009 when a new agreement is sought.

On December 5, 2006, Venezuela imposed a new 15 percent luxury tax as part of broader currency control measures for goods considered "non-priority" items, including alcohol, rugs and carpeting, jewelry, and toilet paper. This new tax raises the tariff on most of these items to 35 percent.

Venezuela continues to apply the CET of the Andean Community for certain agricultural products, including feed grains, oilseeds, oilseed products, sugar, rice, wheat, milk, pork and poultry imports from third-party countries. While most agricultural products fall between the 5 percent to 20 percent tariff levels, Venezuela's average tariff for the sector currently stands at approximately 17 percent. *Ad valorem* rates for these products are adjusted according to the relationship between commodity market reference prices and established floor and ceiling prices. However, the adjustable levy applied under the Andean Price Band System can increase the actual duty significantly. The Andean Price Band system is designed to raise tariffs when world prices are low, and to lower them when international prices are high. However, in the case of Venezuela, tariffs are rarely the constraining factor on trade, as lack of access to the appropriate signed import documentation is the main barrier.

In addition to the traditionally high import tariffs of the Andean Community's price band system, Venezuela also protects its agricultural producers through a non-legislated system of guaranteed minimum prices and the restrictive use of import licenses and sanitary permits. For many years, the government and domestic producers have agreed – behind closed doors – to minimum prices for major crops such as corn, sorghum and rice. The government generally prohibits imports until the entire local crop has been purchased at the set price, resulting in a *de facto* import ban.

Under its World Trade Organization (WTO) commitments, Venezuela is entitled to maintain tariff-rate quotas (TRQs) for up to 62 Harmonized System code headings, but issuance of import licenses for opened TRQs is neither transparent nor automatic and has negatively affected trade in basic agricultural commodities, as well as processed products. The issuance of import licenses and sanitary permits has become very restrictive. Animal feed importers as well as vegetable oil processors have commented on cumbersome procedures and discretionary issuance of import licenses. The Venezuelan government has denied import licenses for both in-quota and over-quota quantities, even though importers are often willing to pay the over-quota tariff for additional quantities of some products. Automatic issuance of licenses of over-quota quantities has not occurred. Furthermore, for some products eligible for TRQs, the Venezuelan government has not taken the necessary steps to publish regulations establishing the TRQ mechanism. For other products, such as pork, the government has refused to activate the quota at all.

Non-Tariff Measures

In response to the rapid decline in the value of the national currency, the Bolivar, following a two-month general strike that brought oil production to a near standstill, the Central Bank of Venezuela halted trade in Bolivars on January 22, 2003. President Chavez announced the creation of an Exchange Administration Board (CADIVI) on February 5, 2003, to regulate the purchase and sale of foreign currency. During much of 2003, CADIVI was unable to process requests for authorization of foreign exchange in an efficient and timely manner, and only supplied \$3.6 billion or approximately two months worth of transactions. There has been significant improvement over time. CADIVI's daily average of currency approvals grew from \$63.5 million in 2005 to \$99.6 million by October 2006. The Ministry of Light Industry and Commerce (formerly the Ministry of Production and Commerce) maintains a list of imports that are eligible to receive foreign currency approval. This list has grown significantly since the introduction of the exchange controls, and now includes services and the repatriation of capital. Despite the exchange controls, imports have grown significantly due to economic growth fueled by high oil prices and Venezuelan government spending. Exchange control authorities have recently expressed the need to tighten the supply of currency to limit imports of certain products, particularly spirits and luxury goods.

Through a December 5, 2006, decree, the Venezuelan government also imposed price controls on 47 items used in construction including: sand, stones, steel rods, wire, wood, metal doors and frames. Many importers of agricultural products and processed foods have received the majority of dollars available under the CADIVI system, since most basic food products are on the import list. Up until mid-December 2006, food producers were the second-highest recipient of CADIVI dollars, after automotive parts; since then, access to dollars has improved for all sectors of the economy. Even so, problems with coordinating the timing of access to dollars, approval of import permits and licenses, and contracting the shipments have led to delays and higher import costs. Trade in higher value products, such as apples, pears, grapes, nectarines, and other fruits and nuts, has been dramatically reduced as they are not included among the list of high priority products for which foreign exchange is available.

Venezuela also requires that importers obtain sanitary and phytosanitary (SPS) permits from the Ministry of Agriculture and Lands for most agricultural imports. Imports are indirectly blocked by non-issuance of SPS import permits. Import licenses as well as the correspondent sanitary permits are needed for corn, sorghum, oilseeds, and dairy products. Only sanitary permits are needed for products where the licensing system has not yet been implemented, such as pork, poultry, fruits, and vegetables.

U.S. industry has raised concerns about the use of SPS permits to unreasonably restrict agricultural and food imports, as well as the consistency of Venezuela's SPS practices with WTO requirements. These practices have particularly affected trade in pork, poultry, beef, apples, grapes, pears, nuts, onions and potatoes. Industry representatives have reported that Venezuela also restricts the sale of nutritional supplements or natural products to pharmacies, limiting direct sales efforts.

Although the Venezuelan government has not published requirements on absorption agreements, it has been common practice for years to require the purchase of domestic production before issuing import licenses or permits. Imports of yellow corn are dependent upon the purchase of local sorghum and/or white corn. Soybean meal imports are dependent upon the purchase of "domestically-produced" soybean meal that is crushed from imported soybeans, and permits for grape and black bean imports have been tied to the purchase of local production.

In 2002, the United States Trade Representative (USTR) initiated formal WTO consultations with Venezuela on its agricultural import license procedures for a wide-range of products. Canada, the EU, Chile, Argentina and New Zealand participated in the first round of consultations. Official consultations were held in November 2002 in Geneva. A subsequent exchange of letters on the SPS permit system was conducted in 2003. During the meeting of the WTO Committee on Agriculture in November 2004, the United States again raised questions about Venezuela's permit and licensing procedures. At that time, Venezuela argued that these questions should be discussed under the WTO Sanitary and Phytosanitary Committee. Subsequent to the WTO consultations in November 2002 on licenses and permits, Venezuela made its first significant notification to the WTO Committee on Sanitary and Phytosanitary Measures covering many of the items under dispute. No further notifications have been made since 2003.

Venezuela prohibits the importation of used cars, buses, and trucks; used tires; and used clothing. No other quantitative import restrictions exist for industrial products. Some products, such as cigarette paper, bank notes, weapons of war and certain explosives can only be imported by government agencies. The government can delegate authority to import on its behalf and can place orders for such products with the local sales agents of the foreign manufacturers.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Some Venezuelan importers of U.S. products have alleged that Venezuela applies product standards more strictly to imports than to domestic products. The certification process is expensive. The Venezuelan Commission for Industrial Standards normally requires certification from independent laboratories located in Venezuela, but at times will accept a certificate from independent laboratories elsewhere.

Venezuela's labeling regulations, which became effective in 2002, established the register of domestic manufacturers and importers of clothing and footwear, as well as the minimum labeling requirements for all clothing and footwear products marketed in Venezuela. Imported product labels must include the legal name or tax payer number of the Venezuelan importer. Industry reports that such information is difficult if not impossible to know during the manufacturing process when permanent labels are attached. Re-labeling of products upon entry to meet these requirements results in additional costs and delays.

GOVERNMENT PROCUREMENT

Venezuela's government procurement law covers purchases by government entities, national universities and autonomous state and municipal institutions. The law requires a contracting agency to prepare a budget estimate for a procurement based on reference prices maintained by the Ministry of Production and Commerce. This estimate is to be used in the bidding process. The law forbids discrimination against tenders based on whether they are national or international. However, the law also states that the President can mandate temporary changes in the bidding process "under exceptional circumstances," or in accordance with "economic development plans" to promote national development, or to offset adverse conditions for national tenders. These measures can include margins of domestic price preference; reservation of contracts for nationals; requirements for domestic content, technology transfer and/or the use of human resources; and other incentives to purchase from companies domiciled in Venezuela. For example, government decree 1892 establishes a 5 percent preference for bids from companies with over 20 percent local content. In addition, half of that 20 percent of content must be from small- to medium-sized domestic enterprises. The Venezuelan government is increasingly awarding contracts directly, thus avoiding competition required by the government procurement law.

In an effort to move away from proprietary software products, the government of Venezuela in 2004 issued a decree mandating the use of open-source software in government entities and public institutions, though compliance is reportedly minimal. A bill is currently under discussion in the National Assembly to make the open-source software requirement more universal, expanding it to universities, government contractors and municipal governments.

The Venezuelan government has created a huge food distribution network, aimed at the low-income population. CASA (Corporación de Abastecimiento y Servicios Agrícolas) is the government food purchasing entity, and MERCAL (Mercado de Alimentos) is a government organization created for the marketing of food products. The state-trading entity, CASA, purchases both domestic and imported products. To date, it has purchased sugar, rice, wheat flour, black beans, milk powder, edible oil, margarine, poultry, and eggs from a variety of countries. MERCAL now distributes more than 40 percent of all basic food staples consumed in Venezuela, offering products at prices that are at or below those of controlled-price products. CASA and MERCAL compete with private industry, although the private sector also supplies products to this chain. The private sector has complained that CASA has an unfair advantage because it is ensured access to dollars, import licenses and permits. Furthermore, CASA, as a government entity, imports products without tariffs and customs duties, import licenses or permits.

The Venezuelan government has also created several state-owned enterprises, such as Venezuelan Agricultural Corporation (CVA) Cereals and Oilseeds, CVA Dairy, and CVA Sugar, to supply the food network. The main objective of the CVA is to supply the demand of the state-owned food distribution chain, MERCAL. According to CVA’s regulations published in the official gazette, these industries will not only produce pre-cooked corn flour, pastas, milled rice, powdered milk, refined sugar and various agricultural inputs through established processing plants, but also are entitled to import and export raw and processed food. These are still not functioning at full capacity.

Additionally, the Venezuelan government has controlled food prices since 2003, when it set prices for 107 food products in an attempt to keep food prices low and to control inflation. Measures such as price controls and restricted access to dollars have had the opposite effect and have created new distortions in the market, such as temporary scarcities of certain products. Huge increases in input prices, as well as the need to maintain at least a reasonable profit margin, have led both producers and merchants to reduce production, withhold products for sale, or illegally sell outside the controlled price. Some products frequently disappear from the market shelves, and some end up in the Colombian market, which does not have price regulations.

Venezuela is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Exporters of selected agricultural products -- coffee, cocoa, some fruits and certain seafood products -- are eligible to receive a tax credit equal to 10 percent of the export's value.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The Venezuelan Industrial Property Office’s actions and occasional publicly stated antagonism towards IPR often draw criticism from IPR advocates and rights holders. Protection of IPR is also hindered by the lack of adequate resources for the Venezuelan copyright and trademark enforcement police and for the special IPR prosecutor's office. Venezuela’s tax agency, SENIAT, is promoting several measures to fight piracy in an effort to reduce tax evasion, including a new anti-piracy law and the proposed introduction of a tax on street vendors. According to industry representatives, SENIAT seems to be a promising enforcement entity due to its technical and financial capabilities.

Unfortunately, pirated software, music and movies remain readily available throughout the country, and levels of piracy are increasing. In the 2005 Annual Review, Venezuela was placed on USTR's Special 301 "Priority Watch List” and was kept on the list in 2006 for its failure to improve its IPR regime.

Copyrights

Venezuela's 1993 Copyright Law provides the legal framework for the protection of copyrights. The 1993 Copyright Law is modern, comprehensive and extends copyright protection to all creative works, including computer software. A National Copyright Office was established in 1995 and given responsibility for registering copyrights, as well as for controlling, overseeing and ensuring compliance with the rights of authors and other copyright holders. Industry experts are concerned about a proposed new copyright law that would require the mandatory registering of works in order to receive protection, reduce protection terms, hamper distribution agreements and increase royalties.

Patents and Trademarks

Venezuela provides the legal framework for patent and trademark protection through the 1955 National Industrial Property Law. The legal status of the Andean Community Decision 486, which to some extent implements the TRIPS Agreement, and Andean Community Decision 345, which covers protection for plant varieties, are currently in question since Venezuela withdrew from the organization in April 2006. The Venezuelan government has not yet clarified whether CAN norms should still be applied. Regardless, Venezuela's 1955 legislation is outdated and offers inadequate protections.

U.S. companies remain concerned about the consequences of Venezuela leaving the Andean Community. If the Venezuelan government decides that CAN regulations still apply, U.S. companies will continue to monitor the impact of the Andean Tribunal's 2002 interpretation of Articles 14 and 21 of Decision 486, which do not allow for the patenting of "second-use" products (e.g., new uses of previously known or patented products). Under pressure from the Andean Community and in line with some changes in leadership at SAPI, Venezuela has revoked previously issued patents. Very few patents for new pharmaceuticals were awarded in 2004, and none were issued in 2005 or 2006. Since 2002, Venezuela's food and drug regulatory agency (INH) began approving the commercialization of new drugs which were the bioequivalent of innovative drugs and relied on innovator proprietary data submitted for INH marketing approval. This denied the innovative drug companies protection against unfair commercial use of their test data as required by TRIPS. In effect, the government now allows unfair reliance on the test data, which required lengthy and expensive development, to be used by others seeking marketing approval for the same products.

Enforcement

The Venezuelan copyright and trademark enforcement branch of the police (COMANPI) attempts to provide copyright enforcement support with a small staff of permanent investigators. Lack of personnel, coupled with a very limited budget and inadequate storage facilities for seized goods, has forced COMANPI to work with the National Guard and private industry to improve enforcement of copyrighted material. SENIAT passed a regulation in mid-2005 that allows *ex officio* seizure of contraband goods at customs points and inland, and gives companies three days to verify the product's authenticity and press charges. In most cases, companies and violators reach a settlement instead of going through a lengthy, and often fruitless, court proceeding. SENIAT continues to be the only agency actively protecting IPR, and has launched public anti-piracy and "zero tax evasion" campaigns that have raised awareness of the IPR issues.

SERVICES BARRIERS

Venezuela maintains restrictions on a number of service sectors. Venezuela requires that certain professions be licensed in Venezuela (e.g., engineers, architects, economists, business consultants, accountants, lawyers, doctors, veterinarians and journalists). Foreign nationals wishing to practice these professions in Venezuela must have their credentials validated by a Venezuelan university, provided that a reciprocity agreement exists with their country of origin. Some (particularly government-related) accounting and auditing functions require Venezuelan citizenship, and only Venezuelan citizens may act as accountants in companies which trade over 25 percent of their total shares in the stock market. A foreign lawyer cannot provide legal advice on foreign or international law without being licensed in the practice of Venezuelan law.

Foreigners are required to establish a commercial presence for the provision of engineering services. Foreign consulting engineers must work through local firms or employ Venezuelan engineers. There is a law governing public service tenders that gives preferential treatment to Venezuelan firms for projects financed with public funds. Foreign participation is restricted to a maximum of 19.9 percent in professional firms.

Venezuela limits foreign equity participation (except from other Andean Community countries) to 20 percent in enterprises engaged in television and radio broadcasting and Spanish language newspapers.

A trade association has reported that draft satellite regulations call for preferential treatment for satellites owned and operated by the government of Venezuela, and may subject U.S. satellite operators to local establishment requirements that the trade association considers burdensome.

The government enforces a "one-for-one" policy that requires foreign musical performers giving concerts in Venezuela to share stage time with national entertainers. There is also an annual quota regarding the distribution and exhibition of Venezuelan films, as well as a requirement that a percentage of film copying be done in Venezuelan facilities. At least half of the television programming must be dedicated to national programs, and at least half of FM radio broadcasting must be dedicated to Venezuelan music.

Finally, in any enterprise with more than 10 workers, foreign employees are restricted to 10 percent of the work force, and Venezuelan law limits foreign employee salaries to 20 percent of the payroll.

By signing the 1997 WTO Financial Services Agreement, Venezuela made certain commitments to provide market access for banking, securities, life and non-life insurance, reinsurance and brokerage activities. Venezuela did not make commitments on pensions, or on maritime, aviation and transportation insurance, and it reserved the right to apply an economic needs test as part of the licensing process.

Rules governing maritime activities, transportation insurance, and civil aviation were issued in 2001 in a package of 49 laws passed under enabling powers granted to President Chavez in 2000. Of particular concern is a bill for a public services law currently in the National Assembly. The proposed law introduces the concept of “social salary,” adopted from similar European frameworks, but is accused of being more ambiguous. Equally concerning is the definition of public services, which is said to be extremely broad, ranging from recreational parks to cemeteries, telecommunications, banking, health and education. Under the public services law, rates are to be set by the purchasing power of the population and not the operational costs.

INVESTMENT BARRIERS

The government continues to control key sectors of the economy, including oil, petrochemicals and much of the mining and aluminum industries. Venezuela began an ambitious program of privatization under the Caldera administration, but under President Chavez further privatization has been halted. On January 8, 2007, President Chavez announced that the telecommunications provider CANTV, the electricity generation sector, the heavy-oil strategic associations, and other "important and strategic" areas would be nationalized. Several of the affected U.S. companies have reached agreement with the government on compensation terms and others are still weighing their options. With regard to the strategic associations, President Chavez issued a decree in late February 2007 requiring the four strategic associations to convert to PDVSA control joint ventures in which the government will hold at least a 60 percent stake. The decree establishes a deadline of April 30, 2007, for completing the transfer. The U.S. Embassy is watching the process closely, has consulted with the affected U.S. companies, and has publicly stated its expectation that U.S. companies receive fair treatment, including timely, adequate, and effective compensation.

Foreign investment continues to be restricted in the petroleum sector. The exploration, production, refinement, transportation, storage, and foreign and domestic sale of hydrocarbons are reserved to the state. However, private companies may engage in hydrocarbons-related activities through mixed companies and equity joint ventures with the state-owned oil company Petroleos de Venezuela, S.A. (PDVSA). The Venezuelan constitution reserves ownership of PDVSA to the Venezuelan government. Sales to foreign investors of interests in subsidiaries and affiliates of PDVSA are permitted. In the early 1990s, the Venezuelan government partially opened the sector to private investment in order to promote new petrochemical joint ventures and to bring inactive oil fields back into production. Almost 60 foreign companies, representing 14 different countries, participated in these partial privatizations. PDVSA and foreign oil companies signed 33 operating service agreements for marginal fields after three rounds of bidding.

The Hydrocarbons Law of 2001 has raised concerns in the industry as it mandates a minimum 51 percent national participation in future projects and increases most royalties paid to the government from 16.67 percent to 30 percent. Over the last two years, the national government has made significant changes to royalty policies, tax policies, and contracts. This has substantially increased uncertainty in the sector and raised concerns of companies operating in Venezuela. In October 2004, the Venezuelan government eliminated a royalty holiday granted to joint venture projects relating to the development of Venezuela's extra heavy crude oil reserves. These joint venture projects, known as "the strategic associations," were established during the partial opening of the sector and received 35-year contracts that were endorsed by the National Congress. PDVSA has recently begun seeking partners to develop 27 blocks of the country's heavy crude reserves. National oil companies of strategic partner countries seem to be the preferred partners for the development of the new projects. In 2006, the government migrated the operating service agreements to mixed companies in which PDVSA held a majority stake. The Ministry of Energy and Petroleum has also announced that it wishes to migrate the four strategic associations in the Faja region to mixed companies in which PDVSA has a majority interest.

The Gaseous Hydrocarbons Law of 1999 offers more liberal terms, and the Venezuelan government has sought foreign investment to develop offshore natural gas deposits near the Orinoco delta.

Both the 2001 Hydrocarbons Law and the Gaseous Hydrocarbons Law require that there be a competitive process for the identification of private partners for projects to be developed by PDVSA. However, the government may directly award contracts when the project is to be developed under special circumstances, or is of national interest.

The government passed legislation in 1998, aimed at introducing domestic and foreign competition into the domestic gasoline market. The law allows foreign and private Venezuelan investors to own and operate service stations, although the government retains the right to set product prices. The government has not raised gasoline prices in several years, and currency devaluations and a high inflation rate have eliminated service station profit margins.

Electric power generation, transmission, and distribution are open to private participation. Hydroelectric power-generation on several rivers is reserved to the state, although private sector participation is permitted in transmission and distribution. In early 2000, the U.S. power-generating company, AES Corporation, successfully took control, by means of a stock swap of Electricidad de Caracas (EDC), the company that provides power to the Caracas metropolitan area.

Private participation is allowed in the mining sector. In early 2005, President Chavez reorganized the ministries that govern the energy and mining sectors. One result of this restructuring was to increase control over basic industries at the ministerial level and to strengthen the state-owned Corporacion Venezolana de Guayana (CVG), which controls steel and aluminum production, electricity generation, and mining. Under its new board of directors, named in February 2005, CVG announced a review of all existing contracts between CVG companies and third parties. A draft mining law currently in the National Assembly seeks to repeal "inactive" concessions to foreign companies and structure the mining sector under a joint-venture model.

Supply contracts by CVG companies are currently under review by the Ministry of Basic Industries and Mining (Mibam). The government is looking to increase the development of downstream industrial sectors and to add value to Venezuelan exports. To this end, Mibam is taking several steps to help local companies, including making available to them a higher percentage of materials, improving payment terms, and providing discounts of up to 10 percent.

VIETNAM

TRADE SUMMARY

The U.S. goods trade deficit with Vietnam was $7.5 billion in 2006, an increase of $2.0 billion from $5.4 billion in 2005. U.S. goods exports in 2006 were $1.1 billion, down 7.8 percent from the previous year. Corresponding U.S. imports from Vietnam were $8.6 billion, up 29.2 percent. Vietnam is currently the 66th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Vietnam in 2005 was $291 million, up from $242 million in 2004.

IMPORT POLICIES

Tariffs

Vietnam is expected to revise its tariff schedule in early 2007 to implement the tariff concessions and bindings negotiated in its World Trade Organization (WTO) accession agreement. The United States negotiated significant reductions in tariff rates for many important U.S. exports in the context of Vietnam's WTO accession. As a result, the vast majority of U.S. exports will face tariffs of 15 percent or less. The United States will closely monitor Vietnam's implementation of these tariff reductions over the negotiated phase-in periods.

Vietnam agreed to join the WTO Information Technology Agreement upon accession, and as a result it has eliminated tariffs on important U.S. exports of information technology products. Vietnam also reduced tariffs to the harmonization rates required by the WTO Chemical Harmonization Agreement for 80 percent of the chemical products covered by the Agreement.

On September 1, 2003, Vietnam implemented the ASEAN Harmonized Tariff Nomenclature, which is based on the international Harmonized Tariff System of 2002. The new system consists of 10,689 lines (4200 more than the former one), of which 5,300 lines are at four and six digits and 5,400 lines are at eight digits.

Currently, there are three categories of tariff rates: normal trade relations (NTR) / most favored nation (MFN) rates that apply to all WTO Member countries, including the United States; Common Effective Preferential Tariff rates that apply to imports from ASEAN countries; and general tariff rates (50 percent higher than NTR/MFN) that apply to all other countries.

The National Assembly retains authority over setting tariff bands for each product. The Ministry of Finance, typically with oversight from the Office of Government, is authorized to adjust applied tariffs within the bands.

Non-tariff barriers

When Vietnam shifted from a centrally-controlled economy toward more market-oriented trade beginning in the late 1980s, non-tariff barriers (NTBs) became a key component of trade policy. In the past few years, Vietnam has made significant progress in eliminating NTBs under the terms of the United States – Vietnam Bilateral Trade Agreement (BTA). The United States sought the removal of additional NTBs through the negotiations with Vietnam on the terms of its accession to the WTO. As a result of WTO membership, Vietnam has eliminated and committed not to reintroduce any quantitative restrictions on imports or other non-tariff measures, such as quotas, bans, permits, prior authorization requirements, licensing requirements or other restrictions having the same effect which would not be consistent with the WTO Agreement.

Import prohibitions: Vietnam currently prohibits the commercial importation of the following products: arms and ammunition; explosive materials (not including industrial explosives); military technical equipment and facilities; narcotics; certain toxic chemicals; "depraved and reactionary" cultural products; firecrackers; certain children's toys; second-hand consumer goods; right-hand drive motor vehicles; used spare parts for vehicles; used internal combustion engines of less than 30 horsepower; asbestos materials under the amphibole group; specialized encryption devices and software not destined for mass market consumption; certain waste and scraps causing environmental pollution; and refrigerating equipment using chlorofluorocarbons. Vietnam previously banned importation of motorcycles with an engine capacity of 175 cc or greater, which served as a market access barrier for exports of U.S. motorcycles. As part of its WTO commitments, Vietnam eliminated the ban on large engine motorcycles and by May 31, 2007 will put in place a nondiscriminatory and transparent system for their importation, distribution and use by individuals and firms that meet the appropriate criteria. The United States will closely monitor implementation of this commitment.

Quantitative restrictions and non-automatic licensing: Decree 12/2006/ND-CP dated January 26, 2006, detailing the implementation of the Commercial Law regarding export-import management, contains a list of goods that require import permits issued by the Ministry of Trade. The list includes two-wheel and three-wheel motorcycles of a cylinder capacity of 175 cc or more; guns and shells used for sport; certain toxic chemicals; and other line managed goods. The decree places salt, tobacco, eggs, and sugar under a tariff-rate quota regime. Separate regulations apply to exports of rice, imports of petroleum and fuel, imports of cigarettes and cigars, and exports and imports of goods related to security and defense.

Special authority regulation: Prior to 2001, importers required approval from the relevant ministry(ies) to import most goods. On January 1, 2007, Vietnam granted automatic trading rights on a majority of products to domestic and foreign firms and individuals, including the right of foreign firms and individuals to act as the importer of record without a physical presence in Vietnam. Certain categories of goods are limited to importation by state trading enterprises, and others are subject to automatic or non-automatic import licensing. These restrictions and import licensing requirements are set out in the Working Party Report on Vietnam's accession to the WTO. Seven ministries and agencies are responsible for overseeing a system of import licensing based on minimum quality/performance standards for animal and plant protection, health safety, local network compatibility (in the case of telecommunications), money security and cultural sensitivity. Goods that meet the minimum standards can be imported upon demand and in unlimited quantity and value.

Foreign Exchange system: As of April 2003, Vietnam eliminated the foreign exchange surrender requirement.

In May 2000, amendments to the Law on Foreign Direct Investment allowed FDI enterprises to purchase foreign currency at authorized banks to finance current and capital transactions and other permitted transactions. Controls on current account transactions have also been liberalized. A 1998 Decree allowed both residents and non-residents to open and maintain foreign exchange accounts with authorized banks in Vietnam. A 2001 Circular permitted foreign investors to transfer profits and other legal income abroad upon presentation of relevant documents to authorized banks. A 2003 decree contains the government of Vietnam's guarantee to assist in the balancing of foreign currency for foreign-invested enterprises and foreign business cooperation parties that invest in the construction of infrastructure and certain other important projects in the event that banks permitted to trade foreign currency are unable to fully satisfy their foreign currency demand.

Customs: Vietnam implemented the WTO Customs Valuation Agreement through a revised Customs Law, which took effect January 1, 2006, and supporting implementing decrees and circulars. Decree 155/2005/ND-CP and Circular 113/2005/TT-BTC entered into force January 1, 2006. It makes the use of transaction value applicable to all imports and provides for full application of the computed value and deductive methods. Additionally, Decree 154/2005/ND-CP of December 15, 2005, provides implementing guidance relating to customs procedures, customs inspection and supervision, and Circular 114/2005/TT-BTC provides for post-clearance audits. These changes have significantly improved customs valuation in Vietnam. Application of Customs Valuation Agreement principles, however, is not entirely uniform and importers complain about the low level of automation of Vietnam's customs system. The United States will continue to work with Vietnam to monitor implementation of the Customs Valuation Agreement as part of the ongoing bilateral dialogue.

In early October 2005, the Ho Chi Minh City Customs Office began a pilot electronic customs service. Processing time between submission of customs declarations and receipt of approval is less than two minutes, compared to an average of eight hours for paper-based procedures. Hai Phong and Ho Chi Minh City are the first localities to launch e-customs service for sea-borne goods. The service was extended to other areas, including export processing zones, throughout Vietnam in 2006.

Trading rights: In 2006, Vietnam committed, as part of the WTO accession process, to provide full trading rights (including the right to sell an imported product to any individual or enterprise having the right to distribute such product in Vietnam) to all foreign individuals and enterprises no later than January 1, 2007. These rights are accorded to foreign individuals and enterprises without any requirement to invest in Vietnam. A foreign individual or enterprise seeking to be an importer of record, including those without a physical presence in Vietnam, are required to file a registration with the relevant Vietnamese authorities for administrative purposes. Trading rights are granted for all products except for a limited number reserved for state trading enterprises and those subject to a phase-in period. Vietnam has reserved the right of importation for state trading entities for the following categories: cigars and cigarettes; crude oil; newspapers, journals and periodicals; and records, tapes and other recorded media for sound or pictures (with certain exclusions). Under the phase-in, foreign firms and individuals are restricted until January 1, 2009, from importing the following categories of products: pharmaceuticals; motion picture films; unused postage, printed cards and calendars; certain printed matter; machinery for typesetting and print machinery (excluding ink-jet printers); and certain transmission apparatus for radio-telephony (excluding mobile phones and consumer cameras). Foreign individuals and enterprises will be given the right to export rice no later than January 1, 2011. The United States will closely monitor implementation of these commitments.

Taxes: Vietnam applies a value added tax (VAT) on all goods and services in covered categories as established in the Law on Value Added Tax dated January 1, 2004. Imported goods subject to the VAT tax are set out in Circular 84/2003/TT-BTC from the Ministry of Finance, and products exempt from the tax are listed in Circular 122/2000/TT-BTC from the Ministry of Finance. Certain goods in Vietnam are also subject to an excise tax, levied in accordance with the Law on Excise Tax 08/2003/QH11 dated June 17, 2003 and explained in further detail in Circular No. 98 TC/TCP of the Ministry of Finance. In several product categories, particularly beer, wine, distilled spirits and automobiles, the United States raised concerns with Vietnam regarding discrimination between imported and domestically-produced like products. As a result of Vietnam's WTO accession negotiations, Vietnam has taken steps or committed to take steps to eliminate the discriminatory application of excise taxes. In particular, Vietnam equalized the excise tax on imported and domestic wines and distilled spirits under 20 per cent alcohol by volume as of January 1, 2006. The excise tax reductions provided to domestic automobiles was eliminated effective December 31, 2006. As part of the WTO accession negotiations, Vietnam was granted a three year transition period to ensure that its excise taxes on imported and domestic beer and distilled spirits over 20 percent alcohol by volume conform with WTO rules. The United States will continue to work with Vietnam to monitor implementation of this commitment.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Sanitary and Phytosanitary Measures (SPS)

Vietnam is currently working on the establishment of an SPS regime based on international standards, guidelines and recommendations. Its existing regime is based on Codex Alimentarius, FAO/WHO standards, World Organization for Animal Health (OIE), International Plant Protection Convention, the standards of regional or developed countries, or national standards. Vietnam has an inter-ministerial Working Group that coordinates SPS activities and the Ministry of Agriculture and Rural Development currently serves as enquiry point and notification authority under the WTO Agreement on Sanitary and Phytosanitary Measures. Specific responsibility for SPS controls, plant and animal quarantine, health quarantine and fisheries inspection is further assigned to other Ministries and agencies.

In May 2006, the United States concluded an agreement with Vietnam which resulted in the immediate opening of Vietnam’s market to all U.S. beef and beef products from cattle under 30 months of age. Furthermore, Vietnam agreed to recognize the U.S. food safety inspection systems for beef, pork and poultry plants as equivalent to its inspection systems.

Standards and Technical Barriers to Trade

The Law on Standards and Technical Regulations passed by the National Assembly for implementation in January 2007 has comprehensively reformed the system. Under this law, standards and technical regulations are simplified into two levels: national and local. While standards are applied voluntarily, technical regulations are mandatory. The Law also clearly identified the Ministry of Science and Technology as the responsible agency for issuing and managing national standards, while line ministries are responsible for national technical regulations. Following accession to the WTO, Vietnam’s Directorate for Standards and Quality became the inquiry and notification point under the WTO Agreement on Technical Barriers to Trade.

Pharmaceutical companies have raised concerns about alleged discriminatory treatment against foreign firms in product registration requirements for pharmaceuticals. The United States will work closely with the Ministry of Health through ongoing bilateral dialogues to seek improvements in the transparency of the regulatory process.

GOVERNMENT PROCUREMENT

Vietnam is not a party to the WTO Agreement on Government Procurement. Vietnam enacted the Law on Procurement in November 2005. This law provides for greater transparency in procurement procedures and creation of a Procurement Gazette to provide general information on tendering activities, invitations for tender, lists of bidders participating in limited tendering proceedings, and criteria for selection of bids. The law also aims at decentralizing procurement decision-making to the ministries, agencies, and local authorities. The law includes enforcement provisions, including a definition of what constitutes fraudulent behavior and establishing penalties for such behavior. In addition, the law provides for the right of appeal and settlement of disputes relating to procurement decisions. Competition for government procurements may take any of several forms: sole source direct negotiation, limited tender, open tender, appointed tender or special purchase. Different ministries and agencies have different threshold values for the purchase of material or equipment which must be subject to competitive bidding.

EXPORT SUBSIDIES

Export credit is extremely limited in Vietnam. The Export Promotion Fund, managed by the Ministry of Finance, provides subsidies in the form of interest rate support (full or partial refund of interest incurred on ordinary bank loans), direct financial support (to first-time exporters, for exports to new markets, or for goods subject to major price fluctuations) and export rewards and bonuses. Since 1998, the average annual export reward provided to eligible enterprises has ranged from $2,900 to $4,710. Provision of export bonuses, originally targeted for exports of agricultural products, was expanded in 2002 to include non-agricultural products such as handicrafts, rattan and bamboo ware, plastic products and mechanical products. Decision 279/2005/QD/TTg established a new trade promotion program which appears to conform with WTO rules.

Since September 2001, the Development Assistance Fund has administered an export credit program that has provided short-term loan guarantees, medium and long-term investment loans, post-investment interest rate support and investment credit guarantees to domestic enterprises. In May 2006, the Vietnam Development Bank was established by the Vietnamese Government based on a re-organization of the Development Assistance Fund to implement state development investment credit and export credit policies.

Vietnam agreed to cease providing to new beneficiaries, by the date of accession to the WTO, subsidies containing prohibited elements, including subsidies contingent on export performance. Vietnam was granted a period of five years from the date of its WTO accession to eliminate subsidies provided to current beneficiaries under certain programs that offered subsidies contingent on export performance. Vietnam also agreed to eliminate, by the date of accession, all WTO prohibited subsidies previously provided to its textile and garment sector.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Vietnam is a member of WIPO and is a signatory to the Paris Convention for the Protection of Industrial Property. It has acceded to the Patent Cooperation Treaty and the Madrid Agreement. On October 26 2004, Vietnam joined the Berne Convention on Protection for Literary and Artistic Works. Vietnam has committed to provide copyright protection to U.S. copyrights in accordance with the TRIPS Agreement/Berne Convention and BTA. Vietnam acceded to the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms in July 6, 2005. On January 12, 2006, Vietnam joined the Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite.

As a result of efforts to implement its BTA and WTO obligations, Vietnam has made considerable progress over the past few years in establishing the legal framework for IPR protection. New IPR-related legislation enacted between 2005 and October 2006 includes the new Intellectual Property Law and its implementing regulations: Decree No. 100 on Copyright and its Related Rights, Decree No. 103 on Industrial Property, Decree No. 105 on IPR enforcement, Decree No. 106 on Sanctioning Administrative Violations in Industrial Property. The Intellectual Property Law, effective July 1, 2006, provides for injunctions in the Civil Procedure Code and improved court procedures in general for civil litigation on IPR. Other significant legislative developments over the past year include revisions to the Civil Code;

Decree No. 57/2005/ND-CP on Sanctioning Administrative Violations in the Plant Variety Field; a new Law on Cinematography; and amendments to the Law on Customs.

Enforcement of IPR protection in practice remains extremely weak, but there have been some improvements. There have been reports of cracking down on the inclusion of pirated software installed in new computers and a number of enforcement actions initiated by private companies. Some government ministries have begun to purchase licensed software. Vietnam has made commitments under TRIPS and the BTA to provide expeditious remedies to prevent and deter infringement of intellectual property rights, including both judicial and administrative procedures, prompt and effective provisional measures secured by sufficient evidence, and criminal procedures and penalties for willful trademark counterfeiting or infringement of copyrights or neighboring rights on a commercial scale.

Patent and Trademarks

Trademark registration in Vietnam is relatively straightforward, although infringement is widespread and enforcement of administrative orders and court decisions finding IPR infringement remains problematic. Vietnam's laws offer some protection for foreign patent holders, but the system for enforcing patents and trademarks remains weak. The National Office of Intellectual Property (NOIP), under the Ministry of Science and Technology, administers Vietnam's patent and trademark registration systems. NOIP has made significant progress in recent years to build adequate capacity to register and adjudicate patent and trademark claims, and is working with a number of foreign patent and trademark agencies to enhance its systems. Obtaining expeditious adjudication and administrative enforcement of patent and trademark violations remains difficult. Victims of infringement have encountered difficulties implementing NOIP enforcement decisions.

Copyrights

The Vietnam Office of Literary and Artistic Copyright is under the control and supervision of the Ministry of Culture and Information. Significant progress has been made in putting in place the legal framework required to protect copyrights, including those belonging to foreigners, but enforcement is almost non-existent. This is particularly true for certain categories of products, such as PC software, music and video CDs, VCDs and DVDs. Widespread cable and TV signal piracy continues to remain a serious concern. Industry estimates of piracy rates for software, music and videos run as high as 92 percent. Local police authorities are often slow to act on administrative orders fining infringement and enforcing court decisions. After Vietnam joined the Berne Convention and Geneva Convention, the Ministry of Culture and Information made an effort to tighten copyright regulations on foreign musical and theatrical works, as well as sound recordings. All event organizers must now obtain permission in writing from copyright holders before performing their works.

SERVICES BARRIERS

Under the terms of the BTA, Vietnam agreed for the first time to liberalize a broad array of service sectors, including telecommunications, accounting, banking and distribution services, and to apply MFN treatment to U.S. services suppliers in all covered sectors and for all modes of supply (with itemized exceptions).

Vietnam continued to liberalize its services sector in its WTO commitments, which include significant improvements in market access for U.S. service providers. In order to implement these commitments, Vietnam revised the legal framework governing commercial activity with the new Commercial Law of 2005 and implementing regulations issued throughout 2006. The Commercial Law identifies certain ‘conditional sectors’ in which participation requires a license issued by the relevant authority (for example: financial services, telecommunications and distribution). Vietnam made commitments in its WTO accession agreement to ensure that, in sectors requiring a license, licensing procedures and conditions are published prior to becoming effective, review and approval timeframes are clearly established, and any fees and charges associated with the filing and review of an application do not constitute an independent barrier to market access.

Limitations on foreign ownership and other market access limitations and exceptions to national treatment are described in Vietnam’s schedule of specific commitments. Key provisions include:

Legal Services

Foreign lawyers’ organizations providing legal consultancy services are permitted without equity limitations. However, to consult on Vietnamese laws, a foreign lawyer must be a graduate of a Vietnamese law college.

Taxation Services

For a period of one year from the date of Vietnam’s accession, foreign-invested providers are restricted to providing services only to other foreign-invested enterprises for foreign-funded projects. After one year, foreign supply of taxation services is allowed without limitation.

Architectural Services, Engineering and Integrated Engineering Services

Foreign-invested providers are restricted for a period of two years from the date of Vietnam’s accession to providing services only to other foreign-invested enterprises of other WTO Member countries. After two years, there are no market access limitations on these services.

Computer and Related Services

For a period of two years from the date of accession, 100 percent foreign-owned enterprises may only provide services to foreign-invested enterprises. After three years, branching is permitted.

Advertising and Marketing Research Services

From the date of Vietnam’s accession, joint ventures are permitted with foreign ownership limited to 51 percent. After January 1, 2009, the limitation is removed.

Audiovisual Services

Joint ventures or business cooperation contracts are permitted with foreign ownership limited to 51 percent.

Express Delivery Services

Vietnam limits foreign investment to 51 percent of joint ventures for a period of five years from the date of its WTO accession. After five years, 100 percent foreign ownership will be permitted.

Telecommunications

Based on Vietnam's WTO commitments, foreign ownership limitations in joint ventures will now range from 49 percent to 70 percent, depending on the sub-sector (investment in private networks up to 70 percent will be permitted). In three years, foreign ownership limits for all other non-facilities based services will be relaxed up to 65 percent. In the telecommunications sector, 51 percent ownership conveys management control of the joint venture.

Distribution Services

Foreign commercial presence is permitted in commission agents' services, wholesale services, retail services and franchising subject to a limitation on foreign ownership of 49 percent until January 1, 2008. From January 1, 2008 to January 1, 2009, foreign investment must be in the form of a joint venture with a domestic partner, however, there is no equity limitation on foreign ownership. After January 1, 2009, the joint venture requirement is eliminated and 100 percent foreign-owned entities are permitted. The United States secured commitments from Vietnam for an increased number of products covered by the distribution schedule relative to the BTA. Improvements over the BTA include distribution commitments for wine and distilled spirits, automobiles, nutritional supplements and audio media. Vietnam's WTO distribution commitments also cover foreign participation in multilevel sales activities, an important sector for U.S. businesses. Electronic distribution is permitted for computer software and other products over the Internet.

Insurance Services

One hundred percent foreign-owned insurance enterprises are permitted for direct insurance (life and non-life), reinsurance and retrocession, insurance intermediation and services auxiliary to insurance. However, foreign insurance enterprises are restricted from engaging in certain forms of statutory insurance business until January 1, 2008. Five years from the date of its WTO accession, Vietnam will allow foreign insurance companies to open direct branches offering non-life insurance.

Banking and Securities Services

Vietnam currently limits foreign banks to a minority shareholding position of 49 percent, but allows bank branches. As of April 1, 2007, U.S. and other foreign banks will be able to establish 100 percent foreign-invested subsidiaries. After accession, foreign securities firms will be permitted to open joint ventures with up to 49 percent foreign ownership. After five years, the foreign ownership limitation will be removed, permitting 100 percent foreign ownership of securities firms and the ability to branch into Vietnam for some securities activities (asset management, advisory, and settlement and clearing services).

INVESTMENT BARRIERS

Vietnam revised its investment regime through new Enterprise and Investment laws in 2005 and a series of implementing regulations in 2006. Foreign businesses are permitted to remit in hard currency their profits, share revenues from joint ventures, and income derived from services, technology transfers, legally owned capital and intellectual property. Foreigners are also allowed to remit royalties and fees paid for the supply of technologies and services, principal and interest on loans obtained for business operations, and investment capital and other money and assets under their legitimate ownership.

The Enterprise Law regulates the establishment, management and operation of enterprises. It provides for four types of enterprises: limited liability, shareholding companies, partnerships and sole proprietorships.

Under the law any domestic or foreign legal person has the right to establish and manage enterprises in Vietnam. The Investment Law regulates investment activities, investors' rights and obligations, allocation of incentives, state administration of investment activities, and offshore investment. The new law provides for guarantees against nationalization or confiscation of assets and applies uniformly to all investors, foreign and domestic, replacing the previous investment regime which applied differently to domestic and foreign investors. The law establishes criteria for prohibited and conditional investment sectors. Conditional sectors are subject to regulation by separate, specific laws such as laws pertaining to banking, securities, and insurance sector investments. Decree 108/2006/ND-CP dated September 22, 2006, provides registration procedures for obtaining investment certificates. Certificates are obtained through registration for foreign investments of less than VND300 billion ($17.5 million) and those not in sectors categorized as conditional. Investments greater than VND300 billion and those in conditional sectors are required to undergo an investment evaluation that examines an investment's compliance with certain requirements as set out in Decree 108. Evaluation decisions are to be made within 30 days.

Land in Vietnam is subject to public ownership and state administration and as such neither foreigners nor Vietnamese nationals can own land. The Land Law of 2003 permits foreign invested enterprises to lease land for a period of 50 years (extendable) and to mortgage assets associated with land and the value of land use rights to secure loans from all credit institutions permitted to operate in Vietnam.

The BTA provides a broad range of benefits to U.S. investors in Vietnam that should significantly enhance the investment environment for U.S. firms. Vietnamese investment obligations under the BTA include: providing national and most-favored-nation treatment, except where explicit exceptions have been made; ensuring compensation for expropriation consistent with international standards; and guaranteeing access to third-party investor-state dispute settlement. In practice, however, recognition and enforcement of foreign arbitral awards in Vietnam currently remains unpredictable.

In addition, Vietnam is obligated under the BTA and WTO rules to discontinue application of any Trade-Related Investment Measures (TRIMS) or performance requirements inconsistent with the WTO TRIMS Agreement.

Vietnam is also obligated to refrain from imposing requirements to transfer technology as a condition for the establishment, expansion, acquisition, management, conduct or operation of an investment.

Although Vietnam retains restrictions on foreign shareholding in Vietnamese companies, it raised the ratio from 30 percent to 49 percent in September 2005.

According to Government Decree 45 from 1998, the royalty rate for technology transfer cannot exceed 5 percent of the "net selling price" of the products produced with the technology. Decree 45 also narrowly defines the "net sales price" to which the royalty is applied, resulting in very small royalties.

ELECTRONIC COMMERCE

To date, use of electronic commerce has not expanded significantly in Vietnam. Obstacles to its development include: the low number of Internet subscribers in-country, obtrusive firewalls, limited bandwidth and other problems with the Internet infrastructure, limitations of the financial system (including the low number of credit cards in use), and regulatory barriers. There have been recent developments, however, to facilitate the growth of electronic commerce in Vietnam, including legal acceptance of e-signatures and implementation of the electronic inter-bank transaction system. The number of online transactions has been increasing. A master plan for development of electronic commerce was issued under Decision 222-2005-QD-TTg of the Prime Minister dated September 15,

2005. The Prime Minister has also approved a national project on "Supporting enterprises in IT applications to serve integration and development in 2005- 2010 period."

An electronic transaction law was issued on November 19, 2005. The Law, which became effective as of March 1, 2006, facilitates electronic commerce by giving legal standing to electronic contracts and electronic signatures as well as allocating the responsibilities of parties with respect to the transmission and receipt of electronic data. For the law to be fully enforced, six decrees will be required, including: a Decree on E-Commerce; a Decree on E-Finance; a Decree on E-Signature; a Decree on E- Banking; a Decree on E- Government; and a Decree on Handling Administrative Violations in E-Transactions. The Decree on E-Commerce (Decree 57) issued in June 2006 has regulated in more detail the use of transaction documents in the form of data messages in trade.

The Vietnamese government continues to attempt to keep close control of all websites established in Vietnam. The Law on Information Technology came into effect on January 1, 2007. In accordance with this new law, those organizations and individuals who use Vietnam domain ".vn" for their websites will not have to inform the Ministry of Posts and Telematics (MPT), as had been required under the previous legislation. Those not using the ".vn" domain are required to inform MPT in the network environment about certain information related to the website owner and the website's name. Under this law, there will be three decrees to regulate the law: the Decree on IT Applications in the Activities of State Organizations; the Decree Regulating in Detail the Implementation of Some Articles of the IT Law on the IT Industry; and the Decree on Handling Administrative Violations in the IT Sector.

OTHER BARRIERS

Both foreign and domestic firms have identified corruption in Vietnam in all phases of business operations as an obstacle to their business activities. In 2005, Vietnam scored a 2.6 out of a possible high score of 10 points on Transparency International's Corruption Perception Index. In large part, lack of transparency, accountability and media freedom, widespread official corruption and inefficient bureaucracy remain serious problems. Top leaders in the Communist Party of Vietnam and the government of Vietnam publicly admit they must address these problems on an urgent basis. Competition among government agencies for control over business and investments has created confusing and overlapping jurisdictions and bureaucratic procedures and approvals, which in turn create opportunities for corruption. Low pay for government officials and inadequate systems for holding officials accountable for their actions compound the problems. Implementation of Vietnam's public administration reform program, developed with the assistance of the World Bank, combined with Vietnam's obligations under the transparency provisions of the BTA, are expected to improve the situation.

APPENDIX
US Data for Given Trade Partners in Rank Order of US Goods Exports
(Values in Millions of Dollars)

Country	Trade Balance 2005	Trade Balance 2006	Change 2005-06	Exports* 2005	Exports* 2006	Change 05/06 Value	Change 05/06 Percent	Imports** 2005	Imports** 2006	Change 05/06 Value	Change 05/06 Percent	FDI*** 2004	FDI*** 2005	% Change 2004-05	FDI Area
World	-767,477	-818,103	-50,626	905,978	1,037,320	131,342	14.50	1,673,455	1,855,423	181,968	10.87	2,051	2,070	0.92	Manuf., Finance, Wholesale
Canada	-78,486	-72,835	5,650	211,899	230,581	18,682	8.82	290,384	303,416	13,032	4.49	212,829	234,831	10.34	Manuf., Finance, Mining
Mexico	-49,744	-64,092	-14,348	120,365	134,167	13,802	11.47	170,109	198,259	28,150	16.55	63,502	71,423	12.47	Manuf., Banking, Finance
Japan	-82,519	-88,442	-5,923	55,484	59,649	4,165	7.51	138,004	148,091	10,087	7.31	68,071	75,491	10.90	Finance, Manuf., Wholesale
People's Republic of China	-201,545	-232,549	-31,004	41,925	55,224	13,299	31.72	243,470	287,773	44,303	18.20	15,006	16,877	12.47	Manuf., Wholesale, Mining
United Kingdom	-12,445	-8,044	4,401	38,588	45,393	6,805	17.64	51,033	53,437	2,405	4.71	312,156	323,796	3.73	Finance, Manuf., Banking
Germany	-50,567	-47,753	2,814	34,184	41,319	7,136	20.87	84,751	89,073	4,322	5.10	83,588	86,319	3.27	Manuf., Wholesale, Finance
Republic of Korea	-16,016	-13,374	2,642	27,765	32,455	4,690	16.89	43,781	45,830	2,048	4.68	16,752	18,759	11.98	Manuf., Banking, Finance
Netherlands	11,623	13,754	2,132	26,485	31,102	4,617	17.43	14,862	17,347	2,485	16.72	204,319	181,384	-11.23	Manuf., Finance, Wholesale
Singapore	5,532	6,906	1,374	20,642	24,683	4,041	19.58	15,110	17,777	2,667	17.65	57,075	48,051	-15.81	Manuf., Wholesale, Information
France	-11,432	-12,931	-1,500	22,410	24,217	1,807	8.06	33,842	37,149	3,307	9.77	61,200	60,860	-0.56	Manuf., Nonbank Holding Companies
Taiwan	-12,757	-15,191	-2,435	22,069	23,023	954	4.32	34,826	38,215	3,389	9.73		13,374		Finance, Manuf., Wholesale
Belgium	5,668	6,940	1,273	18,691	21,347	2,657	14.21	13,023	14,407	1,384	10.63	30,218	36,733	21.56	Manuf., Finance
Brazil	-9,064	-7,161	1,903	15,372	19,228	3,856	25.08	24,436	26,389	1,953	7.99	30,226	32,420	7.26	Manuf., Nonbank Holding Companies
Australia	8,486	9,574	1,088	15,828	17,782	1,954	12.34	7,342	8,208	865	11.79		113,385		Nonbank Holding Companies
Hong Kong	7,459	9,836	2,377	16,351	17,779	1,428	8.73	8,892	7,943	-949	-10.67	37,567	43,743	16.44	Finance, Wholesale, Manuf.,
Switzerland	-2,280	137	2,417	10,720	14,376	3,656	34.11	13,000	14,239	1,240	9.54	106,849	83,424	-21.92	Nonbank Holding Companies
Italy	-19,485	-20,086	-601	11,524	12,567	1,042	9.04	31,009	32,652	1,643	5.30	26,909	25,931	-3.63	Manuf., Information, Wholesale
Malaysia	-23,224	-23,982	-758	10,461	12,550	2,089	19.97	33,685	36,532	2,847	8.45	8,096	9,993	23.43	Manuf., Mining
United Arab Emirates	7,014	10,536	3,522	8,482	11,921	3,439	40.54	1,468	1,385	-83	-5.67	2,292	2,663	16.19	Mining
Israel	-7,093	-8,186	-1,092	9,737	10,964	1,227	12.60	16,830	19,150	2,319	13.78	6,854	7,920	15.55	Manuf., Information
India	-10,815	-11,735	-920	7,989	10,091	2,102	26.31	18,804	21,826	3,022	16.07	7,677	8,456	10.15	Information, 'Manuf., Banking
Venezuela	-27,557	-28,153	-596	6,421	9,012	2,591	40.35	33,978	37,165	3,187	9.38	8,034	9,610	19.62	Manuf., Mining
Ireland	-19,397	-20,125	-727	9,336	8,515	-820	-8.79	28,733	28,640	-93	-0.32	63,983	61,596	-3.73	Manuf., Information, Finance
Thailand	-12,633	-14,319	-1,686	7,257	8,152	896	12.35	19,890	22,472	2,582	12.98	7,582	8,556	12.85	Manuf., Finance
Saudi Arabia	-20,380	-23,881	-3,501	6,813	7,808	995	14.61	27,193	31,689	4,496	16.53	3,202	3,531	10.27	Nonbank Holding Companies
Philippines	-2,355	-2,078	277	6,895	7,617	722	10.47	9,250	9,695	445	4.81	6,009	6,649	10.65	Manuf., Finance
Spain	-1,701	-2,413	-712	6,914	7,405	492	7.11	8,615	9,818	1,203	13.97	44,808	43,280	-3.41	Nonbank Holding Companies
Chile	-1,442	-2,770	-1,329	5,223	6,790	1,567	30.01	6,664	9,560	2,896	43.45	9,672	9,811	1.44	Finance, Manuf., Banking
Colombia	-3,387	-2,557	830	5,462	6,708	1,246	22.81	8,849	9,265	416	4.70	2,811	3,393	20.70	Manuf., Mining, Wholesale
Turkey	-913	366	1,279	4,269	5,730	1,461	34.21	5,182	5,364	182	3.51	2,399	2,417	0.75	Banking, Wholesale, Manuf.,
Dominican Republic	115	819	704	4,719	5,348	629	13.33	4,604	4,529	-75	-1.62	1,076	758	-29.55	Manuf., Wholesale
Argentina	-462	801	1,262	4,122	4,773	651	15.79	4,584	3,972	-612	-13.34	11,455	13,163	14.91	Nonbank Holding Companies
Russia	-11,344	-15,066	-3,722	3,962	4,717	755	19.05	15,307	19,783	4,477	29.25	3,809	5,545	45.58	Mining
Costa Rica	183	288	105	3,599	4,132	534	14.83	3,415	3,844	429	12.56	1,085	1,277	17.70	Manuf.,
Sweden	-10,106	-9,714	391	3,715	4,126	411	11.06	13,821	13,841	20	0.14	32,941	33,398	1.39	Nonbank Holding Companies
Egypt	1,068	1,710	642	3,159	4,104	945	29.90	2,091	2,393	302	14.45	4,125	4,839	17.31	Mining
Honduras	-495	-25	471	3,254	3,693	439	13.51	3,749	3,718	-31	-0.84	314	402	28.03	Manuf.,
Guatemala	-302	418	720	2,835	3,518	683	24.09	3,137	3,100	-37	-1.18	400	379	-5.25	
Indonesia	-8,960	-10,326	-1,365	3,054	3,078	24	0.79	12,014	13,404	1,390	11.57		9,948		Mining, Nonbank Holding Companies
Austria	-3,510	-5,313	-1,803	2,593	2,987	393	15.16	6,103	8,300	2,197	35.99	6,688	8,762	31.01	Nonbank Holding Companies
New Zealand	-503	-188	315	2,652	2,929	277	10.43	3,155	3,117	-38	-1.22	4,668	4,809	3.02	Nonbank Holding Companies
Peru	-2,810	-2,949	-140	2,309	2,927	618	26.75	5,119	5,877	757	14.79	3,387	3,900	15.15	Mining
Ecuador	-3,795	-4,366	-571	1,964	2,728	764	38.90	5,759	7,094	1,335	23.18	720	760	5.56	Mining

* US Total Goods Exports (f.a.s.); ** US General Goods Imports (customs value); *** Stock of US Foreign Direct Investment Abro

APPENDIX

US Data for Given Trade Partners in Rank Order of US Goods Exports

(Values in Millions of Dollars)

Country	Trade Balance 2005	Trade Balance 2006	Change 2005-06	Exports* 2005	Exports* 2006	Change 05/06 Value	Change 05/06 Percent	Imports** 2005	Imports** 2006	Change 05/06 Value	Change 05/06 Percent	FDI*** 2004	FDI*** 2005	% Change 2004-05	FDI Area
Panama	1,835	2,328	493	2,162	2,707	545	25.19	327	378	51	15.66	5,538	5,868	5.96	Finance, Wholesale,
Finland	-2,088	-2,323	-236	2,254	2,648	394	17.49	4,342	4,972	630	14.51	2,089	2,493	19.34	Manuf., Wholesale
Norway	-4,834	-4,683	152	1,942	2,395	453	23.34	6,776	7,078	302	4.45	8,418	8,795	4.48	Mining, Manuf.,
Denmark	-3,226	-3,272	-46	1,918	2,268	350	18.24	5,144	5,540	396	7.70	5,499	5,695	3.56	Manuf.,
Nigeria	-22,618	-25,686	-3,067	1,621	2,231	610	37.60	24,239	27,916	3,677	15.17	1,999	874	-56.28	Mining, Wholesale
El Salvador	-134	301	435	1,854	2,157	302	16.30	1,989	1,856	-133	-6.68	842	928	10.21	
Kuwait	-2,360	-1,846	514	1,975	2,135	160	8.11	4,335	3,981	-354	-8.16				
Pakistan	-2,002	-1,683	318	1,252	1,990	738	58.96	3,253	3,673	420	12.91	945	1,114	17.88	
Poland	-681	-294	387	1,268	1,961	693	54.65	1,949	2,255	306	15.71	5,942	5,736	-3.47	Manuf., Banking
Greece	309	589	281	1,192	1,554	362	30.35	884	965	81	9.21	1,681	1,903	13.21	Wholesale
Angola	-7,555	-10,169	-2,614	929	1,550	621	66.86	8,484	11,719	3,235	38.13	1,080	1,415	31.02	
Portugal	-1,197	-1,570	-374	1,132	1,471	339	29.93	2,329	3,041	712	30.59	2,657	2,712	2.07	Finance,Information
Qatar	539	1,069	530	987	1,331	344	34.89	448	262	-186	-41.55	4,389	5,385	22.69	
Vietnam	-5,438	-7,466	-2,028	1,193	1,100	-93	-7.79	6,631	8,566	1,935	29.18	242	291	20.25	
Paraguay	844	852	8	896	911	15	1.67	52	58	7	13.01				
Morocco	79	354	275	525	876	351	66.76	446	521	75	16.93	293	285	-2.73	
Oman	40	-55	-95	595	854	259	43.53	555	909	354	63.71	438	615	40.41	
Ukraine	-565	-883	-318	533	756	223	41.88	1,098	1,639	541	49.31	256	356	39.06	
Nicaragua	-555	-771	-215	625	755	130	20.74	1,181	1,526	345	29.23	215	245	13.95	
Kazakhstan	-563	-315	248	538	646	108	20.01	1,101	961	-141	-12.77	4,746	3,905	-17.72	
Luxembourg	394	46	-348	782	580	-203	-25.89	389	534	145	37.39	81,129	61,615	-24.05	Nonbank Holding Companies
Romania	-599	-569	30	609	550	-59	-9.65	1,208	1,119	-89	-7.35	583	741	27.10	
Kenya	284	172	-112	632	526	-106	-16.83	348	354	6	1.64	86	89	3.49	
Bahrain	-81	-142	-61	351	491	140	39.90	432	632	201	46.53	180	194	7.78	
Bulgaria	-186	-166	21	268	293	25	9.34	454	459	4	0.97	171	87	-49.12	
Ghana	179	98	-81	337	290	-48	-14.13	158	192	34	21.29	238	230	-3.36	
Sri Lanka	-1,885	-1,908	-23	198	237	39	19.74	2,083	2,145	62	2.98	37	40	8.11	
Bolivia	-74	-147	-73	219	215	-4	-1.89	293	362	69	23.57	224	177	-20.98	
Cote d'Ivoire	-1,074	-554	520	124	148	23	18.73	1,198	702	-496	-41.44	251	296	17.93	
Ethiopia	448	56	-392	510	138	-373	-73.03	62	81	19	31.26				
Cameroon	-41	-154	-113	117	120	3	2.35	158	274	116	73.18	265	279	5.28	
Cambodia	-1,697	-2,114	-417	70	74	5	6.96	1,767	2,189	422	23.87	1	1	0.00	
Uzbekistan	-22	-97	-76	74	54	-20	-26.88	96	151	56	58.39	107	114		
Laos	6	-2	-7	10	7	-3	-29.05	4	9	5	108.76				
European Union - 25	-122,338	-116,596	5,743	186,437	213,958	27,520	14.76	308,776	330,553	21,778	7.05	948,978	972,994	2.53	Nonbank Holding Companies
SACU	-2,694	-3,826	-1,132	4,102	4,632	529	12.90	6,796	8,457	1,661	24.45	3,510	3,683	4.93	

* US Total Goods Exports (f.a.s.); ** US General Goods Imports (customs value); *** Stock of US Foreign Direct Investment Abro