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APPENDIX: U.S. Data for Given Trade Partners in Rank Order of U.S. Exports

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
DSB	Dispute Settlement Body
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
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
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 2004 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the nineteenth 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: 53 nations, the European Union, Taiwan, Hong Kong, and two regional bodies. 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. In addition, certain issues may fall outside the scope for this particular edition in the series, which primarily focuses on 2003. For example, trade restrictions on beef and poultry resulting from one case of bovine spongiform encephalopathy in an imported cow and limited outbreaks of avian influenza occurred at the end of 2003 and the beginning of 2004. These are top priorities, and the U.S. Government is intensively focused on working with its trading partners to resume U.S. exports as quickly as possible. Key export markets affected by these restrictions include Japan, Korea and Mexico.

In prior reports, most non-market economies also were excluded, since the trade barriers in those countries were qualitatively different from those found in other economies. However, as the economies of the republics of the former Soviet Union and most economies of the countries of Central Europe evolve away from central planning toward a market orientation, some of them have changed sufficiently to warrant an examination of their trade regimes. Where such examination has revealed trade barriers, those barriers have been included in this report. Based on an assessment of the evolving nature of U.S. trade and investment relationships in the various regions of the world, this year’s report adds four countries (Angola, Bolivia, Cote d’Ivoire, Morocco, and Sri Lanka) while Ethiopia, Tanzania, and Zimbabwe do not appear in this year’s 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 2003 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 2003 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. However, it must be understood that these estimates are only approximations. 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 and of questionable reliability. 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 31, 2004

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 takes many forms, and can affect trade in many different ways. In many countries, it affects customs practices and decisions on the award 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.

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 foreign contracts. This is particularly true in large infrastructure projects. Since the United States enacted the Foreign Corrupt Practices Act (FCPA) in 1977, U.S. companies have been prohibited from bribing foreign public officials.

The United States Government has been well aware of the discrepancy between U.S. law and that of its competitors, and has taken a leading role in addressing bribery and corruption in international business transactions with its trading partners at the Organization for Economic Cooperation and Development (OECD). With the strong urging of the United States, at the 1996 OECD Ministerial meeting, Ministers committed to take steps to eliminate the tax deductibility in their countries of bribes to foreign public officials, to criminalize bribery, and to examine methods to accomplish those objectives. In November 1997, negotiators from thirty-four countries (the twenty-nine OECD member states and five other nations (Argentina, Brazil, Bulgaria, Chile and the Slovak Republic)) adopted the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions which criminalized bribery. In 2001, Slovenia, another non-member, became the thirty-fifth signatory. The Convention was signed by representatives of thirty-three participating countries on December 17, 1997 in Paris. The Convention entered into force on February 15, 1999, for twelve of the 34 signatories that had deposited instruments of ratification with the OECD. All thirty-five signatory countries have deposited instruments of ratification with the OECD and thirty-four signatories have adopted legislation implementing the Convention.

In March 1996, countries in the Western Hemisphere concluded negotiation of the Inter-American Convention Against Corruption. This Convention, a direct result of the Summit of the Americas Plan of Action, requires that parties criminalize bribery throughout the region, and describes criminalization using language modeled on the FCPA. The Convention entered into force in March 1997. The United States signed the Convention on June 2, 1996, deposited its instrument of ratification with the OAS on September 29, 2000, and is now a Party to the Convention. Of its twenty-six signatories, the United States was the twentieth to deposit its instrument of ratification. Meanwhile, the Organization of American States is working on a set of model laws that ratifying countries can use to implement the Convention. In addition, the OAS Working Group on Probity and Public Ethics is considering mechanisms to monitor implementation of the Convention.

The United States is an active participant in the Southeastern Europe Stability Pact. Countries in the region have agreed to a Compact and Plan of Action in which they commit themselves to take specific anti-corruption actions, including improving transparency in government procurement.

The United States continues to advance an agenda that includes work in related areas that will serve to diminish opportunities for bribery and corruption to flourish. Because corruption in trade transactions often has its genesis in the absence of a rules-based environment when goods cross borders, the United States has been a leader in pressing for concrete commitments on customs operations in recent FTA negotiations and in advancing work in the WTO toward undertaking negotiations in the area of Trade Facilitation. Similarly, recently-concluded FTAs have also included elements that operate to bring a strong measure of transparency to the government procurement regimes of our FTA partners.

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. trade deficit with Angola was $3.8 billion in 2003, an increase of $1.0 billion from $2.7 billion in 2002. U.S. goods exports in 2003 were $492 million, up 32 percent from the previous year. Corresponding U.S. imports from Angola were $4.3 billion, up 37 percent from 2002. Angola is the 67th largest export market for U.S. goods. The flow of U.S. foreign direct investment (FDI) in Angola in 2002 was $822 million, up from $401 million in 2001. U.S. FDI in Angola is primarily concentrated in the petroleum sector.

IMPORT POLICIES

Tariff and Non-Tariff Barriers

Angola is a member of the WTO and the Southern African Development Community (SADC). In March 2003, Angola agreed to adhere to the SADC Free Trade protocol that seeks to facilitate trade by harmonizing and reducing tariffs and by establishing regional policies on trade, customs, and methodology. The government is reviewing the need for tariff and non-tariff barrier reduction; however, it cites a lack of resources and personnel as impediments to this effort. Due to the government's wish to re-launch and protect its nascent industrial sector, there is political pressure to maintain tariffs.

Angola currently uses the Harmonized System Customs Code. Tariffs fall into one of six categories ranging from 2 percent to 35 percent depending on the good, with most products charged a 10 percent tariff. Additional fees include clearing costs (2 percent), VAT (2 percent to 30 percent depending on the good), revenue stamp (0.5 percent), port charges ($500/20 foot container or $850/40 foot container), and port storage fees (free for first 15 days but rarely do goods clear port within the grace period).

Import Licensing

The importation of goods into Angola requires an import license issued by the Ministry of Trade. This license is renewable every year and covers any item the importer may choose to import.

Customs Barriers

Customs regulations are opaque and often confusing after decades of incremental changes and uncoordinated updates. A new customs law is being drafted, but there is no date scheduled for its implementation, nor is public information about it available.

Required customs paperwork includes the "Documento Unico" (single document), proof of ownership of the good, bill of lading, commercial invoice, packaging list, and specific shipment documents verifying the right to import/export the product. The "Documento Unico," introduced by Crown Agents in 2002, has reduced the number of forms that Angolan customs requires and has decreased the amount of time paperwork spends clearing customs from an average of 25 days to 5 days. However, assistance provided by customs facilitators or "despachantes" can vary greatly and have a substantial impact on the time it takes for goods to clear customs. Angola has not yet notified its implementing legislation in the WTO Committee on Customs Valuation.

Pre-shipment inspection (PSI) by BIVAC International is required for import of goods valued at more than $5,000. Imports without proper PSI documentation may be charged up to 100 percent of the value of the goods. However, art/antiques, precious metals/stones, cinematographic films, newspapers and periodic publications, and other items defined by law are generally exempted from PSI review. U.S. exporters have complained of over-valuation of goods. In September 2003, Angola announced that it would be abandoning this system in favor of local classification and valuation. No date has been given for implementation of this new process.

Certain goods require specific authorization from various government ministries, which can delay the customs process. Goods that require ministerial authorization include: pharmaceutical substances and saccharine and derived products (Ministry of Health); radio, transmitters, receivers, and other devices (Ministry of Post and Telecommunications); weapons, ammunitions, fireworks, and explosives (Ministry of Interior); plants, roots, bulbs, germs, buds, fruits, seeds, and crates/other packages containing these products (Ministry of Agriculture); fiscal or postal stamps; poisonous and toxic substances and drugs (Ministries of Agriculture, Industry, and Health); and samples or other goods imported to be given away (Customs).

Companies operating in the oil and mining industries are exempt from duty payments, with a letter from the Minister of Petroleum or Mines, when importing equipment to be used exclusively for oil and mine exploration.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Angola does not enforce any labeling law at this time. In early 2003, a law was proposed to require labeling in Portuguese but the law has not been enacted. At this time, it is only recommended, not required, that Portuguese be included on the labeling. In practice, imports are admitted into the country with little reference to health, testing, or weight standards.

GOVERNMENT PROCUREMENT

Angola is not a signatory to the WTO Agreement on Government Procurement. The Government of Angola solicits bids for supplies and services in local and international publications 15 to 90 days before the bids are due. Bid documents are normally obtained from a specific government ministry, department, or agency for a non-refundable fee. Completed bids, accompanied by a specified security deposit, are usually submitted directly to the ministry in question. The bidding process often does not meet international standards of objectivity and transparency. In addition, 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.

Some U.S. firms that have won bids to sell goods or services to the government or parastatal companies have experienced delays ranging from months to years in receiving payment or have received reduced payments.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

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

Angola is a member of the World Intellectual Property Organization and uses its international classification system to identify and codify requests for patents and for the registration of trademarks. Each petition for a patent that is accepted is subject to a fee that varies by type of patent requested. Angola recently adopted the Paris Convention for the Protection of Industrial Property. No suits involving U.S. intellectual property are known to have been filed in Angola.

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, with Portuguese banks leading the expansion. However, the financial sector remains weak due to unclear regulations, years of non-transparent spending, a large number of non-performing loans, and the inability to collect short and medium-term debt. Limited transparency in the financial sector impedes the performance of due diligence to comply with U.S. financial laws and poses a significant challenge for U.S. financial institutions doing business in Angola.

Foreign investors can set up fully-owned subsidiaries in many sectors, and frequently are strongly encouraged, though not formally required, to take on local partners. Decrees 5/95 and 6/01 limit expatriate staffing of local companies set up in Angola by national or foreign investors to no more than 30 percent of the workforce.

INVESTMENT BARRIERS

Angola is officially open to foreign investment; however, its regulatory and legal infrastructure is inadequate to facilitate direct investment and to provide protection. Although it recently created a new agency, the National Private Investment Agency (ANIP), to assist investors and to facilitate new investment, it does not yet have the resources to fulfill its mandate and suffers from a lack of trained staff. The Angolan government recently replaced the 1994 Foreign Investment Law with the Law on Private Investment (Law 11/03). Law 11/03 lays out the general parameters, benefits, and obligations for foreign investment in Angola, and recognizes that investment plays a vital role in the country's economic development. Nevertheless, the new investment law is vague on profit repatriation and does not provide strong legal safeguards to protect foreign investors. The law also does not allow for international arbitration and requires that any investment dispute be handled in Angolan courts. It is not certain when the government will produce implementing regulations that may clarify the provisions of profit repatriation or provide investors with a more defined set of investment terms.

The old Foreign Investment Law expressly prohibited foreign investment in the areas of defense, internal public order, and state security; banking activities with respect to the function of the Central Bank and the Mint; administration of ports and airports; and other areas considered by law to be the State's exclusive responsibility. Although Law 11/03 does not explicitly restate these prohibitions, these areas are assumed to be off-limits to investors. Investments will benefit from a more standardized set of incentives approved under the Law on Tax and Customs Incentives for Private Investment approved by the National Assembly in July 2003. However, it is not yet clear whether these incentives will be applied automatically or if they will be negotiated between ANIP and the investors.

Although the new investment law is part of an overall effort by the Angolan government to create a more investor-friendly environment, the process by which this and similar laws are developed is often shrouded in secrecy and generally not open to public review until already enacted into law. Many laws governing the economy have vague provisions that permit wide interpretation and application by the government across sectors. Investments in the petroleum, diamond, and financial sectors, however, continue to be governed by specific legislation.

In addition, obtaining the proper permits and business license to operate in Angola is time-consuming and adds to the cost of investing. A World Bank study published in October 2003 identified Angola as one of the five most time-consuming countries in the world to establish a business, taking 146 days compared to a regional average of 71 days. In August 2003, the government established a one-stop shop, or "Guiche

Unico", to decrease the bureaucracy and time it takes to register a company. As of the end of 2003, the "Guiche Unico" was not yet fully functioning due to a lack of funding and qualified staff.

ELECTRONIC COMMERCE

Due to the 27-year civil war, Angola has been late to join the computer and Internet development process, leaving access to computers and the Internet very low. Access to computers and the Internet in workplaces is still a rarity. Only a small number of Internet cafes exist in Luanda and a few major provincial cities, but new Internet outlets are opening on a gradually increasing basis. Five Angolan companies currently provide dial-up Internet service and several Angolan companies are now licensed to sell computers.

OTHER BARRIERS

Corruption

Petty corruption is a prevalent problem due to extremely low civil service salaries, dependence on a centralized bureaucracy and antiquated regulations dating back to the Portuguese colonial era. Procedures to register a company are complicated and, if rules are followed to the letter and no gratuities or facilitation fees paid, can take two years. This long time frame sometimes leads investors seeking quicker service and approval to pay gratuities and other processing fees. Angola's public and private companies have not traditionally used transparent accounting systems consistent with international norms. Few companies in Angola employ international audit standards. Effective in 2002, the government is requiring "large" companies to undergo audits, though it lacks the capacity to enforce this new legal requirement.

Investors have at times experienced harassment, political interference in their business dealings, 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, which is often a passive conduit. As a result, some investors have experienced significant delays in payments from government contracts and delays in obtaining the proper permits or approval of projects.

Recovering from War

Angola's destroyed or badly damaged infrastructure from its 27-year civil war substantially increases the cost of doing business. The country is only now starting to rebuild its communications, energy, transportation, and road infrastructure. Domestic and international communications, while improving, are difficult and costly. There are frequent interruptions in the power and water supplies. As a result, investors face additional costs to support their businesses, such as paying for security, back-up electricity generators, and water tanks.

THE ARAB LEAGUE

TRADE SUMMARY

The Arab League boycott of the state of Israel is an impediment to U.S. trade and investment in the Middle East and North Africa. 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. Embassies and visiting officials raise the boycott with country officials, noting the persistence of prohibited boycott requests and the impact on both U.S. firms and on the countries' ability to expand trade and investment.

The primary aspect of the boycott prohibits the importation of Israeli-origin goods and services into boycotting countries. The secondary and tertiary aspects of the boycott discriminate against U.S. and other foreign firms that do business with both Israel and boycotting countries and directly affect U.S. exports to the region. The secondary boycott prohibits any entity in Arab League members from engaging in business with U.S. or other foreign firms that contribute to Israel's military or economic development. The tertiary boycott prohibits business dealings with U.S. and other firms that do business with blacklisted companies. Such firms are placed on a blacklist maintained by the Damascus-based Central Boycott Office (CBO), a specialized bureau of the Arab League.

While the legal structure of the boycott in the Arab League remains unchanged, its enforcement varies 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 national discretion on adherence to the boycott, and a number of states have taken steps to dismantle their adherence to some aspects of it. In September 1994, the GCC announced that it would end its adherence to the secondary and tertiary aspects of the Arab League boycott of Israel, eliminating a significant trade barrier to U.S. firms. In March 1996, the GCC reiterated its commitment to end the secondary and tertiary boycott, and recognized the total dismantling of the Arab boycott of Israel as a necessary step in advancing the peace process and promoting 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, requiring U.S. companies to notify the U.S. Department of Commerce's Office of Antiboycott Compliance when they receive such documentation.

Outdated tender documents in Bahrain occasionally refer to the secondary and tertiary aspects of the Arab League Boycott, but such instances are usually quickly remedied by U.S. firms. Israeli products are reported to occasionally be found in the Bahraini market. Kuwait no longer applies a secondary 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. Kuwait still applies a primary boycott of goods and services produced in Israel.

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 trade missions in their respective countries. Omani customs formerly processed Israeli-origin shipments entering with Israeli customs documentation. However, Omani firms have recently reportedly avoided marketing any identifiably Israeli consumer products. Israeli immigration stamps in third country passports are not an issue. 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 practice the Arab Boycott, but some government documents still include outdated boycott language.

THE ARAB LEAGUE

Saudi Arabia enforces only the primary level of the Arab League boycott on Israeli products. If a foreign company is found to have imported an Israeli-made product, or a product with some Israeli content, the Saudis will ban that company from exporting to the Kingdom. Usual practice has been that the Saudi government will remove its ban after the company agrees to stop shipping Israeli products. In 2003, according to press reports, Saudi Arabia banned three American companies for violating the primary boycott.

Recent data indicate that the number of prohibited boycott requests in the UAE continues to decline. It is believed that these cases stem from bureaucratic and administrative inefficiencies rather than from a desire to circumvent UAE government/GCC policy to cease secondary/tertiary boycott application. The United States continues to work closely with the UAE government to eliminate prohibited boycott requests.

ARGENTINA

TRADE SUMMARY

The U.S. trade deficit with Argentina was $734 million in 2003, a decrease of $868 million from $1.6 billion in 2002. U.S. goods exports in 2003 were $2.4 billion, up 546 percent from the previous year. Corresponding U.S. imports from Argentina were $3.2 billion, down 0.6 percent. Argentina is currently the 39th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Argentina were $1.7 billion in 2002 (latest data available) and U.S. imports were $593 million. The stock of U.S. foreign direct investment (FDI) in Argentina in 2002 was $11.3 billion, down from $15.8 billion in 2001. U.S. FDI in Argentina is concentrated largely in the manufacturing, finance, and utilities sectors.

IMPORT POLICIES

Argentina made significant progress in reducing tariffs and non-tariff barriers during the 1990’s. Starting in late 2000 the government implemented and overturned trade policies frequently enough to foster uncertainty and confusion in the exporting and importing community. In January 2002, then-President Eduardo Duhalde abandoned Argentina's quasi-currency board system, known as "convertibility," which had pegged the peso to the dollar at a one-to-one rate since 1991 and replaced it with a market-based (floating) exchange rate system. This resulted in a 70 percent devaluation of the peso. The collapse of the decade-long convertibility regime triggered a 56 percent drop in imports and a 3 percent decline in exports due to uncertainty and lack of financing. The peso has appreciated 22 percent in 2003.

The government implemented an increasing variety of capital and exchange controls throughout 2002. These measures inhibited access to foreign exchange to pay for imports. 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. However, importers must show that imported products entered Argentina within 180 days of payment, though there is an exception for capital goods worth more than $50,000 for which the time frame increases to 270 days. There are no restrictions on payments for services imports (such as freight, insurance, technical assessment, professional fees, etc.). Purchases of foreign currency to settle debt services owed to foreign creditors are permitted within 15 days of each scheduled payment.

Imports of used clothing are prohibited except for donations to government or religious organizations. A tariff of 21.5 percent is imposed on textile and apparel products entering the Argentine market. In addition to this tariff, Argentina maintains a complex array of variable and specific duties that further inhibit market access for textile and apparel products. Importers should expect to pay an aggregate of approximately 35 percent in import tariffs. Argentina also prohibits the importation and sale of used tires, and used or refurbished medical equipment such as imaging equipment.

Tariffs

Tariffs average approximately 11 percent. A statistical fee of 0.5 percent is added to some products. A limited number of imports are banned altogether, such as re-manufactured auto parts. Tariffs on toys were significantly increased in January 1999, and again in November 2001, particularly those originating in countries that are not members of the World Trade Organization (WTO).

On January 1, 1995, MERCOSUR became a customs union by establishing a common external tariff (CET) covering 85 percent of traded goods. MERCOSUR will gradually phase in coverage of the CET through 2006, when all products should be included in the customs union. In 1999, most trade between Brazil and Argentina became duty-free under the intra-MERCOSUR duty phase-out schedule. However, several sensitive sectors, such as sugar, autos, and telecommunications equipment are included on either Brazil's or Argentina's exception list and are still subject to customs duties.

Customs Procedures

Argentina abides by the WTO Agreement on Customs Valuation. Argentina has import monitoring mechanisms, similar to an import licensing regime, which affect roughly one-fifth of its imports, principally textiles, toys, and footwear. U.S. firms also complain of cumbersome certificate of origin requirements, particularly in the electronics and textile sectors.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Agricultural Products

In 2002, Argentina banned the import of all chicken products from the United States. This decision was based on an outbreak of Newcastle Disease in the states of California, Nevada, Arizona, and Texas. Although there was no import of chicken meat from the United States in 2002, this ban affected the import of chicken cartilage, worth $5 million annually. The United States requested recognition as being free of Newcastle Disease in December 2003 and is waiting for a response from Argentina.

Argentina has continued to delay issuing the final authorization for imports of citrus fruit, pears, and cherries from the U.S. In addition, import restrictions remain in place for swine genetics. Argentina also prohibits the import of seed potatoes, claiming phytosanitary concerns.

In October 2002, Argentina's Phytosanitary and Food Safety Agency (SENASA) issued Resolution 816/02 that could require audits of the animal and plant facilities of countries exporting animal and plant products to Argentina. In 2003, SENASA agreed to postpone implementation of this regulation for 180 days. SENASA states that there will be no change in the trade after the 180 days.

Exports of U.S. pet food and of U.S. semen and embryos to Argentina are restricted based on Resolution 117, which concerns risks of BSE.

The Argentine National Food Institute (equivalent of the U.S. Food and Drug Administration) began requiring imports produced with U.S. milk to be accompanied by a special certificate after December 2003.

Non-agricultural Products

Argentina's Standards Institute (IRAM) bases some of its voluntary standards on international standards. These voluntary standards are in some cases compatible with U.S. or European standards. In general, Argentine buyers usually accept products with U.S. product certificates or which meet U.S. standards. In early 1998, Argentina began mandating compliance with new safety certifications on a wide range of products. Argentina has issued regulations that affect U.S. exports of low voltage electrical products (household appliances, electronics products and electrical materials), toys, covers for dangerous products, gas products, construction steel, personal protective equipment and elevators. The procedures for compliance often appear inconsistent, redundant and non-transparent. Regulations that require product re-testing are particularly cumbersome and costly and are especially problematic for U.S. small- and medium-sized 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 some cases, Argentina has failed to fulfill the notification and comment requirements of the WTO Agreement on Technical Barriers to Trade (TBT) in its implementation of these measures.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Patents

Argentina's lack of adequate and effective patent protection has been a long-standing irritant in the bilateral trade relationship. Argentina is listed on the 2003 Special 301 “Priority Watch List.”

The National Intellectual Property Institute (INPI) started to approve pharmaceutical patents in October 2000. INPI has been extremely slow since that time in issuing pharmaceutical patents to products with commercial value. Bilateral trade negotiations between the United States and Argentina did not resolve the issue of protection of confidential and proprietary data developed by pharmaceutical companies and submitted to INPI. In April 2002, negotiations between the governments of the United States and Argentina clarified aspects of the latter's intellectual property system, such as provisions related to the patentability of microorganisms and its import restriction regime. In December 2003, Argentina’s Congress passed an amendment to its patent law to provide protection for products obtained from a process patent and to ensure that preliminary injunctions are available in intellectual property court proceedings, among other steps. The United States has explicitly reserved its right to seek resolution on the outstanding issues that remain, including data protection, under the WTO dispute settlement mechanism.

Copyrights

Argentina's copyright laws provide generally good protection. Argentina adopted legislation in 1999 to ratify the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty, though some implementation issues remain. An agreement between the Argentine government and the software industry to legalize unlicensed software in use in government offices was never finalized.

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 further contribute to the regional circulation of pirated goods.

SERVICES BARRIERS

Argentina enacted broad liberalization in the services sector as part of its economic reform program in the 1990s, though some barriers continue to exist. For example, the Argentine government obliges cable/pay television operators to register their programming with a government body. In addition, restrictions regarding the showing, printing and dubbing of films have inhibited U.S. exports. A further barrier is the practice of charging ad valorem customs duties based on the value of authors' rights, rather than solely on the value of the physical materials being imported, which is the WTO standard.

Argentina has committed to allow foreign suppliers of non-insurance financial services to establish all forms of commercial presence. Argentina has also committed to provide substantially full market access and national treatment to foreign suppliers of non-insurance financial services. The only significant remaining issue involves lending limits for foreign bank branches that are based on local paid-in capital, not parent bank capital. This effectively removes the rationale for establishing in branch form. This issue has become largely moot due to the ongoing banking crisis that began in December 2001 with the freezing of bank accounts and the subsequent devaluation and asymmetric “pesification” from dollars into pesos of deposits, loans and other assets.

Most professionals must enroll in local associations or must maintain a local address for a certain period of time prior to establishment of operations. There are nationality restrictions for some internal shipping, private security companies and education providers.

Provinces can impose their own barriers on the provision of services.

INVESTMENT BARRIERS

Pursuant to WTO rules, Argentina notified the WTO in 1995 that it maintained measures inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMS). These measures deal with local content and trade balancing in the automotive industry. In November 2001, following the conclusion of the five-year TRIMS Agreement transition period, the WTO granted Argentina and several other countries additional time to bring their policies fully into compliance with the TRIMS Agreement. The extension granted to Argentina and the others expired at the end of 2003, and the United States is now seeking to confirm whether the measures in question have been eliminated.

Under the bilateral investment treaty (BIT) between the United States and Argentina, which entered into force in 1994, investors of either country may seek binding international arbitration of claims that a host government violated certain obligations of the treaty. Several U.S. investors have initiated dispute settlement under the BIT in response to measures imposed by Argentina during the financial crisis that began in 2001.

ELECTRONIC COMMERCE

Argentina has taken steps to lower the cost of Internet usage and has shown interest in U.S. electronic commerce initiatives in the FTAA and the WTO. Despite supporting electronic commerce, Argentina does not participate in the WTO Information Technology Agreement (ITA). In addition, Argentina does not allow the use of electronically produced airway bills, slowing the customs processing of critical just-in-time shipments and interfering with Argentina's ability to conduct electronic commerce transactions. Recent advances legalizing digital signatures will enhance the chances to advance in the airway bill issue.

AUSTRALIA

TRADE SUMMARY

The U.S. trade surplus with Australia was $6.7 billion in 2003, an increase of $84 million from $6.6 billion in 2002. U.S. goods exports in 2003 were $13.1 billion, up 0.14 percent from the previous year. Corresponding U.S. imports from Australia were $6.4 billion. Australia is 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 $5.2 billion in 2002, and U.S. imports were $2.9 billion. Sales of services in Australia by majority U.S.-owned affiliates were $14.6 billion in 2001 (latest data available), while sales of services in the U.S. by majority Australia-owned firms were $10.7 billion.

The stock of U.S. foreign direct investment (FDI) in Australia in 2002 was $36.3 billion, up from $32.6 billion in 2001. U.S. FDI in Australia is concentrated largely in manufacturing, mining, and finance.

FREE TRADE AGREEMENT NEGOTIATIONS

The U.S. and Australian Governments launched negotiations for a Free Trade Agreement (FTA) in March 2003 and concluded on February 8, 2004. If Australia and the United States enact the legislation necessary to implement the agreement, this FTA would address many of the issues raised in this report. For example, if the FTA is enacted, more than 99 percent of U.S. exports of manufactured goods to Australia will become duty-free immediately upon entry into force and all U.S. agricultural exports to Australia, totaling more than $400 million, would receive immediate duty-free access. The FTA also would address many of the concerns detailed below relating to services, investment, IPR, government procurement, and other issues.

IMPORT POLICIES

Tariffs

Australia has been reducing its tariffs gradually since the 1970s, and its program of gradual tariff reduction has brought 86 percent of tariffs to between zero and five percent, with more than 99 percent of tariff rates applied on an *ad valorem* basis. More than 96 percent of tariff lines are bound in the World Trade Organization (WTO). Australia’s simple average bound tariff rate is 10.5 percent and its average applied most favored nation (MFN) tariff is 4.3 percent. The average applied MFN rate for industrial products is 4.7 percent, with bound rates generally ranging from zero to 55 percent. The average applied MFN tariff for agricultural products is less than 1 percent, with bound rates generally ranging from zero to 29 percent. Tariff rate quotas are in place for five cheese items and non-manufactured tobacco.

Australia retains two tariff peaks, in the textiles, clothing, and footwear (TCF) (maximum 25 percent) and passenger motor vehicle (maximum 15 percent) sectors. Applied tariffs in both of these sectors are scheduled to be further reduced in 2005. If enacted, the FTA would eliminate tariff barriers over 0 to 4 years in the automotive sector and over 0 to 10 years in the textiles sector. U.S. industry estimates the removal of barriers affecting trade in textiles would lead to increases in U.S. exports to Australia of $100 to $500 million in textiles and by $100 to $500 million in autos and components. The removal of barriers affecting trade in textiles would lead to increases in U.S. exports to Australia of $100 million to $500 million, according to some estimates. U.S. industry estimates that the removal of barriers to trade in autos and components would increase U.S. exports by $100 million to $500 million. Australian tariffs in both of these sectors will be phased out under the FTA with the United States.

Australia assesses a duty of 5 percent *ad valorem* on imports of distilled spirits, with the exception of rum, which is bound at 13 percent. Australia is the third largest market for U.S. exports of distilled spirits, with sales of $55.9 million in 2002, primarily Bourbon and other whiskies. If enacted, these tariffs would be eliminated immediately.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Sanitary and Phytosanitary Measures

The Australian Government maintains an extremely stringent regime for the application of sanitary and phytosanitary (SPS) measures, resulting in restrictions on and prohibitions on imports of many agricultural products. Key U.S. products currently prohibited by Australia's SPS regime include Florida citrus, stone fruit, poultry (fresh, cooked, and frozen), fresh pork, and apples. The U.S. Government continues to underscore the need for Australia to comply with its obligations under the WTO Agreement of SPS Measures by conducting timely, science-based import risk assessments and not applying measures that are more trade restrictive than necessary. The U.S. and Australian Governments have held extensive and detailed consultations on these issues over the past two years, and these discussions have generated progress on specific issues. If enacted, the FTA would create a new mechanism for scientific cooperation between U.S. and Australian SPS authorities to resolve specific bilateral, animal, and plant health matters. This new mechanism is intended to facilitate engagement at the earliest appropriate point in each country’s regulatory process to cooperate in the development of science-based measures that affect trade between the two countries.

Biotechnology

Commercial Release

The Gene Technology Act 2000 is the Commonwealth Government component of a national regulatory scheme for gene technology and products produced through modern agricultural biotechnology. The Act regulates the use of all agricultural biotechnology products in Australia and requires that the Office of the Gene Technology Regulator license all biotechnology dealings involving intentional release of biotechnology products into the environment. Issues related to the marketability and trade implications of the commercialization of biotechnology crops do not fall within the scope of the evaluations provided in the Act. The Commonwealth, State, and Territory governments consider these matters both individually and through forums. Most States and Territories restrict through planting moratoria or bans plantings of food-related biotechnology products licensed by the Commonwealth Office of the Gene Technology Regulator. These actions are not science-based but have been based on marketing and trade concerns. Such actions have held up the commercialization of biotechnology canola.

Biotechnology Food Approvals

Imported foods using biotechnology can be offered for sale and consumption in Australia only after being assessed and approved by Food Standards Australia New Zealand (FSANZ) and being listed in the Food Standards Code. As of November 2003, ANZFA had received 26 applications for safety assessments of biotechnology foods. It approved 22; two applications were withdrawn; and two are pending.

Biotechnology Food Labeling

The joint Australia-New Zealand regulatory regime for food, which includes mandatory labeling requirements for certain foods produced using biotechnology, became effective in December 2001. Biotechnology labeling is required if a food in its final form contains detectable DNA or protein resulting from the application of biotechnology, with a few exceptions. Meeting these biotechnology food labeling regulations may be burdensome for manufacturers, packers, importers, and retailers, particularly U.S. agricultural exports, of which a large share consist of processed food.

GOVERNMENT PROCUREMENT

Australia is the only major industrialized country that is not a signatory to the plurilateral WTO Agreement on Government Procurement (GPA). As such, Australia is not bound by the GPA's rules on open and non-discriminatory policies in government procurement. At both the Commonwealth and State/Territory level, requirements for offsets and similar GPA-inconsistent arrangements are systemic. Domestic supplier price preferences are common at the State/Territory level. Under the Australia and New Zealand Government Procurement Agreement, New Zealand suppliers are afforded domestic supplier treatment. The Australian Government has participated in the WTO Working Group on Transparency in Government Procurement and negotiation of an Agreement on Transparency in Government Procurement. If enacted, the FTA would commit Australia to open its government procurement market to U.S. suppliers, giving U.S. suppliers an important advantage over other foreign competitors.

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 Geneva Phonogram Convention; the Rome Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations; and the Patent Cooperation Treaty. However, Australia has not yet fully enacted the legislation necessary to accede and become a party to the 1996 WIPO Copyright Treaty and Performances and Phonograms Treaty. The Australia-Singapore FTA calls for the Australian Government to ratify the WIPO treaties within four years (mid-2007).

Australia passed legislation in 2003 that permitted the parallel importation of computer software and electronic versions of books, periodicals, and sheet music. Australia continues to permit parallel importation of 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. An estimated 20 percent of the DVDs in Australia are illegal parallel imports.

Locally replicated DVD-Rs, videocassettes copied from 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. Counterfeit DVDs imported from Asia also are an emerging problem. U.S. industry has expressed concerns about the unauthorized sale and use of decrypting technology in DVD players. This enables playback of parallel imported Zone 1 DVDs from the United States. These Zone 1 DVDs are released in Australia three to six months prior to the local Australian video release and frequently coincide with the Australian theatrical release.

U.S. copyright holders remain concerned over past decisions by the Australian Competition and Consumer Commission (ACCC) that equate the holding of a copyright with "market power."

Australia does not yet have a system to provide protection for agricultural chemicals but is expected to implement one shortly. The Australian government also has considered relaxing restrictions on "springboarding," potentially allowing generic pharmaceutical manufacturers to begin trials, production, and export of pharmaceuticals that are still under patent in Australia.

Australia's Copyright Amendment (Digital Agenda) Act, which took effect in 2001, brought Australia closer to meeting the WIPO Copyright Treaty requirements. However, the Act is weak in its treatment of technological protection measures (TPMs) and Internet service provider (ISP) liability. Specifically, it permits the sale and use of TPM-defeating devices and fails to provide an effective “takedown” mechanism that encourages ISP cooperation in the event of web-based infringements. The WIPO Treaties require effective legal remedies against the circumvention of TPMs used by content owners to protect their property from theft and mutilation.

If enacted, the FTA would set high standards for protecting IPR, including copyrights, patents, trademarks, and trade secrets, and would provide enhanced means for enforcing those rights. For example, the FTA would provide broad protections for digital works and establish strong anti-circumvention provisions. It also would extend the term of copyright protection, consistent with emerging international trends. The FTA also would provide stronger protections for patents and trade secrets, including providing for the extension of patent terms to compensate for delays in granting the original patent and limiting the grounds for revoking a patent. It would enhance enforcement, including by establishing tough penalties for piracy and counterfeiting.

SERVICES BARRIERS

Telecommunications

U.S. industry remains concerned about the ability of the majority government-owned telecommunications firm Telstra, to abuse its monopoly power. This has included delays in making an acceptable public offer for access to its network, and the inflated pricing of its wholesale services such as leased lines and interconnection with its mobile network. The regulator has made significant progress in addressing some of these issues: approving a reference interconnection offer and instituting a review of mobile termination rates that is expected to introduce significant price reductions (termination rates in Australia are among the highest in Asia). Telstra has provided evidence that its leased line rates are now comparable with other competitive markets, and companies seeking to challenge these rates have the opportunity to do so under Australia’s rules.

The Australian government has submitted legislation to permit it to sell off all of its 51-percent share of Telstra; the legislation was rejected once, but is expected to be re-submitted. The Australian government has not, however, addressed the issue of foreign equity limits in Telstra, now limited to 35 percent. If enacted, the FTA would confirm the Australian government’s public commitment to the full privatization of Telstra.

Audiovisual Trade Barriers

The Australian Broadcasting Authority's (ABA) Content Standards require that 55 percent of all free-to-air television programming broadcast between 6:00 a.m. and midnight be of Australian origin (with sub-quotas and point systems applying to various content genres). 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 of their programming budget on new Australian drama programs. Australian radio industry quotas require that up to 25 percent of all music broadcast between 6:00 a.m. and midnight be "predominantly" Australian in origin/performance. If enacted, the FTA would improve market access for U.S. films and television programs over a variety of media, including cable, satellite, and the Internet.

AUSTRALIA

INVESTMENT BARRIERS

The Foreign Investment Review Board (FIRB) screens in advance potential foreign investments in Australia above a set value. Australia's foreign investment law provides discretion for the government to deny specific foreign investment on the grounds of a broad and undefined "national interest." Proposals are evaluated according to their consistency with existing government policy and law, where these are taken to define important aspects of national interest. Australia's commitments under the General Agreement on Trade in Services Agreement of the WTO are limited as a result of Australia's screening regime. If enacted, the FTA would exempt all new U.S. investments from screening. It also significantly would raise thresholds for acquisitions by U.S. investors of existing businesses, which would have exempted nearly 90 percent of U.S. investments from screening over the past three years.

OTHER BARRIERS

Commodity Boards and Agricultural Support

The export of almost all wheat, barley, rice, and sugar remains under the monopoly control of commodity boards. The privatization of the Australian Wheat Board, Ltd., (AWB) in July 1999 saw its export controls transferred to the Wheat Export Authority (WEA), with veto rights over containerized export requests retained by the AWB. After a review during 2000, the Australian Government extended the WEA's export monopoly until 2004.

In 2000, the Australian government launched an eight-year adjustment assistance package for the dairy industry. In 2002, it initiated a four-year, A$150 million sugar industry package. Both programs support regional adjustment, diversification and industry restructuring. Assistance includes interest rate subsidies and short-term income support.

Automotive and Textile, Clothing, and Footwear (TCF) Sector Support Programs

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. The TCF industry receives grants under the Australian government's Strategic Investment Program for research and development, restructuring, and investment to assist firms to restructure prior to legislated tariff cuts in 2005. In November 2003, the Australian government announced a tariff reduction schedule and a reduced and final assistance scheme for the period 2005 through 2015.

Pharmaceuticals

The U.S. pharmaceutical industry has raised concerns that the Australian government's policies regarding the pharmaceutical sector do not appropriately value innovation and diminish the contribution of Australia to research and development of innovative pharmaceutical products. The lack of transparency of the Australian government's pharmaceutical listing and reimbursement decision-making process, including the absence of an appeals process, also is problematic. If Australia and the United States enact the legislation necessary to implement the FTA, it would address these transparency concerns and would establish an independent appeals process. The two governments also would establish a Medicines Working Group that will provide for continued dialogue between the two governments on emerging health care policy issues. If enacted, the FTA would address these transparency concerns and would establish an independent appeals process. The two governments also would establish a Medicines

Working Group that will provide for continued dialogue between the two governments on emerging health care policy issues.

Blood Plasma Products

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 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. If enacted, the FTA would commit Australia to review its arrangements for the supply of blood fractionation services by no later than January 1, 2007. The Commonwealth government will recommend to Australia's States and Territories that future arrangements for the supply of blood plasma products will be conducted through an open tender process.

BOLIVIA

TRADE SUMMARY

The United States' trade deficit with Bolivia was $3 million in 2003, a decrease of $28.7 million from $32 million in 2002. U.S. goods exports in 2003 were $182 million, down 5.4 percent from the previous year. Corresponding U.S. imports from Bolivia were $185 million, up 15.3 percent. Bolivia is currently the 98th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Bolivia in 2002 was $169 million, down from $248 million in 2001.

Free Trade Area Negotiations

In November 2003, the United States announced its intention to begin free trade negotiations with Colombia, Peru, Ecuador and Bolivia, the four Andean Trade Preference Act beneficiary countries. The negotiations will begin on May 18, 2004 with Colombia, as well as any of the other countries that has demonstrated its readiness to begin. The Andeans collectively represented a market of about $7 billion for U.S. exports in 2003, and are home to about $4.5 billion in U.S. foreign direct investment. A free trade agreement with these countries would extend the list of countries in the Americas with which the United States has completed free trade agreements. The negotiation will complement the goal of completing a Free Trade Area of the Americas (FTAA). The U.S. Government will seek to address the issues described in this chapter within the context of our bilateral free trade agreement negotiations.

IMPORT POLICIES

Tariffs

Bolivia has a three-tier tariff structure. Capital goods designated for industrial development are not subject to duty, non-essential capital goods are subject to a five percent tariff, and most other goods are subject to a 10 percent tariff.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Supreme Decree 26510 of February 2002 established labeling norms for all pre-packed food products (national or imported). All labels must be approved by the National Food and Plant Safety and Inoculation Service (SENASAG), and must include the sanitary registry number and the manufacturer, importer, or distributor's taxpayer number and address. However, because food manufacturers and food importers have found flaws in this Decree, and have proposed major changes to it, this regulation is not currently being enforced by government authorities.

GOVERNMENT PROCUREMENT

All government purchases are regulated under Supreme Decree 25964 (basic norms for the administrative system of goods and services). Government entities in Bolivia usually conduct their own procurement, calling for public bids for large purchases. Even though there is no limitation on foreign participation in government purchases, a 10 percent preference margin is given to domestic firms. Local micro and small entities are also given priority on small purchases under $7,000. Bolivian law does not require the use of local distributors for private sector commercial sales. Most government purchases, however, call for local agents. Foreign and local bidders on government tenders must post two types of guarantee bonds. Bolivia is not a signatory to the WTO Agreement on Government Procurement.

BOLIVIA

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Bolivia’s existing legislation governing protection of intellectual property rights (IPR) is insufficient, and enforcement efforts have been sporadic and largely ineffective. Piracy rates of videos, sound recordings, and software remain among the highest in Latin America. The International Intellectual Property Alliance estimates that piracy levels in Bolivia have reached 100 percent for motion pictures and 90 percent for recorded music. The 1992 Copyright Law recognizes copyright infringement as a public offense, and in May 2001 the new Bolivian Criminal Procedures Code began to provide for the criminal prosecution of IPR violations. However, the laws are largely not enforced and U.S. firms have had little success in getting justice in this area from Bolivian courts.

The government is undertaking steps to modernize both its legislation and enforcement capabilities regarding the protection of IPR. During 2000-2001, the Ministry of Justice completed a draft IPR reform law that was submitted to Congress for ratification. However, the Congress has yet to approve it. USAID is undertaking a project for judicial training on intellectual property rights.

In early 1999, the Bolivian government established an independent National Intellectual Property Rights Service (SENAPI), uniting under one authority the previously disparate offices in charge of enforcing patents, trademarks, and copyrights. This effort has brought new coherency to government efforts to protect IPR effectively. During 2003, USAID, through its competitiveness program, began supporting the non-political institutionalization of SENAPI. However, deficiencies remain in intellectual property enforcement, including the common practice of suspending prison sentences imposed on counterfeiters and the inability of enforcement officials to take action ex officio.

Bolivia has fully joined the World Intellectual Property Organization, and the Bolivian Congress approved accession to the Paris, Geneva, and Bern Conventions. Bolivia ratified the Patent Cooperation Treaty in 2003.

INVESTMENT BARRIERS

Since 1985, restrictions on foreign investment have been removed in all sectors. The government of Bolivia established a program to sell government-owned entities, modernize banking laws, free currency conversion, remove most trade restrictions, and lower tariffs. During the 1993-97 presidential term, the government of Bolivia implemented the so-called “capitalization” (privatization) program. This program differs from traditional privatization in that the money paid by the new strategic partners for a 50 percent share of the business equity went directly into new investment rather than to the government.

In September 1990, the Government of Bolivia approved the Investment Law. This law, together with other legislation, opened the country’s economy to foreign investment. The law established guarantees such as equal treatment of foreign companies, the unhindered remission of profits, convertibility of currency, and the right to international arbitration in all sectors. Bolivia has also signed bilateral investment treaties with several countries, including the United States. The U.S.-Bolivia bilateral investment treaty entered into force in June 2001.

BRAZIL

TRADE SUMMARY

The U.S. trade deficit with Brazil was $6.7 billion in 2003, an increase of $3.3 billion from $3.4 billion in 2002. U.S. goods exports in 2003 were $11.2 billion, down 9.4 percent from the previous year. Corresponding U.S. imports from Brazil were $17.9 billion, up 13.3 percent. Brazil 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 Brazil were $5.0 billion in 2002 (latest data available) and U.S. imports were $1.7 billion. Sales of services by majority U.S.-owned affiliates were $12.0 billion 2001, while sales of services in the United States by majority Brazil-owned firms were $208 million.

The stock of U.S. foreign direct investment (FDI) in Brazil in 2002 was $31.7 billion in 2002, down from $35.5 billion in 2001. U.S. FDI in Brazil is concentrated largely in the manufacturing, finance and banking sectors.

IMPORT POLICIES

Brazil's arithmetic average applied tariff was an estimated 11.5 percent in 2003. Brazil currently maintains no applied tariff rates in excess of 35 percent, but does have safeguard measures in place for some imports, such as toys. For example, Brazil imposes tariffs between 4.5 percent and 16.5 percent on wood products and 22 percent on motorcycles. In April 2002, the Brazilian government approved a new tax law that dramatically increased the duty on imported advertising materials and discriminates between domestic and foreign producers. A number of imports are prohibited, including various used goods such as machinery, foreign blood products, automobiles, clothing, and other consumer goods. 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). One Brazilian state has adopted an excise tax that favors soda ash of a producer located in the state over imported soda ash.

Brazil and its MERCOSUR partners, Argentina, Paraguay, and Uruguay, implemented the MERCOSUR Common External Tariff (CET) on January 1, 1995. The CET currently covers 9,626 items, with tariffs mostly ranging between zero and 21.5 percent. Within the CET, certain sectors are treated separately and are organized on special lists. The list for informatics and telecommunications goods contains 427 items with tariffs in 2002 ranging between zero and 26 percent; a tariff phase-down schedule should bring the top tariff down to 16 percent by 2006. The automotive list covers 55 items (vehicles and parts) with a tariff rate of 35 percent; Brazil has negotiated automotive agreements with third countries, which provide duty-free treatment within quotas. A MERCOSUR suspension of duties ranging from 2 percent to 15.5 percent on some 550 pharmaceutical products has been extended until December 31, 2004. Although the CET was meant to be a comprehensive, common tariff schedule, MERCOSUR countries have agreed to allow exceptions. Brazil has 100 exceptions to the CET, with tariffs reaching as high as 55 percent on coconuts and peaches. The CET remains a significant barrier to increased U.S. exports of agricultural products, distilled spirits, and computer and telecommunications equipment. In addition, significant barriers exist to U.S. textile exports. In particular, Brazil applies additional import taxes and charges that can effectively double the actual cost of importing textile products into Brazil.

Import Licensing/Customs Valuation

The Secretariat of Foreign Trade (SECEX) implemented a computerized trade documentation system (SISCOMEX) in early 1997 to handle import licensing. All importers must register with SECEX to access SISCOMEX. Registration requirements are onerous and include a minimum capital requirement. In addition, fees are assessed for each import statement submitted through SISCOMEX. As a general rule, imports into Brazil fall within an "automatic import license" process. Originally, Brazil's non-automatic import licensing system was used only in cases of specific imports that require special authorization from specific ministries/agencies: beverages (Ministry of Agriculture); pharmaceuticals (Ministry of Health); arms and munitions (National Defense Ministry); etc. In 1998, the Brazilian government stopped publishing a list of products subject to non-automatic licenses. The only method available now for determining if a product requires an import license is to check the SISCOMEX system, which is available only to registered importers. Under Brazil's non-automatic import licensing system, U.S. suppliers have no means of finding out in advance which products require import licenses and whether they are subject to minimum price and payment terms as a condition of receiving a license.

Under Brazilian customs regulations, a "gray line" process exists for enhanced scrutiny of suspected fraudulent imports. This process is opaque and burdens some categories of U.S. exports. A related concern has been the possible use of the gray line process to impose minimum reference prices. In November 1999, the United States actively participated as an interested third party in EU WTO consultations on the issue, and in July 2000, the United States held its own WTO consultations with Brazil.

Product registrations from the Ministry of Health are required for imported processed food products and food supplement products, and as of March 1, 2000, the term of validity for registration was shortened. Registration fees for these imports, as well as for medical and pharmaceutical products, have increased significantly. The U.S. Government also has received complaints relating to Brazilian practices that lead to non-transparent preferences for Brazilian products in procurement for government and nonprofit hospitals and bias against the import of refurbished medical equipment when domestically produced “similars” exist. Implementation of such import measures continues to have a negative impact on U.S. exports, especially given the high tariffs on medical equipment. Although some progress in increasing the transparency of the process was made at the end of 2001, problems for U.S. exporters still exist. U.S. companies continue to complain of a variety of customs-related non-tariff barriers.

The U.S. Government has received complaints that the ICMS value-added tax collected by individual states is sometimes set to favor local companies, constituting a non-tariff trade barrier. Similarly, some U.S. companies have raised concerns about the arbitrary application of various non-automatic import licensing procedures, such as authorizations from the Federal Police and the Nuclear Regulatory Agency.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Sanitary and Phytosanitary Measures

Progress has been made in the area of sanitary and phytosanitary (SPS) measures. On March 15, 2001, the Ministry of Agriculture lifted the ban on U.S. Soft Red Winter, Hard Red Spring, and Hard Red Winter wheat shipped from non-west coast ports. The ban remains on Durum and White wheats and wheat from the states of Washington, Oregon, Idaho, California, Nevada, and Arizona due to phytosanitary concerns. The U.S. Government continues to work with the Brazilian government to resolve the remaining import restrictions.

Despite progress, SPS measures remain significant barriers in several cases. Brazil continues to prohibit the entry of poultry and poultry products from the United States based on an alleged lack of reciprocity, contrary to WTO rules, which dictate that sanitary and phytosanitary determinations be based upon sufficient scientific evidence. Attempts to import seed potatoes into Brazil have been blocked by unresolved permit issues based upon a delayed and non-transparent pest risk assessment (PRA) before commercial market access is granted. Brazilian legislation also bans the importation of beef produced with growth hormones; however, beef imports from the United States have been allowed on a waiver basis since 1991.

Biotechnology

The biotechnology debate has captured public attention in Brazil with frequent negative reports in the press. Development of regulations for the biotechnology sector has been impeded by a 1998 court case that is still pending in a federal court in Brasilia. This case was filed by environmental non-governmental organizations (NGOs) against the use of Monsanto's Roundup Ready soybean variety. The case addresses not only the requirement to conduct environmental impact studies on biotechnology products, but also the constitutional authority of the Government's CTNBio commission to approve biotechnology products.

In the absence of a definitive court ruling on this case, President Lula made progress in 2003 towards a new legal framework for production and marketing of biotechnology soybean crops. Law 10,814, which was enacted on December 15, 2003, legalizes the planting and marketing of biotechnology soybean crops for the 2003/2004 harvest. On October 31, 2003, President Lula sent to Congress the long-awaited draft of a Biosecurity Law that would provide a long-term regulatory regime for the biotechnology sector. The current text of the bill envisions a complicated mechanism for approval of biotechnology products by a national commission attached to the President’s office that would consider political and economic, as well as scientific, factors. It is likely that the bill will undergo substantial revision before passage, which is expected in April 2004.

On April 24, 2003 the Brazilian government published Decree Number 4680, which formally implemented the provisions of a 1990 law (law 8,078 of September 1990) that requires labeling of biotechnology products. The decree requires labeling of biotechnology products, including meats from animals fed with feed derived from biotechnology. The label must include a special logo created by the Ministry of Justice in October 2003. The requirement does not apply to packaged food products containing less than one percent of agricultural biotechnology products.

GOVERNMENT PROCUREMENT

Brazil is not a signatory to the WTO Agreement on Government Procurement. The transparency of Brazil’s procurement process could be improved. Remaining limitations on foreign capital participation in procurement bids can reportedly impair access for potential service providers in the energy and construction sectors. Brazilian federal, state, and municipal governments, as well as related agencies and companies, in general follow a "buy national" policy. Although Law 8666 of 1993, which covers most government procurement other than informatics and telecommunications, requires nondiscriminatory treatment for all bidders regardless of the nationality or origin of product or service, 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 1070 of March 1994, which regulates the procurement of information technology goods and services, requires federal agencies and parastatal entities to give preference to locally produced computer products based on a complicated and nontransparent price/technology matrix. However, Brazil permits foreign companies to compete in any procurements funded by 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 inputs in exported products. An export credit program known as PROEX was established in 1991. PROEX is intended to equalize domestic and international interest rates for export financing and to directly finance production of tradable goods. Exporters enjoy exemption from withholding tax for remittances overseas for loan payments and marketing, as well as from the financial operations tax for deposit receipts on export products. Several PROEX programs have been found to be countervailable under U.S. law in the context of specific countervailing duty cases. In 1999, a WTO panel found PROEX interest equalization payments used to finance the sale of regional aircraft manufactured in Brazil to be a prohibited export subsidy. The WTO Appellate Body upheld this finding. The Government of Brazil states that it has modified PROEX so as to bring it into conformity with WTO subsidy rules. Canada challenged this position in the WTO, but subsequently reached a negotiated settlement with Brazil. Changes to PROEX were announced most recently in 1999, expanding the program. In 2003, roughly $808 million was budgeted for PROEX, with $400 million slated for equalization and $408 million for direct financing. Actual spending on PROEX during 2003 is expected to have been about one-half of the amount budgeted.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Brazil is on the Special 301 “Priority Watch List” due to continuing serious concerns about copyright and trademark infringement, inadequate enforcement of intellectual property rights, and the need to greatly improve the processing of patent applications in a manner that is consistent with its international obligations.

Patents and Trademarks

Brazil's industrial property law, covering patents and trademarks, took effect in May 1997. The law improved most aspects of Brazil's industrial property regime, providing patent protection for pharmaceutical products and processes, agrochemical products, and other inventions. However, concerns continue about a provision that prohibits importation as a means of satisfying the requirement that the patent be "worked" in that country. This issue was the subject of a dispute settlement proceeding at the WTO, which was terminated without prejudice in June 2001. The dispute was terminated based on Brazil's commitment to hold talks with the U.S. should it deem it necessary in the future to grant a compulsory license for failure to work a patent.

On December 14, 1999, the Brazilian Government issued a Provisional Measure that became Law 10,196 in 2001, which includes some problematic provisions, including a requirement that Health Ministry approval be obtained prior to the issuance of a pharmaceutical patent. This would appear to conflict with Article 27 of the WTO’s Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS), and U.S. officials have raised this concern with their Brazilian counterparts. "Pipeline" protection is provided for inventions not previously patentable in Brazil because of limitations on patentable subject matter, if these inventions were patented in another country and not marketed in Brazil. While Brazil's patent office, the National Institute for Industrial Property (INPI), is addressing its backlog of both pipeline and regular patent applications, the resources and support necessary to effectively and consistently manage the processing of patent applications still appear to be insufficient. As of December 2003, industry sources reported that INPI had granted fifteen pipeline patents and fifty-seven regularly filed pharmaceutical patents. At the same time, unauthorized copies of pharmaceutical products have received sanitary registrations relying on undisclosed tests and other confidential data, in apparent violation of TRIPS Article 39.3.

On December 17, 2002, the Brazilian Congress passed Law 10,603 on data confidentiality. The law covers pharmaceuticals for veterinary use, fertilizers, agrotoxins, and their components and related products; the law does not cover pharmaceuticals for human use.

The 1997 industrial property law also added provisions for the protection of "well-known" trademarks, but contains a long list of categories of marks that cannot be registered. U.S. industry has expressed concern with the continued high level of counterfeiting in Brazil. A bill (PL-1787) on the protection of layout designs of integrated circuits (required by TRIPS) was introduced in April 1996 and is still progressing through committees within the Brazilian Congress.

Copyrights

A copyright bill that included amendments to bring Brazil into compliance with the Berne Convention and TRIPS was signed by then-President Cardoso in February 1998. A software law was signed by then-President Cardoso that same month, protecting computer programs as "literary works," increasing the term of protection to 50 years, and making software infringement a fiscal and an intellectual property crime. Copyright enforcement in Brazil continues to be uneven, and losses from piracy remain significant. As a result of this concern, on January 10, 2001, the U.S. Government accepted a petition, submitted by the International Intellectual Property Alliance, to review the GSP status of Brazil. This petition was reviewed as part of the 2003 Annual Generalized System of Preferences Product and Country Eligibility Review. A Country Practices Review of Brazil was held in October 2003.

Problems have been particularly acute with respect to sound recordings and videocassettes, and virtually all audiocassettes sold are pirated copies. Brazil accounts for over half of the market for sound recordings in Latin America and is one of the world's largest markets for videos. Vigorous industry and Brazilian government anti-piracy campaigns have begun to show a positive impact and general awareness among the populace has increased significantly.

In June 2003, the Brazilian Congress launched a Parliamentary Investigative Commission (CPI) on Piracy, which has gained wide support from industry for its action-oriented nature towards combating piracy, as well as its willingness to address related issues including organized crime and official corruption. Several Deputies on the CPI have pressed law enforcement officials to arrest copyright infringers and seize counterfeited and pirated goods ranging from cigarettes to CDs. The CPI’s 6-month mandate has recently been extended and, as an outgrowth to the CPI, a Congressional caucus on piracy and tax evasion was formed in September 2003. Efforts in 2003 resulted in prosecutions, but the number of convictions for intellectual property rights violations remains insufficient to act as a deterrent. While anti-piracy actions in 2003 resulted in several large seizures of pirated CDs, the sound recording industry estimates that the piracy level for records and music in 2003 was 52 percent. Even with piracy raids and more prosecutions, the number of cases prosecuted and sentenced in Brazilian courts remains low, frustrating efforts at deterrence. In July 2003, President Lula signed a law that doubled the minimum penalty for copyright violations. The law also codifies procedures to seize and destroy contraband and gives judges authority to dispose of seized goods to ensure they will not be used for commercial purposes. Brazil has increased inspections at border crossings, but significant amounts of pirated material continue to enter Brazil from Paraguay.

The Federal Government of Brazil to date has not given police adequate tools or training to effectively enforce the law. Further, fines provided for in the penal code are too insignificant to create a true deterrent; and the court and judicial process is often unresponsive and slow. The generally inefficient nature of Brazil's courts and judicial system has complicated the enforcement of intellectual property rights. The Brazilian government is working to streamline the judicial process. In early 2001, the government created an interagency IPR committee, coordinated by the Ministry of Justice, to improve anti-piracy enforcement. After two years of very limited activity due to lack of resources and the 2002 national elections, the committee made progress in 2003 with a national public awareness campaign and the start of IPR training at the National Federal Police Training Academy. Brazil is not a party to the WIPO Treaties on Copyright, and Performances and Phonograms.

SERVICES BARRIERS

Telecommunications

Privatization within the telecommunications sector, which is based on the General Telecommunications Law of 1997, has presented regulatory challenges. In the fixed-line sector, interconnection charges and other incumbency advantages have provided strong barriers for entry, and the companies created during a transitional duopoly stage have not fared well.

Brazil has not yet properly ratified its WTO basic telecommunications commitments. In 2001, Brazil withdrew its schedule of commitments in view of concerns raised by certain WTO members that it maintained the right of the Executive Branch to summarily limit foreign investment in telecommunications services providers. This presidential right is contained in Brazil's 1997 General Law on Telecommunications and is inscribed in Brazil's constitution. Brazil has not sought the constitutional change required to allow a revision of its schedule. Nonetheless, the current regulatory environment generally reflects commitments offered by Brazil under the WTO Basic Telecommunications Agreement.

Maritime

The Government of Brazil considers the bilateral Maritime Agreement signed with the United States in October 1999 to have expired. Bilateral consultations should result in a new agreement in 2004, and in the interim the regulatory agencies of Brazil and the United States have agreed to maintain the provisions of the 1999 agreement on a reciprocal basis. Key provisions of this agreement commit the parties to afford fair and nondiscriminatory access for national-flag carriers and third-flag carriers to competition on commercial cargo and provides equal and nondiscriminatory access to government cargos. A 25 percent merchant marine tax on freight puts U.S. agricultural products at a competitive disadvantage to MERCOSUR products.

Audio Visual Services

Foreign ownership of cable companies is limited to 49 percent. 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 operators are subject to an 11 percent remittance tax; however the tax 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.

Provisional Measure 2,228-1/01 and later Law 10,454 aim to promote the national film industry through creation of the National Film Agency (ANCINE) and through various regulatory measures. Under Law 10,454, published on May 14, 2002, a fixed title levy is imposed 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 tax. Brazilian distributors of foreign films are subject to a levy equal to an 11 percent tax 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 tax on their remittances in co-productions with Brazilian film companies. The CONDECINE tax is also levied on any foreign cinematographic or videophonographic 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. Importation of color prints for the theatrical and television markets is prohibited. In 2003, the theatrical screen quota was increased so that the mandatory screen time for Brazilian full-length films was increased from 35 days to 63 days per theater for calendar year 2004. Quotas on domestic titles for home video distributors, while not currently enforced, present another potential hindrance to commerce.

Foreign firms had been prohibited from owning capital in the "open broadcast" (non-cable) television sector. However, in October 2002, then-President Cardoso issued Provisional Measure 70, which was subsequently approved by the Congress, which permits up to 30 percent foreign ownership in Brazilian media. This law covers print as well as the open television sector. Open television companies also have a regulation requiring that 80 percent of their programming content be domestic in origin. All broadcast media material that enters the country must pass through the Ministry of Justice, which retains rights to censure and edit content.

Express Delivery Services

A bill (PL 1491/99) that would reorganize the National Postal System remains under discussion in the Brazilian Congress. The current proposal creates 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 for U.S. firms.

Insurance

Brazil is potentially 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. The Brazil Reinsurance Institute (IRB) is a state monopoly. While a 1996 constitutional reform ostensibly abolished the monopoly, private reinsurers have been precluded from operating in Brazil pending the IRB's privatization, which has been delayed indefinitely by a court decision. A 2003 Constitutional amendment allows for the regulation of the reinsurance sector, including market entry. If Brazilian shipping companies wish 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.

Banking and Other Financial Services

Brazil has not ratified the WTO Financial Services Agreement, formally known as the Fifth Protocol to the GATS, which is necessary to bring Brazil's commitments under the Agreement into force. The Financial Services Agreement is still pending approval in the Brazilian Congress; no action has been taken on the proposed legislation since 2000.

In negotiating the 1997 WTO Financial Services Agreement, Brazil made commitments in almost all service sub-sectors for non-insurance financial services, including banking and securities services. Brazil's constitution precludes the expansion of foreign-owned banks until new financial sector legislation is issued. For practical reasons, new legislation has not been issued, but the President of Brazil has the authority to authorize new foreign participants on a case-by-case basis. In practice, Brazil has approved most plans by foreign service suppliers to enter the market or expand existing operations. As of December 2002, foreign-owned or controlled assets accounted for one third of Brazil’s total financial sector equity, and over 18 U.S. financial service suppliers had established significant operations in Brazil.

INVESTMENT BARRIERS

In addition to restrictions discussed above, various prohibitions limit foreign investment 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 the National Security Council. Despite investment restrictions, U.S. and other foreign firms have major investments in Brazil, with the U.S. accounting for more than one third of total foreign investment. There is no Bilateral Investment Treaty between the United States and Brazil.

BULGARIA

TRADE SUMMARY

The United States' trade deficit with Bulgaria was $286 million in 2003, an increase of $47 million from $238 million in 2002. U.S. goods exports in 2003 were $156 million, up 54 percent from the previous year. Corresponding U.S. imports from Bulgaria were $441 million, up 30 percent. Bulgaria is currently the 102nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Bulgaria in 2002 was $142 million, up from $107 million in 2001.

IMPORT POLICIES

Tariffs

Bulgaria's trade policies are shaped primarily by its World Trade Organization (WTO) membership and by its status as a candidate for EU membership. Bulgaria has a preferential trade agreement with the EU (European Agreement) and free trade agreements with the European Free Trade Area (EFTA) countries, and with its Central European neighbors (CEFTA), Turkey, the Former Yugoslav Republic of Macedonia, Estonia, Israel, Lithuania and Latvia. Bulgaria has signed free trade agreements with Albania, Serbia and Montenegro, and Bosnia and Herzegovina. The free trade agreement with Albania entered into force on September 1, 2003. A free trade agreement with Moldova is under negotiation.

In 2003, the average Most Favored Nation (MFN) bound rate was 28.2 percent, with a maximum rate of 200 percent. Under the common commercial policy, upon accession Bulgaria will be required to align its tariffs with those of the EU.

For 2004, Bulgaria's average applied import tariff is 11.6 percent (up from 11.3 percent in 2003); the average level for industrial goods is 8.7 percent (up from 8.6 percent in 2003); the average *ad valorem* level for agricultural goods is 23.9 percent (up from 22.0 percent in 2003). The maximum *ad valorem* level for agricultural goods, which is applied on 0.4 percent of tariff lines, is 75 percent. Effective in 2002, Bulgaria eliminated all tariffs for industrial imports from the EU under its association agreement with the European Union, EFTA, Turkey, and Estonia. Industrial exports to Bulgaria from the rest of the world face tariffs ranging from zero to 26.8 percent. The applied MFN duty for pharmaceutical products is zero percent, with the exception of adhesive plasters and some gel products.

Bulgaria's agricultural trade regime is characterized by high MFN tariffs, particularly for red meat and poultry, and preferential agreements with the EU and CEFTA. Both aspects are barriers for U.S. exporters. *Ad valorem* duties and minimum customs charges of more than 100 percent provide importers with incentives for smuggling and fraud. Cargoes are often falsely labeled and declared; and improperly identified in an effort to avoid customs charges. The Bulgarian customs service also uses minimum import prices to calculate customs duties, particularly on poultry shipments. These prices are applied arbitrarily and appear inconsistent with Bulgaria's WTO commitments. Bulgaria provides the EU with preferential tariff rates and zero-for-zero for numerous agricultural products. These preferences are hurting U.S. agricultural exporters who must face higher MFN rates. In particular, the high import tariffs favor Bulgaria's inefficient domestic chicken and pig meat industries. Import tariffs on U.S. chicken are 68 percent, with frozen cut parts at 74 percent.

In 2003, the Bulgarian government introduced separate rates for "conventional customs duties" and "autonomous customs duties" as required by the European Agreement and the List of Obligations and Waivers to the General Agreement on Tariffs and Trade of 1994. Bulgaria's Customs Tariff has been changed in order to bring the structure of applied customs duties into compliance with the categories identified by the WTO and the EU Combined Nomenclature and Integrated Customs Tariff. The Bulgarian Council of Ministers also approved a regulation to allow for the use of autonomous measures which enable the government to grant tariff suspensions to overcome temporary shortages of raw materials, intermediate products, and final products needed by domestic industry if they cannot be secured internally or from countries with which Bulgaria has free-trade agreements. Autonomous measures granting tariff suspensions are applied twice per year (January 1 and June 1) and can be introduced at the request of local persons or organizations.

Non-tariff barriers

U.S. exports to Bulgaria are hampered by the Pan-European cumulation system, and particularly by the removal of the availability of customs duty drawback on products originating in the United States. Under this recently introduced system, customs duties on U.S.-origin inputs used in the production of goods subsequently exported under preferential trade agreements between the EU, Bulgaria, and other countries, are no longer refunded. In addition, inputs from any participant in the system may be accumulated with Bulgarian inputs and the final good may qualify for preferential treatment under Bulgaria's Europe Agreement, even though other participants in the "cumulation system" are not party to the Europe Agreement.

In general, customs regulations and policies are reported to be cumbersome, arbitrary, and inconsistent. Problems cited by U.S. companies include excessive documentation requirements, slow processing of shipments, and corruption. The Customs Agency requires invoices even for equipment transfers from corporate offices in other countries to Bulgaria. Bulgaria uses the single customs administrative document used by EU members.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Bulgaria is making an effort to harmonize its national standards with international and EU standards. Bulgaria is a participant in the International Organization for Standardization (ISO) and the International Electro-technical Commission (IEC). It was working to adopt 80 percent of the applicable EU standards by 2003; as of November 2003 it had adopted 7,500, or about 70 percent. Under the 1999 National Domestic Standards Act, all domestic standards are no longer mandatory. The major product safety requirements are regulated in separate ministerial ordinances in compliance with the respective EU directives.

All imports of goods of plant or animal origin are subject to European Union phytosanitary and veterinary control standards, and relevant certificates should accompany such goods. However, Bulgarian authorities have modified their national regulations to accept U.S. Department of Agriculture certificates.

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 not transparent. New advanced drugs, which are more effective with fewer side effects, are often arbitrarily classified, thereby limiting the companies' ability to recover their research and development costs.

Legislation adopted in April 2002 introduced new drug registration procedures. New regulations stipulate two separate consecutive procedures. Obtaining a license is a prerequisite for the price registration procedure. On their face, these requirements are equally applied to local and foreign producers or traders. A Commission on Transparency on the Law on Drugs and Pharmacies for Human Medicine was established in 2001.

U.S. and other foreign pharmaceutical companies consider that Bulgarian pricing and reimbursement decisions are not based on objective and verifiable criteria. In addition, companies have expressed concerns that there are no appeal procedures for Government pricing and reimbursement decisions and no timeframes for reimbursement are provided in the Bulgarian law. Bulgaria's price approval system hampers the ability of foreign companies to compete effectively as the price regulations utilize the methodology of the lowest registered price in the member-states of the Council of Europe and do not allow companies to recover costs of importation. In addition, price regulations provide for an automatic refusal to reimburse if the government does not act on a request within 14 days.

GOVERNMENT PROCUREMENT

Bulgaria is an observer but not a signatory to the WTO Agreement on Government Procurement (GPA). In its accession to the WTO, Bulgaria committed to accede to the GPA and to submit an offer by June 1997 and complete negotiations by December 1997. But, it did not initiate the process for GPA accession until September 2000 and has not yet submitted an offer.

In June 1999, Parliament adopted a new law on procurement which sets out terms and conditions for public orders and aims to increase transparency and efficiency in public procurement. However, bidders still complain that tendering processes are frequently unclear or subject to irregularities, fueling speculation regarding corruption in government tenders. U.S. investors have also found that neither state enterprises nor private firms are accustomed to using competitive bidding. However, tenders organized under projects financed by international donors have tended to be open and transparent.

In April 2002, Parliament approved amendments to the 1999 Public Procurement Act, which shortened the complaints review procedure, i.e., the plaintiff now can go directly to the court and the judge is obliged to decide the complaint in one month. The law excluded mobile network operators and private radio stations from the scope of public procurement. There are remaining problems with the effective implementation of procedures and, while the Public Procurement Register has contributed to transparency, foreign companies have complained about the nature of public procurement transactions. The complaints review procedure is burdensome and time-consuming and should be improved.

Government procurement practices in the energy sector appear to disadvantage foreign insurance companies. All Bulgarian energy entities are now insured by Energiya -- a joint venture between the state-owned National Electricity Transmission Company (50 percent), Allianz Bulgaria (25 percent) and other private shareholders (25 percent) established in 1992-1993. According to U.S. industry, procedures for awarding insurance contracts for companies within the energy sector are not transparent.

EXPORT SUBSIDIES

At the time of accession to the WTO, Bulgaria negotiated the possibility of granting export subsidies for a limited number of agricultural products. To date, Bulgaria has not granted any export subsidies.

The Ministry of Economy oversees an export promotion fund of about BGN 10 million (about $6 million) to finance the activities of the Export Insurance Agency, National Tourism Advertisement and Information Agency and Export Promotion Agency.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Bulgarian IPR legislation is fairly comprehensive, with modern patent and copyright laws and criminal penalties for copyright infringement. In 2000, amendments to the copyright law extended copyright protection to 70 years and introduced a new neighboring right for film producers, provisional measures to preserve evidence of IPR infringement, and special border measures. Further amendments in 2002 addressed new developments in communications and information, digital technologies, and the Internet.

Responding to long-standing industry concerns, the Bulgarian government included in the drug law which took effect in January 2003 a provision to provide protection for confidential test data submitted for marketing approval by pharmaceutical products companies. The law, however, links data exclusivity to a valid patent. Bulgaria joined the European Patent Convention on July 1, 2002 and obtained observer status in the Administrative Council of the European Patent Organization.

The Bulgarian government's inability to protect trademarks is a significant barrier to investment and legitimate domestic economic development. U.S. businesses have noted significant difficulties in obtaining enforcement against trademark infringement. Even if courts understand the law and issue orders, the entities charged with enforcement often cannot be relied upon to carry out the court judgment.

In Bulgaria, trademark and service mark rights and protection for geographical indications arise only with registration at the Bulgarian Patent Office or an international registration mentioning Bulgaria; and do not arise simply with "use in commerce" of the mark or indication. Under Bulgarian law, legal entities cannot be held criminally liable. Therefore, the criminal penalties for copyright infringement and willful trademark infringement are limited.

Implementation of "special border measures" for copyright enforcement has created problems for legitimate exporters and importers and further changes are necessary to clarify the law and to better train customs officials. There is no provision for a bond from the complainant to protect the legitimate importer or exporter of goods that are stopped in transit under "special border measures."

Music piracy and copyright violations in Bulgaria's domestic market -- mainly the sale of imported pirated CDs from Ukraine, Serbia, and Montenegro -- are very high and enforcement is inadequate. Bulgaria is still widely used for transshipment of pirate CDs from Ukraine and Russia to the Balkans, Greece, and Turkey.

Optical media piracy has been increasing rapidly, and the local music business in particular is feeling the brunt of this phenomenon. The possibility that Bulgarian optical media production plants are contributing to or generating this piracy is not adequately accepted or addressed by Bulgarian authorities. In an effort to monitor the trade in optical grade polycarbonate, equipment, and stampers, the Bulgarian government introduced new tariff lines for these products in its 2004 schedule. However, the government abolished in 2002 a registration regime for optical grade polycarbonates. The Bulgarian parliament is considering a law on the production of optical disc media, but it is unclear whether the law will include key elements needed to strengthen enforcement.

Software piracy continues to be a serious problem, although an industry legalization campaign, which began in 1999, has made noticeable gains against unauthorized software. Nevertheless, the lack of prosecutions and court judgments has kept the piracy rate at an unacceptably high level. Over the last three years, out of over 122 criminal prosecutions filed, only four have reached settlement and only one has produced a court judgment.

Counterfeit spirits sales are widespread in Bulgaria and the loss of U.S. sales is caused both by differential tariffs and by trademark violations.

BULGARIA

SERVICES BARRIERS

As in other EU candidate countries, Bulgaria's 1998 Radio and Television Law requires a "predominant portion" of certain programming to be drawn from European-produced works and sets quotas for Bulgarian works within that portion. This requirement, however, will only be applied to the extent "practicable." Foreign broadcasters transmitting into Bulgaria must have a local representative, and broadcasters are prohibited from entering into barter agreements with television program suppliers.

INVESTMENT BARRIERS

The U.S.-Bulgaria Bilateral Investment Treaty (BIT) took effect in 1994 and provides guarantees for U.S. investors of the better of national and MFN treatment, the right to make financial transfers freely and without delay, international law standards for expropriation and compensation, and access to international arbitration.

Foreign persons cannot own land in Bulgaria because of a constitutional prohibition, but foreign-owned companies registered in Bulgaria are considered to be Bulgarian persons. Foreign persons may acquire ownership of buildings and limited property rights, and may lease land. Local companies where foreign partners have controlling interests must obtain prior approval (licenses) to engage in certain activities: production and export of arms/ammunition; banking and insurance; exploration, development, and exploitation of natural resources; and acquisition of property in certain geographic areas. There are neither specific export-performance requirements nor specific restrictions on hiring of expatriate personnel, but residence permits are often difficult to obtain.

New insolvency rules in Bulgaria's Commercial Code and its Law on Public Offering of Securities have greatly improved the legislative protection for minority shareholders. However, enforcement of the law's provisions is inadequate and corporate governance remains weak.

In September 2003, Parliament approved a new Telecommunications Law, which increases institutional and regulatory liberalization of the Bulgarian telecommunications sector but focuses more on institutional issues and the protection of state interests than on greater market liberalization. The new Telecommunication Act extended until December 2005 the Bulgarian Telecommunications Company's (BTC) control over the sole telecommunications network. After a long delay, the Bulgarian government's privatization agency signed on February 20, 2004, the privatization sale of 65 percent of BTC to Viva Ventures, a wholly-owned subsidiary of U.S. company Advent. However, the delay in privatizing BTC has slowed down telecommunications market liberalization. U.S. companies continue to note problems with issues of funding, licensing, interconnectivity and leased lines, dispute resolution, rights of use, and universal service.

A June 1999 law regulating gambling imposes additional requirements on foreigners organizing games of chance. Foreigners can receive a license to establish a casino in a hotel only if they satisfy one of the following conditions: 1) purchase or construction of a hotel rated four-star or higher; or 2) investment of at least $10 million and employment of at least 500 workers in economic activities unrelated to gambling.

According to U.S. businesses, other steps needed to improve the environment for foreign investment include: improved creditor rights through improvements to bankruptcy law and procedures; reform of the judicial system; improved accounting standards and risk assessment; reform of the energy sector; and transparency and accountability in public policy to reduce the perception of corruption.

ELECTRONIC COMMERCE

The Law on the Electronic Document and Electronic Signature went into effect in November 2001. On January 31, 2002, three implementation ordinances for this law were approved, aimed at improved access to information services and promotion of electronic commerce: Ordinance on Requirements for Algorithms for Advanced Electronic Signature; Ordinance for Activity of Certification-Service-Providers, Termination Procedure, and Requirements for Provision of Certification Services; and Ordinance for the Order of Registration of Certification-Service-Providers.

OTHER BARRIERS

Selective enforcement

Foreign investors complain that tax evasion by private domestic firms combined with the failure of the authorities to enforce collection from large, often financially-precarious, state-owned enterprises places the foreign investor at a disadvantage.

The multiplicity of Bulgarian licensing and regulatory regimes, their arbitrary interpretation and enforcement by the bureaucracy, and the incentives this creates for corruption, have long been seen as an impediment to investment, private business development, and market entry. The Restriction of Administrative Regulation and Control of Economic Activity Act adopted in 2003 is expected to considerably lighten the potential of regulatory abuse at all levels of government, and when implemented, should improve the overall business environment.

CAMEROON

TRADE SUMMARY

The U.S. trade deficit with Cameroon was $123 million in 2003, an increase of $107 million from 2002. U.S. goods exports in 2003 were $91 million, down 41.8 percent from the previous year. Corresponding U.S. imports from Cameroon were $214 million, up 24.3 percent. Cameroon is currently the 119th largest export market for U.S. goods.

Cameroon has made significant headway in making itself a more acceptable place to do business. Progress in implementing economic reforms is slow but steady. Corruption continues to be an obstacle to doing business in Cameroon.

Cameroon is a member of the Central African Economic and Monetary Community (in French, CEMAC), which also includes Gabon, Central African Republic, Republic of the Congo, Chad, and Equatorial Guinea. CEMAC countries have a common currency managed by a common central bank. CEMAC is working to establish a unified market allowing for open trade and capital flows between the member states. However, trade levels between Cameroon and its neighbors are small compared to the trade flows between Cameroon and its principal trading partners in Europe.

Cameroon's economy has registered eight consecutive years of real economic growth averaging 4 percent to 5 percent annually. It has undertaken economic reform measures in collaboration with the International Monetary Fund (IMF) and the World Bank. The Cameroon government has liberalized some aspects of the trade and investment climate, notably allowing greater foreign investment in previously closed sectors. New investment legislation passed in March 2002 will further open opportunities for investors once it is fully implemented, possibly in 2005. There are efforts to reform port and customs administrations, but many procedures remain opaque.

IMPORT POLICIES

Since 1994, Cameroon has been operating under the Central African Customs Union's regional program. This program has been expanded to include a customs code and an amendment to the investment code. The customs code eliminates most quantitative restrictions on foreign trade and simplifies customs procedures.

On January 1, 1998, the Generalized Preferential Tariff (GPT) was to have been completely eliminated for goods shipped between CEMAC countries. Only a value added tax (replacing the turnover tax in Cameroon) at the rate of 18.7 percent should be applied to intra-regional goods. However, there has been some delay in fully achieving this goal, and currently both customs duties and the value added tax are being assessed on imports within CEMAC countries.

In order to improve customs revenue collection, the Cameroon government contracted with the Swiss company SGS to assess and collect customs duties. The unweighted average of the Common External Tariff (CET) of the CEMAC is 18.4 percent. The CET is assessed through four 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, which 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 much higher.

Import Licensing

Cameroon's import licensing procedures have been simplified. A prospective importer is now only required to have an "agreement," which serves as a two-year, renewable import license covering any item an importer may choose to import. Special import permits are granted to individuals who import items for personal use. These "licenses" exist only for statistical purposes and help to identify the importers of certain types of goods. Contractors importing equipment and supplies related to public contracts can seek a duty exemption from the Ministry of Finance and Budget. CEMAC has not created a regional licensing system.

Documentation Requirements

Cameroon requires a commercial invoice and a bill of lading for all imported goods. Shipping marks and numbers must match exactly those on the invoices and the goods. Three copies of the invoices are necessary for surface shipments, while four copies are necessary for air shipments. The importer must also present an "agreement" and/or exemption, if appropriate. Documentation of bank transactions is required if the value of the imported goods exceeds CFA francs 2,000,000 (approximately $3,600). This is also true for pre-shipment inspection certificates, which require a "clean report of findings" from SGS. For certain imports, such as secondhand clothing, certificates of non-infestation are also required. Customs officials have also introduced a new service fee for importing secondhand automobiles.

A one-stop shop for customs procedures became operational in December 2000. All documents must be submitted within 48 hours of a shipment's arrival. This innovation has reduced import formalities from 26 days to 15 days and export formalities from 14 days to 7 days.

Customs Valuation

Cameroon began implementing the WTO Agreement on Customs Valuation in July 2001. Cameroon assesses duties on its own estimated cost of production, rather than the actual purchase price, for three frequently subsidized goods: beet sugar, flour, and metal rebar. Customs taxes in Cameroon are levied on the C.I.F. (cost, insurance, freight) value of the imported goods. Although the Cameroon 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

Standardization is at an early stage in Cameroon and is only partially regulated. The Department of Price Control, Weights, and Measures is officially responsible for standards administration in Cameroon. Labels should be written both in French and English, and must include the country of origin as well as the name and address of the manufacturer. In addition, the product name, weight, and all ingredients must be listed. Comments such as "made in," "to be consumed before a certain date," etc., should appear in either French or English. For canned goods, it is required that the manufacture and the expiration dates be engraved or stamped on top of the package in indelible ink. Cigarettes destined for Cameroon must be pre-labeled with health hazard warnings as required by the Cameroonian Health and Commerce Ministries. SGS 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, imports are admitted into the country with little reference to standards or norms.

GOVERNMENT PROCUREMENT

Cameroon is an observer and not yet a member of the WTO Agreement on Government Procurement. The Government Procurement Regulatory Board (in French, Agence de Regulation des Marches Publics, or ARMP) administers public sector procurement. Although less than in previous years, local companies still receive some preferential price margins and other preferences on government procurement and development projects. As part of its economic reform program, the Cameroon government has established more open tender announcements, established independent monitors for large government contract awards, and instituted more regular audits of tender awards. Cameroon's tight budgetary constraints require that most direct purchases by the Cameroon government have pre-identified sources of financing.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

A new agreement among francophone African countries, signed in 1999 in Bangui, aims at bringing their intellectual property laws into compliance with TRIPS. Cameroon has ratified the Bangui Agreement and an interagency committee has updated Cameroon's IPR laws. In November 2001, a law drafted by the committee with the assistance of World Intellectual Property Organization (WIPO) and passed by the National Assembly, sought to bring older Cameroonian laws into accord with the Bangui Agreement and TRIPS.

Cameroon is also party to the Paris Convention on Industrial Property and the Universal Copyright Convention. The licensed copyright company (the Societe Civile Nationale des Droits d'Auteurs) that formerly registered copyrights for music, books, periodicals, paintings, and theatrical productions was liquidated. In its place, new structures covering each specific domain are being created, including the Cameroon Music Corporation. IPR enforcement is problematic due to the small size of the market, the cost of enforcement, and the rudimentary understanding of IPR among government officials. U.S. industry complains that software piracy is widespread.

Cameroon is the headquarters for the fourteen-nation West Africa Intellectual Property Organization (OAPI in French), which offers patents and trademarks registration. Patents in Cameroon are good for ten years and renewable every five years thereafter, so long as the patent was used in any OAPI member country at least once. Compulsory licensing also exists. Registered trademarks are good for twenty years and renewable every ten years thereafter. Trademark enforcement is weak due to limited government expertise and resources. OAPI is a member of WIPO.

SERVICES BARRIERS

Telecommunications

Cameroon has eliminated many restrictions on foreign trade in services and is gradually privatizing its telecommunications sector. In 1999, the Cameroon government sold the state-owned mobile telephone company to a South African firm and gave a second mobile phone license to a French company. Negotiations to privatize the main state-owned telephone utility, CAMTEL, collapsed when the two best bidders withdrew their offers. The World Bank and the Cameroon government authorized CAMTEL to resume investments previously frozen for more than seven years. During this period, CAMTEL will operate as if it were a private company with no government support. At the end of the period, the Cameroon government and relevant international financial institutions will determine how to proceed with further privatization. Some companies are now moving into local VSAT systems for data transmission, international telephone service, and Internet access. The Agence Regulation de Telecommunication (ART) regulates the sector and issues licenses to new companies. Cameroon has not made commitments in this sector in the WTO, and has not committed to the pro-competitive WTO basic telecommunications reference paper.

Banking

The Cameroon government sold its last state-owned bank in January 2000, the last step in a major banking system restructuring. Four new private banks have begun operations since 2000, and there are now ten banks in the sector. The Central African States Bank (in French, BEAC) regulates the sector through the Regional Banking Commission, COBAC. COBAC has the authority to take disciplinary action. Both COBAC and the Cameroon Ministry of Finance and Budget must license banks, and there are special regulations for small-scale credit cooperatives. A national stock exchange in Douala was inaugurated in the second quarter of 2003 but has not yet begun trading operations.

Insurance

Cameroon is one of the fourteen French-speaking African nations that ratified the Inter-African Conference on Insurance Markets Treaty (CIMA) and adopted a common code with respect to the insurance sector. This supra-national code is designed to regulate the insurance sector in all signatory states. Enforcement of the CIMA code of regulations led to the closure of some weak insurance companies and the restructuring of the sector, which is almost completed. Foreign firms can operate in Cameroon, but they must have local partners. There are several foreign insurance companies (including one U.S. firm) working in Cameroon with Cameroonian partners.

Shipping

The country's major port is in Douala, with smaller ports at Limbe, Kribi, and Garoua. Though the Port of Douala is considered the major port of entry for the Central African region, it has traditionally been one of the most inefficient ports in Africa. To improve port efficiency, the Cameroon government made the port administration autonomous in 2000. An average of three days is needed to clear goods through customs. In December 1997, the Cameroon government liberalized auxiliary port and maritime services, and the maritime transport sector is now open to any transporter serving Cameroon ports. Cameroon has a relatively well-developed rail system, which was privatized in 1998, and three international airports, along with 50 small airports or airstrips. Domestic passenger and cargo air service is largely dominated by the national airline, CamAir. Service is unreliable due to the company’s chronic losses and poor management.

INVESTMENT BARRIERS

Capital movements within CEMAC are completely free. Those between CEMAC and third countries are permitted, provided that proper supporting documentation is available and prior notification is given to the exchange control authority. Regarding inward or outward foreign direct investments, investors are required to declare to the Ministry of Finance only those transactions above a prescribed threshold and within 30 days of the realization of the investment. There is still a lingering perception that controls on transfers remain in force due to BEAC’s decision to monitor outward transfers and the cumbersome BEAC payments system.

The Cameroon government tends to welcome foreign investment, although the process of obtaining approvals for investment projects under special schedules can be tedious. In March 2002, the parliament approved a new investment charter that establishes a new framework for investments in Cameroon. The new charter will integrate recent laws relating to the mining and the petroleum codes. Implementation of the new charter has faced delays, and it may not be in effect until 2005 or beyond. In general, Cameroon’s legal system is prone to favoritism and corruption.

Cameroon has a Bilateral Investment Treaty with the United States that provides, inter alia, investor-state access to international arbitration, the right to make transfers freely and without delay, and the right of establishment. Cameroon is a member of the Organization for the Harmonization of Business Laws (in French, OHADA). OHADA codes are applicable throughout French-speaking West and Central Africa.

CAMEROON

ELECTRONIC COMMERCE

Internet access is still in its infancy in Cameroon, and legislation to govern Internet services has not been devised. Currently, no special restrictions on these services have been imposed.

OTHER BARRIERS

Agent and Distributor Rules

Agents and distributors must register with the Cameroon government, and their contracts with suppliers must be notarized and published in the local press.

Procedural and Financial Irregularities

Corruption is fairly pervasive throughout government and business. In the past, the judicial system, characterized by long delays and poorly paid staff, has resulted in major expenses for some American companies operating in Cameroon. Court decisions are often arbitrary and subject to corruption. Many accused individuals find it easier and cheaper to bribe a judge than to hire a lawyer to win a case. Lawyers are frequently unethical. Local and foreign investors, including some U.S. firms, have found Cameroon courts too complicated and costly to resolve their contract or property rights disputes.

CANADA

TRADE SUMMARY

U.S. investment in Canada, which is a major contributor to the U.S. non-goods trade surplus with Canada, is concentrated in manufacturing, natural resources, and the Canadian financial sector. The U.S. trade deficit with Canada was $54.7 billion in 2003, an increase of $6.5 billion from $48.2 billion in 2002. U.S. goods exports in 2003 were $169.5 billion, up 5.3 percent from 2002. U.S. imports from Canada were $224.2 billion in 2003, an increase of $15.1 billion from 2002. Canada is the largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Canada were $24.3 billion in 2002 (latest data available), and U.S. imports were $18.4 billion. Sales of services in Canada by majority U.S.-owned affiliates were $51.2 billion in 2001 (latest data available), while sales of services in the United States by majority Canada-owned firms were $47.9 million.

A Trading Relationship Based on Free Trade

The North American Free Trade Agreement (NAFTA) came into force on January 1, 1994 and replaced a bilateral free trade agreement implemented in 1989. The bilateral phase-out of tariffs between Canada and the United States was completed on January 1, 1998, except for tariff rate quotas (TRQ) that Canada has not eliminated on certain supply-managed agricultural products. However, Canada still maintains some non-tariff barriers of concern at both the federal and provincial levels, impeding access to the Canadian market for U.S. goods and services.

IMPORT POLICIES

Supply-Managed Products

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

Dairy: Over a number of years, the United States has argued before the WTO that Canada’s dairy programs provided export subsidies to its dairy processors and farmers above the level that Canada committed to in the WTO. In its latest ruling in December 2002, a WTO Appellate Body found that Canada’s system of subsidizing exports of dairy products continue to violate its WTO commitments. The United States and Canada reached agreement in May 2003 to comply with that report. Canada agreed to end all exports to the United States of subsidized dairy products and to bring all dairy exports to third countries within WTO export subsidy limits, both by August 1, 2003. To accomplish this, by the end of April 2003 all Canadian provinces had imposed regulations on all dairy production, including production by producers who do not hold domestic marketing quotas.

Margarine: The Province of Quebec continues to apply coloring restrictions on dairy margarine. In addition, provincial restrictions on the marketing of butter/margarine blends and imitation dairy products have served to limit and, in certain cases, prohibit the sales of these products in many provinces. The provinces of Ontario, Manitoba and Saskatchewan are challenging Quebec's provincial coloring regulations.

Cheese snack foods: Canada remains unwilling to resume duty-free trade in cheese snack foods between the United States and Canada. Prior to 1999, cheese snack foods were traded duty-free between the U.S. and Canada. Canada ceased issuing duty-free import permits, effective September 1, 2001, and initiated a tariff of 245 percent on U.S. exports of breaded cheese sticks to Canada. Canada was responding to a

1999 U.S. Customs Service reclassification of cheese sticks, which subjected imports to a TRQ and over-quota tariff. After USTR completed consultations with Congress on November 7, 2001, USTR stated and it was prepared to request that the President issue a Proclamation to return duty- and quota-free treatment to Canadian cheese sticks, provided Canada commits to providing the same tariff treatment for imports of similar U.S. cheese snack foods. In early January 2002, the Department of Foreign Affairs and International Trade informed USTR that Canada had no intention of reducing its duties or entering into negotiations with the United States.

Processed egg products: The Canadian Egg Marketing Agency maintains 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 and a portion of the levy is used to subsidize exports of eggs. This practice artificially increases Canadian exports of egg products at the expense of U.S. exporters.

Fresh Fruits and Vegetables: 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 easement or exemption. To obtain an easement, Canadian importers must demonstrate that there is an insufficient supply of product in the Canadian domestic market. The bulk restrictions do not apply to intra-provincial shipments. These restrictions apply to all fresh and processed produce in bulk containers and have a particularly 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 due in part to Canadian varietal controls. Canada requires that each variety of grain be registered and be visually distinguishable. Because U.S. varieties may not be visually distinct, they are not registered in Canada. As a result, U.S. wheat is being sold in Canada as "feed" wheat at sharp price discounts compared to the Canadian varieties. The Canadian Grain Commission (CGC) is currently in the process of introducing a new system called Variety Eligibility Declaration, or VED, which is designed to monitor and control the type of grain that enters the grain handling and transportation system. After extensive consultations on the operational details of the VED system, the CGC is close to making its proposals public.

Wine and Spirits

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

The Canadian Wheat Board and State Trading Enterprises

The Canadian Wheat Board (CWB) continues to enjoy government-sanctioned monopoly status as well as other privileges that restrict competition. In February 2002, the Bush Administration announced a four-prong plan, which it has pursued aggressively over the past two years.

First, the plan called for the examination of a possible WTO challenge. On March 6, 2003, USTR announced it would seek formation of a World Trade Organization dispute settlement panel to challenge the monopolistic wheat trading practices of the Canadian Wheat Board (CWB) and the unfair and burdensome requirements that the Canadian grain handling system places on imported grain, including U.S. grain. The dispute also raised certain discriminatory aspects of the rail transportation system for grain in Canada. The United States argued that these unfair practices put American farmers at a disadvantage and undermine the integrity of the international trading system.

A WTO panel was established on March 31, 2003. An interim panel report was issued to the parties in December 2003 and the final report is scheduled to be issued to the public in early April 2004.

Second, in response to petitions filed by the North Dakota Wheat Commission, the Administration recently completed its antidumping and countervailing duty investigations on imports of certain durum and hard red spring wheat from Canada. While the Department of Commerce found that imports of durum and hard red spring had been dumped and unfairly subsidized, the International Trade Commission found that while imports of hard red spring wheat did materially injury the U.S. industry, imports of durum wheat did not. Therefore, antidumping and countervailing duty orders were issued only on imports of hard red spring wheat, with an antidumping margin of 8.86 percent and a subsidy rate of 5.29 percent.

Third, USTR announced that it would work with the U.S. industry to identify impediments to U.S. wheat entering Canada. The elements of the WTO dispute regarding Canada's grain segregation requirements and rail transportation rules are a direct result of those efforts.

Fourth, the United States committed to seek reform of state trading enterprises through the adoption of new rules in the WTO agriculture negotiations, which are part of the Doha Development Agenda launched in November 2001. The United States is aggressively pursuing this negotiating objective. In particular, the United States has proposed eliminating export monopolies so that any producer, distributor, or processor can export agriculture products. The United States has also proposed ending special financial privileges which are granted to state traders and expanding their WTO transparency obligations.

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 some 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. The current regulatory regime requires that products such as calcium-enhanced orange juice be treated as a drug, and forces manufacturers to label vitamin and mineral fortified breakfast cereals as "meal replacements." These standards impose costs on manufacturers who are forced to make separate production runs for the U.S. and Canadian markets.

A U.S. company may request a Temporary Marketing Authorization Letter (TMAL) from Health Canada which may grant a 2-3 year marketing authorization when the benefits of a product are clear, but the potential risks to a consumer are still under study. However, U.S. companies have encountered difficulties with consistency and transparency in this process, and many breakfast cereals are still prohibited from entering Canada without extensive re-labeling and without incurring associated marketing expenses, to re-brand breakfast cereal as, for example, "meal replacements." In May 2003, Health Canada put off a final decision on a TMAL for breakfast cereal pending the release of a study on Dietary Reference Intakes (DRIs) by the U.S. Institute of Medicine (IOM). The final report, which was released on December 11, 2003 and is currently being reviewed by both governments and interested parties, provides guiding principles for fortifying foods rather than explicit recommendations of fortification levels. A principal message contained in the report is that additional research will be required to determine the scientific justification for discretionary fortification. The need for further research provides the justification for the TMAL, whose very purpose is to generate information in support of the Food and Drug Regulations.

CANADA

EXPORT SUBSIDIES

Softwood Lumber

The 1996 U.S.-Canada Softwood Lumber Agreement expired on March 31, 2001. This bilateral agreement was put in place to mitigate the effects of subsidies in several Canadian provinces. Upon expiration of the Agreement, the U.S. lumber industry filed antidumping and countervailing duty petitions regarding Canadian softwood lumber. Preliminary investigations found both dumping and subsidies, and led to the imposition of preliminary duties. On March 22, 2002, the U.S. Department of Commerce announced its final, company-specific antidumping duties and a countrywide (except for the Maritime provinces) countervailing duty determination. On April 26, 2002, the Commerce Department announced amended final antidumping rates ranging from 2.18 percent to 12.44 percent and an amended final countervailing duty rate of 18.79 percent.

Canada is challenging the underlying Commerce Department and ITC investigations in the WTO and NAFTA.

A WTO panel reviewing Commerce’s final countervailing duty determination handed the United States a victory in August 2003 on two key issues: Canadian provinces' sale of timber from public lands can constitute a subsidy under the WTO Subsidies Agreement; and U.S. laws governing reviews of countervailing duty orders are consistent with the WTO Subsidies Agreement. The panel found fault with certain aspects of Commerce’s calculation of the subsidy benefit, but its adverse findings were significantly narrowed by the Appellate Body in a January 2004 ruling that found in favor of the United States on key elements of the dispute. A NAFTA dispute settlement panel also found in favor of the United States on the key issues in the countervailing duty case. The NAFTA panel remanded the case to Commerce for reconsideration of the benefit calculation methodology. Commerce filed its remand redetermination with the NAFTA panel on January 12, 2004, and a ruling on that redetermination is expected in April 2004.

Another WTO panel is considering Canada’s challenge to Commerce’s initiation and conduct of its investigation into dumping of softwood lumber by Canadian producers. Public release of the panel’s report is expected in April 2004. A NAFTA panel reviewing the same dumping case remanded the Commerce’s determination in July of 2003 on three calculation issues. Commerce issued a remand redetermination in October 2003. The NAFTA panel is expected to rule on that redetermination in May 2004.

A third WTO panel is considering Canada’s challenge to the International Trade Commission’s May 16, 2002 determination that a U.S. industry was threatened with material injury by reason of dumped and subsidized softwood lumber imports from Canada. The panel’s report was released in March 2004. However, as a result of NAFTA litigation described below, the ITC determination at issue in the WTO case has been replaced. Canada brought a parallel challenge to the ITC’s determination under NAFTA. The NAFTA panel issued a decision in early September, in which it remanded the matter in part to the ITC for further action consistent with its decision. On December 15, 2003, the ITC filed a remand determination, which is now being reviewed by that panel. Thus, as a result of the NAFTA litigation, the determination reviewed by the WTO panel is no longer in existence.

Negotiations in 2003 to find a durable solution as an alternative to the cycle of trade cases and litigation progressed significantly and narrowed differences in several areas. The negotiations focused on two objectives: agreement as to the market-oriented reforms to Canadian provincial forestry practices that would be sufficient to enable the Department of Commerce to revoke the countervailing duty order on a province-specific basis; and an interim measure to be imposed by Canada that would both stabilize the market pending the completion of reforms and provide an effective substitute for the deposits currently being collected under the antidumping and countervailing duty orders.

At the end of 2003, U.S. and Canadian negotiators agreed to present to their respective stakeholders a proposal for an interim measure. This proposal proved to be unacceptable to Canadian stakeholders. The Department of Commerce continues to work on a Policy Bulletin that is intended to provide a roadmap for market-based reforms of Canadian provincial forestry systems.

Technology Partnerships Canada

Technology Partnerships Canada (TPC) is a Canadian Government program that supports the research and development activities of selected industries. Established in 1996, TPC provides funding for pre-competitive research and development activities for companies incorporated in Canada that operate in three strategic areas, including aerospace and defense. Funding covers approximately 25 percent to 30 percent of a project's total costs, but may be significantly higher. Applicants must demonstrate that they have the capabilities to perform the R&D and that the project proposal has economic and commercial merit. To date, the program has made well over CN$2.0 billion in funding commitments for over 500 projects, of which about two-thirds have been disbursed. Publicly available information indicates that the aerospace and defense industry receives the largest amount of funds under the TPC. The U.S. government will continue to monitor this program and its consistency with WTO provisions.

Pharmaceuticals

The U.S. pharmaceutical industry has complained about the use of international price comparisons and the establishment of price ceilings on patented medicines in Canada and encourages Canada and the Patented Medicine Prices Review Board (PMPRB) to move towards a more market-based review system. The United States is monitoring Canadian policies with respect to patent and data protections. Canadian patent protection has improved following two WTO cases in which Canada agreed to, among other things, amend its patent law to provide 20-year patent protection to all patents filed before October 1989. Canada also has eliminated its regulations which previously allowed generic manufacturers to stockpile pharmaceuticals before a patent expired. However, Canada's compliance with its TRIPS and NAFTA obligations continues to be a source of concern. Although Canada has statutory data protection, several judicial rulings have cast doubt on how well these protections are being enforced as required by TRIPS Article 39.3 and NAFTA Article 1711. Canadian authorities allow parties other than the right-holder effectively to gain marketing approval in direct reliance on protected confidential data and it appears Canada may be in violation of TRIPS Article 39.3. In addition to this perceived discrepancy between the standard applied by Canadian courts and that provided under the TRIPS and the NAFTA, Canada apparently is failing to apply its "linkage regulations" effectively. Such regulations require that Health Canada determine if the marketing of generic pharmaceuticals infringes on existing name-brand patents.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Canada is a member of the World Intellectual Property Organization (WIPO), and adheres to a number of international agreements, including the Paris Convention for the Protection of Industrial Property (1971), the Berne Convention for the Protection of Literary and Artistic Works (1971), and the 1952 Universal Copyright Convention (UCC). Canada is also a signatory of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (together the WIPO Treaties), which set the standards for intellectual property protection in the digital environment, but has not yet ratified either treaty.

To date, Canada has not introduced draft legislation that would ratify the WIPO treaties. While Canada was a strong supporter of both treaties, which led to it becoming a signatory, intense lobbying by Canadian broadcasters and provincial education ministers has prevented Canadian ratification. In the legislated five-year review of the 1997 Copyright Act, published in October 2002, Canada listed ratification of the WIPO Treaties as the top copyright priority. The Parliamentary committee charged with providing recommendations for copyright reform commenced its review in October 2003. The Parliamentary committee plans to hold extensive consultations and is not expected to finalize its recommendations until Fall 2004.

Canada's Copyright Act contains two provisions under which Canada applies reciprocal rather than national treatment. The first provision is for the payment of a neighboring rights royalty to be made by broadcasters to artists. Under Canadian law, those payments are only guaranteed to artists from countries that are signatories of the 1961 Rome Convention. The United States is not a signatory of the Convention, and Canadian authorities have still not granted U.S. artists national treatment in the distribution of these royalties. The second provision is for the payment of a levy, dubbed the private copy levy, by manufacturers and importers of blank recording media to artists from countries that provide an equivalent payment to Canadian artists. The levy covers analog and digital tapes and diskettes, and was expanded in December 2003 to include MP3 players. Canada's copyright law stipulates this reciprocity criterion in the distribution of the private copy levy to foreign artists. The United States does not impose a levy on analog tape, only on digital audio recording media, with proceeds distributed to applicable artists, including Canadians.

The United States regards Canada's reciprocity requirement for both the neighboring rights royalty and the blank tape levy as denying national treatment to U.S. copyright holders. Consequently, USTR has placed Canada on its Special 301 "Watch List" for the past four years. While Canada may grant some or all of the benefits of the regime to other countries, if it considers that such countries grant or have undertaken to grant equivalent rights to Canadians, Canada has yet to grant these benefits with regard to the United States. A growing coalition of technology and retail companies advocating for the elimination of the private copy levy have successfully added the levy to the list of copyright issues that will be examined as a part of the ongoing Parliamentary review of the Copyright Act.

Canada's border enforcement measures have been the target of criticism U.S. intellectual property owners who express concern with the low rate of prosecution arising from counterfeit goods seizures. Deficiencies in border enforcement are compounded by the failure, or lack of resources, of law enforcement authorities to conduct follow-up investigations of many illegal import cases.

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 Radio-television and Telecommunications Commission (CRTC) licenses them as distribution undertakings. Internet "broadcasters" are currently exempt from licensing. In 2003 the CRTC confirmed its intention to leave this exemption unchanged.

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 Canadian Radio Television and Telecommunications Commission (CRTC), is charged with implementing this policy. The CRTC requires that for Canadian conventional, over-the-air broadcasters, Canadian programs 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 TV and direct to home (DTH) broadcast services, a preponderance (more than 50 percent) of the channels received by subscribers must be Canadian programming services. For other services, such as specialty television and pay audio 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 (CBC) not show "popular foreign feature movies" between 7 pm and 11pm. The only non-Canadian films that maybe 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.

Under previous CRTC policy, in cases where a Canadian service was licensed in a format competitive with that of an authorized non-Canadian service, the CRTC could revoke the license of the non-Canadian service, if the new Canadian applicant so requested. This policy led to one "de-listing" in 1995, and has deterred potential new entrants from attempting to enter the Canadian market. 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, and the CRTC will consider removing existing non-Canadian services from the list if they change format to compete with a Canadian pay or specialty service.

Radiocommunication Act

One of the foremost concerns of the Canadian Cable Television Association (CCTA) is the spread of unauthorized use of satellite television services. Industry findings, extrapolated on a national basis, established that 520,000 to 700,000 households within cabled areas use unauthorized satellite services. Any survey of the incidence of satellite 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 are approximately 1,000,000 illegal users of U.S. satellite systems in Canada, resulting in a significant annual loss to the legitimate satellite 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 remaining 10 percent subscribing via "gray market.” "Grey market" signal theft is less attractive at current exchange rates because of the unfavorable currency conversion in U.S. dollars. These survey results have led the Motion Picture Association to recalculate total losses to the U.S. motion picture industry due to signal theft in Canada. Annual losses to the U.S. motion picture industry due to audiovisual piracy in Canada are estimated to be $122 million in 2002.

Late in 2003, the GOC introduced amendments to the Radio Communication Act which would significantly increase penalties for signal theft and for the sale of unauthorized hardware. However, this legislation expired at the end of the Parliamentary session in November 2003 but has been reintroduced in substantially the same form in the current session.

Basic Telecommunications Services

Under the terms of the WTO Agreement on Basic Telecommunications Services, Canada's commitments permit foreign firms to provide local, long distance, and international services through any means of technology, on a facilities or resale basis. However, Canada retained a 46.7 percent limit on foreign ownership for all services 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). In April 2003 the House of Commons Committee on Industry recommended the complete removal of these restrictions.

Canada has revised its universal service system. Previously, contributions to universal service funds were based upon on a per-minute assessment. This system potentially overcompensated incumbent local suppliers, who also competed in the long distance sector. The Canadian regulator, CRTC, established rules for a more competition-neutral collection system as of January 1, 2001. On May 30, 2002, the CRTC released its price caps decision, which cut contribution rates by 10 percent to 20 percent. This new regime extends through 2006.

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 it cannot own or operate its own telecommunications transmission facilities.

Internet Services

A recent Canadian Federal Court of Appeals ruling concerning "caching" has the potential to stifle the development of a vibrant Internet services market in Canada. Caching is a way for Internet Service Providers (ISPs) to store content in a local server to enable users to retrieve it quickly without having to access such content from a distant host. It is a more efficient means by which ISPs provide access to data. The Court ruling essentially requires the ISPs to pay royalties if they cache copyrighted materials. The case is pending before the Supreme Court of Canada, which heard arguments in December 2003. While this case would not lead to the application of tariffs on peer-to-peer file sharing, it could nevertheless impact the free flow of Internet traffic, and Internet usage, and hinder the growth of electronic commerce.

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 MPA members must submit product destined for theatrical release. Most of these boards also classify product intended for home video distribution.

As a control device, and to display a video's Québec classification, the Québec 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 Québec. 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, Québec, 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 Québec 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 maintains restrictions that inhibit new or expanded foreign investment in the energy, publishing, telecommunications, transportation, film, music, broadcasting, and cable television sectors.

Investment Canada Act

The Investment Canada Act (ICA) is intended to regulate foreign investment in Canada. The Government of Canada reviews the direct or indirect acquisition by a non-Canadian of an existing Canadian business of substantial size (as defined below). It also reviews the specific acquisition of an existing Canadian business or establishment of a new Canadian business by a non-Canadian in designated types of business activity relating to Canada's culture, heritage or national identity (as described below) 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, or is in a business that is identified by regulation to be culturally sensitive, or in uranium production, financial services or transportation services; or
- acquire the indirect control of 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 2002, the C$5 million threshold was increased to C$218 million in cases where the country of the acquiring non-Canadian investor is a member of the World Trade Organization (WTO). The WTO exemption for amounts over $5 million does not include investments in production of uranium; financial services; transportation services or acultural business. The dollar threshold varies year-to-year and is a function of GDP growth.

In addition, there is no review process applicable to an indirect acquisition of a Canadian business by a non-Canadian whose country is a member of the WTO. The reviewing authority is the Department of Canadian Heritage in the case of investments related to cultural industries, and the Department of Industry in other instances. The ICA sets strict time limits within which the reviewing authority must respond, in an effort to ensure that the legislation does not unduly delay any investment in Canada. In practices, Canada has allowed most transactions to proceed, though in some instances only after compliance by the applicant with certain undertakings.

Publishing Policy

Since January 1992, Canadian book publishing and distribution firms that would transfer to foreign ownership as a result of an indirect acquisition need not be divested to Canadians, but the foreign investor must negotiate specific commitments to promote Canadian publishing. Foreign investors may directly acquire Canadian book firms under limited 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 businesses continues to be prohibited.

Film Industry Investment

Canadian policies prohibit 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 Government Procurement Agreement (GPA), Canada allows U.S. suppliers to compete on a non-discriminatory basis for its federal government contracts covered by the GPA. However, Canada has not yet opened "sub-central" government procurement markets (i.e., procurement by provincial governments), despite commitments in the GPA to do so no later than July 1997. 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, 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 Administration 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.

ELECTRONIC COMMERCE

There are currently few barriers to U.S.-based electronic commerce in Canada. In the WTO context, Canada has consistently supported the U.S. initiative for duty-free cyberspace. The CRTC announced in 1999 that it would not attempt to regulate the Internet, but this decision is subject to review after five years (expected in 2004).

Early in 2000, Canada passed a new personal information protection law, the Personal Information Protection and Electronic Documents Act, which took effect on January 1, 2001. It requires persons or firms which collect personal information in the course of commercial activities to inform the subject of all purposes to which the data may be put, and to obtain informed consent for its use.

CHILE

TRADE SUMMARY

The U.S. trade deficit with Chile was $984 million in 2003, a decrease of $192 million from $1.2 billion in 2002. U.S. goods exports in 2003 were $2.7 billion, up 4.2 percent from the previous year. Corresponding U.S. imports from Chile were $3.7 billion, down 2.2 percent. Chile is currently the 35th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Chile were $1.2 billion in 2002 (latest data available) and U.S. imports were $721 million. Sales of services by majority U.S.-owned affiliates were $2.9 billion in 2001 (latest data available), while sales of services in the United States by majority Chile-owned firms were $29 million.

The stock of U.S. foreign direct investment (FDI) in Chile in 2002 was $11.6 billion, down from $12.0 billion in 2001. U.S. FDI in Chile is concentrated in the mining, finance, and manufacturing sectors.

IMPORT POLICIES

Tariffs

The United States and Chile concluded negotiations on a bilateral Free Trade Agreement (FTA) in December 2002. The 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 twelve years. Approximately 75 percent of U.S. farm exports will enter Chile duty-free within four years.

Chile also concluded FTAs with the European Union, the European Free Trade Association (EFTA), and South Korea during 2002. The Chile-European Union FTA entered into force in February 2003. Chile’s agreement with EFTA, the latter comprised of Iceland, Norway, Liechtenstein, and Switzerland, also entered into force in 2003. The Chile-Korea FTA is to enter into force on April 1, 2004**.**

Chile has a generally open trade regime. The country reduced its applied tariffs unilaterally by one percent per year between 1999 and 2003. The uniform rate for virtually all imports declined to 6 percent in January 2003, concluding the pre-established reductions. Imports also pay the 19 percent Value-Added Tax (VAT) calculated over the Customs value plus the import tariff. In the case of duty-free imports, the VAT is calculated over the Customs value alone. Most of Chile's tariffs are bound at 25 percent *ad valorem.*

There are several exceptions to the uniform tariff. Higher tariffs will remain throughout the U.S. - Chile FTAs 12-year transition period for wheat, wheat flour, and sugar. In August 2001, Chile formally notified its new consolidated sugar import tariff to the World Trade Organization (WTO), which increased from the current level of 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 FTA, the 50 percent surcharge on used goods has been eliminated for U.S.-originating goods. The importation of used passenger and cargo transport vehicles is prohibited except for personal use. Many computer products and books enter Chile duty free.

CHILE

Import Controls

Customs authorities must approve and issue an import report for all the imports valued at more than $3,000. Imported goods must generally be shipped within 30 days from the day of the import permit, but longer periods may be authorized. Commercial banks may authorize imports of less than $3,000. All imports must be reported by the importer in Chile to the Central Bank. Approval for this report is automatic and comes through the assignment of a number and a date for the report. 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 reports. 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, which will be phased out under the U.S.-Chile Free Trade Agreement for imports from the U.S. 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 prices, including insurance and freight, are calculated by Chilean authorities as falling below the floor, a special tax is added to the uniform tariff rate to raise the price to the floor. Price bands effectively set a minimum import price that is normally higher than both international and Chilean domestic prices.

The WTO ruled on October 23, 2002, that Chile’s price band system was inconsistent with Article 4.2 of the WTO Agreement on Agriculture. Following arbitration, Chile was given until December 23, 2003, to implement the rulings and recommendations of the WTO to bring the price band system into compliance with its WTO obligations. President Lagos’ Administration 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 began in November 2003 and will remain fixed 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 with the price band system or eliminate it. Mixtures (high fructose corn syrup) containing more than 65 percent sugar content are now subject to the sugar price band system.

Safeguards

On June 30, 2003, safeguards on a range of hot-rolled steel products and wire rods, which had been imposed the year before, were removed. On February 14, 2003, a 14 percent safeguard measure on fructose imports which had been imposed in November 2002 was removed.

The FTA establishes a bilateral safeguard mechanism that allows parties to impose a temporary safeguard measure when a good of the other party is being imported in such increased quantities and under such conditions to constitute a substantial cause of serious injury or threat thereof to a domestic industry. These safeguards can be applied only during the transition period of 10 years for industrial products and 12 years for agricultural products. The FTA does not affect the ability of each party to take global safeguard actions.

In addition, the FTA provides two special safeguard provisions, one for textiles and one for agricultural products. If, as a result of the elimination of a duty under the FTA, a textile or apparel good is being imported into either Party in such increased quantities as to cause serious damage to the domestic industry, the Party may take an “emergency action” by increasing the rate of duty on those imports. The agricultural safeguard allows the imposition of additional import charges over the preferential tariff on certain agricultural products depending on the relationship between the import price and a "trigger price" specified in the FTA. The charges can never go above the MFN rate. Once the preferential tariffs reach zero, the ability to use the safeguard disappears.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Prior to U.S.-Chile FTA negotiations, Chile's strict animal health and phytosanitary requirements prevented the entry of a number of U.S. products. The U.S.-Chile FTA addresses sanitary and phytosanitary concerns by establishing a committee to follow up on the implementation of the WTO's Agreement on Sanitary and Phytosanitary Measures. The committee will provide a special mechanism for channeling technical inquiries on problems that arise in bilateral commerce and for recognizing inspection and certification systems that facilitate trade.

In March 2002, a Bilateral Technical Working Group on Sanitary and Phytosanitary Issues was established in order to facilitate the solution of technical matters that could create obstacles for certain products from one of the two countries. The Technical Group has resolved several matters of interest to both the U.S. and Chile, such as:

- New or improved market access for several horticultural products was obtained on both sides;

- The Chilean Plant and Animal Health Inspection Service (SAG) delegated to the Food and Drug Administration the authority to approve U.S. dairy plants to export to Chile, eliminating the need for SAG to approve each facility on a plant-by-plant basis;

- Both parties reached an agreement regarding beef quality grades, allowing products to be sold according to the grades of the originating country and thus avoiding the requirement that the product be specifically cut to the specifications of the other market;

- Both parties engaged in a meat and poultry equivalency review process. Chile now recognizes the U.S. red meat inspection system administered by USDA's Food Safety Inspection Service and the U.S. is in the final stages of completing a similar review to make the same determination for SAG. The equivalency review process for poultry is ongoing.

The Chilean Ministry of Health administers Chile's labeling standards. All U.S. food imports must be registered with the Ministry of Health and all must be approved on a case-by-case basis. The Chilean Ministry of Health is expected to issue an amendment to its food labeling law, but it is not expected to address these requirements. However, the changes may clarify how agricultural biotechnology products are handled. Currently, there are no specific labeling requirements relating to agricultural biotechnology products. Chile has controlled production of agricultural biotechnology products for export, but does not allow these products to be marketed domestically. A Presidential Commission formed to review all aspects of biotechnology (including cloning) released a report in June 2003 that favored increased use of biotechnology in Chile. The commission also recommended that Chile's current laws provide adequate authority to regulate biotechnology, although it called for a new interagency regulatory committee to provide better oversight. The Chilean government is likely to implement the recommendations of the Commission report with respect to the regulation of agricultural biotechnology products, treating these products in a manner similar to that of the Food and Drug Administration.

GOVERNMENT PROCUREMENT

Individual government entities in Chile usually conduct their own procurement. In general, 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 guarantee 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 in their area of interest, free of charge. The system also allows all public agencies with needs for goods and services to publish information concerning their public bidding processes and requirements 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 350 municipalities in Chile. It also establishes strong disciplines aimed at preventing discrimination against U.S. firms when 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 some export promotional activities. ProChile, the Export Promotion Bureau of Chile, promotes specific products to targeted exports markets. It provides matching funds of up to 50 percent to participating firms for approved market promotion activities.

Chile provides a simplified duty drawback program for nontraditional exports that reimburses to firms a percentage of the value of the export. Companies purchasing capital equipment domestically can borrow up to seventy-three percent of the amount of customs duties that would have been paid on the capital goods if they had been imported. If the capital goods are ultimately used in the production of exports, the loan balances and any unpaid interest are waived and the producer is not required to repay the loan. 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 VAT reimbursement policy, exporters have the right to recoup the VAT that they have paid when purchasing goods and using services intended for export activities. Chile's export credit guarantee program guarantees 80 percent of exporter credits up to a limit of $132,000**.** Eligible exporters must have annual sales of less than $16.7 million.

The "Country Image" Program is an advertising campaign intended to enhance Chile's image in target export markets. The program is a joint venture between the Chilean public and private sector.

The FTA’s Chapter on Market Access eventually eliminates the use of duty drawback and duty deferral for inputs from third countries that are incorporated into any good exported to the U.S. or Chile. Full drawback rights are allowed for the first eight years from entry into force. Beginning on year nine, the amount of drawback allowed is reduced until reaching zero by year 12.

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. Export reports are filed with the Central Bank by Chilean exporters purely for statistical purposes. As with imports, exporters may use the formal or informal exchange market. All exports must be reported to the 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 VAT if re-exported.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Protection and enforcement of intellectual property rights in Chile has been inadequate in several important respects in recent years. As a result, Chile was placed on the 2003 Special 301 Watch List. The FTA addresses these deficiencies by incorporating an extensive chapter on intellectual property rights that includes stipulations on trademarks or manufacturing brands, internet domain names, geographic indications, copyrights and related rights, protection of satellite signals carrying codified programs, patents, and regulated products. The FTA also commits Chile to ratify and adhere to certain multilateral agreements on intellectual property. With full implementation of this agreement, Chile will be in compliance with its TRIPS obligations as well as providing WTO-plus intellectual protections.

Patents and Trademarks

Chile implemented a patent, trademark, and industrial design law in 1991 that provides product patent protection for pharmaceuticals and a limited form of pipeline protection. The FTA significantly strengthens protections under pre-existing Chilean Law. For example, the FTA provides for the extension of the protection period for patents when there are unjustified delays in the patenting process. The Agreement also requires both parties to protect confidential information provided to authorities in order to obtain marketing or health permits for pharmaceutical products and agricultural chemicals. In addition, the FTA establishes the obligation to undertake reasonable efforts to extend patent rights to qualifying plants.

The Institute of Public Health (ISP in Spanish), Chile’s version of the U.S. FDA, is the agency charged with granting health/marketing approval to new drugs. The ISP has issued health approvals -- which have effectively constituted marketing approval -- for unauthorized copies of patented products as well as of products whose patent application is in process or whose period of data exclusivity has not yet expired. U.S. firms have been obligated to defend their patent rights in costly court proceedings that take several years. The FTA requires Chilean authorities to establish a reasonable link between the actions of the ISP and the Ministry of Economy’s Industrial Property Department, Chile’s patent and trademark office**,** to prevent this undermining of effective patent protection. The U.S. Government continues to monitor Chile’s performance.

Chile's Trademark Law is generally consistent with international standards, but also contains some deficiencies addressed by the FTA. Some U.S. trademark holders have complained of inadequate enforcement of trademark rights in Chile. In relation to Internet domain names, the U.S. and Chile committed to making a system available for the resolution of disputes, following international standards with respect to problems such as the cyber-piracy of brands and trademarks for higher-level country domain names. Furthermore, both countries committed to putting together a database containing information on individuals who have registered higher-level domain names, which will protect the personal data of those that have done the registration. The FTA also applies the principle of "first-in-time, first-in-right" to trademarks and geographical indicators (place-names).

Copyrights

Despite increasingly active enforcement efforts by the police, piracy of computer software and video recordings in Chile remains significant. Attempts to enforce copyrights in Chile have met with considerable delays in the courts and weak sentences. The U.S. industry estimates losses related to video piracy alone to exceed $2 million annually. Chile's copyright law of 1970 offered inadequate penalties for copyright infringement and had no provision for ex parte civil searches. It was also vague with respect to injunctions and temporary restraining orders, and placed unnecessary constraints on contractual rights. Chile approved the long-pending Miscellaneous Law in November 2003 to bring the country into compliance with TRIPS obligations and addressed some concerns about copyrights and authors rights. However, U.S. industry representatives have questioned whether the law is adequate. The FTA's provisions on copyrights seek to strengthen Chile's legal framework for protection of copyrights and related rights such as protection for phonogram producers. For example, the agreement increases the period of protection for copyrights and related rights to life of the author plus 70 years, establishes strong prohibitions against circumvention of encryption technology attached to digital works, performances and phonograms and provides for certain limitations on secondary liability for Internet Service Providers. The FTA also criminalizes end-user piracy and mandates both statutory and actual damages for IPR violations and penalizes tampering with anti-piracy technology.

Chile joined 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 on 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, as well as market access commitments for local basic telecommunications 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 occasionally complain of regulatory delays and a lack of transparency in regulatory decisions. Chile's WTO schedule of commitments excludes local basic telecommunications services, one-way satellite transmissions of Direct-to-Home and Direct Broadcast Satellite television services and of digital audio services. It also excludes free reception broadcasting services. The U.S.-Chile FTA establishes requirements for greater levels of transparency in regulatory processes.

Financial Services

During the 1997 WTO financial services negotiations, Chile made commitments in banking services and most securities and other financial services. However, the Chilean WTO Commitment Schedule in the securities sector does 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 financial service suppliers. In practice, Chile has allowed foreign banks to establish branches or subsidiaries and to provide the same range of services as domestic banks. Foreign insurance companies established in Chile face no limitation on access to the Chilean market as long as their legal incorporation meets 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, U.S. banks, insurance, securities, and related services firms face a more open, competitive, and transparent market. The financial services chapter of the FTA includes core obligations concerning non-discrimination and most-favored-nation treatment as well as additional market access obligations. U.S. insurance firms now have full rights to establish subsidiaries or joint ventures for all insurance sectors with limited exceptions. Chile also committed to phase in insurance branching rights and to modify its legislation to open cross-border supply of key insurance sectors such as marine, aviation, and transport (MAT) insurance, insurance brokerage of reinsurance and MAT insurance. U.S. banks and securities firms are now 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 saving plans and they have gained increased market access through Chile's mandatory social security system. Chile now allows U.S.-based firms to offer services cross-border 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

While Chile welcomes foreign investment, some controls and restrictions exist. Foreign direct investment is subject to pro forma screening by the Government of Chile. The Foreign Investment Committee (FIC) of the Ministry of Economy is the institution responsible for approving foreign investment as well as setting terms and conditions for related contracts. 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 or carried out by public services; those involving the mass media; and those made by foreign governments or by foreign public entities. Foreign investment projects worth more than $5 million are entitled to the benefits and guarantees of Decree Law (DL) 600. Under this law, the FIC signs a separate contract with each investor, which must stipulate the time period within which the investment will be implemented. In the case of mining investments, this period is eight years. The FIC may extend this period to 12 years. In all other areas the period is three years. In the case of investments in industrial or extractive projects (excluding mining) in amounts of at least $50 million, the term may be extended up to eight years depending on the nature of the project. Under DL 600, profits from an investment may be repatriated immediately, but none of the original capital maybe repatriated for one year.

Foreign investors in Chile may own up to 100 percent of an enterprise established under Chilean law, and there is no limit on the period for which they may own property in Chile. They have access to all sectors of the economy except for a few restrictions in coastal trade, air transportation, and the mass media. Restriction in the fishing industry is subject to international reciprocity (i.e., Chile permits a person to invest in this sector to the extent that that person’s home country 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 DL 600 (e.g., those 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 freely sell his foreign currency through the formal or informal exchange market. On April 16, 2001 the Central Bank of Chile suspended its prior controls on capital flows, including the "encaje"--a deposit requirement that applied to short-term flows. The Central Bank also eliminated an earlier one-year holding period for indirect investment. Outflows associated with capital returns, dividends, and other investments no longer need government approval. Restrictions on the issuance of American Depositary Receipts (ADRs) 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 establishes a secure, predictable legal framework for U.S. investors operating in Chile. All forms of investments are protected under the FTA, including enterprises, debt, concessions, contracts, and intellectual property. The FTA removes and prohibits certain potential restrictions on U.S. investors, such as requirements to buy Chilean rather than U.S. inputs.

Chile notified the WTO in 2000 concerning measures related to local content and trade balancing in the automotive industry that were inconsistent with the WTO Agreement on Trade-Related Investment Measures (TRIMS). The Chilean government was granted an extension until December 31, 2001 to legislate the end of its TRIMS-inconsistent laws. Chile finally came into WTO compliance in this area when the measures concerned were abolished in November 2003.

The U.S. and Chilean Governments and have been discussing a bilateral tax treaty. Until such a treaty takes effect, profits of U.S. companies will continue to be subject to taxation by both Governments.

ELECTRONIC COMMERCE

Chile has enjoyed rapid growth in the computer/telecommunications sector and Internet use. In February 2000, Chile became the first country in Latin America to sign a Joint Statement on Electronic Commerce with the United States, highlighting the countries' agreement that the private sector should take the lead on the establishment of business practices related to electronic commerce. Furthermore, under the U.S.-Chile FTA, each country committed to non-discriminatory treatment of digital products, to refrain from imposing customs duties on such products and to cooperate in numerous policy areas related to electronic commerce.

On January 15, 2002, the Chilean Congress passed a law authorizing digital signatures. Law 19,799 establishes the legal framework to regulate commercial operations completed in Chile over the Internet. The Digital Signature Act provides electronic contracts the same legal recognition and protections that are given to traditional contracts. In 2003, the Government implemented the electronic invoice, which is intended to promote e-commerce, facilitate tax compliance by firms and strengthen the Government’s regulatory control. The Chilean Internal Revenue Service, the SII, is currently conducting a trial run of the system with eight companies.

Electronic government has also acquired great importance in Chile and is a priority for the Administration of President Lagos. As part of the overall modernization of the Government, the President has issued guidelines for the development of electronic government. The Chilean Government has made substantial progress toward implementation.

OTHER BARRIERS

Luxury Tax

The luxury tax is currently applied to automobiles whose import value, including insurance and freight, exceeds $15,740. Under the terms of the FTA, the luxury tax on automobiles will be phased out over 4 years. Starting on January 1, 2004, the threshold for applying the luxury tax will increase each year by $2,500. Simultaneously, the luxury tax rate will fall to 63.75 percent during the first year, 42.5 percent during the second year and 21.25 percent during the third before reaching 0 percent during the fourth year.

Distilled Spirit Tax and Other Taxes

Chile collects an *ad valorem* tax rate of 27 percent for all liquor. Beers and wine are also subject to a 15 *ad valorem* percent tax rate. Other merchandise subject to additional taxes are: articles of gold; platinum; ivory; jewelry; natural or synthetic precious stones (15 percent); compressed air arms, their accessories and bullets (15 percent); fine carpets and upholstery (15 percent); motor homes and caviar (15 percent); caviar preserves and its substitutes (15 percent); and natural or artificial nonalcoholic beverages (13 percent).

CHINA

TRADE SUMMARY

The U.S. trade deficit with China was $124.0 billion in 2003, a 20.3 percent increase over the $103.1 billion deficit in 2002. U.S. goods exports to China increased by 28.4 percent to $28.4 billion in 2003, compared to $22.1 billion in 2002, as China is currently the fastest growing export market for U.S. goods. Indeed, over the last three years, U.S. exports to China increased by 76 percent, while U.S. exports to the rest of the world decreased by 9 percent. U.S. imports from China increased by 21.7 percent to $152.4 billion in 2003, compared to $125.2 billion in 2002. The pace of growth in U.S. exports to China has outstripped the growth in U.S. imports from China over the last three years 76 percent to 52 percent.

U.S. exports of private commercial services (i.e., excluding military and government) to China were $6.1 billion in 2002 (latest data available), and U.S. imports were $4.1 billion. Sales of services in China by majority U.S.-owned affiliates were $2.6 billion in 2001 (latest data available), while sales of services in the United States by majority China-owned firms were $144 million.

The stock of U.S. foreign direct investment (FDI) in China in 2002 was $10.3 billion, down from $11.4 billion in 2001. U.S. FDI in China is concentrated in the manufacturing and mining sectors.

Three areas continued to generate significant problems – agriculture, intellectual property rights (IPR) and services. The area of agriculture proved to be especially contentious between the United States and China. While concerns over market access for U.S. agricultural products are not unique to China, particularly serious problems were encountered on many fronts during the first two years of China's WTO membership, particularly with regard to China's regulation of agricultural goods made with biotechnology, the administration of China's tariff-rate quota system for bulk agricultural commodities, and the application of sanitary and phytosanitary (SPS) measures and inspection requirements. In the IPR area, China has made significant improvements to its framework of laws and regulations, but the lack of effective IPR enforcement remains a major challenge. In addition, concerns arose in many services sectors, largely due to transparency problems, delays in the issuance of legislative measures, and China's use of prudential and entry threshold requirements that exceeded international norms. Transparency concerns cut across sectors, and although China has made notable improvements in this area, China's decision-making and regulatory processes largely continue to be opaque. While some ministries and agencies took steps to improve opportunities for public comment on draft laws and regulations, and to provide appropriate WTO enquiry points, China's overall effort was plagued by uncertainty and a lack of uniformity. Recognizing that adjustments must be made to address fundamental issues of transparency more systemically, China's leadership has instructed government think tanks to draft concrete reform proposals on a wide array of legal and policy issues to improve the transparency and efficiency of China's market structure.

As the slowdown in China's WTO implementation efforts became evident in 2003, senior Administration officials stepped up efforts to engage senior Chinese leaders. U.S. Trade Representative Zoellick made two separate visits to China for talks on WTO implementation matters with Premier Wen and with Vice Premier Wu Yi. He also raised U.S. concerns throughout the year with his MOFCOM counterpart. The Secretaries of Commerce and Treasury made their own trips to China, again carrying the message that China's WTO implementation was a matter of the highest priority. Sub-cabinet officials from various U.S. economic and trade agencies also met with their Chinese counterparts in China, Washington and Geneva to work through areas of concern, including WTO implementation issues, on numerous other occasions.

The Administration also utilized the newly established sub-cabinet dialogue on WTO compliance and other trade matters, which brings together U.S. economic and trade agencies and various Chinese ministries and agencies with a role in China's WTO implementation. Meetings were convened twice in

2003, once in February, led by then Deputy United States Trade Representative Huntsman, and later in November, led by Deputy United States Trade Representative Shiner. These meetings have proven to be effective in communicating specific trade concerns and in serving as an early warning mechanism for emerging trade disputes.

The new Chinese leadership continues to adhere to the policy of pegging China's currency (the RMB) to the U.S. dollar, as it has done for the past 10 years. The new leadership has publicly committed itself to the goal of moving toward a flexible exchange rate and has taken some measures to prepare for such a system such as relaxing some capital controls, but has not announced a timetable for implementing a more liberalized, market-oriented currency regime. Throughout 2003, the Administration urged China, both bilaterally and in multilateral fora, to move toward a flexible, market-based exchange rate regime and to reduce controls on capital flows. Treasury Secretary Snow traveled to China for discussions with senior Chinese officials on a range of financial issues, including exchange rate policy. In addition, at the September 2003 G7 meeting in Dubai, the ministers and central bank governors endorsed flexibility in exchange rates for large economies. Serious engagement with China on this issue will continue in 2004. For example, a new Technical Cooperation Program involving the Treasury Department and the central bank of China was implemented in early 2004. This program is intended to help create the market mechanisms needed for China to make the transition to a flexible exchange rate regime.

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 additional trade barriers, there are still substantial barriers to trade that have yet to be dismantled, In addition, some agencies have renewed efforts to erect new technical barriers to trade. 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. The central government continues to implement industrial policies and protect noncompetitive or emerging sectors of the economy from foreign competition. Provincial and lower-level governments have strongly resisted certain 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.

If China is to complete the implementation of its WTO commitments and institutionalize market-oriented reforms, it will have to resist the temptation to retain mechanisms that allow government officials to intervene in the Chinese economy in a manner that is inconsistent with market principles. Despite its remarkable transformation over the past quarter century, China continues to suffer from its command economy legacy. As a result, Chinese economic policy-making operates in a way that prevents U.S. businesses from achieving their full potential in the China market

IMPORT POLICIES

China has traditionally restricted imports through high tariffs and taxes, quotas and other non-tariff measures, and restrictions on trading rights. As part of its first year in the WTO, China significantly reduced tariff rates on many products and the number of goods subject to import quotas, expanded trading rights for Chinese enterprises, and increased the transparency of its licensing procedures. However, during China's second year of WTO membership, while China continued to reduce tariff rates on schedule and made other implementation progress, bureaucratic inertia and a desire to protect sensitive industries contributed to a significant loss of the momentum created in the first year of China's WTO membership.

Trading Rights and other Restrictions

Trading Rights

China restricts the types and numbers of entities with the right to trade. Only those domestic and foreign firms with trading rights may import goods into or export goods out of China. Restrictions on the type and number of firms with trading rights contribute to systemic inefficiencies in the trading system and create substantial incentives to engage in smuggling and other corrupt practices.

Liberalization of the trading rights system had been proceeding gradually since 1995. The pace accelerated in 1999 when MOFCOM's predecessor, MOFTEC, 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 of foreign-invested firms were still restricted to the import 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, are 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 make full trading rights automatically available for 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 is 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.

Through the first two years of its WTO membership, it appears that China has fully implemented the required liberalization of trading rights for Chinese enterprises. However, it appears China has fallen behind in phasing in trading rights for foreign-invested enterprises. By now, China should have made full trading rights available to all joint ventures with minority or majority foreign ownership. Instead, China has continued to limit the availability of trading rights by imposing conditions on the eligibility of these enterprises, including requirements related to minimum registered capital, import levels, export levels and prior experience.

In January 2004, China circulated a draft of a new Foreign Trade Law for comment. This new law is intended to institute an automatic trading rights system and bring China into full compliance with its WTO commitments on trading rights for all Chinese-foreign joint ventures, wholly foreign-owned enterprises and foreign individuals. The United States subsequently raised two concerns with this draft, and China indicated that it would make the changes sought by the United States. In connection with the run-up to the April 2004 meetings of the Joint Commission on Commerce and Trade (JCCT), to be hosted by Commerce Secretary Evans and U.S. Trade Representative Zoellick, the United States has sought assurances from China that it will issue any necessary implementing regulations swiftly after it finalizes the new law, so that China will be in a position to comply fully with its trading rights commitments by the December 11, 2004 deadline.

Under the terms of China's WTO accession, the import of some goods such as grains, cotton, vegetable oils, petroleum, sugar, fertilizers, news publications and related products can still be reserved primarily for state trading enterprises. However, for grains, cotton, vegetable oils and fertilizers, China committed to making a portion of the tariff-rate quotas (ranging from 10 percent to 90 percent) available for import through non-state traders. In some cases, the percentage available to non-state traders increases each year.

Import Substitution Policies

Throughout the 1990s, China gradually reduced formal import substitution policies. In its WTO accession agreement, China 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 policies include:

Fertilizer. Since 2001, China has offered value-added tax (VAT) exemptions and rebates for the types of fertilizers that are primarily produced domestically, but not for like or directly competitive imported fertilizers of American producers. U.S. industry representatives believe China is trying to encourage consumption of domestically produced fertilizer.

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, charges the full 17 percent VAT on imported ICs, unless they were designed in China. The United States raised this issue with China in several high-level bilateral meetings beginning in early 2003. Although China initially appeared willing to reconsider its differential tax treatment of ICs, by the end of 2003 China appeared to have hardened its conviction that it was acting consistently with its WTO obligations. In March 2004, the United States requested formal consultations with China, the first step under the WTO's dispute resolution procedure. If the consultations do not lead to a resolution within 60 days, the United States can then request that a WTO panel rule on whether China's differential tax treatment is consistent with its WTO obligations.

Automobile Investment Guidelines. 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, 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. auto manufacturers report that some local government officials continued in 2002 to require local content and cite the old auto 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. In an effort to comply with that commitment, the NDRC announced in April 2003 that it was drafting a new development policy for the automotive industry. Although the NDRC called for comments by interested parties, it released the draft policy only to domestic firms. Foreign automakers later obtained copies from their joint venture partners, but the U.S. Government's request for a copy was refused. Reportedly, the April 2003 draft of the policy did not contain specific local content requirements, but did contain a target that domestically designed automobiles would account for 50 percent of the market by 2010. It also includes provisions that discourage the importation of auto parts, seek to restrict imports of complete knocked-down auto kits, and set targets encouraging the use of domestic technology. China is also reportedly considering a requirement that separate distribution channels be used for domestic and imported autos. At WTO meetings in late 2003 and during the run-up to the April 2004 JCCT meetings, the United States expressed concern about the direction of the draft policy and urged China to issue the draft policy for public comment.

Telecommunications Equipment. There have been continuing examples of 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

Tariff Reductions

Under the terms of its WTO accession, China committed to substantial reductions in its tariff rates. In 2002, China's first full year of WTO membership, the overall average tariff rate fell from over 15 percent to 12 percent. Further tariff cuts are scheduled, with most of them taking place within five years of China's WTO accession.

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 preferential tariff rates for items that benefit key economic sectors, in particular for the automotive, steel and chemical industries.

China's WTO accession commitments are having a dramatic effect on tariffs for many products of interest to the United States. Tariffs for some passenger cars were over 100 percent prior to accession, and will be reduced to 25 percent by 2005. China will also reduce its tariffs on auto parts to 9.5 percent by 2005. China's elimination of tariffs on the products covered by the Information Technology Agreement (ITA) – semiconductors and semiconductor manufacturing equipment, computers and computer parts, software, telecommunications equipment and computer-based analytical instruments – began upon accession and is to be completed by 2005. U.S. exports of ITA goods to China continued to expand in 2003, totaling $4.4 billion by the end of the year.

In 2003, the United States, with the support of other WTO members, resolved one notable problem involving China's treatment of fifteen ITA product categories, covering certain semiconductor and telecommunications equipment inputs. When China implemented its 2002 ITA tariff changes, it conditioned the availability of reduced or zero tariffs for these products on the importer's completion of an end-use certificate, to be approved by the Ministry of Information Industry (MII), guaranteeing that the products being imported would be used as inputs into the production of finished information technology (IT) products in China. This requirement was not authorized by China's WTO accession commitments, and the WTO Committee of Participants in the Expansion of Trade in Information Technology Products (ITA Committee) had rejected this type of condition whenever a WTO member sought to pursue it. The United States pursued this issue bilaterally with the Chinese and blocked China's membership in the ITA Committee until this issue could be resolved. When China made its 2003 tariff changes, it addressed this issue by transferring the certification requirement from MII to the Customs Administration and thereby creating, in essence, a notification process. China was voted into the ITA Committee in April 2003.

A number of other U.S. industrial products benefiting from reduced Chinese tariffs showed strong export growth in 2003. For example, U.S. exports of iron and steel to China increased by 123 percent in 2003 and reached $1.1 billion. U.S. medical and optical equipment exports increased by 28 percent in 2003, rising to $1.6 billion.

In another important sector, tariffs for U.S. priority agricultural products fell from an average of 31 percent to 14 percent on January 1, 2004. China has also reduced its tariffs on frozen beef cuts to 12 percent, frozen potato products and grapes to 13 percent, beef and pork offal, cheese and citrus to 12 percent, frozen poultry parts, apples, pears, almonds and pistachios to 10 percent, paper to 5.4 percent, and wood to 4.2 percent.

However, China plans to maintain 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 around 30 percent. Raisins face duties of 35 percent.

Tariff Classification

Tariff classification remained a problem in 2003. Customs officers have wide discretion in classifying a particular import. Chemical importers report that they have to "negotiate" tariff classification with customs officers at each port. 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

Importers have often reported inappropriate valuation methods by customs officials, resulting in higher-than-necessary customs charges. In early 2002, China released new valuation regulations in order to bring its valuation practices into conformity with the WTO Customs Valuation Agreement.

Despite the issuance of the new valuation regulations, importers report that many Customs officials continue to use minimum and reference price lists rather than the actual transaction price for valuation purposes. While at times this can result in lower import charges – especially for certain luxury imports – it tends to increase fees for many products, ranging from apples to big-ticket machinery and electronic imports. In addition, many Customs officials still automatically apply royalty and software fees to the dutiable value, even though China's new regulations correctly direct them to add those fees only if they have been paid to the exporter as a condition of the particular sale in question.

In 2003, another concern became more immediate. According to reports from U.S. exporters, China was continuing to value digital products based on the imputed value of the content, which includes, for example, the data recorded on a floppy disk or CD-ROM. China committed to discontinue that valuation method by December 11, 2003 and instead implement the WTO Decision on Valuation of Carrier Media Bearing Software for Data Processing Equipment. That decision makes clear that duties are to be assessed on the basis of the value of the underlying carrier medium, meaning, for example, the floppy disk or CD-ROM itself. Following high-level bilateral engagement, China began charging duties on the value of the underlying carrier medium in late 2003.

Rules of Origin

China is still using regulations written in the 1980s on determining the origin of imports. Although China Customs has been slow in drafting new regulations, importers have not reported problems stemming from inappropriate application of rules of origin.

Border Trade

Firms along China's borders can receive an exemption from, or reduction in, tariff and licensing requirements based on a regulation issued in 1996. This policy was intended to allow small-scale traders to operate in border communities. The regulation expired in 2000, but in the absence of a new policy governing border trade, customs officials are still applying the 1996 regulation. Larger operators appear to be taking advantage of this system to import bulk shipments across China's land borders into its interior at preferential rates. For some time, China was reluctant to stop such shipments in its economically depressed northern and western areas. The government, however, recently eliminated preferential tariff rates for boric acid and a number of other import items of concern to the United States, although several other products continue to benefit from preferential treatment. China continues to use border trade policies to provide preferential treatment for Russian timber imports, to the detriment of U.S. timber exporters.

Taxation

In April 2001, the National People's Congress Standing Committee 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.

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.

Application of China's single most important revenue source – the VAT, which ranges between 13 percent and 17 percent, depending on the product – is 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, China has substantially reduced the VAT rate for semiconductors manufactured in China through a rebate program, while the full VAT must be paid on imported semiconductors. China has also announced the selective exemption of certain fertilizer products from the VAT, to the disadvantage of imports from the United States. Other tax exemption programs, designed to reduce the tax burden on farmers, put U.S. farm imports at a competitive disadvantage. China also 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 three percentage points partly in response to foreign complaints about an under-valued RMB. Although State Administration of Taxation officials plan eventually to eliminate rebates as a way to increase tax revenues, the authorities have continued this practice to date in order to spur domestic economic growth.

China's 1993 consumption tax system has also raised 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.

Antidumping, Countervailing Duty and Safeguard Measures

China continued to aggressively apply its antidumping law in 2003, initiating six new investigations and completing eleven. Of the newly initiated investigations, five involved U.S. exports. Chemical products are the most frequent targets of Chinese antidumping investigations. China's implementation of its antidumping regime has raised concerns in key areas such as transparency, due process and judicial review. The United States is seeking to clarify and address these concerns both bilaterally and multilaterally. To date, China has not initiated a countervailing duty investigation. At the end of 2003, China removed safeguard measures put in place in 2002 against certain steel products, although the effect of those measures had been reduced by several rounds of exclusions during 2003.

A government restructuring carried out early in 2003 merged the agencies formerly responsible for conducting China's antidumping investigations into MOFCOM. Investigations continue to be conducted under regulations and rules issued by the predecessor organizations, the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and SETC. These regulations and rules were primarily good-faith efforts to implement the relevant WTO commitments and improve pre-WTO measures, including procedures for public hearings, but they remain vaguely worded. In addition, as MOFCOM has conducted investigations under the new regulations and rules, several concerns have developed in key areas such as transparency and due process. Meanwhile, the Chinese People's Supreme Court in Beijing has promulgated rules providing for judicial review of trade remedy determinations, but no case has yet reached the courts.

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 even increased in 2003.

Two years after China's WTO accession, many U.S. industries complain that they face increasing non-tariff barriers to trade. These barriers include regulations that set high thresholds for entry into service sectors such as banking and insurance, selective and unwarranted inspection requirements for agricultural imports, unreasonable rules on biotechnology products, 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 standards. In fact, several national officials have stated openly in the state-run media that China should manipulate technical standards to limit imports. At the sub-national level, importers have expressed concern that local officials do not understand China's WTO commitments and are not prepared to relinquish control over the local economy. These problems are compounded by the fact that coordination between the State Administration for Quality Supervision and Inspection and Quarantine (AQSIQ) and its new affiliated bodies, the China National Certification and Accreditation Administration (CNCA) and the Standardization Administration of China (SAC), is lacking, as is coordination between these bodies and China Customs and other local implementers of standards and import regulations.

Import Quotas

Quotas on most products were eliminated or scheduled to be phased out under the terms of China's WTO accession. China's WTO accession agreement required China to eliminate existing quotas for the top U.S. priority products upon accession and phase out remaining quotas, generally by two years but no later than five years after accession. In 2002, quotas remained in place for eight categories of goods, including watches, certain vehicles, motorcycles, machine tools, oil and rubber. China did not have a system to allocate quotas in place as required, and bureaucratic delays in allocating quotas disrupted imports of many products, particularly in the auto sector. Because of these problems, in December 2002, MOFTEC announced it would extend the validity of 2002 import quotas for machinery and electronic imports (including automobiles). Holders of a 2002 MOFTEC-issued "Machinery and Electronic Import Quota Certificate," if they applied by December 31, 2002, could receive a 2002 "Import License" valid until March 31, 2003. Continuing the phase-out of its quota system, China announced that beginning January 1, 2003, certain vehicles, vehicle parts, motorcycles, motorcycle parts, cameras, watches, and cranes and chassis would no longer be subject to import quotas.

In the past, China often did not announce quota amounts or the process for allocating quotas. The government set quotas through negotiations between central and local government officials at the end of each year. Under the terms of its WTO accession agreement, China must make quotas available at agreed levels that increase 15 percent each year. China is required to allocate quotas to importers based on detailed rules outlined in China's accession agreement. For some products, such as autos, China's implementation of the required quota system has been characterized by unwarranted delay, lack of transparency and inappropriate allocations in both 2002 and 2003.

Monopoly importers have also been able to establish *de facto* quotas that maximize their monopoly rents. For example, the sole official government theatrical film importer informally limits the number of foreign motion pictures for theatrical release it allowed each year. In 2001, this number was ten. In its WTO accession agreement, China committed to allow 20 foreign films to be distributed annually in China on a revenue-sharing basis.

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 quantity 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, vegetable oils, 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 quota to end-users that have an interest in importing.

However, China's implementation of its TRQ systems has been problematic since it joined the WTO. Regulations for the administration of the TRQ systems were issued late, did not provide the required transparency and imposed burdensome licensing procedures. TRQ allocations were also plagued by delays. Chinese officials have repeatedly argued that the agencies responsible for TRQ administration were unprepared for such a difficult task, resulting in one-time delays in allocations.

China's performance improved in certain respects during 2002, and 2003 TRQs were issued close to the prescribed times. However, the U.S. Government remained concerned, particularly because 2002 trade data showed extremely low fill-rates for the TRQ commodities of most interest to U.S. industry. The quota fill-rates for wheat, corn and cotton were 7 percent, 0.1 percent and 22 percent, respectively.

While the United States' efforts in 2003 focused on ensuring that necessary systemic changes were made by the National Development and Reform Commission (NDRC), exports of some bulk agricultural commodities from the United States increased dramatically primarily due to market conditions. In particular, U.S. cotton exports totaled $737 million during 2003, representing a 423 percent increase over 2002.

Nevertheless, in 2003, the most serious problems – lack of transparency, sub-divisions of the TRQ, small allocation sizes and burdensome licensing – persisted. In June 2003, following high-level meetings between the United States and China, China agreed to take steps to address most of these concerns. China followed through in part in October 2003, when it issued new regulations for shipments beginning January 1, 2004. Key changes made by these regulations include 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.

Import Licenses

In the early 1990s, China began to reduce substantially the number of products subject to import licensing requirements. With its WTO accession, China committed to the fair and non-discriminatory application of licensing procedures.

Among other things, China committed upon its WTO accession to limit the information that a trader must provide in order to receive a license, 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. However, license applicants reported that they have 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. This system acted as an impediment to trade. MOFTEC began to allow more than one shipment per license in late 2002 following U.S. interventions, although the measure authorizing the "one-license-per-shipment" system apparently remains in place.

China's inspection and quarantine agency, AQSIQ, has also imposed inspection-related requirements that had the effect of restricting imports of some U.S. agricultural goods. In particular, two AQSIQ measures issued in 2002 require importers to obtain an import inspection permit or a quarantine permit for many agricultural goods before they can enter China, such as livestock, poultry, grains, oilseeds, planting seeds, horticultural products, and hides and skins. U.S. exporters have been concerned that AQSIQ is using the procedures provided for by these measures to control the pace and quantity of some imports, which would be contrary to China's market access and import licensing commitments. They have also been concerned about the burdensome nature of these procedures and reported selective enforcement by AQSIQ. Following multiple U.S. interventions, some progress appeared to have been achieved in early 2003, as China discontinued arbitrary limits on imported poultry and pork shipments. However, many concerns of U.S. exporters have not yet been addressed.

Export Licenses and Fees

Over the last several years, China has progressively reduced the number of products requiring some type of export license. In 2003, China continued this trend, as it freed up two more categories of products from this requirement. However, 52 categories of products (equaling 338 items at the 8-digit tariff level) are still subject to various types of export licenses. Products still requiring export licenses include some grains, cotton, livestock, raw materials and metals, lethal chemicals, and food products. For some products, such as fluorspar and coke, export licenses require exporters to pay fees beyond the administrative costs of administering an export license system and are accompanied by export quotas. In addition, China still occasionally imposes new export licensing requirements on strategically sensitive commodities.

China also requires export licenses on products that are the subject of antidumping duties in a foreign market. However, the central government has 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.

STANDARDS, TESTING, LABELING AND CERTIFICATION

In preparation for its WTO entry, China devoted significant energy to reforming its standards, testing, labeling, and certification regimes. In its accession agreement, China specifically committed that it would ensure that its conformity assessment bodies operate with transparency, apply the same technical regulations, standards 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. In April 2001, China merged its domestic standards and conformity assessment agency and entry-exit inspection and quarantine agency into one new organization, the Administration of Quality Supervision, Inspection, and Quarantine, or 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. In 2001, China also formed two quasi-independent agencies administratively under AQSIQ: CNCA, charged with the task of unifying the country's conformity assessment regime, and SAC, responsible for setting mandatory national standards and 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.

While the formation of AQSIQ and a unified system of certification are positive steps, implementation of standardization and certification regulations continues to be a problem. Although China agreed to apply the same standards and fees to imported and domestic products upon its accession to the WTO, some importers report discriminatory treatment and enforcement of standards. For example, foreign companies' products can only be tested at certain laboratories, although this has not appeared to have a negative impact. U.S. companies cite problems with a lack of transparency in the certification process, lack of coordination among standards bodies as well as between standards bodies and other agencies, 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 quality testing. In some cases, laboratories responsible for testing imported products are affiliated with domestic competitors, making the possibility of such releases more likely.

A continuing and growing concern among many foreign companies and associations is the lack of transparency in China's standards development process. The vast majority of 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 addition, in a number of sectors, including information technology equipment, telecommunications equipment, electrical products, and whiskey, concern has grown over the past year as China has pursued the development of unique requirements, despite the existence of well-established international standards. These China-specific standards, which sometimes appear to have little scientific basis, could create significant barriers to entry into China's markets because of the high cost of compliance for foreign companies.

China's designated standards notification authority, the Ministry of Commerce, has been notifying proposed standards, technical regulations and conformity assessment procedures to WTO members, as required by the WTO Agreement on Technical Barriers to Trade (TBT Agreement). Almost all of these notified TBT measures have emanated from AQSIQ, however, and have not included measures that should be notified from other agencies. In late 2003, in part to address this problem, China reportedly formed a new inter-agency committee, with representatives from approximately 20 ministries and agencies and chaired by AQSIQ, to achieve better coordination on TBT (and SPS) matters.

In 2003, as in 2002, the comment periods established by China for notified TBT measures in some cases were unacceptably brief. In other cases, insufficient time was provided for Chinese regulatory authorities to consider interested parties' comments before a regulation was adopted. In addition, China failed to notify many measures emanating from AQSIQ and other agencies that should have been notified according to the terms of the TBT Agreement.

Meanwhile, in 2003, after China's formerly separate bureaucracies for imported and domestic goods settled into unified entities, Chinese standards agencies developed a closer working relationship with the U.S. Government and private sector, including joint technical programs and ongoing consultations on issues related to standardization and conformity assessment. To increase U.S.-China cooperation on standards issues, the United States obtained AQSIQ's support in principle for the establishment of a new U.S. private sector standards office in China. This new office will focus on strengthening ties with Chinese government regulatory authorities, Chinese industry associations and Chinese standards developers and on ensuring that close communication exists between U.S. and Chinese standards developers. The United States has also increased its technical assistance to China in the standards area, with programs addressing pharmaceuticals, medical devices, building materials, fertilizer and information and communications technology.

China banned imports of U.S. beef in December 2003 with the detection of one positive case of Bovine Spongiform Encephalopathy (BSE) in the State of Washington. As of the publication of this report, the U.S. government is taking aggressive action and is working intensively to re-open the market as quickly as possible. In addition, the United States is working in the International Organization for Epizootics to revise international standards on BSE to reflect current scientific knowledge.

Wireless LAN Encryption Standards

In May 2003, China issued two mandatory standards for encryption over Wireless Local Area Networks (WLANs), applicable to domestic and imported equipment containing WLAN (also known as Wi-Fi) technologies. These standards, which are scheduled to become fully effective in June 2004, incorporate the WLAN Authentication and Privacy Infrastructure (WAPI) encryption technique for secure communications. This component of the standards differs significantly from the internationally recognized standards that U.S. companies have adopted for global production. China is enforcing its use by providing the necessary algorithms only to a limited number of Chinese companies. Accordingly, U.S.

and other foreign manufacturers would have to work with and through these companies, some of which are their competitors, and provide them with technical product specifications, if their products are to continue to enter China's market.

China's WLAN encryption policy is a matter of grave concern to the U.S. Government and U.S. companies. If this policy goes into effect, China would be the only country in the world mandating a specific encryption standard for general consumer use. The United States is particularly concerned that the new standards would require foreign suppliers to enter into joint ventures with Chinese companies and transfer technology to them. This type of compelled investment and technology transfer would appear to be inconsistent with China's WTO commitments. It also raises other serious WTO concerns, including the use of standards that are more trade-restrictive than necessary to fulfill a legitimate objective. As a technical matter, these new standards also should have been notified to the WTO.

The Administration has repeatedly pressed China on this issue since the issuance of the new standards, including during the run-up to the April 2004 JCCT meetings. Most recently, in early March 2004, the Administration demonstrated the seriousness of its concern in a joint letter from Commerce Secretary Evans, Secretary of State Powell and U.S. Trade Representative Zoellick to Vice Premiers Wu Yi and Zeng Peiyan.

Quality and Safety Certification

In December 2001, CNCA promulgated a new compulsory product certification system. Under this system, there is one quality and safety mark, called the "China Compulsory Certification" (or CCC) mark, for both Chinese and foreign products. Under the old system, domestic products were only required to obtain the Great Wall mark, while imported products in some cases needed both the Great Wall mark and the CCIB mark. The new CCC mark system took full effect on August 1, 2003, following a transition period that lasted for fifteen months, and is required for over 100 product categories.

Despite these positive changes, U.S. companies in some sectors have 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. Some U.S. companies report that China is applying the CCC mark requirements inconsistently. Some shipments of imported products that do not require a CCC mark have been denied entry by Customs. In other cases, companies that apply for the CCC mark have found their shipments of product samples, required for testing during the CCC mark application process, blocked by Customs, despite regulations permitting the import of such product samples.

In special circumstances, like the import of replacement parts or the import of parts for assembly in China and re-export, companies can seek an exemption from CCC mark requirements. However, smaller and medium-sized U.S. companies without a presence in China find it burdensome to apply for these exemptions, because China requires the applications to be done in person in the Beijing offices of CNCA.

In addition, under the CCC mark system, China will not accept foreign manufacturers' self-certification of conformance to Chinese standards. Products must be tested in designated laboratories in China. Chinese officials must also inspect and certify manufacturing facilities before products can be certified for import into China, with annual follow-up inspections. These inspections are time-consuming and costly for producers. In 2003, China took measures to reduce the costs of the follow-up inspections by permitting certain U.S. private-sector testing companies to conduct the follow-up inspections on behalf of CNCA.

Redundant Testing

U.S. companies have expressed concern about continued requirements for redundant testing, particularly for cosmetics, pharmaceuticals, medical equipment, cellular telephones and other telecommunications products and consumer electronic products. For example, telecommunications equipment faces CNCA quality and safety tests, but then MII conducts functionality tests that overlap the CNCA tests.

Sanitary and Phytosanitary Measures

China's phytosanitary and veterinary import standards sometimes are based on dubious scientific principles and have not always been consistently applied. To advance its bid to join the WTO, China addressed certain longstanding barriers to U.S. agricultural imports. China agreed to lift bans on imports of U.S. grain, citrus, and meat and poultry with the signing of the U.S.-China Agricultural Cooperation Agreement (ACA) in April 1999. In particular, China agreed to recognize the U.S. certification system for meat, promising to accept U.S. beef, pork, and poultry meat from all USDA-certified plants. China also lifted its ban on imports of citrus from the United States, allowing imports of citrus from most counties in Arizona, California, Florida, and Texas. In addition, China lifted its ban on imports of wheat and other grains from the U.S. Pacific Northwest and promised to allow the import of U.S. wheat that meets specified tolerances for TCK fungus. China's implementation of the ACA has produced mixed results, however. This situation continued in 2003.

China has imposed a "zero tolerance" standard for certain pathogens in imported uncooked meat and poultry. While it is possible to reduce contamination through cooking, the complete elimination of pathogens in uncooked meat and poultry is not reasonably achievable, nor scientifically justifiable. It has resulted in the de-listing of four U.S. processing plants, and it has so far proven impossible to get these plants re-listed, as AQSIQ is requiring U.S. health authorities to identify and correct problems in these plants when U.S. authorities believe none exist. With regard to citrus, China continues to hold up the approval of imports from four counties in Florida. Additionally, while Chinese quarantine officials did approve Pacific Northwest wheat imports, traders reported that quarantine officials required special treatment of some wheat imported from the Pacific Northwest, effectively discouraging imports.

Phytosanitary barriers also continued to block imports of several other U.S. products in 2003, including stone fruit, several varieties of apples, pears, fresh potatoes and processed food products containing certain food additives.

A separate problem arose in November 2002, when AQSIQ issued a decree imposing new requirements for certification of imported seafood products, which was scheduled to go into effect in December 2002. The certification requirements appeared to exceed what is necessary to protect consumer health and discriminated against imported seafood products. Prompt U.S. intervention secured a delay in the implementation of these new requirements until June 2003, and the United States used that time to work with the Chinese authorities to eliminate some of the more burdensome certification requirements. However, U.S. industry remains concerned about the certification requirements as implemented, and the United States has continued to pursue technical discussions with the Chinese authorities in an effort to resolve those concerns. Meanwhile, AQSIQ issued a similar decree requiring the certification of live aquatics, which went into effect in November 2003. The United States is pursuing technical discussions with the Chinese authorities on this decree as well.

In August 2003, AQSIQ announced plans to suspend soybean imports from four companies trading U.S. soybeans, along with companies from Argentina and Brazil. According to AQSIQ, this action was based on detections of Phytophthora sojae in shipments of soybeans beginning in the Spring of 2003. However, there was no apparent legitimate purpose for AQSIQ's months-long delay in making the announcement, and it is unusual for an inspection and quarantine agency to announce plans for a suspension but not set a specific date upon which the suspension would take place. These circumstances suggested that AQSIQ's intent was to disrupt the importation of U.S. soybeans, and not to address a legitimate phytosanitary concern. Indeed, the presence of Phytophthora sojae in soybeans is ubiquitous in many parts of the world, including China. In September 2003, following high-level U.S. interventions, China agreed to technical level meetings of U.S. and Chinese agricultural experts, and in the interim it committed not to impose the suspensions.

Since joining the WTO, China has issued more than 100 new standards for foods. Although some of these standards have been notified to the WTO as required by the WTO Agreement on Sanitary and Phytosanitary Measures, many of them have not, particularly those issued by the Ministry of Health.

China's Biotechnology Regulations

In January 2002, the Ministry of Agriculture (MOA) issued new rules implementing a June 2001 regulation on agricultural biotechnology safety, testing and labeling. The product most affected was soybeans. However, the implementing 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" regulations which have allowed trade to continue while authorities carry out safety assessments of transgenic products. These interim rules have been extended twice and will expire in April 2004. In December 2003 talks, MOA officials promised that permanent approval of Round-up Ready soybeans would be complete at least 60 days before expiration of the interim regulations, which should prevent any trade disruption. China followed through on this promise and approved Round-up Ready soybeans, along with two cotton varieties and two corn varieties, in February 2004. However, because of delays in conducting required tests, MOA could not promise when approvals would be completed for six other corn varieties planted in the United States.

Substantial U.S. concerns with China's biotechnology regulation and implementing rules remain, particularly with regard to risk assessment (including the administration of field trials), labeling and inter-ministerial coordination of biotechnology policy. China is a signatory to the Convention on Biodiversity, but has yet to ratify the Biosafety Protocol.

Labeling

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

Agricultural importers and importers of processed foods are also concerned about new measures requiring labels for products containing transgenic material, 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 regulations. The industry believes that some of these requirements are inappropriate since the industry does not consider distilled spirits to be a food.

EXPORT SUBSIDIES

China officially abolished subsidies in the form of direct budgetary outlays for exports of industrial goods on January 1, 1991. China agreed to eliminate all forms of export subsidies on industrial (and agricultural) goods upon its accession to the WTO in December 2001.

It is difficult to identify and quantify possible export subsidies in China because of the lack of transparency in China's subsidy regime. Chinese subsidies are often the result of internal administrative measures and not publicized. They can also take a variety of forms, including mechanisms such as credit allocations or low-interest loans. 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 subsidization practices in the textiles industry as well as in the steel, petrochemical, machinery and copper and other non-ferrous metals industries. U.S. subsidy experts are currently seeking more information about several Chinese programs and policies that may confer export subsidies. Their efforts have been frustrated in part because China has failed to make any of its required subsidy notifications since becoming a member of the WTO.

U.S. agriculture exporters have expressed concern that China continues to use export subsidies for corn. In both 2002 and 2003 China's corn exports exceeded 12 million metric tons, compared to 6 million tons in 2001. It appears that corn, including corn from Chinese government stocks, is being exported at prices 20 percent to 30 percent below domestic Chinese prices. As a result, U.S. corn exporters have lost market share in Asia, while China is exporting record amounts of corn. China claims that it stopped using subsidies in March 2002, and instead supports exports with various WTO-consistent measures, such as transportation subsidies and VAT rebates. Because export procedures are not transparent, it is difficult to determine what effect these measures have on export prices. However, the VAT rebate appears to account for only a small proportion of the difference between export prices and domestic prices.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

While China has made significant progress in its efforts to make its framework of laws, regulations and implementing rules WTO-consistent have been largely satisfactory, serious problems remain with China's enforcement of IPRs. Throughout 2003, the need for improvements in China's enforcement efforts was a major focus of the Administration's engagement with China. In meetings with the U.S. Government and U.S. industry, China's leaders have acknowledged the importance of improving IPR enforcement and have stated that China can improve its enforcement record. China's leaders appear to recognize that deficiencies in the protection and enforcement of IPR are impeding knowledge-based, value-added trade and investment. The appointment of Vice Premier Wu Yi to head a new Leading Group on IPR issues in the October 2003 signals that China recognizes the need for more focused and sustained efforts to tackle the IPR enforcement problems.

Legal Framework

In anticipation of its accession to the WTO, China began modifying the full range of IPR laws, regulations and implementing rules, including those relating to patents, trademarks and copyrights, in an effort to become compliant with the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). By the end of 2001, China had completed amendments to its patent law, trademark law and copyright law, along with regulations for the patent law. In 2002, after it had acceded to the WTO, China issued regulations for the trademark law and the copyright law. China also issued various sets of implementing rules covering specific subject areas, such as integrated circuits, computer software and pharmaceuticals. In 2003, China issued several other new measures. In the patent area, the State Council issued the Amendments to the Patent Law Implementing Measures. In the trademark area, the State Administration of Industry and Commerce issued the Rules on the Determination and Protection of Well-Known Trademarks, the Measures on the Implementation of the Madrid Agreement on Trademark International Registration and the Measures on the Registration and Administration of Collective Trademarks and Certification Marks. In the copyright area, the National Copyright Administration of China issued the Measures on the Implementation of Administrative Penalties in Copyright Cases. These regulations and implementing rules have generally been well-received by U.S. companies as steps toward full compliance with China's TRIPS Agreement obligations. Overall, while China could make improvements to its legal framework, the legal changes made by China are major improvements.

By the end of 2003, with copyright infringement on the Internet becoming a growing phenomenon in China because of loopholes in existing regulations and implementing rules, China still had not acceded to the 1996 World Intellectual Property Organization (WIPO) Internet-related treaties. These treaties entered into force in 2002 and have been ratified by many developed and developing countries. The United States considers the WIPO treaties to reflect international norms for providing copyright protection over the Internet. While China's existing regulations and implementing rules do address certain copyright issues related to the Internet, and China is reportedly in the process of drafting further Internet-related implementing rules, China needs to accede to the WIPO treaties and harmonize its regulations and implementing rules with them to meet international norms. China's accession to the WIPO treaties is an important priority for the United States and many other countries because China has the second largest number of Internet users of any country in the world.

Enforcement

Although the central government worked effectively to modify the full range of China's IPR laws and regulations in an effort to bring them into line with China's WTO commitments, IPR enforcement continues to be seriously inadequate. In 2003, IPR infringement in China continued to affect products, brands and technologies from a wide range of industries, including films, music, publishing, software, pharmaceuticals, chemicals, information technology, consumer goods, electrical equipment, automotive parts and industrial products, among many others. According to a July 2003 report by the State Council's Development Research Center, the market value of counterfeit goods in China is between $19 billion and $24 billion, which translates into enormous losses for IPR rights holders. Various U.S. copyright holders report that inadequate enforcement has resulted in piracy levels in China that have remained at 90 percent or above in 2003 for all copyright sectors, and that estimated U.S. losses due to the piracy of copyrighted materials continues to exceed $1.8 billion annually.

China's IPR laws and regulations provide for three different mechanisms for IPR enforcement – enforcement by administrative authorities, criminal prosecutions and civil actions for monetary damages. However, China's IPR enforcement efforts are hampered by lack of coordination among Chinese government ministries and agencies, local protectionism and corruption, high thresholds for initiating investigations and prosecuting cases, lack of training and inadequate administrative penalties. China needs to take immediate steps to improve each of these enforcement methods, particularly by improving access to and application of criminal enforcement measures. The United States has repeatedly urged China to take immediate and substantial steps to put it on the path toward effective enforcement mechanisms, and it has also sought to foster improvements through a variety of technical assistance programs.

Administrative Enforcement. China continues to take a large number of administrative enforcement actions against IPR violators. However, these actions do not appear to deter further infringements of IPRs.

Although the central government continues to promote periodic anti-counterfeiting and anti-piracy campaigns, and these campaigns result in high numbers of seizures of infringing materials, counterfeiting and piracy remain rampant. Administrative cases usually result in extremely low fines. Fine amounts are kept artificially low because many administrative authorities do not calculate fines on the basis of the value of the genuine articles, but rather establish value based on the price charged for the counterfeit or pirated goods. In addition, evidence showing that a person was warehousing infringing goods is not sufficient to prove an intent to sell those goods. As a result, the administrative authorities often do not include those goods in the value of the infringing goods when determining the fine amounts. The problem is compounded because the administrative authorities rarely forward cases for criminal investigation, even for commercial-scale counterfeiting or piracy. As a result, the infringers consider the seizures and fines simply to be a cost of doing business, and they often are able to resume their operations.

It is crucial for the administrative authorities to begin to refer cases to the Supreme People’s Procuratorate for criminal prosecution. At the same time, China needs to revise its IPR legal framework to provide for substantially higher administrative fines. In addition, for these fines to have a deterrent effect, the administrative authorities need to provide greater transparency throughout the enforcement process, issue written decisions and publicize the results.

Criminal Enforcement. Effective criminal enforcement offers the deterrence needed for China to begin to handle the rampant IPR infringement hurting both foreign and domestic enterprises. Application of criminal procedures and remedies in cases of willful trademark counterfeiting and piracy on a commercial scale is required by the TRIPS Agreement.

At present, criminal enforcement has virtually no deterrent effect on infringers. China’s authorities have pursued criminal prosecutions in a small number of cases, and a lack of transparency makes it difficult to determine if the cases resulted in convictions and, if so, what penalties were imposed. If this situation is to change, China needs to revise its laws and regulations to make it easier to prosecute criminal cases and then to prosecute a much higher percentage of IPR infringers, particularly those engaged in commercial-scale counterfeiting or piracy and repeat offenders.

One critical legal change involves criminal liability thresholds. At present, these thresholds are very high and seldom met. For example, under a Supreme People’s Court interpretation, in order to bring a criminal action against an alleged copyright infringer, there must be evidentiary proof of sales totaling RMB 200,000 ($24,100) for enterprises and RMB 50,000 ($6,030) for individuals. This proof-of-sale requirement has proved unworkable, as it does not apply to counterfeit or pirated goods discovered in a warehouse but not yet sold, and infringers generally do not issue receipts or keep detailed records of the sales that they have made. The proof-of-sale requirement is also misguided, as the amount of counterfeit or pirated goods sold should only be relevant to the severity of the penalty imposed, not to the decisions to investigate, prosecute or convict. In its WTO accession agreement, China committed that its administrative authorities would work with the Supreme People’s Court in an attempt to address these concerns, but this work has not yet been completed.

A significant related concern in the criminal enforcement area involves the scope of China’s laws and regulations. China needs to broaden its laws and regulations so that they do not apply only when a sale can be proved. China’s laws and regulations would be much more effective if they also applied to the willful manufacture, storage, distribution and use of counterfeit and pirated goods. Similarly, China’s failure to consider the export of counterfeit or pirated goods on a commercial scale as related to a criminal act remains a problem.

China also needs to increase the criminal penalties provided for in its laws and regulations. In particular, the prison terms prescribed are too short to deter infringers engaged in commercial-scale counterfeiting or piracy.

U.S. companies complain that, in most regions of China, the police are either not interested in pursuing counterfeiting and piracy cases or simply lack the resources and training required to investigate these types of cases effectively. In addition, in some circumstances, it is not clear under China's laws and regulations whether a particular activity warrants administrative, civil or criminal enforcement. Moreover, even when IPR violations are referred for criminal enforcement, the actual prosecution of IPR crimes frequently requires coordination among a relatively large number of agencies at the national and local levels. Coordination remains problematic, however, with different agencies apparently unwilling or unable to work together.

Civil Enforcement. In part because of the ineffectiveness of the administrative and criminal enforcement mechanisms in China, there has been an increase in the number of civil actions brought for monetary damages or injunctive relief. Most of these actions have been brought by Chinese right holders, but recently an increasing number of foreign right holders are also pursuing civil actions. This increased use of civil actions has coincided with an increasing sophistication on behalf of China's IPR courts, as China continues to make efforts to upgrade its judicial system. However, U.S. companies complain that there is still a lack of consistent and fair enforcement of China's IPR laws and regulations in the courts. They have found that most judges lack necessary technical training and that court rules regarding evidence, expert witnesses, protection of confidential information are vague or ineffective. In addition, in the patent area, where enforcement through civil litigation is of particular importance, a single case can still take four to seven years to complete, rendering the new damages provisions adopted to comply with the TRIPS Agreement less meaningful.

SERVICES BARRIERS

China's services sectors have been among the most heavily regulated and protected sectors of the national economy. Until China's entry into the WTO, foreign service providers were largely restricted to operations under the terms of selective "experimental" licenses. Both as a matter of policy and as a result of its WTO commitments, China has decided to open significantly foreign investment in its services sectors. The market for services, currently 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 documents, China committed to the substantial opening of a broad range of services 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, 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.

However, in many services sectors, while agreeing to lift restrictions over time and to de-politicize licensing procedures, China has implemented excessively high capitalization requirements, both for establishment and branching. These high capitalization requirements appear to be higher than necessary from a prudential perspective and act as a barrier to market access. A wide range of foreign firms also emphasized that China's regulations remain vague and in many instances do not reflect fully China's WTO commitments. In addition, China's ministries have generally not consulted adequately with foreign firms about proposed new or revised regulations and have often not allowed sufficient time for meaningful comment.

Insurance Services

China's insurance market is growing steadily, but not as quickly as its potential. Some experts believe potential revenues for foreign and domestic insurers could reach $15 billion per year after a full opening of the market. Since 1992, China has allowed foreign firms limited access to its insurance market. Prior to 2001, 16 foreign insurers reportedly received licenses to operate either in Shanghai or in Guangdong Province. The pace of opening increased rapidly in 2001 when the China Insurance Regulatory Commission (CIRC) committed to accept an additional 16 license applications from foreign firms.

In its WTO accession agreement, China committed to a gradual opening of both its life and non-life insurance sectors. Foreign life insurers are limited to a 50 percent equity stake in a joint venture, while non-life firms are limited to a 51 percent stake. After two years, non-life firms can be wholly foreign-owned. Geographic restrictions will also be removed over the next three years.

CIRC issued several new insurance regulations shortly after acceding to the WTO, 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, i.e., prudential requirements, transparency and branching.

China's insurance company capital requirements are extremely high and many foreign firms complain they act as a barrier to market access and in some cases to finding a suitable joint venture partner. A national license which includes a main office and three branch offices requires a capital infusion of RMB 500 million ($60 million), while a regional license which includes a main office and two branch offices requires a capital infusion of RMB 200 million ($24 million). Once a firm has a national license, an additional RMB 50 million ($6 million) capitalization will be required for additional branches. CIRC has recently issued draft regulations that would reduce capital requirements for national licenses to RMB 200 million and reductions for branch offices to RMB 20 million ($2.4 million), but these regulations have yet to be finalized.

With regard to transparency, the regulations continue to permit considerable bureaucratic discretion and create uncertainty for foreign insurers seeking to operate in China's market. This lack of transparency has manifested itself particularly in the licensing process. Foreign firms complain that the insurance licensing requirements are overly complex and cumbersome. The regulations are also unclear as to whether multiple branch and sub-branch expansion applications may be submitted simultaneously or can only be submitted at intervals. CIRC has also insisted that non-life insurers that are already in the market as a branch and that wish to branch or sub-branch cannot do so unless they first establish as a subsidiary, a costly – and unnecessary – proposition.

Currently, approximately 50 insurance companies operate in China's market. Approximately 30 of them are foreign firms (operating joint ventures with Chinese partners), and 20 of them are Chinese firms. By the end of 2003, the operations of foreign insurers in China had grown significantly. While foreign insurers had only about 2 to 3 percent of the national market (when measured in terms of premiums paid), they reportedly had captured 12 percent and 17 percent market shares in Shanghai and Guangzhou, respectively. In addition, U.S. industry reports that its market share in Beijing has been growing rapidly.

Banking and Securities Services

With the exception of its failure to produce regulations enabling foreign non-bank financial institutions to engage in auto financing (discussed in the next section), China put in place the necessary laws and regulations to meet its WTO commitments for financial services during its first year as a WTO member. Nevertheless, foreign banks and securities firms continue to face a restrictive regulatory environment.

China continues to have strict limitations, in particular, on foreign banks' participation in local currency operations. Restrictions on the rights of foreign banks to raise RMB in the interbank market, being planned by the People's Bank of China (PBOC), China's central bank, will inhibit the ability of foreign banks to build RMB loan portfolios necessary for profitable operations in China. In addition, although China reduced capital requirements for foreign bank branches in December 2003, they still remain excessively high, increasing local capital costs for foreign banks.

In December 2001, the Chinese government issued revised regulations permitting the establishment of foreign bank branches anywhere in China so long as the bank meets certain criteria, including having gross assets of $20 billion. Although foreign currency business with any customer, foreign or domestic, is also freely permitted under the new regulations, the Bank of China, one of China's four major state-owned commercial banks, continues to enjoy a monopoly on forward foreign exchange contracts. Foreign bank branches must also place 30 percent of their operating capital in interest bearing assets designated by the PBOC. Foreign bank branch current assets (cash, local bank demand deposits, and

PBOC deposits) must continue to be greater than 25 percent of customer deposits. In addition, the ratio of customer deposits in foreign currency to domestic foreign currency loans may not exceed 70 percent, an increase from the 40 percent-level mandated previously. China calculates prudential ratios and limits based on the local capital of foreign bank branches rather than on the global capital base of the bank.

As part of its WTO accession agreement, China agreed to allow foreign banks to conduct local currency business with Chinese companies two years after WTO entry, and with Chinese individuals three years later. The Chinese government also committed to opening four new cities every year where foreign banks could engage in local currency operations. Regulations released in December 2001 place the authority for determining the geographic and operational scope for foreign financial institutions to participate in local currency business with the PBOC. As of December 2003, four new cities were opened – Jinan, Fuzhou, Chengdu and Chongqing – bringing the total number to 13. Qualified foreign banks will also be allowed to conduct local currency business with Chinese enterprises for the first time in these areas. In December 2003, the Chinese Government also increased the stake a single foreign investor can take in a Chinese bank from 15 to 20 percent, with a total 24.9 percent allowed for all foreign investors. All non-prudential market access and national treatment restrictions on foreign banks are to be lifted within five years of China's accession to the WTO.

Pursuant to the terms of China’s WTO accession agreement, foreign securities firms are to receive the right to form joint ventures for fund management upon China’s accession to the WTO, while joint ventures for securities underwriting must be permitted within three years after accession. The China Securities Regulatory Commission 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 33 percent stake of these joint ventures, however, continues to limit their appeal to leading foreign firms.

Motor Vehicle Financing Services

China’s WTO accession agreement required China to allow non-bank financial institutions to provide motor vehicle financing immediately upon accession and without any limits on market access. However, heading into 2003, China’s second year of WTO membership, China still had not issued regulations allowing the entry of foreign non-bank auto financial services companies. Following repeated U.S. engagement with China, both bilaterally and at WTO meetings, China issued motor vehicle financing regulations in October 2003. The necessary implementing regulations came out in November 2003, opening up this sector to foreign financial institutions.

Several foreign firms, including at least one U.S. company, have since applied for licenses. Although the regulations as finally issued reduced capital requirements from the levels set in earlier drafts, capital requirements still remain relatively high. In addition, access to local currency still presents problems for foreign firms.

Wholesale Distribution Services

In its WTO accession agreement, China committed to eliminate national treatment and market access restrictions on 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 meantime,

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.

For the most part, China’s implementation efforts have been problematic. In particular, China has fallen behind in its implementation of the required progressive liberalization, as foreign businesses continue to be plagued by a variety of restrictions relating to trade volumes, registered capital and prior experience. It is also not clear whether these businesses will be allowed simply to amend their business licenses to receive authorization to provide these distribution services, or whether the establishment of new enterprises will be required. In addition, there has been no indication whether foreign businesses will be required to license separate units of their China operations to conduct distribution activities, or whether they will be allowed to integrate these activities under a single entity.

MOFCOM and other relevant government agencies are apparently working to revise the existing regulatory framework to satisfy China commitment to full liberalization by December 11, 2004. However, the relevant authorities have maintained drafts of all new regulations in strict confidence, making it difficult to predict how China will actually implement this commitment. The Administration has been using the run-up to the April 2004 JCCT meetings to press China to issue new WTO-compliant regulations in draft form for public comment well in advance of the December 11, 2004 deadline.

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 WTO commitments are designed to further expand the ability of foreign retailers to enter the market through a much wider range of modalities. Smaller retail operations, some large retail operations, gas stations and even car dealerships will be allowed to be wholly foreign-owned within three to five years of China's December 11, 2001 WTO accession. In addition, franchising, sales away from a fixed location (both wholesale and retail), and related subordinate activities will be permitted without restrictions within three years of accession. Certain types of large retail operations, however, may still face ownership limitations.

China was required to begin phasing in most of these commitments for joint ventures with minority foreign ownership upon its accession and for majority foreign-owned joint ventures two years later, subject to geographic restrictions, quantitative restrictions and exceptions for a handful of listed goods. To date, although China has authorized retailing services to be supplied through joint ventures, it greatly restricts the supply of these services. For example, onerous threshold requirements (relating to minimum wholesale volume, minimum imports and exports, minimum assets, minimum registered capital and prior experience) significantly reduce the number of enterprises that can qualify for the right to supply retailing services. These requirements are burdensome and trade-restrictive. In addition, China subjects joint ventures to cities' commercial development plans. China is also currently drafting regulations governing certain activities of foreign retailers that appear to raise national treatment concerns.

Direct selling remains a prohibited sector in China. In 1998, China banned all direct selling activities because some foreign and domestic firms used direct selling techniques to operate pyramid schemes and other less-than-legitimate operations. Direct selling firms were allowed to convert to more traditional fixed location retailers, but were only permitted to sell products manufactured in China. China indicated that it would allow full resumption of direct selling activities by December 2004, consistent with the commitment that it made in its WTO accession agreement. China is currently drafting regulations to implement this commitment.

As in the case of wholesale distribution, the Administration has been using the run-up to the April 2004 JCCT meetings to press China to issue new WTO-compliant retailing regulations in draft form for public comment well in advance of the December 11, 2004 deadline.

Express Delivery Services

Beginning in December 2001, the State Postal Bureau (together with MOFTEC and MII) issued new, restrictive measures that could have jeopardized market access that foreign express delivery firms (which must 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, Notice 629, issued in December 2001, required firms wishing to deliver letters to apply for entrustment from China Post. Notice 64 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, Notice 472 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 services 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, contrary to 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 amendments. While each set of draft amendments included a different definition of the China Post monopoly, the most recent draft amendments again provided 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 licensing process to replace the existing entrustment process, and they seemed to require express couriers to pay a percentage of their revenue from express shipments into a universal service fund.

To date, no final amendments have been issued. Working closely with U.S. industry, the U.S. Government has continued to urge China during the run-up to the April 2004 JCCT meetings not to issue amendments that would be inconsistent with its WTO obligations.

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. Domestic firms have used government connections and investments to monopolize the sector. Foreign shipping firms have found it impossible to open subsidiaries in inland ports.

Nevertheless, China's WTO commitments support a broad opening of the transportation and logistics sector to foreign service providers, as do China's own reform policies. After periods of time ranging from three to six years after WTO accession, foreign firms are supposed to be able to invest freely in warehousing, road freight transport, rail freight transport and freight forwarding companies.

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's international maritime transportation regulations became effective January 1, 2002. Implementing rules issued in June 2002 raised various concerns, particularly with their imposition of a requirement that non-vessel-operating common carriers make a cash deposit of RMB 800,000 (about $100,000) in Chinese banks without clear rules on access to and use of this money. In December 2003, however, the United States and China signed a bilateral maritime agreement that allowed the use of surety bonds and also settled a range of maritime issues between our two countries.

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.

Regulation of International Data Flows and Restrictions on Data Processing

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. However, according to a Harvard University study, China has blocked 19,032 sites on multiple occasions. In addition to blocking sites related to Taiwan, the Falun Gong spiritual movement, Tibetan and Uighur support groups, and human rights organizations focusing specifically on China, university alumni homepages such as that for MIT, various Church and other religious-themed sites, and search engines such as Alta Vista, have been blocked repeatedly. Foreign news websites were also blocked for several weeks during the 16th National Congress of the Communist Party of China in March 2003. Few, if any, websites related to strictly economic and business matters are blocked. 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, its “cached pages” feature remained blocked; that feature had previously allowed users in China to access “snapshots” of some webpages that were otherwise blocked in China.

Internet content restrictions are governed by a number of measures, not all of which are public. The most important of these measures was issued in September 2000 and cover Internet content providers, electronic commerce sites and application service providers. In March 2002, the Internet Society of China, a nominally private group affiliated with MII, established a “Public Pledge on Self-Discipline for the China Internet Industry.” 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.” At least one Chinese subsidiary of a U.S. Internet firm has signed the pledge.

China generally prohibits foreign-developed encryption and decryption technologies. In the past, this prohibition has not applied to software and hardware for which encryption is only an incidental feature. However, recent standards on encryption for WLAN dramatically changed this precedent in December 2003 (see “Wireless LAN Encryption Standards” section above).

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, all geographical restrictions are to be eliminated within two to six years after China’s WTO accession, depending on the particular services sector.

Importantly, when it acceded to the WTO, China also accepted key principles from the WTO Agreement on Basic Telecommunications Services. As a result, China is 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. Since accession, MII has spun-off China Telecom, which now competes in the market with other telecom operators. China is also obligated to adopt pro-competitive regulatory principles, such as cost-based pricing and the right of interconnection, which are necessary for foreign-invested joint ventures to compete with wholly domestically owned operators.

Since making these commitments, China has separated post and telecommunications services. It has also developed a number of telecommunications regulations.

In May 2002, the government split China Telecom, the country's largest telecommunications company, into northern and southern parts. Two of China's seven national basic telecommunications companies, China Netcom and Jitong, merged with China Telecom's subsidiaries in 10 northern provinces to form China Network Communications; subsidiaries in the other 21 provinces and municipalities in southern and northwestern China retained the China Telecom name. Other national companies – China Unicom, China Mobile, China Satellite, and Railcom – will continue to operate separately.

China's new Regulations on Foreign-Invested Telecommunications Enterprises went into effect January 1, 2002. They 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). The entire process of forming a Sino-foreign joint venture for basic services pursuant to the new regulations is expected to be lengthy, lasting on average 9 to 12 months.

Draft revisions of China's telecommunications law are still under consideration, and when approved, will represent China's first comprehensive set of regulations in this sector. China's existing telecommunications regulations were issued by the State Council in September 2000 and allow for interconnection, cost-based pricing, universal service, and stipulate licensing authority and procedures. However, these regulations are generally vague and lacking in specific and necessary details. For instance, they do not stipulate any transparent methodology for determining cost-based interconnection rates.

China has not yet established an independent regulator in the telecommunications sector. The current regulator, MII, is not structured as an independent entity as it still bears the responsibility to help develop China's IT and telecom manufacturing industries. An additional anecdotal example comes from a November 28, 2003 article in the China South Morning Star newspaper summarizing comments made by the MII's Deputy Director of Telecommunications Administration at a meeting of foreign investors and analysts. The Deputy Director reiterated MII's support for the mainland's homegrown 3G technology, TD-SCDMA, and was quoted as saying, "MII might 'suggest' to operators which 3G technology should be adopted."

China has also used regulatory authority to disadvantage foreign firms. For example, MII arbitrarily raised settlement rates for international calls terminating in China, which had the effect of artificially boosting the revenues of Chinese telecommunications operators at the expense of foreign firms. At times, MII also changed applicable rules without notice and without transparency. For example, on February 21, 2003, MII announced its problematic notice reclassifying certain basic and value-added telecommunications services and indicated that it would become effective April 1, 2003. No public comment period was provided for.

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.

Foreign equity investment limitations for ISPs and Internet Content Providers (ICPs) mirror the timetable for value-added services in the WTO 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 telecom 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.

Audiovisual Services (Including Film Imports)

China’s new Regulations on the Administration of Audio-Visual Products and Regulations on the Management of Film went into effect on February 1, 2002. They are designed to bring more order and transparency to the film and audio-visual industries, with an eye to moving toward greater commercial efficiency in accordance with domestic reform efforts and WTO commitments. Despite these positive moves, the desire to protect the monopoly rents earned by the state-owned movie and print media importers and distributors, and China’s concerns about politically sensitive materials, result in continued restrictions in audiovisual services.

Distribution of sound recordings, videos, movies, books and magazines remains highly restricted. In addition news services remain wary that the government will impose new restrictions on their activities. Inconsistent and subjective application of censorship regulations further impedes market growth for foreign and domestic providers alike.

China began importing foreign films on a revenue-sharing basis in 1994. The Chinese Government continues to limit the number of foreign films allowed to enter China. China allowed in only ten foreign films annually through much of the 1990s, but more recently allowed in twenty foreign films annually on a revenue-sharing basis under its WTO commitments. However, U.S. industry sources report that China treats its WTO commitment as a ceiling, rather than a floor, which artificially increases demand for pirated products.

Although China is also obligated to open theaters and film distribution to foreign investment, currently there are only two authorized distributors of foreign films, the state-owned China Film Distribution Company and Huaxia. Furthermore, lengthy censorship reviews by Chinese authorities delay the arrival of legitimately imported foreign films on Chinese movie screens. When the films do make it to the screen, they are subject to blackout viewing periods during national holidays. China’s large black market for foreign films continues to grow because these market access restrictions not only create a demand for pirated DVDs in the absence of legitimately licensed films, but also diminish the incentive for foreign investment in movie theaters. Right holders who comply with Chinese law must forego marketing legitimate products, leaving the demand for movies to be satisfied almost entirely by pirates. This situation somewhat negates the apparent benefits of China’s recent raising of the percentage of foreign investment allowed for movie theaters to 75 percent, thus allowing for majority ownership by foreign investors.

Tourism and Travel Services

Immediately following China’s WTO accession, China issued new travel agency administration regulations to allow large foreign travel and tourism service providers to operate full-service joint venture travel agencies to promote foreign inbound tourism in the four major foreign tourist destinations in China:

Beijing, Shanghai, Guangzhou and Xian. Within six years after accession, wholly foreign-owned firms catering to foreign inbound tourists will be permitted, and all geographic restrictions will be removed.

For now, the agencies must have an annual worldwide turnover in excess of $40 million, and local registered capital of almost $500,000.

China issued Provisional Measures for the Establishment of Foreign Controlled and Wholly Foreign-funded Travel Agencies, effective July 2003. In November 2003, Germany's Touristic Union International (TUI) signed a letter of intent with the China Tourism Agency to form the first joint venture travel agency controlled by a foreign interest since China's accession to the WTO. Japan Airlines has also established the first wholly foreign-funded travel agency. These and other foreign firms, however, continue to be restricted from marketing to Chinese outbound tourists.

Holders of Chinese official passports, over 85,000 of whom applied for U.S. visas in FY2002, are required to use China's state-owned airlines or their code-share partners. Most of these individuals, state-owned enterprise employees, would not be considered government employees in most countries. This represents a significant loss of business for U.S. airlines.

The total number of visa applications by Chinese wishing to travel to the United States in 2003 was approximately 86% of the total from the preceding year. The SARS outbreak in China and the fall-off in travel during and immediately after the war in Iraq account for most of this decrease.

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 and only 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 banned foreign companies and organizations from offering educational services via satellite networks. Foreign universities may set up non-profit operations, but must have a Chinese university host and partner to ensure that programs bar subversive content and localize imported information. 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 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 will be able to engage in profit-making business, and to advise clients on foreign legal matters and to provide information on the impact of the Chinese legal environment, among other things. They will also be able to maintain long-term "entrustment" relationships with Chinese law firms and be able to instruct lawyers in the Chinese law firm as agreed between the two law firms.

Under new regulations and implementing rules issued by the Ministry of Justice (MOJ) in 2002, it appears that foreign law firms are required to demonstrate there is an actual need for the establishment of a representative office and the development of the firm's legal services in China. In addition, 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 may not take China's bar examination, and they may not hire registered members of the Chinese bar as attorneys.

The new measures also appear to restrict the types of services that foreign law firms may provide in China. Foreign law firms are not allowed to perform any legal services involving Chinese law. They may only engage in legal services related to the laws of their home country and to international law. Foreign law firms are not permitted to act as an agent in arbitration proceedings or to express opinions or comments on the applications of Chinese law or about facts involving Chinese law. Foreign representative offices are prohibited from completing registration, amendment, application, filing and other procedures with Chinese government agencies. Even after the MOJ measures took effect, some foreign lawyers served as agents in arbitration proceedings and handled other legal procedures when dealing with certain central and local level officials, which indicates that enforcement of the measures is inconsistent.

As more foreign businesses enter Chinese markets, the demand for U.S. law firms will likely grow as well. A number of U.S. law firms have recently established new offices in Beijing.

Engineering, Architectural and Contracting Services

U.S. engineers, architects and contractors have enjoyed a relatively cooperative and open relationship with the Chinese government. These professionals have operated in the Chinese market through joint venture arrangements and have been less affected by regulatory problems than other service sectors. Nevertheless, they also face restrictions. Under an older regulation, it has been difficult for foreign architecture and engineering firms to obtain licenses to perform architecture and engineering services except on a project-by-project basis. Foreign firms also face severe partnering and bidding restrictions. Foreign firms cannot hire Chinese nationals to practice architecture and engineering services as licensed professionals. Currently, Chinese architecture and engineering firms must approve and stamp all drawings prior to construction. There have been instances where U.S. architectural firms have had to pay Chinese domestic taxes on designs prepared in the United States for Chinese projects. China also sets extremely low design fees, rather than letting the market set prices. In addition, China does not have adequate lien laws to protect the rights of engineers, architects, contractors and material suppliers from non-payment.

Construction Services

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 1, 2003. In addition, these decrees for the first time required foreign-invested firms supplying construction

services to incorporate in China, and they impose 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 1, 2003 until April 1, 2004 so the concerns of foreign firms could be analyzed further.

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. In its WTO accession agreement, 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. Foreign accounting firms can also 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.

Meanwhile, the Chinese Institute of Certified Public Accountants, a government body under MOF, has made significant progress in modernizing accounting in China. In 2002, MOF 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. The Chinese Securities Regulatory Commission required listed companies to appoint a certified international CPA firm to conduct audits on prospectuses and annual reports in accordance with international standards. While specific numbers are not available, most observers agree that the demand for internationally qualified accountants will grow rapidly in coming years. 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

The State Administration of Industry and Commerce (SAIC) enforces China's 1995 Advertising Law. Among other things, the law bans messages "hindering the public or violating social customs." The law is subject to interpretation by the 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.

Foreign firms have been restricted to representative offices or minority ownership of joint-venture operations. As part of its WTO accession commitments, 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.

Movement of Professionals

Generally, there are no special entry restrictions placed on professional Americans who wish to work in China, such as doctors or engineers. However, 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. Recent press reports indicate that the government is considering measures to liberalize access by issuing "permanent resident" visas to long-time foreign residents of China.

INVESTMENT BARRIERS

Foreign investors show great interest in China despite significant obstacles. China received $53.5 billion in FDI in 2003, remaining the top recipient in Asia. General barriers to investment include opaque and inconsistently enforced laws and regulations and a lack of a rules-based legal infrastructure. Nevertheless, China's leadership has reaffirmed its commitment to "further open" China to investment and to continue movement toward a rules-based economy.

Investment Requirements

In addition to taking on the obligations of the WTO Agreement on Trade-Related Investment Measures, China committed in its WTO accession agreement to eliminate export performance, local content and foreign exchange balancing requirements from its laws and regulations and not to enforce any contracts imposing those requirements. China also agreed that it would no longer condition investment (or import) approvals on those requirements or on requirements such as technology transfer and offsets.

In anticipation of these commitments, China revised its laws and regulations on foreign-invested enterprises to eliminate WTO-inconsistent requirements relating to export performance, local content and foreign exchange balancing as well as technology transfer. China also revised "Buy China" policies that regulated procurement of raw materials and fuels, and removed requirements that joint ventures and wholly foreign-owned enterprises submit production/operation plans to Chinese authorities. However, some measures continue to "encourage" technology transfer, without formally requiring it. U.S. companies are concerned that this "encouragement" will in practice 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. In addition, according to U.S. companies, some Chinese government officials in 2003 still considered 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 inflows continue to be controlled and channeled toward areas that support national development objectives. China has adjusted its investment guidelines a number of times over the last five years. The revisions have confused potential investors and added to the perception that the investment guidelines do not provide a stable basis for business planning. Uncertainty as to which industries are being promoted as investment targets, and how long such designations will be valid, undermines confidence in the investment climate. A new catalogue took effect April 1, 2002, listing sectors in which foreign investment would be encouraged, restricted or prohibited, replacing the December 1997 list. Unlisted sectors are considered to be permitted.

Among other things, the new catalogue aims to implement elements of sectoral openings that China committed to in its WTO accession agreement, including for banking, insurance, petroleum extraction, value-added telecommunications, and distribution. According to an accompanying regulation, projects in "encouraged" sectors benefit from duty-free import of capital equipment and VAT rebates on inputs.

The Chinese government emphasizes guiding new foreign investment towards “encouraged” industries and areas that support national development objectives. Regulations relating to the encouraged sectors were designed to direct FDI to areas in which China could benefit from foreign assistance or technology, such as in the construction and operation of infrastructure facilities. The government announced a series of measures in August 1999 that began to decentralize investment approval decision-making authority and to create new incentives for investments in key sectors and geographic regions. These guidelines allowed authorities at the provincial level of government to approve “encouraged” foreign-invested projects and raised the investment value at which central government approval is required.

Over the past five years, China has introduced new incentives for investments in high-technology industries, such as a regulation issued in November 1999 that provided foreign-invested enterprises a tax deduction for contributions to non-affiliated research and development or educational institutions. In December 2001, China announced comprehensive new incentives for investment in the less-developed central and western parts of the country.

Meanwhile, the Chinese government restricts foreign investment in sectoral projects not in line with “the needs of China’s national economic development.” In these sectors, foreign firms must form a joint venture with a Chinese company and restrict their equity ownership to a minority share in order to invest in the Chinese market.

The Chinese government also prohibits investment in certain sectors. China bans investment in the news media, broadcast and television sectors, citing national security interests. An official of the State Administration for Radio, Television and Film stated in February 2004 that China was going to allow foreign-invested joint ventures to produce films and television programming, although authorizing regulations have not yet been issued. The production of arms and the mining and processing of certain minerals remain prohibited sectors. U.S. investors have expressed particular concerns about China’s prohibition of investment in genetically modified seed development and production. Ongoing work and planned projects are at risk.

Other Investment Issues

Venture Capital. A new regulation that took effect March 1, 2003, replaced earlier provisional regulations 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. The new regulation lowers capital requirements, allows these firms to manage funds directly invested from overseas, and offers the option of establishing venture capital firms under an organizational form similar to the limited partnerships used in other countries.   An April 2001 regulation barred securities firms (including foreign-invested firms) from the private equity business. Chinese laws concerning foreign private equity firms set limits on corporate structure, share issuance and transfers, and investment exit options. 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.

Holding Companies. There has been some relaxation of the restrictions on the business scope and operations of holding companies, although minimum capital requirements normally make them suitable only for corporations with several sizeable investments to manage. A new regulation that took effect in April 2003 made it possible for holding companies to manage human resources across their affiliated companies and provide certain market research and other services to their affiliates. However, some restrictions on services provided by holding companies and on their financial operations and their ability to balance foreign exchange internally will remain even after full implementation of China's WTO commitments. Profit and loss consolidation within holding companies also remains prohibited.

Access to Capital Markets. Foreign-invested enterprises in China remain largely unable to access domestic and international stock markets, to sell corporate bonds, to accept venture capital investment, to sell equity, or to engage in normal merger, acquisition and divestment activity. Foreign exchange transactions on the capital account can be concluded only with case-by-case official review, and approvals are subject to very tight regulatory control. These barriers to capital market access are not removed by China's WTO accession agreement. China has begun to experiment with liberalization, such as the opening of domestic stock markets to listings by foreign-invested firms. Through the Qualified Foreign Institutional Investor (QFII) program, foreign securities firms can gain limited access to the RMB-denominated A share market by applying for QFII status with the Chinese Government. As of December 2003, 10 foreign firms had been granted QFII status.

GOVERNMENT PROCUREMENT

In accordance with the terms of its WTO accession agreement, China agreed to conduct its government procurement in a transparent manner and to provide all foreign suppliers with equal opportunity to participate in procurements opened to foreign suppliers. China also committed to become an observer to the WTO Agreement on Government Procurement (GPA), which it did in May 2002. In addition, China committed that it would table an offer and initiate negotiations for membership in the GPA "as soon as possible." According to Chinese officials, however, China has no immediate plans to begin discussions.

In July 2002, China promulgated its first Government Procurement Law. In part, this was a response to the need to separate procurement by "state-owned enterprises," which China has promised would be made on a commercial basis, from "government procurement." China's new government procurement system allows bidding to be limited to domestic suppliers. At the same time, many Chinese officials are beginning to recognize the high cost of not allowing an open and competitive bidding process for government contracts. The new law expounds on the principles of fair competition, openness, transparency and recourse. It establishes rudimentary criteria for the qualification of suppliers and various categories of procurement, including open tenders, tenders by invitation, competitive negotiation and sole sourcing. It also sets broad standards for publicity, notification, bid scheduling, sealed bidding and bid evaluation. The U.S. Government has sought to foster improved government procurement through technical assistance. It has also submitted written comments on China's draft implementing regulations.

On January 9, 2001, the Ministry of Finance issued a measure entitled the "Procedures Concerning Public Bidding for Procurement Companies in Foreign Government Loan Projects." According to this measure, government agency financial departments must release all pertinent information regarding qualified foreign government loan projects to procurement companies, and the companies responsible for implementing a project must tender bids to more than three procurement companies within 10 working days. The procedures strictly prohibit non-competitive or protectionist methods when selecting a procurement company for a loan project, and they indicate that MOF will regularly examine bids and restrict procurement companies with "monopolistic inclinations." However, the procedures offer insufficient protection to potential foreign participants. Among other requirements, foreign companies, unlike domestic companies, have had to obtain permission from MOF before bidding on a project. It is not clear whether the Government Procurement Law eliminates this requirement.

China has drafted and will soon make public a series of domestic software procurement regulations that will require government agencies to purchase domestically produced software. These new regulations are based on concerns of national information security, but are also aimed at supporting the domestic software industry. In addition to the overall lack of transparency regarding the drafting of the regulations, the U.S. Government and U.S. industry have expressed their concerns to the Chinese government about the likely decrease in market access.

In 1999, SETC issued regulations requiring state-owned enterprises to purchase all capital equipment from either domestic manufacturers or foreign-invested enterprises in China unless the equipment is not available domestically. In its WTO accession agreement, China subsequently agreed that purchases or sales by state-owned and state-invested enterprises of goods and services for commercial sale, production of goods or supply of services for commercial sale, or for non-governmental purposes would be subject to national treatment, market access and MFN requirements. It further agreed to ensure that state-owned and state-invested enterprises would make purchases and sales based solely on commercial considerations and, in addition, that foreign enterprises would be allowed to compete for sales to and purchases from these enterprises without discrimination. It also agreed that the government would not influence the commercial decisions of these enterprises, although in practice this has not consistently been the case.

ELECTRONIC COMMERCE

China has experienced dramatic growth in Internet usage. According to industry estimates, the number of people in China with access to the Internet was approximately 60 million by the end of 2003, compared with 620,000 in October 1997. China now has the second largest Internet population in the world, behind the United States. A fall in 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 electronic businesses established. An estimated 78 percent of all Chinese websites are now operated by “enterprises” and 5 percent by “businesses.” However, despite these developments, only 40 percent of Internet users in China have reported purchasing goods and services online. Moreover, only 11 percent of Chinese “enterprise” websites and 45 percent of Chinese “business” websites offer “e-commerce services.”

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 consumer privacy needed for electronic commerce to flourish. Content is still controlled and encryption regulated, as discussed more fully below (in the “Regulation of International Data Flows and Restrictions on Data Processing” section). In a positive sign, China plans to issue e-signature regulations in 2004 that will establish the legal efficacy of electronic signatures for official transactions.

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. Slow connection speeds are another barrier, although this is changing as broadband connections become more readily available. Other impediments to Chinese businesses and consumers conducting online transactions are: the paucity of credit payment systems; consumer reluctance to trust online merchants; the lack of a secure online payment system; 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 security have been proposed, but not yet issued. Despite these obstacles, however, over forty percent of Chinese Internet users surveyed in June 2003 said they had made an online purchase within the past year, and almost a third of them said they had paid online.

CHINA

ANTICOMPETITIVE PRACTICES

China continues to struggle with economic inefficiencies and investment disincentives created by local protectionism, pricing practices and preservation of industry-wide monopolies. Anticompetitive practices in China take several forms. In some cases, industrial conglomerates operating as monopolies, near monopolies, or authorized oligopolies (as in the telecommunications industry) have been authorized to fix prices, allocate contracts, and in other ways restrict competition among domestic and foreign suppliers. Regional protectionism by provincial or local authorities often blocks efficient distribution of goods and services inside China. These practices may restrict market access for certain imported products, raise production costs, and restrict market opportunities for foreign-invested enterprises in China.

There are several existing laws and regulations in China addressing competition matters. However, these measures are ineffective due to poor national coordination and inconsistent local and provincial enforcement. China is drafting a new anti-monopoly law that could be adopted as early as 2004 or 2005.

Regulations issued in November 2002 permit foreign purchase of traded and non-traded (designated state) shares of Chinese enterprises. In addition, China issued regulations that took effect in April 2003 which specify procedures for foreign acquisition of and merger with domestic enterprises. These regulations require pre-merger notification and allow for examination of antitrust considerations in some cases. By requiring approval of all owners of the domestic enterprise, the regulation implicitly prohibits hostile takeovers. The thresholds for notification are not straightforward, leaving open the possibility of abuse by officials or domestic competitors. Domestic competitors have the power under the regulations to call for public hearings on prospective mergers.

China also issued provisional regulations in November 2002, effective January 2003, on using foreign investment to reorganize state-owned enterprises. These reorganizations, however, require extensive approvals and full agreement of the domestic enterprise’s labor union. These requirements are likely to limit the appeal of this type of investment.

OTHER BARRIERS

Transparency

Laws and regulations directly affecting international trade are increasingly becoming publicly available in China. Since 1992, China has published all trade laws and regulations in the “MOFCOM Gazette,” available on a subscription basis, and MOFCOM maintains an updated list on its website. 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 implemented policies based on internal “guidance” or “opinions” that are not available to foreign firms. Experimental or informal policies and draft regulations, in addition, are regarded as internal matters and public access is tightly controlled.

China, in its WTO accession agreement, committed to publishing all laws, regulations and other measures that relate to trade matters, including those that affect imports, and generally to allowing its WTO trading partners an opportunity to comment on them before implementation. China also 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 also agreed to create various contact points for its WTO trading partners and foreign businesses to inquire about these measures.

In 2003, China did a reasonable job of publishing national laws and regulations. Although several regulations carried effective dates before the dates of publication, the lag was usually only a couple of weeks. Various government-owned specialty newspapers routinely carried the texts of government regulations, implementing rules, circulars and announcements. Many government ministries also published 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.

China failed in 2003 to publish all measures related to trade, however. Chinese businesses continue to report unofficial guidance provided by Chinese regulators, which is usually unavailable to foreign entities. In some cases, Chinese officials provided unpublished documents to interested parties, but this dissemination was ad hoc and based more on personal connections than formal procedures.

MOFCOM's predecessor, MOFTEC, in late 2001, established an "Enquiry Center" to provide information on new trade and investment laws, regulations and other measures. In addition, MOFCOM and State Council Legislative Affairs Office officials have researched the United States' "Federal Register" and are planning to begin a journal to publish all national, provincial and local laws, regulations and other measures related to trade and investment.

The Chinese government has been considering a system to solicit input from interested parties before issuing trade and investment laws or regulations. 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 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, it 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 too short. In April 2003, the NDRC posted on its website a call for comment on a draft Automobile Industry Development Policy, but the text of the policy was never posted online. Consequently, foreign companies and governments were not uniformly allowed an opportunity to review and comment on the draft policy. Government officials are still researching the wisdom of establishing a formal mechanism for soliciting input prior to finalization of all governmental measures.

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 usually 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 such investors simply by threatening to wield such power.

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 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. 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, China further committed to establish an internal review mechanism to investigate and address cases of non-uniform application of laws based on information provided by companies or individuals.

Commercial Dispute Resolution. Both foreign and domestic companies often avoid seeking enforcement actions 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 such 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 August 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 lawsuits 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. The rules took effect in October 2002.

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 right to freely associate or bargain collectively. There are also persistent concerns about the use of prison labor and child labor.

The Chinese government is slowly developing nationwide pension, unemployment insurance, medical insurance, and workplace injury insurance systems that will 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. There is also inconsistent application and enforcement of labor regulations between Chinese-owned enterprises and foreign-invested enterprises.

The cost of labor – especially unskilled labor – is low in much of China. The existence of an enormous surplus rural labor force, many of whom seek work in urban areas, helps to keep unskilled wages low. 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 a household registration system, which traditionally has made it difficult for rural Chinese to work or live in urban areas, in part due to the recognition that labor mobility is essential to the continued growth of the economy.

Corruption

Corruption is endemic in China. Chinese officials themselves admit that corruption is one of the most serious problems the country faces. China pursued more than 32,759 corruption cases in the first nine months of 2003. Of those, 905 were major cases of bribery or embezzlement each involving over one million RMB (over $120,000). Lower-level officials bore the brunt of the ongoing anti-corruption campaign, but over the past year the former Minister of Land and Resources, former Party Secretary of Guizhou Province, former Governor and Party Secretary of Hebei Province and former Vice Governor of Liaoning Province were among the high-level officials disciplined for corruption. Separately, a highly influential, politically connected Shanghai real estate developer was among those held on corruption charges. Many people expect China’s entry into the WTO, which has greatly reduced tariffs, to significantly reduce incentives for smuggling-related corruption. Most other official graft in China involves misappropriation of funds, abuse of power and embezzlement.

China issued its first law on unfair competition in December 1993, and the Chinese government continues to call for improved self-discipline and anti-corruption initiatives at all levels of government. While the government 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

China’s constitution specifies that all land is owned in common by all the people. In practice, agricultural collectives distribute agricultural land to the peasants, 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 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, of course, than allocated rights. However, the law does not define standards for compensation when eminent domain supercedes 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.

A new 2002 rural land law that took effect in 2003 gives peasants fixed contracts for periods of 30 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 present prospect for changing from land-use rights to direct ownership of rural land. In addition, when farmland is converted from agricultural to industrial or residential use, compensation paid to individual peasants rarely reflects the actual value of the land.

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.

COLOMBIA

TRADE SUMMARY

The United States' trade deficit with Colombia was $2.6 billion in 2003, an increase of $609 million from 2002. U.S. goods exports in 2003 were $3.8 billion, up 4.8 percent from the previous year. Corresponding U.S. imports from Colombia were $6.4 billion, up 13.9 percent. Colombia is currently the 27th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Colombia in 2002 was $3.7 billion, up from $3.6 billion in 2001. U.S. FDI in Colombia is primarily in the manufacturing, mining and wholesale sectors.

Free Trade Area Negotiations

In November 2003, the United States announced its intention to begin free trade negotiations with Colombia, Peru, Ecuador and Bolivia, the four Andean Trade Preference Act beneficiary countries. The negotiations will begin on May 18, 2004 with Colombia, as well as any of the other countries that has demonstrated its readiness to begin. The Andeans collectively represented a market of about $7 billion for U.S. exports in 2003, and are home to about $4.5 billion in U.S. foreign direct investment. A free trade agreement with these countries would extend the list of countries in the Americas with which the United States has completed free trade agreements. The negotiation will complement the goal of completing a Free Trade Area of the Americas (FTAA). The U.S. Government will seek to address the issues described in this chapter within the context of our bilateral free trade agreement negotiations.

IMPORT POLICIES

Tariffs

Colombia has opened its economy considerably since the early 1990's. Customs duties were cut and many non-tariff barriers eliminated. Most duties have been consolidated into four tariff levels: zero percent on capital goods, five percent on industrial goods and raw materials, ten percent on manufactured goods with some exceptions, and twenty percent on "sensitive" goods.

Some important exemptions include automobiles, which remain at the level of 35 percent, and agricultural products, which fall under a variable "priceband" import duty system. Andean Community variable duties, which are applied to 159 separate agricultural and food product areas, have become an important barrier to imports of the U.S. products into Colombia subject to these duties. This priceband system results in duties approaching or exceeding 100 percent for important U.S. exports to Colombia, including corn, wheat, rice, soybeans, pork, poultry, cheeses, and powdered milk, and negatively affects U.S. access for products such as dry pet food, which is made from corn. The elimination or reduction of these variable duties is a top market access priority for the U.S. agricultural sector. Processed food imports from Chile and other country members of the Andean Community (Peru, Ecuador, Bolivia, Venezuela) enter duty-free.

Imports of the majority of used goods—cars, manufactured auto parts, tires and clothing—are prohibited, and those that are allowed, such as machinery, are subject to licensing. Import licenses are used to restrict certain agricultural imports such as chicken parts and other preserved chicken and turkey products. In addition, Ministry of Agriculture approval is required for import licenses for products, which, if imported, would compete with domestic products. Some of the covered products include important U.S. exports to Colombia, including wheat, malt barley, poultry, corn, rice, sorghum, cotton, wheat flour, and oilseeds and their products (i.e., soybean meal and soybean oil). Under a World Trade Organization (WTO) waiver, Colombia had until December 31, 2003, to eliminate absorption agreements that required an importer to purchase a government-specified quantity of domestically produced goods as a precondition for the granting of import licenses. In February 2004, the government of Colombia enacted measures to replace this regime, and we are reviewing them for their WTO consistency. Wheat was excluded from this new mechanism and continues to pay the duty calculated under the Andean price band system.

Colombia also assesses a discriminatory value-added (VAT) of 35 percent on whiskey aged for less than 12 years, which is more characteristic of U.S. whiskey, compared to a rate of 20 percent for whiskey aged for 12 or more years, most of which comes from Europe.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Colombian Ministry of Foreign Trade requires specific technical standards for a variety of products. The specifications are established by the Colombian Institute of Technical Standards (ICONTEC), a private non-profit organization, which provides quality certification and technical support services and serves as an Underwriters' Laboratories (UL) inspection center. ICONTEC is a member of the International Standards Organization (ISO) and the International Electrotechnical Commission (IEC). In December 2001, the Ministry of Economic Development issued Resolutions 1190 through 1194, which eliminated mandatory compliance to technical standards on approximately 90 percent of the products previously subject to such requirements. Certificates of conformity are no longer a prerequisite for importing most products that are subject to technical standards. According to U.S. industry, Colombian requirements for phytosanitary registrations to bring new products into the market are excessive and often take as long as six to eight months to fulfill. Colombia maintains trade-restricting requirements for listing of ingredients by percentage on pet food.

GOVERNMENT PROCUREMENT

In July 2003, the Colombian government promulgated Law 816 to protect national industries in government procurement. Law 816 mandates that all public entities adopt criteria that support national industries and accords preferential treatment to bids that incorporate Colombian goods or services. Under Law 816, national companies are given a 10 percent to 20 percent "bonus" in their evaluation score, and companies using Colombian goods or services are given a 5 percent to 15 percent bonus. Bids without any Colombian component are scored between 5 percent and 20 percent lower than national ones. Additionally, Law 816 requires foreign suppliers without local headquarters in Colombia to obtain certification from a Colombian mission overseas that government procurement laws in the home country meet reciprocity requirements. To date, this new system, and specifically the lack of an established certification process, has proven to be a barrier against the participation of U.S. suppliers in government procurement contracts.

There have been complaints of non-transparency in the awarding of major government contracts. However, the Colombian government has taken positive steps to fight corruption, such as working with non-governmental organizations to launch probity programs aimed at promoting entrepreneurial and public ethics. Colombia is still not a signatory of the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Colombia has been working to eliminate export subsidies since its GATT accession. This process has continued under the WTO Agreement on Subsidies and Countervailing Measures. In June 2003, the Colombian Government announced that it would eliminate the tax benefits linked to exports and will replace them with other incentives for employment generation and investment in new technologies. Colombia agreed to phase out all export subsidies in free trade zones by December 31, 2006. Free trade zones and special import-export zones will maintain their special customs and foreign exchange regimes.

Colombia's tax rebate certificate program (CERT) contains a subsidy component, which the Government of Colombia has stated it will replace with an equitable drawback system, although it has not yet done so. In late August 2002, the Colombian government effectively eliminated the CERT, reducing it to zero percent. Although this means that the subsidy component has disappeared, the CERT has not been eliminated, and it could be increased in the future when Colombia's budgetary conditions improve. For example, in July 2003 the Colombian government approved approximately $7 million for CERT payments to banana exporters. The other export subsidy, known as the "Plan Vallejo," allows for duty exemptions on the import of capital goods and raw materials used to manufacture goods that are subsequently exported.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Colombia has been on the Special 301 "Watch List" or "Priority Watch List" every year since 1991. In 2003, the International Intellectual Property Alliance (IIPA) recommended that Colombia remain on the Special 301 Watch List because of its continued difficulties in copyright enforcement. Colombia, which is a WTO member, has ratified its legislation to implement its obligations under the Uruguay Round Agreement on Trade-Related Aspects of Intellectual Property Rights. Colombia is a member of the World Intellectual Property Organization (WIPO), the Paris Convention for the Protection of Industrial Property, and the 1978 Union for the Protection of New Plant Varieties, and a signatory to the Patent Cooperation Treaty.

Patents and Trademarks

The patent regime in Colombia currently provides for 20-year protection for patents and reverses the burden of proof in cases of alleged process patent infringement. Provisions covering protection of trade secrets and new plant varieties have improved Colombia's compliance with its TRIPS obligations.

In 2002, the Colombian government issued Decree 2085, which improved the protection of confidential data. Until 2002, Government of Colombia health authorities approved the commercialization of new drugs that were the bioequivalents of already-approved drugs, thereby denying the originator companies the exclusive use of their data. However, Decree 2085 prohibited this practice, thus providing improved protection for industrial information. Under the decree, data presented for health certification of pharmaceuticals is protected for a period of three years for registrations issued in 2002, four years in 2003, and five years in 2004 and beyond. In May 2003, the Agricultural Ministry promulgated Decree 505 that provides similar protection for agricultural chemicals.

Colombia is a member of the Inter-American Convention for Trademark and Commercial Protection. Enforcement of trademark legislation in Colombia is showing some progress, but contraband and counterfeiting are widespread. The Superintendence of Industry and Commerce acts as the local patent and trademark office in Colombia. This agency was given the control of the government's IPR policy, effective January 2000. However, the agency suffers from inadequate financing and a large backlog of trademark and patent applications.

Copyrights

Andean Community Decision 351 on the protection of copyrights has been in effect in Colombia since January 1, 1994. Colombia also has a modern copyright law: Law 44 of 1993. The law extends protection for computer software to 50 years but does not classify it as a literary work. Law 44 and Colombia's civil code include some provisions for IPR enforcement and have been used to combat infringement and protect rights. Colombia is a member of the Berne and Universal Copyright Conventions, the Buenos Aires and Washington Conventions, the Rome Convention for the Protection of

Performers, Producers of Phonograms and Broadcasting Organizations, the Geneva Convention for Phonograms, the WIPO Copyright Treaty, and the WIPO Performances and Phonograms Treaty. It is not a member of the Brussels Convention relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite.

Colombia's Criminal Code of 2001 includes copyright infringement as a crime, and significantly increased jail terms from three to five years. The code also contains provisions regarding the violation of technological protection measures and rights management information, both key obligations of the WIPO treaty. Colombia has also created a Special Investigative Unit within the Prosecutor General's Office dedicated to intellectual property rights issues. This unit began functioning in November 1999 and is currently working on a number of cases against pirate television programming broadcasters.

Piracy levels in Colombia exceed half the legitimate market in almost all the copyright sectors. The International Intellectual Property Alliance estimates that in 2003 piracy levels in Colombia for recorded music reached 70 percent with damage to U.S. industry estimated at about $50 million, while motion picture piracy represented 75 percent of the market, valued at a loss of an estimated $40 million.

A major intellectual property rights issue has been the need for the Colombian government to license legitimate pay television operators and to pursue pirate operators. The Motion Picture Association of America (MPAA), in conjunction with local attorneys, took 17 criminal actions against alleged television pirates in 2000, 16 such cases in 2001, and eight in 2002. However, MPAA's anti-piracy strategy relied on enforcement by the Colombian National Television Commission (CNTV), which largely failed in its efforts. Given the CNTV's poor results in suppressing piracy, MPAA has ceased initiating action against television broadcast or home video piracy. Colombia's Television Broadcast Law increased legal protection for all copyrighted programming by regulating satellite dishes, and enforcement has begun through a licensing process. However, the MPAA claims that despite several years of promising administrative action to enforce copyright, CNTV has been completely ineffective in addressing the problem of piracy in television. An MPAA estimate suggests that 90 percent of the motion picture market in Colombia is pirated, while annual losses due to audiovisual piracy remained at $40 million in 2002.

SERVICES BARRIERS

Liberalization has progressed furthest in financial services, telecommunications, accounting/auditing, energy, and tourism. It has occurred to a lesser extent in legal services, insurance, distribution services, advertising, and data processing. The provision of legal services is limited to law firms licensed under Colombian law. Foreign law firms can operate in Colombia only by forming a joint venture with a Colombian law firm and operating under the licenses of the Colombian lawyers in the firm. Colombia permits 100 percent foreign ownership of insurance firm subsidiaries. It does not, however, allow foreign insurance companies to establish local branch offices. Insurance companies must maintain a commercial presence in order to sell policies other than those for international travel or reinsurance. Colombia denies market access to foreign maritime insurers.

A commercial presence is required to provide information processing services. Foreign educational institutions must have resident status in Colombia in order to receive operational authority from the Ministry of Education.

Cargo reserve requirements in transport have been eliminated. However, the Ministry of Foreign Trade reserves the right to impose restrictions on foreign vessels of nations which impose reserve requirements on Colombian vessels. Colombia also restricts the movement of personnel in several professional areas, such as architecture, engineering, law, and construction. For firms with more than ten employees, no more than ten percent of the general workforce and 20 percent of specialists may be foreign nationals.

Financial Services

Colombian legislation permits 100 percent foreign ownership in financial services, although the use of foreign personnel in the financial services sector remains limited to administrators, legal representatives, and technicians. In April 2000, the Central Bank completely removed previous reserve requirements on foreign borrowing operations. Such reserve requirements on foreign loans were designed to reduce the amount of import-related debt.

Basic Telecommunications Services

In the WTO negotiations on basic telecommunications services, Colombia made fairly liberal commitments on most basic telecommunications services and adopted the WTO reference paper. However, Colombia specifically prohibited “callback” services and excluded fixed and mobile satellite systems. The license or concession for the supply of telecommunications services is only granted to enterprises legally established in Colombia. Currently, foreign investment is allowed in telecommunications firms, but under its WTO commitments, Colombia reserves the right to limit foreign investment in these firms based on an economic needs test. In general, for certain key services such as carrier, national, and international long-distance, and cellular mobile telephony, foreign investment is permitted up to a maximum of 70 percent of the capital of the enterprise licensed to operate. While Colombia has allowed new competitors into long distance and international services, high license fees are a significant barrier.

For cellular mobile telephone service, the country was divided into three regions; in each one the service was supplied by two exclusive operators until September 1999. Thereafter, a few additional operators entered the market. Private licensed companies must be established as “open” corporations in which no single person or group can hold more than 30 percent of the company and the shares must be listed in Colombia’s stock exchange.   In 2003, Colombia opened the telecommunications market to Personal Communications Services (PCS) competition. The government issued a PCS license to new competitor Colombia Movil, effectively ending Colombia’s mobile telecommunications duopoly (Bellsouth and Comcel share approximately 80 percent of the cellular market) and opening the door for competition. The bidding winner, Colombia Movil, received a 10-year concession to develop the market and compete against the current cellular providers.

Audiovisual and Communication Services

As part of the de-monopolization of Colombia’s government-owned television network, Colombia passed the Television Broadcast Law, Law 182/95, effective January 1995, which increased protection for all copyrighted programming by regulating satellite dishes and permitting private television broadcasters to compete with the government-owned broadcaster. The law increased restrictions on foreign content in broadcasting and imposed a burdensome system of sub-quotas for different hours of the day. The law requires broadcasters to transmit 70 percent locally-produced programming during prime time and a range of zero to 40 percent during other times on national television and 50 percent locally produced programming on regional channels and local stations. Retransmissions of local productions are considered to fulfill only part of the national content requirement. Foreign talent may be used in locally produced programming, but the quasi-independent National Television Commission (CNTV) sets limits.

INVESTMENT BARRIERS

Colombian law provides for national treatment for foreign investment. 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 largely eliminated, and the mechanisms that still exist are generally routine and non-discriminatory.

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.

All foreign investment in petroleum exploration and development in Colombia must be carried out under an association contract between the foreign investor and Ecopetrol, the state oil company. In view of Colombia's need for new oil discoveries, the government implemented a new hydrocarbon policy designed to attract foreign oil companies to Colombia which reduced Ecopetrol's mandatory share in joint ventures from 50 percent to 30 percent and changed royalties from a flat 20 percent to a sliding scale from 8 percent to 25 percent, depending on the size of the field. The Colombian government also restructured Ecopetrol and created the National Hydrocarbon Agency (ANH) in mid-2003. Ecopetrol will be an operating company while the ANH will regulate the sector. The government has announced its intention to extend existing contracts. After 2004, association contracts may be replaced by concession agreements between newly created AHN and multinational companies.

Colombian television broadcast laws (Law 182/95 and Law 375/96) impose several restrictions on foreign investment. For example, foreign investors must be actively engaged in television operations in their home country and their investments must involve an implicit transfer of technology. The National Planning Department issued a new Foreign Investment Regime -- Decree 2080 of October 18, 2000 -- that unified foreign investment regulations, revoking all the rules on the subject previously dispersed into various decrees. Decree 2080 eliminated percentage limits previously placed on foreign equity participation as well as limits on foreign participation in audiovisual and radio services.

ELECTRONIC COMMERCE

Colombia's electronic commerce Law 527 of August 1999 provides electronic documents and signatures the same legal recognition as paper documents and provides a framework for their use. Law 527 allows for, and regulates, the issuance of digital certificates and grants enforcement and oversight responsibilities to the Superintendent of Industry and Commerce. Decree 1747 of September 11, 2000, regulates Law 527 with regard to certificates and digital signatures, and establishes minimum capital and other requirements for certifying agencies to be approved by the Superintendent of Industry and Commerce.

In May 2000, the Colombian and U.S. Governments signed a joint declaration on Electronic Commerce to increase transparency in the sector. According to the Bogota Chamber of Commerce, the Colombian electronic commerce market was estimated at $370 million in 2003. Electronic commerce in Colombia has grown at an annual rate of approximately five percent since 1997. Electronic commerce providers have contended with a weak level of computer penetration, lack of Internet accessibility (only 2.5 percent of the population or approximately 1.1 million people,) and per-minute phone charges for Internet usage that discourage browsing and web surfing. The development of Colombia's electronic commerce market will also be contingent upon improvements in telecommunications, the postal service, and credit card usage.

COSTA RICA

TRADE SUMMARY

The U.S. trade surplus with Costa Rica was $53 million in 2003, an increase of $78 million from a $25 million deficit in 2002. U.S. goods exports in 2003 were $3.4 billion, up 10 percent from the previous year. Corresponding U.S. imports from Costa Rica were $3.4 billion, up 7 percent. Costa Rica is currently the 29th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Costa Rica in 2002 was $1.6 billion, down $75 million from 2002. U.S. FDI in Costa Rica is concentrated mainly in the manufacturing sector.

IMPORT POLICIES

Free Trade Agreement

The United States and four Central American countries (El Salvador, Guatemala, Honduras, and Nicaragua) concluded negotiations on the U.S.-Central American Free Trade Agreement (CAFTA) in December 2003. The United States and Costa Rica on January 25 finalized Costa Rica's participation in the CAFTA. The United States and the Dominican Republic concluded market access negotiations in March 2004 to integrate the Dominican Republic into the CAFTA.

The CAFTA will not only liberalize bilateral trade between the United States and the region, but will also further integration efforts among the countries of Central America, removing barriers to trade and investment in the region by U.S. companies. The CAFTA will also require the countries of Central America to undertake needed reforms to alleviate many of the systemic problems noted below in areas including customs administration; protection of intellectual property rights; services, investment, and financial services market access and protection; government procurements; sanitary and phytosanitary (SPS) barriers; other non-tariff barriers; and other areas.

Tariffs

As a member of the Central American Common Market (CACM), Costa Rica agreed in 1995 to reduce its common external tariff to a maximum of 15 percent. Costa Rica completed its agreed reductions with a decree published on January 6, 2000. Once the CAFTA goes into effect, about 80 percent of U.S. industrial and commercial goods will enter Costa Rica duty free, with the remaining tariffs being eliminated within ten years. Textiles and apparel will be duty-free and quota-free immediately if they meet the Agreement's rule of origin, promoting new opportunities for U.S. and Central American fiber, yarn, fabric and apparel manufacturing.

Selected agricultural commodities are protected with tariffs that significantly exceed the 15 percent common external tariff ceiling. These specially protected commodities include dairy products (40 percent to 65 percent) and poultry products (150 percent). Most tariffs on agricultural products range from one percent to 15 percent. New and used automobiles are also taxed heavily, from 52 percent to 79 percent, depending upon the age of the vehicle.

The CAFTA will eliminate tariffs on virtually all agricultural products within a maximum of fifteen years (dairy and rice in 20 years and chicken leg quarters in 17). Fresh potatoes and onions will be liberalized through expansion of a tariff-rate quota (TRQ). The Agreement also requires transparency and efficiency in administering customs procedures, including the CAFTA rules of origin. Costa Rica committed to ensure procedural certainty and fairness and all parties agree to share information to combat illegal trans-shipment of goods.

COSTA RICA

Non-tariff Measures

Costa Rica levies a sales tax of 13 percent on most goods and services, whether locally produced or imported. A variable selective consumption tax is also applied to many locally produced goods and to about half of all products imported. Among the highest taxed items are arms and ammunition (75 percent), costume jewelry (50 percent), fireworks (50 percent), new and used vehicles (variable), and wine and beer (40 percent). A bill currently in the Costa Rican Legislature contemplates the enactment of a value-added tax.

A U.S. company has expressed concern about the way Costa Rican Customs determines the model year for imported vehicles, which the company believes applies a different standard to non-U.S. auto manufacturers in the Costa Rican auto market.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The process for obtaining standard sanitary and phytosanitary documentation can often be cumbersome and lengthy. Importers of U.S. rice, onions, and potatoes have experienced difficulty in gaining entry for their shipments. There have been allegations that officials of the Ministry of Agriculture have delayed issuance of standard sanitary/phytosanitary (SPS) documentation to protect domestic farmers. The shipments have eventually been allowed to enter, but the delays have resulted in lost earnings for the shipments' owners. Costa Rican customs procedures remain complex and bureaucratic despite recent laws and improvements such as the establishment of an electronic "one-stop" import and export window significantly reducing the time required for customs processing. CAFTA provisions will require that Costa Rica recognize the U.S. inspection system for meat and poultry.

Currently, all foods, pharmaceuticals, agricultural goods, and chemicals and cosmetics for human and animal consumption, locally produced or imported, must be tested and certified by the Ministry of Health before they are allowed to be sold. A system of standards exists, but lack of adequate laboratory testing equipment and funds prevents effective local controls being implemented. Costa Rica requires instead that all imported products be certified safe and allowed for sale in the country of origin. Effective December 24, 2003, Costa Rica temporarily banned import of U.S. beef due to reports of BSE in the United States.

Under the CAFTA, Costa Rica agreed to apply the science-based disciplines of the WTO Agreement on Sanitary and Phytosanitary Measures, and will move toward recognizing export eligibility for all plants inspected under the U.S. food safety and inspection system. In May 2003, Costa Rica issued a decree allowing for the certification of an inspection system to replace a regulation that required poultry export plants to be inspected and approved by the Costa Rican Government. However, Costa Rican inspectors had not approved the USDA veterinary inspection system as of December 6, 2003.

When the United States and Central America launched the CAFTA negotiations, they initiated an active working group dialogue on SPS barriers to agricultural trade that met alongside the negotiations to facilitate market access. Through the work of this group, Costa Rica committed to resolve specific unjustified measures restricting imports from the United States. The SPS Working Group remains committed to continue working on resolution of outstanding issues even after the negotiations concluded.

GOVERNMENT PROCUREMENT

In recent years, a growing number of U.S. exporters and investors are reporting unsatisfactory experiences when responding to Costa Rican government tenders. For example, the Government of Costa

Rica (through the Comptroller General) and large state-owned enterprises have occasionally annulled and re-bid tenders after the financial analysis was completed and awards granted. The Government of Costa Rica 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. Costa Rica is not a party to the WTO Agreement on Government Procurement.

Under the CAFTA, U.S. suppliers would be granted non-discriminatory rights to bid on contracts from most Central American government entities, including key ministries and state-owned enterprises. The CAFTA requires fair and transparent procurement procedures, such as advance notice of purchases and timely and effective bid review procedures. The CAFTA anti-corruption provisions ensure that bribery in trade-related matters, including in government procurement, is specified as a criminal offense under Central American and U.S. laws.

EXPORT SUBSIDIES

Incentives for non-traditional exports, including the remaining tax credit certificates (CATs) formerly granted, were phased out in 1999. Tax holidays are still available for investors in free trade zones, unless tax credits are available in an investor's home country for taxes paid in Costa Rica. The CAFTA will require the elimination of WTO-illegal export subsidies.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Inadequate enforcement of Costa Rica's intellectual property laws (IP) remains a U.S. concern. However, in recognition of improvements by the Costa Rican government to IPR laws and enforcement in April 2002 the United States moved Costa Rica from the Special 301 Priority Watch List to the Watch List, where it remains. While many elements of Costa Rican intellectual property laws appear to be consistent with TRIPS obligations, the country's criminal codes have certain weaknesses that limit effective deterrence of intellectual property crimes. Among the important steps the Costa Rican government has taken recently to improve intellectual property protection are increased raids on companies, the formation of an inter-governmental intellectual property rights commission, and the training of judges and prosecutors on intellectual property laws.

Costa Rica is currently in the process of making meaningful changes to its existing IP laws. The United States hopes that changes will include increasing criminal penalties and removing the "insignificance" provisions of the criminal code relating to IP violations. Although an improved IP legal regime may be established by early 2004, serious concerns are still present about the Costa Rican authorities’ ability to adequately prosecute IP crimes.

The CAFTA provisions will strengthen Costa Rica’s IPR protection regimes to conform with, and in many areas exceed, WTO norms and will criminalize end-user piracy, providing a strong deterrence against piracy and counterfeiting. The CAFTA will require all member countries to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. It will also mandate both statutory and actual damages for copyright infringement and trademark piracy. This serves as a deterrent against piracy, and ensures that monetary damages can be awarded even when it is difficult to assign a monetary value to the violation.

Copyrights

Costa Rica's copyright law is generally adequate, but not uniformly enforced. The copyright regime was revised in 1994 to provide specific protection for computer software and in 1999 to protect integrated circuit designs. The Legislative Assembly ratified the WIPO Copyright Treaty and the WIPO

Performances and Phonograms Treaty at the end of 1999. Piracy of satellite television transmissions by the domestic cable television industry has been curtailed, but some apartment buildings and hotels, particularly in areas not served by major cable service providers, continue to engage in satellite signal piracy. Unauthorized sound recordings, videos 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 IP enforcement. The CAFTA enforcement provisions are designed to help reduce copyright piracy.

Patents

The Legislative Assembly ratified reforms required by the Paris Convention for the Protection of Industrial Property in 1995. The patent law 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. Problems remain, however, for pharmaceutical companies seeking to protect the use of data submitted for regulatory approval, in that such data are not being protected from unfair commercial use by unauthorized third parties. Costa Rica has committed under the CAFTA to protect test data and trade secrets submitted to the government for the purpose of product approval. This data will be protected against unfair commercial use for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals. Also, although there is no effective means of providing protection for plant varieties in Costa Rica's TRIPS Agreement, the CAFTA obligations require that Costa Rica accede to the UPOV Convention (International Union for the Protection of New Varieties of Plants, 1991) by June 1, 2007.

Trademarks

Counterfeiting of well-known trademarks occurs frequently 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 on registered trademarks. The CAFTA enforcement provisions are designed to help reduce copyright piracy.

SERVICES BARRIERS

Costa Rica's insurance, telecommunications, electricity distribution, petroleum distribution, potable water, sewage, and railroad transportation industries are state monopolies. In addition, there are restrictions on the participation of foreign companies in some private sector activities, such as customs handling, medical services, and other professions requiring Costa Rican registration and long-term residency of the persons providing the services. Under the CAFTA, Costa Rica will accord substantial market access in services across their entire services regime, subject to very few exceptions. For Costa Rica, liberalization in insurance will be achieved through a phased-in approach with an initial opening at entry into force, the vast majority of the market open by 2008, and a total opening by 2011. In addition, Costa Rica made specific commitments to gradually open its telecommunications market in three key areas - private network services, Internet services, and wireless services – and committed to establishing a regulatory framework to help foster effective market access.

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 100 percent owned bank subsidiaries in Costa Rica to provide lending and deposit-taking services, leasing services, credit card services, and financial information services. Costa Rica made no commitments in the WTO for the provision of securities trading, underwriting services, or any type of insurance services. However, the CAFTA will provide for openings in all these areas (insurance openings to be phased in as noted above).

Since 1995, private commercial banks have been permitted to offer checking accounts and savings deposits of less than 30 days and, since 1996, to access the Central Bank's discount window. However, 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 will ensure that foreign banks are treated under the same rules as domestic banks.

Costa Rican regulations restrict the ability of certain professions to practice on a permanent basis in Costa Rica. For example, medical practitioners, lawyers, certified public accountants, engineers, architects, teachers, and other professionals must be members of an officially recognized guild (colegio) which sets residency, examination, and apprenticeship requirements. However, under the FTA Costa Rica did agree to allow the provision of certain professional services on a reciprocal basis and also agreed to provide for temporary licensing of professional services.

INVESTMENT BARRIERS

The slow pace of Costa Rica's legal system (a commercial dispute within the Costa Rican legal system can take an average of 10 years to be resolved) has been cited as an investment barrier by many U.S. investors. Another concern to existing and potential U.S. investors is the frequent use of "recursos de amparo" before the Costa Rican Constitutional Court, which are challenges to review the possible illegality of acts by the authorities or to review the constitutionality of legislation and regulations. Although these measures are generally seen as pro-investor, such challenges have been used at times to slow procedures and hinder the quick resolution of disputes.

Costa Rica's constitution and the expropriation law make clear that expropriations are to occur only after full advance payment is made. The law applies to Costa Ricans and foreigners alike.

While electrical generation and distribution remain a state monopoly, an electricity co-generation law enacted in 1996 allowed some private-sector participation (limited to 15 percent of the total market) 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 (BOT) and build-lease-transfer (BLT) mechanisms, but the operator must have at least 35 percent Costa Rican equity. Legislative proposals to open the electricity and telecommunications sectors to investment and competition were abandoned in 2000 in the wake of large-scale demonstrations against reform and a Constitutional Court ruling against specific legislation under discussion. 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. Several U.S. investors have recently noted serious difficulties executing contracts made with the Costa Rican government, bringing into question the sanctity of contracts made with the Costa Rican government.

Under the CAFTA, all forms of investment will be protected, including enterprises, debt, concessions, contracts and intellectual property. U.S. investors will enjoy in almost all circumstances the right to establish, acquire and operate investments in the Central American countries 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 will be backed 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.

COSTA RICA

OTHER BARRIERS

The law regulating commercial representatives of foreign firms (Law No. 6209) grants local companies exclusive representation, without a signed agreement, for an indefinite period of time. In most cases, foreign companies must pay indemnity compensation in order to terminate an undesirable relationship with the local company. The CAFTA will address these issues through comprehensive transparency requirements and specific provisions on dealer protection laws.

COTE D’IVOIRE

TRADE SUMMARY

The U.S. trade deficit with Cote d’Ivoire was $387 million in 2003, an increase of $87 million from the $300 million deficit in 2002. U.S. goods exports to Cote d’Ivoire in 2003 were $103 million, up 35 percent from the previous year. U.S. imports were $490 million, mostly cocoa beans and wood products, up 30 percent. Cote d’Ivoire is currently the 114th largest export market for U.S. goods. The stock of U.S. foreign direct investment (FDI) in Cote d’Ivoire in 2002 was $183 million, up from $137 million in 2001.

IMPORT POLICIES

Cote d’Ivoire is a member of the 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 entered into effect. Imports from all other countries are subject to duty and tariffs based on the Common External Tariff Schedule of five percent on raw materials and inputs for local manufacture, 10 percent for semi-finished goods, and 20 percent for finished products. Additionally, a one percent statistical fee is levied on the CIF (customs, insurance, freight) value except those destined for re-export, transit, or donations for humanitarian purposes under international agreements. Other taxes on imports into Cote d’Ivoire are a one percent ECOWAS community levy (solidarity tax) of the CIF value of imported goods. There are special taxes on fish (20 percent), rice (between 5 and 10 percent based on category), alcohol, tobacco, cigarettes, certain textile products, and petroleum products. 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 includes the CIF value added to the duty and the statistical fee.

Cote d’Ivoire reportedly continues to apply minimum import prices (MIPs) to imports of certain products. Although it had a WTO waiver at one point allowing it to apply MIPs for some products, Cote d’Ivoire continued to apply MIPs after the waiver’s expiration in January 2003, including to imports of products never covered by the waiver.

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/munitions, plastic bags, distilling equipment, pornography, saccharin, narcotics, explosives, illicit drugs, and toxic waste.

STANDARDS, TESTING, LABELING AND CERTIFICATION

All items imported into Cote d'Ivoire must have a certificate of compliance to clear customs. Two European companies are contracted to carry out all qualitative and quantitative verifications of goods imported into Cote d'Ivoire equal to or higher than CFA 1.5 million (approximately $2,800). 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 the French or European norm.

GOVERNMENT PROCUREMENT

The government of Cote d’Ivoire regularly and periodically issues notices of procurement tenders in the local press, in the form of documentation sent to the U.S. Embassy, or sometimes published in international magazines and newspapers. The implementing agency is usually the ministry making the request or the ministry under whose tutelage the office functions. The Bureau National d’Etudes Technique et Developpement (BNETD), the government’s technical planning agency and think tank, sometimes serves as an executing agency representing ministries for major projects to be financed by the World Bank or the African Development Bank. On occasion, there is a charge for the bidding documents.

The government has created a centralized office of public bids in the Finance Ministry to help ensure compliance with international bidding practices. While theoretically the procurement process is open, some well-entrenched French companies, through their relations with government officials, may on occasion retain preferred position in securing bid awards.

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 in computer services, education, and training currently is widespread. Prior approval, however, is required for foreign investment in the health sector, travel agencies, law, and accounting firms, and majority foreign ownership of companies in these sectors is not permitted. Foreign companies currently operate successfully in all these sectors. Three U.S. accounting firms and one U.S. bank currently have branches in Cote d'Ivoire.

INVESTMENT BARRIERS

Cote d'Ivoire places no limits on foreign investment but does set limits on some sectors in which majority ownership must be Ivoirian. The government actively encourages foreign investment through mergers, privatizations and acquisitions, management concessions, or new start-ups. In recent years, however, political stability has become a big issue weighing on business and 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 2001 had not dissipated when another attempted coup and rebellion gripped the nation in September 2002. Ongoing attempts at national reconciliation, while showing progress, have been slow and protracted.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The Ivoirian Civil Code protects the acquisition and disposition of intellectual property rights. Legal protection for intellectual property may fall short of TRIPS standards. Cote d'Ivoire is a party to the Paris Convention, its 1958 revision, and the 1977 Bangui Agreement covering 16 Francophone African countries in the African Intellectual Property Organization (OAPI). Effective February 2002, changes were made to the Bangui Accords in an effort to bring them into conformity with TRIPS. 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, Ivoirian experts drafted a new law in an effort to bring Cote d'Ivoire into conformity with TRIPS. The new law adds specific protection for computer programs, databases, and authors' rights with regard to rented films and videos. The National Assembly has not yet approved this legislation.

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 resource allocation, 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 Ivoirian market with all types of counterfeit goods. Government efforts to combat piracy are modest. The Ivoirian Office of Author's Rights (BURIDA), established in 1998, recently established a new sticker system to enter into effect in January 2004 to protect phonograph, video, literary and artistic property rights in music and computer programs. BURIDA's operations remain hampered by a long-running dispute over policy and who should direct the agency, but the agency does help to promote IPR enforcement with lawyers and magistrates.

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. However, a few individuals and small businesses have begun experimenting with electronic commerce, and interest in the medium continues to gain ground.

OTHER BARRIERS

Corruption

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 open to financial influence to distort the merits of a case. Corruption and the recent political crisis have affected the Ivoirian government's ability to attract and maintain 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.

There is no specific legal provision for the arbitration of investment disputes, although in 1989 the Supreme Court upheld the use of arbitration. Cote d'Ivoire is a member of the International Center for the Settlement of Investment Disputes.

DOMINICAN REPUBLIC

TRADE SUMMARY

The United States had a trade deficit with the Dominican Republic of $242 million in 2003, a change of $323 million from the $81 million surplus for 2002. U.S. goods exports to the Dominican Republic were $4.2 billion, a decrease of about $37 million from the previous year. Corresponding U.S. imports from the Dominican Republic were $4.5 billion, an increase of $286 million. The Dominican Republic is currently the 26th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in the Dominican Republic in 2002 was $1.1 billion, down 8.9 percent from 2001. U.S. FDI in the Dominican Republic is concentrated largely in the manufacturing and wholesale sectors.

Much of the U.S. investment in the manufacturing sector is located in export processing zones, called Free Trade Zones (FTZ), which specialize in producing apparel, footwear, electronic products and medical goods using U.S. components and materials.

IMPORT POLICIES

Free Trade Agreement

The United States and four Central American countries (El Salvador, Guatemala, Honduras, and Nicaragua) concluded negotiations on the U.S.-Central American Free Trade Agreement (CAFTA) in December 2003. The United States and Costa Rica on January 25 finalized Costa Rica’s participation in the CAFTA. The United States and the Dominican Republic concluded market access negotiations in March 2004 to integrate the Dominican Republic into the CAFTA.

Integrating the Dominican Republic with the CAFTA expanded the FTA by some 40 percent, creating a free market for U.S. goods and services that would become the 2nd largest U.S. export market in Latin America. The Dominican Republic is among the world’s fastest-growing economies, and is already an important market for U.S. agricultural, fish, apparel, textiles and forestry products. The FTA will also require the Dominican Republic and the countries of Central America to undertake needed reforms to alleviate many of the systemic problems noted below in areas including customs administration; protection of intellectual property rights; services, investment, and financial services market access and protection; government procurement; sanitary and phytosanitary (SPS) barriers; other non-tariff barriers; and other areas.

Tariffs

As a result of a progressive deterioration in the Dominican economy during the second half of 2003, the Dominican government has requested assistance from the International Monetary Fund (IMF). As part of the initial agreement reached with the IMF, the Dominican Government ordered the application of a two-percent surcharge on the CIF value of all imports. Decree 646-03 establishes that goods that have been exempt from taxes and surcharge under free trade agreements will not pay the new surcharge. The decree does not mention if FTZ items are exempt, although previous statements from the government indicate the surcharge would affect free zone imports. The government also planned to implement a 5 percent export tax as part of a revised IMF agreement under negotiation at the end of 2003.

The Dominican Republic applies a maximum tariff on most items of 20 percent. Tariffs on beef imports, however, have been raised in recent years from 25 percent to 40 percent. The CAFTA will eliminate most tariffs on industrial goods within ten years and most tariffs on agricultural goods within fifteen years.

Non-tariff Measures

Bringing goods through Dominican Customs can often be a slow and arduous process. Customs Department interpretations often provoke complaints by businesspersons, and arbitrary clearance procedures sometimes delay the importation of merchandise for lengthy periods. Furthermore, the Dominican government continues to require importers to obtain from a Dominican Consulate in the United States a consular invoice and "legalization" of documents, with attendant fees and delays. The use of "negotiated fee" practices to gain faster customs clearance continues to put some U.S. firms at a competitive disadvantage in the Dominican market. Under the FTA, the Dominican Republic commits to providing transparency and efficiency in administering customs procedures, to ensuring procedural certainty and fairness, to sharing information with other parties to combat illegal trans-shipment of goods, and to eliminating the consular invoice requirement.

U.S. companies have also expressed concern that the Dominican Dealer Protection Law 173, which applies only to foreign and not domestic suppliers, makes it extremely difficult to terminate contracts with local agents or distributors without paying exorbitant indemnities. Several U.S. companies have lost lawsuits brought under this law and have suffered significant financial penalties. This law has had a negative impact on market access and on consumer welfare in the Dominican Republic. In the FTA, the Dominican Republic has committed to loosen restrictions that lock U.S. firms into exclusive or inefficient distributor arrangements as it dismantles distribution barriers.

In late 2003, in anticipation of the signing of a second IMF stand-by agreement, and in an effort to raise badly needed revenue, the Dominican government increased the exchange surcharge (Recargo Cambiario) from 4.75 percent to 10 percent. Dominican Customs collects the Cambiario, which is a tax imposed on the invoice dollar amounts of all imports into the Dominican Republic. The Cambiario was initially supposed to be gradually phased down according to the Monetary and Financial Law No. 183-02 (Nov. 21, 2002). On October 23, 2003, the Central Bank issued a resolution increasing the Cambiario to 10 percent and delaying the phase out until February 2004 or when macroeconomic conditions were stable. This resolution was implemented on November 3, 2003. These short-term measures are expected to expire prior to the FTA's entry into force.

The Dominican government implemented the WTO Agreement on Customs Valuation in July 2001 following a 16-month extension granted by the WTO Committee on Customs Valuation.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Sanitary permits are required for the importation of many agricultural products. In practice, these sanitary permits are used as import licenses to control import levels of selected commodities and products. The inability to apply for and receive sanitary permits in a timely manner in the Dominican Republic for shipments of U.S. meat and dairy products continues to be a serious problem for U.S. export companies and Dominican importers. This is a result of a continuing policy by the General Directorate of Livestock within the Ministry of Agriculture to delay or reject applications for sanitary permits, based on its assessment of market needs and the effect imports would have on domestic producers.

The trade-restrictive actions of the Livestock Directorate fall into two main areas: absorption requirements and lack of transparency.

Absorption Requirements

Absorption requirements, which require an importer to purchase specified quantities of domestic products in order to be able to import those same types of products, were to be eliminated in 2003. However, U.S. companies indicate that the Livestock Directorate is requiring importers to purchase 25 percent of their requirements for turkeys from domestic sources, in order to receive sanitary permits.

Transparency

The Dominican Republic generally accepts U.S. certifications and standards, but U.S. agricultural exports are sometimes subject to sanitary and phytosanitary (SPS) measures that appear to be arbitrarily enforced, not based on science, and applications for permits may be rejected or subject to lengthy delays, with little or no explanation and no apparent basis in Dominican law. This is especially a problem for products with a short shelf life, such as yogurt, which could quickly pass its expiration date if delayed in port. Some U.S. companies have reported that they are no longer attempting to export to the Dominican Republic because of financial losses and frustration from previous attempts to obtain sanitary permits. The CAFTA will impose transparency requirements to help alleviate problems with sanitary permits.

Furthermore, under the FTA, the Dominican Republic reaffirmed its commitment to apply the science-based disciplines of the WTO Agreement on SPS measures. When the United States and the Dominican Republic launched FTA market access negotiations, they initiated an active working group dialogue on SPS barriers to agricultural trade that have met alongside the negotiations. In this working group the Dominican Republic is making additional commitments to resolve specific unjustified measures restricting imports from the United States. The SPS Working Group will continue working on resolution of outstanding issues even after the negotiations conclude.

GOVERNMENT PROCUREMENT

The Dominican Republic is not a party to the WTO Agreement on Government Procurement. However, the United States lifted its suspension of its waiver of “Buy America Act” provisions in 2003 after the Dominican government increased its cooperation in the World Trade Organization Working Group on Transparency in Government Procurement, its cooperation in the negotiations for a Free Trade Area of the Americas (FTAA), and its action in submitting legislation to its Congress that would make the government procurement process more transparent. However, the Dominican Congress has yet to take action on this legislation. Nonetheless, in the CAFTA, the Dominican Republic committed to ensure that U.S. suppliers are granted non-discriminatory rights to bid on contracts from Central American government ministries, agencies, and departments and that procurements are conducted in accordance with fair and transparent procurement procedures.

EXPORT SUBSIDIES

The Dominican Republic does not have aggressive export-promotion schemes other than the exemptions given to firms in the free trade zones. The WTO granted the Dominican Republic a waiver allowing it to phase out its subsidies. The CAFTA requires the elimination of WTO-illegal export subsidies once the waiver expires.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The Dominican government took steps to strengthen its intellectual property rights regime during 2003, and as a result, the United States improved the country’s standing under Special 301 from Priority Watch List to Watch List. Although the Dominican Republic has strong legislation to protect copyrights and has improved the regulatory framework for patent and trademark protection, United States industry representatives continue to cite lack of IPR enforcement as a major concern. The government has taken some steps to prosecute violators, but there is insufficient training or resources for enforcement, and the judicial process moves very slowly. The Dominican Republic recently ratified the WIPO Copyright Treaty and has submitted the WIPO Performances and Phonograms Treaty to Congress for ratification.

The FTA obligations will strengthen the Dominican IPR protection regime to conform with, and in many areas exceed, WTO norms and will criminalize end-user piracy, providing a strong deterrence against piracy and counterfeiting. The CAFTA requires the Dominican Republic to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. It also mandates both statutory and actual damages for copyright infringement and trademark piracy. This will serve as a deterrent against piracy, and ensures that monetary damages can be awarded even when it is difficult to assign a monetary value to the violation.

Patents and Trademarks

The Dominican government issued a Presidential decree on March 3, 2003, stipulating regulatory measures that appear to significantly strengthen the Industrial Property Law passed in 2000 and bring the law into compliance with most elements of the TRIPS Agreement. However, a second Presidential decree was issued three days later on March 6, 2003, that unfortunately nullified many of the positive elements of the first decree. The United States government has continued to pressure the Dominican Republic to issue a corrective decree that fully brings the Industrial Property Law in line with its TRIPS Agreement obligations. Furthermore, the regulations have not yet been applied in legal proceedings, so the effectiveness of those measures has not been tested. The CAFTA obligations ensure that test data and trade secrets submitted to the Dominican government for the purpose of product approval will be protected against unfair commercial use for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals.

Copyrights

Despite a strong copyright law passed in 2000 and some improvement in enforcement activity, piracy of copyrighted materials is still widespread. Video and audio recordings and software are being copied without authorization despite the government’s efforts to seize and destroy such pirated goods. The U.S. Government continues to receive serious reports of television and cable operators rebroadcasting signals without compensating either the original broadcaster or the originator of the recording. U.S. industry representatives point to extended delays in the judicial process when cases are submitted for prosecution. High-profile cases against large cable companies were postponed repeatedly in 2003, and have now been rescheduled for early 2004.

SERVICES BARRIERS

In October 2002, the Dominican Republic passed a new 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.

It is not clear at this time what long-term effects the Banco Intercontinental (Baninter) bank fraud scandal will have on financial services sector investment. The fraud resulted in an estimated $2.2 billion loss, equivalent to roughly 12-15 percent of GDP. The Dominican government chose to guarantee all deposits, even though the banking law sets a relatively low ceiling for government guarantees of bank deposits. Since the Baninter scandal, the government has intervened in two other Dominican banks that became insolvent, BanCredito and Banco Mercantil. The Dominican Republic's Leon Jimenez Group subsequently purchased BanCredito, and Republic Bank, based in Trinidad & Tobago, acquired Banco Mercantil.

The Dominican Republic has ratified the 1997 WTO Financial Services Agreement and its new monetary and financial law appears to go beyond the commitments of the WTO agreement. The Dominican Republic has committed itself to allow foreign banks to establish branches or local companies with up to 100 percent foreign equity to supply deposit-taking, lending, and credit card services. Foreign investors could also own up to 100 percent equity in local suppliers of leasing and insurance service suppliers. There is no longer any need for local participation.

The Dominican Insurance Law remains unchanged requiring that Dominican shareholders hold at least 51 percent of the shares of national insurance companies. Under the CAFTA, U.S. financial service suppliers will have full rights to establish subsidiaries, joint ventures or branches for banks and insurance companies. Furthermore, the Dominican Republic will allow U.S.-based firms to supply insurance on a cross-border basis, including reinsurance; reinsurance brokerage; marine, aviation and transport (MAT) insurance; and other insurance services.

INVESTMENT BARRIERS

Dominican legislation does not contain effective procedures for settling disputes arising from Dominican Government actions. Dominican expropriation standards are not consistent with international law standards. Numerous U.S. investors have outstanding disputes related to expropriated property. Subsequent to U.S.-Dominican Trade and Investment Council meetings in October 2002, the Government set out to examine outstanding expropriation cases for possible resolution through payment or issuance of government bonds under a 1999 law. With the help of a USAID contractor, the Boston Institute for Developing Economies (BIDE), the Dominican government has been able to identify and analyze 245 cases and has sent 188 of them (76.7 percent) to the Debt Commission, which approved them for resolution. The remaining cases will be sent to the next Debt Commission meeting, which has yet to be set.

The Dominican Republic implemented the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) in August of 2002, which provides courts a mechanism to enforce international arbitral awards. The CAFTA provides effective remedies through transparent arbitration for investors who seek compensation for acts of expropriation by the Dominican Government.

In 1999, capitalization of the state electric company left control of the distribution system and most generating capacity in private hands. In 2002, the Dominican government reached agreement to renegotiate most of the contracts with independent power producers (IPP) and established a new agreement with the distributors on collection and payment mechanisms, as well as rate structure. In 2003, however, the electricity sector in the Dominican Republic began to deteriorate. The crisis in the sector is primarily due to distributors’ inability to collect sufficient funds from consumers and the Dominican Government, and the pricing formula that distributors must use to convert dollar-indexed tariffs into peso charges to their customers, which has been exacerbated by the devaluation of the peso. The total amount owed in payment arrears to the generators and distributors exceeds $350 million, and continues to grow. In September, the government surprised many observers by re-purchasing Spanish firm Union Fenosa’s share of two distributors (EDENORTE and EDESUR). The buyout resulted in a suspension of the IMF stand-by agreement that had been agreed in August. Electrical sector problems threaten economic competitiveness and have the potential to spark further social unrest in the Dominican Republic.

Under the CAFTA, all forms of investment will be protected, including enterprises, debt, concessions, contracts and intellectual property. U.S. investors will enjoy in almost all circumstances 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 will be backed 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

The U.S. Government is not aware of specific legislation or taxes that apply to electronic commerce. However, shipping costs, difficulties with the postal system and customs, and import duties are practical constraints to e-commerce. Under the CAFTA, the Dominican Republic agreed to provisions on e-commerce that reflect the issue's importance in global trade and the importance of supplying services by electronic means as a key part of a vibrant e-commerce environment. The Dominican Republic also committed to non-discriminatory treatment of digital products and agreed not to impose customs duties on such products and to cooperate in numerous policy areas related to e-commerce.

OTHER BARRIERS

U.S. companies continue to complain about lack of transparency and corruption in all sectors. Lack of predictability in the judicial process also presents problems for U.S. companies seeking to resolve contract disputes.

ECUADOR

TRADE SUMMARY

The United States' trade deficit with Ecuador was $1.3 billion in 2003, an increase of $735 million from the $598 million deficit in 2002. U.S. goods exports in 2002 were $1.4 billion, down 9.8 percent from the previous year. Corresponding U.S. imports from Ecuador were $2.7 billion, up 26.9 percent. Ecuador is currently the 51st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ecuador in 2002 was $1.1 billion, up from $480 million in 2001. U.S. FDI in Ecuador is primarily in the mining sector.

Free Trade Area Negotiations

In November 2003, the United States announced its intention to begin free trade negotiations with Colombia, Peru, Ecuador and Bolivia, the four Andean Trade Preference Act beneficiary countries. The negotiations will begin on May 18, 2004 with Colombia, as well as any of the other countries that has demonstrated its readiness to begin. The Andeans collectively represented a market of about $7 billion for U.S. exports in 2003, and are home to about $4.5 billion in U.S. foreign direct investment. A free trade agreement with these countries would extend the list of countries in the Americas with which the United States has completed free trade agreements. The negotiation will complement the goal of completing a Free Trade Area of the Americas (FTAA). The U.S. Government will seek to address the issues described in this chapter within the context of our bilateral free trade agreement negotiations.

IMPORT POLICIES

Tariffs

When Ecuador joined the WTO in January 1996, it bound most of its tariff rates at 30 percent or less. Ecuador's average applied tariff rate is 13 percent. Ecuador applies a four-tiered structure with levels of five 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, are subject to a tariff rate of zero. Agricultural inputs and equipment are imported duty-free.

As part of its WTO accession, Ecuador committed to phase out its price-band system, with a total phase-out by December 2001. No steps have been taken to do so. Ecuador maintains a price band system on 153 agricultural products (13 “marker” products and 140 “linked” products). The “marker” products include white and yellow corn, rice, soybeans, soybean meal, soy oil, African palm oil, barley, sugar, chicken, pork meat, and powdered milk. Under this system, the *ad valorem* rates are adjusted according to the relationship between commodity reference prices and established floor and ceiling prices. Upon accession to the WTO, Ecuador bound its tariffs plus price-bands on these commodities at between 31.5 percent and 85.5 percent.

At the time of its accession to the WTO, Ecuador also agreed to establish tariff-rate quotas for certain agricultural imports. In May 2000, the Government of Ecuador established regulations for 17 agricultural products, with tariff rates ranging from 19 percent to 45 percent. The 17 agricultural products include sorghum, wheat, corn, frozen turkey and chicken parts, powdered milk, and soybean meal.

Non-Tariff Measures

Ecuador has failed to eliminate several non-tariff barriers since its WTO accession. Prior authorization for importation of all goods is required before the Central Bank can issue an import license. In order to get a license from the Central Bank to import, an importer must first obtain, inter alia, a tax registration number from Ecuador's Internal Revenue Service (SRI). Importers must also obtain authorization to import from the SRI for tax and tariff purposes. Ecuador requires prior authorization from the Ministry of Agriculture (MAG) for importation of most commodities, seeds, animals, and plants. An important exception is wheat, which has been exempt from the requirement since July 2000. Also, the Ministry of Health must give its prior authorization (i.e., sanitary registration) before the importation of processed, canned, and packed foods as well as food ingredients and beverages.

Ecuador also continues to maintain a preshipment inspection (PSI) regime. Preshipment inspection by an authorized inspection company (both before shipment and after specific export documentation has been completed at the intended destination) results in delays far exceeding the time saved in customs clearance. Customs authorities sometimes perform spot-checks, causing further delays. These practices generally add six to eight weeks to shipping times.

Ecuador maintains bans on the import of used motor vehicles, tires, and clothing. Ecuador applies a 25 percent markup on imported distilled spirits for excise tax purposes. This markup is not added to the tax base when the excise tax is applied to domestic spirits.

In December 1999, the MAG, through the Ecuadorian Animal and Plant Health Inspection Service (SESA), issued a requirement that all importers must present a certificate stating that imported agricultural products (plants, animals, their products or byproducts) have not been produced using modern biotechnology. In November 2002, the President issued Executive Decree 3399 creating the National Commission for Biosafety as an office of the Ministry of Environment. It will be responsible for biotechnology-related products and regulations issues. However, no rules have yet been enacted.

STANDARDS, TESTING, LABELING AND CERTIFICATION

National standards are set by the Ecuadorian Norms Institute (INEN) of the Ministry of Commerce and generally follow international standards. 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 must comply with 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.

SESA follows the "Andean Sanitary Standards" established under the Andean Community of Nations (CAN). 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 complies with risk analysis and that the country of origin or the area of production is free from certain exotic plant or animal diseases.

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 application rules 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 the receipt of the request, and reduce the number of documents required to obtain a permit. However, these regulations are not being applied consistently. U.S. firms report that the Izquieta Perez National Hygiene Institute (INHIP - the agency responsible for registering imported processed food products) office in Guayaquil has refused to accept U.S. Certificates of Free Sale and 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 blocked the entry of some imported products 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 products. This requirement appears to go beyond the requirements of the Codex Alimentarius Commission on Internationals Standards and Labeling.

GOVERNMENT PROCUREMENT

Government procurement is regulated by the 1990 public contracting law. Foreign bidders must be legally represented in Ecuador. There is no legal requirement to discriminate against U.S. or other foreign suppliers. Bidding for government contracts can be cumbersome and insufficiently transparent. Ecuador is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Ecuador has created a semi-independent agency, the Corporation for the Promotion of Exports and Investments (Corpei), to promote Ecuadorian exports. Using a World Bank loan, Corpei offers matching grants to exporters to help fund certain expenses, including international promotional events and export certifications. The maximum individual grant is $50,000.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In 1998, Ecuador enacted a comprehensive law that significantly improved the legal basis for protecting intellectual property, including patents, trademarks, and copyrights. The intellectual property law provides greater protection for intellectual property; however, it is deficient in a number of areas and the law is not being adequately enforced. Enforcement of copyrights remains a significant problem, especially concerning sound recordings, computer software, and motion pictures.

Ecuador's current intellectual property regime is provided for under its intellectual property rights (IPR) law and Andean Pact Decisions 486, 345, and 351. Ecuador is a member of the World Intellectual Property Organization (WIPO) and is a member of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Furthermore, Ecuador has ratified the Berne Convention for the Protection of Literary and Artistic Works, the Geneva Phonograms Convention, the Paris Convention for the Protection of Industrial Property, and the WIPO Patent Cooperation Treaty.

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. Article 78 of the 1999 Law on Higher Education appears to permit software copyright violations by educational institutions.

Patents and Trademarks

ECUADOR

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, compulsory licensing, and the lack of protection of test data.

Government of Ecuador health authorities continued to approve the commercialization of new drugs which were the bioequivalents of already approved drugs, thereby denying the originator companies the exclusive use of their data. In effect, the Government of Ecuador is allowing the test data of registered drugs from originator companies to be used by others seeking approval for their own pirate version of the same product. Also, U.S. companies are concerned that the Government of Ecuador is implementing a policy that a company that had patented a compound for one use cannot subsequently patent a second use of that compound. This puts Ecuador at odds with international norms.

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 both motion pictures and recorded music has reached 95 percent, with estimated damage due to music piracy of $19 million. At times, judges in IPR cases, before issuing a preliminary injunction, apply performance bond and evidentiary requirements that exceed legal requirements and in effect limit the ability of rights holders to enforce their rights. 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 pirated drugs and have sought to block improvements in patent protection. U.S. industry estimates damage due to the failure to provide data exclusivity at $5 million.

SERVICES BARRIERS

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. Foreign professionals are subject to national licensing legislation, and the Superintendent of Banks must certify accountants.

In the area of basic telecommunications, Ecuador only subscribed to WTO commitments for domestic cellular services. It did not make market access or national treatment commitments for a range of other domestic and international telecommunications services, such as voice telephony and data. In addition, Ecuador did not adhere to the pro-competitive regulatory commitments of the WTO Reference Paper.

INVESTMENT BARRIERS

Ecuador's foreign investment policy is governed largely by the national implementing legislation for Andean Pact Decisions 291 of 1991 and 292 of 1993. 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. The U.S.-Ecuador Bilateral Investment Treaty (BIT) entered into force in May 1997 and includes guarantees regarding national and most-favored-nation treatment, prompt, adequate and effective compensation for expropriation, freedom to make financial transfers, and access to international arbitration. U.S. companies are sometimes reluctant to resolve commercial disputes through the Ecuadorian legal system, fearing a prolonged process and a lack of impartiality.

Certain sectors of Ecuador's economy are reserved to the state. All foreign investment in petroleum exploration and development in Ecuador 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. Several of these companies are involved in a dispute with the government of Ecuador regarding the refund of value-added tax rebates. One U.S. company is currently involved in an international arbitration proceeding with the government of Ecuador regarding this dispute. 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. Foreigners are prohibited from owning land on the frontier or coast.

Appropriate 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 varies widely. It can be difficult to enforce property and concession rights, particularly in the agriculture and mining sectors. Foreign oil, energy, and telecommunications companies, among others, have often had difficulties resolving contract issues with state or local partners. Several U.S. companies have also raised concerns about the lack of transparency, predictability, and stability in Ecuador’s legal and regulatory regime, which increases the risks and adds to the cost of doing business in Ecuador.

ELECTRONIC COMMERCE

Ecuador passed an electronic commerce law in April 2002 that makes the use of electronic signatures in business transactions on the Internet legally binding and makes digital theft a crime. Ecuador has initiated a program for e-government services and universal access to information technology through funding from international financial institutions.

EGYPT

TRADE SUMMARY

The U.S. trade surplus with Egypt was $1.5 billion in 2003, the same as in 2002. U.S. goods exports in 2003 were $2.7 billion, down 7.3 percent from the previous year. Corresponding U.S. imports from Egypt were $1.1 billion, down 15.7 percent. Egypt is the 36th largest export market for U.S. goods.

The stock of U.S. foreign investment (FDI) in Egypt in 2002 was $3.0 billion, up 16.6 percent from 2001 (latest data available). U.S. FDI in Egypt is concentrated in the mining sector.

IMPORT POLICIES

The government of Egypt has gradually implemented a number of import policies to promote greater trade liberalization. The list of goods requiring prior approval before importation was eliminated in 1993. Egypt became a member of the World Trade Organization (WTO) in 1995 and has pledged to be in full compliance with its trade commitments to the WTO by 2005. Over the last two years progress on trade reform has been uneven. Although the government recognizes the need to eliminate non-tariff barriers to trade, significant problems remain and add to the cost of doing business. These include red tape, cumbersome bureaucracy, and the enforcement of unreasonable and excessive Egyptian standards.

In January 2003, the government adopted a free-market exchange-rate system. Both the government and business hoped the move to a flexible exchange rate would ease problems of gaining access to foreign exchange. However, foreign-exchange liquidity and turnover remain problems. Firms report delays in processing requests to convert Egyptian pounds to foreign currency for imports, loan repayments, and other purposes and firms have turned to an illegal parallel market for their foreign-currency needs. To counter this trend, Prime Ministerial decree 506 of 2003 established a surrender requirement for all foreign-exchange-generating transactions. Under the decree, ministries, authorities, companies and individuals that engage in foreign-exchange-generating activities are required to sell 75 percent of their foreign currency revenues to banks within one week of their receipt. Because of spotty compliance and weak enforcement of the surrender requirement, foreign currency inflows to the banking system have been limited. As a result of the liquidity problem and the declining value of the Egyptian pound, imports have been declining.

Tariffs

Egypt has made progress in liberalizing its tariff structure. In 1998 Egypt reduced the maximum tariff rate for most imports from a high of 50 percent to 40 percent. In keeping with most of its Uruguay Round commitments, over 98 percent of Egypt’s tariffs are bound tariffs. Egypt’s average weighted tariff rate is 27.5 percent. However, Egypt's tariffs remain relatively high, especially when compared with those of other developing countries with large internal markets and diversified industrial economies. In addition to tariffs, Egypt levies service fees on the value of imported shipments in exchange for inspection, listing, classification and reexamination of shipments. An inspection fee of one percent is levied on all imports. Egypt also applies an additional surcharge of two percent on goods subject to import duties of 5 percent to 29 percent, and a surcharge of three percent on goods subject to duties of 30 percent or more. All goods are subject to sales tax ranging from 5 percent to 25 percent. Egypt applies a discriminatory sales tax of 10 percent on high quality imported flour, which is not applied to locally produced flour.

Although most tariffs range between 5 percent to 40 percent, Egypt maintains a number of tariff spikes for luxury goods (including most automobiles, tobacco, alcoholic beverages and clothing). A ban on fabric imports was lifted in 1998, and a ban on apparel imports was lifted in January 2002. However, tariffs on textiles are well over 50 percent, and as of January 1, 2002, garments are subject to a specific-rate, per-piece duty ranging up to 1,400 Egyptian pounds ($230) per item, which appears to greatly exceed Egypt's WTO commitments. In December 2003 the United States requested WTO consultations to address Egypt's apparel tariffs. In January 2004 an Egyptian Presidential decree was issued lowering a range of tariffs, apparently including those subject to the U.S. request for WTO consultations. The two governments will engage in consultations in 2004 to determine if Egypt has addressed U.S. concerns regarding apparel tariffs. The tariffs on passenger cars with engines over 1,500 cc are 100 percent to 135 percent, and on poultry are 80 percent. There is a 300 percent duty on wine for use in hotels, and a 3,000 percent rate on alcoholic beverages for general importers. Foreign movies are subject to duties and import taxes of about 87 percent of the value of a film, as well as a 10 percent sales tax and a 20 percent box office tax (compared to a five percent box office tax for local films). Soft drinks face a statutory excise tax of 50 percent to 60 percent (though various government-approved deductions result in an effective tax rate between 25 and 30 percent). By comparison, competing beverages such as bottled water, juices, teas and coffees are taxed at 10 percent**.** The government of Egypt states that the new draft tax law being introduced in the 2003/2004 round of Parliament will reduce the statutory soft drinks tax to around 18 percent. In 2002, the government reduced a safeguard tariff on powdered milk from 50 percent to 7 percent and then eliminated it entirely in October 2003. With this additional tariff removed, milk powder imports are now taxed at 5 percent.

Mandatory quality control standards and other non-tariff barriers restrict imports of some U.S. products, thereby providing preferential treatment for domestic products over imports. Although the government stresses that standards applied to imports are the same as for domestically produced goods, in practice imports are subject to different inspections by agencies from a number of ministries. Many U.S. agricultural exports face obstacles, including burdensome import licensing requirements, which, in the case of poultry and poultry parts, have the effect of blocking nearly all U.S. exports of these products. High tariffs restrict the competitiveness of U.S. food products such as canned peaches and U.S. chocolates and confections, which face a 40 percent *ad valorem* duty, as do some dairy products. Forty percent tariffs also apply to U.S. apples, cherries and pears, and U.S. exporters report that Egypt's application of sanitary and phytosanitary measures to these products are non-transparent and burdensome. Processing of imports also adds significant real costs to imported merchandise through service and inspection fees. Exporters to Egypt report being hampered by non-transparent regulations and requirements. In addition to high tariffs, U.S. textile exports are effectively barred by a combination of hurdles, including complex and excessive customs procedures, customs surcharges, and costly and complex marking requirements for fabric. The U.S. textile industry estimates that U.S. textile exports to Egypt would be in the range of $10 million to $50 million if all barriers were removed.

Customs Procedures

Egypt announced implementation of the WTO customs valuation system in July 2001, but the government acknowledges that the system has not been fully implemented. In the meantime importers face a confusing mix of the new invoice-based and old reference-price valuation systems. The Ministry of Finance has committed to a comprehensive program to reform the customs system, and one of the priority goals is to implement the WTO Customs Valuation Agreement. USAID has funds available for a five-year, $30 million customs reform project to support the Ministry of Finance's efforts. The September 2003 inauguration of the Model Customs and Tax Center (MCTC) was an important step in modernizing tax administration in Egypt. The MCTC is one-stop shop where taxpayers can settle income taxes, sales taxes and customs.

In June 2002, the parliament approved a new Export Promotion Law (Law 155). The law reinforces the coordinating authority of the Ministry of Foreign Trade's General Organization for Import and Export Control (GOIEC) for all import inspection procedures, though the Ministries of Health and Agriculture maintain their own inspection units and procedures. A focus of the law is to improve the duty drawback and temporary admission systems for exporters by establishing a central unit under the joint supervision of the Ministries of Finance and Foreign Trade to monitor and streamline the systems. The law also established an “export promotion fund” to promote Egyptian exports and increase their share of foreign markets, but the specific activities of the fund have not yet been determined. To date the fund has not been used to subsidize exports. As of December 2003, the law’s executive regulations have not yet been issued.

In November 2002, the Ministers of Foreign Trade and Finance inaugurated the new temporary admissions unit at the Port of Alexandria, a first step in a plan to upgrade operation of the temporary admissions system at all ports of entry in the country. USAID is helping the government of Egypt to set up three other sites for temporary admissions and duty drawback in Suez, Port Said, and Damietta.

Import Bans

Egypt lifted its ban on apparel imports on January 1, 2002, but replaced it with excessive specific rate duties (per piece rather than *ad valorem*) on over 1,000 categories of clothing, effectively excluding imports from the market. The U.S. views the high effective rates of Egypt’s new specific rate duties on apparel products as violating Egypt’s WTO obligations. Some of the new specific rate duties reach up to 1,400 Egyptian pounds per item ($230), often many times the value of the garment itself and well in excess of Egypt’s WTO tariff bindings. As noted in the preceding section, the Egyptian Government recently issued a Presidential decree that lowers the apparel tariffs in question and establishes *ad valorem* duties for these products. The two sides will engage in WTO consultations in 2004 to confirm that Egypt has addressed U.S. concerns.

In 1998, Egypt issued a decree stipulating that imported automobiles can only be imported during their year of manufacture, effectively banning the importation of second-hand cars.

In October 2003, the government of Egypt lifted an import ban on beef liver processed by a major U.S. company. This ban, which was imposed in 1999, was lifted by the issuance of Decree No. 574 of 2003.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Egypt currently has over 4,500 standards, seven percent of which are mandatory. There is little or no interagency coordination in the formulation and enforcement of standards: standards are established by the Egyptian Organization for Standardization and Quality Control in the Ministry of Industry; verification of compliance, however, is the responsibility of agencies affiliated with several ministries, including the Ministry of Health, the Ministry of Agriculture and, for imported goods, GOIEC in the Ministry of Foreign Trade.

Egypt has increased efforts to bring mandatory regulations into conformity with international standards. However, many imports are still subject to burdensome quality standards and inspections. The import process remains opaque despite a 1999 Presidential decree designating GOIEC as the coordinator for all import inspections. Moreover, even as average tariffs have gone down, the number of imports subject to mandatory quality control has increased from 69 to 131 categories of items including foodstuffs, appliances, electrical products, and spare parts.

Importers report that product testing procedures are not uniform or transparent and that inadequately staffed and poorly equipped laboratories often yield faulty test results. Efforts are underway to improve Egyptian standards and testing. USAID and the U.S. Department of Agriculture currently are working with GOIEC to develop a state of the art food laboratory in Dekhaila port near Alexandria. The laboratory should be operational by early 2004. The privately-run port of Ain Sukhna also will soon have a qualified inspection laboratory on its premises.

EGYPT

Egypt is a key U.S. agricultural export market and is a major purchaser of U.S. wheat. Trade in agricultural products could be expanded through the elimination of tariff and non-tariff barriers. Shelflife standards required by the government are rigid and do not recognize quality, safety and technological differences between producers. Many imports (mainly foodstuffs) entering Egypt must have 50 percent or more of their shelf life remaining. Such standards can have the effect of blocking some U.S. exports, as in the case of some U.S. processed cheese products. Moreover, Egypt applies shelf life standards to certain non-food imports such as syringes and catheters.

Product specification can also be a barrier to trade. Food imports are sometimes subject to quality standards lacking in technical and scientific justification. For example, Egyptian Standard 1522 of 1991 requires that frozen beef imported for direct consumption contain no more than seven percent fat, a requirement not imposed on domestically graded premium beef. As a result, U.S. exporters lose an estimated $2 million in sales annually.

Food imports face a number of burdensome labeling and packaging requirements. Poultry and meat products must be shipped directly from the country of origin to Egypt and sealed in packaging with details in Arabic both inside and outside the package. This requirement raises processing costs and discourages some exporters from competing in the Egyptian market.

Egypt maintains restrictions on the importation of health food products such as dietary goods. For example, import permits are not issued for products that compete with local products.

Textile fabric is also subject to costly and complicated labeling requirements. Imported fabric must have the name of the importer woven into the cloth. In addition, imported textiles are subject to quality control examination by a committee made up of members representing the domestic spinning and weaving industries. This group also has some influence with Egyptian Customs in setting the duties that are imposed.

GOVERNMENT PROCUREMENT

Egypt is not a signatory to the WTO Agreement on Government Procurement. In 1998, Egypt passed a law setting new regulations for government procurement to make the tendering process more open and fair and to provide the Egyptian government greater value for money in its procurements. The new law mandates that technical factors, not just price, be considered in awarding contracts. The preference shown to parastatal companies has diminished but not eliminated. Previously, publicly owned companies always received preference. Under the new law, this preference only applies when the bid of a publicly owned firm is within 15 percent of other bids. Contractors receive certain rights under the law, such as speedy return of their bid bonds and an explanation of why a competing contractor won the bid. Many concerns about transparency remain, however. For example, the Prime Minister can authorize the method of tendering for specific entities according to terms, conditions, and rules that he determines. The United States and Egypt discuss government procurement in a working group established under the U.S.-Egypt Trade and Investment Agreement Council.

EXPORT SUBSIDIES

The government of Egypt mandated a $43 million subsidy program for Egyptian cotton in October 2002 to encourage the use of local cotton by textile mills. The program ended during the first half of 2003 and there are no plans to renew this program. However, the government recently prohibited the export of long and medium long staple cotton to make these cotton varieties more available for local mills, presumably sold at lower prices than in foreign markets.

EGYPT

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Though Egypt is a signatory to most of the international intellectual property (IP) conventions, intellectual property rights (IPR) protection remained well below international standards until 2002. Since then, Egypt has made progress in strengthening its IPR regime through improvements in its domestic legal framework and enforcement capabilities. In May 2002, the Egyptian Government passed a comprehensive IPR law to protect intellectual property and bring Egypt into line with its obligations under the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The law addresses IPR protection in areas such as patents, copyrights (with enhanced protection for sound and motion picture recordings and computer software), trademarks, plant varieties, industrial designs, and semiconductor chip layout design. With respect to certain violations, the law stipulates higher fines and prison sentences for convicted violators. Although the law has certain shortcomings, its passage demonstrated a marked improvement in Egypt's IPR regime. In June 2003, the Executive regulations dealing with patents, trademarks, and botanical varieties were issued. The executive regulations covering copyright protections remain under review.

Responding to Egypt's improved IPR protection, in May 2003 the United States Trade Representative (USTR) moved Egypt from the IPR "Priority Watch List" (a designation that Egypt had retained since 1997) to the "Watch List." However, the U.S. government is very concerned that the Egyptian government has given its approval for local manufacturers to produce copies of several U.S. pharmaceutical products. These approvals, which were granted in late 2003, appear to violate Egyptian data exclusivity laws and regulations designed to protect the holder of the intellectual property rights of such products.

Copyright piracy is another concern and currently affects most categories of works, including motion pictures (in video cassette format), sound recordings, printed matter, textile designs, and computer software. Regarding computer software protection, the Government of Egypt recently has taken steps to ensure the authorized use of legitimate business software by civilian government departments and in schools. False licensing, where a local unauthorized distributor receives and is permitted to rely upon Ministry of Culture approval to distribute pirated software, music, and films remains a problem and undermines copyright protection in Egypt. The Egyptian government, however, has recently taken steps to revoke such approvals for well-known pirates. Infringement of trademark, textile design and industrial designs remains problematic, though there are signs of improvement. For example, according to the Business Software Alliance, an international NGO, computer software piracy in Egypt declined by six percent over the fiscal year 2002/2003. The U.S. Government is intensively engaged in working with Egypt to address deficiencies in Egypt's IP protection which U.S. industry estimates resulted in 2003 losses for U.S. firms of $33 million due to pirated music and books, a figure which does not take into account high levels of piracy in software or movies

The United States has sought, through USAID-funded projects, to assist Egypt's efforts to address its deficiencies in IP protection. These programs have contributed to substantial and meaningful progress in establishing and strengthening some of the government institutions necessary for an effective IP regime. A modern, computerized Egyptian Patent Office is now capable of processing patent applications, and the quality and transparency of the trademark and industrial design registration system has been significantly improved. A new USAID technical assistance program is currently under final stages of design to support the government of Egypt in IPR enforcement and public awareness. Egypt has taken advantage of numerous technical assistance opportunities at the United States Patent and Trademark Office (USPTO) on topics such as computerized patent and trademark application searching, patent, trademark, and design application examination, and the processing of applications under the Patent Cooperation Treaty (PCT).

SERVICES BARRIERS

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 negotiations. Egypt is gradually implementing its General Agreement on Trade in Services (GATS) commitments. Egypt supported launching a new round of trade negotiations, including trade in services, at the WTO Ministerial meeting in Doha in November 2001.

Egypt has restrictions for most service sectors in which it has made GATS commitments. These restrictions place limits on foreign equity in construction and transport services. Egypt restricts the employment of non-nationals to 10 percent of the personnel employed by a company. 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.

In 1998, the Government passed legislation allowing privatization of Egypt's four state-owned insurance companies. The law removed the prohibition on majority foreign ownership of Egyptian private insurance firms, permitting up to 100 percent foreign ownership. In addition, the law eliminated the prohibition on foreign nationals serving as corporate officers of insurance companies. There are currently at least four foreign insurance companies operating in the market: Alico and AIG-Pharaonic (U.S.), Legal and General (U.K.), and Allianz (Germany). There are eleven private sector insurance companies, three of which are joint ventures with U.S. firms. Plans to prepare the four state-owned insurance companies for privatization appear to have made little headway in the past two years.

Also in 1998, legislation was passed to allow privatization of the four state-owned banks that control over 50 percent of the banking sector's total assets. A new banking law passed in mid-2003 confirmed that possibility. The government has appointed new, western-trained senior management teams for the four banks, but has announced no explicit plans for privatizing them. There are 63 banks in Egypt, 23 of which are joint ventures with foreign participation. As a result of its 1997 WTO financial services commitments, 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). In all cases, these 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. As a result, the only way a foreign bank can enter the market in Egypt is to purchase an existing bank. Since early 2001 the government has advocated the merger of some smaller banks, though little has happened in this regard. In 2002, the Central Bank of Egypt required that banks raise their capital adequacy ratios to meet Basel II standards. The 2003 banking law substantially raised minimum capital requirements for all banks.

Egypt's WTO financial services commitment in the securities sector provides for unrestricted market access and national treatment for foreign companies. International investors are permitted to 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 May 2002, the Minister of Finance issued a decree to establish the Primary Dealers System, though it has yet to be implemented. The new system will allow financial institutions that are registered with the Ministry of Finance, including banks and bond dealers, to underwrite primary issues of government securities and to activate trading in the secondary market through sale, purchase and repurchase of government securities.

Telecommunications services have expanded rapidly in the past three years as the sector has been liberalized and opened to international competition. Telecom Egypt (TE) is still a state-owned monopoly, though the GOE has announced that it plans to offer up to 34 percent of the company to a strategic investor and additional shares on the stock exchange when market conditions are suitable. Attempts to find a strategic investor have been unsuccessful. An initial public offering of TE stock was originally planned for late 2000, but it was delayed due to market conditions.

Private sector firms participate actively in Internet, cellular, and pay telephone services. Foreign firms compete for contracts offered by TE to modernize its networks and switching equipment.

Telecom Egypt has sought foreign participation in the management and operation of the national telecommunications grid, however no agreements have yet been signed. In February 2003, Egypt's parliament approved a new telecommunications law (Law 10). It stipulates that Telecom Egypt will relinquish its monopoly status as Egypt's domestic operator and sole international operator by January 2006 and provides for greater price flexibility for TE shares in a future public offering. In June 2002, Egypt's schedule of commitments for basic telecommunications under the Fourth Protocol was certified in the WTO, including commitments to adhere to the WTO basic telecommunications Reference Paper. In April 2003, Egypt joined the WTO Information Technology Agreement, which requires the eventual phasing out of tariffs on all IT imports from WTO members.

Maritime and air transportation services are being liberalized. A 1998 law ended the long-held government monopoly in maritime transport, and the private sector now conducts most maritime activities, including loading, supplying, and ship repair, and, increasingly, container handling. The new Ain Sukhna port is the first privately owned and operated Egyptian port. Egypt Air's monopoly on carrying passengers has been curtailed, and several privately owned airlines now operate regularly scheduled domestic flights and international charter services, although the national carrier remains by far the dominant player in the sector. Egypt passed laws in 1996 and 1997 permitting private firms to build and operate new airports. Private concessions can operate businesses and provide services in airports, but private ownership of airports is still not permitted. Six new build-operate-transfer (BOT) airports were under construction at the start of 2001. One of these, at Marsa Alam, opened at the end of 2001. The government of Egypt plans to increase the number of airports in the country from the current 18 to 31 over the next decade.

Egypt maintains several other barriers to the provision of certain services by American and other foreign firms. Foreign motion pictures are subject to a screen quota and limitations on the number of prints (five) of a foreign film a distributor may import. Private and foreign air carriers may not operate charter flights to and from Cairo without the approval of the national carrier, Egypt Air.

The government applies a licensing fee of 10 percent of revenue with a minimum of approximately $70,000 per year on private express mail operators, a fee that negatively affects their competitiveness. Only Egyptian nationals may become certified accountants.

INVESTMENT BARRIERS

Under the 1992 U.S.-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 of investment (with limited exceptions specified by the treaty), the right to make financial transfers freely and promptly, and international law standards for expropriation and compensation. The BIT also establishes formal procedures to enforce the treaty, including the availability of international arbitration for investors.

In 1999, Egypt and the U.S. signed a Trade and Investment Framework Agreement (TIFA) that established a TIFA Council designed to facilitate the discussion of bilateral trade and investment issues. The Council met most recently in October 2002, and it established at that time four working groups to review technical issues related to agricultural trade, customs administration, and government procurement. Other issues, including IPR, Egypt's foreign exchange regime, and specific commercial issues are discussed in the Council itself and in less formal groupings.

Egypt offers first-time investors expedited approval to establish operations, and investors in 16 priority sectors (among them agriculture, housing, transportation, petroleum, and computer software) receive special advantages and incentives. Many incentives are geographically based to encourage investors to locate outside of the greater Cairo area. For example, investors locating businesses in parts of Upper Egypt can receive 20 year tax holidays. A dozen new industrial zones have been built in satellite cities in the desert areas outside of Cairo and Alexandria.

In 1995, Egypt notified the WTO that it maintained measures inconsistent with its obligations under the Agreement on Trade-Related Investment Measures (TRIMS). The notified measure granted customs duty reductions to investments that met certain conditions with respect to resource exploitation, technology transfer, and export performance. By making a formal notification under the TRIMS Agreement, Egypt qualified for a five-year transition period for phasing out the relevant measure. In February 2001, Egypt submitted a request to the WTO for an additional five-year transition period. This request, which was received one year after the initial transition-period had ended, was never formally granted by the WTO. The United States is seeking to confirm whether Egypt is now fully in compliance with its TRIMS Agreement obligations.

ANTICOMPETITIVE PRACTICES

The government of Egypt has drafted a comprehensive competition and antitrust law that would prohibit monopolistic behavior that negatively impacts prices and quantities in local markets, and would call for monitoring companies that exceed a specific benchmark market share. The government circulated the draft law in the business community for discussion in the past year and made several amendments to accommodate international standards and the structure of the Egyptian economy. The law is expected to be considered during the current session of parliament (November 2003-June 2004).

ELECTRONIC COMMERCE

Egypt has drafted an electronic signature law, which has been approved by the Cabinet and is on the docket for discussion by the parliament in the 2003-2004 session. Egypt is deferring a broader electronic commerce law that will address such issues as domain names, customs and duties, and creation of a certificate authority to verify electronic signatures. The development of electronic commerce in Egypt has been impeded by concern about the lack of security on computer networks, the relatively high prices charged by Internet Service Providers, and the limited number of Internet users in the country. Businesses are also required to pay high telephone rates for dedicated Internet lines. The duty rate on personal computers was reduced in 2000 from 20 percent to 5 percent, which should stimulate demand for them and help expand the market for electronic commerce.

OTHER BARRIERS

Pharmaceuticals

Industry has raised concerns that the government has not allowed pharmaceutical price increases to compensate for general inflation and depreciation of the Egyptian pound. For example, though the Egyptian pound has fallen 76.5 percent in value against the U.S. dollar since June 2000, the government has adjusted for inflation for only a few pharmaceutical products. Because both domestic and foreign pharmaceutical companies rely heavily on imported inputs, some companies claim to be operating at a loss. Several foreign pharmaceutical companies have been forced to downsize as a result.

EL SALVADOR

TRADE SUMMARY

The United States had a trade deficit with El Salvador of $196 million in 2003, a decrease of $123 million from $318 million in 2002. U.S. goods exports in 2003 were $1.8 billion, up 9.6 percent from $1.7 billion the previous year. Corresponding U.S. imports from El Salvador were $2.0 billion up $37 million from 2002. El Salvador is currently the 43rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in El Salvador in 2002 was $580 million, a 60.7 percent increase from 2001.

IMPORT POLICIES

Free Trade Agreement

The United States and four Central American countries (El Salvador, Guatemala, Honduras, and Nicaragua) concluded negotiations on the U.S.-Central American Free Trade Agreement (CAFTA) in December 2003. The United States and Costa Rica on January 25 finalized Costa Rica's participation in the CAFTA. The United States and the Dominican Republic concluded market access negotiations in March 2004 to integrate the Dominican Republic into the CAFTA.

The CAFTA will not only liberalize bilateral trade between the United States and the region, but will also further integration efforts among the countries of Central America, removing barriers to trade and investment in the region by U.S. companies. The CAFTA will also require the countries of Central America to undertake needed reforms to alleviate many of the systemic problems noted below in areas including customs administration; protection of intellectual property rights; services, investment, and financial services market access and protection; government procurements; sanitary and phytosanitary (SPS) barriers; other non-tariff barriers; and other areas.

Tariffs

As a member of the Central American Common Market (CACM), El Salvador's tariffs do not exceed the maximum common external tariff of 15 percent. Certain products, however, remain subject to tariffs above this tariff ceiling. Salvadoran imports of clothing, certain agricultural and meat products, vehicles, and certain other items are subject to tariffs ranging from 15 percent to 30 percent -- and in a few significant cases even higher. Tariffs on new and used finished clothing are generally 25 percent. Tariffs on fabrics range from 5 percent to 20 percent, with some exceptions. Once CAFTA goes into effect, about 80 percent of U.S. industrial and commercial goods will enter El Salvador duty free, with the remaining tariffs on such goods being eliminated within ten years. Textiles and apparel will be duty-free and quota-free immediately if they meet the Agreement's rule of origin, promoting new opportunities for U.S. and Central American fiber, yarn, fabric and apparel manufacturing.

Agricultural products face the highest tariffs – duties up to 40 percent are levied on certain food imports and alcoholic beverages. Dairy, rice and pork products are assessed a 40 percent duty, while the poultry tariff is higher. Alcoholic beverages are subject to 30 percent duty, a consumption tax based on alcoholic content, and a special 20 percent sales tax.

El Salvador implemented the WTO Agreement on Customs Valuation in March 2002.

The CAFTA will eliminate most tariffs immediately, and will establish duty free bilateral trade in consumer and industrial goods within 10 years and virtually all agricultural products within a maximum of fifteen years (dairy in 20 years and rice and poultry in 18). The Agreement requires transparency and efficiency in administering customs procedures, including the CAFTA rules of origin. El Salvador committed to ensure procedural certainty and fairness and all parties agree to share information to combat illegal transshipment of goods.

Non-tariff Measures

Rice and pork are both subject to import quota systems and 40 percent duties. Rice millers are required to buy rice locally. When there is insufficient local supply, the Ministry of Agriculture allows imports under the quota, and after the import quota has been exhausted and there is still a need for imported rice, rough or milled rice can be freely imported, subject to a 40 percent duty. Pork importers face a similar arrangement to first buy locally, then import, subject to a 40 percent duty. Under the CAFTA, El Salvador committed to a 15-year phase-out for all tariffs on pork, except for bacon and most offal, which will be eliminated immediately. Only a fixed part of the TRQ will remain subject to a performance requirement, and the requirement will be eliminated in 15 years. Tariffs for rice will also be phased out over a 15-year period with no performance requirements.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Although sanitary standards have generally not been a barrier in El Salvador, practices with respect to raw poultry are a notable exception. Since 1992, the Ministry of Agriculture has imposed arbitrary sanitary measures on U.S. poultry imports. These sanitary restrictions call for zero tolerance or negative laboratory tests for diseases such as aviana denovirus, chicken anemia, and salmonella. These diseases, common worldwide, are not recognized as list "A" diseases by the International Office of Epizootics. The Salvadoran government applies these standards in a discriminatory manner since domestic production is not subject to the same requirements as imports. As a result of these measures, the United States has been unable to export poultry to El Salvador. The industry estimates the value of lost U.S. poultry exports at $5 million to $10 million per year. Resolution of this issue has been a priority for U.S. agencies, which continue to work with the government of El Salvador in ongoing talks parallel to the CAFTA.

The Salvadoran government requires that rice shipments be fumigated at importers’ cost unless they are accompanied by a U.S. Department of Agriculture 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 the WTO under the Agreement on the Application of Sanitary and Phytosanitary Measures when it imposed this requirement. The CAFTA chapter on sanitary and phytosanitary (SPS) measures provides that the signatory countries accept each other’s mechanisms for inspection.

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 the imported goods to be sold at retail outlets. Some U.S. processed foods that were approved in the United States were rejected after analysis in El Salvador, thereby barring their sale. The United States and the Ministry of Public Health initiated discussions on this issue in 2002. The U.S. Embassy has been able to obtain access for U.S. products rejected by the Ministry of Public Health testing on a case-by-case basis. There is not yet a standard regulation allowing entry of U.S.-approved products, but implementation of the CAFTA agreement will require the acceptance of the equivalence in testing, which will assure that testing done in the United States will be accepted in the other countries.

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. The United States has raised concerns regarding the potentially discriminatory effects of a proposed Salvadoran technical standard for distilled spirits.

Under the CAFTA, El Salvador reaffirmed its commitment to apply the science-based disciplines of the WTO Agreement on Sanitary and Phytosanitary (SPS) Measures. El Salvador will move toward recognizing export eligibility for all plants inspected under the U.S. food safety and inspection system. Through the work of this group, additional commitments to resolve specific unjustified measures restricting trade between El Salvador and the United States have also been agreed. When the United States and Central America launched the CAFTA negotiations, they initiated an active working group dialogue on SPS barriers to agricultural trade that met alongside the negotiations to facilitate market access. The objective was to leverage the impetus of active trade negotiations to seek difficult changes to the countries' SPS regimes. The SPS Working Group remains committed to continue working on resolution of outstanding issues even after the negotiations concluded.

GOVERNMENT PROCUREMENT

Government purchases and construction contracts are usually open to foreign bidders. The Legislative Assembly passed a new, more transparent procurement law in April 2000 that applies to the central government structure as well as to autonomous agencies and municipalities. El Salvador is not a party to the WTO Agreement on Government Procurement.

Under the CAFTA, U.S. suppliers would be granted non-discriminatory rights to bid on contracts from most Central American government entities, including key ministries and state-owned enterprises. The CAFTA requires fair and transparent procurement procedures, such as advance notice of purchases and timely and effective bid review procedures. The CAFTA anti-corruption provisions ensure that bribery in trade-related matters, including in government procurement, is specified as a criminal offense under Central American and U.S. laws.

EXPORT SUBSIDIES

El Salvador gives a six percent tax rebate on exports shipped outside the Central American area based on the F.O.B value of the goods. The rebate is not granted to exports of coffee, sugar, or cotton unless these products have undergone a transformation process that adds at least 30 percent to the original value. Assembly plants (maquilas) are eligible if they meet the criteria for adding 30 percent Salvadoran value in the production process. Firms operating in free trade zones are not eligible to receive rebates as they already enjoy a 10-year exemption from income tax and duty-free privileges. The CAFTA will require the elimination of WTO-illegal export subsidies.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

During 2003, there was progress in a significant intellectual property dispute, which involves trademark and copyright infringement by an ex-franchisee who continued to use the name and other protected material of a U.S. fast food franchise. The Supreme Court in July 2003 allowed the complainant to go to four of the ex-franchisee's restaurants to take down the signs and to seek redress for illegal use of intellectual property. The case, however, was still not fully resolved at year's end. The U.S. company's proprietary emblems were still being used at other restaurants. Judicial enforcement continues to be the weakest pillar of intellectual property protection in El Salvador. Criminal enforcement of IPR laws at the Attorney General's office is handled by the Crimes Against Private Property and Intellectual Property Unit, where 5 of the approximately 25 prosecutors are assigned to IPR cases, but not necessarily full time. The National Police established an IPR unit that supports the Attorney General's office, but also conducts its own investigations and raids.

The CAFTA provisions will strengthen El Salvador's IPR protection regime to conform with, and in many areas exceed, WTO norms and will criminalize end-user piracy, providing a strong deterrence against piracy and counterfeiting. The CAFTA will require El Salvador to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. It will also mandate both statutory and actual damages for copyright infringement and trademark piracy. This serves as a deterrent against piracy, and ensures that monetary damages can be awarded even when it is difficult to assign a monetary value to the violation.

Patents

The 1993 Intellectual Property Protection Law and El Salvador's acceptance of the disciplines in the TRIPS Agreement addressed several deficiencies in the patent regime. The 1993 law lengthened patent terms to 20 years from the application filing date. Although pharmaceutical patent terms were kept at 15 years, the Salvadoran government's Registry for Intellectual Property issues 20 year patents for pharmaceutical products in practice, which start on the filing date of the application. Major U.S. pharmaceutical companies claim they face unfair competition in El Salvador from copied products because El Salvador currently does not grant data exclusivity. The CAFTA provisions will provide protections for data exclusivity when it comes into force.

Copyrights

The largest number of complaints and raids for copyright infringement involved CD piracy. As of December 3, 2003, the Attorney General's office said there had been 136 raids related to pirated CDs and cassettes. Most of these involved police going to street locations known as places where illegal CDs were sold and seizing from street vendors CDs that could be identified as illegal copies. In these street seizures, arrests are usually not made. Of the 33 complaints filed at the Attorney General's office concerning copyright infringement, 13 involved illicit copying operations for making pirated copies of CDs and cassettes. In 2003, for the second year in a row, the largest number of criminal cases was for music compact disc (CD) piracy. There were also 20 complaints filed for other kinds of copyright violations. Eight complaints were filed for software piracy; four for copying of books, six for the illegal use of satellite signals carrying copyrighted materials, and two for copying videos. Eight raids were conducted in relation to these 20 cases. The CAFTA enforcement provisions are designed to help reduce copyright piracy.

Trademarks

In 2002, El Salvador's Legislative Assembly passed the Law of Trademarks and Other Distinctive Signs. The law provides for new protections against bad-faith registration of famous marks. Under the law, the National Registry of Intellectual Property requires that applicants show that they either own or have permission to register the famous mark. As of December 3, 2003, there were 14 complaints filed with the Attorney General's office for counterfeiting or illegal use of trademarks. There were 11 raids to seize products with such trademarks. The CAFTA enforcement provisions are designed to help reduce trademark piracy.

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 commitments on financial services into effect. Foreign investors are limited to 49 percent of equity in free reception TV and AM/FM radio broadcasting. There are no such restrictions on cable television ownership. Notaries must be Salvadoran citizens. Under the CAFTA, El Salvador will accord substantial market access in services across its entire services regime, subject to very few exceptions. In addition, U.S. financial service suppliers will have full rights to establish subsidiaries, joint ventures or branches for banks and insurance companies.

INVESTMENT BARRIERS

The United States has raised concerns about the re-regulation of the electric power sector impacting U.S. electric energy investors in El Salvador. The United States and El Salvador signed a Bilateral Investment Treaty (BIT) in 1999, but the ratification process was not completed. When it enters into effect, the investment chapter of the CAFTA will provide for protection of U.S. investors analogous to those that were included in the 1999 BIT. Under the CAFTA, all forms of investment will be protected, including enterprises, debt, concessions, contracts and intellectual property. U.S. investors will enjoy in almost all circumstances the right to establish, acquire and operate investments in the Central American countries 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 will be backed 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.

EUROPEAN UNION

TRADE SUMMARY

The U.S. trade deficit with the European Union was $94.3 billion in 2003, an increase of $12.2 billion from $82.1 billion in 2002. U.S. goods exports in 2003 were $150.5 billion, up 4.8 percent from the previous year. Corresponding U.S. imports from the European Union were $244.8 billion. European Union countries, together, would rank 2nd (behind Canada) as an export market for the United States in 2003.

U.S. exports of private commercial services (i.e., excluding military and government) to the European Union were $95.7 billion in 2002, and U.S. imports were $77.2 billion. Sales of services in the European Union by majority U.S.-owned affiliates were $220.3 billion in 2001 (latest data available), while sales of services in the U.S. by majority EU-owned firms were $216.8 billion.

The stock of U.S. foreign direct investment (FDI) in the European Union for 2002 was $700.0 billion, up from $632.8 billion in 2001. U.S. FDI in the European Union is concentrated largely in the manufacturing, finance, and wholesale sectors.

OVERVIEW

In most respects, the enormous U.S.-EU trade and investment relationship operates smoothly and to the great benefit of companies, workers, and consumers on both sides of the Atlantic. However, as outlined in this report, U.S. exporters in some sectors continue to face chronic barriers to entry in the EU market. A number of these barriers (e.g., restrictions on U.S. poultry and meat exports) have been highlighted in this report for several years, despite repeated efforts to resolve them through consultations or, in some cases, the dispute settlement provisions of the WTO. Other EU barriers cited in this report (for example, wine restrictions and agricultural biotechnology) are the result of restrictive regulatory approaches that often fail to reflect a sound assessment of actual risks posed by the goods in question and that rely on ill-defined concepts of precaution. This year’s report also outlines concerns of U.S. exporters with respect to a number of emerging EU policies that may represent future trade disruptions, such as the proposed new EU chemicals regulation. And while the United States acknowledges the important achievement of EU enlargement to include 10 new Member States as of May 2004, this report also highlights the U.S. determination to negotiate appropriate compensation arrangements to account for the possible expansion into the new EU Member States of EU tariff, non tariff, and services-related barriers to U.S. trade.

IMPORT POLICIES

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 several EU wine regulations. One such regulation requires wines imported into the EU to be produced with only those oenological practices (wine-making practices) that are authorized for the production of EU wines. Other regulations require extensive certification procedures for imported wines and prohibit the use of wine names and grape varieties as regulated in the United States. Without derogations from these regulations, many U.S. wines would be immediately barred from entering the EU. U.S. wines that are produced with practices for which there is no EU derogation are barred already. By contrast, U.S. law effectively grants automatic acceptance of EU wine-making practices absent a health or safety concern. EU derogations for U.S. wines were set to expire on December 31, 2003, but the EU has agreed to further extend the current arrangement for two years to permit ongoing U.S.-EU wine negotiations to continue.

U.S.-EU negotiations on a bilateral wine agreement were launched in 1999 and continued throughout 2003. In this negotiation, the United States is pressing the EU to provide U.S. wine makers equitable access to the EU wine market, particularly in light of Europe's considerable surplus in wine trade with the United States. A key U.S. objective is EU acceptance of current U.S. wine-making practices, to obviate the need for future short-term derogations. The United States also continues to press for approval of all future U.S. wine-making practices, removal of EU wine import certification requirements, transparent protection of U.S. wine names in the EU, and reductions in the EU's export subsidies and subsidies to its grape growers and wine producers.

For its part, the EU is seeking a U.S. commitment to phase out the use in the United States of semi-generic names (e.g., burgundy, champagne, chablis) on labels of non-EU origin wines and greater protection of its wine names in the United States. The United States has indicated its willingness to negotiate on these issues within the U.S. regulatory framework for wine labeling.

On April 29, 2002, the EU adopted a new wine labeling regulation (Commission Regulation No. 753/2002), which entered into only limited enforcement on January 1, 2003, after the United States, along with a number of other WTO Members, raised serious concerns about its lack of clarity and, more importantly, about its WTO-consistency, and submitted written comments outlining these concerns and urging withdrawal of the regulation. Specifically, the regulation appears 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 are met (e.g., the marketing information used must be regulated in the producing country). In addition, the EU imposes restrictions on the use of traditional terms listed in the regulation, in some instances granting exclusive use of a term to an EU wine in a manner akin to intellectual property. 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 generic (e.g., ruby and tawny). The United States does not recognize the concept of traditional terms as a form of intellectual property, nor is this subject covered under the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS).

EU authorities began fully enforcing the new regulation as of March 15, 2004. Amendments to the original regulation fail to address key U.S. industry concerns, including restrictions on the use of certain wine terms, bottle shapes and labeling information on non-EU origin wines.

Customs Administration Procedures

While customs procedures are regulated by the EU Community Customs Code -- which aims to establish a standard legal framework for basic customs procedures such as customs entry and release -- the EU does not currently operate as a single customs administration. Application of the Community Customs Code to individual cases is the responsibility of EU Member State Customs administrations, which do not have identical working practices and are not obliged to follow each other's decisions.

In terms of day-to-day customs operations, differences from Member State to Member State exist in areas such as the automated systems used, risk criteria used by administrations to determine when to examine goods, VAT levels, and licenses required for food products, as well as disparities in certificate of origin requirements, treatment of express shipments. The difficulties presented by less than uniform procedures are increased by the absence of EU-wide administrative management of customs operations.

This problem is further compounded by the absence of tribunals and procedures that would provide for the prompt review and EU-wide correction of administrative actions relating to customs matters, as is required by Article X:3(b) of the GATT 1994. Review by the European Court of Justice of national decisions regarding customs administrative matters may be available in some cases, but generally only after a review is conducted at the national level. Obtaining corrections with EU-wide effect for administrative actions relating to customs matters may take years. For example, Customs Valuation and Tariff Classification are dealt with by Committees on those issues, respectively, that serve as platforms for Member States' customs authorities, under encouragement of the Commission, to strive toward common approaches in these areas. Experience has shown that achieving consensus among Member States on particular issues is time-consuming with significant uncertainty to exporters. Moreover, decisions by a Committee may not specifically address all elements of an individual exporter's case -- thereby resulting in less than uniform implementation when decisions are applied to identical imports by the same companies in different Members States.

The lack of access for traders to prompt review and correction by a tribunal with EU-wide jurisdiction is not a new phenomenon. However, the concern it has engendered is heightened by the May 2004 enlargement of the EU from 15 to 25 Members. The United States also regards the work on trade facilitation within the Doha Development Agenda negotiations as an opportunity for addressing concerns surrounding EU customs administration.

EU Enlargement

The European Union will expand from 15 to 25 members on May 1, 2004, with the accession of 10 Central and Eastern European and Mediterranean countries (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia). While this expansion of the single European market represents important opportunities for United States exporters, it may result in negative commercial consequences in some instances.

Among U.S. concerns related to enlargement are: increases in certain acceding country tariff rates when new Member States begin applying the EU common external tariff; potential withdrawal or modification of services market access commitments, and changes to various GATS MFN exemptions, by new Member States in order to align with the EU's existing GATS commitments; application by acceding countries of certain EU non-tariff barriers (such as sanitary and phytosanitary measures or other technical barriers); and uncertainty surrounding the adjustment of import quotas or tariff-rate quotas applied to EU imports of agricultural products. The United States has expressed concern about EU intentions to extend the application of EU antidumping and countervailing duty orders to new Member States without conducting appropriate economic or market analyses. In addition, the United States desires to ensure that incoming EU Member States abide fully by the terms of trade agreements to which the European Community is bound, such as the WTO Agreement on Government Procurement, the WTO Agreement on Trade in Civil Aircraft, and various bilateral U.S. EU agreements.

The United States has initiated early discussions with the European Commission about enlargement-related concerns, including within the framework of GATT provisions relating to the expansion of customs unions.

Market Access Restrictions for U.S. Pharmaceuticals

U.S. pharmaceutical companies encounter persistent market access problems throughout the EU due to the price, volume, and access controls placed on medicines by national governments. The pharmaceutical industry views these controls as limiting access by patients to innovative products and diminishing the contribution of Europeans to research and development.

While the EU's single market ensures that pharmaceuticals, like other goods, can move freely across borders among EU Member States, Member States' public health authorities impose their own strict price controls on pharmaceuticals. As controlled prices vary greatly from one Member State to another, intermediaries engage in parallel trade (buying drugs in countries where the price is lower and selling them in Member States where the price is set at a higher level).

The proposed Future Medicines Legislation is still under review. At time of this writing, the proposal would reduce regulatory data protection and provide a new definition for generics B two issues, which if mismanaged, could affect market access.

Austria: A pharmaceutical firm seeking to include a product on the list of reimbursable drugs in Austria must first obtain the approval of the umbrella organization of social insurance funds (Hauptverband/HVB). Pharmaceuticals not approved for reimbursement have higher out-of-pocket costs. According to many U.S. and European pharmaceutical companies, the HVB approval process (particularly the long delay in obtaining HVB decisions) limits market access for innovative pharmaceutical products. They also complain that the problem is compounded by often relatively quick HVB approvals of generic competitor products even before patents for the innovative products have expired. U.S. companies operating in Austria reported cumulative losses between $25 million and $100 million due to these practices. Further, the Austrian Government is preparing a major health care reform that provides Austria with an opportunity to come closer to European norms in pharmaceuticals pricing and transparency of decision-making on reimbursement approvals. However, an initial draft raises doubts that Austria will follow through on EU average pricing and transparent decision-making. The U.S. Government will closely monitor implementation of the reforms to ensure that they do not limit market access, while maximizing patient access to innovative medications.

Belgium: Pharmaceutical companies consider Belgium among the most inhospitable markets for their sector in Europe. The approval process for new drugs has come down from an average of 560 days to around 200 days since the Belgian Government passed legislation in Spring 2002 that will conform Belgian practice to relevant EU directives. Nonetheless, tax, pricing, and patient access restrictions remain, and discourage investment in research and development. Despite promises by the Economics Minister to lift pharmaceutical price controls, a price freeze continues on drugs reimbursed through the Belgian social security system. There is also strong pressure to reduce drugs under patent. Further, a 3.5 percent turnover tax is charged on total sales of pharmaceutical products, and companies are also obligated to reimburse to the government 65 percent of any amount the government spends over its budget for drugs in a given year. The two measures together amount to a seven percent additional tax levy on the pharmaceutical industry.

France: The government that assumed office in 2002 has taken steps to accelerate the approval process and make prices for the most innovative drugs more comparable to those in other European markets. At present, however, France’s health care provisions are still based on a 1997 law.

Germany: As part of a broader health-care reform package, Germany in October 2003 mandated a 16 percent reduction in reimbursed prices for patented medicines and will introduce a reference pricing scheme by the end of 2004. U.S. pharmaceutical firms have commented that this pricing scheme may not appropriately value innovative drugs.

Italy: In 2001, the Government of Italy began a series of reforms to control health care expenditures, which stemmed in part from the elimination of patient co-payments for pharmaceuticals. The government transferred responsibility for health care expenditures from the central to regional governments, with the central government capping overall health care expenditures, and limiting pharmaceuticals expenditures to 13 percent of the overall budget. In April 2002, a government decree temporarily reduced pharmaceutical reimbursements by five percent across the board. Italy's 2003 financial law not only makes this reduction permanent, it increases the cuts by an additional one to two percent. U.S. companies also question the fairness of the government's cost-efficacy formula to determine reimbursement levels. U.S. pharmaceutical companies are concerned that the devolution of marketing approval authority to regional governments, in addition to the Ministries of Health and Economy, will cause unwarranted delays in bringing new products to market.

The Netherlands: U.S. companies have complained that the criteria used by the Dutch health insurance board (CVZ) too often result in their new-to-market products being incorrectly classified with drugs determined by the board as therapeutically equivalent (and therefore reimbursable at a lower rate) rather than as unique, innovative drugs, reimbursed at a higher price. They have also voiced concerns that the Dutch health insurance board procedures have resulted in considerable and unnecessary delays in classifying products for reimbursement.

Spain: Pharmaceuticals and drugs must go through an approval and registration process with the Ministry of Health lasting several years, unless previously registered in a EU Member State or with the London-based EU pharmaceutical agency (in which case, the process is shortened to a few months). Regardless of registration process, actual access to the Spanish market is often delayed due to a lengthy administrative pricing process plus onerous government reimbursement procedures. Many U.S. pharmaceuticals sold in Spain are still protected under the former pharmaceutical process patent regime. U.S. pharmaceutical manufacturers assert that effective patent protection for these drugs is limited.

In July 2002, the Spanish Ministry of Health approved a regulation requiring that consumers obtain special approval (called a "visado") from a state inspector before pharmacies can fill prescriptions for two specific drugs produced by U.S. pharmaceutical manufacturers. Adoption of the measure has resulted in sharply decreased sales for both drugs. In 2003, the regional government of Andalucia followed suit and imposed a visado on all anti-psychotic drugs. This move affected several U.S. pharmaceutical companies, among others. The Law of Cohesion, approved in 2003, states that once a drug has been on the Spanish market ten years (and regardless of its patent status), it will be subject to a newly revised reference pricing system. "Innovative drugs" will be exempted from the measure. However, U.S. industry is concerned that the government of Spain has not clearly defined what will be considered innovative.

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 unnecessarily 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 time required to bring a product to market. Such costs for U.S. exporters are compounded by inadequate 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, U.S.-EC dialogue frequently is unable to resolve promptly regulatory-based trade problems. In particular, the EU's growing use of a precautionary principle to restrict or prohibit trade in certain products, even in the absence of full scientific justification, is viewed increasingly by many U.S. exporters as a pretext for market protection. Further, EU regulatory barriers are often compounded by multiple and/or overlapping measures affecting particular products. Wine, poultry, and agricultural biotechnology products are examples of products that confront 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 the fact that there are multiple obstacles. As a result, resolution of one obstacle (the EU allowing the use of alternative antimicrobial treatments on poultry meat) would not necessarily result in reopening of trade due to the existence of other obstacles (such as requirements regarding on-farm practices for raising poultry).

- U.S. wine exporters are confronted not only by the uncertainty surrounding the EU's restrictions based on wine-making practices, but also by high tariffs, heavy subsidization of EU wine producers, and cumbersome certification and labeling requirements.

- 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 legally-questionable member state prohibitions on products already approved for marketing within the European Community.

Standardization

Given the large volume of U.S.-EU trade, EU standardization work in regulated market segments is of considerable importance to U.S. exporters. Although there has been some progress with respect to the EU's implementation of legislation, a number of problems continue to impede U.S. exports. These include: delays in the development of EU standards; delays in the drafting of harmonized legislation, inconsistent application and interpretation by EU Member States of legislation; overlap among Directives dealing with specific product areas; gray areas between the scope of various Directives; and, in some cases, reliance on design-based, rather than performance-based, standards. In addition, there are concerns related to the respective procedures, responsibilities (e.g., accountability, redress) and transparency in both the Commission and the European standards bodies that require careful monitoring and more frequent advocacy efforts. The following two examples illustrate the type of standards-related problems affecting U.S. exporters.

Gas Connector Hoses: The European Standardization organization, CEN, drafted a standard for gas connector hoses, which impedes EU market access for a U.S. product because of design specifications. The U.S. manufacturer has experienced considerable difficulties in gaining access to the standardization process, and has been unsuccessful in countering assertions by the CEN Technical Committee that only fixed/welded connections can be considered safe methods for gas hose connectors. Both U.S. industry and the U.S. Government have argued in favor of performance-based standards for years, and the U.S. Government has persistently raised this case with national CEN members and Commission officials to press for more transparency and performance criteria in the CEN standardization process.

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, as 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, repetitive process for which there are no clearly defined procedures in the PED. In light of these factors, U.S. manufacturers question the need for the retesting of products, and seek the grandfathering of existing materials.

Agricultural Biotechnology

With some minor exceptions, the EU has failed to approve new biotechnology products since 1998. Several products have been under review for more than six years, as compared with an average 6-9 month process in Canada, Japan, and the United States. This de facto moratorium on approvals has virtually stopped U.S. exports of corn to Spain and Portugal (the most significant EU importers of U.S. corn) and threatens U.S. exports of soya.

Directive 2001/18, governing the approval of biotechnology products, including seeds and grains, for environmental release and commercialization entered into force in October 2002, replacing the moribund older approval system embodied in Directive 1990/220. However, EU Member States have refused to lift the approvals moratorium despite the new legislation, saying they needed to wait for new biotechnology-related traceability and labeling and biotechnology food and feed authorization rules to come into force. In April 2004, those new regulations will be fully applied. The regulations include mandatory traceability and labeling requirements for all biotechnology products and downstream products. Exporters expect the new rules to be onerous and expensive for producers and foreign suppliers to meet.

In May 2003, the United States announced that it would initiate a WTO dispute settlement process focused on the EU's *de facto* moratorium on approvals of biotechnology products, and on the existence of individual Member State marketing prohibitions on previously approved biotechnology products. The dispute settlement case is expected to continue to develop through 2004.

Several Member States including Austria, Luxembourg, and Italy have imposed marketing bans on some biotechnology products despite existing EU approvals. The European Commission has not taken steps to overturn these bans, despite the fact that the EU's Scientific Committee has found no justification for the bans. In addition, Portugal and Germany have suspended approvals for planting certain biotechnology products.

Austria: Austria has imposed a marketing ban on some biotechnology products despite existing EU approvals. 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. This standard is more restrictive than what is commonly accepted practice in the EU.

France: There are six bioengineered products approved for sale in France (Bt 176 corn, Bt 11 corn, MON 810 corn, T25 corn, Roundup Ready soybeans, and ITB-1000-0X tobacco), with restrictions on use for some, such as on planting. However, no bioengineered crops are grown in France other than for research purposes. On July 4, 2002, the French Ministry of Agriculture approved eight applications for open-field testing of bioengineered crops, but none of them could be planted in 2002. The number of bioengineered test plots, mainly corn, is 59.

Greece: Greece has not been responsive to applications to introduce bioengineered seeds for field tests, despite support for such tests by Greek farmers and Greece's agricultural science community.

Italy: There are varying positions on agricultural biotechnology among Italy's Ministries of Health, Agriculture, and Environment. The Ministry of Agriculture is trying to minimize the risk of adventitious presence by imposing extremely rigorous thresholds for seed purity, which threaten U.S. exports of conventional corn and soybean seed. The stated objective of the Ministry of Agriculture is to disallow any bioengineered presence in seeds. In the case of soybeans used for animal feed, the Ministry of Agriculture tacitly allows biotechnology, since it is unable to segregate in storage or in processing the locally produced non-bioengineered soybeans from those of imported origins. Italy has not rescinded its ban on four EU-approved bioengineered corn varieties (BT11, MON 810, MON 809, and T25), which was enacted by the previous government.

Luxembourg: Although several biotechnology products have been approved for sale in Luxembourg, the government continues to support the *de facto* moratorium on the approval of new products of agricultural biotechnology. In 1997, the Ministry of Health placed an administrative ban on Bt 176 corn. In December the Parliament enacted a new biotechnology law for the approval of agricultural biotechnology products in Luxembourg. The law adds several new requirements to the process for biotech approvals, including an environmental impact study requirement, and a financial guarantee requirement to cover unintended financial consequences resulting from the introduction of a crop or product into Luxembourg.

Barriers Affecting Trade in Cattle and Beef Products

A variety of EU measures, outlined as follows, have the effect of severely restricting U.S. exports of beef and cattle products to the European Union market.

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 is inconsistent with the WTO Agreement on Sanitary and Phytosanitary (SPS) measures because it is imposed without a risk assessment based on scientific evidence of health risks 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 extended the provisional bans on the five other growth hormones included in the original EU legislation. With enforcement of this new directive, the EU argues that it is now in compliance with the earlier WTO ruling. The United States has rejected this claim and continues to maintain its WTO-authorized sanctions on EU products. The United States and the EU continue to explore possible approaches to resolve this longstanding dispute.

Animal By-Products Legislation

In October 2002, the European Commission approved legislation (EC Directive 1774/2002), strictly regulating the importation of animal by-products not fit for human consumption. Though full enforcement of the regulation for third countries has been delayed twice based on requests from the U.S. and other countries the EU is scheduled to enforce the Directive as of May 1, 2004. During 2003, intensive technical discussions between U.S. and EU officials successfully addressed various issues that should prevent trade disruption for a significant portion (about $300 million) of U.S. exports to the EU of animal by products. However, publication of the final text of the EU regulation has been delayed, including the specifics necessary for USDA to develop certification procedures for establishments exporting affected products. Therefore, unless the implementation date for third countries is delayed significantly beyond May 1, all U.S. animal by-products exports to the EU of about $400 million will be disrupted.

In addition, the United States remains concerned about various outstanding issues for which the EU has not provided risk assessments, such as a proposed ban on the use of dead-in-transport poultry in pet food. It is estimated that at least $100 million of U.S. animal by-product exports to the EU could be adversely impacted because of these outstanding provisions. Those U.S. exports remaining most exposed to this regulation are dry pet food, other animal protein products, and some hides and skins.

Poultry 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 chlorine as an anti-microbial treatment (AMT) to reduce the level of pathogens in poultry meat production, a practice not permitted by the EU sanitary regime.

In 2003, the United States made significant progress in its work with the EU to address differences between U.S. and EU food safety rules for poultry. The U.S. goal remains to restore U.S. poultry exports to the EU and preserve existing markets for U.S. poultry in Central and East European countries that are moving to adopt EU standards in this area. The European Commission has accepted a U.S. residue program, U.S. water standards, and a U.S. proposal on use of alternative AMT substances. However, the Commission has linked the use of alternative AMTs with adoption by the United States of an integrated production control system that includes specific on-farm good management practices (GMPs) directly overseen by U.S. government officials. In the United States, on-farm practices are routinely overseen by private sector veterinarians who are certified by the U.S. Government. The U.S. Government has made the case that while our poultry industry is significantly different from the EU's, the results of our respective sanitary systems are the same. The United States and the European Union are now discussing final details of a series of steps aimed at reopening the EU market to U.S. poultry products.

France: According to a 1961 decree of the Ministry of Agriculture, poultry originating from countries which allow the use of compounds incorporating arsenic in poultry feed, cannot enter France for human use. As the United States does not ban these products, this decree creates a *de facto* ban on exports to France of U.S. poultry meat for human consumption.

Triple Superphosphate Fertilizer

EU legislation (EC Directive 76/116) requires Triple Superphosphate (TSP) B a phosphate-based fertilizer used to enhance soil fertility and to increase crop yields B to meet a standard of 93 percent water solubility in order to be marketed as EC-Type fertilizer. Scientific studies done to date on typical crops cultivated in Europe show that water solubility rates of 90 percent or higher are not necessary to gain the agronomic benefits associated with adding TSP to the soil. While in theory, TSP of any origin can be imported and sold in the EU, the inability to market TSP with less than 93 percent water solubility as EC-Type restricts its marketability, depresses its price, and has the effect of unfairly discriminating against products of countries that cannot meet the 93 percent water solubility requirement. EU imports of non-EC-Type TSP have been virtually eliminated. The U.S. fertilizer industry, which accounts for 20 percent of total world TSP exports, has been working with the European Commission and European industry to amend the water solubility requirements to reflect current scientific and agronomic studies. The United States continues to seek from the European Commission a justification for the 93 percent standard in light of scientific evidence and trade rules.

Emerging Regulatory Barriers

In addition to the foregoing current 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.

Chemicals

In October 2003, the European Commission approved its proposal for a massive overhaul of existing EU chemicals regulation called **A**REACH (Registration, Evaluation, and Authorization of Chemicals). REACH would be applicable to all existing and new chemicals. Under this proposed system, chemicals producers and downstream users would be responsible for registering and testing chemicals, conducting risk assessments, and reporting this information to a central database. Virtually every industrial sector, from automobiles to textiles, could be impacted by the new policy.

While the United States fully supports the EU**'**s objectives to protect human health and the environment, it is concerned this proposed approach is unworkable and could have significant adverse implications for U.S. exports. Many of the EU**'**s trading partners have expressed similar concerns. U.S. industry has stressed that the Commission**'**s proposal could present obstacles to trade and innovation, possibly distorting global markets for thousands of products.

The European Council and European Parliament are in the early stages of considering the proposal under the EU**'**s legislative approval process. The U.S. Government continues to underscore the importance of transparency, openness, and accountability throughout the EU regulatory process, as this will contribute to a balanced and cost-effective regulation.

Cosmetics

On January 27-28, 2003, the EU formally adopted the seventh amendment to Directive 76/768/EEC on Cosmetics. EU Member States were required to transpose the Directive into national law by January 1, 2004, at which time a series of amendments came into effect. One of the provisions of particular U.S. concern is a ban on the marketing of cosmetic products tested on animals. The amended Directive calls for an EU-wide ban on animal testing within the EU for cosmetic products as well as an EU-wide ban on the marketing/sale of cosmetic products which have been tested on animals, whether such testing has occurred inside or outside the EU. The ban will take effect by 2009 at the latest for the majority of tests (11 out of 14 tests). For the remaining three tests B toxicity of repeat doses, toxicity for reproduction, and toxicity for toxicocinicity B the ban will come into effect by 2013 at the latest. The testing and marketing bans will take effect on the proposed dates unless an alternative (non-animal) method of testing has been adopted and validated at the European Community level. The amended Directive states that any alternative testing methods should also take into account the developments of validation measures within the OECD.

Two-way trade between the United States and European Union could be disrupted by the EU testing and marketing ban, as it could conflict with existing U.S. regulations. 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 an alternative testing method is approved by the European Community. At the same time, however, EU exports to the United States of certain cosmetics could be prohibited as well. Some products sold in the EU as cosmetics are regulated by the U.S. Food and Drug Administration (FDA) as over-the-counter (OTC) drugs. These include products claiming to provide a medicinal benefit, such as anti-dandruff shampoos and sunscreens. The FDA requires OTC products to be tested on animals in order to ensure their safety for human use. Thus, EU cosmetic products falling into the OTC category would be prohibited from sale in the United States if they have not undergone FDA-recognized animal testing for human safety.

To minimize possible trade disruption, the U.S. Government and the European Commission agreed to pursue 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 (ICCVAM) and the European Center for the Validation of Alternative Methods (ECVAM). The aim is to develop mutually agreeable alternative testing methods that would be submitted to the OECD process for international validation.

Waste Management

In June 2000, the European Commission issued proposals for a Directive focusing on the take back and recycling of discarded equipment (known as Waste from Electrical and Electronic Equipment or WEEE), and a second Directive addressing restrictions on the use of certain substances in electrical and electronic equipment, such as lead, mercury, cadmium, and certain flame retardants (known as Restrictions on the Use of Hazardous Substances or RoHS). Both Directives were adopted on December 18, 2002. Member States are obliged to transpose the legislation into national law by August 13, 2004.

Under the WEEE Directive, producers will be held individually responsible for financing the collection, treatment, and recycling of the waste arising from their new products starting in August 2005. Producers will have the choice of managing their waste on an individual basis or by participating in a collective scheme. Waste from old products will be the collective responsibility of existing producers based on their market share. Under the WEEE Directive, Member States must ensure that a target of at least 4 kg of electrical and electronic equipment (EEE) per inhabitant per year is being collected from private households. This target is to be met by 31 December 2006 at the latest. 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 electrical and electronic equipment containing lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls, and polybrominated diphenyl ethers will be prohibited. Existing national measures on these substances can continue to apply until that date. Exceptions to the ban exist for spare parts used for repair, or the re-use of electrical and electronic equipment put on the market before July 1, 2006. Exemptions from the ban on hazardous substances in EEE can be found in the annex of the RoHS Directive. Responding to concerns about the basis for the substance bans, the Commission pledged to conduct risk assessments before 2004. To date, the United States is not aware of the results of any such risk assessments.

The United States supports the directives' objectives to reduce waste and the environmental impact of discarded products. However, the United States has expressed concerns that development of these directives lacked transparency and meaningful input from non-EU stakeholders, and would adversely affect trade in products where viable alternatives may not exist. The annexes (covering scope, exemptions, substance concentration) of WEEE and RoHS are currently being discussed in an EU technical adaptation committee. Industry has expressed strong interest in ensuring uniform implementation of the waste management directives in all EU Member States.

Battery Directive

On November 25, 2003 the European Commission proposed a new EU Battery Directive. The overall aim of the Directive is to require collection and recycling of all batteries that are placed on the community market. Unlike previous proposals, the current one does not call for a ban on nickel-cadmium batteries, but it does propose strict collection and recycling targets, which the Commission considers will provide for an equivalent level of environmental protection. For all types of batteries, Member States are to ensure that producers finance collection, treatment, and recycling activities. In addition to the collection rate of 160 grams per inhabitant per year in each member state, the proposal includes an additional collection target for nickel-cadmium batteries of 80 percent of all such batteries generated annually in the member state. The Commission expects final adoption by the European Parliament and Council sometime in early 2005. The collection rates being proposed in the Directive are to come into force four years after transposition of the Directive. Industry is concerned about the costs and feasibility of reaching the minimum collection and recycling rates, and would like clearance to operate a permanent visible fee on new battery sales to fund collective treatment schemes for all waste.

Energy Using Products (EuP)

In August 2003, the European Commission issued a draft Directive referred to as "EuP" (energy using products), which combines the essence of two earlier proposals on product design -- one on electrical and electronic equipment and the other on energy efficiency. The stated objective of the new draft is to minimize harmful effects on the environment. It would be issued as a "new approach" Directive, consisting of a framework and "implementing measures" according to product groups. As with other precursors of the directive, industry is most concerned about the need for product life cycle analysis, fearing adverse impacts on design flexibility, new product development and introduction, and increased administrative burdens.

Acceleration of the Phase-outs of Ozone-depleting Substances and Greenhouse Gases

In June 2000, the EU adopted Regulation 2037/2000, a new Regulation for phasing-out all ozone depleting substances in the EU. The timetable in the directive is faster than that agreed under the Montreal Protocol. The U.S. Government actively opposed early drafts, which proposed phase-outs of HCFCs by 2001 without yielding appreciable environmental benefits. The existing Regulation requires the air-conditioning industry to have phased out its use of Hydrochlorofluorocarbons by 2001 while most other HCFC uses may continue until 2004. Small (100 kW) fixed air conditioners and heat pump units have been exempted from the initial phase-out.

The European Commission introduced its Climate Change Program in 2001 and is expected to issue approximately 10 new directives in order to implement the program (the most recent Directive was adopted October 2003 Establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Directive 96/61/EC, Official Journal L 275). The Commission's annual progress report on greenhouse emissions assesses the actual and projected progress of Member States toward fulfilling their emission commitments under the UN Framework Convention on Climate Change and the Kyoto Protocol. The Second European Climate Change Program progress report, released in May 2003, reveals that the emissions of greenhouse gases from the European Union have increased for a second consecutive year, and that more stringent measures and policies in Member States are needed in order to meet the Kyoto Protocol objectives (i.e., 8 percent emission reduction) by 2010.

One of the most recent proposals under the Climate Change Program, was adopted on August 12, 2003, by the European Commission. It is a new Regulation on certain fluorinated greenhouse gases. The proposal sets 2010 as the deadline for reducing fluorinated greenhouse gases by almost a quarter, with even greater reductions in the period after. The proposal also aims to phase-out the use of fluorinated gas HFC-134a in air-conditioning systems in new vehicles B a measure which is expected to heavily impact U.S. car manufacturers. There are strong concerns that the regulation could be amended to target domestic refrigeration units using HFCs, the vast majority of which are produced in the United States. Final adoption of the proposal is expected in 2005. The United States will monitor Commission and Member State activity closely and carefully examine new directives for the impact on business.

Additional Information on Member State Practices

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 nation after Denmark to ban a range of uses of the three fluorinated gases (F-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 (PFCs), and sulphur hexafluoride (SF6). 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 for the export market. The European Commission (EC) and some Member States raised serious objections, forcing the Austrian government to re-draft the proposal, particularly with regard to export exemptions. The EC will re-examine the resulting new draft. European industry has pressed the Commission to launch an infringement proceeding against Austria and Denmark. The United States hopes that the Austrian government will consider alternate policy responses.

Denmark: On July 2, 2002, the Danish Environment Minister signed into effect a ban of HFCs, PFCs, and SF6, with the first phase-out dates being January 1, 2006 (although new products using these chemicals in tires, spray cans, and district heating pipes are not allowed after September 1, 2002). The ban covers the import, use, and sale, but does not cover HFCs for the export market. There are numerous exemptions provided, the most notable being cooling systems with between 150g and 10kg of HFC gas, mobile refrigeration units, vehicle air-conditioning units, and vaccine coolers. In addition, Denmark established an HFC consumption tax on March 1, 2001.

The Danish Environment and Energy Minister in November 2000 signed an Executive Order banning (as of December 1, 2000) the import and marketing (but not export) of certain products containing lead over the next four years. The ban is at odds with the EU Scientific Committee on Toxicity, Ecotoxicity, and the Environment (CSTEE) report on lead that concluded that there are no scientific grounds for the Danish ban. Products for which viable alternatives do not exist, for example car batteries, are not affected by the ban. U.S. industry estimates that if the ban were lifted, U.S. exports would increase by less than $10 million based on current export levels.

Finland: A ban on the importation and sale of new appliances containing HCFC was imposed on January 1, 2000, and remains in place. The importation of the chemical HCFC is allowed when used for maintenance of old 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.

France: National standards impose restrictions on the import of U.S. products in several areas, including enriched flour, bovine genetics, and exotic meats. French regulations prohibit the import of any products made with flour enriched with vitamins, since added vitamins are permitted only in dietetic food products. Current French government marketing controls and regulations restrict trade in bovine semen and embryos. Prior to import, a license must be obtained from the French Customs service and approved by the Ministry of Agriculture. Imports of exotic meats are prohibited by the French government unless authorized by a special waiver.

Germany: The German Economics Ministry completed consultations with industry and economic groups to review the Environment Ministry's proposal to restrict fluorinated gases. The Economics Ministry criticized the proposal, and produced a detailed, technical report that echoed German industry's concerns. The two ministries are currently studying the EU Commission's proposal on fluorinated gases, to determine whether to adopt this regulation directly into national legislation or to make national legislation on fluorinated gases more restrictive than the EU proposal.

GOVERNMENT PROCUREMENT

Discrimination in the Utilities Sector

In an effort to open government procurement markets within the Member States, the EU in 1990 adopted a Utilities Directive covering purchases in the water, transportation, energy, and telecommunications sectors. The Directive, which went into effect in January 1993, required open, objective bidding procedures (a benefit for U.S. firms) but discriminated against bids with less than 50 percent EU content that are not covered by an international or reciprocal bilateral agreement. The Directive's discriminatory provisions were waived for the heavy electrical sector in a May 1993 Memorandum of Understanding (MOU) between the United States and the EU. On April 15, 1994, the United States and the EU concluded a procurement agreement that expanded upon the 1993 MOU. The 1994 agreement extended nondiscriminatory treatment to more than $100 billion of procurement on each side, although it did not cover telecommunications procurement, which remained subject to the discriminatory provisions of the Utilities Directive.

The European Commission in 2000 proposed new legislation that, *inter alia*, included a formal exemption of the entire telecommunications sector from the Utilities Directive. Although the restrictions remain theoretically in place until the new Directives are finally adopted, they are no longer implemented by European telecommunications operators. Several years ago, the European Commission decided not to launch infringement procedures against telecommunications operators who do not abide by the rules of the Utilities Directive.

Starting in 2001, the Council of Ministers and the European Parliament undertook review of the proposed legislation. A political agreement on the adoption of the new Directives was reached by the Council and the Parliament in December 2003. The compromise was formally adopted in February 2004 and the new Directives will now be transposed into the national law of the Member States. The new Directives are not expected to be implemented before 2005.

Member State Practices

EU Member States have their own national practices regarding government procurement. A brief discussion of some of the national practices of particular concern to the United States follows:

Austria: The Federal Procurement Law in effect since September 1, 2002, brought Austria into conformity with applicable EU guidelines, particularly on services. However, U.S. firms continue to report a strong pro-EU bias, often even a bias for purely Austrian solutions, in government contract awards and some privatization decisions. In major defense purchases, most government procurement regulations do not apply, offset agreements up to 200 percent are common, political considerations remain key, and transparency remains limited. Austria's largest military procurement ever, the $2 billion purchase of fighter jets in 2002, continues to raise allegations locally regarding lack of transparency and apparent bias against a U.S. fighter jet proposal.

Germany: In 1999, the German Ministry of Economics promulgated a protection clause that would have prohibited firms from bidding on certain German government contracts if they have employees that attend or participate in, among other things, Scientology seminars. The United States expressed concern in bilateral consultations about the clause's potentially discriminatory effects on government procurement. In response, the German government revised its protection clause and no longer prohibits firms from competing for government contracts on the basis of the affiliation of its management or employees with the Church of Scientology unless the contracts involve government information systems or sensitive areas of national security. The U.S. Government will continue to monitor the implementation of the revised policy to ensure that U.S. firms and workers are not discriminated against in German government procurement.

Greece: U.S. suppliers of defense material and services express concern that firms from other EU Member States are favored over U.S. firms in competitions for procurement contracts; U.S. firms believe that they are more likely to win defense-related contracts if they compete jointly with EU partner firms. Greece continues to insist on offset agreements as a condition for the purchase of defense items.

Ireland: Some U.S. companies competing for government contracts have expressed concern about procurement practices in Ireland.   Several unsuccessful U.S. bidders on Irish government tenders have indicated that they are unable to get debriefings on their unsuccessful bids by the contracting agencies, contrary to Irish procurement guidelines. U.S. companies have also questioned the transparency of some awards, and have alleged that unqualified companies have won bids over more qualified firms. In addition, U.S. companies that have been awarded contracts have experienced delays in finalizing contract and commencement dates, and, in a few instances, tenders have been cancelled just prior to contracts being signed.

Italy: Italy's government procurement practices have, at times, created obstacles for U.S. firms. Italy has made progress in increasing the transparency of its procurement laws and regulations and has updated its government procurement code to implement EU Directives. The pressure to reduce government expenditures while increasing efficiency has resulted in increased use of competitive procurement procedures and greater emphasis on obtaining the best value. Italy has been receptive to the U.S. Government's suggestion that some government tender practices have tended to disadvantage market entrants that lack the capacity to bundle services to parallel those offered by a single incumbent. Italy's 2001 public works procurement law may streamline the bureaucracy that undertakes major infrastructure work.

The Italian Government agency, CONSIP (Consulenza, Tecnologia, e Project Management per la Pubblica Amministrazione, or Consulting, Technology, and Project Management for Public Administration), overseen by the Ministry of Economy and Finance, is now playing a major role in Italy's public procurement process. CONSIP manages procurements of all goods on behalf of public administration entities, issuing tenders that stipulate framework agreements for specific products and services with suppliers that win the tenders. Framework agreements are executed between a supplier and CONSIP, but the eventual business transaction for a specific product or service is between the supplier and the ordering government entity. CONSIP monitors and ensures that transactions are implemented correctly. U.S. firms have mixed views on the effectiveness and transparency of CONSIP operations to date.

Spain: Following the Prestige oil spill, a U.S. firm bidding on a remediation contract found the bidding process arranged by Spanish government authorities at the regional level to lack transparency. After losing the contract, the U.S. company and its Spanish partner learned that the regional authorities awarded the remediation contract to a construction company in which the government has shareholder participation. The winning company's bid price was significantly higher than the bid offered by the U.S. firm and its Spanish partner.

EUROPEAN UNION

EXPORT SUBSIDIES

Government Support for Airbus

Since the inception of Airbus in 1967, the governments of France, Germany, Spain and the United Kingdom have provided direct subsidies to their respective Airbus member companies to aid in the development, production and marketing of Airbus civil aircraft. Airbus member governments have borne a large portion of the development costs for all Airbus aircraft models 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 United States, therefore, is concerned about the prospect for further subsidization of Airbus by EU Member States governments. Any distortions caused by WTO inconsistent subsidies would only exacerbate an already difficult situation for the U.S. large civil aircraft industry, brought on by the terrorist attacks of September 11, 2001 and a cyclical industry downturn. Moreover, the Airbus Integrated Company – successor to the original Airbus consortium and representing a partnership of the European Aeronautic, Defense, and Space Company (EADS-80 percent equity share) and BAE Systems (20 percent equity share) – is now the second largest aerospace company in the world. With about half the new aircraft commercial sales worldwide over the last few years, Airbus is a mature company that should face the same commercial risks as its global competitors.

In 2001, the EU announced that seven of the nine EU Member State governments that have companies participating in the Airbus A380 superjumbo airliner project had committed approximately one third of the total cost of the development of the aircraft, then estimated to be $12 billion. France has begun providing 1.3 billion euros in reimbursable advances. The German government has committed to provide one billion euros in loans. The British government announced a commitment of 530 million pounds to underwrite BAE System's participation in the project. The Airbus repayment obligations are to be success-dependent, which means they are repayable only through royalties when aircraft are sold and delivered, and at interest rates that do not appear to reflect the commercial risks involved. The United States, prior to the EU decision, had repeatedly urged the Airbus member governments to ensure that the terms and conditions of their support of the A380 were consistent with commercial terms.

In addition, the city of Hamburg is spending some 750 million euros to lengthen the runway and expand the facilities for Airbus at the EADS Hamburg-Finkenwerder airport to accommodate the expansion of EADS Airbus assembly facility there, including that of the A380. French national and local authorities are providing 46 million euros in aid for road expansion and facility construction for Airbus in Toulouse. These government funds appear to constitute production support for the manufacture of the A380. Furthermore, the EU's aeronautics research programs are driven significantly by a policy intended to enhance the international competitiveness of the European civil aeronautics industry. Through these large research programs, the EU and many of the Airbus member governments have provided significant additional funding to support the development of Airbus aircraft programs, including the A380.

European officials claim that Member State support for Airbus is in compliance with the 1992 U.S.-EU Agreement on Large Civil Aircraft. However, the United States believes that government support to Airbus raises serious concerns about the Member States' adherence to their bilateral and multilateral obligations, including the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). Further information continues to be sought from the EU on how its government support comports with the obligations of the 1992 agreement and the SCM Agreement. The United States also believes that increased transparency regarding government support to large civil aircraft manufacturing could reduce the potential for disputes and also foster greater international cooperation in the aerospace industry.

Government Support for Airbus Suppliers

Belgium: The government of Belgium and Belgian regional authorities subsidize Belgian aircraft component manufacturers (operating as the Belairbus/Flabel consortium), which supply parts to the Airbus Integrated Company. In November 2000, the Belgian federal government reached an agreement with the three regional governments responsible for aviation research and development on a euro195 million package for the development and prefinancing of components for the new Airbus A380. Since then, Belairbus has already received orders worth $1.3 billion for the A380 from Airbus. Although the regional governments of Wallonia, Flanders and Brussels are usually responsible for industrial assistance, this authority has been ceded to the national level for the A380 project. The government of Belgium states that they have discontinued an earlier Belgian exchange rate subsidy program. There is concern that these supports may be inconsistent with the obligations of the U.S.-EU 1992 Agreement on Trade in Large Civil Aircraft and the WTO SCM Agreement.

France: In addition to the 1.3 billion euros in reimbursable advances, spread out over several years, for development of the Airbus A380 super-jumbo aircraft, the government of France has committed to provide an additional 59 million euros in reimbursable advances to other aero-structure companies, which have concluded supplier partnership agreements with Airbus for development of the A380 airframe. France's 2004 government budget appropriates 317 million euros toward its A380 reimbursable advance program, to be disbursed to French companies Airbus, Latécoère, Socata and Aircelle. In addition to R&D, specific funds (43.5 million euros in 2004 and 32 million euros in ongoing programs) are earmarked for the development of on-board avionics and structural systems for the Airbus A380 and the Dassault Falcon F7X, a long-range business jet.

Spain: The recently completed Puerto Real factory in Spain's Andalucia region is responsible for constructing 10 percent of Airbus' new 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. To date, the ministry has provided 92.5 million euros of that obligation. 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.

Government Support for Aircraft Engines

United Kingdom: Since 1988, the government of the United Kingdom has committed 949 million pounds to direct product development of Rolls-Royce civil aircraft engines. Despite Rolls-Royce's substantial market share during this period, the UK government has been repaid only 314 million pounds. This amount would not appear to cover the cumulative interest expense on equivalent commercial debt over the period, let alone provide a return on the loan's principal.

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 state investigation into whether the advance constituted an illegal (under EU law) state aid. According to the European Commission's 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.

As the United States noted in last year's NTE report, continuing UK government support of Rolls-Royce raises serious concerns about UK and EU adherence to the WTO SCM 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. In March 2004, United Kingdom officials stated their expectation that Rolls-Royce would not seek government funding for the development of a new engine to power the Boeing 7E7 aircraft.

France: The government of France-owned engine manufacturer SNECMA will receive 102 million euros in support under a royalty-based system authorized by the European Commission for SNECMA's development work on a family of large engines, including its participation in the Engine Alliance (a joint venture between General Electric Aircraft Engines and Pratt and Whitney). The proposed 2004 budget appropriates 18.7 million euros for SNECMA in this ongoing program of reimbursable advances for research into new generation engines. The French government has stated that this support for engine development is not covered by the U.S.-EU 1992 Agreement on Trade in Large Civil Aircraft.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The EU and its Member States support strong protection for intellectual property rights (IPR), and they regularly join with the United States in encouraging other countries to adhere to and fully enforce such IPR standards as those covered by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). However, there are a few Member States with whom the United States has raised concerns either through Special 301 or WTO Dispute Settlement procedures about failure to fully implement the TRIPS Agreement. The United States continues to be engaged with the EU and individual Member States on these matters.

Copyrights

In April 2001, the EU adopted a Directive establishing pan-EU rules on copyright and related rights in the information society. The Directive was the result of more than three years of debate and work by the Commission, the European Parliament, and the Council.

The Directive is meant to provide a secure environment for cross-border trade in copyright-protected goods and services, and to facilitate the development of electronic commerce in the field of new and multimedia products and services. It harmonizes the rights of reproduction, distribution, communication to the public, and the legal protection of anti-copying devices. The Directive includes a mandatory exception for technical copies on the Internet for network operators in certain circumstances; an exhaustive list of exceptions to copyright which includes private copying (all of the exemptions are optional to the Member States); the harmonization of the concept of fair compensation for rights holders; and a mechanism to secure the benefit for users for certain exceptions where anti-copying devices are in place.

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 them with the EU's Office for Harmonization in the Internal Market (OHIM), based in Alicante, Spain. They will then be granted exclusive rights to use the designs anywhere in the EU for up to twenty-five 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.

Patents

Patent filing and maintenance fees in the EU and its Member States are significantly more expensive 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.

Patenting of Biotechnological Inventions

On June 16, 1998, after years of debate, the EU adopted a Directive (98/44) on the legal protection of biotechnological inventions. The Directive harmonizes EU Member State rules on patent protection for biotechnological inventions. Member States were required to bring their national laws into compliance with the Directive by July 30, 2000. By the beginning of 2004, some Member States had not yet fully met that obligation.

Austria: There is considerable resistance to the Directive in Austria. The Austrian Parliament held a conference on the pros and cons but the Parliament has not yet decided on a timetable for legislation to implement the Directive.

France: France has not yet brought its national law into compliance with Directive 98/44. The French government's draft bill transposing the directive into national law is not expected to be approved by Parliament before mid to late 2004. The final disposition of the bill is likely to be compatible with French civil code, which prohibits commercialization of the human body or any of its parts. Also the French seed industry is asking that the Directive be changed so that plant breeders could be authorized to use protected varieties to conduct their research. The French seed industry prefers to use Plant Variety Rights rather than the patent system. The Plant Variety Rights system provided for under the International Convention of 1991 of the Union for Selected Plant Protection, signed by 60 countries, allows varieties protected under the system to be freely used for research and selection of other varieties. Under a patent system, by contrast, such a use would generally be considered infringement.

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 15 EU Member States.

Madrid Protocol: The World Intellectual Property Organization (WIPO) Madrid Protocol, negotiated in 1989, provides for an international trademark registration system permitting trademark owners to register in member countries by filing a standardized application. The EU has taken the political decision to accede to the Protocol and has adopted Regulations needed to effect its accession. The EU accession will be effective in October 2004.

Geographical Indications: The EU's system for the protection of geographical indications, apparently reflected in Community Regulation 1493/99 for wines and spirits and Regulation 2081/92 for certain agricultural products and foodstuffs, appears to fall short of what is required under the TRIPS Agreement; notably, that system does not appear to be available to other WTO Members on a national treatment or MFN basis. Under the TRIPS Agreement, the EU is obligated to make such protection available to nationals of all WTO Members. In addition, both regulations appear to deprive trademark owners of

TRIPS-level ownership rights. U.S. industry has been vocal in raising concerns about the impact of these EU regulations on U.S.-owned trademarks.

For these reasons, in 1999 the United States initiated formal WTO consultations with the EU on Regulation 2081/92. Bilateral discussions continued in 2000 and 2001 and intensified in 2002, following the European Commission's release of a number of proposed amendments to the regulation. While some of the proposed amendments to 2081/92 are intended to address the WTO concerns expressed by the United States, they do not address all of these concerns and, in some instances, raise new concerns. In August 2003, the United States requested the establishment of a WTO dispute settlement panel to consider the WTO-consistency of the EU's geographic indications regime. A panel was appointed in February 2004 and the case is expected to continue through the rest of the year.

Member State Practices

Belgium: Although parallel imports of DVDs from North America have decreased slightly in recent periods, they are still distributed by specialist stores, key retail outlets, and on local and international Internet sites. Parallel imported DVDs also lead to pre-video-release copies on VHS, CD-R, and DVD-R. To date, the Belgian Anti-Contraband Force's (BAF) primary focus on Internet piracy has been hard goods sales. The BAF cooperates with Internet Service Providers to remove offers of illegal goods. Most problems of illegal downloading come from websites located outside the country. Companies report it is difficult to obtain the cooperation of the Police Forces in Internet cases, as they are preoccupied with other security priorities. Annual losses to the U.S. motion picture industry due to audiovisual piracy in Belgium are estimated to be approximately $15 million in 2003. Belgium's 1994 Copyright Law provides deterrent penalties for piracy, but the court system is slow and overburdened. Obtaining a judicial restraining order against Internet piracy, for example, takes two to three months. The importation and sale of DVDs from the United States or elsewhere outside the European Economic Area without the authorization of the rights holders are forbidden under the Copyright Law. The Belgian courts have confirmed that U.S. rights holders are entitled to a distribution right in Belgium, and that such a right can only be exhausted with regard to a specific copy of a work imported by the rights holder or with his consent. The courts have further confirmed that the burden of proof of consent to importation rests solely with the importer.

France: The French government has stepped up its efforts to fight piracy. On November 12, 2003, the French government sent to Parliament a bill transposing the May 2001 EU Copyright Directive, which imposes stiffer penalties on offenders than current law. It is expected to be approved during the first half of 2004. The government has also initiated collaborative efforts against piracy with Asian countries. Video piracy and unauthorized parallel imports continue to impose significant losses on U.S. industry. Cable piracy and Internet piracy present further problems in this area. The deterrent effect of law enforcement is limited by the relatively mild penalties imposed on offenders by French courts.

Germany: Non-retail outlets (Internet, print media, mail order, open-air markets) represent Germany's major piracy problem. Pirated videos, VCDs, and DVDs are sold primarily by residential mail-order dealers who offer the products via the Internet, newspaper advertisements, or directly sell them in flea markets. German copyright legislation currently allows the making of private copies, which, although it theoretically does not include sharing or downloading of music, has been a legal gray area. German authorities have yet to prosecute pirates who download music or videos from the Internet and then distribute burned CDs or DVDs. The German government in July 2003 passed amendments to the German Copyright Act to bring it in line with the EU Copyright Directive. The amendments entered into force in September 2003. Certain articles of the amendments which allow limited distribution of scientific and technical articles over the Internet have caused consternation among U.S. scientific, technical, and medical publishers, who fear that their German market could be negatively impacted. The Ministry of Justice is consulting with domestic publishers (as well as with USTR) to address these concerns.

Greece: Although Greece was removed from the Special 301 Watch List in recognition of progress made in reducing the illegal broadcast of unlicensed films, problems involving copyrighted products and trademarks still exist, especially in the audiovisual and software sectors. The United States looks to the Greek government to strengthen its enforcement of laws governing the protection of patents, copyrights and trademarks.

Italy: In 2000, Italy passed a long-awaited anti-piracy law, which had been introduced in Parliament in 1996. The U.S. Trade Representative moved Italy from the Special 301 Priority Watch List to the Watch List as a result. The law and its implementing regulations provide for significant administrative penalties and increased criminal sanctions for violations of music, film, and software copyrights as well as the creation of an anti-piracy steering committee in the Prime Minister's Office to develop national anti-piracy strategies. The law and ensuing efforts by authorities to implement it have led to increased anti-piracy efforts by law enforcement officials. In addition, in June 2003, the Industry Ministry signed a Joint Declaration of Cooperation on Intellectual Property with the U.S. Patent and Trademark Office. Under the Declaration, the parties are developing, in consultation with each other, compatible, Madrid Protocol-compliant web-based registration systems for trademarks. The parties will also share information on the use of legislation to stimulate commercialization of new inventions and on judicial aspects of intellectual property protection. Piracy, however, remains a serious problem. There is still no coordination of anti-piracy efforts at the national level. Moreover, despite having the laws on the books, the judiciary has failed to impose meaningful sanctions against pirates and counterfeiters, thus undermining law enforcement's capacity to deter chronic violations.

Spain: In a long-standing case, a well-known U.S. apparel and footwear manufacturer has pursued legal action against infringement of its brand name. While the Spanish Supreme Court ruled against the U.S. company's claims in September 1999, the company appealed to the Spanish Constitutional Court. The Constitutional Court accepted the case for review. In February 2004, the Constitutional Court remanded the case to the Supreme Court. The Supreme Court is expected to issue its revised decision within a year. Copyright infringement has become an increasing problem in Spain's major urban centers. In 2001 there was a sudden surge in street sales of pirate compact disks (CDs). More recently, street sellers have also begun offering pirate CDs and videogames. An estimated 30 percent of CDs sold in Spain are pirated; the estimated pirate sales rate for new releases of the most popular artists is 50 percent. Enforcement and government authorities have taken the threat seriously. The government has revised its Penal Code to better combat IP crime, and has launched consumer and judicial education programs. Spain's Guardia Civil, national police and various municipal police forces have special units and plans focused specifically on fighting CD piracy. By third quarter 2003, Spanish enforcement authorities had seized several million pirated CDs and conducted numerous raids on production and distribution centers.

Sweden: U.S. copyright industries have raised concerns about a provision in Swedish copyright law that denies to authors and producers of U.S. audiovisual works, and to the performers that appear in those works, the right to be compensated for private reproductions. U.S. industry questions the consistency of this practice with Sweden's national treatment obligations under the Berne Convention and its national treatment and MFN obligations under the TRIPS Agreement. The government of Sweden has promised to rectify these problems, as well as problems related to levies on blank tapes, through the process of implementing the EU Copyright Directive. According to Swedish Justice Ministry officials, the Swedish Parliament will not address this issue until late Summer 2004 at the earliest.

SERVICES BARRIERS

Concerns Related to 1995 EU Enlargement

In July 2003, 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 in order to reflect the 1995 accession to the European Union of Austria, Finland, and Sweden. As a result of this proposed consolidation, a number of previous GATS commitments by these three countries have been modified in a way that may reduce sector-specific or horizontal market access commitments. Although not within the scope of the GATS Article V notification, the consolidation also entails the extension to Austria, Sweden, and Finland of most-favored nation exemptions reflected in the EU's schedule of GATS commitments. As provided for under GATS rules, the United States held initial consultations with the European Commission on this matter in November 2003 in order to evaluate possible adverse consequences to U.S. services trade of the consolidation and the potential for EU compensation to the United States for such consequences. Both sides agreed to consult further. As of March 2004, the United States was considering next steps.

Television Broadcast Directive (Television with Frontiers Directive)

In 1989, the EU issued the Broadcast Directive (also known as the Television without Frontiers Directive) which includes a provision requiring that a majority of television transmission time be reserved for European origin programs where practicable and by appropriate means. By the end of 1993, all EU Member States had enacted legislation implementing the Directive. The Commission is currently considering the parameters of a scheduled revision of the Directive.

Several countries 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 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, the 60 percent European / 40 percent French quotas apply to both the 24-hour day and to prime time slots. (The definition of prime time differs from network to network according to a yearly assessment by France's broadcasting authority, the Conseil Supérieur de l'Audiovisuel, or CSA.) The prime time rules are a significant barrier to access of U.S. programs to the French market. France's broadcasting quotas were approved by the European Commission and became effective in July 1992.

In addition, the United States continues to be concerned about the French radio broadcast quota (40 percent of songs on almost all French private and public radio stations must be Francophone), which took effect on January 1, 1996. The measure limits the broadcast share of American music.

Germany: The German Youth Protection Authority has the power at any time to designate or index films that it believes to be unsuitable for minors, in addition to the ratings and classification procedure currently in place. Indexed videocassettes, DVDs, etc., cannot be advertised or publicly displayed. For Internet websites with indexed materials, adult users must register in person at a post office to receive an access code to the sites.

In 2003, in order to streamline youth protection measures and to adapt to new media developments, the Youth Protection Act, applying to videocassettes and DVDs, and an agreement among German states, applying to telemedia services such as the Internet, were promulgated. A Commission for Youth Media Protection was established as a central supervisory authority.

U.S. industry has expressed particular concern that a film may be indexed at any time, thereby exposing distributors and retailers to the constant risk that their business may be subject to onerous restrictions for the sale and rental of indexed products. While countries do have a legitimate interest in protecting minors, regulations should be crafted so as to minimize the disruption for the overall market. These provisions are dampening the fledgling DVD market, given that the costs to withdraw a particular title from release and/or re-edit it to comply with the standards of the Youth Protection Authority are prohibitive. The indexing system could result in rights holders manufacturing separate DVDs for Germany, whereas most DVDs are manufactured on a regional basis.

Italy: In 1998, the Italian Parliament passed Italian government-sponsored legislation including a provision to make Italy's national TV broadcast quota stricter than the EU Broadcast Directive. The Italian law exceeds the EU Directive by making 51 percent European content mandatory during prime time, and by excluding talk shows from the programming that may be counted toward fulfilling the quota. Also in 1998, the Italian government issued a regulation requiring all multiplex movie theaters of more than 1,300 seats to reserve 15 percent to 20 percent of their seats, distributed over no fewer than three screens, to showing EU films on a stable basis. In 1999, the government introduced antitrust legislation to limit concentration in ownership of movie theaters and in film distribution, including more lenient treatment for distributors that provide a majority of made in EU films to theaters.

Spain: Despite remaining protectionist elements, Spain's theatrical film system has been modified sufficiently in recent years so that it is no longer a major source of trade friction. New government regulations issued in 1997 eased the impact of a 1994 cinema law. The screen quotas adopted in 1997 require exhibitors to show one day of EU-produced film for every three days of non-EU-produced film instead of the original ratio of one to two. In July 2001, after lengthy debate about eliminating film screen quotas, the Spanish Parliament adopted new legislation that maintains quotas. The new law calls for revisiting the issue of potential quota elimination in 2006.

Postal Services

United States' express and package service providers remain concerned that postal monopolies in many EU Member States restrict their market access and subject them to unequal conditions of competition. In October 2001, EU Member States agreed to open additional postal services to competition beginning in 2003, including all outgoing cross-border mail. Depending upon the results of a European Commission study (scheduled to be completed by the end of 2006), full liberalization of the EU postal market could occur by 2009.

The procurement of postal services will soon be regulated by the new public procurement Directives recently adopted by the Council of Ministers and the European Parliament (See Government Procurement section above).

Belgium: American firms continue to be concerned that the Belgian state railroad is using its monopoly power in rail passenger transportation to cross-subsidize the Belgian package delivery service, known as ABX. The Belgian railroads are also exempt from VAT on their mail transport business and reportedly do not pay any of the fines (such as traffic tickets) frequently incurred by private mail operators. The Belgian Postal Group has developed express mail units to compete with private sector operations in this field. This gives rise to additional concerns regarding cross-subsidization. Concerns have also been expressed about a possible joint venture between the Belgian Postal Group and Belgacom on secure Internet communications. The dominant positions held by the two publicly-owned incumbents could limit competition from other Internet Service Providers (ISPs) in the electronic communications market.

Germany: In June 2002, the European Commission found, in a case originally brought by a U.S. firm in 1994, that German postal monopoly Deutsche Post had illegally used state aids to cross-subsidize its package delivery services. Deutsche Post paid the imposed fine of 906 million Euro in January 2003, though it has appealed the Commission's decision to the courts.

Professional Services

In the area of professional services, there are significant variations in 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 EU Member State requirements can complicate access to the European market for U.S. lawyers and accountants.

Legal Services

Austria: In general, Austria displays a high degree of regulation intensity, including market entry barriers for all services professions, according to a study carried out by the Austrian Institute for Advanced Studies for the European Commission's Competition Directorate General and published in January 2003. To provide legal advice on foreign and international law on other than a temporary basis, requires establishing a commercial presence as well as joining the Austrian Bar Association. Only an Austrian or other EU national can join the Bar Association. Lawyers from elsewhere in the EU or the European Economic Area (EEA) receive equal treatment under the EU's Directive to Facilitate the Practice of the Profession of Lawyer on a Permanent Basis in a Member State. Citizens from other countries cannot practice law in Austria.

Denmark: Foreign legal consultants are restricted in their ability to advertise, including restrictions on the use of letterhead or signs on office doors. These restrictions are not applied to attorneys licensed to practice Danish law. There are restrictions on the ability of foreign lawyers to associate with Danish lawyers. Foreign attorneys may hire Danish attorneys in private firms but foreign attorneys who are not members of the Danish bar cannot own a Danish firm. Also foreign attorneys who do not also have appointment as Danish attorneys cannot be partners in a Danish legal firm. To be an attorney in Denmark, a person must be a Danish law school graduate and clerk in a law firm for three years.

Finland: Foreigners from non-EU countries cannot become members of the Finnish Bar Association and receive the higher law profession title of Asianajaja. This does not, however, prevent persons from practicing domestic or international law (including EU law) using the lower level title of Lakimies or Jurisiti. A Finn must pass a test and have five years of legal experience before becoming an Asianajaja. The title gives added prestige and helps solicit clients, but is not essential to practice law.

France: There is a nationality requirement to qualify as a practicing lawyer avocat. 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: Foreign non-EU lawyers from WTO members 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, provided these countries are listed in a Justice Ministry directive as having equivalent bar rules. Such countries include the United States, Japan, New Zealand, Turkey, and Brazil. Foreign lawyers from other WTO members and non-WTO countries may only practice the law of their home country. To be admitted to the bar to practice German law, individuals generally complete five years of study and two years of practical training.

Ireland: 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, 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 an Italian societa tra avvocati (company of lawyers, a type of limited liability partnership) or through the Italian branch of a partnership formed in another EU Member State, so long as the societa tra avvocati or partnership is composed exclusively of Italian and EU lawyers. The status of non-EU lawyers is not expressly 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.

Accounting and Auditing Services

France: There is a nationality requirement for establishment of a practice, which can be waived at the discretion of the French authorities. However, an applicant for such a permit must have lived in France for at least five years.

Greece: The transition period for de-monopolization of the Greek audit industry officially ended on July 1, 1997. Numerous attempts to reserve a portion of the market for the former state audit monopoly during the transition period (1994-97) were blocked by the European Commission and came under peer review scrutiny in the OECD. In November 1997, the government issued a presidential decree that continues to undermine the competitiveness of multinational auditing firms. The decree establishes a method for fixing minimum fees for audits, and mandates restrictive professional qualifications requirements for different types of audits. It also prohibits 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. However, in practice, the decree represents a step back from deregulation of the industry.

Architectural Services

Austria: Only citizens from EU and EEA Member States are eligible to obtain a license to provide independent architectural services in Austria. Austria's Schedule of Specific Commitments under the GATS does not list any limitations on the supply of architectural services on a cross-border basis or through a commercial presence. This measure appears to be inconsistent with Austria's GATS commitments on market access and national treatment.

Telecommunications Market Access

Both the WTO Basic Telecommunications Agreement and the EU's regulatory framework for telecoms services have spurred liberalization and competition in the European telecommunications sector. Under the WTO Agreement, for example, all EU Member States made commitments to provide market access and national treatment for voice telephony and data services. However, liberalization and harmonization have been uneven across the EU's Member States, as reflected below. In many markets significant problems remain with the provisioning and pricing of unbundled local loops, line sharing, co-location, and the provisioning of leased lines. Partial government ownership of some EU 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 a framework directive, which defines the role of National Regulatory Authorities, and four specific directives on licensing, access, and interconnection, universal service and user rights, and data protection.

Member States had until July 25, 2003 to implement the new rules with the exception of the data privacy Directive that required transposition into Member State legislation by the end of October 2003.

This new regulatory framework replaces a number of EU Directives that previously covered the sector, and updates and adapts European legislation to developments such as the continuing convergence of technologies, as well as establishing a system that will be responsive to future technological and market developments. The new regulatory framework will apply 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. Many Member States failed to meet the implementation deadline, and the European Commission has commenced the first stage of infringement proceedings to pressure them to bring their regulatory regimes in line with the new framework.

Member State Practices

Enforcement of existing legislation by National Regulatory Authorities (NRA) appears hampered by unnecessarily lengthy and cumbersome procedures in France, Italy, Austria, Portugal, among others. The European Commission 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 despite the fact that in most cases the appeals are not successful.

Austria: The European Commission found that Austria has already transposed into national law the Framework, Authorization, Access, and Universal Services Directive, and has begun to transpose the e-Privacy Directive. Austria's new Telecom Act went into force August 20, 2003. In general, Austria has moved toward a more open and competitive telecommunications market, despite ongoing issues such as mobile phone spectrum allocation and interconnection fees. The National Regulatory Authorities (NRA) provides timely initial decisions, but follow-up on NRA decisions, including the appeals process for such decisions, remains uncertain and slow.

Belgium: Telecom operators in Belgium continue to express concern over the country's slow pace in incorporating European Commission directives into national law. Belgium, together with seven other EU Member States, has not yet implemented the Commission's Telecommunications Regulatory Package. With the threat of infringement proceedings by the Commission, Belgium is expected to pass the legislation in the first quarter of 2004.

Belgacom, Belgium's former telecom monopoly incumbent, is one of the few European operators in which the government is still the majority shareholder. The minority shareholders will divest their stake in an initial offering that is slated for 2004. The operator will not sell its share and intends to purchase 10 percent of the minority holdings, thus increasing the government's share in the company to 60 percent.

Belgacom still enjoys dominant market position in both fixed and mobile telephony with a total 75 percent market share. Regarding broadband access, despite the company's strong position, the number of unbundled local loops is growing. Other Licensed Operators (OLOs) can either collocate with Belgacom in the local exchange or purchase wholesale bitstream access from the company. These offers have had a significant effect on the market, with many OLOs now offering DSL services. However, OLOs contend that Belgacom does not offer a consistent cost model. The OLOs demand that BIPT, the now independent national telecommunications regulatory authority, take measures to ensure that Belgacom develop an honest pricing policy that will enable the OLOs sufficient profit margin.

Finland: In Finland, traditional operators still hold 80 percent to 90 percent of local loop operations. Amendments to the Telecommunications Market Act passed in March 2001 intend to increase competition in local networks by creating a new right-of-use obligation in network operations under which local operators are obliged to offer for rent their upper band subscriber lines to other telecommunications service providers (local loop unbundling). Customers are allowed to obtain competitive bids from different telecommunications service providers. As of September 1, 2001, Finns have been able to make local calls using the operator of their choice and choose which operator is used when calling from a fixed-line phone to a mobile subscriber.

In July 2003, the second stage of the comprehensive reform of communication legislation (in 2001-2002) implemented the new Communications Market Act. The stated aims are to improve the legislative environment for competition and the development of communications technology and innovations. The Act implements four new Directives on electronic communications. Internet Service Providers are also included in the scope of the Act.

According to the Act, specific requirements will be applied to telecom operators with significant market power. Regulation of smaller operators is less stringent. The Finnish Communications Regulatory Authority will determine if there is not enough competition within a particular market and institute what it sees as remedial requirements. The intent of the regulation is to approach telecom operators on a case-by-case basis. Decisions of the Communications Regulatory Authority can be appealed to the Supreme Administrative Court. For example, a telecom operator can be required to turn over to another telecom operator, at cost-oriented price, an access right to mobile subscription (SIM card) capacity or some other equivalent capacity of a smart card used in managing communications network termination points. The obligation to relinquish the capacity of a SIM card is expected to promote content production in the communications market.

France: The independent regulatory agency Autorité de Régulation des Télécommunications (ART) continues to prod the 50 percent government-owned telecom company, to comply with EU Directives and French law. Nevertheless, former monopolist France Telecom still dominates the fixed line market and is a major player in mobile services and Internet services through subsidiaries Orange and Wanadoo. In the fixed line market, FT has 64 percent market share (by volume) for national and international long distance calls and an 80 percent market share for local calls. Meanwhile, FT subsidiary Orange controls 50 percent of the mobile phone market. In mid-2003, the European Commission sanctioned FT subsidiary Wanadoo for expanding its market share to 72 percent at the expense of its competitors by offering internet services well below costs.

France has still not fully implemented the EU Telecom Framework Directive, despite the July 2003 deadline. Where possible, ART has made regulatory changes to ease the transition to the new framework. However, many formal changes to French law are necessary and draft legislation still awaits Parliamentary approval.

Addressing a long-standing complaint from France Telecom competitors, ART promised to make fixed-to-mobile termination rates more cost-oriented, lowering them 40 percent over three years from 2002 to 2004. Following through on these promised rate reductions, in November 2003, ART announced that Orange and SFR (the two mobile operators with significant market power in interconnection) will decrease their call termination charges by 12.5 percent as of January 2004, following a 15 percent reduction in January 2003.

Germany: Germany has made slow progress in introducing competition to some sectors of its telecommunications market. However, new entrants 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. The Regulatory Authority for Telecommunications and Posts (RegTP) issued some pro-competitive rulings during 2002 and 2003, but the incumbent challenged virtually all of them in court, meaning most of the decisions have never been implemented. Competitors maintained, and some RegTP officials agreed, that the cumbersome German legal system had become a barrier to competition. On the positive side, implementation of carrier selection and pre-selection for local calling was completed in July 2003 and as a result, competitors gained close to 20 percent of the local calling market. Competitors had hoped that the ongoing revision of the German telecommunications law to implement EU directives, which has already missed the EU's deadline of July 2003, would address many of these competitive problems. While the draft which passed the cabinet October 2003 does attempt to speed up court challenges, investors have criticized its provisions which could severely limit the application of regulation that competitors need to prevent market abuses and which limit competitors' ability to petition RegTP when there are abuses of market power.

Throughout 2003, competitors charged that DT continued to engage in a variety of anticompetitive practices. In January 2003, several telecommunications trade associations and private firms filed complaints with the U.S. Government under Section 1377 of the Omnibus Trade and Competitiveness Act of 1988. The submissions asserted, *inter alia,* that: timely interconnection and timely unbundling of the local loop remained serious problems; DT's unbundled rates were not cost-oriented; DT's broadband monopoly remains unchallenged; and DT and other mobile providers charge excessive termination charges when fixed-line users call mobile phones.

Ireland: The government privatized the state monopoly, Telecom Eireann, in 1999, but the new company, Eircom, retains either market dominance or significant market power in fixed lines (80 percent share) and leased line services and national interconnection. Thus, while there are currently 42 fixed line licensed operators in the Irish market, 19 of which are active, these new entrants only account for 20 percent of the fixed line market. Competition has significantly reduced prices for international business and residential calls, while the price for local service remains high, discouraging both broadband development and Internet use.

Significant competition is now emerging in the mobile phone market, with three licensed and active operators. The mobile penetration rate in Ireland in 2003 was 81 percent; there are 3.17 million mobile subscribers. Following adoption of EU local loop unbundling legislation, the Irish government committed to full liberalization of access to the last mile of telephone lines on January 1, 2001. However, progress has been slow. The industry regulator, the Commission for Communications Regulation (COMREG), was embroiled in a legal dispute with Eircom over the tariff rate for the last mile. This dispute was settled in April 2002, which resulted in an overall reduction in charges offered by Eircom. The determination of interconnection rates will benefit new entrants and Irish rates now compare more favorably with prices across the EU.

Italy: The Italian telecommunications market is almost fully liberalized. Fixed telephony is fully open to competition, with approximately 220 fixed line operators licensed to provide commercial services including Internet access, local and long distance calls, and international service. Three GSM operators are fully operational, and five third generation cellular (UMTS) licenses were awarded in October 1999 of which four are operational. As elsewhere, the start of UMTS in Italy has been delayed by the market slowdown, high licensing costs, and the bureaucracy involved in launching such services. The local loop is now unbundled. One issue of concern is the continued State role in the telecommunications sector.

Despite the progress in liberalizing the overall telecommunications market, and even though it sold off its residual three percent share in the Telecom Italia, the Italian government is still able to influence the firm. The State also exerts its influence in other companies, as well. For example, the government holds a majority interest in ENEL, the national electricity conglomerate that in turn owns a controlling interest in cellular operator WIND and fixed line operator Infostrada. The government also holds interests in other participants in telecommunications consortia also operating at the national level.

Spain: Leased lines in Spain remain problematic as rates are not based on actual cost. The Spanish regulator introduced in 2001 a wholesale offer for the provision of leased lines, a significant price reduction in 2002 (around 35-40 percent), and another moderate reduction (around 15 percent) in July 2003. However, wholesale prices are still above the European average and around 100 percent above U.S. prices. This has allowed the incumbent operator Telefónica to offer to final customers discounts on the leased line which eliminate any advantage in the prices of the downstream services which could be offered by alternative operators.

Spanish mobile operators charge excessive prices for their mobile termination services. The Spanish regulator imposed a reduction of 17 percent on these prices in July 2002 and a seven percent reduction in October 2003, but there is still a wide margin between costs and prices. U.S. citizens and companies calling to European mobile numbers are charged an excessive price. American operators active in the European markets are squeezed out from the fixed-to-mobile communications markets, as mobile operators offer retail mobile-to-mobile and fixed-to-mobile calls at prices below the wholesale termination price. A recent investigation by Spain's antitrust authority found that the three dominant mobile providers (Telefónica Mobiles, Auna, and Vodafone) have launched thousands of retail offers at prices below their wholesale rates. The market awaits announcement of penalties and changes that will be required of these providers.

Evolution of the broadband market has been slow and problematic, and many operators have ceased offering these services. Although Telefónica's market share is slowly being reduced, it is still the dominant player and it is difficult for new entrants to operate on a commercially viable basis in Spain. Competitors that have tried to negotiate nondiscriminatory access directly with Telefónica have been met by refusal from the incumbent, and at times disinterest by the regulator.

Sweden: Sweden implemented the EU directive on local loop unbundling (LLUB) in January 2001. Interest in last mile access is increasing as new companies emerge to offer services to a broader customer base. There are complaints at times among new players about price levels and terms of delivery. Charges have to be cost-based and the Swedish National Post and Telecom Agency (PTS) is monitoring activities to make sure that prices are correct.

There is some dissatisfaction among new entrants regarding Telia Sonera's ownership of the copper infrastructure. They would prefer that the company sell that part, which is called Skanova. Skanova would act as an independent supplier of capacity in the market. So far, PTS has seen no need to force Telia Sonera to do so as the market is regulated in this respect.

United Kingdom: There is little competition in advanced data services over fixed-line incumbent British Telecom's (BT) infrastructure. In a recent OECD study, the UK ranked near the bottom of OECD countries in the use of broadband services. BT has been criticized by potential competitors for blocking access to its network so that alternative broadband services could be offered; at the same time, BT has been slow to offer its own high-speed data services. Competition in high-speed services is emerging, however, with cable television companies offering lower-priced broadband access over their own infrastructure. In 2002, the integration of broadband services increased rapidly in the UK: one million people had purchased the service by October and 30,000 people a week were subscribing in late 2002. The government has stated that it aims to become the leader in broadband services among G-7 countries by 2005, and the government, including the Prime Minister, have recently given the goal high-level attention.

INVESTMENT BARRIERS

EUROPEAN UNION

The European Commission's mandate on investment issues is evolving, and it has a growing role in defining the way in which U.S. investments in EU Member States are treated. Still, in many instances Member State practices are of more direct relevance to U.S. firms. 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. However, a few Member State barriers existing on December 31, 1993 remain in effect, although EU law can now supersede these. Right of establishment issues, particularly regarding third countries, is 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 legislated regulations in that sector. Direct branches of non-EU financial service institutions remain subject to individual member country authorization and regulation. EU Member States negotiate their own bilateral investment protection and taxation treaties, and generally retain responsibility for their investment regimes, until and unless they are superseded by EU law. The EU supports national treatment for foreign investors in most sectors. Once established, 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 (see below).

During 2002, the European Commission conveyed to the United States its concern that certain provisions of Bilateral Investment Treaties (BITs) between the United States and several Central and Eastern European countries could conflict with EU law following the entry of these countries into an enlarged EU. The United States and EU engaged in consultations on this issue during 2002 and 2003. The United States stressed the importance of preserving the treaties and the protections they afford to U.S. investors, but expressed a willingness to explore ways to meet EU concerns regarding legal consistency. On September 2, 2003, the United States, the European Commission, and the eight U.S. BIT partners that are expected to join the EU (Czech Republic, Estonia, Latvia, Lithuania, Poland, the Slovak Republic, Bulgaria, and Romania) endorsed a political Understanding that preserves the BITs. The Understanding sets out the steps that the parties will take to remedy actual or potential incompatibilities between the BITs and EU law. These steps include several narrow amendments and joint interpretations of the BITs and a commitment to continued consultation on EU authority to restrict capital movements into and out of U.S. BIT partners and on future EU measures potentially affecting U.S. investments.

Ownership Restrictions and Reciprocity Provisions

The right to provide maritime transport services within certain EU Member States is restricted. EU banking, insurance, and investment services Directives include reciprocal national treatment clauses, under which financial services firms 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. In the EU Hydrocarbons Directive, the notion of reciprocity may have been taken further to require mirror-image reciprocal treatment, under which an investor may be denied a license if its home country does not permit EU investors to engage in activities under circumstances comparable to those in the EU. It should be noted, however, that so far no U.S.-owned firms have been affected by these reciprocity provisions.

Member State Practices

Austria: While European Economic Area Member States' banks may operate branches on the basis of their home country license, banks from outside the EEA must obtain an Austrian license to operate in Austria. However, if such 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.

France: There are no general screening or prior approval requirements for non-EU foreign investment. Notification requirements apply to foreign investments, EU and non-EU, for acquisition of a stake of more than five percent in the capital of a firm in the national defense, public safety, or public health sector. The government is able to exert influence over privatized firms through golden share provisions. The use of golden shares remains exceptional. France continues to apply reciprocity requirements to non-EU investments in a number of sectors. For the purpose of applying these requirements, the French government generally determines a firm's residency based on the residency of its ultimate owners rather than on the basis of the firm's place of establishment or incorporation.

Germany: Germany's new takeover law, which came into effect on January 1, 2002, has reintroduced measures that allow firms to ward off hostile takeover bids: first, at the stockholder level, where management may be given authority at the annual shareholders' meeting to take measures deemed necessary to guard against unwanted interest; and, second, at the management level where the managing board can take protective measures upon approval by the supervisory board bypassing the need for stockholder approval altogether. These provisions may have negative consequences for outside investors and stockholders.

The German government has introduced legislation to create a right of review and approval for planned investments by foreign entities of 25 percent and more in German armament companies. Planned share acquisitions meeting the threshold must be submitted for approval to an inter-ministerial review. The draft bill was approved by the Cabinet in early December 2003 and is expected to be adopted by Parliament in early 2004. If adopted, the legislation could seriously restrain U.S. and other foreign investors.

Greece: Greek authorities take into serious consideration local content and export performance when evaluating applications for tax and investment incentives. However, these factors are not mandatory prerequisites for approving investments.

Greece, which restricted foreign and domestic private investment in public utilities (except for cellular telephony and energy from renewable sources, e.g., wind and solar), has recently opened its telecommunications market and has plans to gradually liberalize its energy sector. As of January 1, 2001, the traditional voice telephony market and the market for providing infrastructure for it has been opened to EU firms. The Greek energy market entered a phase of deregulation in February 2001. The electricity market in Greece will have to be fully deregulated by 2005. In addition, the Development Ministry has continually refused to grant licenses to several U.S. renewable energy providers to connect to the Greek transmission grid, hampering attempts by U.S. firms to develop much needed energy production facilities.

United States' and other non-EU investors receive less advantageous treatment than domestic or other EU competitors in the banking, mining, maritime, air transport, and broadcast industries (which were opened to EU citizens due to EU single market rules). Extensive red tape and contract delays also are major impediments to U.S. investments in Greece. There are national security-related restrictions for non-EU investors on land purchases in border regions and on certain islands.

Italy: In conformity with EU Treaty Article 43, Italy provides national treatment to foreign investors except in a few instances. The exceptions include limits to access to government subsidies for the film industry, some additional capital requirements for banks from non-EU countries and restrictions on non-EU airlines operating domestic routes. Firms incorporated in EU countries may offer investment services in Italy without establishing a presence. U.S. and other firms from non-EU countries may operate based on authorization from the Italian Companies and Stock Exchange Commission, the security oversight body (CONSOB, Italy's equivalent of SEC). CONSOB may deny authorization to firms from countries that discriminate against Italian firms. Finally, foreign insurance firms must prove that they have been active in life and property insurance for not less than ten years and must appoint a general agent domiciled in Italy.

Portugal: Most foreign investments in Portugal are only subject to *post facto* registration. However, Portugal retains the discretion to limit foreign investment, on a case-by-case basis, in state-owned companies that are being privatized. To date, this prerogative has not been exercised.

United Kingdom: On December 1, 2001, the Financial Services Authority (FSA) assumed its full powers and responsibilities under the Financial Services and Markets Act of 2000. In its role as the single statutory regulator responsible for deposit-taking, insurance, and investment business, the Authority requires that key staff at regulated firms be approved by the Authority. Although the rules apply to all banks, globally managed banks had noted the rules would pose a large administrative burden on them, and require that hundreds of bankers already working in the UK seek FSA approval. However, firms and individuals that held equivalent status under the old legislation are being grand-fathered, which means that firms can carry on without re-applying for permission or approval.

ELECTRONIC COMMERCE

The European Union currently maintains no significant barriers to electronic commerce. However, U.S. businesses and the U.S. Government continue to monitor potential problems related to data privacy regulation and taxation of electronic transactions.

Data Privacy

Data privacy retains a high profile in transatlantic relations. There are three relevant EU Directives: a horizontal Directive on Data Protection that was adopted in 1995 and took effect in October 1998; a telecommunications-specific Data Privacy Directive that was adopted in 1997 and took effect in October 2000; and a Directive on Privacy and Electronic Communications that extends coverage to all electronic communications passed in July 2002 and was to be transposed into Member State laws by October 2003. Based on the Commission First Report of May 2003 on the transposition of the Data Protection Directive of 1995, only four Member States passed national laws implementing the Directive within the October 1998 deadline. France still has not passed legislation necessary to bring its old data protection law of 1978 fully into line with the Directive. Ireland has passed legislation recently, which has yet to be notified to the Commission.

The horizontal Directive seeks to protect individual privacy with regard to the storage, processing, and transmission of personal data, while still permitting the free flow of data within the EU. It allows transmission of data to third countries, if those countries are deemed by the EU to provide an adequate level of protection, if the recipient can provide other forms of guarantee (e.g., a contract) that ensures adequate protection, or if the data transfer falls within the limited exceptions in the Directive.

The United States and the European Commission concluded in July 2000 a Safe Harbor arrangement that bridges the differences between the EU and U.S. approaches to privacy protection and will help ensure that data flows are not interrupted. Under the Safe Harbor arrangement, U.S. companies can voluntarily participate in the Safe Harbor by self-certifying to the Department of Commerce. Currently, only entities whose activities fall under the regulatory authority of the Federal Trade Commission or the Department of Transportation are eligible to participate in the Safe Harbor. Whether or how other sectors, in particular financial services (banks, insurance, credit unions), telecommunications common carriers and not-for-profits, will be considered in relation to Safe Harbor will be determined in the future. The U.S. Department of the Treasury and the EU Commission agreed at the time the safe harbor arrangement was concluded that separate talks should continue on bringing the benefits of an adequacy finding to the financial services industry. Both sides agreed that it was essential to take into account the additional privacy protections applicable to U.S. financial institutions that would be implemented in 2001 under the Gramm-Leach-Bliley Act of 1999. Discussions on this issue are ongoing.

The telecommunications Data Protection Directive addresses issues such as the storage of customer data and gives consumers rights related to unsolicited calls or faxes as well as inclusion in directories. The new draft privacy Directive proposed in July 2000 includes an update that would expand coverage to all kinds of electronic communications networks and associated services (e.g., Internet services would be covered). It also introduces more stringent restrictions on unsolicited commercial mail and directory services. The proposal has raised a number of questions and practical concerns regarding transnational implications of its implementation on both sides of the Atlantic and its ultimate impact on U.S. service providers remains to be seen. The Directive has made it harder for legitimate direct marketing via the Internet, which is expected to have a detrimental effect on e-commerce. In addition, business has concerns with the proposal in that it will increase the amount of data they have to retain and ensure confidentiality of, thereby making it technically and financially more burdensome.

Taxation of Electronic Commerce

On May 7, 2002, the European Union (Council) adopted Directive 2002/38/EC setting out the principles of the system to collect Value Added Tax on electronically supplied services (commerce transaction). While EU Member States have agreed that no new or additional taxes should be imposed on electronic commerce, they found that existing taxes should be adapted and applied. In each EU Member State, a domestic value-added tax (VAT), which is a consumption tax, is payable on deliveries of goods and the provision of services. In this regard, the Council agreed that electronic commerce transactions that do not involve the delivery of physical goods are a provision of a service subject to VAT, no matter whether the services are supplied from inside or outside the EU. From July 1, 2003, U.S.-based companies providing these electronically supplied services (ESS) to EU-based final consumers have had to collect VAT. The Directive sets out an indicative list of the types of services covered, which includes digitally downloadable software, web-site hosting, on-line music delivery, and distance teaching. U.S.-based providers of these services to EU based consumers will be able to choose from three options in order to comply with the new rules. They can establish in the EU (in effect become an EU company), register in each Member State where they make supplies of ESS (the standard business registration for non-established businesses) or use a Special Scheme set up by the Directive that allows non-EU based suppliers to choose a single VAT authority with which to conduct their VAT affairs. (The proposed Directive would require that non-EU suppliers register with a VAT authority in a single Member State.) The VAT on digital products supplied from outside the EU would be levied at the rate applicable in the customer's country of residence, and VAT revenue then reallocated from the supplier's country of registration to that of the customer.

U.S.-based businesses have expressed concern about the potentially discriminatory effects of this Directive. Specifically, U.S. businesses are concerned that the proposed Directive treats U.S. suppliers of electronically supplied services (digital products) less favorably than their EU counterparts. For instance, unless the U.S. supplier establishes a permanent base in the EU it would be obliged to collect and remit VAT at 15 different rates depending on the consumer’s Member State of residence. By contrast, EU suppliers would only be obliged to collect and remit VAT at the rate of the single Member State in which that supplier is registered. Moreover, the Directive appears to create more stringent administrative burdens for U.S. suppliers because they need to check their customer’s location prior to each sale a difficult task in a real time online environment (including strict verification and data storage requirements).

Member State Practices

Austria: Although Austria was among the first EU countries to introduce a comprehensive law on electronic signatures in 1999, private businesses complain that widespread use of the practice is hampered because only government and quasi-government agencies can accredit firms that provide qualified signature certificates.

OTHER BARRIERS

Subsidies for Fruit and Canned Fruit

EU shipments of heavily subsidized canned peaches continue to distort world markets to the detriment of U.S. producers. Similarly, EU subsidies for the production of prunes, table grapes, cherries, and clementines affect U.S. exports to the EU and globally. 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. Under the EU's current subsidy regime, a per-ton payment is made directly to producer organizations such as cooperatives. The United States will continue to monitor EU subsidies to this sector, evaluate their trade-distorting effects, and monitor other areas of interest to our agricultural sector, for example, horticulture, grains, pork, and beef.

Vitamins and Health Food Products

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.

GHANA

TRADE SUMMARY

The U.S. trade surplus with Ghana was $128 million in 2003, an increase of $51 million from the $76 million surplus in 2002. U.S. goods exports to Ghana in 2003 were $209 million, up 8.7 percent from the previous year; U.S. imports from Ghana were $82 million, down 29.6 percent. Ghana is currently the 91st largest export market for U.S. goods. The stock of U.S. foreign direct investment (FDI) in Ghana in 2002 was $264 million, down from $295 million in 2001.

IMPORT POLICIES

Ghana has progressively eliminated or reduced its import quotas, tariffs, and import licensing requirements through the structural adjustment program it initiated in the early 1980s. The import licensing regime was eliminated in 1989, but some imports such as drugs, mercury, gambling machines, handcuffs, condensed or evaporated milk, arms and ammunition, and live plants and animals require special permits. The tariff system, which has been simplified and harmonized with the Economic Community of West African States (ECOWAS) trade liberalization program, has only four *ad valorem* import duties: 0 percent, 5 percent, 10 percent, and 20 percent. The standard rate of duty is 20 percent. The zero-rate duty continues to apply to agricultural and industrial machinery, solar, wind, and thermal energy, and educational materials. In 2002, the government increased the duty from 0 percent to 5 percent for imported fish, selected commercial vehicles, and selected building materials. A one percent processing fee applies to zero-rated goods, except on education, health, and agriculture sector goods. In 2002, an additional one percent examination fee was levied on imported used vehicles. Importers are charged 0.04 percent of the sum of the free on board (F.O.B.) value of goods and the value added tax (VAT) for the use of the automated clearing system, the Ghana Community Network (GCNet), although they have indicated they would prefer a flat fee on each transaction.

In 2000, Ghana imposed an additional 0.5 percent ECOWAS levy on all goods originating from non-ECOWAS countries. In 2001, under the Export Development and Investment Fund Act (Act 582), Ghana instituted a 0.5 percent levy on all non-petroleum products imported in commercial quantities. Since the end of 1998, a 12.5 percent value added tax (VAT) has been tacked on the duty-inclusive value of all imports, with a few selected exemptions. The National Health Insurance Law, which was passed in September 2003, is expected to increase the VAT to 15 percent, but implementation is not likely before mid-2004. Additional excise taxes ranging between 5 percent and 140 percent are applied to malt drink, water, beer, and tobacco products.

In August 2002, Ghana abolished its 10 percent tax on selected “non-essential” imports in an effort to bring its tariff structure into harmony with ECOWAS and WTO provisions. In February 2003, the government considered adding 20 percent to the existing import duty on rice and poultry products but decided against it following consultations with its trading partners. However, the government did increase import duties from 10 percent to 20 percent on some imported finished products for which locally manufactured products are available. These include cement, doors, windows and their frames, corrugated iron sheets, and nails. In August 2002, the ban on importing older vehicles was replaced with a system of penalties ranging from 5 percent to 50 percent of the C.I.F. (cost, insurance, freight) value. All communication equipment is subject to import restrictions.

In May 2002, the WTO and Ghana’s Customs Excise and Preventive Service (CEPS) signed an agreement on customs valuation and trade facilitation to simplify customs procedures and facilitate swift clearance of goods. In April 2000, Ghana transitioned from using pre-shipment inspection to a destination inspection scheme. Four inspection companies currently have contracts with the government to perform the destination inspection.

In order to develop competitive domestic industries with exporting capabilities, the Ghanaian government continues to support domestic private enterprise with financial incentives and tax holidays. 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. While tariff reductions have increased competition for local producers, the reductions have also reduced producer costs for imported raw materials and inputs, and there is increasing demand for further tariff reductions, especially on inputs used by local businesses. Ghana has responded by reducing the import duty on livestock ingredients and inputs for textiles production. Tariff information is available on the CEPS website (www.cepsghana.org).

STANDARDS, TESTING, LABELING AND CERTIFICATION

Ghana's domestic standards are currently mandatory. Ghana has issued its own standards for most products under the auspices of its testing authority, the Ghana Standards Board (GSB), which subscribes to accepted international practices for the testing of imports for purity and efficiency. The GSB has promulgated more than 250 Ghanaian standards and adopted more than 3,057 foreign 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 harmonize with international standards and move away from its mandatory domestic standards, except for products that raise environmental or human health or safety concerns.

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, with the exception of imported skim milk in containers. There is currently a temporary ban on the importation of fish, except canned fish. Imported turkeys must have their oil glands removed. Coded expiration dates on U.S. products cause delays but are accepted by the GSB.

GOVERNMENT PROCUREMENT

Ghana is not a signatory to the WTO Agreement on Government Procurement. Currently, Ghana uses several guidelines to purchase equipment and supplies, which can make the process confusing, especially for foreign businesses. However, in December 2003, Parliament passed a public procurement law that will codify guidelines, enhance transparency and efficiency, and give administration of procurement to a central body. In response to increased demands for government support of local industries, beginning in August 1999 Ghana allowed tenders to be awarded to local suppliers as long as the prices of the "Made in Ghana" goods were not more than 12.5 percent higher than imported ones. Government contractors must, if possible, source at least 40 percent of their materials locally.

EXPORT SUBSIDIES

The Ghanaian government does not grant direct export subsidies but does use preferential credits and tax incentives to promote exports. The Export Development Investment Fund administers financing on preferential terms using a 15 percent rate of interest rather than much higher 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 ten years of business operation in an EPZ, after which the tax rate climbs to 8 percent (the same as for non-EPZ companies, except for those producing traditional exports, e.g. cocoa beans, logs and lumber). The tax rate for non-exporting companies is 32.5 percent.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Ghana is a party to the Universal Copyright Convention and a member of the World Intellectual Property Organization (WIPO), the African Regional Industrial Property Organization, and the World Trade Organization. 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. In December 2003, Parliament passed five of the six bills designed to bring Ghana into compliance with TRIPS requirements. The new laws are: Trade Marks, Patents, Layout-Designs (Topographies) of Integrated Circuits, Geographical Indications, and Industrial Designs. The government expects Parliament to pass the remaining Copyright bill in 2004. In cases where trademarks have been misappropriated, the price and quality disparity is usually readily apparent. Computer software bootlegging does take place, but there are no data available to measure this practice. Pirating of videotapes may affect U.S. exports, but the evidence suggests that such piracy is not done on a large scale. There is no significant export market for books, cassettes, or videotapes pirated in Ghana.

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 these services to be provided through joint ventures with Ghanaian nationals. The government has allowed a duopoly to dominate both domestic and international services but has announced plans to open up the market by allowing additional carriers in 2004. The government has adopted a reference paper on regulatory principles, which obliges Ghana, among other things, to ensure cost-oriented interconnection with its major suppliers. The National Communications Authority, established to regulate the market, has yet to become an effective mechanism to resolve complaints of anticompetitive practices by Ghana Telecom, the partially state-owned national telecommunications operator.

Ghana allows up to 60 percent foreign ownership in the insurance sector. This cap does not apply to auxiliary insurance services. Ghana requires a high capital requirement for foreign firms to participate in the insurance sector but allows them to provide a full range of services.

There are no limits on foreign participation in banking and other financial services. However, 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. Foreign-owned banking businesses face higher capital requirements than Ghanaian-owned banks (50 billion cedis versus 25 billion cedis, approximately $5.6 million and $2.8 million, respectively).

INVESTMENT BARRIERS

The 1994 Investment Code (Act 478) eliminates the need for prior project approval of foreign investors by the Ghana Investment Promotion Center. Registration, essentially for statistical purposes, is normally accomplished within five working days. Investment incentives are no longer subject to official discretion; they have been made automatic through incorporation into the corporate tax and customs codes. Incentives include exemption from import tariffs for plant and equipment and generous tax breaks. Work visa quotas for businesses, though relaxed, remain 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: 1) $10,000 for joint ventures with a Ghanaian; 2) $50,000 for enterprises wholly-owned by a non-Ghanaian; 3) $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 government, at its peak, controlled more than 350 state-owned enterprises, but nearly 300 had been privatized by the end of 2000 under the privatization program of former President Rawlings. The Kufuor government has reconstituted the Divestiture Implementation Committee, and by the end of 2003, total divestiture transactions numbered 318. Thirty-six remaining state-owned enterprises are slated for divestiture.

U.S. direct investment in Ghana is predominantly in the fabricated metals sector, but there is also significant U.S. investment in the petroleum, seafood, telecommunications, energy, chemicals, and wholesale trade sectors. Wage rates in the metals and mining sectors are substantially higher than in other industries in the Ghanaian economy. U.S. and other foreign firms in Ghana are required to adhere to Ghanaian labor laws, including restrictions on the number of expatriates employed.

Some U.S. investors operating in Ghana continue to struggle with longstanding trade disputes that are both exhausting and expensive. Most investors do not encounter such disputes.

ELECTRONIC COMMERCE

Barriers to electronic commerce are mainly due to an inadequate financial infrastructure for electronic commerce to thrive. 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.

OTHER BARRIERS

U.S. businesses interested in Ghana should also be aware of other barriers such as limited and costly credit facilities for local importers and freight rates that are higher than those for potential European competitors. Limited Ghanaian purchasing power dampens demand for U.S. goods and services. 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 also hurt the business climate. The Customs Service is still phasing in an automated customs declaration system that was established in the last quarter of 2002 to facilitate customs clearance. It has not yet had the desired impact because complementary services from government agencies, banks, destination inspection companies, and security services are not up to speed.

The high cost of local financing (with short-term interest rates currently above 25 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 residual effects of a highly regulated economy and occasional lack of transparency in government operations create an element of risk for potential investors. Bureaucratic inertia is sometimes 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.

GHANA

Corruption historically has been an issue with which foreign firms have had to contend. However, in keeping with his intent to make Ghana an investor-friendly country, President Kufuor has instituted a policy of “zero tolerance” for corruption, and has confirmed his commitment to free markets and trade, saying, “Ghana is open for business.”

GUATEMALA

TRADE SUMMARY

The U.S. trade deficit with Guatemala was $672 million in 2003, a decrease of $80 million from 2002. U.S. goods exports in 2003 were $2.3 billion, up 11.2 percent from the previous year. Corresponding U.S. imports from Guatemala were $2.9 billion, up 5.3 percent. Guatemala is currently the 40th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Guatemala in 2002 was $391 million, up 0.5 percent from 200l.

IMPORT POLICIES

Free Trade Agreement

The United States and four Central American countries (El Salvador, Guatemala, Honduras, and Nicaragua) concluded negotiations on the U.S.-Central American Free Trade Agreement (CAFTA) in December 2003. The United States and Costa Rica on January 25 finalized Costa Rica's participation in the CAFTA. The United States and the Dominican Republic concluded market access negotiations in March 2004 to integrate the Dominican Republic into the CAFTA.

The CAFTA will not only liberalize bilateral trade between the United States and the region, but will also further integration efforts among the countries of Central America, removing barriers to trade and investment in the region by U.S. companies. The CAFTA will also require the countries of Central America to undertake needed reforms to alleviate many of the systemic problems noted below in areas including customs administration; protection of intellectual property rights; services, investment, and financial services market access and protection; government procurements; sanitary and phytosanitary (SPS) barriers; other non-tariff barriers; and other areas.

Tariffs

Guatemala's tariffs on most goods from outside the Central American Common Market are currently within the zero to 15 percent range, though there are exceptions of up to 21 percent and 40 percent in the areas of footwear and alcoholic beverages. The average applied rate is approximately 5 percent to 6 percent. Other exceptions include agricultural commodity imports in excess of any applicable tariff rate quota (TRQ). Once CAFTA goes into effect, about 80 percent of U.S. industrial and commercial goods will enter Guatemala duty free, with the remaining tariffs being eliminated within ten years.

The CAFTA will eliminate tariffs on virtually all agricultural products within a maximum of fifteen years (dairy in 20 years and rice and poultry in 18). Textiles and apparel will be duty-free and quota-free immediately if they meet the Agreement's rule of origin, promoting new opportunities for U.S. and Central American fiber, yarn, fabric and apparel manufacturing. The Agreement requires transparency and efficiency in administering customs procedures, including the CAFTA rules of origin. Under the CAFTA, Guatemala commits to ensure procedural certainty and fairness and all parties agree to share information to combat illegal transshipment of goods.

Non-tariff Barriers

The government of Guatemala committed to implement the WTO Customs Valuation Agreement by November 2001. However, in December 2001, the WTO Committee on Customs Valuation granted Guatemala's request to retain the use of minimum import values for used clothing and used vehicle products until November 21, 2004. Once the CAFTA is implemented, Guatemala will have to abide by the agreement's transparent customs valuations provisions.

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.

Under the CAFTA, Guatemala agreed to apply the science-based disciplines of the WTO Agreement on SPS measures, and will move toward recognizing export eligibility for all plants inspected under the U.S. food safety and inspection system. Through the work of this group, additional commitments to resolve specific unjustified measures restricting trade between Guatemala and the United States have also been agreed. When the United States and Central America launched the CAFTA negotiations, they initiated an active working group dialogue on SPS barriers to agricultural trade that met alongside the negotiations to facilitate market access. The objective was to leverage the impetus of active trade negotiations to seek difficult changes to the countries' SPS regimes. The SPS Working Group remains committed to continue working on resolution of outstanding issues even after the negotiations concluded.

GOVERNMENT PROCUREMENT

Guatemala is not a party to the WTO Government Procurement Agreement. Currently, Guatemala's Government Procurement Law requires most government purchases over $113,000 to be submitted for public competitive bidding. Contracts can be awarded when there is only one bidder. The government often declares certain projects a matter of national emergency, thereby avoiding the competitive bidding process. Foreign suppliers no longer need to meet pre-qualification requirements, though it is sometimes required of their local counterparts. Bids must be submitted through locally registered representatives, a bureaucratic process that can place foreign bidders at a competitive disadvantage. Additionally, U.S. companies have alleged that significant corruption exists in the public procurement process and is a barrier to entry.

Under the CAFTA, Guatemala will grant U.S. suppliers non-discriminatory rights to bid on contracts from most Central American government entities, including key ministries and state-owned enterprises. The CAFTA requires fair and transparent procurement procedures, such as advance notice of purchases and timely and effective bid review procedures. The CAFTA anti-corruption provisions ensure that bribery in trade-related matters, including in government procurement, is specified as a criminal offense under Central American and U.S. laws.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Although Guatemala passed and implemented greatly improved IPR legislation in November 2000, the legislative framework was seriously weakened by a November 2002 law that suspended the processing of pharmaceutical and chemical patents until 2005, and removed protection for test data submitted to obtain market approval for those products. A series of legislative initiatives and court challenges seeking to eliminate data protection provisions of the law have also ensued. Effective enforcement of existing laws remains a problem.

However, the CAFTA provisions will strengthen Guatemala's IPR protection regime to conform with, and in many areas exceed, WTO norms and will criminalize end-user piracy, providing a strong deterrence against piracy and counterfeiting. The CAFTA will require Guatemala to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. It will also mandate both statutory and actual damages for copyright infringement and trademark piracy. This serves as a deterrent against piracy, and ensures that monetary damages can be awarded even when it is difficult to assign a monetary value to the violation.

Patents

Guatemala's 2000 Industrial Property Law also made improvements to the protection afforded to patent holders, including by increasing the term of protection for a patent to 20 years from the date of filing the patent application. It increased the number of products and services that are considered patentable, including living organisms, commercial plans and chemical compounds or compositions. This law provided patent protection for pharmaceutical and agricultural products for the first time and established a mailbox system to process cases filed since 1995. U.S. pharmaceutical firms have been concerned about the constitutional challenges to the current laws. However, the CAFTA obligations will strengthen protection of test data and trade secrets submitted to a government for the purpose of product approval by requiring that they be protected against unfair commercial use for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals.

Copyrights

Piracy of copyrighted material, including videos and software, remains widespread. Some progress has been achieved in reducing the incidence of pay television piracy and in concluding valid licensing agreements with copyright holders. Guatemala has ratified the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). CAFTA enforcement provisions are designed to help reduce copyright piracy.

Trademarks

Exclusive rights for trademarks are granted on a first-to-file basis, thus permitting third parties to register and gain exclusive use of well-known or famous trademarks. A dispute resolution system has been established in the event that a well-known or famous trademark is granted to a third party. The local Internet domain name registrar does not accept applications for well-known and famous names from applicants who are not the trademark holders as frequently as it once did. Additionally, when receiving an Internet domain name registration, the domain name owner is required to submit the registration to the WIPO online dispute resolution system in the event of a challenge by a third party. CAFTA enforcement provisions are designed to help reduce trademark piracy.

SERVICES BARRIERS

Currently, international telephone traffic must be routed through the facilities of an enterprise licensed by the Guatemalan Superintendency of Telecommunications. U.S. companies have raised allegations of anti-competitive behavior, including unilateral changes of interconnection rates, by the country's dominant fixed line telephone service provider, Telgua, which is a subsidiary of Telmex of Mexico. Guatemala's courts have ruled against Telgua in those cases where a verdict was reached, but the anti-competitive practices continue. The CAFTA will require that Guatemala further open its telecommunications market to competition on a nondiscriminatory basis.

Foreign banks are currently not permitted to open branches in Guatemala, though they may establish local subsidiaries subject to the conditions of the Monetary Board, including capital and lending requirements based exclusively on the balance sheet of the local subsidiary. The CAFTA provisions will make it easier for U.S. banks to enter the Guatemalan market. U.S. banks will have full rights to establish subsidiaries, joint ventures or branches.

Guatemalan law forbids the operation of foreign insurance companies or the supply by foreigners or foreign companies of many professional services reserved for professionals with locally recognized academic credentials Many professionals must have graduated from a recognized university and must be registered in a professional association. Notary publics must be Guatemalan nationals. Guatemala's National University can validate foreign degrees but often requires additional course work or examinations. Under the CAFTA, as with banks, U.S. financial service suppliers would have full rights to establish subsidiaries, joint ventures or branches for insurance companies. The right to provide professional services will be granted on a reciprocal basis depending on the requirements in individual U.S. states.

INVESTMENT BARRIERS

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, insurance and forestry, although these restrictions are not always enforced. Complex and confusing laws, regulations, red tape, and corruption constitute practical barriers to investment. When the CAFTA is implemented, the agreement will establish a secure, predictable legal framework for U.S. investors operating in Guatemala. Under the CAFTA, all forms of investment will be protected, including enterprises, debt, concessions, contracts and intellectual property. U.S. investors will 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 will be backed 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.

OTHER SIGNIFICANT BARRIERS

Corruption

Past allegations of official corruption, security concerns and an anti-business attitude under the previous administration (there was a change in administration in January 2004) may have weakened investors' confidence and affected investment and trade decisions related to Guatemala. Anti-corruption provisions in the CAFTA aim to help alleviate these problems in many areas related to trade and investment, including making it a criminal offense to bribe a public official in any manner related to trade.

GULF COOPERATION COUNCIL

TRADE SUMMARY

The Gulf Cooperation Council (GCC) is an economic and political policy-coordinating forum for the six member states (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (UAE)). Since the GCC cannot impose trade policies upon the member states, each is free to pass and enforce its own trade laws. However, there has been growing cooperation among GCC member states on issues such as customs duties, intellectual property protection, standards-setting, and intra-GCC investments.

As part of an overall plan for greater GCC economic integration, the six GCC members implemented a Customs Union in January 2003, unifying tariffs throughout the GCC. In theory, the Customs Union means the members have adopted unified customs laws and procedures, single point-of-entry with internally free movement of goods, and treatment of goods as national origin within the GCC. However, the practical details of numerous issues have yet to be resolved, including, but not limited to, tariff exemptions, standards, and revenue distribution. The GCC has set 2010 as the target date for adoption of a single currency, with 2005 as a deadline for agreement on convergence criteria.

The U.S. trade deficit with the GCC was $12.0 billion in 2003, a increase of $5.2 billion from 2002. U.S. goods exports in 2003 were $10.9 billion, up 3.6 percent from the previous year. Corresponding U.S. imports from the GCC were $22.9 billion, up 32.3 percent. The stock of U.S. foreign direct investment (FDI) in the GCC in 2002 was $8.2 billion, up from $6.8 billion in 2001.

IMPORT POLICIES

Tariffs

At the December 2001 Summit, GCC Heads of State adopted an across-the-board common external tariff of five percent for most products to start in January 2003 as part of the Customs Union agreement. The GCC states also agreed to develop a list of products to which a higher tariff will apply. Currently, some GCC countries maintain tariffs of 15 percent to 20 percent or higher on imported products. However, tariffs on tobacco, pork, and alcohol products can exceed 100 percent in countries where importation of such products is permitted.

In anticipation of the GCC Customs Union, Bahrain reduced customs tariffs to five percent in January 2002 for imported goods, except alcohol (125 percent) and tobacco (100 percent), and exempted a list of 417 food and medical items from customs duties entirely. Oman maintains a maximum five percent tariff on most imported consumer products, including automobiles. However, Oman's tariff on tobacco, pork, and alcohol products is 100 percent. On September 1, 2003, Kuwait increased tariffs from 4 percent to 5 percent on the vast majority of imported goods. Exceptions include 417 food and agriculture items, which will remain free of duties, as well as tobacco products, on which tariffs will remain at 100 percent.

Qatar maintains a five percent tariff on a wide range of products. Basic food products such as wheat, flour, rice, feed grains, and powdered milk are exempted from tariffs. The tariff on alcoholic beverages and tobacco products is 100 percent and on 12-millimeter steel bars is 20 percent. 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.

In May 2001, the Saudi Supreme Economic Council reduced Saudi Arabia's tariff rate for most products to five percent from the pre-existing standard rates of 12 percent and 20 percent. The Saudi government also identified a list of 483 products to which a 12 percent tariff applies in order to protect local industries. Certain textile imports, including carpets but excluding apparel, are among the products to which the 12 percent rate applies. A number of Saudi infant industries enjoy 20 percent tariff protection, including sesame extract, furniture, cooking salt, edible offal, rabbit meat, mineral water, and plastic pipes. In addition, nine agricultural products are subject to a 25 percent tariff on a seasonal basis to protect local production. Saudi Arabia also imposes a 100 percent tariff on dates, long-life milk products, and cigarette imports.

Import Licensing

Locally established companies must be at least 51 percent Bahraini-owned to receive import licenses for retail sales in Bahrain. Foreign companies established before 1975 may be exempt from this rule under special circumstances. Bahrain requires that pharmaceutical products be imported directly from a manufacturer with a research department and that the products be licensed in at least two other GCC countries, one of which must be Saudi Arabia. Drugs and medicines may be imported only by a drug store or pharmacy licensed by the Ministry of Commerce after approval by the Ministry of Health. Bahrain prohibits the importation of weapons (except under special license), pornography, wild animals, radio-controlled model airplanes, foodstuffs containing cyclamates, and children’s toys containing methyl chloride (and other articles declared injurious by the Ministry of Health). Bahrain is also taking steps to ban the import of 127 chemicals.

Kuwait prohibits the importation of alcohol and pork products, and requires a special import license for firearms. In Oman, companies that import goods must register with the Ministry of Commerce and Industry, and must be at least 51 percent Omani-owned. Importation of certain classes of goods, such as alcohol, firearms, narcotics, and explosives require a special license, and media imports are subject to censorship. In the UAE, only firms with the appropriate trade license can engage in importation, and only UAE nationals can get such a license.

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 specific 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. The importation and distribution of alcohol is the exclusive right of the Qatar Distribution Company (QDC). Pork and pork derivatives may not be imported.

In Saudi Arabia, the importation of certain articles is either prohibited or requires special approval from competent authorities. Specifically, the importation of alcohol, firearms, illegal drugs, and pork products is prohibited, and imports of agriculture seeds, live animals, fresh and frozen meat, books, periodicals, movies, tapes, religious books and tapes, 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

Bahrain

Bahraini customs requires commercial invoices in duplicate in Arabic or English, a certificate of origin in Arabic or English (produced by a Chamber of Commerce and endorsed by an Arab Embassy), a copy of the insurance policy where applicable, and four copies of bills of lading (including gross weight and dimensions) and the statistical statement (in case that commodity is to be shipped to its final destination). For food items, presentation of a manufacturer’s certificate stating that the goods do not contain cyclamates is required. All imported beef and poultry products require a health certificate from the country of origin and a halal slaughter certificate issued by an approved Islamic center in the United States.

Kuwait

In Kuwait, the clearing process can be manually intensive, requiring numerous transfers, vast paper work, and an array of duplications. This process is prone to errors and fraud, since human judgment plays a major role in processing the transactions, especially auditing, valuation, and inspection. In most instances, the same task is repeated two or more times at different stages of the process in order to capture customs-related data or to validate documentation. The Customs Department is currently undergoing a major privatization effort that will include implementation of a state-of-the-art computer system, which should make the import process less complicated.

Oman

In Oman, with the exception of 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. For example, Arab League boycott-certification is no longer required. However, only Omani nationals are permitted to submit documents to clear shipments through customs, drive vehicles shipping commodities and products from wholesale centers, or own and operate food retail establishments.

Qatar

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 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 legalize all shipping documents.

Saudi Arabia

To export products to Saudi Arabia from the United States, the U.S.-Saudi Business Council and the Saudi Embassy or Consulate must authenticate the documentation. 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. Products that are regulated by the Saudi Arabian Standards Organization (SASO) must have a certificate of conformity issued through Saudi Arabia's International Conformity Certification Program (ICCP) before entering the country. The categories of regulated products include, but are not limited to, playground, amusement and fairground equipment, toys, electrical elements and electronics, automotive, and chemicals.

UAE

Since July 1998, the UAE has required that documentation for all imported products be authenticated by the UAE Embassy in the United States. There is an established fee schedule for this authentication. Without the validation in the United States, customs authorities will apply the fee schedule when the goods arrive in the UAE.

Customs Valuation

Bahrain has notified the WTO Customs Evaluation Committee of its legislation and started implementing the Agreement in January 2002. Kuwait began implementation of the Agreement in September 2003. Oman implemented the Agreement when it joined the WTO in 2000, and currently is working on further enhancing its customs valuation system. Qatar has not yet implemented the Agreement. The UAE was granted an extension to delay implementation until the start of 2004.

Textiles

Import tariffs on textiles in Bahrain are five percent. Textiles accounted for approximately seven percent of Kuwait's imports in 2003, and tariffs are five percent. Textile manufacturing represents approximately 11 percent of the UAE's gross domestic product, and Ministry of Economy officials have said that the textile sector is key to the UAE's efforts to diversify its oil-dependent economy. The UAE has attracted a number of garment manufacturers because of its close proximity to the Indian subcontinent and the lack of corporate or personal income taxes. The majority of garment factories are located in free trade zones, where they operate exempt from UAE commercial law and can be owned 100 percent by foreigners.

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, originally targeted for adoption by 2006. However, each country currently applies either its own standard or a GCC standard, causing confusion among business.

GCC standards and labeling practices have restricted trade in many of the GCC countries. In particular, shelf-life standards are set at arbitrary levels that restrict imports of a variety of food products of interest to U.S. suppliers. The situation has deteriorated in recent years, as shelf life durations for a large variety of food products have been shortened to one year. In some cases, this time frame is one-half the previous artificially set period. Further, a product must have more than half of its defined shelf life remaining at the time of importation. Recent developments are more troubling, with port officials detaining imported food products not arriving within three months of production. While detention is short, the penalty effect is steep as the product's marketable life is shortened. To avoid such difficulties, importers are sourcing from nearby suppliers the more perishable, shorter-life products. The removal of GCC shelf life standards could significantly increase U.S. food exports to the region.

The Gulf Standards and Metrology Organization (GSMO), the central accreditation organization for the GCC, adopted a resolution in October 2002 to implement a AGCC Conformity Certification Scheme for Countries Exporting to GCC Member Countries, a conformity assessment program similar to Saudi Arabia's current International Conformity Certification Program (ICCP). Saudi Arabia initiated the ICCP in 1995 as a pre-shipment certification program to monitor and control the quality of certain products imported into the country. The ICCP currently applies to 76 regulated consumer product lines and is managed by a private firm that inspects and tests shipments bound for Saudi Arabia on behalf of Saudi Arabia Standards Organization (SASO). In December 2002, Kuwait notified the WTO of its proposal to implement the ICCP as well.

The United States and many other WTO members have raised concerns about the ICCP during meetings of the WTO Committee on Technical Barriers to Trade (TBT) and as part of Saudi Arabia's efforts to join the WTO. Among other concerns, the United States and many other exporting countries believe the ICCP is not consistent with the WTO TBT Agreement, accords favorable treatment of local products manufactured in the Gulf Region, is more trade-restrictive than necessary, charges *ad valorem* fees, and lacks transparency.

Although the proposal for a AGCC Conformity Certification Scheme for Countries Exporting to GCC Member Countries is still under consideration by member countries, Saudi Arabia announced in October 2003 that it would abandon the ICCP in favor of a new, yet to be determined, system. The United States is working to develop a constructive dialogue with GCC countries on this issue and establish alternative regulatory practices that address clearly-identified concerns raised by GCC countries, while also recognizing a country's right to take appropriate measures to ensure the health and safety of its citizens and the safety of both imported and domestic products.

Bahrain

Bahrain has replaced its product shelf-life requirements, a major impediment to U.S. processed food exports to the Gulf region, with international (Codex) standards. Food labels must include product and brand names, production and expiration dates, country of origin, name and address of the manufacturer, weight in metric units, and a list of ingredients and additives in descending order of importance. All fats and oils used as ingredients must be listed in Arabic or Arabic and English. Although stickers providing such information are not legally accepted, if they provide required labeling information exceptions normally are made. Small quantities of products with English-only labels may be approved for import on a case-by-case basis for test marketing purposes.

Kuwait

Kuwait maintains restrictive standards that impede the marketing of some exports. Kuwait strictly enforces shelf life standards on 44 of 75 food products listed in Gulf Standard 150/1993, but recognizes the manufacturer's set shelf life on all other food products. Shelf life requirements for processed foods are far shorter than necessary to preserve freshness and result in those U.S. goods being non-competitive with products shipped from countries closer to Kuwait. Meanwhile, 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 October 2002, Kuwait announced it was considering adopting an import standards program similar to Saudi Arabia's International Conformity Certification Program (ICCP). The Kuwaiti government has said the program, which would apply to between 15 and 45 consumer products (primarily electrical goods and motor vehicle parts), was being implemented because Kuwait lacked laboratory facilities to properly conduct its own inspections. In December 2002, Kuwait submitted a proposal for this program to the WTO. Kuwait implemented this new program on March 17, 2003, dividing imports under the program into five groups: (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. The United States, and many other WTO members, have raised concerns about the ICCP during WTO TBT Committee meetings, as indicated earlier in this section.

Oman

In its accession to the WTO, Oman committed to eliminate mandatory shelf-life standards for shelf-stable foods from the date of accession and revise its shelf-life requirements program to meet the substantive requirements of relevant WTO Agreements. Oman also agreed to establish regulations and procedures in line with international norms for highly perishable refrigerated food products and gradually replace remaining shelf-life requirements with a science-based regulatory framework by December 31, 2000. In late 2000, Oman announced by Ruler Decree that all labeling of food products should conform to labeling standards as defined by CODEX and that all labels should be in Arabic.

Qatar

Most Qatari standards are derived from GCC standards. In October 2002, Qatar established a General Authority for Standards and Specification to replace the Standards Office of the Ministry of Economy and Commerce. The Ministry of Health provides input on standards related to public health issues, and Qatar enforces shelf life standards for about 75 food products. Qatar also requires importers to comply with self-life standards defined in Gulf Standard 150/1993, Part II, although this standard was never officially endorsed. Food products must arrive at the destination with at least half the shelf life remaining. Shelf-life validity of all foodstuffs should not be less than six months at the time of entry of the products into Qatar. All foodstuffs are examined at government central laboratories before they are distributed to consumers.

Saudi Arabia

In Saudi Arabia, the Saudi Arabian Standards Organization (SASO) imposes shelf life requirements on food products. In practice, the Saudi government requires imported food products to arrive in port with at least one-half of their shelf life remaining, calculated from the date of production. Over the past few years, SASO has shortened the shelf life duration for baby foods, eggs, stuffed cookies, chilled meats, and some snack foods, all products of interest to U.S. exporters.

Saudi Arabia has taken a number of actions over the past several years that inaccurately implied a health or safety risk associated with U.S. products and have seriously disrupted U.S. exports, including import bans on rice, poultry, beef, lamb, and livestock offal, therapeutic medicines used in animal feed, and the entire range of Firestone tires. After extensive interventions by U.S. Government officials and Saudi importers, only the ban on therapeutic medicines used in animal feed currently remains in effect. The Saudi Ministry of Commerce also requires that poultry meat and further processed poultry products must be derived from birds that have not been fed animal protein, animal fats, or animal by-products. These measures were taken with little to no advance notice, contrary to Saudi statements to follow the provisions of the relevant WTO agreements.

The Ministry of Commerce imposed a mandatory labeling requirement for agricultural biotechnology products in late 2000, and a requirement that importers sign a pledge stating that they were aware of the possible health risks of such products. After a period of uncertainty, the Ministry of Commerce announced a positive-labeling-only requirement (i.e., containing ingredients derived from biotechnology), rather than requiring labels for both the presence and absence of such ingredients, and delayed implementation until December 1, 2001. The Ministry also imposed a ban on imports of agricultural biotechnology products manufactured from animal products. In November 2002, the Ministry of Commerce agreed to language that it would accept on an export certificate to accompany all shipments containing agricultural biotechnology products entering Saudi Arabia. The export certificate must be issued by a government entity from the country of origin, preferably at the federal level, although the sub-federal level is acceptable. U.S. companies found to be in violation of Saudi Arabia's biotechnology labeling requirements will be banned from exporting the product in question into the Kingdom, but may continue to export other products that have been suitably labeled.

UAE

UAE officials have advocated implementing a conformity assessment program similar to Saudi Arabia's current ICCP on a GCC-wide basis and established the Emirates Authority for Standardization and Metrology (EASM) under the auspices of the Ministry of Finance and Industry in October 2002 to manage issues of standardization arising from the GCC Customs Union.

GOVERNMENT PROCUREMENT

Bahrain

In October 2002, Bahrain implemented a new government procurement law that establishes the basic framework for a transparent, rules-based government procurement system. It provides that certain procurements may be conducted as international public tenders open to foreign suppliers. To implement this law, a tenders board, chaired by a Minister of State, was established in January 2003 to oversee all government tenders and purchases. While the new law sets out the basic elements of its procurement system, the implementing regulations, which have not yet been issued, will be key to gaining a full understanding of how the system is intended to operate. Bahrain is not a signatory to the WTO Agreement on Government Procurement, but is considering acceding to the Agreement.

Kuwait

Kuwait’s government procurement policies specify the purchase of local products when available and prescribe a 10 percent price advantage for local firms in government tenders. However, this local firm price advantage is not commonly applied in government tenders. In January 2002, the Kuwaiti government transformed its offset program into the major vehicle for inducing foreign investment in Kuwait. The new offset requirements will impose an offset obligation on civilian contracts with the Kuwaiti Government of 10 million Kuwaiti Dinar (approximately $33 million) or more and on defense contracts of KD 1 million (approximately $3.3 million) or more. The obligation will amount to 35 percent of the contract value, which must be invested in an approved offset business venture. A supplier must sign a memorandum of agreement with the Offset Program Division at the Ministry of Finance before the contract is signed. The supplier must also present a bank guarantee totaling 6 percent of the value of the offset obligation. Kuwait is not a signatory to the WTO Agreement on Government Procurement.

Oman

Oman provides a 10 percent price preference to tenders that contain 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 firms either already registered in Oman or preselected 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 now requested to be present at the opening of bids, and interested parties may view the process on the tender board website. In the past, bidders’ costs have sometimes increased dramatically when award decisions were delayed, sometimes for years, or when bidding was reopened with modified specifications and, typically, short deadlines. Oman is known to have an offset program only with the United Kingdom. Offsets are not standard adjuncts to government contracts and have not been associated with any U.S. defense transactions, whether commercial or foreign military sales. In 2001, Oman became an observer to the WTO Committee on Government Procurement. As part of its accession to the WTO, Oman has also committed to begin negotiations to join the WTO Agreement on Government Procurement.

Qatar

Qatar gives preferential treatment to contractors that include high local content in bids for government tenders. As a rule, bids must be submitted through local Qatari agents, but in practice certain exceptions exist. Qatar gives a 10 percent price preference to local firms and a five percent price preference to GCC firms in all government procurement. Qatar is not a signatory to the WTO Agreement on Government Procurement.

Saudi Arabia

Saudi Arabia's government contracts on project implementation and procurement are regulated by several royal decrees that strongly favor GCC nationals. However, most defense contracts are negotiated outside these regulations. Under a 1983 decree, contractors must subcontract 30 percent of the value of the contract, including support services, to majority-owned Saudi firms. An exemption is granted in instances where no Saudi company can provide goods and services to fulfill the procurement requirement. In addition, Article 1(d) of the tender regulations requires that Saudi individuals and establishments be given preference over all other suppliers in government procurement. The same regulations also accord preference to other suppliers as long as Saudi nationals hold at least 51 percent of such suppliers' capital. Article 1(e) of the tender regulations gives preference to products of Saudi origin that satisfy the requirements of the procurement, even when the product is inferior to that of a foreign counterpart. Saudi Arabia also 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 involved in government projects are required to establish a training program for Saudi nationals. Some government contracts will also require a minimum amount of subcontracting with Saudi companies. In addition, the Saudi Government may favor Saudi-foreign joint venture companies as opposed to foreign firms and will also support companies that use Saudi manufactured goods and services. However, 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. For large military projects, there is frequently an offset requirement. The Saudi government reportedly has asked for offset commitments in other procurement areas.

Foreign contractors operating solely for the government, if not already registered to do business in Saudi Arabia, are required to obtain temporary registration from the Ministry of Commerce and Industry within 30 days of contract signing. Foreign companies also may be allowed to establish a branch office through the new Foreign Investment Regulations. These branch offices were usually approved only for foreign defense contractors and high-tech companies, while for others, a liaison office may be established to supervise work in Saudi Arabia and to facilitate coordination between the government and home offices.

In June 2003, the Saudi Council of Ministers passed a resolution calling for increased transparency in government-budgeted projects and government contracts. The Saudi Council of Chambers of Commerce and Industry has begun publishing the details of government contracts on its website. The contract information to be published includes: title, parties, date, financial value, brief description, duration, place of execution, point of contact information.

UAE

The UAE does not require that a portion of any government tender be subcontracted to local firms, but it grants a 10 percent price preference for local firms in government procurement. The UAE requires a company to be registered to be invited to receive government tender documents. To be registered, a company must have 51 percent UAE-ownership. However, these rules do not apply on 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 joint venture projects 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. The projects must be commercially viable joint ventures with local business partners, and are designed to further the UAE objective of diversifying its economy away from oil. To date, more than 40 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.

EXPORT SUBSIDIES

Bahrain has phased out most subsidies for export industries, but permits duty-free importation of raw materials for export products and of equipment and machinery for newly established export industries. All industries in Bahrain, including foreign-owned firms, benefit from government subsidized utilities.

The Industrial Bank of Kuwait offers below market rate loans to local industry. Land is also provided at low cost. In the UAE, subsidies for manufacturing firms are available only to those companies with at least 51 percent local ownership.

The Oman Development Bank (ODB) provides export payment guarantees at below local-market interest rates, protecting Oman’s few non-petroleum exporters from payment problems on transactions. These guarantees are subject to ODB approval of buyer and country risk. The Omani Ministry of Commerce and Industry also offers soft loans to projects in the industrial, tourism, health, education, and some other service-related sectors. Formerly interest-free, these loans now bear about a four percent interest rate.

Saudi Arabia contends that it has no export subsidy programs for industrial production. However, the costs for establishing productive facilities in the industrial cities in Saudi Arabia are artificially low. Land is available at little or no cost, and low interest loans are available from the Saudi Industrial Development Fund (SIDF). Because input prices are relatively low in Saudi Arabia, investment in the production of petroleum and related downstream products is comparatively attractive. The Saudi Government contends that low input prices reflect Saudi Arabia’s low costs for domestic oil production. Saudi Arabia began a substantial reduction in wheat production subsidies in 1993. The Grain Silos and Flour Mills Organization (GSFMO) controls wheat production through assignment of production quotas to each of the country’s grain farmers. Farmers can only receive government support prices within preassigned quotas. This conforms with current policy to produce for domestic needs. Production support prices remain $400 per metric ton, a level well above world prices.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The GCC Secretariat has declared protection of intellectual property to be a priority and is working to strengthen GCC laws in the six member states, particularly for patent protection. In this respect, the GCC has adopted a unified patent law with the goal of creating a patent system for all member states. However, concerns remain regarding the law relative to member states’ obligations under the TRIPS Agreement. The GCC patent office in Riyadh has received approximately 3,000 applications since it began accepting patent applications in October 1998, and issued its first patent certificates in late Spring 2001. Its third round of patents is expected in early 2004. The GCC patent office plans to complete a review of all applications within two to three years of receipt. According to GCC patent regulations, once the GCC patent office grants a patent, all GCC states automatically afford its owner protection. The GCC has also indicated an interest in creating common trademark and copyright laws and regimes. However, no progress has been made so far in these areas.

Bahrain

Revised legislation to implement Bahrain's obligations under the TRIPS Agreement is currently under review. Bahrain is also considering joining the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. The government has made dramatic progress in reducing copyright piracy, and there are no reports of significant violations of U.S. patents and trademarks in Bahrain. The government's copyright enforcement campaign, based on inspections, closures, and improved public awareness, began in late 1997 against the video industry, followed by the audio and software industries, with impressive results. The commercial pirated video and audio markets have been virtually eliminated. However, software piracy remains problematic, shifting from retail to end-user violations.

Kuwait

Kuwait's copyright law must be amended to make it consistent with its obligations under the TRIPS Agreement, the government is currently in the process of drafting these amendments, but has not yet set a date by which these will be submitted to the National Assembly. Kuwait's revised patent and trademark legislation took effect on January 14, 2001.

Although improving, enforcement of these laws remains inadequate to prevent widespread marketing of pirated products. In October 2002, the Government's Ministry of Information launched a joint work team that combines forces with the Ministry of Interior and the Kuwait City Municipality in an effort to enhance investigation abilities. Cooperation with owners of intellectual property and raids and seizures against intellectual property violators have increased significantly since then. However, sales of pirated goods remain high in Kuwait, and the use of unauthorized computer software continues in private enterprise. Uncertain and slow judicial action remains a hurdle, and penalties, when imposed, are generally too weak to deter future crimes.

Oman

As part of its WTO accession, Oman adopted the GCC patent law with derogations as needed to comply with its obligations under the TRIPS Agreement. Oman issued a copyright protection law in 1996, 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 effective, as once plentiful pirated video and audiotapes and computer software have disappeared from local vendors' shelves. While some under-the-counter sales of unauthorized software persists, authorities continue to implement credible and effective enforcement against business use of unauthorized software. In late October 2003, 16 Omani companies signed the Business Software Alliance (BSA) Code of Ethics. The Code of Ethics declares that the signatories would neither commit nor tolerate the manufacture or use or distribution of unlicensed software and would only supply licensed software to customers.

Qatar

Qatar was removed from the Special 301 Watch List in 2003 in recognition of the passage of the 2002 Copyright Law (Law No. 7/2002) and its improved, sustained enforcement actions against copyright infringement. In September 2003, the government of Qatar and Microsoft signed a three-year software licensing agreement that covers all Qatari government ministries and agencies. Qatar has recently authorized government officials responsible for IPR enforcement to independently conduct raids and seize pirated material without Ministry of Interior officials. In June 2002, Qatar promulgated Law No. 9 for Trademarks and Geographic Indicators.

In July 2001, the Emir approved Qatar’s accession to the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works. The Copyright Office of the Ministry of Economy and Commerce continues to prosecute resellers of unlicensed video and software.

Qatar utilizes 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 Ministry of Health to coordinate their efforts and ensure that only patented products or authorized copies of pharmaceutical products are registered for sale. Qatar provides protection for trademarks registered with the Office of Commercial Registration.

Saudi Arabia

Saudi Arabia is currently working to revise its intellectual property laws to bring them into conformity with the TRIPS Agreement as part of its efforts to join the WTO. An updated Trademark Law took effect at the end of 2002, and an updated Copyright Law will take effect in March 2004. Both laws allow for increased deterrent penalties for violators, including fines and prison sentences. A new unified law on patents, industrial designs, plant varieties, and integrated circuits is working its way through the legislative process.

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, U.S. software manufacturers seek greater Saudi government enforcement action against software copiers and end-users of unauthorized software. Another area of concern is counterfeiting of U.S. trademarked products. The Saudi government is aware of these problems and is considering options to combat them. U.S. industry has expressed frustration with the lack of transparency in the enforcement system, procedural hurdles to judicial enforcement, and lack of application of the higher end of deterrent penalties.

The United States continues to have serious concerns over the protection and enforcement of patents. Although Saudi Arabia has recently taken measures to hire and train more examiners, the approval of patents often takes several years due to extreme delays in the processing of patent applications. The currently inadequate patent application process has resulted in a large backlog of patent applications and prevents U.S. patent holders from obtaining adequate protection. The United States has urged Saudi Arabia to enact the new Patent Law legislation as soon as possible, and to ensure some form of de facto patent protection in the near term to address the backlog of pending applications.

UAE

The UAE has begun to make 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, while an agreement between the UAE and U.S. pharmaceutical companies provides *de facto* patent protection for a number of copies of U.S. patent-protected medicines.

The new copyright law, enacted in July 2002, 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 2002 industry estimates, the rate of software piracy in the UAE is the lowest in the Middle East. The UAE is recognized as the regional leader in fighting computer software piracy.

The UAE's new Trademark Law, also issued in July 2002, confirms that the UAE will follow the International Classification System and that one trademark can be registered in a number of classes. The new 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.

The UAE published the official and final version of the long-awaited Patent Law in November 2002.

Specifically, the Patent Law provides for national treatment for 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 data exclusivity protection in the UAE market for pharmaceutical products equal to the patent term of the pharmaceutical product in the origin country.

SERVICES BARRIERS

Insurance

Bahrain has opened the life insurance sector to foreign competition, but foreign companies may not sell most other insurance products in Bahrain. The Bahrain Monetary Agency, which assumed regulation of the sector in 2003, plans to open the sector to more foreign competition. As part of its WTO accession, Oman introduced legislation allowing majority foreign-ownership of up to 70 percent in most insurance sectors. Oman is also phasing in commitments over a period of years to allow 100 percent foreign-ownership for most insurance sectors.

In Qatar, the Organization of Foreign Capital Investment Law (Law No. 13/2000) restricts foreign investment in banking, insurance, commercial agencies and the purchase of land. Foreign insurance companies wishing to operate in Qatar are subject to the same laws that apply to foreign firms in all other sectors. Foreign insurance companies can establish a presence in the UAE by operating a branch or representative office. This option allows for 100 percent foreign-ownership, yet generally limits business activities to offshore operations.

In the last two 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 June 2002, the Cooperative Health Insurance Council issued the by-laws of a mandatory cooperative health insurance scheme. The scheme will be implemented gradually and will require employers to pay for insurance coverage of foreign workers and dependent family members. 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. In keeping with adherence to Islamic principles, insurance companies will need to operate on a co-operative or mutual basis. Firms will need to register with the Saudi Arabian Monetary Agency (SAMA). The law sets capitalization requirements for insurers at SR100 million ($26.7 million). 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 co-operative insurance structure.

Banking

International financial institutions operate in Bahrain, both internationally and domestically, without impediments. In 2003, Bahrain's central bank issued 10 new licenses (six investment advisory and other financial services institutions, one investment bank, one offshore banking unit, one financing company and one representative office). Under Kuwait's 2001 Foreign Direct Investment law, foreigners may own up to 100 percent of existing or newly formed Kuwaiti banks, subject to approval by the Central Bank.

While Oman has laws permitting foreign banks to operate, it has barred new non-GCC banks from establishing operations on the grounds that there is excess capacity in the sector. Oman does not permit representative offices or offshore banking. In Qatar, regulations for local and foreign bank practices are the same, with new licenses available through the Qatar Central Bank application process. In 2003, the Qatar Central Bank allowed foreign banks to establish representational offices and the existing foreign banks in Qatar to open new branches.

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 to 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. The Bahrain-based Gulf International Bank (GIB), Dubai-based Emirates Bank International, and Kuwait Bank currently operate in the Kingdom. In November 2003, the Saudi Government granted an operational license to Deutsche Bank. Saudi Arabian investment banking will likely see significant growth when the Saudi Capital Markets Law comes into effect in February 2004. The law provides for the creation of investment banks and brokerages in the Kingdom. Allowed levels of foreign participation in these ventures have not been finalized.

With 21 national banks, 26 foreign financial entities, a total 457 branches, the UAE government considers the country overbanked, and is reluctant to further open its financial services sector to foreign competition in the ongoing WTO services negotiations. Following a banking crisis caused by accumulating bad debts after the oil boom in the mid-1980s, the Central Bank stopped giving licenses to new foreign banks. However, in September 2003, 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 undertake to employ UAE nationals. Figures by the Central Bank show national banks enjoy a stronger financial position than foreign banks operating in the UAE, with assets peaking at the end of March 2003 at nearly $68.3 billion compared with foreign banks' assets of around $21.5 billion. The UAE does not allow offshore banking.

Shipping

Bahrain presents no major impediments to shipping. Currently, Bahrain is evaluating procedures for privatizing its two major ports, a decision issued by decree in July 2002. Kuwait has prevented foreign shipping lines access to cargo for government projects by granting the United Arab Shipping Company the right of first refusal on all such cargoes. However, Kuwait no longer applies this requirement to shipments from U.S. ports. Saudi Arabia gives preferences to national carriers for up to 40 percent of government-related cargoes. Under these rules, the Saudi national shipping company and United Arab Shipping Company receive preferences.

Agent and Distributor Rules

Bahrain's 1998 Agency Law eliminated the sole agent requirement; in October 2002 an amendment to the Agency Law eliminated the requirement for a local agent, except in retail sales, and abolished mandatory commissions. In Kuwait, local agents are currently required in all sales transactions.

Since 1993, Oman has permitted an importer to bring in goods without paying a commission to a registered agent, provided that the goods are imported through an Omani port or airport. However, in practice, it is difficult for a foreign firm to sell directly to the government without an Omani agent identifying and bidding on tender opportunities. In addition, 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. Most recently, Oman has attempted to address unemployment through mandating local hire quotas, through limiting distribution from food wholesale centers to Omani nationals, and in the fall of 2002, through restricting small grocery food retail sales to businesses owned and operated by Omani nationals.

The vast majority of foreign firms operating in Qatar are required to engage local agents. Only firms granted 100 percent foreign-ownership in five sectors - agriculture, industry, tourism, education, health - are excluded from the local agent requirement. In June 2002, Qatar passed a new commercial agents law that allows individuals other than exclusive agents to import products provided they pay up to five percent commission to the registered agent/distributor. In practice, some Qatari ministries may waive the local agent requirement for foreign companies that negotiate directly with the government of Qatar.

Saudi law requires that domestic distributors receive licenses from the Ministry of Commerce and Industry. Only Saudi citizens can obtain licenses. However, a recent GCC decision may broaden this to include GCC citizens. Nationals from the GCC countries are also allowed to engage in trading and retail activities, including real estate. In July 2001, the Saudi Council of Ministers canceled the requirement for foreign companies with government contracts to have a Saudi service agent.

The UAE’s Commercial Agencies Law requires that foreign principals distribute their products in the UAE only through exclusive commercial agents that are either UAE nationals or companies wholly owned by UAE nationals. The foreign principal can appoint one agent for the entire UAE or for a particular emirate or group of emirates. All UAE commercial agents must be registered with the Ministry of Economy and Commerce. Once chosen, agents/distributors have exclusive rights, and the law provides that an agent may be terminated only by mutual agreement of the foreign principal and the local agent, notwithstanding the expiration of the term of the agency agreement. Since 1996, the UAE has not recognized new agency agreements in the food sector. Agency agreements in existence prior to this period are still recognized.

INVESTMENT BARRIERS

Bahrain

Bahrain permits 100 percent foreign-ownership of new industrial entities 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. Protection of foreign investments is strong. The 2001 U.S.-Bahrain Bilateral Investment Treaty (BIT) provides benefits and protection to U.S. investors in Bahrain, such as the better of national or most-favored-nation treatment, the right to make financial transfers freely and without delay, international law standards for expropriation and compensation cases, and access to international arbitration.

Since January 2001, foreign firms and GCC nationals may own land in Bahrain. Non-GCC nationals may now own high-rise commercial and residential properties, as well as property in tourism, banking, financial and health projects, and training centers, in specific geographic areas. The Bahrain stock exchange allows GCC firms and persons to own up to 100 percent of listed companies. Non-GCC firms/persons may only own up to 49 percent of listed companies. The Minister of Commerce may increase this percentage at his discretion. There are presently five wholly foreign-owned companies (four GCC and one non-GCC) listed on the Bahrain stock exchange. Any new additions to these five companies must be approved on a case-by-case basis. Individuals had been previously restricted to owning only 1.5 percent of a company's stock. Now Bahrainis and GCC nationals may own up to 100 percent as individuals, and non-GCC foreigners may own up to 49 percent. Bahrain is planning to open its stock market completely for all investors by the end of 2004.

Kuwait

Kuwait currently maintains restrictions on direct foreign investment and applies discriminatory taxation policies. In May 2000, Kuwait's National Assembly approved legislation that allows foreign nationals to own stocks listed on Kuwait's stock exchange. Implementing regulations allow foreigners to own up to 100 percent of all listed companies except banks. Under that law, foreign-ownership in banks was limited to 40 percent with the additional restriction that any foreign-ownership above 5 percent must be approved by Kuwait's Central Bank. In March 2001, the National Assembly passed a direct foreign investment bill that authorizes majority foreign-ownership in new investment projects (up to 100 percent foreign-ownership in selected sectors to be determined by Kuwait's Cabinet). The law also authorizes up to 10-year tax-holidays for new investors. As the National Assembly has not addressed implementing rules and regulations, the law has not yet taken effect.

Oman

In September 2003, Oman amended its tax law and extended the national tax treatment (i.e., a corporate tax rate of 12 percent) to all Omani and GCC companies regardless of the percentage of foreign ownership. Taxes on branches of foreign-owned companies remained at 30 percent. In addition, Oman exempted companies in the education, health, and aquaculture sectors from taxes. Foreign airlines are now tax-exempt subject to reciprocal agreement. The new tax exclusion also extends to capital gains on disposal of securities listed on the local stock market as well as joint investment funds. Oman constantly reviews and modifies its laws and procedures to attract increased foreign investment. Majority foreign-owned investments are eligible for tax-holidays of up to 10 years, a benefit also enjoyed by Omani firms. The tax-holiday waives corporate income tax, as well as customs taxes on goods imported for business purposes under certain categories of projects. Oman now permits 100 percent foreign-ownership on a case-by-case basis with the approval of the Minister of Commerce and Industry, although no applications for such enterprises had been made through the end of 2003.

In Oman, foreigners are permitted to purchase shares on the Muscat Securities Market (MSM). As of mid-year 2003, approximately 15 percent of the MSM's total market capitalization was foreign-owned.

Qatar

Qatar issued a new Investment Law (Law No. 13 of 2000) that allows foreign investors to own up to 100 percent of projects in the agriculture, tourism, education, industry, and health sectors. In the energy sector, foreign companies may own 100 percent of projects subject to approval from the government. The law also gives foreign investors the right to lease land for up to 50 years, which is renewable (also subject to government approval). The new law annuls provisions of Law No. 25 (1990) that restricted foreign-ownership of limited liability business concerns to a maximum of 49 percent. Foreign equity is limited to 49 percent in other sectors. However, this restriction can be waived by the issuance of an Emiri Decree.

Qatar allowed foreign nationals to participate directly in the first public offering of shares of the privatized telecommunications company Q-Tel. Foreign nationals may invest in other publicly offered companies indirectly through local investment firms.

Saudi Arabia

In April 2000, Saudi Arabia's Council of Ministers approved a new foreign direct investment code with the goal of facilitating establishment of foreign companies, both joint-ventures and 100 percent foreign-owned, in Saudi Arabia. Key provisions allow foreign investors to transfer money freely from their enterprises outside the country, allow joint-venture companies to sponsor their foreign investors as well as their foreign employees, and permit foreign investors to own real property for company activities. The Saudi Arabian General Investment Authority (SAGIA) was established to manage investments under the new code under the guidance of the Supreme Economic Council. In March 2003, SAGIA opened a Women's Investment Center in addition to its existing Service Centers. In theory, SAGIA must decide to grant or refuse a license within 30 days of receiving an application and supporting documentation from the investor. While SAGIA is intended as a one-stop-shop for foreign investors, some companies still experience delays in subsequent steps, for example, in obtaining a commercial registry or purchasing property. Following SAGIA's recommendations, the Supreme Economic Council released a negative list in February 2001 of sectors in which foreign investment is prohibited. The Council updated the negative list in 2003, further reducing the number of sectors and subsectors prohibited to foreign investors. (SAGIA publishes the negative list at www.sagia.gov.sa.) SAGIA reportedly approved about 2000 projects representing more than $14 billion by the end of October 2003, with foreign investors accounting for 85 percent of the total. However, figures on actual projects initiated or foreign direct investment inflows are not available. Though statistics for foreign direct investment inflows are imprecise, aggregate SAGIA information indicates that 36 percent of project capital comes from US sources, by far the largest single contributor. In October 2003, SAGIA announced that additional foreign direct investments of nearly $1 trillion will likely be required over the next 20 years (over $100 billion in the energy sector alone).

In October 2003, the Saudi Government passed the Capital Markets Law. The law took effect in February 2004. It allows for the creation of financial intermediaries (stock brokerages and investment banks). The law creates 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. Allowed levels of foreign participation in investment banks and brokerages have not been finalized. The new law does not repeal the prohibition on direct foreign participation in the Saudi stock market. However, foreigners can continue to purchase shares in bank operated investment funds. Foreign participation in these funds is limited to 10 percent of the total value of the fund.

UAE

Except for companies located in one of the free zones, at least 51 percent of a business establishment 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/49 percent foreign limited liability company (LLC). Subsidies for manufacturing firms are only available to those with at least 51 percent local ownership.

The laws and regulations governing foreign investment in the UAE are evolving. There is no national treatment for investors in the UAE. Non-GCC nationals cannot own land, but the emirate of Dubai currently is offering so-called free hold real estate ownership for non-GCC nationals within certain properties. However, the exact legal status of this scheme is still uncertain. Only one stock currently is open to foreign investors and is capped at 20 percent total foreign ownership, although limited participation by foreigners in a few mutual funds is permitted. There have been no significant investment disputes during the past few years involving U.S. or other foreign investors. Claims resolution is also a problem as foreign companies tend not to press claims for fear that doing so may jeopardize business activity in the UAE.

ELECTRONIC COMMERCE

In September 2002, Bahrain implemented an Electronic Transactions law, recognizing the validity of electronic transactions. In a push to make use of this technological opening, the Commerce Ministry has implemented electronic government, banks offer electronic banking, and the parastatal telecommunications company now accepts electronic transactions for bill payments.

In October 2003, Oman officially inaugurated Knowledge Oasis Muscat (KOM), an information technology park within its Rusayl Industrial Estate.

Qatar has established national committees to explore the possibilities of enhancing electronic commerce and E-Government. Some government services, including immigration services, driver license renewals, and donations to the Zakat Fund are now available online. Some Qatari banks have recently established online electronic banking facilities.

Saudi Arabia is studying various options to incorporate electronic commerce into government and private industry. A proposed National Information Technology Plan encompasses infrastructure, industry, electronic government, and electronic learning. The Ministry of Commerce and Industry completed a national project in 2001 for safeguarding dealers' rights, establishing a dispute-settlement mechanism, and endorsing digital signatures. In December 2003, the Saudi Government approved an electronic system for the official authentication of documents (similar to notarization) through the Internet. Called the e-attestation service, it will be available to members of the Chambers of Commerce and Industry.

In the UAE, the Emirate of Dubai passed The Law of Electronic Transactions and Commerce No. 2/2002 in 2002, 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 false signature or certificate, or provides false statements online for fraudulent or any other unlawful purpose. In March 2003, the International Bar Association hosted a conference in Dubai entitled, Middle East Law and the Internet Age. The conference addressed the legal developments related to new technologies, with a focus on electronic commerce in the Middle East. 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.

OTHER BARRIERS

Corporate Tax Policies

Saudi Arabia and Kuwait tax foreign companies, but domestic entities are only required to pay zakat (a charitable donation). Additionally, several GCC countries tax royalties as if they were 100 percent profit and maintain a variety of other tax policies considered unfair to foreign companies.

Bahrain has no personal or corporate taxation, except on oil company profits. There is no income tax or consumption taxes in the UAE. Foreign banks pay 20 percent tax on their profits, and foreign oil companies with equity in concessions pay taxes and royalties on their proceeds.

In Kuwait, foreign firms are currently subject to a maximum income tax rate of 55 percent, although the government is currently drafting a new tax law that would reduce the tax rate. Kuwaiti-listed companies are not subject to income tax, but are required to make an annual contribution of 2.5 percent of their net profits to the Kuwait Foundation for the Advancement of Sciences (KFAS). They must also contribute 2.5 percent of their net profits toward a National Labor Force Fund.

In October 2003, Oman extended national tax treatment to all companies registered in Oman regardless of the percentage of direct foreign investment, i.e., a maximum rate of 12 percent tax on net profits. The Omani branch of a foreign firm is regarded as a foreign firm and is taxed at a maximum rate of 30 percent. These rates do not apply to foreign petroleum companies, which pay royalties according to their concession agreements. Oman now levies a 10 percent tax on services performed offshore for Omani firms.

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 (approximately US$30,000). 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 ten 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.

In Saudi Arabia, only foreign-owned corporations and the foreign-owned portion of joint ventures are subject to the corporate income tax, which ranges up to 30 percent of net profits. Domestic corporate partners are subject to a 2.5 percent tax on assets, or zakat. A resolution issued by the Council of Ministers in April 2000, also eliminated the 10-year tax holiday previously enjoyed by companies and instead provided loss carry-forward provisions without any time limits. In January 2003, the Shoura (Consultative) Council rejected a proposed income tax on expatriate workers.

HONDURAS

TRADE SUMMARY

In 2003, the U.S. trade deficit with Honduras was $467 million, a decrease of $224 million from deficit of $690 million in 2002. U.S. goods exports to Honduras were $2.8 billion, an increase of $274 million from $2.6 billion in 2002. Corresponding U.S. imports from Honduras were $3.3 billion in 2003, up $50 million from 2002. Honduras is currently the United States' 32nd largest export market.

The stock of U.S. foreign direct investment (FDI) in Honduras in 2002 amounted to $184 million, down 24 percent from 2001. U.S. FDI is concentrated largely in the manufacturing sector.

IMPORT POLICIES

Free Trade Agreement

The United States and four Central American countries (El Salvador, Guatemala, Honduras, and Nicaragua) concluded negotiations on the U.S.-Central American Free Trade Agreement (CAFTA) in December 2003. The United States and Costa Rica on January 25 finalized Costa Rica's participation in the CAFTA. The United States and the Dominican Republic concluded market access negotiations in March 2004 to integrate the Dominican Republic into the CAFTA. The CAFTA will not only liberalize bilateral trade between the United States and the region, but will also further integration efforts among the countries of Central America, removing barriers to trade and investment in the region by U.S. companies. The CAFTA will also require the countries of Central America to undertake needed reforms to alleviate many of the systemic problems noted below in areas including customs administration; protection of intellectual property rights; services, investment, and financial services market access and protection; government procurements; sanitary and phytosanitary (SPS) barriers; other non-tariff barriers; and other areas.

Tariffs

In 1995, Honduras and other members of the Central American Common Market (CACM) agreed to reduce and harmonize the common external tariff (CET) at zero to 15 percent, but allowed each member to determine the timing of the reductions. In 2002, Honduras lifted tariffs on capital goods and raw materials (including those used for manufacture of pharmaceutical products and agricultural inputs) for those imports produced outside of the CACM. Additionally, tariffs on most non-CACM intermediate goods were reduced to 10 percent, and final goods were reduced to 15 percent. Per the tax reform law of 2002, import tariffs on cars were reduced from 40 percent to 15 percent ad valorem, and a tariff based on engine size was eliminated. Once the CAFTA goes into effect, about 80 percent of U.S. industrial and commercial goods will enter Honduras duty free, with the remaining tariffs on such goods being eliminated within ten years.

In October 2003, the Government of Honduras increased tariffs to CACM common external tariff levels on thirty specific dairy products, including milk and powdered milk, sour cream, yogurt, some cheeses, butter, and ice cream. For most of the products, the tariffs were raised from 15 percent to 35 percent, the maximum allowable tariff rate under Honduras' WTO commitments. Under the CAFTA, tariffs on dairy products will be phased out over a 20-year period.

Honduras implements a price band mechanism for imports of yellow corn, sorghum, and corn meal. Imports entering with values within the defined band are assessed a 20 percent tariff, while imports with prices above the band are assessed duties at a rate lower than 20 percent, according to a schedule; those imports priced below the band are assessed a tariff higher than 20 percent, also according to a schedule.

The government also maintains a seasonal restriction on the price band. Implementation of the CAFTA will require Honduras to eliminate the price band system.

In addition to the above, the Government of Honduras, farm groups, and importers have agreed to a quasi-tariff-rate quota in which the price band remains in effect until local grain supplies are exhausted, after which a one percent duty is applied to imports. Another quasi-tariff-rate quota system is in place for imports of rice. The United States has strongly opposed the Honduran policies on these grains as limiting access for U.S. agricultural products. When implemented, the CAFTA will lead to the elimination of this system. Tariffs on most grains and flour will be eliminated within 15 years after the agreement takes effect, except for rice tariffs, which will be phased out over 18 years. Under the CAFTA, textiles and apparel will be duty-free and quota-free immediately if they meet the Agreement’s rule of origin, promoting new opportunities for U.S. and Central American fiber, yarn, fabric and apparel manufacturing.

The CAFTA will eliminate tariffs on virtually all agricultural products within a maximum of fifteen years (dairy in 20 years and poultry in 18). The Agreement also requires transparency and efficiency in administering customs procedures, including the CAFTA rules of origin. Honduras committed to ensure procedural certainty and fairness and all parties agree to share information to combat illegal transshipment of goods.

Honduras implemented the WTO Customs Valuation Agreement in February 2000.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Honduras maintains a ban on some U.S. raw poultry imports, based on sanitary and phytosanitary (SPS) concerns. The U.S. Department of Agriculture estimates that if Honduran restrictions on U.S. raw poultry and poultry parts were lifted, U.S. producers could export an additional $10 million of poultry products to Honduras, annually.

Application of sanitary and phytosanitary requirements is lacking in transparency, and changes in SPS requirements are seldom reported to the WTO as required, resulting in uncertainty among U.S. suppliers and Honduran importers. In 2002 and 2003, Honduran importers had initial difficulty in receiving permission to import turkey into Honduras, though in each year permission was eventually granted. The Honduran government has also cited SPS concerns in periodically denying applications for the importation of pork and dairy products. Honduras committed during the CAFTA negotiations to resolve these issues (see below).

The Honduran government requires that sanitary permits be obtained from the Ministry of Health for all imported foodstuffs. During 2003, a U.S. supermarket chain complained that delays in the process of granting these permits were hampering the company's ability to import its products into Honduras. The Ministry of Health agreed to accelerate the process by focusing most closely on products considered to be at high risk for sanitary concerns (such as raw meat) and simplifying the procedures for low-risk products. Honduran law also requires that all processed food products be labeled in Spanish and registered with the Division of Food Control (DFC) of the Ministry of Health.

Under the CAFTA, Honduras agreed to apply the science-based disciplines of the WTO Agreement on Sanitary and Phytosanitary Measures, and will move toward recognizing export eligibility for all plants inspected under the U.S. food safety and inspection system. Through the work of this group, additional commitments to resolve specific unjustified measures restricting trade between Honduras and the United States have also been agreed. When the United States and Central America launched the CAFTA negotiations, they initiated an active working group dialogue on SPS barriers to agricultural trade that met alongside the negotiations to facilitate market access. The objective was to leverage the impetus of active trade negotiations to seek difficult changes to the countries' SPS regimes. The SPS Working Group remains committed to continue working on resolution of outstanding issues even after the negotiations concluded.

GOVERNMENT PROCUREMENT

Honduras is not a party to the WTO Government Procurement Agreement. Under the Government Contracting Law, which entered into force in October 2001, all public works contracts over one million lempiras ($55,690) must be offered through public competitive bidding. Public contracts between 500,000 and one million lempiras ($27,845 and $55,690) can be offered through a private bid, and contracts less than 500,000 lempiras ($27,845) are exempt from the bidding process. Currently, to participate in public tenders, foreign firms are required to act through a local agent (at least 51 percent Honduran-owned). The CAFTA eliminates this requirement.

While foreign firms are granted national treatment for public bids, some still complain of mismanagement and lack of transparency in the bid processes. The Government of Honduras has tried to improve transparency and fairness in government procurement by hiring the United Nations Development Program (UNDP) to manage procurement for an increasing number of ministries and state-owned entities. However, U.S. companies have still expressed concern about the way the state telecommunication company Hondutel and UNDP have been managing major procurement projects.

Under the CAFTA, U.S. suppliers will be granted non-discriminatory rights to bid on contracts from most Central American government entities, including key ministries and state-owned enterprises. The CAFTA requires fair and transparent procurement procedures, such as advance notice of purchases and timely and effective bid review procedures. The CAFTA's anti-corruption provisions ensure that bribery in trade-related matters, including in government procurement, is specified as a criminal offense under Central American and U.S. laws.

EXPORT SUBSIDIES

Honduras does not have export subsidies or export-promotion schemes other than the tax exemptions given to firms in free trade zones. The CAFTA will require the elimination of WTO-illegal export subsidies.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Honduras has significantly improved consistency with the TRIPS Agreement through legal revisions enacted in December 1999. However, the Honduran Congress must still pass laws governing the design of integrated circuits and plant variety protection.

Honduras is a member of the World Intellectual Property Organization (WIPO) since 1983. Honduras and the United States initialed a Bilateral Intellectual Property Rights (IPR) Agreement in March 1999, but both parties decided to fold the provisions into the CAFTA, which, once implemented, will strengthen intellectual property rights protection in all areas. Honduras became party to the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonogram Treaty (WPPT) in May 2002.

CAFTA provisions will strengthen Honduras' IPR protection regimes to conform with, and in many areas exceed, WTO norms and will criminalize end-user piracy, providing a strong deterrence against piracy and counterfeiting. The CAFTA will require all member countries to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. It will also mandate both statutory and actual damages for copyright infringement and trademark piracy. This serves as a deterrent against piracy, and ensures that monetary damages can be awarded even when it is difficult to assign a monetary value to the violation.

Copyrights

Honduras' copyright law, updated in 1999, added more than twenty different criminal offenses related to copyright infringement and established fines and suspension of services that can be levied against offenders. However, the piracy of books, sound and video recordings, compact discs, and computer software is still widespread in Honduras, due in part to limited enforcement capacity. U.S. companies are concerned that recent attempts to prosecute computer software infringement cases have been met with resistance by officials in the Ministry of Industry and Trade's IPR Division and the Attorney General's office. U.S. software companies are currently focusing on legalization of pirated software used in some ministries and state-owned entities. A major U.S. software company estimates that it loses $5 million annually due to software piracy in Honduras. The CAFTA enforcement provisions are designed to help reduce copyright piracy.

Patents and Trademarks

Honduras ratified the Paris Convention for the Protection of Industrial Property in 1994. The Honduran Congress enacted a 1999 Law of Industrial Property to provide improved protection for both trademarks and patents. To be protected under Honduran law, patents and trademarks currently must be registered with the Ministry of Industry and Trade. The CAFTA will eliminate cumbersome registration requirements.

Recent modifications to the Patent Law of 1993 include patent protection for pharmaceuticals, and extend the term of protection for a patent from seventeen to twenty years from the date of filing to meet WTO standards. The term for cancellation of a trademark for lack of use has been extended from one year to three years. Trademarks are valid for up to ten years from the registration date. The illegitimate registration of well-known trademarks has, however, been a persistent problem in Honduras. The CAFTA enforcement provisions are designed to help reduce trademark piracy.

U.S. pharmaceutical companies have complained that the Ministry of Health, in approving a competing company's pharmaceutical product, has often failed to respect their data exclusivity rights as guaranteed under article 39 of the WTO TRIPs agreement and article 77 of Honduras' Industrial Property Law. (Honduran law provides five-year exclusive use of data provided in support of registering pharmaceutical products.) The Honduran Government's uneven history in protection of intellectual property rights leads to uncertainty for U.S. investors. The CAFTA obligations clarify that test data and trade secrets submitted to a government for the purpose of product approval will be protected against unfair commercial use for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals.

Although, there is currently no effective means of providing protection for plant varieties, as required by the TRIPS Agreement, Honduras committed in the CAFTA to accede to the UPOV Convention (International Union for the Protection of New Varieties of Plants, 1991) by January 1, 2006, or provide patent protection for plants by the date of entry into force of the CAFTA.

SERVICES BARRIERS

Currently, special government authorization must be obtained to invest in the tourism, hotel, and banking services sectors. Foreigners may not hold a seat in Honduras' two stock exchanges or provide direct brokerage services in these exchanges. Honduran professional bodies heavily regulate the licensing of foreigners to practice law, medicine, engineering, accounting, and other professions.

Under the CAFTA, Honduras will accord substantial market access in services across their entire services regime, subject to very few exceptions. In addition, U.S. financial service suppliers would have full rights to establish subsidiaries, joint ventures or branches for banks and insurance companies. Honduras will allow U.S.-based firms to offer cross-border services in areas such as financial information and data processing, and financial advisory services. In addition, Central American mutual funds will be able to use foreign-based portfolio managers. The commitments in services cover both cross-border supply of services as well as the right to invest and establish a local services presence (such as in tourism or securities). Market access to services is supplemented by requirements for regulatory transparency. Regulatory authorities must use open and transparent administrative procedures, consult with interested parties before issuing regulations, provide advance notice and comment periods for proposed rules, and publish all regulations. The right to provide professional services will be granted on a reciprocal basis depending on the requirements in individual U.S. states.

INVESTMENT BARRIERS

The Constitution of Honduras requires that all foreign investment complement, but not substitute for, national investment. Currently, the Government of Honduras must approve any foreign investment in sectors including, telecommunications, basic health, air transport, insurance and financial services, private education, and most sectors related to natural resources and farming. Foreigners are barred from small-scale commercial and industrial activities with an investment less than 150,000 lempiras (about $8,353). Foreign ownership of land within 40 km of the coastlines and national boundaries is constitutionally prohibited, though tourism investment laws allow for certain exceptions. Inadequate land title procedures have led to numerous investment disputes involving U.S.-citizen landowners. Under the CAFTA, U.S. investors will enjoy in almost all circumstances the right to establish, acquire and operate investments in Honduras on an equal footing with local investors.

In 2001, a Bilateral Investment Treaty (BIT) between the U.S. and Honduras entered into force. The treaty provides for equal protection under the law for U.S. investors in Honduras and permits expropriation only in accordance with international legal standards and accompanied by adequate compensation. U.S. investors in Honduras also have the right to submit an investment dispute to binding international arbitration.

Honduras has taken the following limited exceptions to its BIT national treatment obligation: properties on cays, reefs, rocks, shoals or sandbanks or on islands or on any property located within 40 km of the coastline or land borders of Honduras, small scale industry and commerce with total invested capital of no more than $40,000 or its equivalent in national currency, ownership, operation and editorial control of broadcast radio and television, ownership, operation and editorial control of general interest periodicals and newspapers published in Honduras.

In the investment chapter of the CAFTA, Honduras will commit to provide a higher level of protection for U.S. investors than under the existing BIT. The CAFTA requires that all forms of investment will be protected, including enterprises, debt, concessions, contracts and intellectual property. 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 will be backed 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.

TRADE RESTRICTIONS AFFECTING 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 (DISELCO), a project of the Chamber of Commerce and Industry of Tegucigalpa (CCIT), the Chamber of Commerce and Industry of Cortes (CCIC) and the National Industry Association (ANDI), is the institution in charge of establishing the policies and norms pertaining to electronic commerce in Honduras.

Although improving, the country still lacks adequate basic telecom infrastructure and Internet bandwidth capacity to effectively support significant electronic commerce at the present time. Except for web page promotional material, companies are not yet utilizing computer sales as an additional distribution channel in Honduras. Twenty-five private ISPs compete for an estimated 30,000 Internet users.

Under the CAFTA, Central America and the United States agreed to provisions on e-commerce that reflect the issue's importance in global trade and the importance of supplying services by electronic means as a key part of a vibrant e-commerce environment. As it develops its electronic commerce sector, Honduras joined other parties in committing to non-discriminatory treatment of digital products and agreeing not to impose customs duties on such products and to cooperate in numerous policy areas related to e-commerce.

OTHER BARRIERS

Anti-Competitive Practices

U.S. companies occasionally encounter anti-competitive practices by private firms, especially in the case of large investments in sectors with one or two national players. The Government of Honduras hopes to address these problems more systematically with the drafting and approval in 2004 of a Competition Law. The World Bank is assisting with this project.

Corruption

Historically, U.S. firms and private citizens have expressed concern that corruption complicates doing business in Honduras, and thus is a constraint on foreign direct investment. Anti-corruption provisions in the CAFTA aim to help alleviate these problems, particularly by criminalizing the bribery of a public official in any area related to trade and investment. Honduras' judicial system is easily influenced; investment and business disputes involving foreigners have rarely been resolved in a transparent manner. The administration of justice is a key challenge to domestic and foreign companies. With considerable U.S. help, the government is reforming Honduras' judicial system and fighting corruption, though serious problems remain in these areas.   Anti-corruption provisions in the CAFTA aim to help alleviate these problems, particularly by criminalizing the bribery of a public official in any area related to trade and investment.

HONG KONG

TRADE SUMMARY

The U.S. trade surplus with Hong Kong was $4.7 billion in 2003, versus $3.3 billion in 2002. U.S. goods exports in 2003 were $13.5 billion, compared to $12.6 billion for 2002. Corresponding U.S. imports from Hong Kong in 2003 were $8.9 billion, versus $9.3 billion for 2002. Hong Kong 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 Hong Kong were $3.4 billion in 2002 (latest data available), and U.S. imports were $3.7 billion. Sales of services in Hong Kong by majority U.S.-owned affiliates were $7.8 billion in 2001 (latest data available), while sales of services in the United States by majority Hong Kong-owned firms were $1.2 billion.

The stock of U.S. foreign direct investment in Hong Kong rose to $35.8 billion in 2002, up 11.5 percent from the 2001 figure of $32.1 billion. U.S. direct investment in Hong Kong is concentrated in the wholesale, finance, and utilities sectors.

OVERVIEW OF HONG KONG’S ECONOMY

Under the terms by which Hong Kong became a Special Administrative Region of the People’s Republic of China (PRC) in 1997, Hong Kong retains a high degree of autonomy in all areas except foreign affairs and defense. As a separate customs territory with autonomy in the conduct of its economic, trade, and financial policies, Hong Kong retains independent membership in economic organizations such as the World Trade Organization and the Asia-Pacific Economic Cooperation forum.

Hong Kong’s economy grew by 4 percent in real terms in the third quarter of 2003, recovering from a Severe Acute Respiratory Syndrome-induced 0.5 percent contraction in the second quarter. The rebound was partly stimulated by tourism, which was boosted by China’s liberalization of travel regulations allowing tourists from the PRC to visit Hong Kong. Strong exports of goods and services also contributed to the economic resurgence, as did consumer demand, which grew for the first time in two years, and increased retail sales. The unemployment rate hit a record high of 8.7 percent in July 2003 but receded to 7.3 percent by January 2004. Hong Kong has suffered from deflation for the past five years, though deflation is easing as the decline in real estate prices slows down.

Hong Kong faces the need to restructure its high-cost, service-based economy while also addressing growing competition in the years ahead to its traditional role of entrepot to the Chinese mainland. Despite these challenges and the recent economic slowdown, Hong Kong enjoys a number of long-term economic advantages, including a large market and base of production in the Chinese mainland, massive fiscal and foreign exchange reserves, virtually no public debt, strong legal and banking systems, world-class infrastructure, and a rigorously-enforced anti-corruption regime. In addition, Hong Kong is well-positioned to benefit from the growth in trade resulting from China's WTO accession.

On June 29, 2003, Hong Kong and China signed the Closer Economic Partnership Arrangement (CEPA), a free trade agreement granting Hong Kong’s manufacturers and service suppliers preferential access to the Chinese market. On January 1, 2004, Hong Kong-origin goods in 374 categories became eligible for tariff-free treatment and Hong Kong-registered companies enjoy preferential access to 18 Mainland service sectors. Preferential access for five types of value-added telecommunications services was implemented on October 1, 2003.

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 does maintain excise duties on certain goods, including alcohol beverage products and wine. These duties on alcohol beverage products and wine range from 30 percent to 100 percent *ad valorem* and have been identified as a significant concern for U.S. exporters and producers.

Hong Kong banned imports of U.S. beef in December 2003 with the detection of one positive case of Bovine Spongiform Encephalopathy (BSE) in the State of Washington. As of the publication of this report, the U.S. government is taking aggressive action and is working intensively to re-open the market as quickly as possible. In addition, the United States is working in the International Organization for Epizootics to revise international standards on BSE to reflect current scientific knowledge.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Hong Kong 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 with jail time. Further, Hong Kong has sustained efforts to combat Internet piracy and to educate its public about the negative repercussions of all types of piracy.

Hong Kong continues to conduct aggressive raids at the retail level and to act against IPR infringements over the Internet. Hong Kong also has sustained public education efforts to encourage respect for intellectual property rights. In 2003, there were 1,286 piracy-related arrests. During the same period, the judiciary issued 1,870 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, prompting many optical disc pirates to switch to computers or CD burners to produce illicit copies and forcing retailers to rely increasingly on smuggled products. Despite the crackdown on large-scale illicit manufacturing, there is still concern about Hong Kong’s 724 licensed optical disc production lines, which give the territory a huge overcapacity that must be carefully monitored. The volume of openly marketed pirated discs found in retail shopping arcades has decreased significantly but more dispersed sales of infringing products remain a problem.

Hong Kong's IPR enforcement efforts have helped reduce losses to U.S. companies, but end-use piracy and the illicit importation and trans-shipment of pirated and counterfeit goods, including optical discs and name brand handbags and apparel from China and elsewhere in the region are continuing problems. The software industry estimated that the piracy rate of business software used in Hong Kong rose from 53 percent in 2001 to 56 percent in 2002. U.S. officials have encouraged Hong Kong authorities to sustain the pace of their ongoing enforcement activities aimed at local producers and vendors of infringing products and to step up efforts against end-use piracy and the cross-boundary flow of infringing products.

Despite Hong Kong’s strong overall efforts, the U.S. Government continues to monitor the IPR situation to ensure that these efforts are sustained and that areas of vulnerability are addressed. Several legislative amendments affecting IP rights holders were passed or proposed in 2003. The government enacted a law in November 2003 to remove civil and criminal liabilities for parallel importation of computer software, while maintaining criminal penalties for the parallel importation of copyrighted products such as movies and music. In February 2003 the Legislative Council began considering a bill that would permanently suspend criminal provisions for unauthorized copying of publications. The proposed bill would create new provisions to crack down on illicit copy shops but the U.S. Government and various industry groups expressed concern about the permanent suspension and other provisions, including those that weaken criminal liability for end-use piracy. To address these concerns, the Hong Kong government in February 2004 decided to pull back the proposed bill, except for provisions on illicit copy shops, to work on drafting new legislation.

U.S. pharmaceutical companies are concerned that the Hong Kong Department of Health continues to issue marketing authorizations for pharmaceutical products that may infringe upon existing patents. In addition, the industry believes that counterfeit pharmaceuticals enter Hong Kong and are then repackaged as legitimate products for sale, threatening consumer safety and brand reputation.

SERVICES BARRIERS

Hong Kong completed its liberalization of the fixed-line telecommunications network services market on January 1, 2003. There are no limits on the number of licenses issued and no time limit for submitting license applications. The government is now reviewing its policy of requiring the dominant telecommunications operator – PCCW – to lease its “last mile” of interconnection with many Hong Kong buildings to competing fixed-line service providers at set prices.

In November 2003, the People's Bank of China solicited proposals from Hong Kong banks for clearing arrangements necessary to permit Hong Kong-licensed banks to conduct personal Renminbi (RMB) business on a trial basis. The scope of RMB business is limited to deposit-taking, exchange, remittances and credit cards.

An October 2002 civil aviation agreement between Hong Kong and the United States significantly expanded opportunities for U.S. carriers. The agreement allows deeper cooperative relationships between U.S. and Hong Kong carriers (codesharing) and also increases the ability of U.S. carriers to operate cargo and passenger services between Hong Kong and third areas. Restrictions on frequencies and routes for these services remain, however, as the agreement fell short of creating completely “open skies.”

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 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.

Hong Kong has no general competition law that prohibits incumbents from using their market dominance to keep out new entrants. There are several domestic service sectors where one or a few firms dominate market share.

ELECTRONIC COMMERCE

Hong Kong places great importance on its role as an information technology and electronic commerce hub. In June 2003, the government introduced to the Legislative Council amendments to the Electronic Transactions Ordinance to update and improve the legal framework for the use of electronic transactions. The government proposed adopting a technology-neutral approach to using electronic signatures for satisfying legal signature requirements. The government also proposed to remove unnecessary legal impediments to electronic transactions and to streamline the operation of a voluntary recognition scheme for certification authorities.

As part of its e-government initiative, Hong Kong launched the Multi-Application Smart Identity Card in June 2003. In addition to providing access to various government services, the card also features an embedded digital certificate that enables secure on-line bank, stock trading, or tax return transactions.

HONG KONG

OTHER BARRIERS

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, the U.S. industry is concerned with non-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.

HUNGARY

TRADE SUMMARY

The United States' trade deficit with Hungary was $1.8 billion in 2003, a decrease of $184 million from $2.0 billion in 2002. U.S. goods exports in 2003 were $934 million, up 35.8 percent from the previous year. Corresponding U.S. imports from Hungary were $2.7 billion, up 2.3 percent. Hungary is currently the 57th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Hungary in 2002 was $2.5 billion, up from $2.0 billion in 2001.

IMPORT POLICIES

Tariffs

Hungary's trade policies are shaped primarily by its impending accession to the European Union (EU) in May 2004 and World Trade Organization (WTO) commitments. Hungary's average most-favored-nation (MFN) import duties have fallen from over 13 percent in 1991 to 7 percent in 2002. Customs duties on textile products range from 0 percent to 13 percent. Hungary will continue its preferential trade agreement with the EU until accession.

Hungary's progressive implementation of Uruguay Round agreements has generally improved U.S. market access to Hungary. Hungary has not yet acceded to the WTO Information Technology Agreement and is not a signatory to the WTO Plurilateral Agreement on Civil Aircraft, but plans to implement the tariff-cutting provisions of each upon accession to the EU.

Under its Europe Agreement, Hungary eliminated tariffs on industrial products from the EU on January 1, 2001. To address the tariff differential issue, on January 30, 2002, the United States and Hungary signed a trade package that reduced tariffs on approximately $180 million of annual U.S. exports to Hungary as of April 1, 2002. In most cases, Hungary agreed to reduce the tariff to the EU's Common External Tariff. Many U.S. products have remained subject to Hungary's MFN rates, but most rates on industrial goods will go down at the time of accession based on EU tariff rates while rates on some agricultural goods will rise.

Non-tariff Barriers

About 96 percent of imports (by value) no longer require import licenses and the number of product categories under quota constraints is decreasing yearly. For consumer goods, import licenses are required only from non-WTO countries for footwear, apparel, dry goods, and fish. As a result of the WTO Agricultural Agreement, Hungary has progressively replaced quotas on agricultural products and processed foods with tariff-rate quotas.

U.S. companies producing in Hungary, especially auto parts manufacturers, complain that Hungarian tax authorities refund the customs duties and fees paid on "imports for re-export" too slowly, tying up large sums of money.

STANDARDS, TESTING, LABELING AND CERTIFICATION

As a result of successful U.S. government efforts, as of November 1, 2003, Hungary fully accepts and recognizes U.S.-made medical equipment and certain electrical products with a valid CE-mark without requiring additional certification. However, when Hungary joins the EU on May 1, 2004, these technical procedures will revert to strictly EU procedures. Once Hungary is an EU-member, the mutual acceptance of the Conformity Certificates issued by the Notified Bodies will apply to all industry sectors, even to those not covered by the current PECA Agreement.

Hungarian import regulations limit and delay imports of breeding animals, livestock semen, planting seeds, and new plant varieties. These regulations include requirements that all bovine semen that enters Hungary be purchased through domestic animal inspection centers and submit to a 30-day in-country quarantine. According to U.S. industry estimates, potential sales without these restrictions could be worth up to $10 million.

In January 2002, Hungary introduced new “EU harmonized” certificate requirements for meat, bovine semen, and pet food, without notifying the affected foreign countries and the WTO Sanitary and Phytosanitary Committee. The United States and Hungary have not yet completed equivalency negotiations on the new requirements. As a result, unclear certification may hamper the exports of some animal products to Hungary.

In 1998, Hungary adopted legislation governing products of biotechnology in agriculture. These laws brought Hungary into harmony with EU law by imposing import restrictions that primarily affected new plant varieties. The Ministry of Agriculture requires a multi-year registration procedure. Final approval for field trials rests with a mixed committee that includes scientists and environmentalists. Several biotechnology crop varieties have been field tested in Hungary. In the next year the Hungarian government must make a decision to register these varieties. The market for seed imports is relatively small (estimated at $22 million in 2001), but U.S. firms in Hungary also produce seed and plant stock for other markets. U.S. industry estimates that elimination of the current restrictions on imports and field trials would lead to additional U.S. exports of $10 million to $25 million.

GOVERNMENT PROCUREMENT

Hungary is an observer but not a signatory to the WTO Agreement on Government Procurement (GPA), however it must become a Party to the GPA upon EU accession.

The total value of public procurement in the first half of 2003 was $1 billion, approximately a 20 percent decrease from the same period in 2002. Of these procurements, 72.1 percent were open tenders and the total value of open tenders was 52.2 percent, up from 40 percent in the same period in 2002. The publication of highway construction tenders in December 2003 could increase this figure further. At this point there is no data on the number of complaints filed with the Public Procurement Arbitration Court.

The 1995 Public Procurement Act and subsequent revisions (1999, 2001, 2002) regulate foreign access to government-funded construction, service, and supply contracts. Tenders must be advertised for the purchase of goods in excess of 10 million HUF ($43,000) and for the purchase of services in excess of five million HUF ($21,500). Three provisions of the current law allow preferential treatment of Hungarian companies. The first allows governmental institutions to issue tenders that explicitly exclude foreign firms, but it is rarely invoked. The second provision allows these institutions to award contracts to tenders with at least 50 percent Hungarian content even if the price is 10 percent higher than majority-foreign tenders. A third provision allows tenders to require the participation of local subcontractors or local labor. These provisions are expected to remain in place until EU accession.

Hungary is modifying its current public procurement law to fully comply with EU legislation, and to make the tendering procedure quicker and more transparent. The new law provides national treatment for companies registered in the EU. For third countries, Hungary will provide national treatment in accordance with international obligations. The law also includes a separate chapter for procurements below the EU limit, but exceeding a national limit and tasks the government to develop a system for electronic procurement. The law is scheduled to enter into force on May 1, 2004.

Some U.S. firms have expressed concern about the transparency of government tenders, and a perceived EU bias, particularly in the defense sector. In more than one instance, the government has postponed making a decision on a large or sensitive procurement without explanation, or transferred decision-making authority from the relevant ministry directly to the Prime Minister's office. Purchases related to state security, as well as purchases of gas, oil, and electricity, are subject to several exemptions from public procurement regulations. All defense-related procurement over HUF 1 billion ($4.2 million) must also be combined with an offset package of at least 100 percent of the offset basis. Thirty percent of the undertaken offset value should be investment in Hungary. These offset requirements are mandatory and inflexible and represent a significant barrier to U.S. defense exports to Hungary. The government is attempting to install more transparency into public procurement, including by requiring greater accountability and financial reporting by sub-contractors in an effort to minimize conflicts of interest.

EXPORT SUBSIDIES

In 2003, the expected value of agricultural export subsidies was about $10 million. From May 1, 2004, Hungary will use the EU's common export refund system.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

With one major exception (the protection of confidential pharmaceutical test data), Hungary's intellectual property rights (IPR) laws are adequate, though insufficient resources, court delays and relatively light penalties hamper enforcement. Copyright industries report that piracy of audiovisual works and computer software remains at unacceptably high levels. The software piracy rate was 45 percent in 2002, down from 48 percent in 2001, but still high compared to a 39 percent global average.

Data Exclusivity

Certain aspects of Hungary's patent protection are inconsistent with its obligations under the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) that came into force January 1, 2000. On January 1, 2003, a Hungarian Government decree on registration and marketing authorization of medicinal products took effect, but it offers retroactive protection only for test data submitted on products granted marketing authorization on or after April 12, 2001, rather than back to January 1, 2000 as required by TRIPS. In the context of the Future Medicine Law, Hungary, together with other accession countries, is fighting against the extension of the six-year data exclusivity period. The absence of any direct linkage between the Hungarian Patent Authority and the Hungarian Regulatory agency is another area of concern.

Patent Protection

Despite having strengthened its patent protection following the conclusion of the U.S.-Hungary bilateral agreement on IPR protection in 1993, the Hungarian patent protection system needs improvement. Specifically, persistent problems in the judicial system hinder protection of patent rights. U.S. interests have tried unsuccessfully to get the judicial system to reverse the burden of proof in patent infringement cases, and to obtain injunctive relief prohibiting the marketing of products that the courts have ruled as infringing on patent rights. The lack of relevant technical expertise in the courts can result in such cases taking three or more years to reach conclusion. Penalties awarded in such cases are considered to be too low to act as effective deterrents.

Hungary joined the European Patent Office (EPO) in January 2003, which allows the EU to issue patents for Hungary. In contrast to US patent regulations, in Hungary a patent can be issued to the first applicant only in the field of technical innovations.

Copyright Protection

In 2002 Hungary became a contracting party to the World Intellectual Property Organization (WIPO) Copyright, Performances, and Phonograms Treaty. Hungarian copyright laws generally conform to international standards, but weak enforcement means piracy is still widespread. Video and cable television piracy abounds; local television and cable companies regularly transmit programs without authorization. However, the estimated level of unauthorized cable programming has dropped from 60 percent to 30 percent in the last year. The estimated public performance piracy rate is 50 percent.

The 1997 Copyright Act was amended in November 2003, to ensure compliance with EU regulations and to extend copyright protection issued in Hungary to the whole territory of the EU. However, a Hungarian copyright can only become an automatic EU copyright if the same copyright is not yet registered in the EU. The 1997 Copyright Act strengthened Hungary’s copyright laws and helped to drive piracy of audiovisual works and transmissions underground. The Copyright Act, however, does not expressly provide for civil *ex parte* searches, although the Hungarian government asserts that such measures are available under the Civil Procedure Act. The U.S. software industry is now testing whether these alternative procedures provide an adequate means for obtaining civil *ex parte* searches. In 2000, the Criminal Code was amended to impose more severe penalties, including eight years imprisonment for video piracy and two years for signal theft. In 2002, the Budapest Police Economic Crime Unit closed 472 criminal investigations involving copyrights, and closed 271 in the first ten months of 2003.

SERVICES BARRIERS

Hungary does not have an Open Skies civil aviation agreement with the United States. Under the terms of the current U.S.-Hungary aviation agreement (signed in 1989), U.S. airlines wishing to operate direct flights to Hungary or make code-sharing arrangements must gain approval of Hungary’s Civil Aviation Directorate (CAD) for each route. The CAD must renew approval of the flight schedule periodically.

A new Media Act is being developed and will be presented to the Parliament in the spring of 2004. To finalize its EU accession negotiation chapter on audiovisual services, however, Hungary passed an amendment to the 1996 Media Law in July 2001. This law requires that over 50 percent of public and private TV broadcasting be of European origin and over one-third be Hungarian. The law gives broadcasters until EU accession to implement the provisions, but makes no exceptions for programming broadcast to other countries or thematic channels, and does not include the “where practicable” language of the EU’s Television without Frontiers Directive that might allow such activities.

Foreign lawyers wishing to practice in Hungary are required to work with Hungarian lawyers. This has led to the conclusion of so-called “cooperative agreements” between Hungarian and U.S. firms to provide clients both Hungarian and international legal advice. Foreign lawyers cannot provide legal advice on foreign or international law without being licensed in the practice of Hungarian law.

Only a Hungarian-certified accountant may conduct audits, but this individual may work for a foreign-owned firm. Foreign nationals may be licensed as architects and engineers, but they must first have their degrees examined for equivalence by Hungarian authorities, and may be required to sit for qualifying exams in some cases. They must then be registered locally and join the local chamber of architects and engineers.

A 1998 decree that the government has never enacted would restrict the distribution of products by direct marketing. This decree prohibits the direct sale of certain products, such as therapeutic substances not classified as pharmaceutical products and foodstuffs. It also imposes a requirement that distributors obtain a vocational training degree. Direct marketers (Avon, Amway) are currently operating in Hungary, but under the threat that the government may enact the restrictions.

INVESTMENT BARRIERS

Hungary's early commitment to privatization of large state enterprises made it a leading recipient of foreign direct investment in Central Europe. Hungary progressively reduced state ownership in "strategic" enterprises but has sometimes retained a single golden share, which will be eliminated following EU accession. The government has started to sell some or all of its remaining stake in some key infrastructure monopolies, including in the telecommunications, energy, transportation and banking sectors. Currently, Hungary restricts ownership in varying degrees in civil aviation, defense and broadcasting. Only Hungarian citizens may own farmland; this will gradually change after EU accession.

Hungary will liberalize its natural gas sector as of January 2004 which should spur investment. Under the current system, the government controls the domestic price at artificially low levels and rarely approves exports at world market prices. Gas liberalization may help make oil exploration profitable by raising the price, but would require a more complex corporate structure from the participants. In order to improve transparency, companies will have to separate production, storage, transportation, trade, and distribution. An exploration company would thus have to create a separate company to sell its gas.

The new Natural Gas Law was approved by Parliament in the summer of 2003, and should eliminate the Hungarian Oil Company's (MOL) monopoly position by providing access to the gas pipeline network to all suppliers. Independent gas companies will also be able to freely export gas at world prices to guarantee their return on investment. Due to the lack of cross-border pipelines with export flow direction, however, swaps seem to be the only option for gas producers who trade gas in one country for that in another, but the market players are still not sure whether or not they will be able to exercise these swaps in 2004.

ELECTRONIC COMMERCE

Hungary has only recently begun to address electronic commerce issues and liberalize its market to make e-business in Hungary more attractive. A new Electronic Communications Act was passed by Parliament on November 24, 2003 replacing the Telecommunication Act of 2001. The new law, which came into effect on January 1, 2004, is structured to reduce the power of the incumbent, Matav. Interconnection fees currently stand at 224 percent of the EU average and will be reduced to the EU level by May 1, 2004. Number portability will become possible from January 1, 2004 for fixed-lines and from May 1, for mobile phone numbers. The new law encourages new market entrants by measures such as granting exemptions from paying into the Universal Service Fund for two years. Broadband investments will receive incentives and access to Hungarian and EU funds. If a broadband network development project exceeds HUF 100 million ($461,000), 50 percent of the investment value can be written off from tax payments. The new law also eased the restriction on the expansion of cable television providers making it possible to provide services on up to one-third of the country's area instead of the previous one-sixth.

All firms face structural obstacles in entering the Hungarian e-commerce market and Hungary's information technology usage and infrastructure lags significantly behind that of its European neighbors. Matáv canceled a popular flat-rate telephone charge Internet access package in spring 2002 because the package did not significantly boost usage. Telecommunications liberalization did not significantly reduce the cost of Internet access. Without a real decline in local telephone prices, Internet use (currently 22 percent) will remain below the EU average, although broadband access is a growing alternative. Personal computer penetration stands at only 22 percent. The new Telecommunications Act should significantly improve competition and prices for internet services.

Sales via the Internet are unrestricted, but subject to taxation. Internet purchases delivered from abroad are subject to customs duties as well as value-added tax (VAT), and VAT is also collected on purchases if delivered from within Hungary. The Customs Office assesses and collects VAT on software imported on physical media and/or installed on hardware. No customs duty payment is required in case of software purchased and delivered via the Internet; however, the VAT is to be paid after the purchase on a self-assessment basis.

Hungary has agreed in principle with the U.S. goal of an indefinite extension of the current moratorium on customs duties on electronic transmissions. The ease, and potential for abuse, inherent in software sales via the Internet may make this a target of scrutiny in the future, since this is a potential source of unlicenced software in Hungary.

OTHER BARRIERS

Hungary has a national health care system under which the government decrees which pharmaceutical products it will subsidize. There are concerns that the reimbursement process lacks transparency; for example, that the decision-making process is not based on adequate, objective and verifiable criteria, and that products are removed without consultation. Due to the lack of transparency, innovative compounds face difficulty entering the Hungarian drug market. As of September 2003, the Hungarian Government introduced the Global Reimbursement Volume System which sets a monthly maximum on drug subsidy payments. Companies are forced to enter volume contracts to avoid a drop in reimbursement for their products. Also, a therapeutic reference price system was implemented that does not appropriately value innovative drugs. Drug companies have raised concerns that the present preparation of the 2004 drug subsidy system is not in compliance with the EU Transparency Directive.

In a surprising move, the Hungarian government issued a decree in late December 2001 which discontinued the rights of a foreign partner who held a minority share in the management of Budapest Ferihegy airport. The government claimed the move was necessary as part of a reorganization plan for airport operations. The airport corporation, privatization agency and foreign partner have begun talks on compensation.

INDIA

TRADE SUMMARY

The U.S. trade deficit with India was $8.1 billion in 2003, an increase of $349 million from $7.7 billion in 2002. U.S. goods exports in 2003 were $5.0 billion, up 22 percent from the previous year. Corresponding U.S. imports from India were $13.1 billion, up 10.4 percent. India 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 India were $3.3 billion in 2002 (latest data available), and U.S. imports were $1.7 billion. Sales of services in India by majority U.S.-owned affiliates were $1.1 billion in 2001 (latest data available), while sales of services in the United States by majority India-owned firms were $325 million.

The stock of U.S. foreign direct investment (FDI) in India in 2002 was $3.7 billion, up from $2.8 billion in 2001. U.S. FDI in India is concentrated largely in the manufacturing, utilities, and banking sectors.

IMPORT POLICIES

India’s economy is one of the most closed in the world. Thus, India's tariffs remain among the highest in the world.

Over the last thirteen years, beginning with its economic reform program initiated in 1991, India has taken noteworthy steps to open its markets. A progressively more open and transparent trade regime stimulated a strong increase in U.S.-India trade and investment in the first half of the 1990s. U.S exports to India stagnated in 1996 as the reform process stalled. While U.S. exports showed signs of renewed upward momentum in 2003, any substantial expansion in U.S.-India trade will be unlikely without significant additional Indian liberalization.

In January 2004, the Indian government announced a reduction of the basic 25 percent ceiling tariff rate to 20 percent (with several notable exceptions). In addition to the basic customs duty, regardless of the rate, the Government of India (GOI) assesses a 1 percent customs-handling fee. The GOI also eliminated a 4 percent Special Additional Duty (SAD) which had been levied on virtually all imports since the 1998/99 budget. The GOI includes tariffs in calculating the base value upon which to assess additional levies. The GOI has made substantial progress to simplify its applied tariff structure to two tiers (10 percent on inputs and 20 percent on finished products) by March 2004.

In 2003, the average duty rate in India was 29 percent, down from 32 percent in 2002. While the average duty was again reduced in January 2004, India's tariffs remain among the world's highest. Applied duties were reduced in 2004 on certain selected products. These include: coal; nickel and nickel articles; power transmission and distribution project equipment; electricity meters; certain raw materials and inputs for optical fibers and cables; capital goods for manufacturing electronic goods; certain telecommunication infrastructure equipment; cellular telephones; VCDs and DVDs; lifesaving bulk drugs, formulations, and medical equipment; parts of artificial limbs and certain rehabilitation aids; medical, surgical, dental, and veterinary furniture; mosquito nets treated with pesticide; aviation turbine fuel, and equipment for industrial and agricultural water supply projects. The reduction in the customs duty for textile products from 25 percent to 20 percent could be negated for goods where the alternate specific rate of customs duty is greater than the *ad valorem* rate. Numerous textile trade barriers still exist, and India remains one of the most heavily protected textile markets in the world, according to the U.S. textile industry.

The United States has actively sought market-opening opportunities for U.S. interests in the Indian market bilaterally and multilaterally in the Doha Development Round. In this regard, United States Trade Representative Zoellick (the USTR) and Indian Minister of Commerce and Industry Jaitley held several meetings in 2003-2004. Recognizing the importance of South Asian markets, including their enormous potential for United States exports, the USTR also appointed the first-ever Assistant United States Trade Representative (AUSTR) for South Asia. The new AUSTR is responsible for United States trade and investment relations with India as well as with other countries in the region. Since late 2003 when he assumed his responsibilities, the AUSTR for South Asia visited India three times; met regularly with Indian diplomatic and trade officials; and, met frequently with U.S. private sector representatives to try to open India's markets. As part of the United States-India Economic Dialogue, the United States-India Trade Policy Working Group met regularly at the technical and Ministerial levels to cover the full range of bilateral trade issues. While India's tariff reductions have helped some U.S. producers, further reductions of basic tariff rates and elimination of additional charges would benefit a wide range of U.S. exports, both agricultural and industrial.

In the World Trade Organization (WTO), India has bound tariffs on 68 percent of its industrial good imports. The majority of these bindings exceed current Indian applied rates of duty. In agriculture, India's Uruguay Round tariff bindings, ranging from 100 percent to 300 percent, are also higher than applied rates in many product areas.

The Indian government publishes tariffs and import tax rates, but they are not transparent. There is no single official publication that includes all necessary information. 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. Furthermore, different classification nomenclatures for tariffs and excise taxes cause confusion.

Import Licensing

As a result of a WTO ruling, India has eliminated import licensing on most consumer goods. The cumbersome and non-transparent regime limits market access for U.S. goods which otherwise would be competitive. In February 2002 the Government of India eliminated its licensing requirements for imported motion pictures.

The GOI requires special licenses for importing motorcycles. These are virtually unobtainable. The GOI prescribes the requirements and conditions for allowing imported vehicles of any type into India. These special licenses are granted only to foreign nationals permanently settling in India, to foreign nationals working in India for foreign firms holding greater than 30 percent equity, or to embassies located in India. Certain importers are eligible to import vehicles without a license, but only if offset by exports attributable to that importer.

India continues to maintain 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 an import license (e.g., livestock products); and (3) "canalized" items 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 all second-hand capital goods by actual users without license, provided the goods have a residual life of five years.

Canalization

Some commodity imports must be channeled ("canalized") through public sector companies, although many such items have been decontrolled. The remaining canalized items are primarily petroleum products (although canalization of crude oil was eliminated in April 2002), some pharmaceuticals, and bulk grains (wheat, rice, and maize).

Fertilizer Subsidy Regime

The Indian government subsidizes di-ammonium phosphate (DAP) fertilizer. That is, the government maintains a maximum retail price for farmers while subsidizing domestic producers and importers, but at different levels. Prior to 2000, the subsidy differential was minimal and encouraged both the import of finished DAP and domestic production. Since then a large subsidy differential put DAP importers at a competitive disadvantage such that imports from the United States have virtually disappeared from what had been a large U.S. export market ($414 million in 1999).

The Government of India is currently reviewing its subsidy regime but has made no commitment to eliminate the disparity in subsidy levels for domestic and imported DAP. The United States has asked India to end its differential subsidy treatment. The Indian government has not yet responded.. As soon as India reconvenes its government after the national elections in April 2004, the United States will continue its efforts to resolve this issue.

Customs Procedures

The Government of India applies discretionary customs valuation criteria to import transactions. Pursuant to amendments to its valuation procedures issued September 7, 2001, these criteria appear to allow Customs to reject the declared transaction value of an import because a particular sale: (a) was not undertaken "in the ordinary course of trade under fully competitive conditions;" or (b) involved 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 raise tariff rates. The United States is using the WTO Committee on Customs Valuation to obtain further information from India on the operation of these amendments, and will continue to examine the customs valuation procedures for consistency with India's obligations under the WTO Agreement on Customs Valuation.

Indian Customs requires extensive documentation. Processing delays often occur. In large part the delays are a consequence of India’s complex tariff structure and multiple exemptions, which may vary according to product, user, or specific Indian export promotion program.

The Government of India fixes minimum import prices for certain imported steel products, including hot-rolled steel coils, cold rolled steel coils, hot rolled sheets, tin plates, electrical sheets, and alloy steel bars and rods. Whether to impose or withdraw the minimum import price for these products is the subject of an Indian government legal confrontation with the Indian courts. The Indian government’s appeal is pending in the Indian Supreme Court and the minimum price regime remains in place.

India introduced a reference price system for soybean oil in September 2002 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. The GOI states that the reference price is adjusted on a weekly basis if published world prices differ by either a 10 percent increase or decrease. India has not formally defined this procedure making it non-transparent and unpredictable. Exports of U.S. crude soybean oil to India were negligible in 2003 after accounting for $25 million in 2002. India has not been responsive to United States requests for relief from this practice.

In 2002, Indian Customs began to value imported movies according to net profits rather than the printing price of the film copy. The motion picture industry appealed the change in past practice, arguing that the new practice amounted to double taxation of film screening revenue. In March 2003, Indian Customs reversed itself; issuing notification that henceforth imported films would be valued based on the cost of the print alone.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The government has identified 159 specific commodities (including food preservatives, milk powder, condensed milk, infant milk foods, color dyes, steel, cement, electrical appliances and dry cell batteries) that the Bureau of Indian Standards (BIS) must certify before the products are allowed to enter the country. To be certified, exporters/manufacturers must either establish a presence in India or name a local Indian representative to accept responsibility, pay an annual fee as well as a percentage of the invoice value of shipments to India, and subject all certified exports to inspection. India has been slow to notify these and other standards, as the WTO Agreement on Technical Barriers to Trade (TBT) requires. In November 2003 the GOI withdrew 33 steel products from the list. To facilitate trade, the GOI announced in January 2004 that importers could obtain BIS certification after importing affected products.

In 2001, the Indian Ministry of Health and BIS proposed new product standards for distilled spirits. U.S. industry viewed the proposed standards as potential trade barriers. After a request from the United States, the Indian government is in the process of revising the draft standards before recirculating them for comment.

India has adopted some of the most stringent emissions standards for imported, large displacement motorcycles. India's standards are written to favor small displacement four-stroke motorcycles that are primarily manufactured by Indian producers. Even the latest low-emission technology used by U.S. manufacturers fails to meet India's requirements. In addition, India's procedures for establishing emissions standards are vague and non-transparent.

In 2001, India began enforcing a ban on textile and apparel imports that contain certain dyes. U.S. industry is concerned that India’s textile dye testing requirements significantly hamper trade by increasing costs and creating delays at the border. The U.S. textile and apparel industries have also raised concerns about India’s marking and labeling regulations. They find that the requirements for prepackaged goods and for imported fabric are expensive and virtually impossible to implement. In January 2004, the GOI relaxed its textile-testing requirement by announcing that it would accept, as proof of the absence of azo-dye, certification that the exporting country had banned azo-dyes in textiles.

Sanitary and Phytosanitary (SPS) Measures

India applies a range of sanitary and phytosanitary measures which pose obstacles for U.S. agricultural exports. Measures include compulsory detention and laboratory testing of several imported food products. The GOI recently announced a change, but the government has not yet identified the products to be covered. Domestic food products are not subjected to the same testing requirements. In 2003, the U.S. Government raised this national treatment issue bilaterally. India agreed to investigate its current practices but has yet to provide a response.

In 2003, the Ministry of Health implemented amendments under its Prevention of Food Adulteration Act (PFA) that could restrict Indian imports of several agricultural products. In addition, at the end of 2003, the Ministry of Agriculture issued a set of new regulations and quarantine requirements for imports of agricultural products. The Indian government implemented both new amendments to the PFA and import regulations on January 1, 2004 without scientific justification or WTO notification. India’s new regulations could significantly affect U.S. exports of almonds, raisins, pistachios, pulses, wheat, soybean oil, fresh fruits and vegetables coated with wax, and beverages (soft drinks, fruit and vegetable juices, fruit pulp, etc.). Furthermore, new requirements on Solid Wood Packaging Material (SWPM) may extend the negative impact on U.S. exports to nonagricultural products. Shortly thereafter, upon learning of India's action, the U.S. Government requested that India delay implementation and notify these new regulations to the WTO. On March 4, 2004, the Indian government notified its phytosanitary regulation to the WTO, although it did not suspend its implementation. On March 23, 2004, India decided to allow U.S. almonds shipped not later than May 4, 2004 to enter India according to the pre-January 1, 2004 import requirements. In practical terms, this means that U.S. almond consignments may enter the Indian market through mid-June under the old import regime. We remain optimistic that a long-term solution will follow.

U.S. agricultural officials proposed to hold regular bilateral meetings with Indian representatives on sanitary and phytosanitary issues. These meetings would provide a forum to discuss bilateral plant protection and quarantine issues, such as Indian SPS requirements for U.S. soybeans and U.S. requirements for Indian mangoes. The first SPS bilateral meeting is tentatively scheduled for spring 2004.

In addition, India is currently reviewing its policy for evaluating the safety of biologically engineered foods. In 2002, the Genetic Engineering Approval Committee (GEAC), the Indian government's regulatory body for biotechnology products, conditionally approved the import of refined soy oil and crude de-gummed soy oil. It declined, however, to consider importation of a corn-soy blend (CSB) without a special U.S.- issued certification. Even if a satisfactory certificate were available, the GEAC has not specified the criteria on which it would evaluate the safety of CSB. In the absence of a policy framework for assessing the safety of biotechnology foods, the decision-making process within the GEAC is slow, non-transparent and of questionable scientific justification. Meanwhile, Indian researchers are engaged in the domestic development of agricultural products derived from biotechnology such as mustard, potatoes, tomatoes, cabbage, cauliflower, chilies, groundnuts, and rice.

GOVERNMENT PROCUREMENT

India is not a signatory to the WTO Agreement on Government Procurement. The United States has no bilateral government procurement obligations to India. Indian government procurement practices and procedures are neither transparent nor standardized. Foreign firms do not generally win Indian government contracts.

EXPORT SUBSIDIES

Export earnings are mostly exempt from income and other taxes. Exporters may also enjoy a variety of tariff incentives and promotional import licensing schemes, some of which are contingent upon export. Export promotion measures include duty exemptions or concessional tariffs on raw material and capital inputs. These measures have caused concern for the agrochemical sector in particular. According to industry representatives, since no corporate taxes are levied on income generated from exports by Indian companies, this enables them to price goods below international competitive levels while maintaining a constant profit margin. Commercial banks also provide export financing on concessional terms. The 2000/01 budget provided for the elimination of the tax exemption on export income over five years in equal steps. The 2002/03 budget made 10 percent of export income taxable for the fiscal year ending March 31, 2003 for all export-oriented units. In October 2000, the Indian government decided to export surplus wheat at subsidized prices. In April 2001, this scheme was extended to cover rice. The sale of government-held stocks of these products for export, at prices significantly lower than the domestic price, appears to be inconsistent with India's WTO commitments. Several programs have been identified that are believed to benefit India's textile and apparel exports.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

INDIA

Intellectual property protection in India is weak. The USTR placed India on the Priority Watch list as part of the 2003 "Special 301" process.

Patents

India's patent law excludes from product patent protection any invention intended for use or capable of being used as a food, medicine, or drug, or relating to substances prepared or produced by chemical processes. As a result, many U.S.-invented drugs are widely reproduced in India without license. In 2003, a U.S. firm reported that its agricultural biotechnology cottonseeds were being copied and marketed without license or GOI regulatory approval. U.S. agro-chemical industries have joined other industries in raising concern about India's inadequate intellectual property protection. As a result, industries have withheld marketing and production of compounds in India.

To meet its Uruguay Round obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the GOI has until January 1, 2005 to provide product patent protection, including for pharmaceuticals and agro-chemicals. In 2003, the GOI reaffirmed its intention to honor this commitment and began work on drafting legislation to amend its Patent Act for the third time. In August 2001, after a prolonged debate, the Indian Parliament passed the Protection of Plant Varieties and Farmers' Rights Act that would provide patent-like protection for plant varieties, fulfilling another of its TRIPS commitments. The GOI has not yet implemented this law.

The May 2002 Patent Law amendment (which became effective in May 2003) contains numerous categories of inventions that are not patentable even though the TRIPS Agreement requires that patents be available for all inventions, with limited exceptions, regardless of field of technology. The 2002 amendment also does not provide adequate process protection for products that cannot be patented in India. Article 28 (b) of the TRIPs Agreement requires that where the subject matter of a patent is a process, the exclusive rights extend to the product obtained directly by that process. Under the Indian regime, if the product is made in another country, it can readily be imported because the product is not subject to patent protection. As a consequence, the process patent can easily be circumvented and has largely lost its effectiveness. India also does not protect biotechnological inventions, methods used with respect to agriculture and horticulture, and processes for the treatment of humans, animals, or plants. Indian policy guidelines normally limit recurring royalty payments, including patent licensing payments, to eight percent of the selling price (net of certain taxes and purchases). Royalties and lump sum payments are taxed at a 30 percent rate.

Indian law does not provide protection for clinical trial data that companies must submit to the government to obtain marketing approval of their pharmaceutical products. In 2003, the GOI debated the provision of data exclusivity protection but took no action. As a result, companies in India are permitted to copy pharmaceutical products (as there is no product patent) and seek immediate government approval for marketing based on the original developer's clinical data.

The United States continues to press for passage of a TRIPS-compliant regime within the agreed upon time frame. A small, but growing, domestic Indian constituency, comprised of Indian pharmaceutical companies, technology firms and educational and research institutions, favors an improved patent regime, including full product patent protection.

Copyrights

India implemented a strengthened copyright law in May 1995, creating one of the most modern systems for copyright protection in the developing world. In the year 2000, certain amendments to the Indian Copyright Act substantially weakened the Act’s once-strong software protection. These exceptions allow decompilation of a computer program, permit reproduction of a computer program so as to observe its functionality, and allow multiple copies of a computer program for personal, non-commercial use. The United States believes that the exceptions provided in the amendments are too broad and will lead to increased piracy. Article 13 of the TRIPS Agreement allows WTO Members to limit intellectual property protection as long as the exceptions or limitations do not unreasonably prejudice the right holder's interests or conflict with the normal exploitation of the work. Other amendments in 2000, designed to meet TRIPs obligations, increased the period of protection of performers' rights from 25 years to 50 years, and extended the provisions of the Act to broadcasts and performances made in other countries only on a reciprocal basis.

The GOI is not a party to either the 1996 WIPO Copyright Treaty (WCT) or the WIPO Performances and Phonograms Treaty (WPPT). A "core group" of GOI officials, local industry representatives, academics and lawyers have been discussing amendments to the Indian Copyright Act which would enable India to implement these treaties. They have yet to introduce the necessary legislation. United States' attempts to provide useful input into this process continue to be disregarded.

Piracy of copyrighted materials (particularly software, films, popular fiction works and certain textbooks) remains a problem for U.S. and Indian producers. Pirated semiconductors are sold in violation of copyright and semiconductor mask laws. India has not adopted an optical disk law to deal with optical media piracy. The Indian Constitution gives enforcement responsibility to state governments. Classification of copyright and trademark infringements as "cognizable offenses" has expanded police search and seizure authority, while the formation of appellate boards has speeded prosecution. The amended law also provides minimum criminal penalties, including mandatory minimum jail terms that U.S. industry believes would go far in controlling piracy, if implemented. Other steps to improve copyright enforcement include: the establishment of a copyright enforcement advisory council with responsibility for policy development and coordination; and the initiation of a program for training police officers and prosecutors concerned with enforcement of copyright laws. Due to backlogs in the court system and documentary and other procedural requirements, few cases have been prosecuted recently. While a significant number of police raids have been planned and executed, the law requires that in order to seize allegedly infringing equipment, the police must witness its use in an infringing act.

Cable television piracy continues to be a significant problem, with estimates of tens of thousands of illegal systems in operation in India at this time. Copyrighted U.S. product is transmitted over this medium without authorization, often using pirated videocassettes, VCDs, or DVDs as source materials. This widespread copyright infringement has a significant detrimental effect on all motion picture market segments - theatrical, home video and television - in India. For instance, pirated videos are available in major cities before their local theatrical release. The proliferation of unregulated cable TV operators has led to pervasive cable piracy. At the same time, anti-piracy efforts in the business applications software field have produced a slight drop in the business software piracy rate from 78 percent in 1995 to 70 percent in 2002. According to a recent report by the Intellectual Property Rights Alliance, trade losses due to the piracy of U.S. motion pictures, sound recordings and musical compositions, computer programs, and books totaled $376 million in 2002. The Information Technology Act of 2000 provides a legal framework for the prevention of piracy and protection of intellectual property rights to include penalties for the unauthorized copying of computer software.

Trademarks

The Government of India has committed to upgrading its trademark regime, including according national treatment for the use of trademarks owned by foreign proprietors, providing statutory protection of service marks, and clarifying the conditions under which the cancellation of a mark due to non-use is justified. In May 1995, the Government of India introduced in Parliament a trademark bill that passed the lower house. Opposition in the upper house stalled discussion of the legislation, which was finally passed in December 1999. Implementing regulations to put the new law into effect were published in September 2003. Protection of foreign marks in India is still difficult, although enforcement is improving. Guidelines for foreign joint ventures have prohibited the use of "foreign" trademarks on goods produced for the domestic market. That is, owners of foreign trademarks who register them in India must use the trademarks on local production. Non-use of such trademarks in India may result in their cancellation.

The required registration of a trademark license (described by U.S. industry as highly bureaucratic and time-consuming) has been refused on such grounds as "not in the public interest," "will not promote domestic industry," or for "balance of payments reasons." The Foreign Exchange Regulation Act (FERA), replaced by the Foreign Exchange Management Act 1999 (FEMA) in June 2000, restricts the use of trademarks by foreign firms unless they invest in India or supply technology.

Trademark owners must prove they have used their mark to avoid a counterclaim for registration cancellation due to non-use. Such proof can be difficult, given India's policy of discouraging foreign trademark use. Companies denied the right to import and sell products in India are often unable to demonstrate use of registered trademarks through local sale. Consequently, trademarks on restricted foreign goods are exposed to the risk of cancellation for non-use. The new Trademark Act provides protection for service marks for the first time. Trademarks for several single ingredient drugs cannot be registered. There have been several cases where unauthorized Indian firms have used U.S. trademarks for marketing Indian goods. The Indian courts, however, have upheld trademark owner rights in infringement cases.

Enforcement

India needs to reform substantially its criminal justice system. In addition, U.S. industry reports significant weaknesses with India’s border protection against counterfeit and pirated goods. India needs to address the high volume of exports of domestically produced counterfeit goods.

India’s criminal IPR enforcement regime remains weak, with few reported convictions for copyright infringements resulting from raids, including raids against recidivists. Adjudication of cases is extremely slow. Criminal enforcement with regard to motion pictures improved somewhat in 2003. No criminal software end-user piracy cases have resulted in convictions to date; although, the first criminal end-user raid ever conducted in India occurred in March 2003. Obstruction of raids, leaks of confidential information, delays in criminal case preparation and the lack of adequately trained officials have further hampered the criminal process.

Recent amendments to the Code of Civil Procedure requiring that civil cases must be completed within one year may provide more expeditious disposition of the civil cases undertaken by U.S. industry in Indian courts.

SERVICES BARRIERS

Indian government entities run many major services industries either partially or entirely. Nevertheless, both foreign and domestic private firms play a large role in advertising, accounting, car rental, and a wide range of consulting services. There is growing 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 WTO GATS offer to provide further services liberalization, it does not go far enough in removing existing restrictions in its services market in key sectors such as professional services, telecommunications and financial services. The United States will continue to press India for further market opening in these sectors and its services market overall to provide additional export opportunities for U.S. services providers.

Insurance

Prior to 2000, all insurance companies were government-owned, except for a number of private sector firms providing reinsurance brokerage services. On December 7, 1999, the Indian Parliament passed the Insurance Regulatory and Development Authority (IRDA) bill that ended the government monopoly and established an insurance regulator. The law opened India's insurance market to private participation with a limit on foreign equity of 26 percent of paid-up capital. In the WTO Financial Services negotiations that concluded in December 1997, India bound the limited range of insurance lines then open to foreign participation. In addition, India committed to most-favored-nation (MFN) treatment effective January 1999, for the financial services sectors, dropping a previous MFN exemption.

Banking

Most Indian banks are government-owned, and entry of foreign banks remains highly regulated. State-owned banks control 80 percent of the banking system. The Reserve Bank of India issued in January 1993 guidelines under which new private sector banks may be established. Operating approval has been granted to 25 new foreign banks or bank branches since June 1993. As of September 2003, 35 foreign banks with 207 branches were operating in India. Foreign bank branches and representative offices are permitted based upon reciprocity and India's estimated or perceived need for financial services. Five U.S. banks now have a total of 16 branches in India. They operate under restrictive conditions including tight limitations on their ability to add sub-branches. Operating ratios are determined based on the foreign branch's local capital, rather than the global capital of the parent institution. India's commitments under the 1997 WTO Financial Services Agreement provided for a greater role for foreign banks starting in January 1999. Foreign banks are allowed to open twelve new branches annually (up from the prior commitment of eight per year). India did not, however, agree to grant national treatment to foreign companies investing or seeking to invest in the financial services sector, nor did it make any commitments on cross-border banking. Foreign direct investment (FDI) in banking is slowly being liberalized and the foreign equity ceiling has been raised to 74 percent from 49 percent for investment in private banks. FDI in state-owned banks remains capped at 20 percent. Foreign banks may also set up subsidiaries as an alternative to branches of the parent company.

Securities

Foreign securities firms have established majority-owned joint ventures in India. Through registered brokers, foreign institutional investors (FII), such as foreign pension funds, mutual funds, and investment trusts, are permitted to invest in Indian primary and secondary markets. The equity caps for foreign portfolio investment are generally identical to the FDI equity caps, with the exception of a few specific sectors. Foreign securities firms may now purchase seats on major Indian stock exchanges, subject to the approval of a regulatory authority. In the 1998/99 budget, FIIs were allowed for the first time to invest in the debt securities of unlisted Indian companies. Indian companies no longer require prior clearance from the Reserve Bank of India for inward remittance of foreign exchange and for the issuance of shares to foreign investors. The introduction of mortgage-backed securities has, in addition, led to the creation of a secondary mortgage market. Indian mutual funds are now permitted to invest in rated securities in countries with fully convertible currencies. The Securities and Exchange Board of India now permits FIIs to trade in all exchange-traded derivative products, subject to trading limits for members and their clients in the derivatives market.

Audiovisual and Communications Services

In August 1992, as agreed with the United States Government, the Indian government introduced a number of significant changes in its film import policy. Several issues of concern remained until recently, including pre-censorship "quality check" procedures and fees. The Indian government removed the import-licensing requirement for motion pictures in January 2002. An annual remittance ceiling of $6 million on all foreign film producers was eliminated in November 2001. U.S. companies have experienced difficulty in importing film/video publicity materials.

Legislation passed in December 2002 allowed the GOI to put in place the Conditional Access System (CAS) for cable television whereby TV subscribers would be required to install set-top-box decoders to view premium channels. The aim of this CAS legislation was to address public grievances about arbitrary hikes in cable subscription fees; and to provide greater choice to subscribers to pay for only those channels they wish to receive instead of one fixed price for the entire package. The Government saw CAS as a means to increase transparency and prevent tax leakage by preventing cable operators from under-reporting their subscriber bases. By providing tighter regulation of the cable industry as a whole, CAS was expected to help reduce the problem of pirated broadcasts. The Government announced plans to implement the CAS system in the four largest metropolitan areas by July 15, 2003. As of March 2004, the GOI indefinitely postponed CAS implementation on the advice of its regulator that continues to study the issue.

The government of India permits FDI of up to 49 percent in Indian companies that uplink from India. Total foreign investment 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. As of August 2003, they also have to ensure that a A dominant Indian partner, i.e., one who has the financial strength to hold 74 percent equity, owns the 51 percent Indian equity. In addition, operational control of the editorial content must be in Indian hands. The Indian government has also announced other minimum capitalization requirements.

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. Effective July 1, 1998, the Institute of Chartered Accountants of India (ICAI) banned 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

The Indian Bar Council has imposed restrictions on the activities of foreign law firms in recent years that have sharply curtailed U.S. participation in the Indian legal services market.

Express Delivery Services

U.S. industry advises that the Indian government is proposing a new regulatory framework covering express delivery services that could discriminate in favor of the government postal monopoly or domestic private operators.

Telecommunications

India has taken positive steps towards liberalizing the telecommunications market and introducing private investment and competition in basic telecommunications services. Concerns remain regarding interconnection charges new entrants must pay, India's weak multilateral commitments in basic telecommunications, and the apparent bias of telecommunications policy towards government-owned service providers.

The national telecommunications policy allows private participation in the provision of basic, including cellular, and value-added telecommunications services. Foreign equity in value-added services is limited to 51 percent. For basic services, the limit is 49 percent. As it has been difficult to raise the amounts of money needed to finance the new networks, creative financing arrangements have been allowed in some cases that extend the limit to 74 percent. Private operators can provide services within regional "circles" that roughly correspond to the borders of India's states. Policy uncertainty has increased the financial risk for both cellular and other basic telecommunications service providers, thus inhibiting even more rapid growth in India’s telecommunications infrastructure than has occurred in the last four years. Local production requirements remain an important factor in negotiations to establish service operations.

Private competitive carriers are concerned about the neutrality and fairness of government policy. The Indian government retains a significant ownership stake and interest in the financial health of the dominant telecommunications firms, all of which formerly enjoyed monopoly status in their areas of operation. The government holds a 26 percent position in the international carrier, VSNL, a 56 percent position in MTNL, which primarily serves the Delhi and Bombay metro areas, and a 100 percent position in BSNL, which provides domestic services throughout the rest of India. The government has indicated it will privatize MTNL and BSNL in the future but has not established a timetable.

American telecommunications companies have complained about the restrictive polices adopted by incumbent Indian international service provider VSNL on international bandwidth, cable access, and landing stations in India. They allege discriminatory and monopolistic practices by VSNL and have requested the Indian government to intervene to ensure VSNL makes available submarine cable capacity to other suppliers on a reasonable and non-discriminatory basis.

In October 2003 the Indian cabinet approved the introduction of a single license regime for cellular and basic telecommunications services. India continues to modernize its regulatory framework, with a draft "convergence bill which is pending parliamentary consideration. The bill will consolidate authority over telecommunications, the Internet, and broadcasting in a single, super regulator.

In January 2003, the Telecom Regulatory Authority of India (TRAI) implemented an interconnection Access Deficit Charge which, though revised in October 2003, appears to remain inconsistent with India's legal and regulatory requirements that such charges be cost-based, completely neutral, and non-discriminatory.

Internet telephony became legal in India in 2002, but this long-awaited liberalization came with several restrictions. Only Internet Service Providers (ISPs) are allowed to offer Internet telephony within their service areas, and telephone-to-telephone communications through the Internet remain illegal.

Distribution Services: Direct Selling

U.S. direct selling firms have been misclassified as retail instead of wholesale companies, and have also been mischaracterized as illegal pyramid schemes. Current Indian law does not sufficiently differentiate between legitimate direct selling operations and pyramid schemes.

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 FDI in certain politically sensitive sectors, such as agriculture, retail trading, railways, and real estate. Foreign investment is still relatively controlled with various government approvals required for many types of investments. While a key reform has allowed automatic FDI approval in many industries, including bulk manufacturing activities, other sectors still require approval by government agencies. The rules vary from industry to industry and are frequently changed, most often in the direction of further deregulation. The process is not always transparent and the restrictions on combined FDI and portfolio investment are inconsistent across industries.

In June 2002, the Indian government opened the news print media sector to FDI of up to 26 percent. FDI is limited to 74 percent in the case of the non-news journals and magazines. In 2001, the government opened the defense equipment industry to private investors with an FDI limit of 26 percent. The government also raised permissible foreign equity in banking to 74 percent from 49 percent, in the ISP sector to 74 percent from 49 percent, and in pharmaceuticals to 100 percent from 74 percent.

Foreign industries have expressed concern with the Indian government's stringent and non-transparent regulations and procedures governing local shareholding. Current price control regulations have undermined incentives to increase 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, introduced by the Ministry of Industry on December 14, 1998, poses major impediments to investment in India. The following are the two most restrictive provisions of Press Note 18:

1) The automatic approval route is not available to foreign investors who wish to set up new ventures in India or who wish to enter into new technical collaborations or trademark agreements in India, if such foreign investors have or have previously had any joint venture, technology transfer or trademark agreement in the same or allied field in India. Such foreign investors would have to obtain an approval from the Indian government; and

2) In its application, such foreign investor would have to give reasons for which it finds it necessary to set up a new venture or enter into a technical collaboration or trademark agreement. The onus is on the investor to provide adequate justification to the satisfaction of the Indian government that its new proposal would not jeopardize the interests of the existing venture or the stakeholders thereof. The government may, at its discretion, approve or reject the application giving reasons for such rejection.

In addition, the foreign investors who already have an equity stake in a venture in India, and who want to increase their equity stake in the company, are required to obtain a resolution of the Board of Directors of the Indian company prior to seeking Indian government permission.

In spite of recent changes to Indian investment policy allowing higher FDI or equity limits and dropping requirements on foreign investors to divest significant portions of their holdings over time, many investors who entered the market prior to the changes continue to be held by the outdated provisions on the grounds they are bound by company-specific agreements. For example, a U.S. soft drink manufacturer which entered the Indian market under the old regulations was compelled by the GOI in 2002 to divest 49 percent of its Indian shareholding in favor of Indian investors (which the company completed in 2003) even though new regulations in effect at the time no longer required it to do so.

Trade-Related Investment Measures (TRIMS)

In July 2000, the United States initiated a dispute settlement proceeding in the WTO, joined later by the EU, challenging India's compliance with its commitments under the Agreement on Trade-Related Investment Measures (TRIMS). As a result, on March 14, 2002, India announced a new automobile investment policy. The new automobile investment policy eliminated previous local content and minimum investment requirements. It allowed automatic approval for 100 percent foreign equity investment for manufacturing automobiles and components. In August 2002, the Indian government removed export performance requirements for foreign automakers.

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 languish for years, Indian firms face few if any disincentives to engaging in anticompetitive business practices.

The Indian Parliament approved competition legislation in 2002 that provided for a new regulatory authority, the Competition Commission of India (CCI) to replace the Monopolies and Restrictive Trade Practices Commission (MRTPC). The new law does not prohibit monopolies but does charge the CCI with regulating unfair practices and promoting policies that favor competition. The government issued the implementing rules for the Competition Act in April 2003.

OTHER BARRIERS

India has an unpublished policy that favors counter-trade. 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 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 drug policy is an issue of concern for U.S. pharmaceutical companies. In view of the lack of adequate and effective intellectual property protection coupled with a rigid government-controlled pricing system that does not adequately reward innovation, they find it nearly impossible to maintain viable pharmaceuticals businesses in India. This prevents pharmaceutical companies from placing the best and latest innovative drugs on the Indian market.

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, pesticide manufacturers whose products have been approved at the national level and banned at the state level, and distilled spirits producers who face non-uniform state-level taxes despite the national government’s directive to harmonize such taxes.

INDONESIA

TRADE SUMMARY

The U.S. trade deficit with Indonesia was $7.0 billion in 2003, a decrease of $88 million from $7.1 billion in 2002. U.S. goods exports in 2003 were $2.5 billion, down 1.4 percent from the previous year. Corresponding U.S. imports from Indonesia were $9.5 billion, down 1.3 percent. Indonesia is currently the 37th largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Indonesia were $1.0 billion in 2002 (latest data available) and U.S. imports were $285 million.

U.S. exports of agricultural products to Indonesia totaled $984 million in 2003. Leading categories include: soybeans ($324 million), and cotton ($232 million). U.S. imports of agricultural products from Indonesia totaled $1.2 billion in 2003. Leading categories include: rubber and allied products ($596 million), cocoa beans ($194 million), and spices ($120 million).

The stock of U.S. foreign direct investment (FDI) in Indonesia in 2002 was $7.5 billion, down from $8.2 billion in 2001. U.S. FDI in Indonesia is concentrated in the mining, manufacturing, and banking sectors.

OVERVIEW

Although Indonesia’s economy weathered the 2002 global economic slowdown relatively well, the country still has not fully recovered from the effects of the 1997-98 financial crisis. President Megawati Soekarnoputri’s government has maintained a measure of political stability during its tenure, despite an ongoing conflict with separatists in the gas-rich province of Aceh. In 2004, Indonesians will go to the polls for legislative elections and for direct elections for the President and Vice President, who will be inaugurated in October. However, the nation's most serious problems -- building effective democratic institutions, establishing the rule of law, restoring private capital inflows, and combating corruption – continue to prove to be difficult to tackle. Terrorist bombings on October 12, 2002 in Bali and August 6, 2003 at the Marriott Hotel in Jakarta harmed Indonesia’s tourist sector. However, the economy proved resilient enough to bounce back. Indonesia’s non-oil and gas exports to the world remained strong in 2003, growing 5.2 percent over 2002.

The Indonesian government generally has adhered to its long-term trade liberalization program, although some backsliding occurred in 2002 and continued through 2003. Indonesia fully implemented the final stage of its commitments under the ASEAN Free Trade Agreement (AFTA) on schedule January 1, 2002. However, the Indonesian government has expressed reservations about the pace of liberalization within AFTA, and noted an interest in pursuing emergency exit clauses from AFTA commitments in general. Indonesia has a mixed record in the WTO. In the current Doha round of negotiations, Indonesia continues to advocate special product exemptions for rice, sugar, soybeans, and corn. 2002 textile regulations advantaged domestic textile fabrics over imports, violating WTO commitments. However, in 2003 the government developed WTO-compliant mechanisms, like safeguards, as an alternative to protectionist measures.

Indonesia's relationship with the International Monetary Fund (IMF) provided the framework for the country's economic policies since November 1997. IMF-supported economic reforms helped stabilize the macro economy, restructure the financial sector, and reinforce existing policies of trade and investment liberalization. Indonesia concluded its IMF program at the end of 2003.

The Indonesian government issued an economic policy White Paper in September 2003 detailing its plans to continue forward with the economic reform agenda in three areas: maintaining macroeconomic stability; continuing financial sector reform; and increasing investment, exports and employment. The first two sections followed closely the reform agenda already in progress with IMF support. The private sector (foreign and domestic) welcomed the ambitious third section on improving the investment climate, but expressed concern about implementation and stressed the need for prioritization. They also urged more government consultation with the private sector before announcing policies or issuing regulations. Additionally, they cited legal reform as key to improve the overall business environment, and offered specific suggestions of priority measures in the areas of Small and Medium Enterprise Development, Taxation, Customs, Labor, Energy, Electricity, Telecommunications and Transportation.

These suggestions reflect U.S. industry's continuing concern over the wide range of business problems, including the lack of contract enforceability, discriminatory taxation, the absence of a transparent and predictable regulatory environment, arbitrary and inconsistent interpretation and enforcement of laws, irregularities in government procurement tenders, and ineffective enforcement of intellectual property rights. These cause great uncertainty, which combined with widespread corruption, an ineffective judicial system, non-existent credit reporting, and underdeveloped capital markets, hinders commercial dealings in Indonesia.

IMPORT POLICIES

Tariffs

As of January 2003, about 70 percent of Indonesia's tariff lines were assessed import duties ranging between zero percent and five percent. Indonesia's average unweighted tariff is 7.3 percent, compared to 20 percent in 1994.

In the late 1980's the Indonesian government began long-term trade reform to wean the economy away from its dependence on oil and gas and to increase Indonesia's industrial competitiveness. In the early 1990's, 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. The January 11, 2001 tariff reduction package cut five percentage points on 1,279 tariff lines. The majority, 769 lines, had tariff rates reduced to 10 percent or below. Effective January 1, 2002, Indonesia, along with the other five original ASEAN members, implemented the final phase of the ASEAN Free Trade Agreement (AFTA). Indonesia has reduced tariffs for all products included in its original commitment (7,206 tariff lines) to five percent or less for products of at least 65 percent ASEAN origin. The 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 ASEAN Free Trade Agreement (AFTA).

In the Uruguay Round market access negotiations, Indonesia committed to bind 94.6 percent of its tariff schedule; most 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. Indonesia committed to remove import surcharges on items bound in the Uruguay Round by the year 2005, and had done so by the end of 1996. In accordance with the WTO Agreement on Agriculture, Indonesia agreed to eliminate non-tariff barriers on agricultural products, and replace them with tariffs. In the agricultural sector, 1,341 tariff lines have bindings at or above 40 percent, including the most sensitive and heavily protected sectors. Local content regulations on dairy products were eliminated on February 1, 1998. In the current Doha round of negotiations, Indonesia has been advocating special products exemptions from tariff reductions for rice, sugar, soybeans, and corn.

Beginning in 2002 and intensifying in 2003, domestic agricultural interests put pressure on the Indonesian

Government for protection from international competition. However, with some notable exceptions, the Indonesian Government has resisted such pressure. 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). The Ministry of Agriculture continues to propose increasing the tariff further in order to protect local farmers, but the Indonesian Government has not implemented this measure. Local agriculture interests also have lobbied the government to increase bound tariff rates on sensitive agricultural products, such as sugar and soybeans.

Non-Tariff Barriers

Since 1997, Indonesia dismantled many formal non-tariff barriers. In September 1998, the Indonesian Government sharply curtailed the role of the National Logistics Agency (Bulog), which had a monopoly on importing and distributing major bulk food commodities, such as wheat, rice, sugar, and soybeans. Bulog now maintains 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. The agency 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. The U.S. government has raised concerns about this issue, but the Ministry of Agriculture 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 sought to repeal the ban, so far without success. U.S. industry estimates the value of lost trade from this ban at roughly $10 million.

The Indonesian government also imposes de facto quantitative restrictions on imports of meat and poultry products by requiring an Importer Letter of Recommendation ("Surat Rekomendasi Importir"). 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 trade impact of this restriction to be between $10 million and $25 million.

Domestic rice producers continue to lobby the government for protection. In addition to tariff protection, other proposed options include banning imports during harvest season (February - May), employing a tariff-rate quota scheme, or limiting ports of entry. The Indonesian government thus far has not exercised any of these proposed options. Meanwhile, U.S. rice exports increased from $5 million in 2001 to $18.5 million in 2002. Most of these exports were linked to two P.L. 480 Title I concessional loan programs in each respective year. Although the Indonesian government rejected the program for 2003, U.S. rice exports reached $16.3 million, 12.2 percent lower than in 2002.

The U.S. government has received reports that the Indonesian Customs Service uses a schedule of arbitrary “check prices” rather than actual transaction prices on importation documents for assessing duties on food product imports. While Indonesian government officials defend this practice on the basis of combating underinvoicing, they do not publicize the list or the methods used to arrive at those prices. As a result, although most food product import tariffs remain at five percent, the effective level of duties can be much higher.

Other quantitative 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.

Import Licensing

The Indonesian Government has continued 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. There have been no complaints concerning NPIK.

On October 23, 2002, the Minister of Industry and Trade issued a decree concerning Textile Import Arrangements. Only companies that have production facilities to use imported fabrics as inputs for finished products, such as garments or furniture, may obtain import licenses. The United States has raised serious concerns that the import licensing requirements severely restrict and distort trade, violating Indonesia's commitments in various GATT and WTO agreements. The Indonesian government insists the regulations are designed to help curb smuggling. The U.S. Government has recommended that the decree be rescinded.

STANDARDS, TESTING, LABELING AND CERTIFICATION

In July 2000, the Indonesian government began to implement 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). After complaints from Indonesian importers and retailers of overly complex, time consuming, and costly requirements, BPOM drafted revised procedures that would simplify the process. However, those draft regulations have stalled in the President's Office without approval or further comment.

All imported food products must be tested by BPOM. Fees for such testing range from Rp 50,000 ($6.00) to Rp 2.5 million ($300) per item, and between Rp 1 million ($120) to Rp 10 million ($1200) per product. Some U.S. producers have expressed concerns that the extremely detailed information on product ingredients and processing they must provide may infringe upon proprietary business information. This has led some U.S. exporters to discontinue sales. However, the government has not fully implemented these regulations, and enforcement is weak and inconsistent. If fully implemented the level of trade affected by this requirement is estimated by U.S. industry at between $10 million and $25 million.

The Indonesian government also has been gradually implementing a strict food labeling law that requires labels written only in the Indonesian language on all consumer products. Labels may not include any other languages. U.S. companies, who generally design labels to accommodate several export markets (often in several languages), have concerns about this requirement, which makes it cost ineffective to export smaller volume products. However, as of December 2003, the government had not issued implementing rules or enforced the food labeling requirement.

Beginning January 2001, Indonesian 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. According to U.S. industry the new regulation could affect sales of approximately $411 million in soybeans and soybean meal from the United States.

GOVERNMENT PROCUREMENT

Indonesia is not a party to the WTO Government Procurement Agreement. Indonesia's government procurement regime is governed by a number of overlapping laws, regulations, and presidential decrees. Most important is a presidential decree issued in February 2000, which updated the Law on Government Procurement of 1994. The decree simplified procurement procedures and enhanced transparency, but also granted special preferences to domestic sourcing. In addition, Construction Law 14/1999 governs procurement of civil engineering services and related consulting services. Regional decentralization also 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), which identified serious irregularities in procurement. However, no legal action has been been taken.

Foreign firms bidding on high value government-sponsored construction or procurement 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 goods and services procurement projects. State-owned enterprises that publicly offer shares through the stock exchange are exempted from government procurement regulations. The new oil and gas upstream authority, BP Migas, regulates the import of all materials used by the oil and gas sector.

EXPORT SUBSIDIES

The Indonesian government, through Bank Export Indonesia, maintains several credit programs that provide subsidized loans, primarily to agriculture and small and medium businesses. The subsidized credit structure is undergoing significant change as economic reforms proceed.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The United States placed Indonesia on the "Priority Watch List" again in 2003, due to continued weak IPR enforcement. Previous Special 301 Annual Reviews in 2002 and 2001 identified a range of IPR concerns, including rampant software, audio, video disk and book piracy; pharmaceutical patent infringement; counterfeiting; trade secret protection; data protection; apparel trademark counterfeiting; an inconsistent and corrupt law enforcement regime; and an ineffective judicial system. The lack of effective IPR protection and enforcement are major disincentives to foreign investment in Indonesia, particularly in high technology sectors.

The government agency responsible for IPR legislation works closely with industry groups to combat abuses. However, prosecution of violators has been difficult due to inadequate police action, prosecutor and judge unfamiliarity with the new law, as well as the Indonesian public’s limited understanding of the importance of IPR protection, and rampant corruption. In 2001, the Indonesian judiciary began to try certain IPR cases in the Commercial Courts. In a landmark case that year, a U.S. software company won a civil suit against five retailers for selling computers bundled with pirated software. In its first two years, the Commercial Courts have concluded over 150 cases. Nonetheless, U.S. companies often find the Indonesian court system frustrating, unpredictable, and ineffective in punishing violators. Industry representatives say the vast majority of criminal prosecutions must be dropped due to poor evidence documentation and maintenance, as well as widespread corruption within the justice system.

Indonesia is a member of the World Intellectual Property Organization (WIPO) and has acceded to numerous international conventions on IPR. These include the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works (with a reservation on Article 33), the WIPO Copyright Treaty, the Patent Cooperation Treaty, the Trademark Law Treaty, the Nice Agreement for the International Classification of Unclassified Goods and Services, and the Strasbourg Agreement Concerning International Patent Classification.

Copyrights

The new copyright law came into force in July 2003, one year after it passed Parliament. The law contains a number of important provisions long sought by U.S. and Indonesian copyright holders, including authorization for the Indonesian government to issue optical disk (OD) regulations, criminal penalties for end-user piracy and the ability of right holders to seek civil injunctions against pirates. The Indonesian government completed draft optical disk regulations in November 2003. The Ministry of Justice has approved the OD regulations, but approval by the Ministry of Industry and Trade is pending. Once the Ministry of Industry and Trade approves the draft, the OD regulations will be submitted to the President's office for final approval.

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, meeting TRIPS Agreement requirements. A 1989 copyright agreement between the United States and Indonesia extends national treatment for copyright protection to works created by citizens of each country.

The Indonesian government enforcement of copyrights is uneven, although it periodically intensifies actions against copyright piracy and regularly consults with copyright holders and associations. However, piracy of video compact disks in Indonesia is widespread, undermining the sale and rental of legitimate products. Periodic raids result in the seizure of sizable caches of pirated OD products. However, none of these cases has resulted in meaningful penalties or permanent impoundment or destruction of equipment used to manufacture pirated products. In recent years, movies on high-quality pirated digital video disks (DVDs) have become increasingly available alongside video compact disks (VCDs). According to U.S. industry estimates, total losses from copyright piracy in Indonesia during 2002 were over $250 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, there remains a lack of effective enforcement of patents and pending patents. The patent law does not correct some of the weaknesses that concern foreign rights holders. Chief among these is the requirement that an inventor must produce a product or utilize a process in Indonesia to obtain a patent for the product or process. The standard for excluding inventions contrary to the public interest from patentability appears broader than the standards enumerated in the TRIPS Agreement.

Trademarks

Indonesia enacted its trademark law on August 1, 2001. The trademark law consolidated three prior laws enacted over 20 years. The law raised the maximum fine for 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. Indonesian trademark officials’ requirement that all trademark modifications be registered, appears to violate the Treaty of Paris. 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 benefited some trademark holders. However, industry representatives had hoped courts additionally would use injunctions, especially in cases where a lower court eventually invalidates a false trademark registration.

SERVICES BARRIERS

Despite relaxation of some restrictions, particularly in the financial sector, 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. In order to practice legally, lawyers must hold Indonesian citizenship and a degree from an Indonesian legal facility or other recognized institution. Foreign lawyers can only work in Indonesia as "legal consultants" and must first obtain the approval of the Ministry of Justice and Human Rights. A foreign law firm seeking to enter the market must establish a relationship with local firm.

Distribution

In 1998-99, Indonesia liberalized portions of the distribution services sector under terms of its agreements with the IMF. The Indonesian government eliminated restrictive marketing arrangements for cement, paper, plywood, cloves and other spices. Indonesia has opened the wholesale and retail trade sectors to foreign investment. Since 1998, it has allowed 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. The film sector is not covered by this regulation. The entire film sector, including film distribution and exhibition, remains closed under provisions of the 1992 Film Law (see Audio-Visual section below).

In October 2001, Indonesia passed a new Oil and Gas Law to deregulate downstream activities. Presidential Decree 86/2002 and Government Regulation 67/2002 establish a new Oil and Gas Downstream Business Regulating Board (Badan Pengatur Kegiatan Usaha Hilir Migas, or BPH Migas) to control downstream activities. Although the day to day activities of the board must still be defined through implementing regulations, BPH Migas will be 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.

Financial, Accounting and Banking Services

Under the WTO Financial Services Agreement, Indonesia committed to allow 100 percent foreign ownership for non-bank financial services companies that are publicly listed, including insurance and securities firms. Indonesia also guarantees the access of existing financial services firms in its market. It lifted restrictions on branching and sub-branching for joint venture banks and foreign branches in 1998.

In 2002, the Indonesian Bank Restructuring Agency (IBRA) sold majority shares of Bank Niaga and Bank Central Asia, formerly the largest private sector bank in Indonesia. In 2003, it continued the reprivatization program with the sale of majority shares of Bank Danamon and Bank BII. IBRA acquired these banks in return for government takeover of debts held by the controlling families. Foreign investors or foreign-led consortia purchased majority stakes in all four banks. The government also successfully launched two IPOs for 20% of Bank Mandiri and 40% of BRI in 2003.

Paid-in capital requirements are twice as high for multi-finance companies with foreign partners than for domestic multi-finance companies. However, in November 1998, Parliament passed amendments to the 1992 banking law that allow 100 percent foreign ownership of Indonesian banks. All insurance policies in Indonesia must be purchased from either domestic or joint venture companies unless specific coverage is unavailable in Indonesia or if the insured is a wholly foreign-owned entity.

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.

Securities

In 1998, the Indonesian government removed restrictions on foreign ownership of securities firms, pursuant to Indonesia's commitments under the WTO Financial Services Agreement.

Audio-Visual

Indonesia prohibits foreign film and videotape distributors from establishing branches or subsidiaries. Under the Film Law, provision of importation and distribution services is limited to wholly-owned Indonesian companies. Importation and in-country distribution of U.S. films must be handled through a single organization, the European and American Film Importers' Association (AIFEA). Duties, taxes, licensing, and other required payments also act as barriers to the importation of films.

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

The provisions of Indonesia's Telecommunications Law 36, which came into force in 2000, have guided reforms to end monopolies and open basic telecom services to majority foreign ownership. Telecom 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 Telecom 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 2002, and of PT Indosat and Satelindo for international calling service in 2003. Indonesia formed a telecommunications regulatory body in July 2003 to improve transparency in regulation development and dispute resolution.

Telecom 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, however popular resistance prevented the second round of price increases in 2003. Indonesia has undertaken partial privatizations of its telecommunication 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

Indonesia's investment climate is poor. The World Economic Forum's 2003 competitiveness rankings scored Indonesia 97th of 102 countries. Foreign direct investment (FDI) has declined steeply since the 1997-98 financial crisis and in the last few years the numbers have been inflated by the inclusion of state-owned firms that were partially privatized. Government approvals for investment proposals reached $14.6 billion in 2003, $9.8 billion in 2002, an adjusted $9 billion in 2001, and $16 billion in 2000. Groups of investors from Tanzania and Mauritius taking advantage of special bilateral tax treaties with Indonesia proposed a third of the $14.6 billion in approved investments purchasing mostly state-owned companies. Investment proposals from Asia, North American and Europe - traditionally large investors - declined from 2002. Most of this investment is never realized.

On January 1, 2001, Indonesia began to implement a large-scale decentralization of authority and budget from the central government to the provincial and district-level governments. Differences of opinion between the central and local governments about which has authority on certain issues has added to the level of uncertainty facing foreign investors. In many areas, even though contrary to law, local governments have instituted revenue-raising measures ("retribusi"), which are trade distorting.

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 FDI projects and joint ventures with a minimum Indonesian equity of five percent. Government officials have drafted a new investment law, which may be enacted in 2004. The proposed law would overhaul existing regulations dating back to the Foreign Capital Investment Law of 1967 and confer significant new approval powers to the Investment Coordination Board (BKPM). Currently, BKPM and other relevant agencies in certain sectors must approve proposed foreign investments, but under the proposed law BKPM would be responsible for approvals in all sectors, including licenses, tax incentives, and business registrations.

Indonesia blocks or restricts foreign investment in some sectors in addition to those service sectors mentioned above. These restricted sectors are described in the "negative list." The most recent version, issued in August 2000, is based on Presidential decree 96, which opened some sectors, particularly certain medical services, to foreign investment. The negative list restricts foreign investment in industries producing marijuana, certain environmentally harmful chemicals, chemical weapons, and alcoholic drinks. And it closes to foreign investment casino and gambling facilities, air traffic and marine vessel certification and classification systems, and radio frequencies. However, various infrastructure, airline, medical services, marine and fisheries, industrial, and other trade sectors are open to investment subject to joint venture or other conditions.

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 land-line 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 on-line transactions as a particularly significant impediment.

Parliament has been debating a cyber law to address issues related to electronic commerce for more than a year. Lack of a cyber law was cited by an Indonesian court in the October 2001 acquittal of a “cyber squatter” who had improperly registered a domain in the name of a competitor. Indonesia has also experienced an explosion of credit card fraud in recent years that may hinder development of electronic commerce. Express delivery companies complain of increasing difficulties and higher costs as a result of fraudulent on-line transactions originating in Indonesia. Many internet companies now blacklist Indonesia among other countries, because of the rampant credit card fraud.

OTHER BARRIERS

Transparency

A lack of transparency and widespread corruption are significant problems for companies doing business in Indonesia. Corruption was endemic under the former Soeharto regime, and still remains an enormous problem for foreign companies. These companies complain about demands for irregular fees to obtain required permits or licenses, government awards of contracts and concessions based on personal relations, and an often arbitrary legal system.

Many laws passed since late 1997 have established new institutions and agencies to respond to popular demands to address corruption, collusion, and nepotism, but poor implementation has undermined that effectiveness. The Indonesian government established stiffer penalties for corruption as well as an independent commission to investigate and audit the wealth of senior government officials. In December 2003, it also established an Anti-Corruption Commission. However, no one has been prosecuted yet to indicate the effectiveness of these measures.

Automotive Policies

On June 24, 1999, the Indonesian government announced a major revision of its national automotive policies in order to rely on market forces to foster a more efficient and globally competitive automotive industry. The new policy eliminated extensive tariff and tax incentives for local content. The Indonesian government reduced the maximum tariff on automobiles from 200 percent to 80 percent. Tariffs on passenger car kits imported for assembly, which had ranged from zero to 65 percent, were reduced to 25, 35, 40, or 50 percent depending on engine size. Tariffs on non-passenger car kits were reduced to a uniform 25 percent. Tariffs on auto components and parts imported for local assembly of passenger cars and minivans were changed to 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.

Despite the steps taken to improve access to the automotive sector, U.S. motorcycle manufacturers complain of the high tariff of 60 percent (25 percent on knockdown kits), the luxury tax of 75 percent, and the prohibition on motorcycle traffic on tollways as barriers to the Indonesian market. The Indonesia government restructured the way luxury sales taxes are imposed on motor vehicles in December 2000. The luxury sales tax on 4,000cc sedans and 4x4 Jeeps or vans was raised from 50 percent to 75 percent. The luxury tax on automobiles with engine capacity between 1,500cc and 3,000cc was increased from 15 percent to 20 percent. This decision had a significant negative impact on the market since 65 percent of the market share belongs to automobiles with engine size between 1,500cc and 3,000cc.

ISRAEL

TRADE SUMMARY

The U.S. trade deficit with Israel was $5.9 billion in 2003, an increase of $503 million from $5.4 billion in 2002. U.S. goods exports in 2003 were $6.9 billion, down 2.1 percent from the previous year. Corresponding U.S. imports from Israel were $12.8 billion, up 2.9 percent. Israel is the 21st largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Israel were $2.3 billion in 2002, and U.S. imports were $1.6 billion.

The stock of U.S. foreign investment (FDI) in Israel in 2002 was $5.2 billion, up 7.1 percent from 2001 (latest data available). U.S. FDI in Israel is concentrated in the manufacturing sector.

The United States-Israel Free Trade Area Agreement

The United States-Israel Free Trade Area Agreement (FTA), signed in 1985, called for phased tariff reductions culminating in the complete elimination of duties on all products by 1995. The agreement eliminated most tariffs between the United States and Israel, although tariff and non-tariff barriers continue to affect a certain portion of U.S. agricultural exports.

Israel continues to restrict market access for certain U.S. agricultural products. This access has been regulated by agreements that have been negotiated 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 (ATAP), establishing a program of gradual and steady market access liberalization for food and agricultural products effective through December 31, 2001. Negotiation of a new ATAP was successfully completed in February 2004. The new agreement will be effective through December 31, 2008 and provide improved access to selected 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 ATAP also provides for annual increases in TRQs and in the discount from MFN tariff levels for many U.S. goods.

IMPORT POLICIES

Tariffs

The 1985 FTA eliminated duties on nearly 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, although substantial tariffs remain on some U.S. agricultural products.

Agriculture

Approximately 90 percent of U.S. agricultural exports (by value) enter Israel duty and quota free as a result of Israel’s commitments under the WTO, the FTA and the new ATAP. However, remaining U.S. agricultural exports consisting largely of consumer-oriented goods face extensive restrictions such as a complicated tariff-rate quota system and prohibitive tariffs. In addition, the ability of U.S. exporters to utilize available quota volumes is hampered by problems with the administration and transparency of Israel’s TRQs. TRQ-related problems include lack of data on quota fill rates and an array of license allocation issues such as small non-commercially viable quota quantities and difficulties in obtaining licenses for within-quota imports. The Israeli government has committed itself to taking steps to improve the administration of TRQs, including the establishment of a regular bilateral review mechanism.

U.S. agricultural exports without free access to Israel primarily consist of high value goods 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 in the range of $25 million to $50 million (with appropriate market development efforts). 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.

Labeling Requirements

Imported food products face rigid labeling requirements. For many products the labeling required by Israel is far more detailed than that required in the U.S. The cost of additional labeling has acted as a deterrent for many U.S. companies who 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.

Customs Procedures

U.S. exporters have complained of difficulties in claiming preferences under the U.S.-Israel Free Trade Agreement. Israeli concerns about the U.S. methods for issuing certificates of origin have sometimes delayed entry of, or delayed preferential tariff treatment to, U.S. goods going into Israel.

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 and lamb. However, the process for granting kosher certificates is expensive and complex. In 2002 the U.S. meat industry and the two governments attempted to identify steps to facilitate U.S. compliance with Israel’s kosher requirements. To date there has been no progress in finding a solution. 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 longer term.

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 less than $10 million.

Wine Imports

The 2004 Agreement on Trade in Agricultural Products for the first time grants U.S. wine exporters an annual tariff-rate quota of 200,000 liters of wine, with preferences over Israel’s MFN rate for exports over and beyond that level. However, other impediments to U.S. wine exports remain. Wine importers also note that the government of Israel 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 the wine industry. 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.

Purchase Taxes

Purchase taxes of 5 percent to 95 percent are applied to imported and locally produced products ranging from imported automobiles and motorcycles to refrigerators, alcoholic beverages, and cigarettes, as well as several types of small electronic appliances. Although Israel reduced or abolished these taxes on more than 600 items in 2000, high purchase taxes continue to exist on automobiles, alcohol, tobacco, color televisions, stereo systems, and other items. Further cuts in purchase taxes could lead to increases in U.S. exports in the $10 million to $25 million range.

Textiles

Israel restricts imports of used clothing, and bans the importation of seconds fabrics. There has been an increased enforcement effort by Israel Customs regarding its inspection of textile products entering Israel under the auspices of the U.S.-Israeli FTA. For apparel shipped from, but assembled outside, the United States, Israel Customs requires a statement from the U.S. exporter with a complete breakdown of the value for each type of item in the shipment by design, cutting, assembly, etc., to determine whether the goods qualify to enter Israel under the FTA rules of origin.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Technical standards are increasingly becoming a prominent non-tariff barrier limiting U.S. exporters' access to the Israeli market. Since 1999 Israeli law mandates that the Standards Institute of Israel (SII) adopt multiple international technical standards whenever possible. However, the SII has not implemented this concept. In addition, SII's formal process for adopting or developing technical standards has proven to be a significant market-access obstacle to U.S. exporters despite concerted U.S. Government efforts to address the underlying issues of access and transparency. Moreover, each government ministry can adopt mandatory new regulations that can prevent the importation of U.S. made products and services to Israel. This procedure has also created difficulties for U.S. exporters because transparency and process are frequently lacking. In addition, requirements for technical standards are often not uniformly enforced. Domestic products sometimes have an advantage over imports because enforcement of mandatory standards on domestic producers have been inconsistent, while standards requirements are more strictly applied to imported goods. U.S. companies that have been doing business in Israel for many years have increasingly been confronted by new, often EU, standards. In addition, the SII does not recognize U.S. testing or accreditation of electrical components and products without the product having to undergo additional and often costly tests in Israel.

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. Poor design and unfair management of public tenders discourages U.S. bidders.

In accordance with the Israel public tendering law, all international public tenders with a value of at least $500,000 contain requirements for "industrial cooperation" (IC) with Israeli entities. Under the IC agreements, foreign companies offset their income from Israel by agreeing to invest in local industry, co-develop or co-produce, subcontract to local companies, or purchase from Israeli industry. The current IC offset percentage for industries covered under the WTO GPA is 30% of the value of the contract; for industries excluded from the GPA, including most military procurements and El Al, it is 35%. Under the GPA, Israel has negotiated a gradual reduction in the IC requirement to a level of 20%. U.S. suppliers have found the size and nature of their IC proposals to be a decisive factor in tight tender competitions, despite a court decision that prohibits the use of offset proposals in determining award of a bid. Small and medium-size 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.

For civilian local currency procurement by the Ministry of Defense (MOD), a U.S.-Israeli Memorandum of Understanding (MOU), extended in 1997, gives U.S. competitors equal status with domestic suppliers. This MOU applies to procurements that are not connected with U.S. military assistance programs. Despite this MOU, 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 an open market for U.S. suppliers competing on MOD's local currency procurements. Efforts by U.S. manufacturers or their agents to win military tenders for food have invariably met with failure.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Israel is a member of the World Trade Organization (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 fully obligated to implement the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 2000. The United States would like to see Israel 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.

Although Israel has been obligated since January 1, 2000 to protect undisclosed test data from unfair commercial use, it has failed to do so. This lack of protection places it at odds with other OECD-level economies and many of its neighbors that have met their TRIPS Article 39.3 obligations. Israel does not deny that it relies, or allows a third party without authorization to rely, on data submitted by U.S. pharmaceutical firms when approving marketing applications from domestic generic competitors of U.S. innovator firms. The impact of Israel’s failure to provide data exclusivity is already being felt within the country. Research and development, as well as clinical trial expenditures made by international pharmaceutical companies, have fallen in recent years as these companies have moved the activities to countries with more favorable data protection regimes. The U.S. Government has urged the Israeli government and the Knesset to enact TRIPS-consistent legislation that will provide a reasonable period of non-reliance on confidential data similar to that granted in OECD countries and many neighboring countries.

Although Israel has failed to act on the undisclosed data issue, it 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 2003, the U.S. Trade Representative (USTR) recognized the country's efforts by moving Israel from the Special 301 Priority Watch List to the Watch List. While noting Israel's efforts, USTR said that it is essential that progress continue to be made in copyright and trademark enforcement, such as providing the Israeli police, prosecutors and courts with sufficient resources to fully meet enforcement requirements. In 2003 U.S. industry estimates the loss due to inadequate intellectual property protection is $71 million, not including losses from business and entertainment software. In addition, although the changes to the copyright laws were a positive step, U.S. textile companies continue to experience problems with trademark infringement. These draft amendments may also exclude end-user piracy from criminal liability, a step that may lead to weaker protection for business software.

The government of Israel has given mixed signals about the status of U.S. music right-holders' ability to collect fees for public broadcasts of their recordings. Although some government officials insist that U.S. right-holders are protected in accordance with Israel's bilateral obligations with the United States, other government officials, including lawyers, have disputed such protection in domestic court cases. In addition, the government of Israel is preparing new legislation intended to update and consolidate the country's copyright laws. U.S. music companies have expressed concern that the draft legislation may discriminate against U.S. right-holders.

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, DBS satellite broadcasts, cable television, and Internet service. Israel officially opened domestic telephone service to domestic and foreign competition in 2000. The State of Israel now owns less than 50% of Bezeq, the telephone parastatal, after it sold off shares of the company in July and November 2003.

In 2001, Bezeq received a license to provide high speed Internet service with the condition that it permit 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 fast Internet and other telecommunications services. In March 2002 one satellite and three cable Internet providers were granted licenses to provide access to high-speed internet services.

Only selected private Israeli television channels are allowed to air advertising. These channels received broadcast licenses and the advertising privilege in exchange for certain investment commitments. Israeli law prohibits other channels, both public and private, from airing 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. In late 2003 the government was contemplating further restricting the amount of advertising that foreign channels can target towards an Israeli audience. The U.S. Government worries that any additional restrictions on advertising might inhibit the economic viability of U.S. firms' participating in the Israeli broadcasting sector. Representatives of U.S. companies airing channels in Israel have expressed concern that the Israeli government was intending to restrict their access to the Israeli market on account of pressure from domestic television channels.

ISRAEL

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 ownership restrictions, but the foreign entity must be registered in Israel. Profits, dividends, and rents generally can be repatriated without difficulty through a licensed bank. In order to boost direct investment, foreign investors in Israeli venture capital firms are currently exempt from capital gains taxes. This is a temporary measure scheduled to be reviewed in 2004.

Over 750 U.S. companies have subsidiaries in Israel. Estimates for the number of Israeli companies with subsidiaries in the United States range from 300 to 500. Investment in regulated sectors, including electronic commerce, banking, insurance, and defense industries, requires prior government approval. Israel is a member of the International Center for the 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

Israel generally supports U.S. efforts to ensure that electronic transmissions will not be subject to tariffs. 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 specific transactions. As a disincentive to online businesses, loopholes in the laws dictate that a consumer can decline to pay for any merchandise they did not physically sign for. In August 2000 an Electronic Signature Bill was passed to regulate signatures on electronic media. 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 their jurisdiction is the Registrar of Data Bases, which by law must issue licenses to any firm or individual holding a client data base. This measure is designed to protect client information from unwanted third party intrusion. It remains to be seen how the bill is being enforced, and whether businesses and consumers have increased confidence in electric commerce due to these measures.

JAPAN

TRADE SUMMARY

The U.S. trade deficit with Japan totaled $66.0 billion in 2003, a six percent decrease from 2002. During 2003, two-way goods trade between the United States and Japan was $170 billion, a two percent decrease from 2002. U.S. goods exports to Japan totaled $52.1 billion, a 1.2 percent increase from 2002. U.S. goods imports from Japan decreased in 2003 to $118 billion, a 2.8 percent decrease from the previous year. 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 $29.7 billion in 2002 (latest data available), and U.S. imports from Japan were $17.3 billion. Sales of services in Japan by majority U.S.-owned affiliates were $35.4 billion in 2001 (latest data available), while sales of services in the United States by majority Japanese-owned firms were $24.1 billion.

The stock of U.S. foreign direct investment in Japan in 2002 was $65.7 billion, up from $58.2 billion in 2001. U.S. foreign direct investment is concentrated largely in finance, manufacturing, and wholesale sectors.

REGULATORY REFORM OVERVIEW

Japan's regulatory and structural reforms of the past several years are beginning to lay the foundation for economic growth and should, if implemented comprehensively, assist in that economy’s return to sustainable growth. The results of a Cabinet report released in December 2003 seem to bear this out. That report concluded that deregulation in Japan from 1992-2002 has resulted in 14.3 trillion yen of economic benefits for the Japanese people, equivalent to 122,000 yen ($1,200) per capita. In addition, a Japan Center for Economic Research report released the same month concluded that meaningful deregulation would increase Japan's long-term economic growth rate by two percentage points by 2010. The United States therefore welcomes Prime Minister Koizumi's renewed commitment to accelerate regulatory reform and to "restructure the economy and let business do what it does best." This will not only reduce the negative impact of regulations on growth, but also increase market access opportunities for U.S. companies. In particular, the United States welcomes Prime Minister Koizumi’s decision to establish a body to carry on the important work of the Council for Regulatory Reform when its mandate expires at the end of March 2004.

The U.S. Japan Regulatory Reform and Competition Policy Initiative

Launched by President Bush and Prime Minister Koizumi on June 30, 2001, the Regulatory Reform and Competition Policy Initiative (the Regulatory Reform Initiative) is one of the six "pillars" of the U.S.-Japan Economic Partnership for Growth (the Partnership). This Initiative addresses key sectors, including telecommunications, information technologies, energy, medical devices and pharmaceuticals, and financial services. It also addresses crosscutting issues, including competition policy, transparency, legal system reform, revision of Japan's commercial law, and distribution. Through the Regulatory Reform Initiative, the United States continues to advocate reform of laws, regulations, administrative guidance and other measures, formal and informal, that impede access to the Japanese market for U.S. goods and services.

The United States and Japan met numerous times in 2003 at the working-level and the deputy/vice minister level to advance the bilateral regulatory reform agenda under the Regulatory Reform Initiative. Progress achieved in 2003 was detailed in the Second Report to the Leaders on May 23, 2003 and presented to President Bush and Prime Minister Koizumi at the G-8 Summit in Evian Les-Baines, France.

Kicking off the third year of the Regulatory Reform Initiative, the United States submitted its recommendations to Japan on October 24, 2003 in Tokyo. The United States urged Japan to adopt the recommendations included in this document (which can be found at www.ustr.gov) at working-level meetings convened in Tokyo and Washington in late 2003 and early 2004. The deputies also met in early March 2004 to assess the progress of the working groups, set priorities for future meetings, and urge the groups to redouble their efforts to conclude a forward-leaning Third Report to the Leaders before the next G-8 Summit in Sea Island, Georgia in June.

SECTORAL REGULATORY REFORM

Telecommunications

Under the Regulatory Reform Initiative, the United States seeks regulatory changes to promote competition, and thereby innovation and choice, in Japan's telecommunications sector. In 2003, Japan revised the Telecommunications Business Law (TBL), which eliminated filing requirements for competitive telecommunications carriers while preserving the existing dominant carrier regulations. The goal of this revision is to promote market entry by opening up bottleneck facilities and eliminating outdated regulations that limit the flexibility of operators to combine owned and leased facilities. On the other hand, interconnection rates were raised for the first time under the Long-Run Incremental Cost (LRIC) model methodology, and five interconnecting carriers who directly suffer from the new rates filed a suit against the Ministry of Public Management, Home Affairs and Posts and Telecommunications (MPHPT) in July 2003, seeking repeal of the rate increase. That suit remains in the courts.

The outcome of the process to review the TBL is an important indicator of Japan's willingness to overhaul its regulatory framework to address the overwhelming market power of the dominant carrier group, Nippon Telegraph and Telephone Corporation (NTT), of which the Japanese government owns 46 percent. NTT companies control access to greater than 98 percent of the local telephone network, giving them the ability to inhibit new competitors and services while promoting their own products and technologies. These problems are compounded by the fact that MPHPT is unduly influenced by political and industry interests (particularly NTT) that can inhibit competition-enhancing measures. While the United States welcomes the long-overdue deregulation of competitive carriers, it continues to press Japan to implement strong and effective competitive safeguards on the dominant carriers. (The two regional providers under the NTT holding company are NTT East and West, and the mobile provider NTT DoCoMo is 64 percent owned by NTT.)

Through its October 2003 Regulatory Reform submission and in bilateral consultations, the United States has asked Japan to take measures to address specific market access impediments related to a wide range of policies in this sector. If undertaken, these measures should help address important market access and regulatory barriers. Nevertheless, ensuring effective competition in Japan, especially in the local telecommunications markets, will require an independent regulator committed to ensuring equitable opportunities for new entrants and unbiased treatment of all operators. In November 2001, Japan established a Telecommunications Business Dispute Resolution Commission within MPHPT. In its first two years, this Commission mediated a number of interconnection disputes and issued its own administrative judgments on policies in two cases. However, the number of actions being taken by the Commission is decreasing. The United States continues to request that Japan develop a plan to move regulatory functions outside the purview of a ministerial agency, subject to direct political control, to a fully independent organization. It is also important for Japan to establish and exercise meaningful sanction authority by the regulator (imposition of fines, payments of damages, license restrictions) to punish anticompetitive behavior.

Interconnection and Pricing: One of the most significant examples of insufficient safeguards on dominant carriers impeding competition is the high cost and onerous conditions that NTT regional operators are allowed to impose on their competitors. As a result of bilateral discussions (1997 - 2001), Japan introduced a pro-competitive methodology (LRIC) for setting interconnection rates. This methodology resulted in rate reductions of 22 percent (for interconnection at the local switch) to 60 percent (at the regional switch) between JFY 2000 and JFY 2002. Partly as a result of lower interconnection rates, competition in local services increased and local calling rates fell by 15 percent or more in 2001. Still, the interconnection rates these operators charged their competitors to use their network were twice comparable rates in the United States, Germany, France or the United Kingdom.

In JFY 2003, however, the interconnection rate at the zone center, where foreign-affiliated carriers tend to interconnect with NTT, was increased by 12 percent. It is believed that the revised rate will be increased by an additional 10 percent in 2004, when rates will be re-calculated based on actual traffic volume. On July 17, 2003, five telecommunications companies filed suit against the MPHPT minister's decision to increase interconnection rates, raising serious questions about the Ministry's impartiality and commitment to competition. If the case moves to Japan's Supreme Court, it could drag on for several years. Meanwhile, MPHPT will conduct another review to determine the rate system to be put in place from JFY 2005. The United States will continue to press Japan to correct the fundamental flaws of the methodology that caused the increased rates, as well as to address its lack of regulatory independence and accountability, which make it vulnerable to political influence throughout the rate-setting process.

Dominant Carrier Regulation: NTT has maintained its dominance through other measures, such as denial of access to emergency services to interconnecting carriers, and proposals for higher interconnection charges on carriers competing with alternative technologies (e.g., for DSL services). Since the December 2001 publication of guidelines for approval of NTT's regional carriers' expansion into new services, NTT East and West have twice applied and received conditional approval: in February 2002, to provide interprefectural virtual private network services, and in October 2003, to offer Internet Protocol-based telephone service to corporate customers. In each of these cases, approval was granted after a public comment procedure in which competing carriers voiced strenuous objections and concerns. The United States continues to monitor whether MPHPT is taking sufficient steps to ensure that NTT East and West will not take advantage of their dominant position to inhibit competition in these new areas.

Mobile Termination: New entrants to Japan's telecommunications market have also expressed concern about the high and non-transparent interconnection and access rates charged by NTT DoCoMo, the dominant wireless service provider. Under reforms to the Telecommunications Business Law in 2001, DoCoMo was recognized as a dominant carrier in 2002, but MPHPT has not required DoCoMo to explain how these rates are calculated. The law places the onus on competing carriers to identify anticompetitive behavior and press for corrective action. In October 2002, in response to such a complaint, the

Telecommunications Business Dispute Settlement Commission found that certain domestic wireline carriers have the right to set the retail rate they offer their customers for their calls from the wireline network to mobile numbers. The Commission also recommended establishment of a rational and transparent system for interconnection rate setting based on this Commission's recommendation. In 2003, MPHPT finally announced a plan to allow wireline carriers to set prices for outgoing calls to mobile networks, enabling them to compete on price with mobile operators.

Rights-of-Way: New competitors in Japan find it extremely time-consuming and expensive to build competing networks in Japan because of costs and difficulties related to access to "rights-of-way." While Japan promulgated guidelines in April 2001 related to access to poles, ducts and conduits held by NTT and utility companies, there are few safeguards against exorbitant rates for the use of poles, ducts, conduits and other rights-of-way facilities. Moreover, if new entrants seek to dig roads to lay their own cables and facilities, they encounter a labyrinth of restrictions that industry sources say makes construction roughly ten times more expensive, and can result in digging that takes six times longer than in other major markets. Japan's e-Japan strategy, which is designed to make Japan a global information technologies leader by 2005, includes measures to relieve these problems on an experimental basis. The United States continues to urge mandatory rights-of-way access for new competitors and has proposed that Japan establish pro-competitive rules to ensure non-discriminatory, transparent, timely, and cost-based access for telecommunications carriers and cable TV operators.

Information Technologies

Japan has taken significant steps towards realizing its ambitious plan to become a global leader in information technology (IT). Even so, the Japanese government itself has recognized through the 2003 e-Japan Priority Policy Program that legal and other barriers hinder growth in the IT sector. As Japan responds to the challenges that lie ahead in this pivotal sector, the U.S. Government is working with Japan through the IT Working Group under the Regulatory Reform Initiative to establish a regulatory framework that ensures competition, promotes innovation, allows private sector-led regulation where appropriate, and protects intellectual property rights (IPR) in the digital age. The aim of the IT Working Group is to foster an environment in Japan that promotes development of IT-related businesses and innovative information technologies to spur growth in other key sectors of Japan's economy.

In its October 2003 Regulatory Reform submission, the United States made numerous recommendations on removing regulatory and non-regulatory barriers, strengthening protection of intellectual property rights, promoting and facilitating public and private sector use of electronic commerce, and expanding procurement opportunities for IT-related goods and services.

Specific recommendations include removing barriers that impede business-to-business and business-to-consumer electronic commerce such as allowing non-attorneys to provide online mediation and arbitration services for profit. With regard to strengthening protection of IPR, the United States is urging Japan to extend the term of copyright protection for sound recordings and all other subject matter protected under Japan's Copyright Law, and to strengthen the enforcement system against IPR infringement by adopting a statutory damages system. To promote the use of electronic commerce, the United States is urging Japan to support private sector led mechanisms for privacy and Alternative Dispute Resolution (ADR), ensure that laws governing electronic transactions are technology-neutral, and provide security for commerce in the digital age. The United States urges Japan to ensure consistency, predictability, transparency, and technology neutrality in network security standards and guidelines developed by the Japanese government. The United States is also calling on Japan to support fair and open procurement of information systems for e-government by thoroughly implementing reforms of all ministries' IT procurement procedures to ensure transparency, technological neutrality, and private sector-led innovation.

Electronic Notification: Under current law, the consumer credit sector cannot benefit from the security, speed and efficiency of electronic notifications because consumer lenders are still required to provide written, paper notifications, even when consumers clearly express a preference to receive notices by electronic means. As a result, consumer credit customers are not able to apply for credit cards or receive bills and notifications electronically as a substitute for paper-based transactions. The United States urges Japan to revise the e-notification law or, if necessary, the money lending business law itself so that lenders can allow customers who have consented to electronic notification to receive notification by electronic means.

Personal Data Regulation: The Diet passed the Law on the Protection of Personal Information on May 23, 2003. Going into effect in April 2005, the Law is designed to establish a basic framework for the protection of personal information. The United States urges the Japanese government to ensure that the implementing ordinances and guidelines for the Law are developed in a transparent and coordinated manner, so as to prevent overly burdensome or contradictory requirements. In order to facilitate transparency, the United States recommends that Japan identify as quickly as possible the ministries that will issue implementing guidelines and urges that all draft guidelines be available for meaningful public comment.

Digital IPR: Japan's liability rules for Internet Service Providers (ISPs) went into effect in May 2002 along with implementing guidelines drafted by a private sector-led working group. The United States remains concerned that the liability rules remain unclear; do not provide the appropriate balance among the interests of telecommunication carriers, ISPs, right holders, and website owners; and, fail to provide adequate protection for right holders. The lack of adequate protection for right holders prevents them from obtaining appropriate remedies when infringement has occurred; adversely affects the financial stability of several creative industries such as the audio-visual and game software industries; and, may hinder the development of creative works and new products that could be subject to online piracy. The United States urges Japan monitor compliance with the implementing guidelines for ISP liability rules and their effectiveness for ensuring that infringing materials are removed from websites quickly and adequate remedies are provided for any injuries suffered. The United States also continues to urge Japan to support the continued existence of the private sector working group, and any revisions of the guidelines and/or the law for ISP liability rules that may be necessary to ensure an effective "notice and take down system" and the appropriate balance of the rights and interests of all parties.

The Japanese government took a significant step forward in protecting temporary copies, (e.g., digital copies made in the RAM of a computer) by recognizing that "temporary storage" implicates the reproduction right. However, the scope of protection for temporary copies remains vague, which could erode the ability to protect copyrighted materials in Japan. Given the importance of this new interpretation, the United States continues to urge Japan to further clarify and ensure the scope of protection for temporary copies. (*Further discussion of this issue can be found in the Copyright subsection below.*)

Network Security: Japan’s Ministry of Economy, Trade and Industry (METI) issued network security guidelines in April 2003 for its own use. MPHPT released similar guidelines for use by local governments. The United States is urging Japan to ensure that any network security standards and guidelines developed for use by the Japanese government be coordinated so as to provide predictability in the private sector, consistent to the extent practicable with standards developed by voluntary industry consensus standards bodies, developed in a transparent manner, and technology neutral and non-trade restrictive.

Information Systems Procurement: Japan's 2003 e-Japan Priority Policy Program strives to digitize administrative procedures at all levels of government, building the foundation of e-government online services. As a result, public institutions will increase dramatically their purchases of hardware, software, and network infrastructure. However, a study group commissioned by METI acknowledged in December 2002 that four major Japanese companies dominate nearly 60 percent of e-government procurement. Japan’s newly established Chief Information Officer Council is taking a closer look at information systems procurement. The United States anticipates that new rules announced in an inter-ministerial task force’s March 2002 memorandum (revised in March 2003) could create more opportunities for U.S. firms. For example, the ministries agreed that Overall Greatest Value Method (OGVM) will be used for e-government projects valued at 800,000 SDRs or higher. The United States continues to urge Japan to implement in a transparent manner new e-government procurement policies and procedures that are consistent across all the ministries, facilitate open competition, and allow for private sector-led innovation.

E-Education: The United States continues to make recommendations on e-education as it relates to Japan's Special Zones for Structural Reform (*see Special Zones section under Transparency and Other Government Practices*). The United States is encouraged by the number of Special Zones that have been created to promote IT and e-education. The Special Zones initiative is particularly well-designed and appropriate for spurring growth in the IT sector. In addition, increasing the use of IT in schools throughout Japan will further the IT literacy of Japanese children and educators, increase collaboration and learning opportunities among schools, and make education-related resources more efficient.

Energy

As Japan moves to further liberalize its energy sector, the United States views ongoing bilateral discussions as a key means of providing input into this process and to support Japan's goals of improved energy efficiency and lower energy costs, which are among the highest in the world.

Electricity: Japan embarked on a new phase of electricity sector reform with passaged of the Law for the Partial Revision of the Electricity Utility Industry Law and Gas Utility Industry Law (the Law) in June 2003. That reform legislation includes many important elements, such as: (1) establishing a neutral transmission system organization (NSO) to set transmission and distribution rules; (2) securing fairness and transparency of transmission and distribution systems through information firewalls, monitoring, and prevention of cross-subsidization; (3) abolishing the transmission pancaking system; (4) preparing for a nationwide wholesale power exchange; (5) organizing and strengthening the governmental structure responsible for market monitoring and dispute resolution; and (6) setting forth a plan and schedule for expanded retail choice.

To support Japan's electricity reform efforts, the United States continues to share its own experiences on reform of this sector and has made numerous recommendations under the Regulatory Reform Initiative, including that Japan: ensure the energy sector regulatory divisions at the Ministry of the Economy, Trade and Industry (METI) are free from undue political and industry influence; take steps to promote fair and transparent competition in electricity transmission and distribution by all market participants; and, codify the liberalization timetables set forth by relevant METI subcommittees.

During working-level talks in November 2003, the United States urged Japan to expeditiously and transparently implement concrete and detailed ordinances and regulations in ways that ensure the objectives of the Law are fully met. Subsequently, METI took the positive step of soliciting public comments on its draft interim report on the "Detailed Design of the Desirable Future Electricity Industry System." The United States submitted comments in December 2003, calling on METI to: ensure a fair composition of members participating in the NSO; establish effective regulatory oversight of the NSO; and encourage the participation of a maximum number and variety of players in the planned Wholesale Electric Power Exchange.

Natural Gas: In parallel with the electricity sector, Japan is also moving to undertake significant reform of its gas sector. The energy reform legislation passed in June 2003 includes numerous important elements related to this sector, such as: (1) taking special measures to increase pipeline investment incentives and promote interconnection of pipeline networks; (2) securing fair and transparent competition between the gas companies that maintain and operate the network and other companies that use the pipelines; (3) taking necessary measures to separate accounts and prohibit discriminatory treatment towards certain businesses to which gas companies supply gas; (4) promoting third-party usage of liquified natural gas (LNG) terminals by, for example, establishing rules for resolving disputes over negotiations; (5) setting forth a plan and schedule for expanded retail liberalization; and (6) developing guidelines and establishing a neutral and fair system for conducting market monitoring and dispute resolution.

As in the electricity sector, the United States continues to share its own experiences on reform of its gas sector and has made numerous recommendations to Japan under the Regulatory Reform Initiative, including that Japan: establish incentives for investment in new gas pipeline construction in regions where the network is not sufficiently developed; create and strengthen a mechanism to conduct more rigorous rate approval examinations and audits; conduct neutral and fair ex-post facto monitoring of the industry; promote construction and improvement of pipelines for gas supply use by parties other than general gas utilities; and establish detailed rules to ensure non-discriminatory negotiations between LNG terminal owners and third-party users of LNG terminals.

In December 2003, the United States submitted public comments on the draft report of the "Detailed Design of the Desirable Future Gas Industry System." In those comments, the United States lauded Japan's movement toward ensuring third-party access to gas pipelines, its recognition of the need to prevent competitive abuses by incumbent gas suppliers, and its efforts to expand customer choice in real terms. The United States, however, raised questions about the difficulty of preventing abuse if gas transportation and supply remain bundled, and expressed concern over potential restrictions being placed on the construction of necessary pipeline capacity. The United States will continue to urge Japan to undertake its reforms in a manner that promotes efficiency, reduces energy costs through competition, and encourages market entry.

Medical Devices and Pharmaceuticals

The United States and Japan address regulatory, reimbursement and other market access concerns in the medical device and pharmaceutical sectors, under the 1986 Market-Oriented, Sector-Selective (MOSS) Medical Equipment and Pharmaceutical Agreement. The two countries discuss their concerns in the Working Group on Medical Devices and Pharmaceuticals, which meets under the MOSS and the Regulatory Reform Initiative. Insuring that Japan’s reimbursement system appropriately values innovation and that its regulatory system provides for faster approvals remains the focus of these bilateral consultations.

Japan has recognized that innovation can foster economic growth and improved healthcare, as noted in its healthcare reform plan and "Visions" policy papers. The reform plan focuses on transformation of the insurance system, creation of a new health insurance program for the elderly, and review of the medical fee system. The "Visions" discuss the need to improve the competitiveness of Japan's medical device and pharmaceutical sectors and contain five-year action plans for realizing the "Visions." The U.S. Government welcomes the healthcare reform plan and "Visions" as evidence that Japan is committed to promoting timely access to the most innovative medical devices and pharmaceuticals. In its October 2003 Regulatory Reform submission, the U.S. Government urges Japan to transform its Visions into policy by reforming its regulatory and reimbursement pricing systems. The United States also urges Japan to develop pricing rules that recognize the value of innovative products; abolish rules that penalize or fail to recognize the value of innovation; and make full use of pricing rules, including premium-pricing rules, to reward and stimulate advances in drug research and medical technology.

Japan applies a “foreign price adjustment” rule, a pricing mechanism that caps Japanese prices by linking them to lower prices in other countries. This rule did not address structural problems that raise the cost of doing business in Japan, such as high medical fees and long hospital stays. Japan has used this rule to cut U.S. device prices significantly. These cuts discourage industry innovation, limit patients' access to the best technologies, and raise long-run costs as patients use less effective treatments requiring long hospital stays. As Japan's national health insurance system continues to face high deficits, the United States is urging Japan to confront systemic problems that raise costs and adopt a more comprehensive approach to its healthcare system. The U.S. Government is urging Japan to eliminate discriminatory policies that result in discouraging innovation. For example, the United States is urging Japan to end repricing of innovative drugs whose sales exceed forecasts. Use of the market-expansion criteria to cut reimbursement prices undermines innovation as it punishes medicines whose sales rise because they are more effective than other drugs. This practice runs counter to the goal in the Visions to spur the development of cutting-edge health-science industries.

In the May 2003 Second Report to the Leaders under the Regulatory Reform Initiative, Japan committed to take steps that reward innovation. Japan, for example, agreed to use premium pricing to reward and encourage medical device and pharmaceutical innovation as well as to review application of such pricing rules to ensure innovation is encouraged. The U.S. Government continues to urge Japan to make full use of such pricing rules, and to periodically review the new and expanded premium system to ensure premiums are being used to fully recognize and encourage innovation. The United States also has been stressing the need for more transparency in establishing reimbursement pricing, including opportunities for greater interaction among officials from industry, government and pricing organizations.

In another step toward reform, Japan has revised its Pharmaceutical Affairs Law to create the Pharmaceuticals and Medical Devices Agency (PMDA), which was scheduled to oversee pre-marketing and approval of drugs and devices starting April 1, 2004. The U.S. Government welcomes PMDA’s creation, as it is expected to speed approvals, improve healthcare administration, and enable Japan to adapt to the bio-genomic age. The United States has been urging Japan to engage in an open dialogue with industry during the creation of the PMDA and to establish a user fee system, based on performance and transparency, that would increase the resources dedicated to faster approvals of new products. Specifically, the U.S. Government has urged Japan to implement from April 1, 2004, transparent performance measures with established baselines. For pharmaceuticals, the United States is urging Japan to work toward reducing its times for new drug approvals to 12 months total time through staged improvements from April 1, 2004. Regarding medical devices, the U.S. Government is urging Japan to speed approvals by setting performance goals that increase the predictability of approval decisions. Increased predictability facilitates new product launches.

For both drugs and devices, the United States continues to request that Japan develop a timely, transparent, and efficient appeals mechanism to arbitrate disagreements between applicants and the PMDA during the development, approval, and post-marketing phases. Regarding post-marketing, the U.S. Government is also urging that manufacturers be allowed to play a significant role in the responses to adverse events. Regarding clinical trials, the U.S. Government believes it is important that U.S. manufacturers be consulted on implementation of the Megatrial Network and that they retain control of their products, studies, and related intellectual property resulting from physician-initiated clinical trials.

Japan's 2002 Blood Law reform 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 urges Japan to ensure that the Plan does not discriminate against foreign blood plasma products and is consistent with Japan's international trade obligations. An additional concern is Japan's decision, implemented in July 2003, to draw a distinction between products derived from paid and unpaid blood donors. The United States continues to urge Japan to conduct science-based discussions with all stakeholders in the blood sector and to apply pricing rules fairly and transparently.

Financial Services

The past few years have seen notable changes in Japan's financial sector. Foreign financial institutions have made important acquisitions in securities brokerage, insurance, and banking. Consolidation among

Japanese financial institutions has increased in an effort to cut costs and boost competitiveness, while traditional segmentation among various types of financial institutions is steadily being phased out. These changes have expanded opportunities for foreign financial firms in Japan to compete on a clear and level playing field. While supervision and disclosure have improved, it is important that Japan continue to move forward in establishing clear and consistent regulation and supervision of financial institutions, in line with international standards and best practices.

There was additional progress in financial sector deregulation in 2003. The requirement for physical certificates for Japanese Government Bonds and corporate debentures was eliminated on January 6, 2003. This followed the elimination of the requirement for physical certificates for commercial paper on April 1, 2002. In addition, on May 23, 2003 the Diet passed new securities market legislation to diversify corporate stock and bond distribution channels and increase the number of intermediaries. This legislation reduces minimum capital requirements for securities companies, investment trust management companies and investment advisory companies. On the same day, the Diet also passed major shareholder rule revisions designed to prevent abuse by brokers. The new rules authorize the Financial Services Agency (FSA) to inspect major shareholders of brokerage houses, including non-financial corporations and individuals. Finally, on May 30, 2003 the Diet passed legislation introducing a new sales agent system to permit CPAs, licensed tax accountants and financial planners to sell corporate stocks to investors as agents of security brokerage houses. The entire securities market reform package will take effect on April 1, 2004.

Japan also amended the Postal Services Corporation Law in July 2003 to allow private investment advisory companies to provide fund management services for Postal Savings (Yucho) and Postal Life Insurance (Kampo). This is a significant breakthrough for foreign investment firms doing business in Japan, who now have the opportunity to manage funds that constitute a significant percentage of individual savings in Japan.

STRUCTURAL REGULATORY REFORM

Antimonopoly Law and Competition Policy

Under the Regulatory Reform Initiative, the United States has been proposing a number of progressive measures to strengthen competition policy and enforcement of Japan's Antimonopoly Act (AMA) that would bolster competition and improve market access. One of the key problems in addressing anticompetitive practices in the Japanese market has been the historically weak status of the Japan Fair Trade Commission (JFTC) and its lack of sufficient enforcement powers and resources to implement the AMA effectively. There have been improvements, most recently the April 2003 transfer of JFTC to the Cabinet Office from the jurisdiction of the Ministry of Public Management, Home Affairs and Posts and Telecommunications (MPHPT), a move that enhances the JFTC's ability to act independently to promote competition in these crucial sectors. Significant further improvements may result from proposals to amend the AMA, the first significant revision of the AMA in over 25 years, which the JFTC hopes will be submitted to the Diet in Spring 2004. Under the Regulatory Reform Initiative, the United States stresses the need for substantial progress on the following AMA and competition policy-related issues.

Deterrence of AMA Violations. Cartel activity, including widespread bid rigging, continues to be a serious problem in Japan. One important reason is that existing administrative and criminal sanctions do not constitute an adequate deterrent against companies and individuals engaging in unlawful anticompetitive practices. Although the AMA provides for criminal sanctions against violators, criminal prosecutions have been sporadic, and prison sentences against corporate officials have been routinely suspended. The JFTC has initiated only one new criminal prosecution of AMA violators since 1999, in July 2003 when it filed charges against four firms and five individuals for a bid-rigging case involving procurement of water meters by the Tokyo Metropolitan Government. In addition, Administrative surcharges are too low to serve as a meaningful deterrent. The current maximum surcharge is six percent of the sales in question over a maximum of three years, but comparisons of prices before and after the JFTC has broken up cartels suggest that illicit profits from such arrangements in Japan average around 20 percent.

In December 2003, the JFTC called for increasing administrative surcharges, introducing a system of additional surcharges for repeat offenders, and expanding the range of violations subject to surcharges and criminal prosecution. In its 2003 Regulatory Reform submission to Japan, the United States calls for increasing surcharges to around 20 percent of the sales in question, applying surcharges to sales during the full term of an illegal conspiracy, more active criminal enforcement, and encouraging judges to impose prison sentences on culpable individuals that are actually served.

JFTC Enforcement Powers. A number of other factors limit the effectiveness of the JFTC's enforcement against egregious AMA violations. The JFTC does not have the powers enjoyed by other Japanese criminal investigation authorities, including the power to conduct compulsory searches and seizures. Nor does it have the authority to reduce or eliminate criminal sanctions and administrative surcharges for companies that come forward to expose illegal activities through a corporate leniency program. In its 2003 Regulatory Reform submission, the United States calls for Japan to introduce a corporate leniency program, criminal accusation procedures in line with other economic crimes, longer terms for cease-and-desist orders, and increased JFTC capacity for economic analysis. In December 2003, the JFTC called for introducing a corporate leniency program, criminal investigation procedures with penalties for interfering with investigations, and streamlined hearing procedures.

The United States is also recommending that Japan take further measures to address prolific bid rigging, including aggressively implementing the newly enacted law against bureaucrat-led bid rigging (so-called kansei dango), instituting procedures for collecting overcharges from companies that have participated in bid rigging conspiracies, and assisting citizen suits aimed at recovering overcharges suffered by local governments as a result of bid rigging.

Promotion of Deregulation by the JFTC: As the only Japanese agency charged with promoting competition throughout the economy, the JFTC should substantially boost its actions as an advocate of competition policy and regulatory reform. The United States continues to propose that the JFTC actively participate in the process of deregulating Japan's public utilities. This is necessary to ensure both that maximum deregulation occurs in the electricity, natural gas, telecommunications, and transportation sectors consistent with sound competition policy, and that anticompetitive conduct by dominant incumbent firms will be strictly dealt with under the AMA. Some steps have been taken. In April 2001, the JFTC established the Information Technologies and Public Utilities Task Force to investigate and take enforcement action against AMA violations in industries undergoing deregulation. This task force continues its efforts, but has been hampered by shortages in JFTC staffing levels and industry expertise, as well as by the need to coordinate bureaucratically with ministries having jurisdiction over the sectors in question.

JFTC Staffing & Resources: The JFTC's ability to enforce the AMA is hindered by its shortage of personnel. Some progress has been made, as seen by the increase in the JFTC's staff levels from 474 in 1990 to 643 for 2003. Even more importantly, the number of the JFTC's investigative staff has increased from 154 in 1990 to 318 in 2003, and JFTC inaugurated an economic research center in 2003, staffed in part by visiting academic economists. Nonetheless, the JFTC remains understaffed, particularly in the areas of economic analysis and investigations, to adequately enforce the AMA and to engage in necessary competition promotion. In its October 2003 Regulatory Reform submission, the United States calls on Japan to increase the staff and budget of the JFTC substantially, with particular focus on personnel with advanced legal and economic training, and with detailed knowledge of the structure and workings of complex public utility sectors.

Transparency and Other Government Practices

It is vital that domestic and foreign firms alike have full and equal access to information and ample opportunities to participate in the regulatory and rulemaking process. While Japan has made some progress in expanding public comment opportunities, additional measures are necessary in order to improve government accountability and increase transparency in the regulatory system. In its October 2003 Regulatory Reform submission, the United States therefore urged Japan to increase transparency in the following areas:

Special Zones for Structural Reform: The U.S. Government is closely following the Japanese government's Special Zones for Structural Reform initiative. Prime Minister Koizumi has made the local deregulation zones the centerpiece of his drive to achieve bold regulatory reform and considers the zones as part of his effort to "let the private sector do what it can do." This innovative approach to deregulation and structural reform could provide important opportunities for Japan to return to sustainable growth and for greater market access to U.S. and other foreign firms. Already, U.S. express carriers are benefitting from reduced overtime fees associated with customs processing now in place at zones located in Japan’s major ports. U.S. companies are also involved in developing agricultural, information technology, and e-education zones. As Japan moves forward with the zone proposals, the United States is recommending that a focus be placed on expanding market-entry opportunities, that domestic and foreign companies alike have non-discriminatory access to operate in the zones, and that successful measures used in the zones be applied on a national basis as expeditiously as possible so that all of Japan can benefit from this important initiative. In particular, the United States is recommending that the Special Zones Evaluation Committee make its determination about expanding zones nationally in a forward-leaning and transparent manner. Currently there are 236 Special Zones operating throughout Japan.

Public Comment Procedures: Serious concerns with the effectiveness of Japan’s Public Comment Procedures (PCP) persist. An annual survey issued on August 22, 2003 by the Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT) on the use of the PCP again revealed deficiencies. As in past years, a majority of comment periods were less than 30 days while a significant number of periods provided less than a meager 14 days for comment making. Moreover, the percentage of cases in which government agencies incorporated comments into final regulations remained extremely low (at only 14 percent), leading the public to believe that rules and regulations are "final" before they are opened to the public for comment. To address these concerns, and to make the PCP a useful and effective regulatory mechanism, the United States urged Japan in its October 2003 submission to: (1) require the use of a minimum 30-day comment period; and (2) undertake the legal steps necessary to incorporate the PCP into the Administrative Procedure Act, a move that would strengthen the PCP from being a mere guideline to a law. During regulatory reform talks in March 2004, the Japanese government gave encouraging indications that it is seriously considering steps to improve the PCP.

Public Participation in the Development of Legislation: In its October 2003 Regulatory Reform submission, the U.S. Government urged Japanese government ministries and agencies to expand participation in the legislative process by implementing the practice of facilitating public input into draft legislation while it is being developed by groups with Government ties prior to Diet submission. While some ministries and agencies have begun to do this, progress has been slow.

Public Corporations: The United States recognizes that Prime Minister Koizumi’s efforts to restructure and privatize Japan’s public corporations could have a major economic impact, stimulating competition and efficiency and leading to a more productive use of resources. In its latest reform recommendations, the United States is urging Japan to ensure that the restructuring and privatization process is transparent and that the private sector has ample and meaningful opportunity to provide input into any privatization plans that could impact private sector interests, such as Japan Post's (and MPHPT's) decisions relating to Kampo insurance products.

Commercial Law

Japan is making steady progress on its efforts to reform its commercial law, starting with substantial revisions to its Commercial Code in 2002. Reform of Japan's commercial law has been key to the introduction of necessary flexibility into the organization, management and capital structure of Japanese companies and to the facilitation of merger and acquisition activities by both foreign and domestic firms in Japan. Until the 2002 amendments, Japan's Commercial Code stifled investment (both domestic and foreign) and hurt Japan's efforts to integrate more fully into the international economy. The 2002 revisions have introduced greater flexibility to the capital structure of Japanese corporations and strengthen corporate governance mechanisms, both of which should contribute to Japan's efforts to revitalize its economy. The reforms should also enhance the ability of foreign firms to enter and operate in the Japanese market.

Specifically, Japan's Commercial Code was amended in 2002 to: liberalize substantially restrictions on the issuance of stock options; permit companies to issue tracking stock and shares with limited voting rights; eliminate the requirement that foreign companies must set up a branch office in Japan; and provide companies the option of adopting an American-style executive committee (audit, nominating and compensation committee) system, composed of at least a majority of outside directors, as an alternative to appointing statutory auditors.

In its October 2003 Regulatory Reform submission, the United States urges Japan to build on past reforms by further improving its commercial law and corporate governance. Specifically, the United States recommends that it introduce modern merger techniques into its commercial law. Japan undertook to examine the introduction of modern merger techniques, such as triangular mergers and cash mergers, into its commercial law, aiming toward submission of appropriate legislation in 2005. As an interim measure, Japan revised the Industry Revitalization Law to permit firms seeking to restructure to use triangular merger techniques, although tax treatment provisions limit the practical value of this measure to foreign firms. The United States also urges Japan to improve corporate governance in Japan by requiring pension fund and mutual fund managers to adopt proxy voting policies and to vote proxies for the benefit of fund beneficiaries. In addition, the United States urges Japan to provide protection to "whistleblowers" in order to improve corporate governance, and to foster the role of Alternative Dispute Resolution (ADR) mechanisms in Japan by allowing ADR mechanisms to develop freely and flexibly, including by allowing non-lawyers to act as neutrals in ADR proceedings.

Legal System Reform

Reform of the Japanese legal system is essential to the establishment of a legal 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 foreign and Japanese lawyers.

In its October 2003 Regulatory Reform submission, the United States welcomes passage of the new legislation regarding free association between Japanese and foreign lawyers and urged expeditious implementation. The United States also calls on Japan to allow foreign lawyers to form professional corporations and establish branches throughout Japan, and to count all of the time foreign lawyers spend practicing law in Japan toward the three-year experience requirement for licensure as a foreign legal consultant. Finally, the United States calls on Japan to meet its stated goal of taking necessary measures to ensure effective judicial oversight of administrative agencies by November 2004.

Distribution and Customs Clearance

While the Japanese government has implemented several measures to streamline its customs processes and improve its distribution system in the context of the Regulatory Reform Initiative, several areas in need of improvement remain. If Japan acts to reform the practices and procedures in these areas, it could enhance the ability of U.S. and other express carriers to provide for the efficient, speedy exchange of goods and information to benefit the Japanese economy and consumer.

In its October 2003 Regulatory Reform submission, the United States outlines several measures that could further improve the distribution environment, including: eliminating overtime fees for import and export processing; allowing foreign carriers to contract directly with Japanese carriers for freight forwarding interline contracts; and, adopting the Free on Board (FOB) method for duty calculation, which more fairly represents the value of the goods being shipped.

Another issue of importance to the United States is the high landing fees at Japan's Narita and Kansai International Airports. These fees, the highest in the world, increase the costs for cargo, mail delivery, and air travel, and are at odds with the region-wide trend of lowering landing fees. To promote financially healthy airline and air-freight industries, the United States is calling on Japan in its October 2003 Regulatory Reform submission to formulate the level of landing fees in an open and transparent manner, using internationally accepted accounting standards, and to base those fees on the actual cost of providing services, just as IATA (the International Air Transport Association) has urged Japan. The Ministry of Land, Infrastructure and Transport (MLIT) has thus far opposed any lowering of these fees.

Additionally, in an effort to improve consumer convenience and expand consumer choice, the United States has made a number of recommendations in the October 2003 submission aimed at increasing the acceptance of credit and debit cards in Japan, and enhancing the security of transactions made with those cards.

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 assures that high quality U.S. rice does not enjoy meaningful access to Japanese consumers. U.S. rice exports to Japan in calendar year 2003 were valued at just over $113 million, representing 339,472 metric tons of rice or approximately 50 percent of Japan's minimum access requirement. In 1999, Japan established a tariff rate quota (TRQ) that was to assure access to the Japanese market for 682,000 metric tons (milled basis) of imported rice annually. The Japan Food Department (JFD) of the Ministry of Agriculture, Forestry, and Fisheries (MAFF), manages imports within the TRQ through periodic minimum access (MA) tenders for imported rice and by imports through the simultaneous-buy-sell (SBS) system. In both programs, the activities of the JFD lack transparency, and less than one-half of one percent of rice imported from the United States reaches Japanese consumers as an identifiable product of the United States. Imports of U.S. rice under the periodic MA tenders, for example, 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.

Since Japan adopted a tariff system in 1999, no rice has been imported outside of the import quota because it would be subject to a duty of 341 yen per kilogram, which is equivalent to a 400-1,000 percent ad valorem tariff, depending on the variety of rice. Through the MA tenders, the JFD imports roughly 582,000 tons of rice. The U.S. rice industry has been disappointed by the JFD's record of buying medium quality rice for industrial use, food aid, and blending, rather than top quality rice for table use. The U.S. industry also faces barriers in moving rice imported under the JFD's MA tenders into the market place. The industry believes that medium grain U.S. rice - the type of rice imported directly by the JFD - can be competitive in the non-table use market. However, lack of information on obtaining U.S. rice held in JFD stocks has made the development of this commercial market difficult. Under the SBS system, also administered by the JFD, Japan imports the remaining 100,000 tons of its total MA commitment. The U.S. rice industry is particularly concerned over the operation of the SBS system, which was designed to allow exporters access to final consumers in Japan in order to engage in consumer market development. The SBS system, which provides a substantial mark-up to the JFD (equal to the difference between the import price of rice and the wholesale price in Japan), has not allowed U.S. exporters to develop markets in Japan for high-quality short grain U.S. rice used for the table market. In June 2003, the Japanese Diet passed a law that included a comprehensive rice reform plan designed to cut government spending, curb surplus production, and make Japanese rice farmers more efficient. The reforms are scheduled to be fully implemented by 2008. Many areas of the plan, however, remain vague, and there is concern that parts of it may be undone before it is fully implemented. In the long term, the reforms would reduce the need for extremely high levels of protection for Japanese rice farmers. Despite these reforms, Japan's position on rice market access in ongoing WTO agricultural negotiations is to decrease Japan's Minimum Access commitment for rice, allegedly because of Japan's changing demographics and declining rice consumption. This proposal is counter to one of the principal aims of the Doha Development Agenda, which is to open agricultural markets and expand trade. Expanding market access for U.S. rice hinges on increasing Japan's market access commitment, reducing tariffs, changing the import system to make pricing and bidding more transparent, and revising the SBS system so the market can function freely. Currently, Japan's complex import system for rice makes it impossible to ensure price stability and a stable year-long supply of U.S. rice. Since the majority of U.S. rice imports sits in warehouses, U.S. rice importers are denied the opportunity to establish direct relationships with Japanese consumers. The United States will work towards these goals bilaterally in the current WTO round.

Wheat Import System

Japan requires that wheat be imported through the Ministry of Agriculture, Forestry and Fisheries' (MAFF's) Food Department, which then releases wheat to Japanese flour millers at prices that are substantially above import prices. High wheat prices discourage wheat consumption by increasing the cost of wheat-based foods in Japan. The United States is seeking greater discipline on trade distorting practices of state trading companies in the WTO agriculture negotiations.

Corn for Industrial Use

To support demand for domestically produced potatoes and sugar, the Japanese government requires Japanese corn starch manufacturers to blend potato starch with corn starch in manufacturing corn sweeteners. The tonnage of cornstarch production must be matched by purchases of domestic potato and sweet potato starch in the ratio of one part of potato starch for 12 parts of cornstarch. If corn sweetener producers use potato starch at a lower ratio than 1:12, they cannot import corn at the zero tariff rate accorded to the pooled quota. Instead they must pay a tariff on corn equal to 12,000 yen per ton or 50 percent of the value of a shipment, whichever is higher.

The blending requirement discourages consumption of imported corn by raising the cost of corn sweeteners, and directly displaces over 200,000 metric tons of U.S. corn sales annually. The United States is seeking resolution of this issue in the WTO agriculture negotiations.

Pork Import Regime

U.S. pork exports to Japan, valued at approximately $800 million annually, comprise more than 65 percent of the value of all U.S. pork exports. However, Japan's pork import system is inflexible and fails to meet the needs of either Japan or the United States. The 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 with different cuts of pork. Importers buy mixed shipments in order to minimize tariffs by keeping the average CIF price of their shipments at or below the gate price.

Japan's pork safeguard, which was triggered for the third time in a row in 2003, is also of concern because it results in erratic purchasing patterns. The safeguard system encourages high imports when the safeguard is not in place, and the high imports then tend to trigger the safeguard. Once the safeguard is triggered, importers tend to buy more expensive cuts of pork in order to raise the cost of their import shipments to the new, higher gate price.

The United States seeks substantial reductions in pork tariffs, reform of the gate price system and safeguard, and greater transparency in Japan's import regime. The United States is seeking to resolve this issue in the WTO agriculture negotiations.

Beef Safeguard

The United States has worked with like-minded parties to express opposition to this safeguard at the highest levels of the Japanese government in an effort to remove, or suspend this safeguard. 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 increase from 38.5 percent to 50 percent. The safeguard is expected to be lifted in the first half of 2004 due to decreased Japanese beef imports resulting from Japan’s prohibition on U.S. beef exports due to the discovery of a single case of Bovine Spongiform Encephalopathy.

Fish Products

Japan is the most important export market for U.S. fish and seafood, accounting for approximately 40.7 percent of U.S. exports of such products in 2003. Japan maintains several species-specific import quotas on fish products. U.S. fish products subject to import quotas include pollock, surimi, pollock roe, herring, Pacific cod, mackerel, 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.

The United States and Japan held annual fish consultations in November 2003 to discuss marine science, ecology and other bilateral and international fishery-related issues. U.S. exporters have been concerned about the quota application process and other administrative procedures. However, over the past few years, Japan has made substantial improvements in its import quota system for fish products, due in large part to recommendations from the United States and European Union. These changes include greater transparency in disclosing the recipients of quota allocations, changes in the timing of quota allocations, and the breakout of several types of fish (including mackerel, sardines, Pacific cod and others) from the "Fish and Shellfish" category into individual categories with quotas listed by weight rather than value.

High Tariffs on Beef, Citrus, Dairy, and Processed Food Products

Japan maintains a high tariff regime on a number of food products that are important trading items for the United States, including red meat, citrus, and a variety of processed foods. Examples of double-digit import tariffs include 38 percent on beef, 32 percent on oranges, 40 percent on processed cheese, and 30 percent on natural cheese. These higher tariffs generally apply to food products where Japan is protecting domestic producers.

High tariffs discourage the use of imported products, and in some cases keep Japanese prices so high that they reduce total consumption of certain products. Tariff reductions are therefore a high priority in the WTO agriculture negotiations.

Wood Products, Housing, and Building Materials

Japan is the second largest overseas export market for U.S. wood products, with U.S. exports totaling nearly $750 million in 2003. With just under 1.2 million housing starts in 2003, Japan's home building materials market is second in size to only that of the United States. Estimates of the size of the home building materials markets range upward of $62 billion, not including materials going into the repair and remodeling market. Imports of building materials from the United States fell 6.1 percent, to $967 million in 2003, in large part due to the strength of the dollar and the high cost of U.S. building materials. The housing market in Japan is not expected to strengthen in the foreseeable future. Starts of North American style wood-frame housing increased by 3.2 percent in 2003, to 81,502 units, and should increase again in 2004.

Japan continues to restrict the import and use of U.S. wood products through tariff escalation (i.e., progressively higher tariffs on more processed wood products). The elimination of tariffs on wood products has been a longstanding U.S. objective, and the United States will continue to urge Japan to eliminate wood product tariffs. In 2001, the United States and Japan agreed that future discussions on wood/building products issues would be under the auspices of the Wood Products Subcommittee and its two technical committees, the Building Experts Committee and JAS Technical Committee. The Wood Products Subcommittee met in Tokyo in April 2002, and the Building Experts Committee and the JAS Technical Committees met in Nagoya in October 2003, to discuss a range of issues related to indoor air quality and fire performance, and acceptance of overseas testing data and calculation methods. The discussions were productive. Japan confirmed that U.S. manufacturers were eligible to apply for and receive a ministerial approval to allow continued use of U.S. building materials in Japan containing formaldehyde. Japan also agreed to consider several U.S. proposals to facilitate the recognition of foreign test data.

Marine Craft

Japan's non-transparent system of small craft safety regulation for boats, marine engines, and marine equipment impede market access in this sector. The regulations, which are administered by the Ministry of Land, Infrastructure and Transport (MLIT) and the Japan Craft Inspection Organization (JCI), are vague and subject to arbitrary and inconsistent interpretation. Product testing requirements are expensive and documentation requirements are non-transparent and burdensome, forcing companies to disclose sensitive proprietary information about product design, material specifications, and manufacturing techniques. Inspection fees are excessive and not in line with the actual cost of conducting the inspections. Moreover, considerable restrictions on the use of boat trailers, a principal means of transporting recreational boats throughout the rest of the world, have significantly limited boating in Japan. In addition, a complicated small craft operator's licensing system accompanied by mandatory expensive and lengthy classes have restricted the ability of interested Japanese citizens to acquire the necessary operator’s license. The result of this regulatory burden is that boating in Japan remains no safer than in other major boating nations, and the recreational boating industry (marinas, boats, engines, accessories, etc.), has remained unnecessarily and unusually small when compared to other developed nations.

The U.S. Government made some inroads in encouraging Japan to deregulate this market under the Working Group Agreement reached on July 2, 2003. The agreement reduces regulatory burdens on marine engine testing requirements, plastic fuel tank certification and the license system for boat operators. It also will reduce current Japanese regulations and will promote U.S.-Japan marine trade and benefit Japanese consumers while maintaining strict safety standards. The results of the Working Group were reported at the Trade Forum in July 2003, and at that time, it was decided that the Working Group, which includes participants from MLIT, JCI, the Japan Marine Importers Committee, and U.S. industry, would continue to meet for one more year in order to implement the July 2 agreement and to discuss outstanding issues.

In actions separate from the Working Group, Japan announced a number of welcome deregulation measures over the past year. It expanded the definition of a small craft to include those under 24 meters; eliminated licensing and inspection requirements for boats less than three meters in length; and revised its boat operator's license categories. The U.S. Government continues to await the details concerning implementation of these new procedures.

Leather/Footwear

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.

In 1991, Japan liberalized treatment of footwear imports, setting a footwear quota of 2.4 million pairs per year. By JFY 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.

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. However, because Japan is entitled to apply the higher of the two rates, which is typically the 4,300 yen per pair specific rate, the effect of the larger ad valorem rate reduction is negated.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Japan has many standards that limit trade in farm, forest and industrial products. Japan has always been particularly conservative on questions involving food safety, human health and the application of sanitary and phytosanitary standards. However, recently there appears to have been an increase in Japan's use of standards and other administrative requirements to limit agricultural and wood product imports in particular, and a greater tendency to deviate from scientific principles in setting new import policies.

Restrictions on building size and designs and products continue to constrain the use of some foreign building products and systems that are commonly used in the United States and elsewhere, thereby limiting choice for consumers and artificially inflating housing costs. The United States continues to have serious reservations about the transparency and basis of certain testing methodologies for evaluating fire resistance and formaldehyde testing.

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 is found in certain building products. The Japanese government failed to adequately take into consideration the potential impact of these regulations on foreign manufacturers. Prior to the drafting of the regulations, the Japanese government failed to notify the World Trade Organization of the development of guidelines upon which these regulations were based. Prior to the passing the regulations, the Japanese government also failed to provide an opportunity for public comment. (The regulations were based upon guidelines set by the Ministry of Health, Labor and Welfare (MHLW) but became law when mandated by MLIT and other ministries.)

The standard for testing fire resistance is inconsistent with international standards, and the testing criteria are such that test results (for the same product) can vary from one testing laboratory to another. Regulations on indoor air quality covering volatile organic compounds appear to be overly restrictive for products such as wall coverings but are not applied on carpeting and interior furnishings, which emit high levels of formaldehyde. As of late 2003, there were no testing bodies recognized outside of Japan to undertake the necessary testing for fire resistance or indoor air quality.

Fresh Apples Quarantine Requirements for Fireblight

Japan imposes burdensome quarantine restrictions on apples, limiting the ability of U.S. growers to access the Japanese market. Of particular concern are Japan’s requirements that aim to prevent transmission of fireblight. Scientific evidence does not support Japan’s assertion that mature, symptomless apples can transmit the fireblight bacteria. Japan’s quarantine restrictions for fireblight include the prohibition of imports of U.S. apples from any orchard containing fireblight, three inspections of fireblight-free orchards at different times in the growing season, maintenance of a 500-meter fire-blight free buffer zone surrounding export orchards, and post-harvest treatment of apples with chlorine. These requirements are not scientifically based, significantly raise costs, and reduce the competitiveness of U.S. apples in Japan.

Joint research conducted by U.S. and Japanese government scientists confirmed the results of earlier studies that mature, symptomless apples are not carriers of fireblight and provided additional scientific support for the United States’ position that Japan’s restrictions are unwarranted. In light of Japan’s continued refusal to modify its restrictions on the basis of the scientific evidence, on March 1, 2002, the United States initiated WTO dispute settlement procedures. In its report of July 15, 2003, the dispute settlement panel agreed with the United States that Japan’s inspection and buffer-zone requirements are inconsistent with Japan’s obligations under the WTO *Agreement on the Application of Sanitary and Phytosanitary Measures.* The WTO Appellate Body upheld these findings on November 26, 2003, and the WTO adopted the findings on December 10, 2003. Japan must implement the WTO rulings by June 30, 2004.

Ban on Fresh Potatoes

Japan bans imports of fresh potatoes from the United States, alleging that such a ban is necessary to prevent the introduction of golden nematode and potato wart into Japan. The United States has urged Japan to immediately lift the ban on fresh potatoes for processing from major production areas not infested by the golden nematode, such as the Pacific Northwest, California, and other U.S. potato exporting areas. Potato wart is not found in the United States. Separately, MAFF has raised new concerns regarding a number of viruses that would necessitate post-entry quarantine of imported potatoes even if the ban were lifted. The United States will continue to urge Japan to recognize disease-free areas in the United States for golden nematode. The United States is also urging Japan to permit imports of peeled potatoes for use in the food service industry, including under the Japanese deregulation initiative.

Excessive Use of Fumigation

Japan requires unnecessary fumigation for a number of imported fresh horticultural products. The fumigation requirement is particularly detrimental to trade in fresh fruits and vegetables, including lettuce, citrus, and cut flowers. Fumigation adds unnecessary costs and results in produce deterioration, making the product unmarketable. The U.S. lettuce industry estimates that exports would increase by at least $100 million if this issue could be resolved.

Japan routinely requires that imported produce be fumigated for insect species that are already present in Japan. This practice is inconsistent with international practice and with the International Plant Protection Convention (IPPC). Japan claims that these pests are under official control by MAFF in order to limit their spread within Japan. However, in practice, MAFF does not appear to have internationally recognized official control programs for domestically grown produce.

After repeated requests by foreign governments for reform, MAFF has begun to implement a non-quarantine pest list by partially amending the Plant Quarantine Law to exempt 53 pests and 10 plant diseases from fumigation requirements. While this appears to be an important positive step, the exemption list does not include ten common insect species found on U.S. fresh fruits and vegetables, which are also known to occur in Japan. The United States will continue to urge Japan to adopt international standards, to develop a comprehensive list of non-quarantine pests, and to reduce excessive, unnecessary, trade-distorting and costly fumigation requirements.

Biotechnology

While Japan has adopted a largely scientific approach in its approval process for agricultural biotechnology products, the United States is concerned with the recent changes in Japan's regulatory system, and seeks assurances that new requirements will be science-based, clearly stated, and will provide sufficient time for compliance as well as a smooth transition in order to reduce risk of trade disruption.

To date, MAFF and the MHLW, which regulate biotechnology products, have approved the importation of 55 biotechnology plant varieties for food, including corn, potatoes, cotton, and soybeans. In July 2003, Japan inaugurated a Food Safety Commission (FSC) with responsibility for performing food related risk evaluations. It is still unclear what exact role the FSC will play and what new assessment procedures will be required. Also unclear is what will be required in the mandatory environmental reviews for biotechnology products.

The United States is also concerned by Japan's efforts to expand mandatory labeling of foods made from the products of biotechnology because, by suggesting a health risk, such labeling may discourage consumers from purchasing these foods. In 2002, MAFF included potato products, frozen potatoes, dried potato, potato starch and potato snacks in the mandatory biotechnology-labeling scheme. The United States believes consumers should have information on foods that have been produced through biotechnology, but alternatives to mandatory labeling, such as educational materials, public discussions, and voluntary labeling regimes, can provide more meaningful information to consumers. The United States is also concerned by MAFF's plans to expand mandatory labeling on feed and seed, which are now being discussed internally in the Ministry.

The United States is urging Japan to continue to participate in discussions on biotechnology advancement and regulation in international fora, such as the WTO, the Codex Alimentarius Commission, the OECD and APEC. Given the continuous development of new biotechnology-produced food products, the United States and Japan share a common interest in working together to promote effective food safety policies.

Restrictive Food Additive List

Japan's overly restrictive list of food additives still limits imports of U.S. food products, especially processed foods. Japanese regulations, which limit the use of specific food additives on a product-by-product basis, are out of step with international practice. For example, Japan refuses to allow 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. However, Japan allows its use in 36 other foods, most of which are traditional Japanese food products not normally produced outside of Japan.

Feed Additive Ban

In August 2002, MAFF publicly announced its intent to ban 29 animal feed additives. After gathering additional information, MAFF decided in October to ban only those additives that could create a resistance problem for humans. Antibiotic animal feed additives have been in use for over 30 years. Many countries, including the United States, are in the process of reviewing regulations regarding the use of these antibiotics. In December 2002, the United States received conflicting reports that Japan had decided to move forward with a ban in advance of a report on the matter from a MAFF scientific committee, and seemingly in the absence of a science-based risk assessment. The United States expressed its concerns to the Japanese government and sought assurances that Japan's review of these additives would be performed in a transparent, thorough, and science-based manner. The Japanese government provided such assurances, and the United States will continue to follow the issue closely to ensure that Japan decides this matter in a manner consistent with its WTO obligations.

Nutritional Supplements

Japan is continuing to liberalize its market for nutritional supplements. However, there are still restrictions or prohibitions on the use of many food additives and ingredients commonly used in markets outside Japan. Consequently, many U.S. nutritional supplement products require reformulation for the Japanese market, a costly process for manufacturers. First in 1996 and again in March 2003, the Japanese Market Access Ombudsman Council issued a recommendation that the nutritional supplement market be liberalized. The Ministry of Health, Labor and Welfare (MHLW) responded by undertaking a scientific study of 46 food additives, out of hundreds that still cannot be brought into Japan. The U.S. Government continues to press Japan to open its market to these producers, to establish a means for industry to consult directly with MHLW, and to make regulatory decisions regarding this area as well as other areas based on clear scientific data.

Other Issues

- The U.S. textiles industry has raised concerns regarding new, stricter formaldehyde labeling and emissions standards proposed by the Japan Industry Standard (JIS). The new standards, adopted in July 2003, may make it difficult for wall covering manufacturers in the United States to export to Japan. The U.S. Government remains concerned about this non-tariff barrier, and continues to monitor this issue.

- Japan banned imports of U.S. beef in December 2003 with the detection of one positive case of Bovine Spongiform Encephalopathy (BSE) in the State of Washington. As of the publication of this report, the U.S. government is taking aggressive action and is working intensively to re-open the market as quickly as possible. In addition, the United States is working in the International Organization for Epizootics to revise international standards on BSE to reflect current scientific knowledge.

- Japan prohibited imports of U.S. poultry in early 2004 due to outbreaks of avian influenza in some U.S. states. The U.S. government is working with the Japanese government to regionalize the import restrictions to only affected states.

GOVERNMENT PROCUREMENT

Computers

While U.S. producers of computer goods and services are global leaders in technology and performance and continue to be among the largest and most successful foreign firms in Japan's private sector, access to the Japanese public sector computer market remains problematic. The last bilateral review under the 1992 bilateral Computer Agreement was held in March 2001, at which time Japan presented data showing a very slight increase in the foreign share of the public sector market.

Given the continued gap between the U.S. share of the Japanese private and public sector computer markets, as well as the rapid technological advancements in this sector, the United States has proposed that Japan more fully utilize the Internet for government procurements, broaden its use of Overall Greatest Value Method (OGVM) in bid evaluations, and provide advance information to potential bidders on a larger number of upcoming procurements.

Construction, Architecture and Engineering

Two public works agreements are in effect: the 1991 U.S.-Japan Major Projects Arrangements (MPA) 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 1994 Agreement, Japan must use open and competitive procedures for procurements valued at or above the thresholds established in the WTO Agreement on Government Procurement (GPA). Public works issues are raised in the Trade Forum established under the U.S.-Japan Economic Partnership for Growth. During the 2003 Trade Forum, the United States urged Japan to eliminate the obstacles that prevent U.S. companies' full and fair participation in its public works sector. The United States and Japan agreed to hold expert-level meetings on public works issues parallel to the Trade Forum to address bilateral sectoral concerns in greater detail.

Although existing agreements have introduced positive procedural changes in Japan’s large public works market ($210 billion for 2003), U.S. firms annually obtain far less than one percent of projects awarded. Problematic practices inhibit the full involvement of U.S. design and construction firms in this sector, which has become increasingly competitive due to recent decreases in public works spending by the Japanese government. These practices include failure to address rampant bid-rigging, use of arbitrary qualification and evaluation criteria to exclude U.S. firms, unreasonable restrictions on the formation of joint ventures, and the structuring of individual procurements so they fall below thresholds established in international agreements.

The public works market continues to be plagued by bid-rigging practices (*dango*), under which companies consult with one another and prearrange a bid winner. The United States welcomes the recent legal and administrative steps taken to address *dango* and urges the Japanese government to increase its efforts to eliminate these practices and sanction government officials who aid them. Some Japanese firms have submitted bids that are so low that they raise the question as to whether the work can be performed without incurring a financial loss. This is hampering U.S. firms' abilities to offer quality services while remaining competitive.

The United States continues to urge Japan to specify the criteria used in particular procurements so as to maximize, rather than restrict, the number of firms that would be able to participate in the procurement. Although the United States is pleased that Japan began using Construction Management (CM) for public projects in 2001, it is concerned that discriminatory qualifying criteria may have been used to impede the involvement of U.S. firms in these procurements. During the 2003 Trade Forum, the United States urged Japan to adopt three CM and one Project Management (PM) project during this fiscal year and to structure them such that the increased efficiencies offered by CM technologies are fully utilized and that foreign firms with appropriate expertise are encouraged to compete. (CM and PM are advanced technologies used to maximize the efficiency of a project by saving time and money.) The United States is concerned about how and when ISO 9000 series registration is being used as qualification criteria and urges Japanese commissioning entities not to use ISO 9000 series registration with the effect of creating a barrier to international trade.

During the 2003 Trade Forum, the United States welcomed the Japanese government’s announcement of the implementation of the “mixed-type procurement,” which allows companies to decide whether to bid solo or as a joint venture, and encouraged the use of this practice for all projects. The United States urged Japan to abolish the three company joint venture rule, which limits to three the number of members in joint ventures for most construction projects, and to allow companies, not procuring entities, to determine the number of companies that should execute a project. The United States also encouraged the proactive use of joint ventures for Design Architect work.

The United States is promoting U.S. firms' effective participation in Urban Renewal (*Toshi Saisei*) projects and Private Finance Initiative (PFI) projects being undertaken by Japan. During the 2003 Trade Forum, the United States urged the Japanese government to fully disclose information regarding these projects and urged all commissioning entities to use the fair, transparent, and non-discriminatory procedures set forth in the Action Plan for these projects. In October 2003, Japanese private sector organizations hosted the fifth U.S.-Japan Construction Cooperation Forum (CCF), which focused on facilitating the formation of joint ventures between U.S. and Japanese design/consulting and construction companies for PFI 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 the New Kitakyushu Airport, Haneda Airport including its expansion stages, Central Japan International Airport, Kansai International Airport, Kobe Airport, Kyushu University Relocation Project, Okinawa Graduate University Project, Japan Railways procurements, laboratory projects commissioned by the Ministry of Education, Culture, Sports, Science and Technology, International Medical Center Project, PFI projects such as the Kudan Government Consolidated Office Building Project and the New Statesman Building, and the remainder of projects stipulated in the MPA. During the 2003 Trade Forum, the United States urged the Japanese government to ensure that the procurement procedures set forth in the MPA are used for all outstanding MPA projects.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The United States continues to pursue its intellectual property rights 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 intellectual property rights and, relative to other countries, piracy is not a major problem, though several key issues remain, 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

The United States has focused particular attention on improving the processing and approval of patent applications, and reforming Japan's practice of affording only narrow patent claim interpretation. 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, 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 is 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 the Japan Patent Office (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. 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.

Copyrights

The increasing use of the Internet and explosive growth of high-speed access in Japan has presented new challenges for protecting intellectual property rights, 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 is therefore concerned that Japan's Internet Service Provider (ISP) liability law does not provide adequate protection for the works of right holders on the Internet or the appropriate and necessary balance of interests among telecommunications carriers, service providers, right holders and website owners. The United States urges Japan to use all the opportunities available to improve these shortcomings in the law. *(For more details, see the Information Technologies section under Sectoral Regulatory Reform.)*

The United States is also concerned about Japan's reluctance to clearly stipulate that temporary copies (e.g., copies in the RAM of a computer) implicate the right holder's reproduction right. Article 9 of the Berne Convention, which is incorporated into the TRIPS agreement, provides that authors must have the right of authorizing the reproduction of their works in any manner or form. The WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty, to which Japan is a party, contain an agreed statement affirming that the reproduction right fully applies to works in digital form. Japan has acknowledged that some temporary copies are subject to copyright protection by recognizing that "temporary storage" implicates the reproduction right. The United States urges the Japanese government to widely disseminate this information and clearly define the scope of protection for temporary copies.

The United States urges 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 would be amending Japan's Civil Procedures Act to award statutory damages rather than actual damages, and to provide for more effective procedures for collecting evidence. In addition, in order to set an example for the private sector, the United States urges Japan to issue a statement clarifying Japan's agreement to use only legitimately produced and licensed software in its government operations.

The United States is concerned about the provision on anti-circumvention in the Copyright Law, which states that the penalties for TPM circumvention devices will be applied only to devices whose principal function is circumvention.

In a positive vein, the Diet passed legislation to extend the term of copyright protection for cinematographic works, animation, and video games to 70 years to bring the term of protection closer to the international norms among developed countries. The United States continues to urge the Japanese government to extend all copyright terms 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.

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.

Regrettably, 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. Of particular concern is Japan's register of well-known marks, where employees of the Japan Patent Office make *ex officio* determinations whether a mark is well-known or not. One defect of the "list" approach to well-known mark protection is that one can essentially pay one's way onto the list by requesting defensive registrations in many classes.

Geographical Indications (GI)

Articles 22 to 24 of the TRIPS Agreement set forth the obligations of WTO Members with respect to geographical indications and their relationships to trademarks. It is unclear whether Japan currently provides interested parties with the legal means to prevent misuse of a geographical indication or whether Japan provides trademark owners with the legal means for resolving conflicts between trademarks and asserted geographical indications, as required by the TRIPS Agreement. The United States understands that the Japanese government is currently studying the issue of geographical indication protection and fully supports that effort. Already, the United States has participated in a digital video conference with Japanese Officials and has provided extensive information on the U.S. GI system to AIPPI-Japan, a research arm for the Japanese Patent Office. Outstanding questions in this area remain of particular concern since it is unclear whether Japan maintains an undisclosed list of protected geographical indications against which applications for trademark registration are reviewed. MAFF recently proposed the use of geographical indications 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. The United States looks forward to receiving further information on this issue.

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. Since 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 a person who illegally acquires, uses, and discloses corporate secrets is subject to criminal sanctions. However, the scope of the amendment is limited. The United States continues to urge Japan to undertake further reform in this area.

Border Enforcement

The United States continues to monitor the Japan Customs and Tariff Bureau's (JCTB) implementation of the policy to allow parallel imports of patented products based on a 1997 Japan Supreme Court. 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 right holders to obtain effective protection against infringed intellectual property rights at the border. Although Japan increased the amount of resources devoted to enforcement during 2003, the United States urges Japan to continue to improve and tighten its border enforcement to ensure effective implementation of 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 $319 billion in FY 2002. In addition to the offerings of Japanese and foreign private insurers, there is a large public sector provider of postal life insurance products (Kampo), the National Public Health Insurance System, and a web of mutual aid societies (Kyosai) that also provide significant amounts of insurance to Japanese consumers.

Given the size and importance of Japan's private insurance market, the United States continues to place a high priority on establishing a regulatory framework that ensures an open and competitive insurance market in Japan. The United States utilizes several opportunities and fora to raise and address several issues of concern, including through the annual U.S.-Japan bilateral insurance consultations, regularly scheduled Working Groups under the U.S.-Japan Regulatory Reform and Competition Policy Initiative, and regular contact between embassy officers and Japanese government representatives from the relevant Ministries.

Two bilateral Insurance Agreements, implemented in 1994 and 1996, are in effect and have contributed significantly to the deregulation of the Japanese insurance market. Largely as a result of positive changes brought about by these agreements, foreign insurance companies have substantially increased their presence in Japan, now holding an estimated 5.4 percent share of the total non-life insurance market and 20 percent of the total life insurance market. In the third sector, foreign firms have captured approximately 61 percent of the health-related insurance market and about 24 percent of the non-life market. In addition, new business partnerships and recent acquisitions in this sector involving foreign firms have significantly increased foreign presence in Japan.

Several issues of concern, however, emerged during 2003, including the lack of a level playing field between private industry and Kampo/Kyosai, the introduction of new product offerings by Kampo, and uncertainty regarding future funding of the life and non-life insurance safety net systems or Policyholder Protection Corporations. The United States raised its serious concerns about these and other key issues during U.S.-Japan bilateral insurance consultations, held in Tokyo on November 17, 2003.

The Japanese insurance sector, aside from Kampo and the Kyosai, is regulated by the Financial Services Agency (FSA), which was established in June 1998. The FSA is responsible for all aspects of financial regulation in Japan, including inspection, supervision, and surveillance of financial activities related to banking and securities business in addition to insurance. In April 2003, the three postal services, including Kampo, were transferred to a public postal corporation (Japan Post), which is supervised by the Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT).

Kampo and Kyosai enjoy significant tax, legislative and regulatory advantages over private sector insurers. For example, while Kampo and the Kyosai compete with the private sector, both are exempt from Japan's Insurance Business Law and from contributing to Japan's insurance safety net systems. In addition, Kampo and Kyosai both possess advantageous tax status, which in Kampo's case, exempts it from paying any corporate and income taxes. Despite expectations that the Koizumi Administration would move aggressively to reduce the public sector's substantial participation in the insurance market, this has not occurred, and Kampo remains by far the largest player in the insurance market. In FY 2002, there were 84 million Kampo issued life insurance policies in force compared to just 123 million for all private life insurance companies combined. In addition, according to the Japan Cooperative Insurance Association, Kyosai-issued policies amounted to 20 percent of all in-force life policies, and 39 percent of all in-force non-life policies in Japan in FY 2001.

The United States has continuously voiced its Kampo-related concerns to the Japanese government, stressing the need for, inter alia, the continued prohibition on Kampo's ability to underwrite any new insurance products until there is a regulatory level playing field; and for postal financial institutions to be subjected to the same legal, tax and business requirements as their private sector counterparts. As any modification to the postal financial system could have significant impact on competition in the Japanese insurance market, the U.S. Government also strongly urged that any decisions related to the future of the postal financial institutions, including possible privatization, be made and implemented in an open and transparent manner, in full consultation with domestic and foreign private insurers.

Japan Post announced in the fall of 2003 that Kampo would seek approval for a new product which includes a rider providing for supplemental health coverage under a hybrid whole life and term life contract. This product would provide health and life coverage that would expand and contract according to the age of the insured, and is designed to maximize coverage during life cycle periods when the insured is most likely to need it.

The U.S. Government objected strongly to the proposed new product offering, which competes directly for the first time with private sector insurance offerings. It urged MPHPT to listen to concerns raised about the new product by the Japanese private sector, other Japanese government agencies, Japanese industry analysts, media, and Japan's major trading partners B and to not approve the new product offering. Unfortunately, MPHPT's Postal Services Policy Council approved the new product offering on November 14, 2003, and Japan Post introduced it in January 2004. The United States will closely monitor the impact this product will have on private insurers and the Japanese insurance market, and urges the Japanese government to prohibit the introduction of any new product offerings by Kampo until there is a level playing field.

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. The Life PPC fund, in particular, had been nearly depleted as a result of industry failures. Private sector insurers have contributed considerable sums to the PPC systems, and U.S. industry, particularly life insurers, has expressed serious concern at the prospect of additional contributions. The United States has raised the need for transparency in determining future PPC funding, and stressed the need for a sustainable funding framework that did not unfairly burden the private sector and lead to greater imbalance in the competitive playing field with Kampo.

On June 8, 2003, the Japanese government implemented legislation to extend its funding guarantee to the Life PPC that would assess private sector life insurers an additional 100 billion yen. The Japanese government also said that it would thoroughly review the PPC system and consider reforms long recommended by private insurers. U.S. insurers, although displeased with the additional levy, welcomed the review. While commending the Japanese government for its decision to extend its financial commitment to the policyholder protection fund, as well as its commitment to review promptly and thoroughly the safety net system, the U.S. Government has urged throughout 2003 that any such review be undertaken in a timely manner, and stated that the deliberation process should be transparent and should involve interested parties, including foreign insurance companies. The U.S. Government has pressed the Japanese government to begin its review soon, in order to ensure that it is completed, and necessary legislation enacted, before the current Life PPC structure expires on March 31, 2006.

Kyosai operations have also received increased attention in 2003. Some Kyosai are regulated by their respective agencies of jurisdiction (Ministry of Agriculture, Forestry and Fisheries, or Ministry of Health, Labor and Welfare, for example); while others operate without any regulatory supervision. 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, as well as to protect Japanese consumers.

Since April 2001, banks have been permitted to sell long-term fire insurance, debt repayment support insurance, credit life insurance, and overseas travel accident insurance. In October 2002, the list of permissible products was expanded to include individual annuities, maturity refund personal accident insurance with an annuity payout feature, zaikei (asset formation) insurance, and zaikei personal accident insurance. Although the U.S. Government welcomes the liberalization of bank sales of annuities, the above list represents only a tiny fraction of the universe of private insurance products that could be made available to Japanese consumers through the bank sales channel. The U.S. Government has urged the Japanese government to promptly and completely liberalize the bank sales channel to allow banks to sell all types of insurance offered by any regulated private insurer and not specifically target third sector products by liberalizing only that sector first. In order to promote bank sales of insurance in a manner that effectively serves the financial planning needs of consumers, the U.S. Government believes the Japanese government should promptly allow banks to use non-financial customer information for the purpose of offering insurance products to bank customers upon gaining customer consent on an opt-out notification basis.

The United States will continue to work closely with industry in following these issues and urge the Japanese government to adequately resolve these concerns in an open and transparent manner.

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 (FDI) 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, and foreigners have to pass a special examination to qualify, an examination last offered in 1975. The United States will continue to urge Japan to remove restrictions on accounting services.

Legal Services: As noted above in the "legal system reform" section, 2003 brought sweeping reform in the area of association between Japanese and foreign lawyers, and the new system of Joint Law Firms (*kyodo jigyo*) will be implemented no later than mid-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: Over-regulation also 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 is taking up these issues, and the U.S. Government has urged greater flexibility through the establishment of a new category for foreign institutions of higher education and/or recognition of U.S. accreditation.

INVESTMENT BARRIERS

Despite being the world's second largest economy, Japan continues to have the lowest value of inward foreign direct investment (FDI) as a proportion of total output in 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. The relative lack of foreign investment can act as a restraint on the expansion of imports. Much of the recent increase in FDI flows represents important opportunities and restructuring in the financial services and telecommunications sectors. Meanwhile, inward FDI is dwarfed by Japan's outward investment flows ($32.3 billion in CY2002 and $38.3 billion in CY2001). The Japanese government has recognized the importance of FDI in revitalizing its economy, and Prime Minister Koizumi vowed in January 2003 to double the stock of FDI in Japan in five years. He has set up an "Invest Japan" office under JETRO and encouraged local governments to be more active in welcoming foreign investment and even produced an advertisement to be placed in Europe and the United States. Japan has taken several steps in recent years to improve the FDI environment, including passage of legislation in 2003 to permit the use of triangular stock swaps for international M&A deals. U.S. businesses have applauded these changes, but they continue to urge that tax rules be clarified and amended to facilitate use of these measures.

Cross-border M&As are more difficult in Japan than in other countries, partly because of conservative attitudes towards outside investors and partly because of the relative lack of financial transparency and disclosure and differing management techniques. The scarcity of qualified lawyers, auditors, and accountants is another impediment. Nevertheless, some progress has been made through the introduction of consolidated taxation and revised bankruptcy procedures that make it easier for corporations and their assets to be acquired or merged in a "rescue" format.

U.S. proposals for M&A include: (1) making more assets available and reducing due diligence costs; (2) removing the surcharge on consolidated taxation to lower the post-tax cost to parent firms of investing in new risk ventures; (3) improving corporate governance practices to reduce the management bias favoring loyalty to the firm over a return to shareholders; (4) continuing financial market reform, allowing new techniques like triangular mergers and cash mergers (including short-form mergers); (5) improving financial data disclosure; and (6) increasing the availability of M&A-related services, including further easing of restrictions on the accounting and legal professions. The United States and Japan are also exploring ways to facilitate investment in the education and medical service sectors, where regulatory regimes severely restrict foreign participation.

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 focus on needed changes in the basic operating rules of Japanese markets and to encourage policy changes to improve the overall environment for foreign (and domestic) investment. The Investment Initiative has held a series of meetings and seminars, scheduled again for 2003-4. The private sector participates actively in this process and has offered detailed suggestions on how to increase transparency, as well as recommending the introduction of new financial instruments for international transactions.

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 sections.

Law Against Unjustified Premiums and Misleading Representations: The JFTC imposes overly restrictive limits on the use of premium offers (prizes) and other sales promotion techniques, and thereby discourages even legitimate cash lotteries and product giveaways used in such promotions. Foreign newcomers, who depend on innovative sales techniques to market their company names and products, are significantly impaired by the JFTC's restrictions on premiums. In addition, the JFTC allows "fair trade associations" (essentially, private trade associations) to set their own promotion standards through self-imposed "fair competition codes." Trade associations often use the cover of these codes to adopt additional standards that are stricter than required by JFTC regulations under the Premiums Law and have the effect of restraining vigorous competition. As of December 15, 2003, there were still 39 JFTC-authorized premium codes.

ELECTRONIC COMMERCE

The United States made numerous recommendations in its October 2003 Regulatory Reform submission for increasing consumer confidence and promoting electronic commerce in the private sector, including: removing regulatory and non-regulatory barriers, strengthening the protection of intellectual property rights, implementing new privacy legislation in a transparent and consistent manner, ensuring effective network security, and facilitating online transactions and electronic government. The United States is urging Japan to support private sector self-regulatory mechanisms for privacy and alternative dispute resolution, as well as to ensure that laws governing electronic transactions are technology-neutral. The United States will continue to work with Japan on these and other electronic commerce issues through the IT Working Group under the Regulatory Reform Initiative. (*For more details, see the Information Technologies section under Regulatory Reform.*)

Online Procurement: The United States welcomes and supports the Japanese government's measures to digitize administrative procedures at all levels of government. Recognizing the key role that electronic government has in providing the impetus for spurring electronic commerce in the private sector, the United States recommends that Japan further expand and accelerate its electronic government programs to facilitate online transactions between the government and consumers and businesses for procurement, information and online services such as applications and licensing. MPHPT launched its online bidding system for non-public works in November 2002, while all other ministries are expected to do so by April 2004. The United States has urged the Japanese government to design online procurement systems that promote fair and open tendering procedures; and support the concepts of transparency, efficiency, security, and private sector leadership.

OTHER BARRIERS

Aerospace

Japan is the largest foreign market for U.S. aircraft and aerospace products. In 2003, the United States accounted for approximately 87 percent of Japan's aerospace imports, valued at $3.8 billion. Many Japanese firms have entered into long-term relationships with American aerospace firms.

The commercial aerospace market in Japan is generally open to foreign firms, but the United States is monitoring Japan's funding of feasibility studies for new projects and technologies, and its important role in apportioning work among major Japanese aerospace companies. A recent proposal by METI to develop a 30-to-50-seat commercial aircraft, replacing the earlier YSX project, bears monitoring.

Military procurement by the Japan Defense Agency (JDA) accounts for over half of the domestic production for aircraft and aircraft parts, and continues to offer the largest source of demand in the aircraft industry. Japanese defense projects are carried out according to the current Mid-Term Defense Program (JFY 2001 – JFY 2005) with a projected budget of 25.16 trillion yen, or approximately $206 billion, over this five-year period. Major projects include: modernization of the F-15 fighter aircraft, procurement of the F-2 fighter support aircraft, air refueling tankers, Apache Attack helicopters, AEGIS destroyers, and development of fixed wing patrol (P-X) and air transport (C-X) aircraft.

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.

Although Japan has considered its main space launch vehicle programs as indigenous for many years, in fact U.S. firms continue to participate actively in those space systems, including Japan's primary space launch vehicle, the H2-A. The U.S. Government has welcomed Japan's plans to develop a supplementary GPS navigation satellite constellation known as the "quasi-zenith" system, with the first launch scheduled for 2008. The United States is working very closely at the technical level with Japanese counterparts to ensure the Japanese system remains compatible with ours, 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 American firms to commercial opportunities within Japan's domestic space programs as appropriate.

Autos and Auto Parts

Further opening of the Japanese auto and auto parts markets remains an important objective of the United States. Access to Japan’s automotive market continues to be impeded by a variety of overly restrictive regulations, a lack of transparency in rule making, and lackluster enforcement of antitrust laws. While there has been a trend toward closer integration and important technological advancements in the global automotive industry over the past several years, the effect these changes will have on market access and competition in this sector remain unclear.

The U.S. Government remains disappointed with falling sales of North American-made vehicles and parts in Japan. Sales of motor vehicles produced in the United States declined in 2003, with sales decreasing by 15 percent (year-on-year) following a decline of 17 percent in 2002. U.S. automakers sell less than a quarter as many U.S.-made vehicles in Japan as they did in 1995.

Even as American automakers have invested in Japanese auto manufacturers, foreign access to Japan’s automotive distribution network remains troubling to U.S. auto companies. The U.S. automotive trade imbalance with Japan, $44 billion in 2003 ($32 billion deficit in autos and $12 billion deficit in auto parts), is the equivalent of more than 66 percent of the overall U.S. trade deficit with Japan and made up eight percent of the 2003 worldwide U.S. trade deficit.

The Automotive Consultative Group, which is co-chaired by USTR and the Department of Commerce on the U.S. side and METI and Ministry of Land, Infrastructure, and Transport (MLIT) on the Japanese side, met in January 2003. The group discussed industry trends based on a series of trade and economic data on autos and automotive parts provided by both countries and identified areas in which specific action can be taken by Japan to address U.S. concerns. This would include further deregulation (particularly in the automotive parts aftermarket), increased transparency in rules and regulations governing this sector, and more rigorous application of Japanese competition laws. The United States also continues to address cross-cutting issues affecting the automotive sector, such as expanding opportunities for foreign investment, increasing transparency in rule making, and promoting corporate restructuring in the Japanese economy under the Economic Partnership for Growth.

Civil Aviation

Market access for U.S. air carriers in Japan improved significantly with the 1998 bilateral civil aviation agreement, but carriers remain constrained by extremely high airport costs in Japan and by enduring restrictions on traffic rights, operational flexibility, and pricing.

In the 1998 MOU, the two sides agreed to hold further negotiations by 2001 "with the objective of fully liberalizing the civil aviation relationship between Japan and the United States." Although negotiations had been stalled in recent years, in November 2003, officials at Japan's MLIT and the U.S. Government re-engaged in informal talks. Formal talks followed in January 2004 but produced little common ground. The U.S. Government, however, continues to engage MLIT to advance liberalization. The chief U.S. concerns are increased rights for non-incumbent cargo carriers, pricing liberalization, code-sharing, and improvements in the regime for Japan-Pacific Islands service.

Unnecessary restrictions on movements at Narita airport are partially responsible for limited slot availability. In periods of high demand, U.S. non-incumbent combination carriers have been unable to operate several routes made available under the 1998 Memorandum of Understanding (MOU). A second runway opened in April 2002 provides additional slots, but at less than 2500 meters, the runway cannot accommodate most long-haul operations. The issue of excessively high landing fees at Narita and Kansai airports continues to be raised in the U.S.-Japan Regulatory Reform talks and in bilateral aviation discussions. (*See Regulatory Reform Initiative, Distribution Section*)

The United States will continue to pursue further liberalization consistent with its global policy to promote competition and market access in civil aviation.

Electric Utilities

The United States continues to stress that by introducing genuine competition into non-fuel procurement (valued at approximately $11 billion annually), Japan can effectively reduce the costs of its electric power, which remain the highest in the industrialized world. U.S. exports currently account for approximately 3.5 percent of Japanese electric utility procurements, or around $385 million per year. Should barriers be lifted, that share could plausibly rise to five percent, or around $550 million per year.

Japan's utilities actively participate in the New Orleans Association (NOA), 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 often prove more economical) to seek greater transparency and fairness in the procurement process.

Nevertheless, 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. Finally, good access to procurement information is difficult to obtain.

Flat Glass

Japan's three domestic flat glass producers to date have maintained largely constant market shares through informal coordination and tight control over distribution channels, thereby restricting market access for U.S. manufacturers. In other major industrial markets, including the United States and the EU, the market share of foreign-owned companies (via imports and in-country production) is more than five times the level in Japan.

The United States engaged Japan in discussions under the Enhanced Initiative on Deregulation and Competition Policy. As a result of these discussions, the Japanese government recognized the economic benefits of competition in the distribution sector. Japan also confirmed that it would be detrimental to competition and a violation of Japan's Antimonopoly Act for distributors to collude to exclude imported or other competitors' products from entering the market, and METI agreed to continue to pursue economic reforms to ensure competition in the distribution sector.

The United States has expressed its concerns regarding access to the flat glass market, most recently in the U.S.-Japan Trade Forum held in July 2003. The U.S. Government highlighted the continuing problems that prevent market entry. The United States continues to urge Japan to take concrete steps to promote competition in, and access to, its glass market, and for Japan's Fair Trade Commission to continue monitoring of the market.

Motorcycles

Japan's ban on tandem riding of motorcycles (carrying a passenger) on motorways is the only remaining restriction on motorcycling in Japan that the United States seeks to eliminate. The ban artificially limits Japan's market for large motorcycles, adversely affecting U.S. exports. More important, by forcing riders to use less-safe ordinary roads, the ban significantly reduces the safety of motorcycling in Japan.

The Japan Automobile Manufacturers Association (JAMA) has recommended that Japan lift its ban on tandem riding of motorcycles on highways in Japan, and in February 2001, released a report summarizing a survey it conducted on motorcycle tandem riding on expressways in Europe (specifically, in Germany and Italy). It found that accidents involving tandem motorcycle riders on expressways are extremely rare, and for motorcycles, traveling on expressways is much safer than on public roadways. The report noted that the accident rate involving motorcycle tandem riders is below that of single riders, and no cases could be found in which tandem riding actually caused motorcycle accidents on expressways.

The Japanese government continues to consider the U.S. petition against the ban. Removing the ban on tandem riding of motorcycles on motorways would involve changing Japanese law. In December 2003, the Japan National Police Agency (NPA) announced on its website its intention to seek revision of the Road Traffic Law. The proposed revision includes a repeal of the ban on motorcycle tandem riding on highways for persons 20 years or older that have held large- or medium-size motorcycle driving licenses for more than three years. The U.S. Government strongly supports this reform.

Paper and Paper Products

The United States remains concerned that there has been no meaningful increase in Japanese imports of paper and paperboard products. The level of import penetration for paper and paperboard products in Japan remains the lowest in the industrialized world. According to U.S. producers, exclusionary business practices remain a key problem. U.S. industry representatives estimate that the removal of systemic barriers to the Japanese paper market would result in at least a 10 percent share for U.S. suppliers, or approximately $5 billion, compared to the current level of $770 million.

Sea Transport/Ports

U.S. carriers serving Japanese ports have long encountered a restrictive, inefficient, and discriminatory system of port transportation services. In 1997, the U.S. Federal Maritime Commission assessed a $100,000 fee on each ocean voyage to the United States by Japanese shipping lines, prompting Japan to agree in October 1997 to substantial regulatory reform of its ports sector. 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 Transport Law (effective November 2000) to eliminate the need for new entrants to prove there is surplus demand. Also, fees no longer need to be approved by the Ministry of Land, Infrastructure and Transport (MLIT).

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 also noted that the revised Port Transport Law contains cumbersome administrative requirements, gives MLIT wide authority to intervene in pricing decisions of terminal operators, and increases minimum permanent staffing by 50 percent. MLIT has not addressed concerns about the prior consultation process nor about the apparent threat of illegal strikes against foreign carriers who obtain permission to operate their own container terminals.

The United States' concerns led the Federal Maritime Commission, in August 2001, to order major Japanese shipping lines and ocean carriers that provide substantial U.S.-Japan service to furnish detailed information on the effects of recent changes in Japanese port laws and ordinances. The United States will continue to closely monitor how these changes affect port operations and to urge faster regulatory reform in the port sector. However, both the Japanese and U.S. positions have solidified over the years. At the February 2003 High Level Regulatory Reform meeting, the U.S. Government reiterated its position that the Japanese government has failed to implement important aspects of the wide-ranging port deregulation promised in 1997.

Steel

U.S. steel producers have previously expressed concerns that Japanese steel companies may be engaging in anticompetitive practices. With respect to Japan's domestic market, it has been alleged that Japan's integrated producers have coordinated output, pricing, and market allocation goals. In addition, it has been alleged that Japanese mills have entered into arrangements with foreign counterparts to regulate bilateral steel trade.

Japan participated constructively in bilateral consultations and in OECD High-Level Meetings on Steel during 2003 aimed at reducing excess, inefficient steel-making capacity around the world. The United States will continue to actively address anticompetitive activity, market access barriers, and/or market-distorting trade practices in the steel sector in appropriate multilateral fora, as well as on a bilateral basis.

KAZAKHSTAN

TRADE SUMMARY

The United States registered a trade deficit of $224 million with Kazakhstan in 2003, a change from the $270 million trade surplus in 2002. Kazakhstan was the United States' 100th largest export market and 83rd largest import market in 2003. In 2003, goods exports to Kazakhstan were $168 million, a 72 percent decrease from 2002. U.S. imports from Kazakhstan were $392 million in 2003, a 17 percent increase from 2002. The stock of U.S. foreign direct investment (FDI) in Kazakhstan in 2002 was $4.5 billion, down from $4.7 billion in 2001.

The U.S.-Kazakhstan Bilateral Trade Agreement, which came into force in 1993, provides for normal trade relations (NTR) between the United States and Kazakhstan and governs other aspects of the bilateral trade relationship. A bilateral investment treaty (BIT) between the United States and Kazakhstan came into force in January 1994.

Kazakhstan is in the process of negotiating terms of accession to the World Trade Organization (WTO). Kazakhstan submitted its application for WTO membership on January 29, 1996, and the fact-finding phase of the accession was completed in 2003. Kazakhstan is currently engaged in negotiations with WTO Working Party members and last held multilateral and bilateral accession negotiations in Geneva in July 2003. While Kazakhstan has announced that it hopes to enter the WTO in 2005, it has been slow to enact key reforms to make its trade regime compliant with WTO norms.

IMPORT POLICIES

Kazakhstan is a member of the Eurasian Economic Community (EAEC) along with Russia, Kyrgyzstan, Belarus and Tajikistan; Moldova and Ukraine currently have observer status in the EAEC. Trade among the five EAEC countries is generally duty-free but protective measures may be applied. The countries have not yet established a common external tariff. The EAEC is developing coordinated customs procedures that would reduce the cost of transshipment through the EAEC member states for U.S. goods destined for Kazakhstan.

The average-weighted import tariff in Kazakhstan is approximately 10 percent. In January 2004, the value-added tax (VAT) was reduced from 16 percent to 15 percent. Imported goods are subject to VAT on the duties value of the goods at the time of importation (VAT destination principle), except for oil and oil products imported from Russia where VAT is applied before export. Kazakhstan plans to adopt the destination principle for VAT application for all imports in the context of WTO accession. In the interim, Kazakhstan has negotiated agreements adopting this principle with individual members of the Commonwealth of Independent States (CIS), e.g. Kyrgyzstan, Moldova, and Azerbaijan.

Goods imported for short-term use in Kazakhstan under the temporary import regime can be fully or partially exempt from duties, taxes and non-tariff regulations. Goods not eligible for duty exemptions have traditionally included food products, industrial wastes and consumables.

Similar to the 1994 Foreign Investment Law, the new Law on Investments, signed in January 2003, provides customs duty exemptions for imported equipment and spare parts, but only if Kazakhstan-produced stocks are unavailable or not of international standards.

Kazakhstan's new Customs Code became effective May 1, 2003, superseding the previous 1995 code. There are positive changes in the new Customs Code, such as provision for WTO-compliant customs valuation methodologies; however, as of January 2004, importers continued to report that customs officials were failing to comply with these methodologies in practice. In addition, key provisions for practices such as voluntary disclosure are not included in the Customs Code.

Despite passage of the new Customs Code, WTO-inconsistent practices remain in place. For example, Ministry of State Revenues Order 402, which sets conditional prices for certain imports, remains in effect. Since October 2002, Kazakhstan has maintained a "customs audit" procedure administered by a private contractor who determines customs value based on a database of world prices. Under this system, approximately 20 percent of all goods crossing Kazakhstan's borders are subject to valuation uplifts. While the government pays for inspections, the declaring party must pay penalties in the event of discrepancies in value. There are concerns that this process is used to generate extra-legal revenues beyond existing duties and taxes. The Kazakhstani courts have decided that over 85 percent of all appeals under this system violate the Customs Code.

In September 2002, the Ministry of State Revenue was merged with the Ministry of Finance, and customs functions were transferred to the Customs Control Agency operating under the President's Office. This transfer has raised concerns about inconsistencies between tax and customs policies and operations. The Customs Control Agency continues to discuss automation of customs procedures, but little progress has been made in this regard.

U.S. companies have consistently identified Kazakhstan's requirement for 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 verify the price of import/export transactions. The regulations allow a maximum financing term for imports of 120 days, after which time the transaction passport must be closed out. This term unnecessarily limits the range of business activities possible and creates a potential bias towards short-term financing in the economy.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The present system of Metrology, Accreditation, Standards and Quality (MAS-Q) in Kazakhstan is weak and fragmented. Many businesses complain of mandatory certification requirements that have no technical basis or aim. The Committee on Standards, Metrology and Certification (Gosstandart, the national governing body operating under the Ministry of Industry and Trade) has frequent management changes that make stable, long-term progress difficult. Government observance of existing standards, testing, labeling and certification requirements continue to be uneven.

In 1999, two laws - "On Standardization" and "On Certification" - were enacted to bring these areas into compliance with international standards and practices. In 2000, the law "On Ensuring Uniformity of Measurement" was passed. In 2001, the Government adopted Resolution No. 590, which outlines a national Program for Quality for 2001-2005 that is intended to bring Kazakhstan's MAS-Q system into general conformity with WTO requirements on Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) measures. There has been little progress towards implementation of this program.

In 1996, the U.S. National Institute of Standards and Technology signed a Memorandum of Understanding with the Government of Kazakhstan to help bring Kazakhstan's metrology methods into conformity with international rules and practices. The agreement expired in 2001, with no significant progress made.

The Law on Certification requires that all imported products subject to mandatory certification be accompanied by documents identifying the producer, the date of production, the expiration date, storage requirements and the code of use in both the Kazakh (state) and Russian languages. The government has accepted placement of Kazakh language stickers on products as compliant with the law, instead of requiring entirely new labels. The Government of Kazakhstan has also issued a wide-ranging regulation exempting pharmaceutical products and several other categories of goods from the Kazakh labeling requirement.

GOVERNMENT PROCUREMENT

With the support of the World Bank, Kazakhstan is reforming and harmonizing its system of state procurement. Some potential U.S. investors have raised concerns about the transparency and efficiency of the government tender process.

The State Procurement Agency was established by presidential decree in December 1998, and the Regulation on the State Procurement Agency was approved in March 1999. This legal structure strengthened the monitoring functions of the agency, improved control systems, and provided independence in the selection of methods for high value procurements. The current law contains provisions whereby domestic producers and small businesses receive preferential treatment during the procurement process.

The Rules on Oil and Gas Procurement, which went into effect in 2003, also give significant preferences to local suppliers, and establish what many firms, foreign and domestic, consider unwarranted state interference in even small tenders. Despite governmental promises to amend the Rules, they stand as originally written, although industry sources report that these rules are not being enforced.

In October 2002, Kazakhstan adopted "Rules for the Organization and Holding of State Procurement." These rules established a standardized format for publicizing tenders and specified in which newspapers the offers should appear, based on the newspaper's circulation and the tender's value.

U.S.-funded assistance projects are helping Kazakhstan to establish a database to assist in procurement. The database was launched by the State Procurement Agency in 2003, but remains a work in progress. Not all tenders are listed, and some Government offices contacted in January 2004 stated that they do not rely on the database but continue to use their own contact lists to publicize tenders. Kazakhstan is not a member of the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The United States-Kazakhstan Bilateral Trade Agreement includes commitments on the protection and enforcement of IPR, some of which have not yet been fulfilled. In addition, as part of its ongoing efforts to join the WTO, Kazakhstan has been taking steps to bring its IPR legislation into compliance with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement).

In February 2004, the Government of Kazakhstan outlined a plan that would address outstanding bilateral IPR obligations and further bring its IPR regime into conformity with WTO and international norms. A key element of this plan is the passage of amendments to Kazakhstan’s Copyright Law, which would, among other things, provide protection to pre-existing U.S. works and sound recordings. In addition, the Government of Kazakhstan has announced plans to increase coordination among law enforcement agencies, public organizations and international organizations in order to fight piracy. In order to bring its regime in line with international standards, the Government of Kazakhstan also needs to amend its IPR legislation to include enforcement provisions such as civil ex parte search provisions and ex officio authority for customs authorities.

Criminal penalties for IPR violations were adopted in 2001, but the United States remains concerned that these provisions will not effectively deter piracy and counterfeiting due to the high burden of proof. In 1999, Kazakhstan also amended its Customs Code to provide for the seizure at the border of items that violate IPR. However, there is little border protection for the importing of illegal material, and illegal sound recordings continue to be imported, particularly from Russia and China.

SERVICES BARRIERS

Foreign insurance companies are limited to operating in Kazakhstan through joint ventures with Kazakhstani companies. Overall capital of all foreign insurance companies should not exceed 25 percent in the non-life insurance market and 50 percent in the life insurance market. The total registered capital of banks with foreign participation is less than 25 percent of the total registered capital of all banks in Kazakhstan. Foreign ownership of individual mass media companies is limited to 20 percent.

Under the 2002 Kazakhstani Oil and Gas Procurement Regulations (see Investment Barriers, below), oil companies must purchase services only from Kazakhstan-based companies unless the required service is unavailable in Kazakhstan.

INVESTMENT BARRIERS

Kazakhstan's new Investment Law, passed in January 2003, supersedes and consolidates past legislation, but, according to industry sources, represents no marked improvement. There is concern about the Investment Law's narrow definition of investment disputes, lack of clear provisions for access to international arbitration, and low level of stability protection for contracts signed after the law went into effect. On the positive side, the Investment Law eliminates time limits for stability clauses for existing contracts, and, in some cases (notably oil and gas), gives precedence to sector-specific legislation.

For several years, there has been a growing trend to favor domestic over foreign investors in most state contracts. 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) but were not being enforced as of December 2003. The decree creates onerous requirements for government involvement in, and approval at, each stage of private companies' procurement processes.

The law allows both citizens of Kazakhstan and foreigners to own land under commercial and non-commercial buildings, including dwellings and associated land. Such land may be leased up to 49 years. In June 2003, a new Land Code came into effect, which, for the first time, allows private ownership by Kazakhstanis of agricultural land, as well as industrial, commercial and residential land. However, foreign individuals and companies may still only lease agricultural land for up to 10 years, although the wording of the law is unclear with regard to purchase of such land by local legal entities, whether 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.

The difficulty in obtaining work permits for foreign investors' employees in Kazakhstan continues to be a problem. In 2001, a quota system was established that limited the number of work permits to 10,500, with exceptions for investor's lead representatives. The quota is set each year, based on a percentage of the total national workforce. 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 the regulations are confusing and interpreted differently by various local officials and the Ministry of Labor.

OTHER BARRIERS

There are other structural barriers to investment in Kazakhstan, including a weak system of business law, a lack of effective judicial process for breach-of-contract resolution, and an unwieldy government bureaucracy. Many companies report significant logistical difficulties serving the Kazakhstani market. In addition, there is a burdensome tax monitoring system for all companies operating in Kazakhstan.

In 2001, Kazakhstan adopted transfer-pricing legislation that gave tax and customs officials the authority to monitor export and import transactions in order the stop distortion of earnings through manipulation of export prices. Foreign investors are concerned because the government rejected use of OECD standards to determine proper market prices, creating instead a methodology that fails to account for all cost and quality differences. The government also holds that transfer pricing can take place even in transactions between unaffiliated parties.

KENYA

TRADE SUMMARY

The U.S. trade balance with Kenya went from a trade surplus in 2002 of $83 million to a trade deficit in 2003 of $52 million. U.S. goods exports in 2003 were $197 million, down 27.5 percent from the previous year. Corresponding U.S. imports from Kenya were $249 million, up 32.1 percent. Kenya is currently the 95th largest export market for U.S. goods. The stock of U.S. foreign direct investment in Kenya in 2002 was $20 million, down from $22 million in 2001.

OVERVIEW

Kenya's economic prospects have brightened with the December 2002 election of President Kibaki and the National Alliance Rainbow Coalition (NARC) government, but Kenya's economic growth remains retarded by many of the same factors that have plagued it for the last decade: poor infrastructure, bloated and inefficient parastatals, corruption, crime, and low levels of domestic and foreign investment. After an unprecedented negative 0.3 percent growth rate in 2000 and a modest 1.2 percent increase in 2001 and 2002, Kenya's economy was expected to grow by 1.8 percent in 2003, far below its potential.

In 2003, the NARC government implemented some of the IMF and World Bank conditions for resumption of aid, including the enactment of anti-corruption legislation (the Anti-Corruption and Economic Crimes Act of 2003 and the Public Officer Ethics Act). The government also established the Kenya Anti-Corruption Commission (KACC), but some controversy remained over staffing of the body. Seeking to shore up Kenya's legal and enforcement structures, in early January 2003, the government revived the Ministry of Justice and Constitutional Affairs, which President Moi abolished in the 1980s, and created the Department of Ethics and Governance in the Office of the President to spearhead the government's fight against corruption. At the same time, the government established an office in the Ministry of Justice to spearhead the fight against graft. In October 2003, the government conducted a much-lauded purge of corrupt judges and magistrates. In November 2003, the IMF approved the Poverty Reduction and Growth Facility (PRGF) for Kenya. About $35 million is available immediately while over $245 million would be available over the next three years. The World Bank was expected to release the suspended tranche of $50 million under the Economic and Public Sector Reform Credit.

Over the last six years, Kenya has signed several trade agreements geared toward gaining export opportunities. Kenya is a member of the East African Community (EAC), the Intergovernmental Authority on Development (IGAD), the Common Market for Eastern and Southern Africa (COMESA), and the World Trade Organization (WTO). Kenya is eligible for preferential access to the U.S. market under the African Growth and Opportunity Act (AGOA). Kenya has implemented the WTO Customs Valuation Agreement and the Financial Services Agreement and has passed legislation designed to implement the Trade-related Aspects of Intellectual Property Rights (TRIPS) agreement.

IMPORT POLICIES

Kenya's trade regime has been liberalized, apart from a small list of import licensing controls based on health, environmental and security concerns. However, imports are still subject to some barriers to access. All imports with f.o.b. value of more than $5,000 are subject to pre-shipment inspection (PSI) for quality, quantity, and price, and require a Clean Report of Findings by a government-appointed inspection agency. In June 2003, the Finance Minister specified that the Import Declaration fee, which includes a PSI fee, would be 5,000 Kenya shillings (about $66). Importers who fail to obtain inspection in advance pay a 15 percent penalty for local inspection (25 percent for motor vehicles).

High import duties and value-added tax (VAT) pose trade barriers and provide protection to domestic producers, 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. However, in the last three years the government has lowered the import duty for inputs and raw materials used in the manufacturing sector from 2.5 percent to zero. Duties on a number of raw materials and capital goods previously taxed at 5 percent were reduced to zero in the 2002/2003 budget. Import duties for fabrics are set between 25 percent and 35 percent, while duties on basic inputs such as yarn are zero. The current import duty on foodstuffs that compete with Kenyan products -- like meat and meat products, poultry and poultry products, and dairy products -- is 35 percent.

In its 2003/2004 budget statement, the government reduced the export tax on raw hides and skins from 20 percent to 15 percent. Import duties on timber and cottonseeds were waived to discourage massive logging and to revive cotton growing. To encourage production of cheaper animal feeds, the VAT on inputs was reduced from 18 percent to zero.

The Kenyan government continues to carefully control imports of seed corn by subjecting hybrid varieties to a certification process that effectively restricts trade. Until a seed variety is fully registered (a process that can take 3-4 years), the Ministry of Agriculture restricts cereal seed imports by setting quantitative ceilings. However, once a variety is certified, the quantitative restrictions are lifted.

The standard VAT was reduced from 18 percent to 16 percent in June 2003. Discriminatory application of the VAT has in the past distorted trading in some commodities, especially sugar and maize.

Customs Procedures

Customs rules are detailed and rigidly implemented, often leading to delays in clearance of both imports and exports. At the beginning of 2000, Kenya started implementing the WTO Customs Valuation Agreement. Under the agreement, Kenya uses the transaction value for valuation of goods imported from other WTO signatories. Kenya maintains its PSI regime, which is administered by two private sector firms. The companies' mandates include ensuring that up-to-date customs valuation and risk assessment methods are applied.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Commercial and research applications of agricultural biotechnology in Kenya are currently regulated through guidelines, which are neither formal regulations nor enacted law. The guidelines, published in 1998, describe a committee-based approach for review and approval of importation of transgenic material, to include specific review of end uses (e.g. planting seeds for trials). Substantial quantities of transgenic product have been imported into Kenya for food aid purposes since the establishment of the Biosafety Committee, and significant volumes of food products derived from transgenic crops are available commercially. Kenya has received food aid containing transgenic components. These shipments do not appear to have been tested for transgenic content. Kenya also imports maize from South Africa, where biotechnology varieties are commercially available. Kenya is a party to the Cartagena Protocol on Biosafety.

The Kenya Bureau of Standards (KBS), a regulatory body under the Ministry of Trade and Industry, inspects imports to ensure conformity to International Standardization Organization (ISO) and other product standards. KBS also conducts product testing and certification for individual product categories. Products that do not meet KBS standards are withdrawn from the market, and the importer is prosecuted. KBS has regular meetings with local manufacturers to address problems arising from the importation of illegal, counterfeit, and substandard goods.

The Kenya Plant Health Inspectorate Service (KEPHIS) subjects certain imported agricultural goods to further inspection. The Inspectorate also regulates the import and export of plant materials and trade in bio-safety control organisms (organisms that require special handling to ensure they are not accidentally released into the environment) in accordance with the International Plant Protection Convention. KEPHIS evaluates commercial hybrid grain seeds for a period of three years before the seeds can be released to market. The certification process is tedious and restrictive, and the three-year period needed for the government to approve or reject a variety is burdensome.

GOVERNMENT PROCUREMENT

Under legal notice No. 51 of March 15, 2001 by the Minister for Finance, a Public Procurement Directorate in the Finance Ministry was established. The Directorate is the central organ for policy formulation, implementation, and oversight of the public procurement process in Kenya. The Directorate monitors the overall functioning of the public procurement process in Kenya and submits proposals for action to the Minister. Regulations require establishment of Ministerial or District Tender Committees (MTCs or DTCs). The Accounting Officer (Permanent Secretary for ministries and the Chief Executive for corporations) chairs and directs the procurement process for goods worth less than Ksh 500,000 (about $6,600) according to the Exchequer and Audit (Public Procurement) Regulations 2001. Tenders for goods and services exceeding that amount are supposed to go through the MTC or DTC. The MTC and DTC review tender documents and requests for proposals where the estimated value exceeds Ksh 1 million (approximately $13,157). The chairman can veto any committee decision. Any veto is supposed to be reported to the Public Procurement Complaints, Review and Appeals Board. The Minister of Finance appoints a chair of the Board from the private sector. Board decisions are final unless judicial review action is commenced within thirty days under any existing written law concerning judicial review of administrative decisions.

Any member of a procuring entity, the Public Procurement Directorate, or the Appeals Board who breaches regulations is subject to a fine not to exceed Ksh 2 million (about $26,315). A corporation that violates the regulations is subject to a fine not to exceed Ksh 5 million (approximately $65,789). In 2003 the government proposed the Public Procurement and Disposal Bill to the Public Procurement Oversight Authority. The bill aims to make procurement more transparent and accountable and would require procurement agencies to carry out an annual update of pre-qualified firms, especially when dealing with restricted tenders such as military tenders. Parliament did not pass the bill before the end of the legislative year.

Government reform measures over the last three years have afforded wider publicity to government tenders, established an appeals committee, and appointed people from the private sector to the Appeals Board. The government has increased transparency in bidding by removing from its tenders the 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.” With the removal of the clause, the Central Tender Board (CTB) now publishes its decisions and, if the bidder asks, provides reasons for rejecting certain bids. However, tenders are frequently manipulated and awarded to noncompetitive firms in which government officials have a significant interest, and conflict-of-interest regulations are rarely enforced. Cases have been reported in which tender specifications are tailored to favor one firm. In November 2003, a tender worth over $190 million involving procurement of Kenya Ports Authority cranes was cancelled after it was established that three Kenyan cabinet ministers had, by seeking postponement of the tender, interfered in the tender process. Similar cases involving corruption and tendering for insurance of public property have been reported. Procurement decisions can also be dictated by donor-tied aid. Kenya is not a signatory to the WTO Agreement on Government Procurement.

In May 2003, the government suspended more than 1,000 procurement officers after an internal audit found massive and widespread irregularities in government tendering and procurement. Since that time, many of the same officers were brought back to work so that the government could function and there have been no more significant changes in government procurement procedures.

EXPORT SUBSIDIES

Firms operating in Export-Processing Zones (EPZ) 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 are allowed expedited licensing procedures.

EPZ firms are allowed to sell up to 20 percent of their output on the domestic market. However, EPZ firms 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.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Kenya is a member of most major international and regional intellectual property conventions – the World Intellectual Property Organization (WIPO), the African Regional Industrial Property Organization, the Paris Convention on the Protection of Industrial Property, and the Berne Convention on the Protection of Literary and Artistic Works. Although a unified system for the registration of trademarks and patents for Anglophone Africa was signed in 1976, the effort has remained stagnant due to the lack of cooperative procedures among the signatory states. One prospect for patent, trademark and copyright protection is embodied in the African Intellectual Property Organization (AIPO), although its enforcement and cooperation procedures are as yet untested.

The Kenyan Parliament passed an amended version of the Kenya Industrial Property Act, which came into force in June 2002, in an effort to make the Act compliant with Kenya’s obligations under the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

An amended Trademarks Bill was passed in August 2002. The bill provides that goods and services for which application is made for registration of a mark shall be classified in accordance with the Nice Classification System for Goods and Services. The amended bill is designed to be in conformity with the Madrid Agreement and Protocol as well as the TRIPS Agreement. The government has drafted a “Layout Designs of Integrated Circuit Bill” and circulated copies to stakeholders and the WIPO for comments.

An amended Copyright Bill was passed into law in November 2001, but has yet to be implemented. The Act protects audio as well as video recordings. Computer programs, sound recordings, broadcasts, and literary, musical, artistic and audiovisual works are protected under the Act. The Act created the Kenya Copyright Board, which has the authority to inspect, seize and detain suspect articles and to prosecute offenses. Violations are subject to fines and a maximum of ten years in jail. Although copyrights are protected in theory under Kenyan law, violation of copyrights, 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 in the country. These materials include pre-recorded audiocassette tapes, videocassettes, CDs and consumer products. Although the exact amount is not available, a local music lobby group estimates that the government loses close to Ksh 15 billion annually on taxes. Historically, however, penalties and enforcement for copyright infringement have been low. Understanding of the importance of intellectual property is extremely limited.

SERVICES BARRIERS

In general, individuals and companies supplying services, whether local or foreign, are accorded the same treatment. However, foreign companies offering services in construction, engineering, and architecture may face discrimination on tenders for public projects. New foreign investors with expatriate staff are required to submit plans for the gradual phasing out of non-Kenyan employees. In 1999, the government of Kenya increased fees and security bonds under the Immigration Act by 50 percent to 100 percent in an attempt to discourage the employment of foreign labor. The government indicated in 2003 that it would not renew work permits for some expatriates, arguing that the domestic workforce should be tapped to fill positions. The Kenyan bar admits foreign lawyers for a maximum duration of 12 years. Medical personnel (doctors) must serve a one-year “induction” in the public hospitals and sit for exams before they are considered for registration in the country.

Since 1995, the government has privatized some government assets through the sale of state-owned tourist facilities, the flotation of shares of state-owned financial institutions on the Nairobi Stock Exchange, and the off-loading of government shares in the Mumias Sugar Company. After awarding a tender for the sale of Kenya Reinsurance Corporation (Kenya-Re) in October 2002, the government suspended the sale. There has been no action on the sale of the 35 percent government stake in Kenya Commercial Bank (KCB) since February 2001.

In July 1999, the government dissolved the Kenya Posts and Telecommunications Corporation (KPTC), under the Kenya Communications Act of 1998. Three separate entities were then formed: Telkom Kenya (telecommunications); the Communications Commission of Kenya (CCK), the regulatory body; and the Postal Corporation of Kenya (postal services). Telkom Kenya is permitted to maintain its monopoly on Very Small Aperture Terminals (VSATs), Internet lines, and most land lines for five years (1999 - 2004). The government has indicated that it intends to license a second landline telephone operator, restricted to provision of telephone lines. In August 2001, the government announced that three Kenyan firms had succeeded in acquiring the rights to operate eight regional licenses in competition with Telkom Kenya. Telair Communications landed five of the eight licenses for a reported $23 million. Safitel netted two regional licenses for $9 million, and Bell-Western acquired the remaining regional license for $25,000. However, these regional entities have not begun operations. As a result, the government has said it will cancel their licenses while the firms argue that changes in circumstances merit renegotiated contracts.

The CCK has licensed two firms, Safaricom (a joint venture of Telkom and Vodafone) and Kencell (a joint venture of Vivendi and Sameer Investments), to provide mobile cellular telecommunications. These two companies have well over 1.8 million subscribers, almost six times the 320,000 landlines provided by Telkom. In fall 2003, the government awarded a tender to a third mobile operator, Econet Wireless, but the award has been challenged in court.

After more than one year of negotiations to sell its 49-percent stake in Telkom Kenya, the government cancelled the sale in late 2001. The government’s failure to privatize Telkom Kenya and sell Kenya-Re has cast doubts on the willingness of the government to privatize other parastatals, such as the Kenya Ports Authority and the Kenya Railways Corporation. The government says its draft Privatization Bill, published in November 2003, will lay the framework for privatization but Parliament will not be able to act until it reconvenes in spring 2004, and political considerations will likely complicate enactment.

INVESTMENT BARRIERS

KENYA

The Kenyan government says it would like to attract foreign investment, and the relative political stability has increased the incentive for private sector development and the NARC government's anti-corruption efforts have eased investor fears. However, Kenya still needs to address rampant corruption; degraded road, rail, and telecommunications infrastructure; high energy costs; and inefficient government expenditure if the country is to attract meaningful foreign investment.

The government has begun to restructure the financial system and taken measures to increase the role of the private sector and to establish greater accountability and transparency. A managed floating exchange rate regime has been adopted, and companies may retain foreign exchange earnings and repatriate capital and profits without certification.

OTHER BARRIERS

The Kenyan government maintains some restrictions on foreign ownership of publicly traded companies and companies in the areas of financial services and telecommunications. In June 2002, the rules were amended to allow up to 75 percent foreign ownership (personal or corporate) of firms listed on the Nairobi Stock Exchange. 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 that 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.

The CCK, which regulates telecommunications and radio communications in the country, restricts the number of ISPs (approximately 90 ISPs currently) and prohibits them and other carriers from establishing switches, international gateways, or direct satellite links. This restriction has forced continued dependency on Telkom Kenya and inhibited competition and improvements in customer service. Foreign ownership of an ISP is restricted to 40 percent. The CCK specifically prohibits ISPs from providing the following services: voice telephony, uploading of telecommunications traffic by satellite, and use of wireless communications. ISPs must agree, in writing, not to provide Internet protocol telephony through their networks (paging services are excluded from this requirement). ISPs must also provide the CCK with information on charges for all services, as well as the names and addresses of clients. CCK must also type-approve equipment that ISPs provide to clients. These regulatory practices make investing in this area considerably less attractive than it might otherwise be.

The legal system protects and facilitates acquisition and disposition of all property rights, including land, buildings and mortgages. Foreigners are not allowed to have a freehold title anywhere in the country. However, leasehold titles, normally 99 years for land in towns and coastal beachfronts and 999 years elsewhere, is allowed. 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, are serious impediments to new investment. Lack of confidence in the speedy and fair resolution of disputes and requests from officials for illicit payments continue to dampen the country's prospects to attract more foreign investment.

Technology transfer requirements and foreign exchange controls have been abolished. Local partners are encouraged but not required. Kenyan partners are no longer required for small-scale commercial enterprises.

Infrastructure

The government of Kenya has been hesitant to open public infrastructure to competition because the state-owned companies that control infrastructure are considered "strategic" enterprises. As a result, the reform and partial privatization of telecommunications, power, and rail has fallen behind schedule.

The Kenyan government split the Kenya Power and Lighting Company (KPLC) into three entities in 1997: a power generator (KenGen), a distributor (KPLC), and a regulator (the Electricity Regulatory Board, ERB), to regulate retail tariffs and to approve power purchase contracts between KPLC and producers. The government also licensed Independent Power Producers to sell electricity to the grid. In late 2001 the ERB commissioned a study to review electricity tariff policy. The draft report was presented to key stakeholders in January 2002 recommending an upward adjustment of electricity tariffs to make the struggling KPLC profitable. The study recommendations are yet to be implemented.

In an effort to reduce the cost of power in the country, Kenya joined a regional organization, the East African Power Pool, in November following the inauguration of the Central African Power Pool in April 2003. The new pool seeks to strengthen the security of power supply in the region and to increase cost-effectiveness, access, reliability, and quality supply. The memorandum of understanding signed in November 2003 would enable member countries to share resources and experiences and to connect their power grids.

The Kenya Railways Corporation has contracted for the maintenance of all of its locomotives to General Electric. The corporation has restructured its operations and recruited senior management from the private sector in the hope of turning the loss-making company into a profitable entity. The government has indicated it would like to contract with a private company to operate the railway, but plans for privatization seem to have stalled.

Textiles and Apparel

In June 2001 the government of Kenya imposed a 35 percent duty on imported fabrics (up from 25 percent - 30 percent), reportedly to protect the local textile industry. Fiber used in textile factories is zero-rated while the import duty on yarn is 20 percent. In the 2002/2003 fiscal year budget, the Minister for Finance increased the tax on secondhand clothes from Ksh 15 per kilogram to Ksh 25 (about $.30) per kilogram. The greatest obstacle to the sale of new U.S. apparel on the Kenyan market is the high price relative to secondhand goods.

KOREA

TRADE SUMMARY

In 2003, the U.S. trade deficit with Korea totaled $12.9 billion, roughly equal to the deficit in 2002. During 2003, two-way goods trade between the United States and Korea increased to $61.1 billion, a slight increase over 2002. U.S. exports to Korea totaled $24.1 billion, a 7 percent increase over 2002. U.S. imports from Korea also increased in 2003 to $37 billion, up 3.9 percent from 2002. In 2003, Korea was the United States' 7th largest export market.

U.S. exports of private commercial services (i.e., excluding military and government) to Korea were $7.8 billion in 2002 (latest data available), and U.S. imports from Korea were $4.3 billion. Sales of services in Korea by majority U.S.-owned affiliates were $2.6 billion in 2001 (latest data available), while sales of services in the United States by majority Korea-owned firms were $395 million.

The stock of U.S. foreign direct investment in Korea in 2002 was $12.2 billion, an increase of 15.8 percent from 2001. U.S. foreign direct investment is concentrated largely in manufacturing, banking, and wholesale sectors.

IMPORT POLICIES

Tariffs and Taxes

Korea bound 91.7 percent of its tariff line items in the Uruguay Round negotiations. However, Korea's 50 percent average out-of-quota tariff rate for agricultural products in 2003 poses a significant barrier to trade and contrasts sharply with the relatively low average tariff for industrial products of 7.5 percent. Korea's tariffs on all agricultural products, except rice, are bound at an average of 66 percent. In the case of rice, Korea committed under Annex 5 of the WTO Agriculture Agreement to provide increasing market access for rice at a tariff rate of 5 percent, but the allowed quota for imports remains very small. Tariffs on forestry and fishery products remain unbound. Between 1995 and 2004, Korea agreed to lower duties on more than 30 agricultural products of primary interest to U.S. exporters. These products include bulk, intermediate- and high-value items, such as mixed feeds, feed corn, wheat, vegetable oils and meals, fruits and nuts.

As part of its Uruguay Round commitments, Korea also established tariff-rate quotas (TRQs) intended to either provide minimum access to a previously closed market or maintain pre-Uruguay Round access (See also "Quantitative Restrictions, TRQs and Import Licensing"). In-quota tariff rates are zero or very low, but over-quota tariff rates on some products are prohibitive. Specifically, in 2003, natural and artificial honey are subject to an over-quota tariff rate of 245.7 percent; skim and whole milk powder, 180.4 percent; barley, 327.6 percent; malting barley, 518.7 percent; potatoes and potato preparations, more than 307.4 percent; and popcorn, 637 percent.

Duties are still very high on many high-value agricultural and fishery products. Korea imposes tariff rates above 40 percent on many products of interest to U.S. suppliers, including table grapes, beef, canned peaches and fruit cocktail, apples, pears and a variety of citrus fruits. Products subject to 30 percent or higher tariff rates include certain meats, most fruits and nuts, many fresh vegetables, starches, peanuts and peanut butter, various vegetable oils, juices, jams, beer and some dairy products.

By 2004, Korea will reduce bound tariffs to zero on most or all products in the following sectors: paper, toys, steel, furniture, semiconductors and farm equipment. Korea is harmonizing its chemical tariffs to final rates of 0 percent, 5.5 percent or 6.5 percent, depending on the product. In addition, tariffs on scientific equipment are being reduced 65 percent from pre-Uruguay Round levels. On textile and apparel products, Korea has harmonized and bound most of its tariffs at the following levels: 13 percent to16 percent for man-made fibers and yarns, 30 percent for fabrics and made-up goods and 35 percent for apparel. The U.S. will continue to press for reduced applied tariffs on agricultural and food products.

Korea uses "adjustment tariffs" and compounding of taxes to boost the applied tariff rate in order to protect domestic producers, practices about which the U.S. Government has expressed concern to the Korean government. In 1997, Korea agreed as a condition of its IMF stabilization package to reduce the number of products subject to tariff adjustments. In 2003, Korea renewed adjustment tariffs on 23 items that received adjustment tariffs in 2002 (reducing the tariff rates for 10 of these 23 items). Most of the 23 adjustment tariffs are imposed on agricultural products and seafood, including frozen croaker and skate.

The combination of relatively high tariffs and value-added taxes continues to render a variety of imported products uncompetitive in Korea. One such product is motor vehicles, which are subject to a tariff rate of 8 percent B more than three times the U.S. tariff B as well as multiple taxes compounded on the tariff, which raises the effective tariff rate to above 12 percent. Three of these taxes are based on engine size and thus have a disproportionate impact on imported vehicles. Although Korea eliminated or reduced some motor vehicle taxes based on commitments it made to the United States under the 1998 Memorandum of Understanding Regarding Foreign Motor Vehicles in the Republic of Korea, the combination of the tariff and remaining taxes levied on imported cars continues to severely impede their price competitiveness. The United States continues to urge Korea to lower automotive tariffs and to undertake reforms of its overall automotive tax system in an open and transparent manner that fully involves all stakeholders throughout the process (*See also "Motor Vehicles"*).

NON-TARIFF MEASURES

Internal Supports

As part of its commitments under the WTO Agreement on Agriculture, Korea agreed to reduce its domestic support (Aggregate Measurement of Support, or AMS) for agricultural products by 13 percent by 2004. The Korean government substantially increased the level of domestic support it provided to its cattle industry during 1997 and 1998, thereby raising the overall level of support for agriculture. The issue of whether Korea had adequately confined domestic support in line with its WTO reduction commitments on domestic subsidies was raised, along with other related issues, by the United States and Australia in WTO dispute settlement proceedings in 1999. While the panel ruled against Korea on this issue, the outcome of the dispute was inconclusive as the WTO Appellate Body was unable to make a specific finding on the consistency of Korea's subsidy level with the applicable obligations under the WTO Agreement on Agriculture. Nonetheless, the Appellate Body did conclude that Korea had not been computing the current level of domestic support in a manner compatible with the requirements of the Agreement. The United States will continue to monitor Korea's notification of its AMS to the Committee on Agriculture to ensure that the calculation is now in conformity with Korea's commitments.

Quantitative Restrictions, TRQs and Import Licensing

Quantitative Restrictions

Korea has purchased U.S. rice under the minimum market access (MMA) quota for rice. However, surging world rice prices in 2003 prompted Korea to implement a "price ceiling" mechanism for rice import tenders. Under the "price ceiling" system, the Agricultural and Fisheries Marketing Corporation (AFMC), the state trading enterprise for purchasing rice, set an internal price ceiling and rejected bidders that offered prices that were higher than the AFMC's internal target price. As a result, completion of several tenders and subsequent deliveries of MMA rice were delayed. Although Korea will eventually import the full amount required under the MMA quota obligation, some of the deliveries to fulfill the

2003 quota will occur in 2004. The exception to tariffication of rice that Korea received during the Uruguay Round expires at the end of 2004. On January 20, 2004, Korea notified the WTO that it would like to continue special treatment of rice. In order for Korea's key trading partners to support continuing special treatment, Korea must offer acceptable concessions that must be negotiated by the end of 2004. (*See also Rice below.*)

Tariff-Rate Quotas (TRQs)

Most imported non-food goods no longer require government approval, but some products, mostly agricultural/fishery items, face import restrictions such as quotas or TRQs with prohibitive over-quota tariffs. Korea implements quantitative restrictions through its import licensing system which is administered by domestic producer groups or government buying agencies, the Agricultural Fishery Marketing Corporation (AFMC) and Public Procurement Services (PPS). A government export-import notice lists products that are restricted.

Korea also continues to restrict imports of value-added soybean and corn products. By aggregating raw and value-added products under the same quota, Korea restricts market access for value-added products, such as corn grits, popcorn and soy flakes. Domestic producer groups, which administer the quotas, invariably allocate the more favorable in-quota rate to their major members, who use it to import raw ingredients.

Rice

The Korean government continues to exercise full control over the purchase, distribution and end-use of imported rice. Korean law allows imported rice to be used only for industrial or processing purposes. The state trading enterprises that administer the WTO-mandated minimum access program typically purchase only low-quality rice on instruction from the purchasing ministry, the Ministry of Agriculture and Forestry. In 2001, Korea imported high-quality U.S. rice for the first time under its minimum market access (MMA) quota, after adjusting its tender specifications to target higher quality rice. The United States sold 30,000 metric tons out of the 142,520 MT tariff rate quota (TRQ) available in CY2001, 40,000 MT out of the 171,023 MT TRQ available in CY 2002, and 55,000 MT out of the 199,528 MT TRQ available in CY 2003.

The U.S. Government welcomed the purchase of higher quality rice while raising concerns that the imported U.S. rice remains relegated to storage facilities, as does most other rice imported under the MMA quota programs. Specifically, the access afforded to U.S. rice is not on par with domestic rice due to marketing restrictions placed on rice imported under the TRQ. Korea has repeatedly stated that it will not allow imported table rice to be marketed directly to Korean consumers, raising questions about the consistency of Korea's actions with its WTO obligations. Since Korea has notified its intent to continue special treatment of rice, access to the domestic market may be a condition for key trading partners to not oppose the continuance.

Import Clearance Procedures

U.S. suppliers of food and agricultural products, including products for which market access was liberalized under bilateral or multilateral trade agreements, continue to encounter market access barriers in Korean ports despite the steps the Korean government has taken in this area over the past few years. After WTO dispute settlement consultations with the United States between 1995 and 1999, the Korean government revised its import clearance procedures by: (1) expediting clearance for fresh fruits and vegetables; (2) instituting a new sampling, testing and inspection regime; (3) eliminating some non-science-based phytosanitary requirements; (4) revising the Korean Food and Food Additives Codes, for example, to bring Korean pesticide residue level standards for citrus into conformity with CODEX Alimentarius standards; and (5) requiring food ingredient listings by percentage for major, rather than for all, ingredients.

In 2003, however, a new import inspection program implemented by the Ministry of Health & Welfare (MHW) and the Korea Food & Drug Administration (KFDA) eroded Korea's earlier efforts to harmonize its import clearance programs with international norms. On January 27, 2003, a draft version of Korea's revised Ministerial Ordinance of the Food Sanitation Act was notified to the WTO in G/SPS/N/KOR/123. The United States and other countries questioned elements of the new import inspection regime in meetings (October 2003) of the WTO Sanitary and Phytosanitary (SPS) Committee as being inconsistent with WTO national treatment provision.

Of particular concern, the new import inspection program mandates annual maximum residue limit (MRL) testing of agricultural products on a packing-house basis and the associated testing fee of approximately $1,960 for foreign products. However, Korean domestic agricultural products are only subject to random tests paid for by the Korean government. KFDA, the implementing agency of the new import inspection program, subsequently proposed to lower the MRL testing fees from approximately $1,960 to $242. Despite these concerns voiced by the U.S. Government and other Korean trading partners in bilateral and multilateral fora, the new requirements went into effect on August 18, 2003 with no changes. The United States will continue to encourage Korea to bring these requirements in line with Korea’s WTO obligations.

Import clearance of agricultural products at Korean ports remains generally slow and procedures continue to be somewhat arbitrary, despite the steps the Korean government has taken in this area over the past couple of years. Surveys of U.S. trading partners in Asia indicate that import clearance for most agricultural products requires less than three to four days. In Korea, import clearance for new products still typically takes 10 days to 18 days, and six months to one year if a food additive is not specifically recognized in Korea's Food Additive Code for use in that product. (Any unauthorized additive must go through a formal approval process before it can be approved for use in a particular food).

The Ministry of Agriculture and Forestry (MAF) and its agencies responsible for administering plant, animal and animal product inspection, including the National Plant Quarantine Service and National Veterinary Research and Quarantine Service, account for the greatest delays in import clearance. MAF imposes numerous requirements that restrict access or delay import clearance, such as incubation testing for non-quarantine pests and product detention based on administrative errors on export certificates such as incorrect zip codes for meat establishments which add costs for importers and, ultimately, for consumers. Improvements in expedited clearance of fruits and vegetables are slowly being eroded through various new testing and documentation requirements, extension of detention periods for pest identification, and an unreasonably high number of insects registered as potential pests subject to quarantine measures.

Korea has continued to revise its food-related standards and specifications every year to harmonize with international standards. KFDA's extensive documentation requirements for mandatory pre-market approval of each food additive not recognized in Korea's positive food additive list and functional foods which are widely accepted by consumers in foreign countries, and its determination that a product is new if formula ratios are changed or if substitute ingredients are used, set its procedures apart from those of other OECD food safety agencies. More work is needed to bring Korea's food code standards up to international standards, especially those related to food additives (for example, Korea has not effectively adopted the "generally recognized as safe" standard).

Concerning the Biosafety Protocol, a lack of clear guidance to industry on document requirements and import procedures when the Biosafety Protocol is enforced may cause great confusion and thus result in trade disruption.

The United States will continue to urge the Korean government to improve its import clearance procedures until clearance times in Korean ports are comparable to those in other Asian ports and Korean procedures are based on science and consistent with international trade rules and norms (*See also "Standards and Conformity Assessment Procedures" section*).

Customs Procedures

The Korea Customs Service (KCS) frequently classifies "blended products" under the Harmonized System (HS) heading for the major ingredient of that product rather than the HS heading for the blended product, which usually has a lower tariff rate. Changes in classification often are based on arbitrary standards (for example, for dehydrated potato flakes to be classified as blended products, they must include at least 10 percent non-potato ingredients) and are at odds with practices observed by other OECD members. "Blended products" disadvantaged by this practice include potato flakes, soybean flakes, flavored popcorn and peanut butter chips. KCS also classifies beef bones with meat attached as pure muscle meat, subject to a tariff of 40.5 percent, rather than offal which would be subject to a 18.2 percent tariff rate.

KCS's misclassification of potato preparations under the HS heading 1105 has restricted U.S. exports of these products to Korea. Korea should import dehydrated potato products under the unrestricted HS 2005 heading, with an applied tariff rate of 20 percent and a bound rate of no more than 31.5 percent in 2004.

The Korean Customs Service (KCS) has issued tariff code classifications of commodities that diverge from classifications observed by other countries (such as the United States and EU). For example, Citrus Pulp Pellets are classified in under HS 2308 by the United States and the EU. However, due to the percentage of molasses content, Korea has classified them under HS 2309, and therefore subject to a quota. In addition, KCS routinely rejects customs clearance applications on administrative grounds (wrong print, font size, erasure marks on application, etc.), thereby delaying the official start of the customs clearance process. Finally, Korean regulations often require local trade associations to certify or approve import documentation. In addition to requiring the importer to pay a processing fee, which is used to help fund the association, this rule requires importers to submit proprietary business information, to which their local competitors often appear to have access.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Standards and Conformity Assessment Procedures (Sampling, Inspection, Testing and Certification)

The U.S. government is seriously concerned that a pattern of exclusionary practices is starting to emerge in the setting of standards for new technologies in the field of next generation mobile communications. The Korean government appears to be encouraging the development and selection of homegrown "Korea-only" technology standards, in some cases mandating a single domestic standard for emerging technologies, rather than allowing companies to freely choose the technology that best suits their needs. Such an approach can sharply limit opportunities for providers of proven foreign technologies. (*See also Telecommunications section.*)

KOREA

Korea maintains standards and conformity assessment procedures, such as sampling, inspection, testing and certification that appear to be overly burdensome and appear to have a disproportionate impact on imports.

Since April 20, 1999, the Korea Food & Drug Administration (KFDA) has been operating a voluntary safety assessment program of biotechnology crops for human consumption. In accordance with the revision of the Food Sanitation Act issued in August 2002, safety assessments of biotechnology crops became mandatory on February 26, 2004. The U.S. Government and U.S. industry expressed concerns that the requirement to have completed the mandatory safety assessment prior to February 26, 2004, could result in trade disruptions if resource constraints made it impossible for KFDA to process all applications prior to the deadline. Recognizing the potential problem, KFDA revised its safety assessment guidelines to provide an additional year for assessments of all biotech crops except soybeans, corn, and potatoes. Safety assessments for soybeans, corn, and potatoes must still have been completed by February 26, 2004. Assessments for all other biotech crops may be completed by February 26, 2005. To date, twenty biotechnology crops and seven biotechnology additives have undergone and received positive KFDA safety assessments.

Korea's approach to implementation of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity (the Biosafety Protocol) and plans for mandatory environmental risk assessments are also areas of concern to the United States. A lack of clarity and transparency in the proposed regulations and a lack of coordination among ministries involved in enforcement of the Biosafety Protocol are expected to cause confusion, trade disruptions, and duplication of requirements for industry at port of entry. Environmental risk assessments for biotechnology crops will become mandatory when the Ministry of Commerce, Industry and Energy's LMO Act goes into effect (expected sometime in late 2004). So far, 11 applications have been submitted for voluntary environmental assessments (6 corn, 1 soybean, 4 cotton). No environmental assessments have been completed to date. Like food safety assessments of biotechnology crops for human consumption, the U.S. Government has continued to urge Korea to adopt a sufficient grace period with adequate lead-time and minimally restrictive implementation requirements to avoid major disruptions of trade and to notify the appropriate WTO Committee of new revised requirements.

In 2002, KFDA port inspectors detained many shipments of U.S. processed organic food because the inspectors lacked clear guidelines from KFDA headquarters on the required documentation for clearance of imported processed organic food. After intervention by the U.S. government, KFDA headquarters agreed to recognize an original transaction certificate issued by U.S. government-accredited organic certifying agents for U.S. processed organic food. However, detention of U.S. processed organic food accompanied by the original transaction certificate issued by U.S. government certifying agents continued in 2003 because some regional KFDA inspectors still demanded unnecessary documentation.

Every year KFDA revises the Food Code, Food Additive Code, and Labeling Standards in an attempt to better harmonize them with international standards. However, additional work is needed. For example, KFDA narrowly defines product categories eligible to use specific food additives. If a particular product does not fit in the defined product category, it then is classified within the "other products" category. The microbial standards and approved food additives for the "other products" category often do not encompass products which failed to meet the KFDA's definition for specific food classifications. KFDA also has not effectively adopted the "generally recognized as safe" standards. Instead, Korea's standards are much more restrictive than internationally recognized standards. Consequently, imports of "generally recognized as safe" food are frequently detained *(See also "Import Clearance Procedures" sections*).

On June 28, 2003, KFDA announced new "Proposed Standards and Specifications for Health Functional Foods". The objective of the so-called "Functional Food Code" is to regulate health foods and nutritional supplements by listing products that can be classified as functional foods and setting standards and specifications for them. Products classified as functional foods can carry "efficacy claims" on their labels. In the proposed Functional Food Code, however, the limited number of functional food categories as well as non-science-based upper limits on vitamin and mineral content restrict entry of U.S. health foods and supplements into the Korean market. The U.S. Government and U.S. industry submitted comments detailing concerns about the potential for Koreas' proposals to restrict trade in health foods and nutritional supplements that are traded in foreign countries. KFDA amended its final version of the functional food regulations which were implemented January 31, 2004 to address U.S. concerns regarding KFDA's proposed upper limits on vitamins and minerals. However, KFDA has not addressed U.S. concerns regarding the limited number of functional food categories which currently do not provide for sport nutrition products or herbal products; categories which are widely accepted by consumers in other countries.

A number of Korea's sanitary and phytosanitary certification requirements still continue to limit market access for a variety of products. However, progress was made in market access for cherries. In April 2003, after lengthy consultations, MAF issued a final rule allowing access of all varieties of cherries to Korea under certain conditions. However, market access for in-shell walnuts is still hampered due to a requirement for pre-export clearance by MAF inspectors.

In an effort to prevent imports of products containing BSE-tainted ingredients, in the spring of 2001 Korea enacted requirements that the U.S. Government certify ruminant and ruminant product exports as BSE-free. These requirements proved overly restrictive. However, the issue was resolved for pharmaceutical products, when the Korean government, after extensive legal review, decided to accept BSE-free certifications by governments, relevant legal entities (associations, etc.), or manufacturers (if notarized). For non-pharmaceutical products, Korea still requires government certification if the product is from a BSE-free country. A BSE-infected cow was discovered in the United States in December 2003. With some limited exceptions, all exports of ruminant origin products from the United States to Korea were suspended pending further investigation. Imports of ruminant products recognized as being free from the BSE prions, such as muscle meat and gelatin, are banned. Korea's import ban on non-ruminant products such as poultry meal from countries where there has been a BSE case is overly restrictive.

Korean government agencies also require prior approval for pharmaceuticals, chemicals, computers, telecommunications equipment, all food additives, and other products. While many other countries require prior approval for some products, the range of affected products is exceptionally broad in Korea, and companies must submit documentation that is extraordinarily detailed. In the past, information provided by importers as part of the prior approval/certification processes often was not adequately protected. Regarding pharmaceuticals, in June 2002, the KFDA implemented Drug Master File (DMF) requirements that oblige manufacturers to submit significant quantities of proprietary manufacturing data to the KFDA as part of the drug approval process. The Korean government says the requirements are designed to assure product quality. U.S. industry, however, has expressed concern that because the requirements apply only to new drugs they apply almost exclusively to foreign manufacturers of innovative pharmaceuticals, and not to local generic companies. Industry has raised concerns that the requirements may delay market access and could jeopardize intellectual property protection. A KFDA task force is studying the concerns expressed by industry and other stakeholders.

KFDA approval for local sale of drugs developed outside Korea remains slow. The frequent need for companies to duplicate clinical trials in Korea that have already been completed elsewhere is of particular concern because such trials are costly and delay market access for U.S. products. Duplicate trials were expected to decrease following Korea's 1999 announcement that it would implement International Conference on Harmonization (ICH) guidelines. While the KFDA has made progress in accepting the concepts in the ICH E5 guidelines, the KFDA typically declines to consider Koreans to be members of the general Asian population for drug testing and presumes that drugs are more narrowly sensitive unless proven otherwise. In November 2002, Korea published revised guidelines that could improve market access for U.S. companies. The U.S. Government will continue to work with Korea on the implementation of these guidelines and the streamlining of the KFDA clinical trial application process.

Finally, the Korean government continues to require that each shipment of a drug imported into Korea for commercial purposes be tested once registered. This is expensive, inefficient and scientifically unsound. The United States will continue to emphasize the need for the Korean government to implement appropriate international guidelines on the acceptance of foreign clinical test data, to make the approval process for new drugs more science-based, and to shorten the overall drug approval process in Korea. (*See also "Intellectual Property Rights Protection" and "Pharmaceuticals"*.)

Automotive Standards Experts Working Group

The United States and Korea have worked together cooperatively over the past few years to resolve a range of motor vehicle standards issues. Consistent with the 1998 U.S.-Korea Memorandum of Understanding (MOU) Regarding Motor Vehicles, Korea has taken steps to simplify and streamline its safety and environmental standards and certification procedures. In October 2000, Korea joined the Global Agreement, an agreement intended to encourage the international harmonization of motor vehicle standards. The United States and Korea have been working since 2001, when a new working group was formed to improve the dialogue between the two sides on complex standards and certification issues. The meetings of this group to date have proved highly productive, and the U.S. Government believes that this forum offers the potential to build a stronger cooperative relationship on standards and certification issues as the work of this group continues. The U.S. Government has closely consulted with the Korean government on the development of a self-certification system, which Korea implemented in January 2003. Also, along with the member governments working to develop a new global standard on side impact crash tests under the Global Agreement, the Korean government committed in January 2002 to continue to accept both the U.S. and European side impact standards. The U.S. Government continues to monitor a variety of other automotive standards issues which could become serious market access barriers to U.S. automakers, and will continue to work with Korea to expeditiously address these matters.

Labeling Requirements

U.S. exporters cite Korea's non-transparent and burdensome labeling requirements as barriers to entry, despite various recent changes by the Korea government to these requirements. The U.S. Government will continue to address these issues with the Korean government.

Korea implemented mandatory biotechnology labeling requirements for corn, soybean, and soybean sprouts in March 2001, and for processed foods containing biotechnology enhanced corn and soybeans in July 2001. In March 2002, MAF extended biotechnology labeling requirements further to include fresh potatoes. MAF officials have indicated to the U.S. Government that U.S. fresh potatoes are exempt from biotechnology labeling requirements with no requirement for extra documentation as long as no biotechnology potatoes are produced in the United States.

Korea originally provided only vague and limited information on the mandatory biotechnology labeling requirements prior to September 2002. Moreover, the new requirements appear far more burdensome than necessary to achieve their stated goal of providing Korean consumers clear information, and appear to raise national treatment concerns as well. After lengthy consultations, in September 2002 Korea permitted acceptance of a notarized self-declaration as certification that products meet requirements to be exempt from biotechnology labeling.

New Korean language labeling requirements for functional foods have raised a new concern. The labeling guideline for functional foods indicates that labels must be printed on packages. Under the new labeling requirements for functional foods, no provision is made to affix labels by means of a sticker. The U.S. Government will continue to monitor the impact of this new labeling requirement.

On January 1, 2001, the Ministry of Environment's (MOE) new packaging and labeling standards for food went into effect. Aimed at protecting the environment by minimizing landfill material, the standards prohibited the use of PVC-shrink-wraps and promotional packaging that included more than 20 percent "dead space" in the container. MOE addressed U.S. Government concerns about the restricted use of PVC-shrink-wrap on some products, including frozen products, on food safety grounds. However, the U.S. Government continues to question Korea's rationale for restricting package size based on gross dead space. The United States has argued that net space displaced by such containers, once collapsed and measured (MOE does not allow this), is minimal and well within the objective of the standard.

In December 2003, major retailers in Korea indicated that they would refuse to accept meat from suppliers after January 1, 2004, if packaging on the meat failed to conform with marking requirements mandated under the Korean Ministry of Environment (MOE) Extended Producer Responsibility (EPR) system. The EPR mark is intended to allow different types of packaging to be channeled for "separate discharge" by providing consumers with information on how packaging should be disposed. The new EPR regulations started going into effect for some products as far back as 1999 although extensions were granted for some products such as food. The U.S. Government will monitor implementation of the MOE packaging requirements.

Other Issues

Korea banned imports of U.S. beef in December 2003 with the detection of one positive case of Bovine Spongiform Encephalopathy (BSE) in the State of Washington. As of the publication of this report, the U.S. government is taking aggressive action and is working intensively to re-open the market as quickly as possible. In addition, the United States is working in the International Organization for Epizootics to revise international standards on BSE to reflect current scientific knowledge.

GOVERNMENT PROCUREMENT

Korea joined the WTO Agreement on Government Procurement (GPA) on January 1, 1997, and agreed to cover procurement of goods and services over specific thresholds by numerous Korean central government agencies, provincial and municipal governments and some two dozen government-invested companies. In accordance with its commitments under the GPA, procurement of satellites was included in Korea's coverage as of January 1, 2002.

EXPORT SUBSIDIES

Korea has historically promoted exports aggressively through a variety of policy tools, including export subsidies. However, it committed several years ago to phase out export subsidy programs that are not permitted under the WTO Agreement on Subsidies and Countervailing Measures. Under its IMF economic stabilization package, Korea eliminated four WTO-prohibited export subsidies earlier than originally planned. Korea is rationalizing its overall subsidy regime, including through the notification of 19 programs to the WTO, as required by reporting obligations, and the elimination or reduction of the benefits available in 68 others. The U.S. Government has strongly urged Korea to ensure that its government support programs comply with its WTO obligations.

KOREA

In February 2002, the Korean government revised the "Act for the Export-Import Bank of Korea" (KEXIM) to enable KEXIM to become more active in undertaking risks and extending credit lines to exporters. Under the new regulations, KEXIM is able to undertake risks that commercial banks are reluctant to assume. In addition, KEXIM's financing sources were expanded to include non-bank guarantee fees, thereby boosting exports from Korean companies. The U.S. Government will continue to monitor modifications made to the Act to ensure that they are consistent with Korea's WTO obligations, including that financing provided under this Act does not take the form of a prohibited subsidy. In addition, the United States will also work to ensure that Korea is respecting its obligations as a participant in the OECD Export Credit Arrangement.

Government Support for Certain Industrial Sectors

The U.S. Government continued to express strong concerns about instances of possible Korean government subsidization of semiconductor production and export that could adversely affect U.S. trade interests. In particular, the U.S. Government raised concerns about continued support extended to Hynix Semiconductor, Inc. (Hynix), Korea's second largest semiconductor manufacturer, by Korean government-owned financial institutions. Because the Korean government continued to provide financial assistance to Hynix, a formal countervailing duty (CVD) investigation was conducted and completed by the U.S. Commerce Department and the International Trade Commission during 2003. As a result of this investigation, Hynix's exports to the United States have subsequently been subject to countervailing duties of 44.29 percent.

The U.S. Government also continued examining concerns raised by members of the U.S. paper industry about alleged targeted Korean government aid to its coated paper sector, including low-cost facility investment loans and loan guarantees, tax benefits for facility expansion, government-sponsored creation of a paper manufacturing complex and government sale of debt obligations. Since a significant percentage of Korean coated paper output is exported to the United States and other markets, U.S. industry is concerned that this support may be distorting international markets for paper goods. The U.S. Government raised the issue both formally and informally several times with Korean government officials. The United States will continue to review detailed and updated information submitted by the U.S. industry concerning Korean government practices that may distort trade or conflict with international subsidy rules. In addition, the U.S. Government will consult closely with the industry with regards to this issue and, if warranted, consider the possibility of further bilateral discussions, multilateral action or remedies available under U.S. law if it is determined such steps are necessary to address U.S. concerns.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Korea was elevated from the Special 301 Watch List to the Priority Watch List in January 2004 as the result of an Out-of-Cycle Review (OCR) conducted in late 2003. During the OCR, Korea’s progress was assessed based on the following criteria, which were set out in the 2003 Special 301 report:

1) granting police authority to the Special Inspection Team (SIT) of the Ministry of Information and Communication (MIC) to conduct raids for software piracy;

2) drafting and submitting legislation to the National Assembly that establishes the exclusive right of transmission for sound recordings, including both the full right of making available and the full right of communication to the public, seeking its enactment by the end of 2003;

3) providing additional, new data on the Korean government’s enforcement efforts that is sufficient to evaluate more fully the range of its enforcement activities, including the imposition of

deterrent penalties, and sufficient to allow right holders to have the opportunity to take action against infringers who are not convicted;

4) drafting and submitting legislation to the National Assembly to grant the Korea Media Rating Board (KMRB) all authority necessary to stop film piracy. The United States has asked Korea to ensure that this legislation and/or the implementing regulations: a) clearly provide the KMRB the authority to reject false applications; b) clearly provide the KMRB the authority to cancel existing ratings which were approved on the basis of a false application; and c) not place undue burdens on legitimate rights holders to prove their rightful ownership; and

5) implementing fully and faithfully its agreement on the Wireless Internet Platform for Interoperability (WIPI) intellectual property issue.

While some progress had been made in some of these areas, the review found that growth of online music piracy and continued piracy of U.S. motion pictures has caused serious economic damage to U.S. companies. The U.S. government also remains concerned with respect to Korea's the legal regime for the protection of temporary copies, technological protection measures, Internet Service Providers (ISP) liability, reciprocity provisions regarding database protection, *ex parte* relief, the lack of full retroactive protection for pre-existing copyrighted works and copyright term extension. In addition, new concerns have arisen over continuing book piracy in universities, street vendor sales of illegally copied DVDs, counterfeiting of consumer products, protection of pharmaceutical patents, and lack of coordination between Korean health and IPR authorities on drug product approvals for marketing. These issues will be revisited during the next Special 301 Review, which will be completed in April 2004.

IPR Enforcement

In an important step forward, Korea passed legislation in July 2003 to give police powers to the SIT of the Ministry of Information and Communication. This new authority took effect on October 18, 2003 and allowed the SIT inspectors to conduct raids on commercial firms and other institutions suspected of using illegal software. In June 2003, the Ministry of Justice sent a directive to all regional prosecutor offices to work pro-actively in pursuing IPR infringement violations. As a result, Korean police and prosecutors are conducting raids against software end-users more consistently, with higher damages being discovered than in previous years. Raids are also more frequently initiated based on leads provided by the software industry.

The United States remains concerned, however, about the transparency of the Standing Inspection Team (SIT) enforcement process, including whether the SIT will act on tips provided by industry, and if the right holders will be able to participate in raids to the maximum extent possible and will be notified about all raids initiated by SIT, even when discovered infringements are minor.

In response to requests by the U.S. Government that the Korean government provide detailed information on the results of IPR enforcement efforts in April 2002, Korea agreed to provide additional data to the United States. The Korean government provided regular quarterly reports during 2003 on the inspections of the SIT, on the disposition of cases by prosecutors and also on court verdict reports (i.e. acquittals, convictions, punishments). However, to date, Korea has not provided new data by which the efficacy of Korea’s enforcement efforts can be better evaluated, such as the level of fines imposed on convicted infringers.

The Korean government passed amendments to the patent, trademark and utility model laws in January 2001 that increased both fines and terms of imprisonment for IPR violators. However, the United States continues to urge Korea to further review the penalties for IPR violations in order to increase their deterrent effect against piracy.

Transmission Rights for Sound Recordings

Korea has one of the highest levels of broadband Internet penetration in the world. Given this, it needs to show a more effective response to the challenges posed by the changing nature of digital copyright piracy by adopting new legal tools and making substantial improvements in enforcement practices. Important aspects of Korea's copyright law structure have failed to keep pace with the transformation of the market resulting from digitization and high-speed access to the Internet. Overhauling these outmoded laws should be a top priority for Korea.

A critical element missing in Korea's Copyright Act is the failure to give exclusive rights for the on-line dissemination of recorded music. Following a National Assembly member's unsuccessful effort to move forward on legislation, the Ministry of Culture and Tourism has announced plans to introduce legislation to the National Assembly in early 2004 that would provide only narrow "interactive" transmission rights for sound recording producers and performers. Without broadening these rights to take into consideration transmission through webcasting or other noninteractive digital transmissions, both rapidly emerging technologies in Korea, on-line piracy rates may continue to surge and to damage the revenues of both domestic and foreign phonogram industries. Korea should introduce legislation that provides a full set of exclusive rights for sound recording producers.

Korea Media Rating Board

In December 2003, the Korean National Assembly passed legislation that the Korean government has stated grants the Korea Media Rating Board (KMRB) the authority to identify and stop the fraudulent registration of videos, DVDs, and games. Due to the lack of specificity in the legislation, the viability of the system will depend on well-drafted implementing regulations. The KMRB's first draft of these regulations did not contain clear lines of authority for the KMRB and included unnecessary and burdensome documentation requirements. However, the KMRB has committed to redrafting the regulations to address these concerns. The U.S. Government will continue to work with Korea to ensure the regulations will not place any undue burdens on the legitimate rights holders to prove their rightful ownership.

Wireless Internet Platform for Interoperability (WIPI)

The U.S. private sector has alleged that the WIPI telecommunications standard has infringed on U.S. companies' IPR. The U.S. Government will continue to monitor this situation closely.

Copyright Act (CA)

In July 2000 and again in December 2001, the Korean government drafted revisions to the Copyright Act that went to committee in the National Assembly in April 2002. The Copyright Act amendments were passed by the National Assembly in April 2003 and the implementing regulations announced in July 2003. Two important steps were taken to strengthen the Copyright Act. First, the amendments strengthened the effectiveness of technological protection measures (TPMs) by prohibiting the production and trafficking of devices aimed at circumventing TPMs. Secondly, the framework for a "notice and takedown system" was introduced under which an Internet Service Provider (ISP) would be given a legal incentive to respond promptly and positively to requests from rights holders to take down or cut off access to sites where pirate activities are taking place. However, Korea must undertake further steps in order to fully comply with the WIPO Copyright Treaty (WCT), which Korea has indicated it intends to join.

With regard to TPMs, Korea's Copyright Act does not clearly protect technologies that manage who can access a work, nor does it prohibit the act of circumvention itself, only the creation or distribution of circumvention tools. A party who strips off protection and leaves the work "in the clear" for others to copy without authorization may escape liability. Until these changes are made, Korea will not have brought its TPM provision into compliance with the global minimum standards embodied in the WCT and WPPT.

While certain provisions of the Copyright Act defining Internet Server Provider liability were harmonized with the Computer Program Protection Act (CPPA), further clarification is required. The Copyright Act amendments still leave unclear the scope of the underlying liability of service providers and the limitations on, or exceptions from, liability. In addition, there are concerns that the documentation requirements for the rights holders in a takedown request are too burdensome.

Other Issues

Concerning library exceptions under the Copyright Act amendments, the U.S. Government believes that a notice period of at least 30 days should be given to the rights holder prior to the unauthorized digitization of their works to minimize any negative effects. Under the current law, library exceptions still apply only to literary works and not to broadcasts, performances and sound recordings. The U.S. government has also urged Korea to delete the reciprocity provisions relating to database protection in the Copyright Act, as it discourages the introduction of databases from other countries without such legislation.

In line with the international trend, 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. Korea currently provides copyright protection for the life of the author plus 50 years. Korea also remains in violation of its obligations under Berne Article 18 and TRIPS Article 14.6 to provide full retroactive protection for pre-existing works and sound recordings.

Computer Program Protection Act (CPPA)

The modernization of the CPPA to meet current challenges as well as to comply with new global norms continued on an incremental basis in 2003. In December 2002, the National Assembly passed revisions to the CPPA that provided for transmission rights, a critical element of an effective copyright regime in the digital age. The Korean government also accepted the U.S. suggestion that Internet Service Providers should immediately stop the infringing activity upon request of the copyright owner for the purpose of revising or updating programs, or for encryption research. However, the application of the CPPA provisions to access control technologies still needs to be clarified. The CPPA amendments were signed into law on December 30, 2002, and took effect on July 1, 2003, with the implementing regulations becoming effective in August 2003.

The United States believes that the CPPA needs to be strengthened further and has urged Korea to make additional amendments to this law to clarify that the copyright owner has the exclusive right to make copies, temporary or permanent, of a work or phonogram. Unlike the Copyright Act, the CPPA does have provisions on protection of TPMs used in connection with computer programs. However, these provisions include several broadly worded exceptions that still need to be narrowed.

Concerns applicable to both the Copyright Act and the CPPA

The United States believes that both the Copyright Act and CPPA need to be strengthened further and has urged Korea to make additional amendments to those laws. Most importantly the reproduction rights accorded works should be clarified and broadened by including: 1) direct or indirect reproduction; 2) temporary or permanent reproduction; 3) reproduction by any means or in any form; and 4) reproduction in whole or in part. The United States has also recommended that the Korean government clarify the availability of injunctive and *ex parte* relief in civil enforcement actions, as required under the TRIPS Agreement.

Book and Video-DVD Piracy

In August 2002, the National Assembly enacted the Publication and Printing Business Promotion Act, which came into effect in February 2003 and allows private sector involvement in enforcement measures against book piracy. The Act gives the Ministry of Culture and Tourism the administrative authority to inspect and dispose of illegal copies of copyrighted books. Whether this new law will provide any practical benefit to U.S. publishers remains to be seen, however. In 2003, the Korean authorities did not carry out effective enforcement efforts against ongoing book piracy which is very common on and near the country's university campuses. The U.S. government will monitor implementation of this law. In February 2004, the Ministry of Education committed to write a letter to all Korean University Presidents, calling on them not to tolerate copyright infringement on their campuses.

Pirated audio-visual materials in DVD format, often sold on the street by illegal vendors, are a serious, emerging problem in Korea. Digital piracy in this sector needs to be addressed by the Korean government with stronger enforcement efforts and deterrent penalties. Despite active enforcement efforts to date, video-DVD piracy in Korea is increasing rapidly because of the growing sophistication of pirate production facilities and more advanced distribution technologies. Intensified and consistent enforcement activities on the part of Korea's law enforcement agencies is needed to cope with the rapidly increasing level of pirated DVDs in the markets and shopping districts of Korea.

Patent and Trademark Acts

Korean patent law is fairly comprehensive, offering protection to most products and technologies. Over the past year, changes to the Patent Act strengthened and streamlined the application process. In 2002 the law was amended to streamline the procedures for foreign Patent Cooperation Treaty (PCT) members. From March 2003, the time limit for entering into the national phase of PCT international applications in Korea was extended to 30 months after the priority date regardless of any international preliminary examinations. The revision also gave the Korean Intellectual Property Office (KIPO) more power to protect technologies exchanged through the Internet. In December 2003, KIPO prepared an amendment to the law to improve collection regulations concerning patent fees, registration fees and commissions imposed in accordance with patent, utility model, design and trademark laws in order to improve the convenience for petitioners.

Despite such progress, U.S. industry still believes that deficiencies remain in the interpretation of claims and in the treatment of dominant and subservient patents. While KIPO has amended Korea's 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), problems still remain. Of top priority has been the lack of coordination between Korean health and safety and intellectual property officials, which results in the granting of marketing approval for products that may infringe on existing patents. However, in March 2002 Korea agreed to provide full protection against unfair commercial use of test data submitted for marketing approval as required by Article 39.3 of the TRIPS Agreement.

The Madrid Protocol, an international trademark application system, entered into force in Korea on April 10, 2003. In preparation for membership, the Trademark Act was changed to become compliant with the Madrid Protocol and the Trademark Law Treaty. The Madrid system streamlines and simplifies international application procedures for trademarks and introduces a retroactive damage compensation system for registrants.

The Trademark Act was amended in March 1998 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 proceedings acts as a barrier to effective enforcement by discouraging U.S. companies from pursuing legal remedies. In particular these problems still arise with respect to "sleeper" trademark registrations. ("Sleepers" are trademarks filed and registered by Koreans without authorization in the late 1980s and early 1990s, when KIPO was still developing a more effective and accurate trademark examination and screening process) These registrations - although a clear infringement of the rights of legitimate trademark owners - are not challenged and removed.

An Internet Domain Name Dispute Resolution committee was created in 2002 to arbitrate such disputes without going through the courts. The U.S. Government has recommended that Korea include foreign participation on this committee. In October 2003, the Ministry of Information and Communication submitted a bill for an Internet Address Space Management Act to the National Assembly that would enhance the legal foundation of the domain name dispute resolution committee and would prohibit cyber-squatting.

Textile designs were afforded copyright protection (in addition to protection under Korean design law) through the July 2000 revisions to the Copyright Act. However protection of textile designs remains problematic largely because of the lack of enforcement; some Korean companies allegedly pirate U.S.-copyrighted textile designs and export them to third countries where they compete with genuine U.S.-produced goods. The U.S. Government continues to urge Korean authorities to increase efforts to halt the trade in counterfeit goods. In an effort to enhance border enforcement against the exports of counterfeit products, the Korean Customs Service has upgraded its computer system.

Korean laws on unfair competition and trade secrets provide a 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 chocolate, face continuing problems with government regulations requiring submission of very detailed product information, such as formulae 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 have not sufficiently protected this proprietary information and the trade secrets were made available to Korean competitors or to their trade associations. To its credit, the Korean Food & Drug Administration (KFDA) revised the Pharmaceutical Affairs Act implementing regulations to stipulate that submitted data must be protected from unauthorized disclosure when the submitting party requests protection.

SERVICES BARRIERS

Korea continues to maintain restrictions on some service sectors through a "negative list." In these sectors, foreign investment is prohibited or severely circumscribed through equity or other restrictions. (See also "Investment Barriers")

Construction

The construction and engineering markets in Korea were first opened to foreign competition in 1996. Foreign companies may bid on public projects, including the massive capital projects designed to improve basic infrastructure in Korea. Foreign firms still report problems with attempts to renegotiate accepted bid prices, as well as with registration and bonding procedures, which are excessively burdensome.

Advertising

Korea is among the world's top twelve largest advertising markets; however, the market remains highly restricted. Since 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. Legislation was passed in 1999 to end KOBACO's monopoly, but implementation of these laws has been delayed.

Some progress has been shown by KOBACO in recent years in offering more flexible packages and a wider range of commercial time lengths to better meet advertisers' needs. However there are still further changes in airtime sales that should be urgently considered. Firstly, in-program advertising has been proposed several times to KOBACO. The government is reconsidering the issue. Secondly, most television airtime packages are still offered on a monthly basis, limiting the opportunity for advertisers to engage in spot buying of advertising time. This impedes advertisers' ability to run short-term campaigns and tailor their media delivery.

Broadcast advertising censorship presents a continuing source of difficulty for all advertisers and agencies doing business in Korea. The Korea Advertising Review Board (KARB) censorship committee is comprised of representatives of various organizations who change regularly. This handicaps television and radio advertisers since their advertising has to be submitted in its final, fully produced film format for approval by KARB. This approval process contributes significantly to the risk and costs involved in developing new advertising campaigns and introducing new brands into the market. Often the committee requires that substantiating testing be repeated in Korea, disregarding advertising claim substantiation accepted in other countries. In some product categories, such as cosmetics, the Ministry of Health and Welfare requires that advertising copy be additionally approved by the local manufacturers' association in advance of airing or publication. Efficacy claims for pharmaceuticals, over-the-counter medicines and cosmeceuticals are also not permitted. This makes advertising of technologically superior products less effective and ultimately discourages innovation.

Screen Quotas

Korea maintains screen quotas on imported motion pictures, requiring that domestic films be shown in each cinema a minimum number of days per year (currently, 146 days with reductions to 106 days possible if certain criteria are met). The quota discourages trade, cinema construction, and the expansion of theatrical distribution in Korea, and hurts the competitiveness of the Korean film industry. In January 1999 and in December 2000 the National Assembly passed resolutions stating that a relaxation of the screen quota should only be considered if and when Korean films achieve a 40 percent market share. Since 2001, Korean films have maintained a market share close to 50 percent. In 1999, the U.S. and Korean governments suspended negotiations of a Bilateral Investment Treaty pending resolution of the screen quota issue. In 2003, the Roh Moo-hyun Administration indicated renewed interest in resolving this issue, but there has not yet been any movement by Korea on this issue.

Foreign Content Quota for Free Terrestrial TV

Korea restricts foreign activities in the free television sector by limiting the percentage of monthly broadcasting time (not to exceed 20 percent) that may be devoted to imported 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 terrestrial television operations.

Foreign Content Quota for Cable TV

Korea restricts foreign participation in the cable television sector by limiting per channel airtime for most foreign programming to 50 percent. Annual quotas for broadcast motion pictures are set at 70 percent and for animation at 60 percent. These restrictions limit foreign access and the development of Korea's film and animation industries. The Korean government also restricts foreign ownership of cable television-related system operators and program providers to 33 percent, although pending legislation, if passed, would raise the ceiling to 49 percent. Network operators are limited 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 10 percent of the total number of operating channels. This artificial restriction limits the amount of international broadcasting which could otherwise be made available to Korean consumers and limits foreign investment in Korea in the broadcasting sector.

Restrictions on Voice-overs and Local Advertisements

Presently, there are restrictions on voice-overs (dubbing) and local advertising for foreign re-transmission channels. These restrictions are written into the Korean Broadcasting Commission's guidelines for implementation of the Broadcasting Act, and as such, could easily be revised. Allowing voice-overs in the Korean language would not only make the broadcasts truly accessible to Korean consumers, but also would benefit the Korean economy by creating more studio-production jobs and foreign investment. The prohibition on local advertising for foreign re-transmission channels restricts the long-term viability of foreign re-transmission channels in the Korean market. Foreign re-transmission channels should be allowed to broadcast their content and add/insert local advertising in order to ensure their financial stability as well as to show relevant advertising to their Korean viewers.

Accounting

Korea restricts the establishment of foreign accounting firms by requiring that companies must employ at least 10 Koreans, at least three of whom must be partners and seven of whom must be certified accountants. Foreign Certified Public Accountants (CPAs) are required to fulfill the same requirements as Korean CPAs, including: (1) obtaining Korean certification; (2) completing a two-year internship; and (3) registering with the public accountants association. Accounting firms in Korea are prohibited from making an investment in, or providing a debt guarantee to, any other firm in excess of 10 percent of the accounting firm's paid-in-capital.

Engineering

Although there are no restrictions on foreign engineering services specified in Korean law or regulation, procuring agencies (national, local and private) can specify particular conditions and/or requirements for engineers and engineering services depending on the nature of the project. Such specifications can be written to favor domestic engineering services firms.

Legal Services

At the time of Korea's accession to the OECD in 1996, the Korean government amended the "Lawyers Act" to permit non-Koreans to be licensed to practice law in Korea, provided that they meet the same criteria that are applied to Korean nationals. The Korean government also amended regulations on foreign investment in 1997 to allow for foreign investment in the legal sector. Any individual not qualified as a lawyer under Korean law is prohibited from providing legal services to Korean and foreign clients in Korea and from establishing a law firm or office in Korea. There is no provision for "foreign legal consultants" in Korean law, although in practice many foreign attorneys in Korea perform legal advisory functions. The U.S. Government continues to urge the Korean government to address U.S. concerns that no foreign law firms may practice law in Korea and that delineation of permitted practices for foreign lawyers is non-transparent, creating serious difficulties for foreign lawyers employed by local firms.

Financial Services

As a condition of its post-Asian financial crisis IMF economic stabilization package, Korea agreed to bind its OECD commitments on financial services market access in the WTO. Korea's revised schedule of WTO financial services commitments entered into force in September 1999. The U.S. Government will continue to work with Korea to ensure that it meets its WTO and OECD financial services commitments and to establish more liberal treatment of foreign financial services providers.

Foreign-based, non-financial businesses in Korea face burdensome and costly procedural requirements for financial transactions that are inappropriate to Korea's level of development and financial sophistication. For instance, virtually all intra-company transfers are subject to certification. This is a cumbersome, costly, and unnecessary requirement, particularly for transactions between subsidiaries. Even after most foreign exchange transactions were liberalized in 2001, foreign bank and financial subsidiaries must receive Bank of Korea (BOK) permission on their capital account transactions.

Insurance

Korea is the second largest insurance market in Asia after Japan, with $51 billion in premiums paid in the fiscal year ending March 31, 2003. The environment for foreign insurance companies has improved considerably since Korea implemented a series of regulatory changes following its 1996 OECD accession. Korea incorporated many of these changes, including expanded market access and national treatment commitments, into the 1997 WTO Financial Services Agreement.

The 1997-98 financial crisis led to an ambitious restructuring of the Korean insurance industry. In 1998, the newly established Financial Supervisory Commission (FSC), the Korean government's financial watchdog and center for financial reform, revoked the licenses of some insurance companies and forced the merger of others on the grounds of insolvency. In addition, 16 life and non-life insurance companies entered FSC-supervised workout programs. (A workout program is a voluntary, out-of-court debt-restructuring framework, which may or may not involve government oversight.)

After failing several times to sell Korea Life Insurance (KLI) to foreign buyers since 1999, the Korean government sold the company to the Hanhwa group in December 2002. KLI has roughly a 16 percent share of the Korean insurance market. The Korean government is gradually liberalizing foreign entry into the life and non-life insurance markets and has lifted some restrictions on partnering with Korean financial companies and on hiring Korean insurance professionals. In April 1998, Korea liberalized insurance appraisals and activities ancillary to the management of insurance and pension funds. Korea's brokerage market was opened to foreign firms in April 1998. Several foreign reinsurance firms have since entered the market. In April 2003, the National Assembly passed a new insurance act removing most limitations on business area and working capital. Despite these efforts, there remains a considerable gap between the practices found in developed insurance markets and those in Korea.

Banking

In the six years since the Asian financial crisis (through September 2003), the Korean government has injected over 86.7 trillion won ($72.3 billion) in public funds into the commercial banking system, effectively nationalizing it.

The IMF and the U.S. Government have repeatedly urged Korea to privatize state-owned banks to allow market forces to more efficiently allocate financial resources and increase investor confidence in the Korean economy. Over the past several years, this has begun to happen. In January 2000, the Korean government sold its 51 percent stake in Korea First Bank to Newbridge Capital, a U.S. company. Later in 2000, Carlyle Asia, a U.S. private equity firm, purchased a 37 percent share of KorAm Bank. In October 2003, Carlyle Group, announced its intention to sell its stake in KorAm Bank and the acquisition of KorAm Bank to Citigroup Inc. was approved by the Korean Financial Supervisory Service in late February 2004. In January 2002, the Korean government announced a comprehensive plan to sell off its stake in Woori Financial Holding Company, Chohung Bank, Seoul Bank, and Cheju Bank and to liquidate its minority stakes in Korea Exchange Bank, and Kookmin Bank. In June 2002, the Korean Deposit Insurance Corporation (KDIC) listed Woori Financial Holding Company on the Korea Stock Exchange, selling an 11.8 percent stake of the company. One month later, the Korean government sold off a 51 percent stake of Cheju Bank to the Shinhan Financial Group. Chohung Bank was taken over by the locally based Shinhan Bank in August 2003 and the Korean government also sold Seoul Bank to Hana Bank in 2003. In August 2003, Lone Star, a U.S. private equity fund, acquired a 51 percent stake in Korea Exchange Bank for $1.2 billion - the largest foreign investment in the banking sector at that time.

At the beginning of 2002, Korea modified its regulations to allow foreign bank branches to borrow from their head offices and to include the net borrowing as Class B capital. However, the Korean government did not allow the foreign branches to use head office capital 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 other than to the top four chaebol conglomerates and to small and medium enterprises. Foreign banks are permitted to establish subsidiaries or direct branches. Since 1998, the Korean government opened capital markets to foreigners, permitting foreign financial institutions to engage in non-hostile mergers and acquisitions of domestic financial institutions.

All banks in Korea continue to suffer from a non-transparent regulatory system and must seek approval before introducing new products and services - an area where foreign banks are most competitive.

The April 1999 Foreign Exchange law introduced the first phase of foreign exchange and import-export transaction liberalization. The second phase of foreign exchange liberalization became effective on January 1, 2001 and deregulated foreign exchange and capital account transactions for individuals, but a few restrictions on foreign exchange transactions by corporations and financial institutions still remain.

Securities

On June 24, 2000, the Korean government removed limits on local currency issues of stocks and bonds by foreign firms. The Korean government places no limits on foreign ownership of listed bonds or commercial paper, no longer restricts foreign ownership of securities traded in local markets and has removed almost entirely foreign investment ceilings on Korean stocks. By the end of 2003, foreigners owned more than 40 percent of the shares on Korean stock exchanges, according to Korean government statistics. Despite this liberalization, foreign securities firms in Korea continue to face some non-prudential barriers to their operations.

INVESTMENT BARRIERS

The Roh Moo-hyun government has continued to voice a strong commitment, shared by the previous administration, to create a more favorable investment climate and to facilitate foreign investment. This welcoming attitude for foreign investment on the part of the Korean government, many in private industry and by a growing number of Koreans, could accelerate opening of the Korean economy. But this is not a complete process and nationalist pride and latent resistance on the part of some Koreans still adversely impacts efforts to transform the country into a fully open market economy. While progress has been made in recent years, additional steps are needed to more fully improve the environment for foreign investment, including the removal of remaining structural (and cultural) barriers. U.S. industry has noted reform of labor practices, increased corporate and regulatory transparency, and the undertaking of true structural reform of the economy as being the highest priorities for U.S. investors.

The 1998 Foreign Investment Promotion Act: (1) increased the number of business sectors open to foreign investment (currently, two remain fully closed to foreign direct investment (FDI) including television and radio stations, and 27 remain partially closed); (2) provided more tax incentives; (3) simplified investment procedures; and (4) established Foreign Investment Zones. The Korean government must automatically approve a foreign investor's notification unless the activity appears on an explicit "negative list" or is related to national security, the maintenance of public order or the protection of public health, morality or safety. Since May 1998, foreigners have been permitted to engage in hostile takeovers and may purchase 100 percent of a target company's outstanding stock without consent of its board of directors.

Capital market reforms have eliminated or raised ceilings on aggregate foreign equity ownership, on individual foreign ownership and on foreign investment in the government, corporate and special bond markets, and have liberalized foreign purchases of short-term financial instruments issued by corporate and financial institutions. However, the Korean government still maintains foreign equity restrictions with respect to investments in various state-owned firms and many types of media, including cable and satellite television services and channel operators, as well as schools and beef wholesalers.

The Korean government has taken several important steps to privatize state-owned corporations, although there were no new privatizations in 2003. The Korean government has also removed restrictions on the direct purchase of land by foreigners through the 1998 revision of the Alien Land Registration Acquisition Act. Non-Koreans, however, still cannot produce certain agricultural products for commercial purposes, nor can agriculturally zoned land be taken out of agricultural production.

General Motors (GM) took over Daewoo Motor, the ailing Korean automaker, in April 2002 and launched a new company, GM-Daewoo Auto and Technology in October of that year. Throughout 2003, local creditor banks, in cooperation with the Korean government, have engaged in negotiations to sell key Korean firms such as Hyundai Investment and Trust Securities to U.S. companies. In November 2003, American International Group (AIG) and U.S. venture capital firm Newbridge Capital purchased Hanaro, a telecommunications company.

While the more liberalized Korean investment regime has increased U.S. investor interest in Korea, additional changes, including a more transparent and predictable regulatory environment, more sustained intellectual property protection, significant progress on structural reform and market opening, and enhanced labor-market flexibility would greatly improve Korea's attractiveness as a destination for foreign investment. The country continues to rely on parochial standards, standards that often benefit local businesses and technologies and discriminate unfairly against foreign companies, in several key sectors. Specifically, multinational investors most often cite labor market inflexibility and labor-management disputes and insufficient regulatory transparency as the most serious obstacles to attracting more foreign direct investment to Korea. The Roh Moo-hyun Administration has stated its goal to transform Korea into an economic "hub" in Northeast Asia, but such a transformation will require policy changes that would both liberalize and open up Korea's economy for U.S. and other investors. The Korean government has announced a plan to address some of these changes and is opening up 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, such as housing, education and medical services. But while establishing these zones is an important stepping-stone to making Korea's business environment more open, liberal and responsive to economic needs, the FEZ's may not address the key factors inhibiting additional foreign investment in Korea.

ANTICOMPETITIVE PRACTICES

Competition Policy

The Korean government's enforcement of its competition policy, although historically weak, has been improving. The Korea Fair Trade Commission (KFTC) has been playing an increasingly active role both in enforcement of Korea's competition law and in advocating for regulatory reform and corporate restructuring. KFTC's powers to conduct investigations and to impose tougher penalties were enhanced in January 1999 with the revision of the Monopoly Regulation and Fair Trade Act. The Act was subsequently revised in December 2000 to broaden KFTC's authority in corporate and financial restructuring and to raise substantially the administrative fines for violations and/or for failure to cooperate with KFTC investigations. In support of the KFTC's more aggressive stance, in October 2003, the Roh Administration submitted legislation to the National Assembly that would extend the KFTC's monopoly regulation authority under that act to allow it to trace the bank accounts of domestic companies through 2007. The proposed legislation would also ban cross-investment between affiliates of parent companies, and double maximum fines (from 5 percent of annual sales to 10 percent) for businesses found engaging in cartels and other unlawful collusive activity. In December 2001, the KFTC fined seven mid-ranking conglomerates (chaebol) $5.5 million for illegally subsidizing affiliates. In October 2003, the KFTC fined the "Big Five" chaebol (Samsung, LG, SK, Hyundai Motor and Hyundai Heavy Industries) $27 million for illegal insider deals.

ELECTRONIC COMMERCE

South Korea is considered by many to be a leader in technology trends. It was among the first countries to see widespread use of wireless phones, and it has more high-speed Internet connections per person than any other country. The Government has actively pursued legislation to encourage electronic commerce.

In August 2003, the government drafted a bill to prevent private information from landing in the wrong hands. Under the bill, the government and public offices could collect private information only with the consent of individuals. Furthermore, both the legal basis and the reason for collecting the information, and the individuals' rights with respect to information collection must be clearly stated either on related websites or documents. The bill, if passed at the National Assembly, will take effect as early as July 2005, according to the Ministry of Government Administration and Home Affairs.

In December 2003, the South Korean government teamed up with the private computer security industry to cope with the emergence of digital threats. The Ministry of Information and Communication launched a national cybersecurity agency under its roof, aimed at protecting critical infrastructure and enhancing Internet security. The new organization, the Korea Internet Security Center (KISC), is similar to the Computer Emergency Response Team in the United States, which provides timely alerts, coordinates information among private companies and government agencies, and monitors backbone Internet networks.

The Basic Law on Electronic Commerce establishes the validity and enforceability of digital signatures, as well as the validity and admissibility of electronic messages. The Law addresses the retention of electronic messages and the security necessary to facilitate the growth of electronic commerce. A digital signature certified by the authorized certification authority is deemed a valid signature or seal, and as a general rule, an electronic message shall not be denied effectiveness or validity, relative to other forms of paper-based messages, on the grounds that it is in an electronic form. Similarly, an electronic message shall not be denied admissibility into evidence in any legal proceedings on the grounds that it is in an electronic form.

Korea has also strengthened its regulation of spam. New laws, enacted in July, require online marketers in South Korea to flag their e-mails as advertisements and to set up a free telephone hot line so people can opt out of future e-mails. The laws also forbid marketers from scanning web sites for e-mail addresses. The Ministry of Information and Communication can impose a fine of up to 10 million Korean Won (US$8305.65) on spam violators. The law also provides criminal penalties for the use of illegal technology or the distribution of maleficent advertisements to minors.

OTHER BARRIERS

Lack of Transparency

The lack of transparency in rule making and in Korea's regulatory system continues to be one of the principal problems cited by investors or exporters seeking to compete in the Korean market. While the Korean government has made some progress in certain areas, many Korean trade-related laws and regulations lack specificity and the implementing regulations often diverge from the objectives of the laws. Korean officials exercise a great deal of discretion in applying broadly drafted laws and regulations, resulting in inconsistency in their application and uncertainty among businesses. Compounding this problem is the Korean government's frequent failure to provide specific and timely notification of planned or actual changes to laws and regulations to all stakeholders. When public comments are solicited, time frames for submission of the comments are frequently insufficient. Furthermore, final legislation, regulations, and rules which do not reflect the extensive comments provided by stakeholders are frequently promulgated by the Korean government. Moreover, vague laws or regulations may be reinterpreted and then applied retroactively, even in cases where companies have sought to fully follow Korean government guidance on implementing domestic regulations. These transparency-related problems continue to be serious problems for market entry in a wide variety of sectors, including agriculture, pharmaceuticals, telecommunications, and automobiles as well as related to the protection of intellectual property. Food producers are particularly negatively affected by the ability of individual Korean government officials to apply their own interpretations of vague or ambiguously worded labeling and product categorization standards. The U.S. Government will place a high priority on these deficiencies in 2004.

KOREA

Anti-Import Bias

The Korean government is no longer directly involved in anti-import campaigns and has taken some steps to discourage overt anti-import activity, but concerns about anti-import biases remain. The legacy from past anti-import campaigns has proven difficult to overcome in several key industrial, agricultural and technology sectors, and among Koreans at large. For example, a 2001 survey revealed that the main factor restraining imported car sales in Korea is social pressure and the negative public image of foreign cars in Korea. Another Korean study completed in January 2002 confirmed these findings and found that such attitudes weaken the competitiveness of the Korean automotive sector.

In 2003, the Korean government continued to take steps to improve attitudes toward foreign cars and there was gradual, but steady improvement in Koreans' perception of imported vehicles. Much of the improvement can be attributed to public statements encouraging Koreans to purchase imported cars, along with tax authorities' public statements that audits will not be conducted on the basis of foreign car ownership. In an important symbolic step, the Korean government purchased 50 U.S.-made cars in 2002 and purchased another 50 imported cars in 2003 for use as highway patrol cars for Korea's National Police Agency. These 100 cars equal more than one-third of the Agency's fleet. The Korean government also lent its support to the establishment of an "imported car" taxi fleet with 100 imported mini-vans prior to the opening of the 2002 World Cup games. Senior-level officials from the Korean government publicly supported the May 2003 Import Motor Show. Finally, the Korean government disseminated the results of twin studies by U.S. and Korean economic research institutes on the contribution of foreign automakers and foreign autos to the development of the Korean automotive industry and the overall Korean economy. It is essential that the Korean government continue to launch these kinds of targeted activities in the future and make sustained and vigorous efforts to help eliminate the negative attitudes of Koreans toward foreign cars.

In December 2003, the Hanwoo Association, which represents Korean beef producers, indicated that it planned a mid-December protest against the import of U.S. cattle, alleging a lack of "U.S. beef safety." Korean agricultural industry attitudes in this regard have a long history. In April 2001, the National Agricultural Cooperative Federation (NACF), a quasi-government producer group that allocates Ministry of Agriculture (MAF) policy-directed loans, showed solidarity with several Korean livestock-related farmer associations in demonstrations against Korea's liberalization of its live cattle market as is required by its Uruguay Round commitment. In the past, demonstrators killed or injured imported cattle as they were offloaded from detained transport trucks while riot police, sent to protect such animals, stood by watching. The U.S. Government relayed its serious concerns about NACF's activities, especially given its links to the Korean government.

Last year, farmer associations also approached the Cheju Citrus Cooperative, the administrator of Korea's citrus import quota, regarding importing citrus that the farmers claimed undermined prices of various domestic fruits and vegetables. The Cheju Citrus Cooperative subsequently chose not to tender for the remaining quota, the third year Korea failed to do so.

Effective July 1, 2002, the Korean Fair Trade Commission (KFTC) began requiring the inclusion of a notification of the presence of biotechnology-enhanced components in advertisements. KFTC defines the "presence" of a biotechnology component as principal information to be provided in an advertisement for any food product required to be labeled by MAF or KFDA in the revision of the guideline entitled, "Notification of Principle Information on Labeling and Advertisement." According to KFTC's advertisement notification, the requirement applies to anyone who manufactures or sells biotechnology-enhanced products and advertises such products in printed materials such as newspaper or magazine or through broadcast media such as television. U.S. officials have encouraged Korea to eliminate this unique non-science-based requirement on the grounds that it duplicates existing labeling requirements and creates an unfounded negative perception of biotechnology products among consumers.

Motor Vehicles

In 1998, the United States and Korea concluded a Memorandum of Understanding (MOU) to improve market access for foreign motor vehicles. Although the Korean government has implemented many of its commitments under the 1998 MOU, the United States continues to have serious concerns about the lack of progress toward the key goals of the agreement including substantially increasing market access for foreign motor vehicles and establishing conditions so that the Korean motor vehicle sector operates according to market principles. While Korean auto exports to the U.S. market hit record levels in 2003, the sales of foreign autos in Korea totaled 19,461 vehicles which represented only 1.9 percent of the Korean market. In 2003, U.S. exports to Korea totaled only 4,100 vehicles.

The United States continues to strongly urge Korea to take additional meaningful actions to open the automotive sector as envisioned in the MOU, including elimination or reduction of Korea's eight percent tariff on automobiles, which would signal to Korean consumers that the Korean government is serious about opening the automobile market to foreign competition. The U.S. Government presented a written proposal in late 2003 requesting the Korean government to consider basing the calculation of Korea's multiple cascading automobile taxes on the actual value of imported vehicles at port of entry (cif) rather than on the cif value plus the tariff as under the current system. However, this proposal does not lessen the priority the U.S. Government places on Korea's effort to reach its MOU commitment to develop and implement a plan to re-structure and simplify the automotive tax regime in a manner that enhances market access for imported vehicles. U.S. industry has provided the Korean government with ideas on how this very important MOU commitment can best be met. The U.S. Government expects a lowering of the overall tax burden, a reduction in the number of taxes assessed on vehicles, and a movement away from engine-displacement taxes towards a value-based system.

The U.S. Government looks forward to detailed discussions with the Korean government on its plans to streamline the tax structure in 2004. The United States also looks toward the positive resolution of the remaining standards and certification issues, including the successful implementation of Korea's self-certification system, and continued efforts to address any anti-import sentiments and negative perceptions that could serve as significant barriers to the purchase of a foreign automobile. While steps in each of these areas are critical, reduction of the tariff - which a Korean study showed would increase foreign auto imports to 12 percent of the total market in 5 years if the tariff were reduced to 2.5 percent - and simplification of the auto tax system would have the most immediate and significant impact.

The United States continued to hold frequent consultations with Korea to resolve outstanding issues (*See also "Standards and Conformity Assessment Procedures"*). During 2003 the auto standards experts working group met on an ad hoc basis and made progress in resolving concerns with the implementation of self-certification and other standards issues. In July 2003, the Korean government modified the Special Consumption Tax from a three-tier to a two- tier system that is still based on engine displacement size. After the modification, vehicles with engine displacement up to 2000 cc were taxed at 5 percent while vehicles with engine size of 2000 cc or greater were levied a 10 percent tax. Even though the U.S. Government continues to urge the Korean government to undertake such changes in a transparent manner which fully involves all stakeholders, this decision was made by the National Assembly with only a few days notice, allowing little time for industry or U.S. Government comments. It is highly unfortunate that such important decisions are being made in a such non-transparent manner. The U.S. Government will work closely with the Korean government in 2004 to encourage the development of more transparent processes that allow for input from all stakeholders, domestic and foreign.

The United States and Korea have reviewed corporate restructuring in the Korean motor vehicle sector. A portion of the Daewoo Motor Company, which went bankrupt in July 1999, was purchased by General Motors in October 2002 after several months of negotiations and due diligence. GM Daewoo began production of a new model small sedan the same month. The U.S. Government will continue to urge Korea to rely on market-based solutions to restructure the automotive and other sectors and will closely monitor actions that may have a direct impact on the ability of U.S. firms to compete in the Korean market.

Motorcycles

Although progress was made in 2002 to resolve U.S. concerns over Korea's pass-by-noise standard, several market access issues remain including a highway ban, tariff and tax levels, and standards and certification procedures. Korea's highway ban is the most serious of these barriers because it prohibits the use of motorcycles on expressways and on designated bridges and severely restricts the market penetration potential for heavyweight motorcycles, safely designed for highway use. Korea is the only major world market in which heavy motorcycles are denied access to major highways and designated overpasses in cities. Traffic safety statistics from other developed countries and research organizations demonstrate that highways are actually safer for motorcycles than are other types of roads with numerous intersections and hazards. The U.S. and Korean governments continue on-going consultations on lifting the ban.

Pharmaceuticals

Korea’s pharmaceutical policies disadvantage research-based pharmaceutical firms and diminish Korea’s contribution to research and development of new, innovative pharmaceutical products. The Korean government often has developed its policies in this sector in a non-transparent manner without adequate input from domestic or foreign stakeholders. Moreover, the Korean government has largely failed to consult in advance with the U.S. Government on proposed measures, despite the 1999 U.S.-Korea agreements on pharmaceuticals. To address U.S. concerns about transparency and pre-notification, Korea agreed in January 2002 to establish a bilateral health-care reform working group. The group provides a forum for foreign pharmaceutical companies to discuss their view of changes the Korean government is contemplating and to establish a dialogue on health-care reform. The U.S. and Korean governments serve as observers on the working group. The United States supports the continuation of the working group, which it hopes will address transparency concerns by sharing information with industry and other key stakeholders in a timely manner.

In 2002, Korea adopted new Triennial Repricing and Lowest Transaction Pricing measures and issued new proposals on Reference Pricing. Under the LTP system, Korea reduced the reimbursement price of a pharmaceutical from the weighted average price of the previous quarter's sales to the lowest transaction price of the previous quarter's sales. The Korean government failed to consult with the United States on this issue as agreed. The Korean government subsequently decided not to continue the Lowest Transaction Price pilot program, and returned to a system of reimbursement based on the average weighted price, beginning in September 2003. While this is a positive step, the U.S. Government is seriously concerned that the initial round of price cuts based on the LTP methodology will not be rescinded. Despite some progress made in 2003 in improving transparency and information flow to the private sector, as a general matter the Korean government still fails to provide adequate transparency in its policy-making process for pharmaceuticals.

Actual Transaction Price: One of the major problems with the Korean pharmaceuticals market remains how to institute a fair and transparent pricing regime. In 1999, Korea agreed to price innovative drugs at the average ex-factory price of A-7 countries (United States, United Kingdom, Germany, France, Italy, Switzerland, and Japan). All other drug prices would be determined using the Actual Transaction Price (ATP) system. The ATP was intended to end hospital practices of demanding a discount from pharmaceutical manufacturers when purchasing drugs, and then receiving a full reimbursement from the government-operated national health insurance system. As mentioned above, ATP has only recently been reinstituted after being replaced by LTP for a period of one year. Currently, Korea allows wholesalers to bundle their sales of drugs to hospitals and doctors. Consequently, there is difficulty in accurately determining the individual transaction cost of pharmaceutical sales. Bundled products that are sold include both low-margin and high-margin products in one package. The reimbursement price based on an average of the prices thus favors the low-margin drugs and disadvantages the high-margin drugs. The Korean government established a distribution task force (DTF) in September 2003 with the hope of that it would resolve such problems in the wholesale distribution system. The U.S. Government is currently working with Korean government on this issue.

Triennial Repricing: The Triennial Repricing system was adopted in August 2002 for all drugs registered on the national reimbursement list as of the end of 1999. All registered drugs will be subject to repricing every three years under this system, which took effect on January 1, 2003. The system is expected to reduce prices for 2,732 products by an average of 7.2 percent in its first year. The U.S. Government and industry have expressed concern that the repricing system does not properly reflect innovation and discriminates against foreign producers. In addition, the repricing system does not allow for price increases when data supports such action. The repricing system was implemented without meaningful consultation, and the lack of transparency continues to be a problem.

Reimbursement Guidelines: As part of its efforts to trim health-care costs, the Health Insurance Reimbursement Agency (HIRA) has imposed restrictive reimbursement guidelines on the innovative drugs of several foreign pharmaceutical companies without a rigorous transparent scientific review. These guidelines are initially set by the Korea Food and Drug Administration, but can later be modified by guidelines established by HIRA. The process for establishing these modified guidelines is non-transparent. Although an appeals process exists, it is not codified by law, and the appeal is not made to a separate appeals panel but to the same office that made the initial ruling. The U.S. Government has raised concerns regarding the guidelines with the Ministry of Health and Welfare (MHW) and HIRA since 2002, and continues to urge the Korean government to develop a transparent process for revising reimbursement guidelines. The government-industry working group initiated a task force to look at improving transparency in the reimbursement guideline-setting process. Korea has pledged to examine how reimbursement guidelines are set in other developed countries. Since February 2003, the Korean government has also provided advance notification to companies whose products will be subject to a review of the reimbursement guidelines.

In addition to pricing and reimbursement problems, other issues under MHW's purview include Drug Master File requirements, redundant local testing of biologics and vaccines, and requirements that clinical trials completed elsewhere be duplicated in Korea (See also "Standards and Conformity Assessment Procedures").

Medical Devices

The United States continues to be concerned about reimbursement pricing practices (particularly related to orthopedic devices and cardiovascular / endovascular devices), hospitals' buying practices, proposed provisions of the Medical Devices Act, and a proposal for third party review of product approvals. There is a need for more transparency and streamlining of the regulatory approval process.

In late 2002, MHW approved proposed HIRA price reductions on medical products from 2 percent to 75 percent, depending on the product and category. These reductions, effective January 1, 2003, are especially burdensome for all categories of orthopedic devices, for which reimbursement prices have been reduced between 14 percent and 60 percent.

In October 2003, the Korea Health Industry Development Institute (KHIDI) completed a study containing various recommendations for pricing, re-pricing, and disposable medical device management (including re-use and processing of human organs for surgical treatment). On pricing, KHIDI recommended setting price ceilings for new medical products at 90 percent or below the prices of similar products; using cost data (manufacturing costs for local manufactured products and import Free On Board prices for imported products) for calculations; setting a ceiling of 10 percent above the current market price for new medical technology; using prices in other countries (including Japan, France and Taiwan) as pricing benchmarks; and conducting re-pricing every two years. Industry has expressed concern, and asked for a hearing on the study results.

The Medical Device Act (MDA) was passed by the National Assembly in May 2003 and Implementing Regulations were being drafted in late 2003. The MDA, which takes effect on May 29, 2004, establishes a new legal framework for the regulation of medical devices, currently governed along with pharmaceuticals under the Pharmaceutical Affairs Act. The new legislation includes a modification of the current classification system of three categories of medical devices into four by creating two categories from the original class II category. This revised four-class system will be consistent with global trends and will allow U.S. device firms to use global data for registration approvals with less need for data specific to Korea.

In compliance with WTO obligations to eliminate tariffs on medical products, in 2000 the Korean government eliminated tariffs on orthopedic devices and in 2004 plans to eliminate tariffs on other medical products.

Cosmetics and Cosmeceuticals

The United States welcomes the Korean government's stated goal of moving toward self-regulation in the cosmetics sector; however, there is a significant amount of work left to be done for Korea to achieve this goal, and obstacles to the entry and distribution of foreign cosmeceutical products in Korea remain. Korea has testing and import authorization requirements for cosmeceuticals that appear excessive.

When the Korean Cosmetic Products Act (KCPA) became effective July 1, 2000, a new product category "cosmeceuticals" was created. Under KCPA, cosmeceuticals must be reviewed for safety and efficacy by the Korean Food and Drug Administration (KFDA) and must not be "falsely advertised" to have functions beyond proven efficacy. The KCPA regulations relating to cosmeceuticals go far beyond requirements in this area set by Europe, the United States, or Japan, and the approval process is lengthy. Compliance with Korean regulations remains difficult, particularly for foreign manufacturers who must incur additional expenses for onerous and duplicative testing and labeling requirements. Because imported products are produced overseas, foreign companies must submit more data to prove their efficacy, which often is business proprietary. Furthermore, Korea is in the process of drafting a new Cosmetic Act, which will broaden the definition of "cosmeceuticals" and likely create more challenges to foreign cosmetic companies in Korea.

Moreover, the process of introducing new products in Korea is difficult because of a tendency on the part of the Korean bureaucracy to resist products and procedures that are different from those used by domestic companies. Foreign cosmetics often contain different ingredients or different concentrations of common ingredients and often use differing testing procedures in their home country, and the KFDA has tended to be conservative when foreign product applications come before it. This problem has been exacerbated since the cosmeceutical product approval process has been taken over by the KFDA, as that agency is still refining its approval procedures. KFDA has also added another requirement for foreign cosmetic companies to submit original Certificates of Manufacture and Sales prior to import, both of which contain company proprietary information. The stated purpose of this requirement is to ensure that no cosmetic products containing prohibited ingredients are imported into Korea. However, local manufacturing companies are not required to submit such documents to ensure the safety and quality of the ingredients used in their cosmetic products. The United States continues to work with the Korean government to further simplify and increase the transparency of the cosmetics testing procedures and product approvals process and to ensure that all cosmetics companies fully understand the scope and requirements of the KFDA regulations.

Telecommunications

As one of the world's most advanced telecommunications markets, Korea is actively commercializing a variety of cutting-edge wireless technologies, such as IMT 2000, cdma2000 1ev-do, and W-CDMA, as well as introducing terrestrial and satellite-based digital TV broadcasting. Despite rapid growth in the sector, U.S. suppliers have been hurt by excessive governmental influence over private operators' selection of technologies and interference in issues such as foreign licensing and technology transfers. This governmental influence on the equipment and technology choices of private companies is often implied in the licensing process for operators and is clearly evident in localization policies for procurement. The Korean government’s control over tariff rate approvals, equipment certification, and other regulatory authority provides it the means to exert strong influence over industries' selection of specific standards or technologies.

The Korean government appears to be discouraging use of foreign-sourced goods and services for certain telecommunications applications, while simultaneously supporting development of a national standard for those applications based upon a domestic technology. The Ministry of Information and Communications funds development of domestic telecommunications technologies through its research and development arm, the Electronics and Telecommunications Research Institute (ETRI). The U.S. Government has recently stepped up efforts to urge Korea to ensure that Korea allows fair and open competition in this sector. In particular, the U.S. Government has urged the Korean government not to mandate specific technologies or intervene in private sector negotiations. Failure to do so on Korea’s part would send a negative signal regarding the receptivity of the Korean market to foreign investment.

A key issue for U.S. industry and the U.S. Government is implementation of the domestic Wireless Internet Platform for Interoperability (WIPI) standard for mobile phone applications. The U.S. Government continues to have a number of concerns related to WIPI, including: inappropriate government involvement in the creation, standardization and deployment of WIPI; recent actions taken by the Korean government to discourage Korean telecommunications service providers from subscribing to competing foreign technologies; overly-restrictive WIPI specifications which appear designed to keep competing foreign systems out of the market; and possible infringement on U.S. companies' intellectual property in the creation/promulgation of the WIPI standard. Theses issues have been raised at recent bilateral meetings and the U.S. Government continues to urge the Korean government to fulfill all of its bilateral and multilateral commitments related to the deployment of new standards in the market, whether or not such standards are mandatory. The Korean government has stated that it will not make any decisions on whether to mandate WIPI in the Korean marketplace until it has fully consulted bilaterally and within the WTO.

The Korean government has also announced plans to reallocate the 2.3-gigahertz spectrum to a new portable broadband Internet system and has informed the U.S. Government that it will only permit one technology standard to be used for this service. At the insistence of the United States, the Korean government provided a written justification for its one-technology preference in January 2004. The U.S.

Government and private sector have found serious flaws in Korea’s justification, some of which call into question Korea’s adherence to its bilateral and WTO commitments. As with WIPI, consultations between the governments, which include participation by experts from the private sector, are ongoing.

The Korean government’s plans for deployment of WIPI and broadband Internet in Korea appear indicative of larger policy goals being pursued by the Korean government that could put a serious strain on U.S.-Korea trade relations. The Korean government has publicly initiated an aggressive policy of reducing royalty payments made to foreign firms and encouraging the development of domestic standards and core technologies. The U.S. Government views this development as necessarily discriminatory against foreign technology producers. The U.S. Government has expressed repeatedly its strong concerns that the decision to limit permissible service to a single technology is overly trade restrictive, and that the current selection process discriminates against foreign technology and favors selection of the standard under development by government-funded ETRI.

In the services sector, foreign ownership restrictions, including a ceiling of 49 percent foreign ownership for facilities-based (Type 1) carriers also impede the access of foreign firms in the Korean market. The Korean government divested the government's final holdings in Korea Telecom (KT) in May 2002. The United States believes that full privatization should inject much-needed competition into the market and allow more U.S. suppliers to qualify for KT procurement through locally qualified agents and distributors. However, the true measure of effectiveness of privatization will be demonstrated through KT's commitment to make needed changes to ensure a fair, transparent, and non-discriminatory procurement process.

MALAYSIA

TRADE SUMMARY

The U.S. trade deficit with Malaysia was $14.5 billion in 2003, an increase of $852 million from $13.7 billion in 2002. U.S. goods exports in 2003 were $10.9 billion, up 5.6 percent from the previous year. Corresponding U.S. imports from Malaysia were $25.4 billion, up 6.0 percent. Malaysia 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 Malaysia were $1.1 billion in 2002 (latest data available) and U.S. imports were $498 million. Sales of services by majority U.S.-owned affiliates were $1.7 billion in 2001 (latest data available).

The stock of U.S. foreign direct investment (FDI) in Malaysia in 2002 was $8.6 billion, up from $7.7 billion in 2001. U.S. FDI in Malaysia is concentrated in the manufacturing, mining, and wholesale sectors.

IMPORT POLICIES

Tariffs

Tariffs are the main instrument used to regulate the importation of goods in Malaysia. The simple average applied most-favored nation (MFN) tariff rate is approximately 9.29 percent, but duties for tariff lines where there is significant local production are often higher. For example, 6.8 percent of tariff lines have rates between 16 percent and 20 percent, 16.9 percent of tariff lines have rates that exceed 20 percent, and several lines (such as automobiles) have rates that significantly exceed 100 percent.

The level of tariff protection is generally lower on raw materials and increases 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.

Seventeen 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 relied on high tariffs and an import quota and licensing system on imported motor vehicle parts to protect its automobile manufacturing industry. The government phased-out one element of these protectionist measures on January 1, 2004, when it completely eliminated local content requirements that were inconsistent with its obligations under the World Trade Organization (WTO) Agreement on Trade-Related Investment Measures (TRIMS).

The government announced a reduction in import duties on autos and auto kits beginning January 1, 2004. However, an expanded auto excise tax program went into effect at the same time, which has kept the tax burden on automobiles, on average, unchanged. High import tariffs hamper the efforts of U.S. auto makers trying to compete in the Malaysian market. The tax regime continues to protect two domestic producers: Malaysian automobile manufacturers Proton and Perodua receive a 50 percent rebate on excise taxes that is not made available to any other car makers.

The import duty/excise tax schedule is complex, with the tax level applied varying according to engine capacity. 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:

	Tariff (%)	**Excise (%)**
Automobiles (CBU)	70-200	60-100
Multipurpose Vehicles (CBU)	4-130	30-90
Multipurpose Vehicles (CKD)	0-20	30-90
4WD (CBU)	40-130	50-90
4WD (CKD)	10-20	50-90
Motorcycles (CBU)	40-50	10-50
Motorcycles (CKD)	5-30	10-50

The government has said the automotive tax regime will be amended again in 2005 so that Malaysia can meet its commitments under the ASEAN Free Trade Area (AFTA) agreement. The import duty rate for vehicles with at least 40 percent ASEAN content should fall to 20 percent in 2005, and to 5 percent in 2008. The Malaysian government has not determined whether the excise duty will be adjusted at that time.

Rice Import Policy

The sole authorized importer of rice, a government corporation (Bernas), has wide power to regulate imports and has responsibility for ensuring that domestic crops are purchased.

Textiles

Import duties on textiles and apparel range between 0 percent and 30 percent. Malaysia does not impose import licenses or burdensome labeling requirements on the import of textiles.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Nutritional labeling

Malaysia requires that certain processed, packaged food products sold in Malaysia be 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. Nutrition Labeling Regulations 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. The regulations went into effect September 1, 2003, only five months after they were gazetted, leaving companies a very short transition time to use existing stock. The Ministry of Health extended the enforcement date for the regulations until March 1, 2004.

Halal Certification

All meat, processed meat products, poultry, eggs, and egg products must receive *halal* (produced in accordance with Islamic practices) certification from Pusat Islam (the Islamic Center). U.S. producers have expressed concern that the *halal* certification process is confusing and non-transparent. Each individual product, rather than the plant, must receive *halal* certification. This certificate is issued on the joint recommendation of the Malaysian Department of Veterinary Services in the Ministry of Agriculture and Pusat Islam following an on-site inspection. The government of Malaysia has the right to re-inspect approved plants after one year. In practice, up to three years may elapse before a Malaysian inspection team visits the United States, which limits the opportunities for new products to obtain certification.

Although the government of Malaysia applies no import duty on chicken parts, imports are regulated through licensing and sanitary controls. Import levels remain well below the minimum access commitments established during the Uruguay Round.

Drug Registration

The drug registration process is relatively long, and it can take up to 3 years for some products to gain marketing approval. In early 2003, the National Pharmaceutical Control Bureau indicated that it would no longer approve the registration of pharmaceuticals manufactured or sourced from Indonesia as a retaliatory measure, because Indonesian authorities were not registering Malaysian- manufactured pharmaceuticals. U.S. pharmaceutical companies applying to re-register drugs they manufactured in Indonesia were forced to identify alternative sources to supply the Malaysian market.

GOVERNMENT PROCUREMENT

Malaysia is not party to the plurilateral WTO Government Procurement Agreement. Malaysian government policy calls for procurement to be used to support national public policy objectives, such as 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 service sector, and enhancing Malaysia's export capabilities. As a result, foreign companies do not have the same opportunity as some local companies to compete for contracts and, in most cases, foreign companies are required to take on a local partner before their bids will be considered. Some U.S. companies have voiced concerns about the non-transparent nature of the Malaysian government's procurement decision-making process.

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 exporters at a preferential rate for both post-shipment and pre-shipment credit. 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.

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. Malaysian law provides copyright protection to all works (including video and sound recordings and computer software) published in Berne Convention member countries regardless of when the works were first published in Malaysia. Malaysia has not ratified the WIPO Copyright Treaty or the WIPO Performance and Phonograms Treaty, which extend traditional copyright protections in cyberspace.

Malaysia is also a member of the WTO and a party to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). In 2000, the Malaysian 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 TRIPS obligations. Malaysia does not provide data exclusivity protection, i.e., protection of the dossier submitted by pharmaceutical companies in support of drug registration, as called for under Article 39.3 of TRIPs. The Optical Disc Act 2000 established a licensing and regulatory framework to control the manufacture of copyrighted works 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, to place identification codes (SID codes) on each disk, and to allow regular inspections of their operations.

Optical Media Piracy

Malaysia has a significant problem with piracy of copyrighted materials, particularly optical media products. Malaysia's production capacity for CDs and DVDs far exceeds local demand plus legitimate exports, and pirated products believed to have originated in Malaysia have been identified throughout the Asia-Pacific region, North America, South America, and Europe. As noted above, Malaysia has tightened its laws on intellectual property, but enforcement and prosecution remain an ongoing challenge.

The government is making determined efforts to reduce the 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. A prolonged crackdown in the summer of 2003 had some success in curbing open market sales of pirated goods, and driving much of the sales force underground.

Government and industry cooperation has expanded in the past several years. For example, the Ministry and the Business Software Alliance (BSA) have coordinated several "crackdowns" targeting corporate use of unlicensed software. Police and legal authorities are generally responsive to requests from U.S. firms for investigation of copyright infringement cases. But much work remains in educating the general public about the value of intellectual property rights to the businesses that own them. The government's plan to impose price ceilings on CDs and video CDs, which explicitly cites the high price of original products as a major driver of piracy (see "Other Barriers"), suggests there is room for better understanding of intellectual property issues even within official circles.

The Malaysian government made some progress in prosecuting manufacturers and vendors of pirated goods in 2003. The government took action against sixteen factories licensed under the Optical Disk Act, and sealed their production lines pending prosecution for piracy. Two of those factories subsequently had their licenses revoked. Twelve illegal factories were shut down. Bottlenecks in the judicial system and the courts' lack of familiarity with intellectual property law still have a noticeable adverse effect, however. More than 800 infringement cases are awaiting investigation, and another 124 are pending prosecution.

The International Intellectual Property Association (IIPA) estimates 2002 industry losses in Malaysia due to piracy at $240 million. IIPA estimates 2002 piracy rates at 68 percent for business software, 70 percent for music, and 75 percent for movies. Malaysia has been on the Special 301 Watch List since October 2001 for its failure to substantially reduce pirated optical disc production and export.

Pharmaceuticals

Sales of counterfeit pharmaceuticals are a growing problem in Malaysia. Counterfeit medicines include "drugs" with the wrong ingredients, insufficient active ingredients, and those with fake packaging. The copied drugs are believed to originate in China. Unregistered generic copies of patented products, primarily imported from India, are also available in Malaysia. Both street vendors and health professionals sell the counterfeit products. The counterfeit medicines siphon off profits of legitimate manufacturers, and leave companies vulnerable to lawsuits from patients who may have adverse reactions to the counterfeit products.

Trademarked Consumer Products

A number of U.S. consumer product companies have also suffered significant losses due to the manufacture and sale of counterfeit 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 pirated 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 lack of training and the scarcity of information about ongoing counterfeiting activities. Complicating enforcement of trademark-related violations is a Court of Appeals interpretation of the trademark law that requires enforcement officials have a “Trade Description Order” to conduct criminal raids when the counterfeit product seized is not identical to the trademarked original. Penalties meted out to offenders are small, although higher penalties have been adequately provided for in the Malaysian legal system.

SERVICES BARRIERS

Malaysia’s services sector constitutes about 56 percent of the national economy and remains highly protected. Malaysia has yet to submit an offer for further liberalization of its services sectors in the current round of WTO negotiations.

Basic Telecommunications

Under the WTO Basic Telecommunications Agreement, Malaysia made limited commitments on most basic telecommunications services and partially adopted the reference paper on regulatory commitments. Malaysia guarantees market access and national treatment for these services only through acquisition of up to 30 percent of the shares of existing licensed public telecommunications operators, and limits market access commitments to facilities-based providers. These restrictions constitute one of the most restrictive regimes for an economy of Malaysia’s level of development. Value-added service suppliers are similarly limited to 30 percent foreign equity. Restrictions on these activities tend to benefit the dominant provider, government-controlled Telekom Malaysia, and hamper the development of a more efficient information infrastructure.

Direct Selling

The Malaysian government requirements for the licensing and operation of direct selling companies include a provision that no more than 30 percent of a locally incorporated direct selling company may be foreign-owned. The Ministry also “recommends” local content targets. Local companies that seek multi-level direct selling licenses require paid-up capital of RM 2.5 million ($657,000), while companies with foreign shareholders must have paid-up capital of twice that amount, or RM 5 million ($1.3 million).

Legal Services

Foreign lawyers may not practice Malaysian law or operate as foreign legal consultants, nor may they affiliate with local firms or use their international firm's name. 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. Malaysia limits foreign attorneys' scope of services to advice concerning home country and international law. Malaysian law does not allow for foreign legal consultancy except on a limited basis in the Labuan International Offshore Financial Center (see "Banking" below). 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, the 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 a consulting engineering 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 the Malaysian company is expected to design and is required to submit the plans.

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 recognized overseas professional bodies recognized by Commonwealth countries may apply for registration. Members of the American Institute of Certified Public Accountants (AICPA) are not eligible to become members of the MIA.

Banking

The Malaysian government limits foreign participation in financial services in an effort to encourage the development of domestic financial services providers. The governments policies are guided by the Banking and Financial Institutions Act of 1989 (BAFA) and the ten-year Financial Sector Masterplan unveiled in 2001. The plan is focused on building competitive domestic banks, in large part through banking consolidation, and defers the introduction of new foreign competition until after 2007. Foreign banks currently operate in Malaysia under a grandfathering provision. No new licenses are being granted to either local or foreign banks; foreign banks must operate as locally controlled subsidiaries. However, in September 2003, Bank Negara announced plans to issue three Islamic banking licenses to foreign banks active in the Islamic banking sector. On April 1, 2003, the government removed the restriction that foreign-controlled companies were required to obtain 50 percent of their local credit from Malaysian banks. However, sourcing of funds of more than RM 50 million ($ 13.2 million) from local banks requires approvals from Bank Negara.

The Federal Territory of Labuan was established as an International Offshore Financial Center in October 1990. Foreign investors receive preferential tax treatment for offshore banking activities, trust and fund management, offshore insurance and offshore insurance-related businesses, and offshore investment holding business.

Insurance

The insurance industry remains dominated by foreign providers, including several U.S. firms. The 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. Branches of foreign insurance companies were required to incorporate locally under Malaysian law by June 30, 1998, though the Malaysian government has granted individual extensions. Foreign shareholding exceeding 49 percent is permitted only with Malaysian government approval. As part of the 1997 WTO Financial Services Agreement, Malaysia committed itself 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.

Securities

Malaysia currently allows 49 percent foreign ownership in stock broking companies 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. As of mid-December 2003, foreign participation limits remained unchanged, in part because the consolidation of stock broking firms globally has reduced companies’ interest in having a Malaysian presence. 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. In September 2003, the Securities Commission began allowing foreign firms operating in Malaysia to seek listing on the Kuala Lumpur Stock Exchange.

Advertising

Commercials are restricted to a maximum of 20 percent foreign film content. The 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 (an increase from the previous limit of 60 percent). 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 investments in terrestrial broadcast networks are 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 direct foreign investment, particularly in export-oriented manufacturing and high-tech industries, but retains considerable discretionary authority over individual investments. Especially in the case of investments aimed at the domestic market, it has used this authority to restrict foreign equity (normally to 30 percent) and to require foreign firms to enter into joint ventures with local partners. To alleviate the effects of the regional economic crisis, in 1998 Malaysia temporarily relaxed foreign-ownership and export requirements in the manufacturing sector for those companies that do not directly compete with local producers. In June 2003, the government extended indefinitely the policy permitting 100 percent foreign ownership in new investment and expansion of existing investments in manufacturing concerns. Malaysia continues to suffer shortages of skilled and technical employees, 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 government released new guidelines liberalizing the policy on employment of expatriates in the manufacturing sector. Manufacturing companies with foreign paid-up capital of at least $ 2 million receive automatic approval for up to 10 expatriate posts.

ELECTRONIC COMMERCE

Malaysia currently applies no special 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 Internet unless the engineer is properly licensed.

OTHER BARRIERS

Price Controls

In July 2003, the Ministry of Domestic Trade and Consumer Affairs announced it would impose a ceiling on the retail price of all optical disk media. The government said it was motivated by a desire to undercut trade in counterfeit movies and music by lowering the price of legitimate products. Industry groups and the U.S. Government countered that the move represented an unfair restriction on market access, and would do little to combat piracy. After further consideration, the Ministry amended the price control plan to apply only to CDs and video CDs produced in Malaysia. The government has since postponed the scheduled enactment date from January 1, 2004 to April 1, 2004.

Transparency

U.S. companies have indicated that they would welcome improvements in the transparency of Malaysian government decision-making and procedures, and limits on anticompetitive practices. A considerable proportion of government projects and procurement is awarded without transparent, competitive bidding. After taking office in October 2003, Prime Minister Abdullah Badawi announced that the government would introduce open tenders for government procurements and major projects, with direct negotiations limited to special cases. The Malaysian government has declared that it is committed to fighting corruption. To promote that objective, Malaysia maintains an Anti-Corruption Agency (ACA) that 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.

MEXICO

TRADE SUMMARY

Two-way trade between the United States and Mexico grew from $81.5 billion in 1993 to $235.5 billion in 2003. United States trade with Mexico has grown at an average annual rate of 11 percent since implementation of the NAFTA, which contributes to Mexico's status as the United States' second largest trading partner since 1999. Approximately 89 percent of Mexico's exports go to the United States, while 62 percent of Mexico's imported goods come from the United States. In 2003, Mexico held an 11 percent share of total U.S. imports.

United States goods exports to Mexico were $97.5 billion in 2003, virtually unchanged from the previous year. Imports from Mexico were $138.1 billion, an increase of 2.6 percent from 2002. The United States trade deficit with Mexico for 2003 was $40.6 billion, an increase of $3.5 billion from the 2002 deficit.

Mexico has signed a total of 11 free trade agreements with 33 trade partners, including the European Union, Chile, the five economies of the Central American Common Market, and Israel. The newest of these agreements is an FTA with Uruguay, which President Fox signed in November 2003 – the first FTA achieved under the Fox Administration. The number of countries with which Mexico enjoys FTAs will grow to 43 in May 2004, with the accession of 10 new members into the European Union and their inclusion in the Mexico-EU FTA.

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. The NAFTA progressively eliminates tariffs and non-tariff barriers to trade in goods; improves access for services trade; establishes rules for 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. Remaining tariffs and non-tariff restrictions on corn, sugar, dairy products and dried beans will be phased out by January 1, 2008. Mexico's average duty on U.S. goods has fallen from 10 percent prior to the NAFTA to less than 0.1 percent today.

Trade growth in agricultural products has in fact been remarkably balanced since the NAFTA was implemented, with U.S. exports increasing by 118 percent from 1993 to 2003, and imports from Mexico increasing by 131 percent. However the numbers are less balanced when considering only non-agricultural trade. U.S. imports from Mexico grew 251 percent, compared with U.S. export growth of 139 percent from 1993 to 2002.

A number of U.S. exports are subject to antidumping duties, which limit access to the Mexican market. Products subject to these duties currently include beef, apples, rice, liquid caustic soda, ammonium sulfate, polyvinyl chloride, bond paper, and corrugated rods. Mexico initiated antidumping investigations of pork, industrial fatty acids, stearic acid and welded carbon steel pipe and tube in 2003. As part of an agreement with the United States, Mexico also imposed safeguards on poultry leg quarters in July of 2003. The United States exempted Mexico from the recently ended safeguard action on steel.

On January 1, 2001, as required by NAFTA Article 303, Mexico implemented limitations on the use of duty drawback and duty deferral programs. Therefore, the duties waived for non-NAFTA originating goods incorporated into products that are subsequently exported to the United States or Canada may not exceed the lesser of: (a) the total amount of customs duties paid or owed on the good initially imported; or (b) the total amount of customs duties paid to another NAFTA government on the good, or the product into which the good is incorporated, when it is subsequently exported.

To minimize the increase in input costs for its manufacturers as a result of these new limitations, Mexico created several “Sectoral Promotion Programs” (PROSECS). PROSECS reduce the MFN applied tariffs (often to zero) on items in over 16,000 tariff categories used to produce specified products in 22 industries. While the industries and items eligible for the reductions are those of greatest importance to the temporary import (maquiladora) sector, the reduced tariffs are available to all qualifying producers, regardless of nationality, and do not condition benefits on subsequent exportation.

Implementation of NAFTA Article 303 continues the process of integrating maquiladoras into Mexico’s domestic economy. During 2003, the Mexican government implemented a series of measures to reduce regulatory barriers for the maquiladora sector. The United States continues to monitor the consistency of Mexico’s PROSEC programs with the NAFTA.

On January 1, 2002, Mexico published amendments to its Income Tax Law that appear to discriminate against small retailers and distributors that sell imported products by subjecting them to higher taxes and more burdensome administrative reporting requirements. Article 137 precludes small companies that sell imported products from qualifying as “small contributors” for tax purposes, even if they meet all other qualifications (e.g., annual income limit of less than approximately $150,000 per year). As a result, small companies selling imported goods are categorized as “medium contributors,” with an annual income not to exceed $400,000. Meanwhile, small companies only selling products produced domestically can continue to enjoy the “small contributor” status. Officials have raised this matter with the Government of Mexico.

Agricultural Products

The United States exported $7.9 billion in agricultural products to Mexico in 2003, a new record. Mexico is the United States’ third largest agricultural market. Under NAFTA, Mexico has eliminated nearly all import tariffs and tariff-rate quotas on agricultural products from the United States. As of January 1, 2003, the only U.S. agricultural exports subject to tariffs or tariff-rate quotas are corn, sugar, dry beans, chicken leg quarters, and non-fat dry milk.

Mexico’s Secretariat of Economy (SECON) continued antidumping duties on beef, rice, and apples, while eliminating antidumping duties on live hogs. SECON has also initiated an antidumping investigation on U.S. pork. Concerns about Mexico’s methodology for determining injury to the Mexican domestic industry and for calculating dumping margins in the rice case have led the U.S. to challenge the antidumping measure at the WTO. In the case of beef product exports, the dumping duty rates assigned to individual companies only apply to beef aged less than 30 days and graded Choice or Select; for all other cuts of beef subject to the order, the higher rate applies. These policies have reduced the number of U.S. suppliers and have altered product trading patterns. Industry believes that between $100 million to $500 million is lost each year due to dumping duties in this sector.

In July 2003, Mexico imposed a 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 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.

Mexico’s cattlemen have also submitted a proposal for a global safeguard on beef. SECON has not yet decided if it will conduct a beef safeguard investigation.

On December 31, 2001, the Mexican Congress approved a 20-percent consumption tax on certain beverages sweetened with ingredients other than cane sugar, including HFCS. This action has prevented a settlement of broader sweetener disputes between the United States and Mexico. Industry estimates that the cost of this trade barrier to the United States is roughly $200 million in U.S. corn and HFCS exports and $800 million in U.S. investment in Mexico. HFCS sales fell well below prior volumes, as bottling companies in Mexico switched to cane sugar. On March 5, 2002, the Fox Administration suspended the tax for a period of seven months; however, the Supreme Court ruled this action unconstitutional and reinstated the consumption tax on July 12, 2002. The tax was renewed by the Mexican Congress for 2003 and 2004. On March 16, 2004, the United States requested consultations under the dispute settlement procedures of the WTO.

In late 2002, Mexico announced its “Agricultural Armor” initiative, a package of measures designed to keep Mexican agriculture competitive. The initiative calls for measures to increase sanitary, phytosanitary and food safety inspections and impose quality standards. The initiative also proposed modifications to Mexico's antidumping and countervailing duty laws, which resulted in amendments to the Foreign Trade Law in early 2003. The United States is challenging several of these provisions before the WTO. On April 28, 2003, the Government of Mexico and producer groups signed the National Agricultural Accord. The document’s most specific measures echo what was contained in Mexico’s Agricultural Armor package, such as stricter enforcement of sanitary and phytosanitary measures. In addition, the agreement proposes approaching Canada and the United States to investigate the possibility of revising the dry bean and white corn provisions of the NAFTA.

Sanitary and Phytosanitary Issues

Mexican sanitary and phytosanitary standards 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, and table eggs. In addition, procedural requirements regarding sanitary and phytosanitary inspections at the port-of-entry often do not reflect agreements reached between U.S. Department of Agriculture officials and the Mexican Secretariat of Agriculture, resulting in unnecessary delays at the border, seaports, and airports. In 2003, significant quantities of imports were rejected or delayed at the border. Disagreements over the prevalence of certain pests and certain administrative requirements led to a delay in the implementation of the California Stone Fruit protocol in 2003 and 2004, which provides for a systems approach to prevent transmission of quarantinable pests. Because of this delay in implementing the systems approach protocol, the U.S. industry is reverting to more costly fumigation procedures. Similarly, in October 2001, the Mexican quarantine monitoring system for apples was to have been transferred to APHIS. While all but one Mexican inspector was withdrawn from the State of Washington, the program remains in operation and the final transfer is subject to additional reviews. Also, Mexican plant quarantine authorities have notified APHIS of their intent to add new pests to their lists of quarantine concerns, even though no quarantine pests have been detected in over 52 million boxes of apples the United States has shipped to Mexico since 1993. USTR and USDA have raised these issues several times over the last year, including jointly in the bilateral Consultative Committee on Agriculture.

Mexico banned imports of U.S. beef in December 2003 with the detection of one positive case of Bovine Spongiform Encephalopathy (BSE) in the State of Washington. Mexico announced in March it would accept U.S. boxed beef under 30 months of age. As of the publication of this report, the U.S. government is taking aggressive action and is working intensively to fully re-open the market as quickly as possible. In addition, the United States is working in the International Organization for Epizootics to revise international standards on BSE to reflect current scientific knowledge.

Despite the eradication of Low Pathogenic Avian Influenza (LPAI) in eight U.S. states, Mexico maintains a complete ban on all poultry products from those states. Mexico continues to restrict imports from three U.S. states where Exotic Newcastle Disease was detected in poultry in early 2003.

Administrative Procedures and Customs Practices

U.S. exporters continue to complain about Mexican customs administration procedures, including the lack of sufficient prior notification of procedural changes; inconsistent interpretation of regulatory requirements for imports at different border posts; and discriminatory and uneven enforcement of Mexican standards and labeling rules. 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, though Mexico has raised the *de minimis* level to fifty dollars from one dollar. However, Mexican regulation still holds the courier 100 percent liable for the contents of shipments.

To be eligible to import any of well over 400 different items, including agricultural products, textiles, chemicals, electronics and auto parts, Mexican importers must apply to the Secretariat of Finance and Public Credit (SHCP) and be listed on a special industry sector registry. U.S. exporters complain that the registry 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. Mexico 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 six months, and then only 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 $1,500 to open an account for this purpose and $250 for each transaction, making this a burdensome and costly regulation for businesses on both sides of the border. The United States and Mexican governments are discussing an exchange of customs data for security purposes that would result in the lifting of the estimated pricing regime.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Changes to the 1997 Federal Metrology and Standardization Law provided for greater transparency in the rules applicable to technical regulations and voluntary standards. However, the Mexican government continues to consider certain regulations to be executive orders that are allegedly exempt from WTO and NAFTA rules concerning notification and comment periods.

Under NAFTA, Mexico was required, starting January 1, 1998, to recognize conformity assessment bodies in the United States and Canada on terms no less favorable than those applied in Mexico. To date, no U.S. certification bodies have been recognized by Mexico.

U.S. exporters have complained that standards are enforced more strictly for imports than for domestically produced products, and of inconsistencies in the treatment of goods among ports of entry. Mexico has over 700 mandatory technical regulations (NOMs) issued by a number of different agencies, each with its own compliance procedures. Only the Secretariat of Economy and the Secretariat of Agriculture (for a limited subsector of its NOMs) have published their procedures. After discussions with the United States government, the Secretariat of Economy implemented procedures in 2000 designed to reduce the cost of exports to Mexico by allowing U.S. manufacturers and exporters to hold title to a NOM certificate of compliance (an official document certifying that a particular good complies with applicable standards) and assign it to as many distributors in Mexico as needed to cover the market. Previously, only Mexican producers or importers were allowed to obtain a NOM certificate posing a problem for U.S. firms using multiple importers. Each importer had to pay to have the exact same product tested at a Mexican lab every year. The costs associated with this redundant testing was industry's main complaint. While the new procedures were supposed to address redundant testing requirements, U.S. firms are complaining that the certification bodies have increased the cost of certification and are charging for certificates to be assigned to other entities. In addition, key Mexican ministries such as Health, Energy and Labor have yet to publish their product procedures.

The Mexican government, citing the need to ensure the quality of Mexican tequila, is considering amending the official standard for tequila to require that tequila be "bottled at the source." Currently, the Mexican standard requires that only "100 percent agave" tequila be bottled at the source. Ordinary tequila can be sold and exported in bulk form under the current official standard. If the draft standard prepared in 2003 is adopted, it will require that all tequila be bottled within the territory of the Mexican appellation of origin, and bulk exports will be prohibited.

The United States is Mexico's largest export market for tequila, accounting for 50 percent of Mexican production. In 2003, the United States imported over $402 million in tequila. Approximately 77 percent of the total volume was tequila in bulk form. Government officials and industry stakeholders from the NAFTA partners are engaged in consultations, with the aim of removing the export ban from the proposed standard.

U.S. exporters of certain vitamins, nutritional supplements, and herbal remedies have reported that Mexico's revised health law regulations impede access to the Mexican market. While the Mexican government has stated that it is looking at ways to address these concerns consistent with WTO and NAFTA obligations, the U.S. Government has seen no progress. According to industry's estimates, the cost of this trade barrier to the United States is over $500 million each year.

GOVERNMENT PROCUREMENT

Mexico's efforts to make its government procurement regime more transparent through policies and technologies 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. According to the Mexican Secretariat of Public Administration, 321 government offices processed 3,800 electronic transactions for procurement through Compranet in 2002.

In addition to continuing allegations of corruption, several problems remain with Mexico's procurement market. The NAFTA Government Procurement Chapter allowed Mexico to cover only a temporary, narrow list of services, based on the requirement that it would develop a complete list of covered services by July 1, 1995. However, Mexico has not yet completed the permanent list.

NAFTA provides for the gradual increase of U.S. suppliers' access to purchases by the two largest Mexican procuring authorities, Mexico's parastatal petroleum and electricity monopolies, PEMEX and the Federal Electricity Commission (CFE). As of January 1, 2003, NAFTA limits the total value of contracts that PEMEX and CFE may remove from coverage under NAFTA to $300 million per year. The United States has not been able to confirm whether this commitment has been properly implemented, as Mexico has not provided the statistics called for under NAFTA.

The United States also has concerns with CFE procurement practices, in particular its domestic content requirements in procurements for sub-stations and transmission lines. Also, as a result of CFE's decentralization of its procurement activities in 2002, the number of procurements covered by the NAFTA has been reduced.

The United States has raised with the Government of Mexico the concerns of suppliers with regard to additional fees that PEMEX includes in procurement for offshore platforms. PEMEX applies supervision fees to bids for platforms to be built outside of Mexican territory and assesses transportation fees on a nautical mile that disadvantage suppliers based outside of Mexico. These fees significantly diminish U.S. suppliers' access and raise concerns under NAFTA.

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 for the protection of intellectual property and procedures to address infringement such as piracy and counterfeiting. Although Mexican legislation on IPR matters is quite comprehensive, the enforcement of these IPR laws is limited and sporadic. Monetary sanctions and penalties are minimal and generally ineffective in deterring these 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 put back on in 2003 due to enforcement concerns.

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 are improving, piracy levels continue to rise, resulting in closures of legitimate copyright-related businesses, according to industry sources. Counterfeit sound and motion picture recordings are widely available throughout Mexico, crippling the Mexican music industry. The International Intellectual Property Alliance (IIPA) estimates that trade losses due to copyright piracy in Mexico totaled $718 million in 2002. Piracy levels in some industries have declined since 1996. For instance, industry estimates that the business software piracy level decreased from 67 percent in 1996 to 55 percent in 2002. Although levels of music piracy are down from last year, dropping from 68 percent in 2002 to 60 percent in 2003, the music industry in Mexico suffered one of its worst years in recent history. Of all pirated music sales in Mexico in 2003, 90 percent were of Spanish speaking artists. Industry associations report that piracy has begun to shift from traditional formats to optical discs (CD, DVD, CD-ROM). This is particularly troubling, as content in digital form is easier to reproduce on a large scale.

In July 2003, the Mexican Congress amended the Mexican copyright law. These amendments fail to address the comprehensive reforms needed by Mexico to: (1) effectively implement the obligations of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (Mexico is a party to both agreements); and (2) correct existing incompatibilities in the law with Mexico's obligations under the NAFTA IPR Chapter and the WTO TRIPS Agreement. Implementing regulations that Mexico has indicated would address these concerns were to have been published by the end of October 2003 but as of January 2004 have not yet been made available. The United States has been urging Mexico to meet its various obligations by issuing satisfactory implementing regulations.

Mexican law enforcement agencies have conducted hundreds of raids on pirates. In 2003, the Attorney General's Office created an IPR enforcement unit, which combines federal prosecutors and police to make the enforcement regime more effective and efficient. Industry representatives report that raids against counterfeiting operations have improved from 2002 and there has been improved access to prosecutors. Despite increased raids and seizures of counterfeit material, only three of the 900 counterfeiters who were arrested in 2002 and 2003 received sentences greater than one year, thus undercutting the deterrent effect of the raids and arrests. Very few IPR violations result in prison terms. As a result, counterfeiters are often released and return to the street.

Patent, Trademark, Pharmaceutical and Agricultural Chemical 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 Secretary of Economy. Some U.S. trademark holders have encountered difficulties in enjoining former subsidiaries and franchisees from continued use of their trademarks.

U.S. companies holding trademarks in Mexico have cited problems with trademark enforcement and administration. When counterfeit items are discovered, injunctions against trademark violators are often unenforceable and are consistently challenged before the courts. Although 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 IMPI. Trademark applications in Mexico are not subject to opposition. Registrations are issued and can only be canceled post-registration. On average, it takes two and a half years to cancel a trademark registration, and the registrant is allowed to continue using the mark for one year following cancellation.

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 copies of patented pharmaceuticals. In 2003 the Mexican Ministry of Health agreed that starting with purchases scheduled for delivery on January 1, 2003, IMSS (Mexican Social Security Institute) and possibly ISSTE (Social Security Institute for Government Workers) would purchase only patented products where a patent already exists in Mexico.

In the past, the Mexican Ministry of Health granted health registrations to generic products without verifying with IMPI whether a patent already existed for such products. In September 2003, the Ministries of Health and Economy implemented a Presidential decree that requires applicants for safety and health registrations to 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, submitting companies can now be subject to both civil and criminal proceedings for false submissions.

Border Enforcement of IPR

NAFTA Article 1718 and Article 51 of the TRIPS Agreement obligate Mexico to allow U.S. intellectual property rights holders to apply to Mexican authorities for suspension of release of goods with counterfeit trademarks or pirated copyright goods. Intellectual property rights owners seeking to use the procedure must obtain an order from a competent authority that directs customs officials to detain the merchandise. Companies requesting such actions report positive outcomes.

SERVICES BARRIERS

Telecommunications

Mexico's former state-owned telecommunications monopoly (Telmex) continues to dominate Mexico's telecom sector. Competition in the sector has been hampered by the inability of Mexico's telecommunications regulator (Cofetel) to enforce its own regulatory findings. Enforcement authority resides with the Secretariat of Communications and Transportation (SCT), which has been slow to act against Telmex. Telmex competitors complain of inaction by both Cofetel and the SCT in resolving disputes, resulting in many cases lingering for months or years without resolution. Failure to ensure non-discriminatory quality of service for interconnection, highlighted by a Cofetel report documenting the inferior quality Telmex provided to competitors, is particularly troubling. In cases where the government has taken action, Telmex has successfully used court-ordered injunctions to prevent enforcement against it. For example, an injunction has prevented the SCT from enforcing a regulatory ruling requiring Telmex's wireless affiliate (Telcel) to adopt competitively neutral numbering rules. Legislation to reform the telecommunications sector is pending in the Mexican Congress. Meanwhile, the Fox Administration is expected to issue Executive Orders reorganizing the regulatory structures and transferring enforcement authority from SCT to Cofetel.

Mexico has also failed to address much-needed reform to its international rules. Mexico's international long distance rules grant Telmex the exclusive authority to negotiate interconnection rates for cross-border traffic on behalf of all Mexican carriers and prevent foreign carriers from using leased lines to bring calls directly into the domestic network. The United States has repeatedly raised concerns regarding the WTO-consistency of Mexico's international telecom regime and on February 13, 2002, the United States requested formation of a WTO dispute settlement panel arguing that Mexico has failed to fulfill its WTO obligations to ensure that international interconnection rates are cost-oriented and that leased lines are available. The WTO panel issued its final report in March 2004. The panel found that Mexico breached its commitment to ensure that U.S. carriers are afforded cost-based interconnection and that Mexico failed to prevent its dominant carrier from engaging in anti-competitive practices.

INVESTMENT BARRIERS

Ownership Reservations

Mexico's Constitution and Foreign Investment Law of 1992 reserve ownership of certain sectors, such as oil and gas extraction, to the state; other laws limit activities to Mexican nationals, such as forestry exploitation, and domestic air and maritime transportation. This reservation is incorporated into the NAFTA. In addition, only Mexican nationals may own gasoline stations. Gasoline is supplied by PEMEX, the state-owned petroleum monopoly, and gasoline stations sell only PEMEX lubricants, although other lubricants are manufactured and sold in Mexico. A national foreign investment commission decides questions of foreign investment in Mexico. Investment restrictions prohibit foreign ownership of residential real property within 50 kilometers of the nation’s coasts and 100 kilometers of its borders. However, foreigners may acquire the effective use of residential property in the restricted zones through trusts administered by Mexican banks.

MOROCCO

TRADE OVERVIEW

Morocco is an emerging market at the crossroads of Europe, Africa, and the Middle East that imports $11 billion worth of goods each year. The United States currently exports goods valuing an average of $475 million worth to Morocco each year. Leading exports include aircraft, corn, and machinery. Recently, exports of fabrics and pharmaceuticals have increased significantly.

Morocco has begun implementing an Association Agreement with the European Union (EU), which provides preferential tariff treatment for most EU industrial and some agriculture exports to Morocco, putting American producers at a comparative disadvantage. The recently enacted United States – Morocco Free Trade Agreement (FTA) will improve U.S. exporters' goods and services competitiveness in this market.

IMPORT POLICIES

Currently, U.S. goods entering Morocco face an average tariff of over 20 percent.

Under the FTA, when enacted, U.S. exports will receive more favorable tariff treatment. More than 95 percent of bilateral trade in consumer and industrial products will become duty-free immediately upon entry into force of the FTA, with all remaining tariffs to be eliminated within nine years – the best market access package of any U.S. free trade agreement with a developing country. Key U.S. export sectors gain immediately duty-free access to Morocco, such as information technologies, machinery, construction equipment and chemicals.

U.S. textile products will also gain enhanced access to the Moroccan market. For certain sensitive products, imports to Morocco will be subject to TRQs that will grow in the future for the United States and Morocco.

CUSTOMS

The FTA, when enacted, will require improvement in the transparency, efficiency and administration of the Moroccan customs regime, effectively improving access to the Moroccan market for U.S. exports. The FTA requires customs procedures designed to facilitate the rapid clearance through customs of express delivery shipments. While rules of origin are designed to ensure that only U.S. and Moroccan goods benefit from the increased access under the FTA, they are also designed to be easy to administer and are consistent with other U.S. free trade agreements in the region.

In addition to the high standard obligations that Morocco is adopting in the FTA, the United States will be providing targeted technical assistance to implement the agreement.

STANDARDS, TESTING, LICENSING, AND LABELING

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 requires Morocco to make its system more transparent and open In particular, the agreement 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 has provided export subsidies to reduce transportation costs for tomatoes. The FTA requires the Moroccans to end this practice and to not otherwise provide export subsidies.

SERVICES

Morocco effectively prevents U.S. service firms from competing in large segments of Morocco’s service economy. The government has either stipulated outright bans on foreign participation in the domestic market and/or included onerous ownership requirements or business operating practices.

The FTA accords U.S. firms substantial market access across its entire service regime, subject to very few exceptions. Key service sectors covered by the agreement include audiovisual, express delivery, telecommunications, computer and related services, distribution, and construction and engineering.

The FTA provides benefits for businesses wishing to supply services cross-border as well as businesses wishing to establish a presence locally in the other country.

Under the agreement, Morocco will also be 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 will be able to lease lines from Morocco's dominant carrier, and to re-sell telecom services to build a customer base.

Investment Barriers

The United States and Morocco have a Bilateral Investment Treaty (BIT), which entered into force in 1991. The FTA updates the legal framework for U.S. investors operating in Morocco. All forms of investment will be 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 U.S. inputs for goods manufactured in Morocco.

Agriculture

The Moroccan agriculture sector is dominated by traditional small-scale farmers, particularly grain farmers. The Moroccan trade regime is designed to maintain this status quo, particularly through the imposition of high, prohibitive tariffs. These tariffs have created significant barriers to trade for U.S. exporters. For example, tariffs on poultry and beef products range up to 124 and 275 percent respectively on an applied basis.

Tariffs on virtually all U.S. farm exports to Morocco will be phased-out within 15 years, while the FTA also takes into the unique circumstances facing Morocco’s agriculture sector. U.S. farmers and ranchers of poultry and beef (products that have been kept out of the market due to high tariffs) will benefit from new tariff-rate quotas that grow over time. U.S. wheat producers will benefit from new tariff-rate quotas on durum and common wheat that have the potential to lead to significant increases in exports over recent levels.

Tariffs on goods such as corn and corn products, sorghum, soybeans and soybean meal will be eliminated immediately or eliminated in a short amount of time.

INTELLECTUAL PROPERTY (IPR) PROTECTION

Moroccan IPR laws and enforcement of these laws 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 U.S. IPR concerns. The agreement's strong anti-piracy provisions mandate both statutory and actual damages under Moroccan law for IPR violations. Under these anti-piracy provisions, monetary damages can be awarded even if actual economic harm (retail value, profits made by violators) cannot be determined. 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 criminalize end-user piracy.

The FTA further expands the protection of trademarks, copyrights, patents and trade secrets. Protection extends to cover state-of-the-art elements such as trademark disputes used in Internet domain names and strong anti-circumvention provisions to prohibit the tampering of technologies designed to prevent piracy and unauthorized distribution over the Internet.

OTHER BARRIERS

Lack of transparency and regulatory predictability have been inhibitors to U.S. access to the Moroccan market.

Under the FTA, when enacted, each government must publish its laws and regulations governing trade and investment, and, beginning within one year, publish proposed regulations in advance and provide an opportunity for public comment on them. The Moroccan government will commit 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. trade deficit with New Zealand was $555 million in 2003, an increase of $86 million from $469 million in 2002. U.S. goods exports in 2003 were $1.8 billion, an increase of 2.0 percent from the previous year. Corresponding U.S. imports from New Zealand were $2.4 billion, up 5.3 percent. New Zealand is currently the 41st largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to New Zealand were $1.0 billion in 2002, and U.S. imports were $914 million. Sales of services in New Zealand by majority U.S.-owned affiliates were $869 million in 1998, while sales of services in the United States by majority New Zealand-owned firms were $25 million in 200l.

The stock of U.S. foreign direct investment (FDI) in New Zealand in 2002 was $4.4 billion, roughly the same as in 2001. U.S. FDI in New Zealand is concentrated largely in finance, wholesale, and manufacturing sectors.

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 Labor government, elected in 1999, decided to freeze further reductions until at least July 2005. The New Zealand government announced in September 2003 the resumption of unilateral tariff reductions, ending the six-year freeze on rates. On July 1, 2006, New Zealand plans to begin gradually reducing its highest tariff rates of between 17 percent and 19 percent to 10 percent by July 1, 2009. The top rates apply mostly to clothing, footwear, carpets, and certain autos and auto parts. *Ad valorem* tariffs on other goods also will gradually be reduced to 5 percent by July 1, 2008. The New Zealand government will conduct a review in 2006 to determine rates after July 1, 2009.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Biotechnology Commercial Release Moratorium

New Zealand's Parliament passed the New Organisms and Other Matters (NOOM) Bill 2003 on October 14, 2003, ending New Zealand’s moratorium on acceptance of applications for the commercial release of products produced through modern agricultural biotechnology into the environment. The new law puts in place a revised regulatory framework by amending the Hazardous Substances and New Organisms (HSNO) Act 1966, under which the moratorium was scheduled to sunset on October 29, 2003.

New Zealand's commercial release moratorium had precluded applications for the commercial planting of biotechnology crops, the commercial importation of biotechnology seeds, and the release into the environment of biotechnology animals. It did not, however, affect the use and sale of processed biotechnology foods and ingredients or veterinary medicines.

The NOOM Bill 2003 provides for a new conditional release category of approval for new organisms, including biotechnology products. This will permit New Zealand's Environmental Risk Management Authority (ERMA) to accept for review and its approval applications for release of biotechnology products with controls applied on a case-by-case basis. Under the provisions of the NOOM Bill, ERMA now will be able to approve a conditional release for biotechnology products that will allow field trial activity to expand from the limited scope of a fully contained trial to larger farm scale, encouraging ongoing research activity in New Zealand. Products from large-scale conditional field trials that ERMA may now approve could be sold domestically if the terms of project approval do not explicitly preclude such sales.

Biotechnology Food Approval

Imported biotechnology foods can be offered for sale and consumption in New Zealand after being assessed and approved by Food Standards Australia New Zealand (FSANZ) under delegated authority of the New Zealand Food Safety Authority (NZFSA). In mid-1999, a mandatory standard for foods produced using modern biotechnology came into effect. The standard established under the Food Act 1981 prohibits the sale of food produced using gene technology, unless the food has been assessed by FSANZ and listed in the food code standard. FSANZ had received 26 applications for safety assessments of bioengineered foods as of December 2003. Of these, 22 had been approved, two applications were being processed, and two approval requests were withdrawn.

Biotechnology Food Labeling

Mandatory labeling requirements for foods produced using gene technology became effective in December 2001. Biotechnology labeling is required if a food in its final form contains detectable DNA or protein resulting from the application of biotechnology, with a few exceptions. Meeting New Zealand's biotechnology food labeling regulations places a burden on manufacturers, packers, importers, and retailers, particularly U.S. agricultural exports, which consist primarily of processed food. Wholesalers and retailers frequently demand biotechnology-free declarations from their supplier/importer, which passes liability in the event of biotechnology labeling non-compliance back to 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. Individuals and companies found to be in non-compliance with biotechnology food labeling requirements may be assessed penalties under the Food Act 1981. The New Zealand government is reviewing authorized penalties stipulated under the act to make sure that they represent an adequate economic deterrent. New Zealand food retailers are discouraged from sourcing biotechnology food products, in part because of these regulations.

Sanitary and Phytosanitary (SPS) Measures

New Zealand maintains a strict regime of SPS control for virtually all imports of agricultural products. The United States and New Zealand have held discussions on New Zealand’s highly conservative regulatory approach as well as on specific SPS issues. The two sides continue to make progress in addressing specific issues that negatively impact trade in products supplied by the United States.

Table Grapes. The New Zealand Ministry of Agriculture (MAF) issued a new Import Health Standard (IHS) for the import of table grapes from California that effectively reopened trade to U.S. exporters. The IHS contains specific mitigation measures, which were reached following consultations with the U.S. Department of Agriculture, to address the detection of post-border, black widow and other exotic spiders. As of December 2003, no significant biosecurity breaches were reported to the New Zealand government following the resumption of trade. The United States is requesting a modification of these mitigation measures that will reduce costs to U.S. exporters and New Zealand importers without compromising New Zealand’s biosecurity standards.

Pork Meat. In June 2002, New Zealand modified its regulations imposed a year earlier requiring pork meat products imported from countries with porcine reproductive and respiratory syndrome (PRRS), including the United States, to be cooked to a certain temperature, either before export or after import in special facilities in New Zealand. The cooking requirement results in a darker meat color, which tends to be negatively received by consumers. New Zealand further modified its import regulations, allowing pig meat products from the United States to be microwave treated. The Ministry of Agriculture indicated that it remains willing to consider scientific evidence that would justify a review of its import health standard for pork meat.

Poultry Meat. New Zealand implemented measures that suspended the importation of poultry meat from various nations, including the United States, in late 2001 because of the risk of introducing infectious bursal disease (IBD). U.S. exporters currently are unable to sell uncooked poultry meat to New Zealand, while cooked poultry meat is restricted to canned products. Discussions between the United States and New Zealand on this issue continue.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In October 2003, the New Zealand Parliament enacted a ban on the parallel importation of films, videos and DVDs for the initial nine months after a film's international release. The ban applies only to film media, not to parallel importation of music, software and books. It is scheduled to sunset in five years, unless extended.

The new legislation, which amended the Copyright Act 1994, also makes 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.

The ban, however, fails to roll back all the provisions of the New Zealand government's 1998 amendment to the Copyright Act, which had legalized parallel imports of films, videos, music, software and books. Whereas the new legislation addressed many of the U.S. film industry's concerns about parallel importing, other U.S. industries, particularly producers and distributors of music and software, have voiced concerns that allowing parallel imports makes it more difficult to detect and combat piracy and erodes the value of their products in New Zealand and in third country markets.

In June 2003, the New Zealand government proposed amendments to the 1994 Copyright Act to make it more consistent with the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). The amendments are intended to reflect developments in digital technologies and international developments in copyright law, and are expected to be introduced in 2004. If this legislation passes, the New Zealand government will determine whether to accede to the WCT and WPPT treaties.

New Zealand also took a number of actions to strengthen its IPR enforcement regime. To deter counterfeiting and copyright piracy the Trade Marks Act 2002, which entered into force in August 2003, creates new criminal offenses for counterfeiting trademarks and increases the penalties for pirating copyright goods. For those offenses, the act provides for penalties of up to NZ $150,000 (US $97,065) in fines or up to five years' imprisonment.

The pharmaceutical industry is concerned about an amendment, enacted in December 2002, to the Patents Act 1953. The amendment provides that it is not a patent infringement for a person to make, use, exercise or vend an invention for purposes related to gaining regulatory approval in New Zealand or other countries. This amendment was passed quickly and not as part of an ongoing and thorough review of the Patents Act. The pharmaceutical industry has expressed strong concerns over this "springboarding" legislation, including its rapid passage, which did not allow adequate opportunity for public comment.

In June 2003, the New Zealand government issued a discussion paper about the possibility of extending the patent term for pharmaceuticals. In a submission to the New Zealand government, the pharmaceutical industry group, Researched Medicines Industry Association of New Zealand, contended that New Zealand's effective patent life for pharmaceuticals had been substantially eroded and recommended adoption of a supplementary protection certificate arrangement, similar to those used in a number of OECD and European Union countries. This would effectively extend patent protection.

The United States continues to monitor developments in IPR issues closely.

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 otherwise would consider mandatory quotas. While 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.

INVESTMENT BARRIERS

Investment Screening

New Zealand screens certain types of foreign investment through the Overseas Investment Commission (OIC). The OIC must approve foreign acquisition or control of more than 25 percent of businesses/property worth more than NZ $50 million (US $32.4 million); land over 5 hectares and/or worth more than NZ $10 million ($6.5 million); and land in certain sensitive or protected areas. The OIC is charged with considering whether overseas persons have the necessary experience to manage the investment. Any application involving land in any form (roughly 70 percent of applications received) also must meet a vague national interest test. The United States has raised concerns about the continued use of this screening mechanism. New Zealand's commitments under the GATS Agreement of the WTO are limited as a result of New Zealand's screening program.

In November 2003, amid a growing public outcry about foreigners buying coastal properties, the New Zealand government called for a review of the OIC's powers. The review is to consider several questions, including whether compliance costs for business transactions could be reduced and whether criteria for approval should be extended to include historical, cultural and environmental factors. The review is intended to lead to the introduction of new legislation in June 2004.

OTHER BARRIERS

Pharmaceuticals

The U.S. Government continued to raise concerns with New Zealand about its pharmaceutical sector policies, which do not appropriately value innovation and diminish the contribution of New Zealand to research and development of innovative pharmaceutical products. The Pharmaceutical Management Agency (PHARMAC), which accounts for 73 percent of expenditures on prescription drugs in New Zealand, is a stand-alone Crown entity structured as a statutory corporation. It administers a Pharmaceutical Schedule that lists medicines subsidized by the New Zealand government and the reimbursement paid for each pharmaceutical under the national health care system. The schedule also specifies conditions for prescribing a product listed for reimbursement.

New Zealand does not directly restrict the sale of non-subsidized pharmaceuticals in the country. However, private medical insurance companies will not cover non-subsidized medicines, and doctors are often reluctant to prescribe non-subsidized medicines for their patients, who would have to pay out-of-pocket costs. Thus, PHARMAC's Pharmaceutical Schedule 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 United States has serious concerns relating to the transparency, predictability and accountability of PHARMAC's operations. U.S. pharmaceutical suppliers report that the methodology used to determine Pharmaceutical Schedule decisions lacks transparency. The Boards of PHARMAC and the Researched Medicines Industry Association of New Zealand (RMI) have been meeting to discuss these concerns. The U.S. Government will continue to closely monitor developments in this sector.

The New Zealand government has indicated its intention to create with Australia a Trans-Tasman Therapeutic Goods Administration, which may extend to New Zealand the same regulatory regime now in place in Australia for medical devices, prescription, over-the-counter, dietary and nutritional supplements, and cosmetics such as sun creams. Except for prescription pharmaceuticals, New Zealand does not currently regulate these products and is considering what type of certification it will require. U.S. companies have expressed concerns that the new requirements may be overly burdensome and costly and may serve to discourage imports of these products from the United States.

NICARAGUA

TRADE SUMMARY

The U.S. trade deficit with Nicaragua was $266 million in 2003, an increase of $24 million from $242 million in 2002. U.S. goods exports in 2003 were $503 million, a 15.1 percent increase from the previous year. Corresponding U.S. imports from Nicaragua were $769 million, an increase of 13.2 percent over 2002. Nicaragua is currently the 65th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Nicaragua in 2002 was $242 million, up 54 percent from 2001.

IMPORT POLICIES

Free Trade Agreement

The United States and four Central American countries (El Salvador, Guatemala, Honduras, and Nicaragua) concluded negotiations on the U.S.-Central American Free Trade Agreement (CAFTA) in December 2003. The United States and Costa Rica on January 25 finalized Costa Rica's participation in the CAFTA. The United States and the Dominican Republic concluded market access negotiations in March 2004 to integrate the Dominican Republic into the CAFTA.

The CAFTA will not only liberalize bilateral trade between the United States and the region, but will also further integration efforts among the countries of Central America, removing barriers to trade and investment in the region by U.S. companies. CAFTA will also require the countries of Central America to undertake needed reforms to alleviate many of the systemic problems noted below in areas including customs administration; protection of intellectual property rights; services, investment, and financial services market access and protection; government procurements; sanitary and phytosanitary (SPS) barriers; other non-tariff barriers; and other areas.

Tariffs

In 2002 and 2003, Nicaragua completed implementation of most of a broad package of tariff reductions that had been approved in 1997. In those same years, two tax reforms included tariff changes as well. The overall thrust of the changes in both legislation and practice over the last several years has been to reduce tariffs (though there have been a few increases), reduce non-tariff barriers, and greatly reduce the discretion of government officials to waive the application of tariffs. The reform process is in accordance with reduction and harmonization of a common external tariff among members of the Central American Common Market (CACM), to between zero and 15 percent on most items.

Nicaragua imposes regular import duties of 10 percent or 15 percent on many final consumer goods and a duty of 5 percent on certain primary or intermediate goods from outside Central America that compete with products produced in CACM countries. The tariff is assessed on a good's CIF value. Once the CAFTA goes into effect, about 80 percent of U.S. industrial and commercial goods will enter Nicaragua duty free, with the remaining tariffs on such goods being eliminated within 10 years. Textiles and apparel will be duty-free and quota-free immediately if they meet the Agreement's rule of origin, promoting new opportunities for U.S. and Central American fiber, yarn, fabric and apparel manufacturing.

A small number of protected agricultural commodities, notably rice and chicken parts, have higher rates. Processed rice faces tariffs as high as 61 percent, down from a maximum of 103.5 percent in 2002. Certain chicken parts face a tariff of 170 percent. Tariffs on corn, previously higher, now range from 10 percent to 15 percent. In May 2003, Nicaragua raised tariffs on cheese and certain other dairy products from countries outside the CACM region to a common external tariff rate of 40 percent, from a prior rate of 15 percent. Under the CAFTA, Nicaragua has committed to eliminate tariffs on rice within 15 years, on poultry within 18 years, and dairy products within 20 years. Tariffs on yellow corn will be phased out over 15 years, while trade in white corn will be liberalized through an expanding quota. In addition, the CAFTA will eliminate tariffs on virtually all other agricultural products within a maximum of fifteen years.

Non-tariff Measures

A “selective consumption tax” (ISC) on luxury items, -- known until May 2003 as the “specific consumption tax” (IEC) -- is levied on a limited number of items. The tax is generally lower than 15 percent, with a few exceptions noted below. Although the ISC is not applied exclusively to imports, the value on which it is based varies depending on whether the product is produced domestically or abroad. While the ISC on domestic goods is based on a manufacturer's price, the ISC on imported goods is based on the CIF value. Alcoholic beverages and tobacco products are exceptions in that the ISC for them is assessed on the price charged to the retailer.

Cars more than six years old may not be imported. Newer models with large engines (greater than 4000 cc) face an ISC of 30 percent, while vehicles with smaller engines are charged between 10 percent and 25 percent ISC, depending on engine size. While the differential applied to U.S. cars was reduced in 2003, a significant differential remains which continues to create a preference in the Nicaraguan market for non-U.S. cars.

In accordance with April 2000 amendments to Nicaragua’s tax laws, the ISC on soft drinks was lowered from a level of 18 percent the preceding year, to 15 percent in 2000 and 12 percent in 2001. A further reduction to the target rate of 9 percent, scheduled to have taken place in 2002, was suspended, leaving the ISC at 12 percent. Soft drink manufacturers have argued that this puts them at a competitive disadvantage with respect to non-carbonated beverages and that changing the basis for calculating the ISC on soft drinks from the wholesale to the retail price further erodes tax reductions of previous years.

Nicaragua also levies a non-discriminatory 15 percent value-added tax (IVA) on most items, except agricultural inputs. A temporary protection tariff (ATP) on some 900 items, which added 5 percent to 10 percent above the regular import duty, was eliminated in 2001.

Licenses are required for imports of sugar prior to the CAFTA’s entry into force. Import licensing requirements are otherwise minimal.

Importers have in the past complained of steep secondary customs costs, including customs declarations form charges, consular fees, and fees for mandatory employment of licensed customs agents. Nicaragua adopted the WTO customs valuation method in September 2002, eliminating previous complaints about customs valuation based on a "reference price" that was often significantly higher than the actual amount paid by importers.

CAFTA provisions call for reforms in customs procedures and valuation methods. The Agreement requires transparency and efficiency in administering customs procedures, including the CAFTA rules of origin. Nicaragua committed to ensure procedural certainty and fairness and all parties agree to share information to combat illegal transshipment of goods.

The telecommunications sector is in transition from state ownership to private ownership. Fifty-one percent of Enitel, the former state telephone monopoly, has been sold and a process to sell the remaining 49 percent is nearly complete. Private mobile telephone companies have at times complained that the regulatory agency TELCOR exhibits favoritism toward Enitel. In general, however, TELCOR has encouraged competition in its licensing and regulatory practices. Under the CAFTA, Nicaragua has committed to open its telecommunications sector to service and investment by U.S. providers.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Products that meet domestic U.S. standards are generally accepted in the Nicaraguan market with little need for further certification. U.S. exporters of food products must meet minimal phytosanitary and labeling requirements.

There is currently no regulatory process for approving agricultural biotechnology products for import or sale. Imported agricultural products derived from biotechnology are supposed to be identified as such, but there is no law in place governing the use of labels on biotechnology products. In August 2003 an executive decree called for the establishment of an interagency commission to develop procedures for risk analysis of agricultural biotechnology products, norms for their use, and regulations for their production and importation. As of November 2003, the commission had not been formed.

Under the CAFTA, Nicaragua agreed to apply the science-based disciplines of the WTO Agreement on Sanitary and Phytosanitary Measures, and will move toward recognizing export eligibility for all plants inspected under the U.S. food safety and inspection system. Through the work of this group, additional commitments to resolve specific unjustified measures restricting trade between Nicaragua and the United States have also been agreed. When the United States and Central America launched the CAFTA negotiations, they initiated an active working group dialogue on SPS barriers to agricultural trade that met alongside the negotiations to facilitate market access. The objective was to leverage the impetus of active trade negotiations to seek difficult changes to the countries' SPS regimes. The SPS Working Group remains committed to continue working on resolution of outstanding issues even after the negotiations concluded.

GOVERNMENT PROCUREMENT

Nicaragua's law on government procurement, which went into effect in January 2000, provides for nondiscrimination among suppliers and requires that most government procurement contracts be advertised in national newspapers and the Internet. However, some contractors have complained of inadequate notification of pending procurements. Nicaragua is not a party to the WTO Agreement on Government Procurement.

Under the CAFTA, U.S. suppliers would be granted non-discriminatory rights to bid on contracts from most Central American government entities, including key ministries and state-owned enterprises. The CAFTA requires fair and transparent procurement procedures, such as advance notice of purchases and timely and effective bid review procedures. The CAFTA anti-corruption provisions ensure that bribery in trade-related matters, including in government procurement, is specified as a criminal offense under Central American and U.S. laws.

EXPORT SUBSIDIES

Nicaragua does not subsidize exports directly or provide export financing. However, all exporters receive tax benefit certificates equivalent to 1.5 percent of the FOB value of the exported goods. Foreign inputs for Nicaraguan export goods from the country's free trade zones enter duty-free and are exempt from value-added tax. The CAFTA will require the elimination of WTO-illegal export subsidies.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Nicaragua has strengthened its legal framework for protection of intellectual property rights over recent years, but enforcement remains weak. In January 1998, Nicaragua and the United States signed a bilateral IPR agreement covering patents, trademarks, copyright, trade secrets, plant varieties, integrated circuits, and encrypted satellite signals. The Nicaraguan legislature subsequently passed a package of six modern IPR laws. In 1999, the National Assembly approved a new copyright law, a plant variety protection law, a law on the protection of satellite signals, and a law on integrated circuit design. In 2000, a new law on patents was passed and a law on trademarks was passed in 2001.

Although the Nicaraguan government has dedicated three public prosecutors solely to IPR issues, enforcement of IPR laws has been limited. Protection of well-known trademarks is poorly enforced. According to industry sources, the government made two attempts to crack down on music recording piracy in 2001 but has made no significant raids or arrests since then, and anecdotal evidence suggests an increase in the reproduction of pirated music and videos. The U.S. Government and industry are working with the Nicaraguan government to provide training for effective enforcement. While in 2003 the Health Ministry suspended the distribution and sale of a locally produced generic version of a pharmaceutical product patented in Nicaragua by a U.S. company, some U.S. pharmaceutical firms remain somewhat concerned about possible unauthorized use of protected data. The CAFTA obligations clarify that test data and trade secrets submitted to a government for the purpose of product approval will be protected against unfair commercial use for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals.

Nicaragua is a signatory to the Paris Convention, the Mexico Convention, the Buenos Aires Convention, the Inter-American Copyrights Convention, the Universal Copyright Convention, the Berne Convention, and the Satellites Convention. In April 2002, the National Assembly ratified the World Intellectual Property Organization (WIPO) Copyright Treaty (WCT) and the WIPO Performances and Phonogram Treaty (WPPT), both of which entered into force shortly thereafter. In September 2003, Nicaragua adhered to the Lisbon Agreement for the Protection of Appellation of Origin and their International Registration.

CAFTA provisions will strengthen Central American IPR protection regimes to conform with, and in many areas exceed, WTO norms and will criminalize end-user piracy, providing a strong deterrence against piracy and counterfeiting. The CAFTA will require all member countries to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. It will also mandate both statutory and actual damages for copyright infringement and trademark piracy. This serves as a deterrent against piracy, and ensures that monetary damages can be awarded even when it is difficult to assign a monetary value to the violation.

SERVICES BARRIERS

Financial Services

Nicaragua has ratified its commitments under the 1997 WTO Financial Services Agreement. Nicaragua’s WTO commitments cover most banking services, including acceptance of deposits, lending, leasing, guarantees, and foreign exchange. However, its WTO commitments do not cover security or asset management. Nicaragua allows foreign banks to operate either as 100 percent-owned subsidiaries or as branches, but no U.S. bank has yet reentered the Nicaraguan financial market since several major U.S. banks withdrew in the 1970s. A requirement that a local partner be involved in solicitations for project proposals may discourage U.S. companies from entering the financial services market, but general weakness of the sector is the main obstacle to foreign involvement in the financial services. CAFTA provisions will make it easier for U.S. banks to enter the Nicaraguan market. U.S. financial service suppliers will have full rights to establish subsidiaries, joint ventures or branches for banks.

Legislation passed in 1996 opened the insurance industry to private sector participation. Private insurance companies now compete with the government-owned firm INISER. However, no U.S. or other foreign insurance company has entered the Nicaraguan market. Under CAFTA, Nicaragua will accord substantial market access in services across their entire services regime, subject to very few exceptions. Nicaragua will allow U.S.-based firms to supply insurance on a cross-border basis, including reinsurance; reinsurance brokerage; marine, aviation and transport (MAT) insurance; and other insurance services.

INVESTMENT BARRIERS

Poorly enforced property rights and the resulting proliferation of property disputes are among the most serious barriers to investment in Nicaragua. The Sandinista government confiscated nearly 30,000 properties during the 1980s. Many thousands of individuals -- including over 1,000 U.S. citizens -- have filed claims since 1992 for compensation or return of properties. While there has been progress in resolving claims, many valuable properties remain in the hands of the government or private parties, including former Sandinista government officials and military officers. Property claimants can sue for return of their properties, but the legal system favors the current occupants. The government offers low-interest bonds as a means of compensation in most instances. The United States continues to urge the Nicaraguan government to resolve claims. Of the nearly 3,000 U.S. citizen claims registered with the U.S. Embassy, fewer than 800 were pending as of December 2003.

Remittance of 100 percent of profits and original capital three years after investment is guaranteed through the Central Bank at the official exchange rate for those investments registered under the Foreign Investment Law. Investors who do not register their capital may still make remittances through the parallel market, but the government will not guarantee that foreign exchange will be available.

Nicaragua and the United States concluded a Bilateral Investment Treaty (BIT) in July 1995. Nicaragua’s National Assembly ratified the BIT in June 1996, but the U.S. Senate has not ratified it. However, the investment chapter of the CAFTA includes provisions for the protection of U.S. investors analogous to those in the 1995 BIT by establishing a secure, predictable legal investment framework. Under the CAFTA, all forms of investment will be protected, including enterprises, debt, concessions, contracts and intellectual property. U.S. investors will 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 will be backed 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.

TRADE RESTRICTIONS AFFECTING ELECTRONIC COMMERCE

Electronic commerce is not well developed in Nicaragua. Currently, there are no laws or regulations restricting its use or regulating the treatment of electronic transactions. Under CAFTA, Central America and the United States agreed to provisions on e-commerce that reflect the issue’s importance in global trade and the importance of supplying services by electronic means as a key part of a vibrant e-commerce environment. Nicaragua committed to non-discriminatory treatment of digital products; agreed not to impose customs duties on such products and to cooperate in numerous policy areas related to e-commerce.

OTHER BARRIERS

Judicial Uncertainty

The Nicaraguan legal system is weak and cumbersome. Many members of the judiciary, including those at high levels, are widely believed to be corrupt or subject to outside political pressures. Recognizing Nicaragua's reputation for problems with corruption, President Bolanos has made anti-corruption a centerpiece of his administration's domestic policy.

Enforcement of court orders is uncertain and frequently subject to non-judicial considerations. Foreign investors are not specifically targeted but are often at a disadvantage in disputes against nationals with political connections. Misuse of the criminal justice system sometimes results in individuals being charged with crimes arising out of otherwise civil disputes, often in order to pressure those targeted into accepting a civil settlement. The resolution of commercial and investment disputes is therefore still unpredictable. Rulings in favor of those who are politically connected are a visible manifestation of political corruption. The CAFTA investment chapter would allow investors to seek recourse outside of Nicaraguan courts under a transparent process for expropriatory acts by Nicaraguan governmental entities.

Law 364

Several multinational firms and the U.S. Chamber of Commerce have expressed concern regarding Nicaraguan Law 364 enacted in 2001. Law 364 retroactively imposed liabilities for foreign companies that manufactured or used in Nicaragua the chemical pesticide DBCP, which was banned in the United States in 1979, when the Environmental Protection Agency cancelled its certificate for use (with exceptions). Onerous requirements under Law 364 include: 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 $21 million earmarked for payment of awards; irrefutable presumptions of causation; liquidated damages as minimum liabilities; and no stay of execution of a judgment pending appeal. In December 2002, the first judgment under this law was rendered in a consolidated lawsuit in the amount of $489 million. A U.S. district court ruled in October 2003 that the judgment could not be enforced against the companies in the United States. Several hundred lawsuits claiming damages of over $11 billion are pending.

NIGERIA

TRADE SUMMARY

The U.S. trade deficit with Nigeria was $9.4 billion in 2003, an increase of $4.5 billion from $4.9 billion in 2002. U.S. goods exports in 2003 were $1.0 billion, down 2.7 percent from the previous year. Corresponding U.S. imports from Nigeria were $10.4 billion, up 74.8 percent from 2002. Nigeria is the 56th largest export market for U.S. goods. The flow of U.S. foreign direct investment (FDI) in Nigeria in 2002 was $1.8 billion, up from $788 million in 2001. U.S. FDI in Nigeria is concentrated in the petroleum sector.

IMPORT POLICIES

Tariffs

Tariffs provide the Nigerian government with its second largest source of revenue after oil exports. In its last major tariff revision, in March 2003, the Nigerian government reduced duties on 230 tariff line items (mostly raw materials, base metals, and capital equipment) to as low as 2.5 percent, while raising them on 30 line items (largely plastic, rubber, and aluminum articles) to as high as 65 percent. Most increases were relatively small. The Nigerian government has announced similar cuts and increases in the past, often on the same items year after year, and will likely announce another round of tariff adjustments as part of its 2004 budget.

Frequent policy changes and uneven duty collection make importing difficult and expensive and create severe bottlenecks for commercial activities. The problem affects foreign and domestic investors alike and is aggravated by Nigeria's dependence on imported raw materials and finished goods. Because of these systemic problems, under-invoicing and smuggling are often used to avoid paying full tariffs.

Non-tariff Trade Barriers

The Nigerian government continues to pursue policies that are of questionable consistency with WTO prohibitions against certain non-tariff trade barriers. Bans on a variety of items – sorghum, millet, wheat flour, cassava, frozen poultry, vegetable oil (in bulk), kaolin, gypsum, mosquito repellent nets and coils, wax-printed fabrics, used clothing, and bagged cement – continued into 2003. A ban on used car imports also continued but was altered to prohibit the importation of vehicles more than eight (rather than five) years old. Food products such as fruit juice in retail packs, pasta, biscuits, confectionery and chocolate products, canned beer, and bottled water were added to the list of banned items in 2003. In January 2004, the Nigerian Government added additional food products to the list of banned items, including fresh fruit, pork, pork products, beef, beef products, mutton, lamb, and goat meat.

Customs Barriers

Nigeria's ports continue to present major obstacles to trade. Importers face inordinately long clearance procedures, high berthing and unloading costs, erratic application of customs regulations, and corruption. The Nigeria Customs Service (NCS) stepped up enforcement of its 100 percent physical inspection policy in 2001 in an attempt to reduce smuggling and under-valuation of imports, but officials admit they do not have the resources to inspect every incoming container. The NCS operates a pre-shipment inspection regime under which contracted inspection companies at ports of origin issue inspection reports that their Nigerian counterparts use to indicate items shipped, their value, and applicable customs duties.

The NCS planned to abandon its pre-shipment inspection regime for 100 percent destination inspections in 2002 and 2003, but introduction was delayed when importers protested that NCS officials might use their positions as sole valuation authorities to extract unauthorized facilitation fees. The Nigerian government has stated its hope to introduce destination inspections in early 2004, but NCS risk assessment and other databases are not fully operational.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Although the Nigerian government currently does not have specific laws or policies on agricultural biotechnology, the government does have draft Biosafety Guidelines that, as of the end of 2003, had not yet been submitted to the National Assembly for enactment. The Guidelines reportedly portray biotechnology products as generally safe for animal and human consumption. They also reportedly require mandatory labeling of all biotechnology food products to protect "consumers' right to know." The Nigerian Government seems to be favorably disposed toward domestic development of agricultural biotechnology capacity, and there is a fair amount of research under way at universities and the International Institute on Tropical Agriculture located in Ibadan. Nigeria is a Party to the Cartagena Protocol on Biosafety.

Rules concerning sanitary and phytosanitary standards, testing, and labeling are relatively well defined, but bureaucratic hurdles slow the 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. By law, items entering Nigeria must be labeled exclusively in the metric system. Products with dual or multiple markings are to be refused entry, though such items are often found in Nigerian markets.

High tariffs and erratic application of import and labeling regulations make importing high-value perishable products difficult. Disputes among 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 setbacks often result in product deterioration and 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 illegal importation of counterfeit and expired pharmaceuticals for special attention, particularly when imports are from the Far East and South Asia. NAFDAC's severely limited capacity for carrying out inspection and testing contributes to an occasionally heavy-handed or arbitrary approach to regulatory enforcement, and the agency has occasionally challenged legitimate food imports.

U.S. products do not appear to be subject to extraordinary or discriminatory restrictions or regulations, but the widespread use of fraudulent documentation by non-U.S. exporters may put U.S. exporters at a competitive disadvantage.

GOVERNMENT PROCUREMENT

The Obasanjo administration has made modest progress on its pledge to practice open and competitive bidding and contracting for government procurement and privatization. The initial stages of the tendering process tend to be transparent and even-handed, but as tenders move through the decision-making process, the process often becomes opaque. Allegations by unsuccessful bidders of corrupt behavior by senior government officials and foreign companies are common, but they rarely provoke substantive reactions.

New procurement and contracting guidelines were issued in January 2001, and a due process office, the Budget Monitoring and Price Intelligence Unit, was established. The agency acts as a clearinghouse for government contracts and procurement and monitors the implementation of projects to ensure compliance with contract terms and budgetary restrictions. Procurements worth more than 50 million naira (about $380,000) are subject to full due process. Foreign companies incorporated in Nigeria receive national treatment, and government tenders are published in local newspapers. U.S. companies have won Nigerian government contracts in several sectors.

EXPORT SUBSIDIES

The Nigerian Export Promotion Council (NEPC) and the Nigerian Export-Import Bank (NEXIM) administer industrial export incentive programs that include tax concessions, export expansion grants, export development funds, capital assets depreciation allowances, and foreign currency retention programs. Funding constraints limit the effectiveness of these programs, and many people allege that only favored individuals and businesses benefit. Aside from these limited incentive programs, Nigeria's non-oil export sector does not receive subsidies or other significant support from the government.

In an effort to attract investment in export-oriented industries, the Nigerian government established the Nigerian Export Processing Zone Authority (NEPZA) in 1992. Of five zones established under NEPZA, only the Calabar and Bonny Island (Onne) export processing zones function. NEPZA rules dictate that at least 75 percent of production in the zones must be exported, but lower export levels are reportedly tolerated. The Nigerian government converted the Calabar export processing zone into a free trade zone in 2001, but it is unclear whether the new designation has improved its export performance.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Nigeria is a member of the World Intellectual Property Organization (WIPO) and a signatory to the Universal Copyright Convention (UCC), the Berne Convention, and the Paris Convention (Lisbon text). Legislation pending in the National Assembly may establish a legal framework for an IPR system compliant with WTO rules. Nigeria's current IPR laws afford protection that complies with most WTO provisions.

Despite Nigeria's active participation in international IP conventions, its reasonably comprehensive IPR laws, and growing interest among individuals in seeing their intellectual property protected, piracy is rampant. Counterfeit pharmaceuticals, business and entertainment software, music and video recordings, and other consumer goods are sold openly throughout the country.

The Nigerian 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, and fraudulent alteration of IPR documentation is common. Patent and trademark enforcement remains weak, and judicial procedures are slow and subject to corruption. Companies rarely seek trademark or patent protection because they generally perceive Nigerian enforcement institutions as ineffective. Nonetheless, recent government efforts to curtail IPR abuse have yielded results. The Nigerian police, working closely with the Nigerian Copyright Commission, have 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. Most cases have been settled out of court, if at all.

Nigeria's broadcast regulations do not permit re-broadcasting or excerpting 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.

IPR problems in Nigeria's film industry worsened dramatically following the Nigerian government's 1981 nationalization of the country's filmmaking and distribution enterprises as part of its campaign to "indigenize" the economy. The legitimate film distribution market has yet to recover. Almost no foreign feature films have been distributed in the country in the last two decades, movie theaters have ceased to operate, and the widespread pirating of foreign and domestic videos discourages the entry of licensed distributors.

SERVICES BARRIERS

Foreign participation in the services sector is generally not restricted. Regulations provide broad participation to foreign services providers, including in banking, insurance, and securities. Central Bank of Nigeria directives stipulate minimum levels of paid-in capital. At least two foreign banks have initiated operations in Nigeria in recent years, and several Nigerian banks have received infusions of foreign capital.

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 and 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 by the Nigerian government except in cases of 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 high business taxes, confusing land ownership laws, arbitrary application of regulations, corruption, and extensive crime. There is no tradition supporting the sanctity of contracts, and the court system for settling commercial disputes is weak and sometimes biased. Foreign oil companies are under pressure to increase procurement from indigenous firms. NAPIMS has set a target of 40 percent local content for oil-related projects; how that target is to be achieved remains nebulous and subject to negotiation on a project-by-project basis.

Nigerian government efforts to eliminate financial crimes such as money laundering and advance-fee fraud (or "419 fraud" after the relevant section of the Nigerian Criminal Code) have increased but have been largely ineffective. Fraud, theft, and extortion are rampant. With the encouragement and cooperation of U.S. law enforcement agencies, more "419" perpetrators are being prosecuted by the Nigerian government.

Corruption remains a serious problem. International watchdog groups routinely rank Nigeria among the most corrupt countries in the world. Some U.S. exporters believe sales are lost when they refuse to engage in illicit or corrupt behavior. Others say Nigerian businessmen and officials understand that U.S. firms must adhere to U.S. Foreign Corrupt Practices Act standards and ultimately believe these restrictions help minimize their exposure to corruption. Unfortunately, U.S. exports to Nigeria occasionally suffer from unfair trade practices by foreign competitors willing to accommodate requests for improper payments.

ELECTRONIC COMMERCE

The growth of electronic commerce and telecommunications in Nigeria, albeit from a low base, offers opportunities for the provision of U.S. products and services. While there are no trade restrictions that discriminate against such U.S. products, high-technology industries suffer from the same constraints noted for other industries.

NORWAY

TRADE SUMMARY

Norway, as well as Switzerland, Iceland, and Liechtenstein, is a member of the European Free Trade Association (EFTA). Norway, along with Iceland and Liechtenstein, participate in the European Union (EU) single market through the European Economic Area (EEA) accord. As an EEA member, Norway assumes most of the rights and obligations of the EU, and grants preferential tariff rates to EEA members. However, as Norway is not a member of the EU, it has limited ability to influence EU decisions. U.S. exports to Norway face many of the same trade and investment barriers that limit U.S. access to the EU, including non-tariff barriers related to labeling and approval for agricultural goods produced through bioengineering or the use of growth hormones.

In 2003, the U.S. goods trade deficit with Norway was $3.7 billion, a decrease of $691 million from the previous year. U.S. goods exports to Norway were $1.5 billion in 2003. In 2003, U.S. imports from Norway totaled $5.2 billion, a decrease of $630 million from the level of imports in 2002. U.S. exports of private commercial services (i.e., excluding military and government) to Norway were $1.5 billion in 2002 (latest data available), and U.S. imports were $1.1 billion. The stock of U.S. foreign direct investment in Norway in 2002 was $7.3 billion, an increase of 29.8 percent from 2001. Such investment is concentrated in the mining, manufacturing, and wholesale sectors.

IMPORT POLICIES

Norway bound its WTO commitments on tariffs for agricultural commodities in July 1995. Tariffication of agricultural non-tariff barriers as a result of the Uruguay Round led to the replacement of quotas with higher product tariffs. Tariff-rate quotas exist for grains and a number of horticultural products. Domestic agricultural shortages and price surges have been addressed through temporary tariff reductions. Lack of predictability in tariff adjustments and insufficient advance notification (generally only 2-5 days before implementation) have made the import of fruit, vegetables, and other perishable horticultural products from the United States much more difficult and favors nearby European suppliers.

In addition to its own requirements related to the import of food products, beginning January 1, 1999, Norway adopted the rules and regulations of the EU. As a result, imported animal products for food use must come from an EU-approved plant and be accompanied by the necessary certificates. The importer in Norway must be registered and notify authorities 24 hours in advance for plants and 30 days in advance for animals of the arrival of any shipment. Except for fish products, shipments must enter through either Oslo harbor or Oslo airport. Twenty entrance locations exist for fish products.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Sanitary and Phytosanitary Measures

Although Norway has implemented EU Directive 90/220 on the deliberate release into the environment of agricultural biotechnology products, Norway has more stringent regulations in place that require approval for marketing products already approved in other EEA countries. Under the authority of Norway's 1993 Gene Technology Act, the government may ban the import of agricultural biotechnology products based on several criteria, including ethical issues, sustainable development, and social justification. To date, Norway has only approved four agricultural biotechnology products for import, one type of tobacco plant only grown in France and the other three are types of carnations grown as greenhouse plants, and has rejected fourteen biotech products approved for use in the EU. As a result, the United States lost access to an approximately $80 million market for soybeans for which the United States had been the major supplier.

The Norwegian Food Law of 1997 includes regulations on labeling and approval of agricultural products derived from biotechnology. The Norwegian Food Control Authority (NFCA) labeling requirements took effect in October 1997 and apply to all agricultural biotechnology products, whether or not their properties or characteristics are different from those of comparable conventional food products. According to the NFCA, products must be labeled whenever more than 2 percent of any ingredient is derived from biotechnology.

Prior to approval of an agricultural product derived from biotechnology (even if the product does not require labeling), a risk assessment must be conducted according to the Norwegian guidelines for the health risk assessment of novel foods. Although Norway's guidelines are based on EU guidelines, Norway is constantly broadening its analysis of possible unintended effects caused by bioengineering, which expand the application of those guidelines beyond that within the EU itself.

As one of many EU harmonization measures under the EEA agreement, on April 19, 1996, the Norwegian Ministry of Agriculture issued a regulation banning the import of meat from animals treated with growth hormones.

EXPORT SUBSIDIES

Agriculture Export Subsidies

Norwegian farming has been highly subsidized and protected for years. This has occasionally contributed to surplus production in excess of domestic demand. However, Norwegian farm production policy has focused on national food self-sufficiency and providing incentives for farmers to remain in sparsely-populated areas of the country, rather than exports. Surpluses, at prices much higher than international price levels, have been disposed of via official government subsidies or producer-financed subsidies. Of the total export subsidies in 2000, only 9 percent were direct support and 91 percent were producer-financed. For 2001, the percentages were 13 percent and 87 percent, respectively. Additionally, Norway provides subsidies for agricultural product inputs used by the food-processing sector to make Norwegian processed products more competitive.

SERVICES BARRIERS

Financial Sector

No single or coordinated group of investors, Norwegian or foreign, may purchase more than 10 percent of the equity of a Norwegian financial institution without an exemption from the Ministry of Finance. As an exception to this, a December 1999 Amendment to the Act on Financial Activities and Financial Institutions allows the Ministry of Finance to approve ownership holdings of up to 25 percent of a Norwegian insurance company, commercial bank, or savings bank by an individual or coordinated group. Although this amendment applies without discrimination to both Norwegian and foreign institutions, there is no explicit guidance on what criteria the ministry will consider as a basis for approving the exceptions. Half the members of the board and half the members of the corporate assembly of a financial institution must be permanent residents of Norway or citizens of a state within the EEA unless an exemption from the Ministry of Trade and Industry is provided. Cross-border insurance can only be supplied through an insurance broker authorized in Norway.

Telecommunications

In January 1998, Norway fully liberalized its telecommunications services market and ended the effective monopoly of Telenor on fixed line voice services, infrastructure, and telex services. Equipment that has not been tested and certified under the EEA's common technical regulations must be type-approved by the Norwegian telecommunications authority. The Norwegian government has said that this takes about six weeks under normal procedures. In the past, U.S. companies have reported that such approval is slow and costly for companies offering new products.

INVESTMENT BARRIERS

In 1995, Norway abolished previous rules governing foreign investment in industrial companies. Under the current system, foreign investors are not required to obtain government authorization before buying limited shares of large Norwegian corporations. However, both foreign and Norwegian investors are still required to notify the government when their ownership in a large company (the definition of which depends on certain size criteria) exceeds specific threshold levels of 33 percent, 50 percent, or 67 percent. Norwegian authorities can initiate a closer examination if they believe the acquisition could have a substantial negative effect on the company, trade or the public interest, including a negative effect on employment.

In the offshore petroleum sector, Norwegian authorities encourage the use of Norwegian goods and services. The Norwegian share of the total supply of goods and services has remained approximately 50 percent over the last decade. In the past, the Norwegian government had shown a strong preference for Norwegian oil companies in awarding the most promising oil and gas exploration and development blocks. However, in 1995, the government implemented an EU directive requiring equal treatment of EEA oil and gas companies. Although U.S. oil companies competing in subsequent concession rounds agree that they received much-improved treatment, Norway's concession process still operates on a discretionary basis instead of utilizing fully competitive bids.

In December 2000, the Government of Norway proposed partial privatization of Statoil and the sale of 21.5 percent of the State Direct Financial Interest (SDFI), the state's share in oil and gas assets, to Statoil (15 percent) and other oil companies (6.5 percent). Parliament agreed to this proposal, and on June 18, 2001, 19.8 percent of Statoil was sold in an initial stock offering.

The telecommunications group Telenor was partially privatized in December 2000, leaving the government with a stake of 78 percent. In July 2003, the state sold 270 million Telenor shares to private and institutional investors, reducing the state's share to 62.6 percent.

Prompted by EU calls for liberalization, Norway's Oil and Energy Ministry announced in May 2001 that Norway's gas sales monopoly, Gassforhandlingsutvalget (GFU), which in the past had negotiated all natural gas sales to Europe, would be suspended on June 1, 2001. GFU was permanently dismantled on January 1, 2002, and all gas producers/operators on the Norwegian continental shelf are now free to negotiate gas sales contracts on an individual basis.

In April 2002, the Government of Norway presented a long-awaited White Paper proposing a reduction in state ownership in Norwegian industry. The White Paper examined state ownership in 40 individual companies (including Norsk Hydro, Telenor, NAMMO, and Kongsberg), and explored measures to strengthen private ownership. However, the opposition Progress Party in 2002 reversed its long-standing support for privatization, which has made it impossible for the government to pass comprehensive privatization legislation. In 2003, some progress was made on privatization through the Telenor share offering, the sale of a 51 percent state share in the industrial group Olivin to North Cape Minerals, and the sale of the 34 percent state share in the Arcus group to private investors.

OTHER BARRIERS

NORWAY

Pharmaceuticals

The Norwegian Association of Pharmaceutical Manufacturers, which includes U.S. pharmaceutical firms, has complained about Norway's inadequate implementation of the EU directive on transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance systems. The EFTA Surveillance Authority issued a preliminary ruling in September 2001 in favor of the complaint, but there are still concerns about how the Norwegian government implements the directive. American companies have cited the Norwegian government's frequent failure to process reimbursement applications within the 90 days required under the EU transparency directive as a barrier to marketing innovative medicines in Norway.

PAKISTAN

TRADE SUMMARY

The U.S. trade deficit with Pakistan was $1.7 billion in 2003, an increase of $80 million from 2002. U.S. goods exports in 2003 were $840 million, up 21 percent from the previous year. U.S. imports from Pakistan increased 10 percent in 2003 to reach $2.5 billion. Pakistan currently ranks as the 59th largest export market for U.S. goods. Roughly 72 percent of Pakistani exports to the U.S. consist of textiles and apparel, while U.S. exports to Pakistan are mostly intermediate capital goods. The flow of U.S. foreign direct investment (FDI) to Pakistan in Fiscal 2003 (FY-03, Pakistan's fiscal year ending June 30, 2003) was $211.5 million, down 35 percent from the previous year. This figure contrasts with overall FDI flows to Pakistan, which in fiscal year 2003 jumped 65 percent to $798 million.

ECONOMIC OVERVIEW

Pakistan's gross domestic product (GDP) grew 5.1 percent during FY 2003, a significant increase from the prior year's 3.5 percent growth rate. Major contributors to GDP growth were services (up 5.3 percent), manufacturing (up 7.7 percent - a 7-year high) and agriculture (up 4.1 percent after two consecutive years of drought induced declines). Consumer inflation remained low at 3.3 percent, credited to improved supplies of essential food items, an appreciating rupee and a decline in interest rates that contributed to lower financing and working capital costs. These factors - in addition to unprecedented growth in worker remittances, improved inflows of foreign assistance and improved export earnings - boosted Pakistan's external account balance as a percentage of GDP to 5.9 percent from 4.8 percent the prior year. Concurrently, foreign exchange reserves rose from $6.3 billion in fiscal year 2002 to $11.1 billion at fiscal year 2003 due to increased flow of remittances through formal banking channels. The debt to GDP ratio dropped to 95.1 percent in FY 2003 from 104.3 percent in FY 2002. The reduction stems from the rupee's appreciation against the U.S. dollar, a write-off of bilateral debt totaling $1 billion by the United States, and retirement of expensive commercial loans.

Reduction of persistent deficit spending has been a crucial element of Pakistan's economic reform program. First under an IMF Standby Arrangement and subsequently under a December 2001 IMF Poverty Reduction and Growth Facility, Pakistan committed to strict deficit reduction targets. Pakistan managed a significant drop in the fiscal deficit to 4.4 percent of GDP in FY 2003 (a 27-year low) compared to the previous year's 6.6 percent on substantial rise in tax revenues, a decline in debt servicing, and below target development expenditures.

Deficit reduction efforts, however, have been constrained by rigidities in spending patterns and a persistently weak tax base (limited to under 1.5 percent of the population). Debt service, which has substantially decreased due to debt forgiveness and reprofiling, consumed approximately 37 percent of government revenues in FY 2003. Defense outlays absorbed an additional 23 percent of revenues, constraining government spending on other priorities, including poverty reduction. Loss-making state-owned enterprises continue to burden the budget, with continued delays in a number of large, proposed energy and financial sector privatizations. Pakistan remains dependent on foreign donors and creditors to finance its social sector and development needs and total public debt is still a significant drag on Pakistan's economic development. Average per capita GDP stands at $492 and 32 percent of the Pakistani population lives below the poverty line.

IMPORT POLICIES

Since 1998, Pakistan has progressively and substantially reduced tariffs. This effort culminated in June 2002 with the establishment of four maximum import tariff bands of 25 percent, 20 percent, 10 percent and 5 percent. Generally, Pakistan's applied tariffs are below WTO bound commitments, and the weighted average applied tariff is 16.7 percent, down from 56 percent in 1994. The tariff on most consumer goods was reduced to 25 percent, for most intermediate goods to 10 percent, and for most raw materials to 5 percent. In November 2000, Pakistan reached an agreement with the WTO Balance of Payments Committee to phase out quantitative restrictions on textile imports. The government removed all textile products from its "negative list," including woven cotton fabrics, woven synthetic fabrics, bed linens, curtains, certain knitted fabrics and apparel items, tents, carpets and textile floor coverings. Many of these items are key Pakistani export products. All textile products can now be imported into Pakistan.

Pakistan's trade policy in 2003 continued to ban the import of 30 items, mostly on religious, environmental, security, and health grounds. Imported automobiles continue to face high duties that currently range between 75 percent and 150 percent. The government exempted all domestically produced pharmaceutical-related raw material from its General Sales Tax (GST, actually a value added tax) through a Statutory Regulatory Order issued in April 2002. Imported pharmaceutical-related raw materials subject to a 10 percent customs duty rate are also exempt from payment of GST. This includes most, but not all, imported pharmaceutical raw materials. In the FY 2002 budget the government reduced duties on instant print film and instant print cameras to 10 percent from 30 percent to 200 percent to stem smuggling and to reduce related industry losses.

The government reserves the power to grant sector-specific duty exemptions, concessions, and protections under Statutory Regulatory Orders (SROs). In recent years, the use of SROs has decreased. SROs and other trade policy and regulatory documents are published on the Central Board of Revenue's website, www.cbr.gov.pk.

In January 2000, the government began implementing a transactional valuation system where 99 percent of import valuation is based on invoices, pursuant to the WTO's Customs Valuation Agreement. Currently, about 90 percent of imports are assessed under the WTO-accepted customs valuation system. However, a number of traders in food and non-food consumer products report experiencing irregularities and deviations in the application of the transaction value system.

STANDARDS TESTING, LABELING AND CERTIFICATION

The Pakistan Standards and Quality Control Authority (PSQCA) is the national standards body. As of June 30, 2003, PSQCA has established over 21,000 standards for agriculture, food, chemicals, civil and mechanical engineering, electronics, weights and measures, and textile products, including 14,500 ISO Standards. Testing facilities for agricultural goods are inadequate and standards are inconsistently applied, resulting in occasional discrimination against U.S. farm products. Generally, however, U.S exporters have not reported problems due to restrictive application of sanitary, phytosanitary or environmental standards. Pakistan accepts most U.S standards.

Pakistan lacks biosafety guidelines for certain bioengineered agricultural goods which has impeded U.S. access. Pakistan's Biosafety Commission has compiled draft biosafety guidelines, but Pakistan's Ministry of Environment has delayed approval of the guidelines for three years.

GOVERNMENT PROCUREMENT

Pakistan is not a member of the WTO Agreement on Government Procurement and has not made a commitment to begin accession negotiations. Work performed for government agencies, including the purchase of imported equipment and services, is often awarded through tenders that are publicly announced or issued to registered suppliers. The government established the Public Procurement Regulatory Authority in May 2002 to introduce and enforce better procurement practices. International tenders now are publicly advertised and the past practice of sole source contracting using company-specific specifications has been eliminated. There are no buy national policies.

Political influence on procurement decisions, charges of official corruption and long delays in bureaucratic decision-making have been common in the past. Investors 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. Occasionally, the government reportedly has "disqualified" experienced and technically proficient bidders otherwise qualified under tender specifications. The government does not invite private tenders 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 FY-2003 were confined mostly to wheat and totaled roughly $56 million, according to government budget statistics. The Government 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 two additional EPZs in Saindak and Risalpur, both in the Punjab. 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

Pakistan’s failure to adequately protect intellectual property constitutes one of its most severe barriers to trade and investment. The U.S. government has placed Pakistan on the "Special 301" Watch List every year since 1989 due to widespread piracy, especially of copyrighted materials. In 2002, Pakistan was the fourth largest source of counterfeit and pirated goods seized by the U.S. Customs Service. The vast majority of these goods were media and apparel. Currently, Pakistan does not adequately enforce patents, copyrights, and trademarks due the lack of a central IPR regulatory and enforcement body, an underdeveloped judicial system, and corruption.

In response to longstanding local and international criticism and the need to enforce its WTO TRIPS obligations, the Pakistani Cabinet approved legislation creating the Pakistan Intellectual Property Rights Organization (PIPRO). If enacted by Parliament, PIPRO would consolidate the issuance and enforcement of trademarks, patents, and copyrights in one government body. In addition, the Ministry of Commerce established an IPR Advisory Committee with private sector and NGO participation. Although 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, the legislation and/or enforcement mechanisms remain lacking in several areas further described below. 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). The government has expressed an interest in becoming a party to the Paris Convention for the Protection of Industrial Property**.** However, the decision to join this convention likely will be delayed until after the formation of PIPRO. Pakistan has not yet ratified the WIPO Copyright Treaty nor the WIPO Performance and Phonograms Treaty. A draft law concerning plant breeders' rights has been stalled because of a dispute over federal and provincial jurisdiction for the past two years.

Patents

Pakistan enacted a new 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. Unfortunately, the 2002 Patent Ordinance weakened the 2000 Patent Law by eliminating use patents, restricting patent filings to single chemical entities, limiting protection for derivatives, introducing barriers to patenting biotechnology-based inventions and establishing a mechanism for compulsory licensing. This last provision has aroused great concern among pharmaceutical firms desiring to sell patented drugs in Pakistan. First, Pakistan fails to protect data exclusivity during the licensing process. Secondly, the government has granted licenses to sell pharmaceuticals without checking whether another firm holds an active patent on that compound. Although courts have issued injunction orders against firms licensed by the Ministry of Health, which sell drugs in violation of patent holder rights, such orders are not consistently enforced. Patent theft is exacerbated by the 12 months to 24 months often required for registration in Pakistan of drugs available on the world market. During this registration process, the government also sets prices - often at a level that does not reflect the cost of developing the product.

Trademarks

Pakistan developed its Trademarks Ordinance in 2000, which provides for registration and better protection of trademarks and for prevention of the use of fraudulent marks. Nonetheless, the ordinance is awaiting enactment, pending finalization after consideration of public comments. The comment period closed in October 2003 and enactment is expected by early 2004. The government has eliminated the requirement that pharmaceutical firms label the generic name on all products with at least equal prominence as that of the brand name. Trademark infringement remains widespread.

Copyrights

According to the International Intellectual Property Association, calendar year 2003 copyright piracy rates in Pakistan stood at 95 percent for motion pictures and100 percent for records and music (no figures were available for business and entertainment software). CD and DVD losses were estimated at $82 million. Pakistan has aroused widespread concern by becoming a major exporter of pirated optical disks. Industry groups estimate that eight firms produced roughly 180 million illegal disks in 2003, up nearly 275 percent over 2002 levels. Industry watchers believe that almost 90 percent of this production is exported.

This level of piracy occurs despite the current ban on the import and export of pirated materials. The law includes a maximum punishment of three years imprisonment and a fine of 100,000 rupees ($1,750). Enforcement, however, remains weak, characterized by sporadic raids at the retail level, few prosecutions, and anemic penalties (no separate IPR enforcement bodies or IPR courts exist in Pakistan). Authorities have not inspected optical disk factories operating in Pakistan.

SERVICES BARRIERS

Pakistan generally permits foreign investment in services, subject to provisions including a minimum initial capital investment of $300,000. Foreign investors may hold up to a 100 percent equity stake at the outset. However, repatriation of profits is restricted to a maximum of 60 percent of total equity or profits, and 40 percent of equity must be held by Pakistani investors within five years of the initial investment. Foreign investments not meeting these requirements are still permitted, but are not guaranteed repatriation of profits.

Investment policy also allows foreign investors in services and other non-manufacturing sectors (including international food franchises) to remit technical fees and royalties, although conditions apply. In information technology services, including software development, foreign investors may hold a 100 percent equity stake. Investors in this field are not subject to the requirements for minimum initial investment and 40 percent Pakistani equity within five years.

Telecommunications

In telecommunications, the government permits 100 percent foreign equity with a minimum foreign equity investment of $300,000 in specific services, including electronic information services, card-pay telephone services, paging services, and voice mail services. Competition among service providers is already allowed in cellular telephony. In July 2003, the government announced a telecommunications sector deregulation policy in compliance with its WTO commitments. When implemented, this policy will end the exclusive right of the majority state-owned Pakistan Telecommunication Company Limited (PTCL) to provide basic telephone services and will allow cross-border market access for voice services. Pakistan currently allows the cross-border provision of packet-switched data and Internet services. Roughly 50 private firms, including foreign investors, provide Internet services on competitive networks. At present, the government does not issue exclusive licenses for voice-over-internet providers (VOIP). Long distance telephone license holders can also provide VOIP services.

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.

Pakistan improved its financial services commitments in the WTO Financial Services Agreement in December 1997. These commitments grant the right to establish new banks, as well as grandfathering acquired rights of established foreign banks and foreign securities firms. 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 for foreign banks. 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.

The government has opened the insurance market as one of its financial sector reforms. Foreign investors are allowed to hold a 100 percent equity (subject to the requirement to establish 40 percent Pakistani equity in 5 years) share of companies operating in the life and general insurance sectors. They are, however, required to bring in a minimum of $2 million in foreign capital and raise an equal amount in 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, raising capital adequacy standards and enhancing policyholder protections.

The government permits only parastatal National Insurance Company to underwrite and insure public sector firms. Private sector firms must use state-owned Pakistan Reinsurance Company for a minimum of 10 percent of their reinsurance requirements through 2004. Market domination in this sector may pose a substantial barrier to entry. State-owned State Life Insurance holds over 80 percent of the market in life insurance, while five major companies account for 78 percent of the market share in general insurance.

Foreign professionals can provide legal and engineering consultancy services - as opposed to direct services - subject to the $300,000 minimum capital and 40 percent/five year local equity requirements. A legal consultant need not be licensed to practice law in Pakistan. However, foreign lawyers may not appear in court or otherwise formally plead cases, even if they work with local lawyers, unless licensed. 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 register with the Pakistan Medical and Dental Council, and foreign engineers are required to register with the Pakistan Engineering Council in order to practice their respective professions in Pakistan.

INVESTMENT BARRIERS

Foreign investors are free to establish and own business enterprises in all sectors of the economy with the exception of four restricted areas: arms and munitions, high explosives, currency/mint operations, and radioactive substances. The government's investment policy promises full repatriation of capital, capital gains, dividends, and profits with the approval of the State Bank of Pakistan. No restrictions exist on technology transfer. The law provides for expropriations only upon adequate compensation and prohibits changes in benefits and incentives for the purpose of disadvantaging foreign investors.

Pakistan has granted significant tax and duty incentives to two categories of industries. "Priority industries" include tourism, housing and construction. "Value added export industries" include manufacturing categories such as garments, bed linens, surgical instruments, and sporting goods. For "priority industries," Pakistan has reduced the maximum customs duty from 25 percent to 10 percent on imported plant, machinery and equipment. The government removed minimum equity investment and national ownership requirements for investments in this category, and granted a 50 percent depreciation allowance to all fixed assets. "Value-added export industries" enjoy higher incentive levels, including zero duties on imported plant, machinery and equipment, in addition to a first-year depreciation allowance of 50% on all fixed assets. Nonetheless, Pakistan subjects all export industries that receive any incentives (as opposed solely to "value added export industries") to performance requirements. Those obligations include the requirement to export an average of 50 percent of production during the first 10 years of operation. Any exporter achieving 10 percent export growth over the prior year is permitted to retain 50 percent of increased export earnings in foreign exchange to purchase machinery, raw material, and promotional services.

The government of Pakistan has substantially complied with its WTO Trade Related Investment Measures (TRIMS) commitments concerning local content rules. In 1999, Pakistan's deletion program (mandating the use of domestic inputs) encompassed 106 items. As of December 2003, 16 items in the auto and motorcycle industries remain. Concerning these 16 items, Pakistan has petitioned for a three-year extension on its original December 31, 2003 deadline to eliminate all deletions.

Although Pakistan has enacted a Monopolies and Restrictive Trade Practices Ordinance, and established a Monopoly Control Authority, parastatal firms are exempt from the provisions of this law and regulatory oversight appears to suffer from capacity limitations. Thus, in the Pakistani market, where state-owned firms dominate several sectors, competition policy remains incomplete. State-owned Water and Power Development Agency (WAPDA) and Karachi Electric Supply Corporation (KESC) retain control of power transmission and distribution. In telecoms, Pakistan Telecommunications Company Limited (PTCL) retains exclusive control over land lines and switching. Two private airlines compete with state-owned Pakistan International Airlines and the government permits them to fly choice trunk routes and to undercut PIA on fares. In retail food sales, the government has used pricing in its several hundred-unit Utility Stores Corporation chain to influence prices of essential foodstuffs. Market leaders in the cement and sugar industries are alleged to have formed cartels.

ELECTRONIC COMMERCE

Although there are no trade restrictions on electronic commerce, the government blocks certain websites that it deems as conflicting with Pakistani religious and cultural norms. Electronic commerce is, however, not well-developed in Pakistan. In 2002, the government enacted an Electronic Transactions Ordinance that adopted international standards and provided for the establishment of a certification authority. The Ordinance has not yet been implemented. There are no duties and taxes on electronic commerce in Pakistan.

OTHER BARRIERS

Businesses operating in Pakistan have repeatedly called for the strengthening of law and order. Corruption and a weak judicial system remain recurrent and substantial disincentives to investment. Pakistani laws targeting the fight against corruption include the 1947 Prevention of Corruption Act, the 1973 Efficiency and Discipline Rules and, most recently, the 1999 National Accountability (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 is difficult in Pakistan. Pakistan is not a member of the New York Convention on Foreign Arbitral Awards. Pakistan’s ranking in Transparency International’s Corruption Perceptions Index changed from 77 out of 102 countries in 2002 to 92 out of 133 countries listed in 2003.

PANAMA

TRADE SUMMARY

The U.S. trade surplus with Panama was $1.5 billion in 2003, an increase of $443 million from $1.1 billion in 2002. U.S. goods exports in 2003 were $1.8 billion, an increase of 31 percent from the previous year. Corresponding U.S. imports from Panama were $301 million, roughly unchanged from 2002. Panama is currently the United States' 42nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Panama in 2002 amounted to $20.0 billion, down 20.5 percent from 2001.

IMPORT POLICIES

Tariffs

Following its accession to the World Trade Organization (WTO) in 1997, Panama's import policies opened considerably and its tariffs ranked among the lowest in Latin America. Panama's average tariff remains low, averaging just 8 percent. However, in September 1999, Panama did raise selected agricultural tariffs, some of which reached the maximum amount allowed under Panama's WTO commitments.

Non-tariff Measures

In addition to tariffs, all imports into Panama are subject to a 5% transfer (or ITBM) tax levied on the CIF value, and other handling charges. Pharmaceuticals, foods, and school supplies enjoy an exemption from the transfer tax. Currently, no import licenses are required in the country, provided the intending importing entity holds a commercial or industrial license to operate in Panama.

Free Trade Negotiations

In November 2003, the United States announced its intention to begin free trade negotiations with Panama starting in the second quarter of 2004. A free trade agreement (FTA) with Panama would extend the list of countries in the Americas with which the United States has completed free trade agreements to include all of North and Central America except Belize, which is a member of the Caribbean Community (CARICOM). In conjunction with these and a planned free trade agreement with the Andean countries Colombia, Peru, Ecuador, and Bolivia, the negotiation with Panama will complement the goal of completing a Free Trade Area of the Americas (FTAA). Negotiations with Panama will increase momentum toward lowering trade barriers and set a positive example for other small economies in the Western Hemisphere.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

With certain exceptions, Panama's application of standards and certification requirements generally conforms to WTO standards. However, restrictions have been applied from time to time in response to pressure to protect local producers. Particularly of concern has been the lack of procedural transparency by relevant Panamanian authorities when deciding whether to issue or deny phytosanitary import permits.

Panama requires certification by Panamanian health and agriculture officials of individual U.S. processing plants as a condition for the import of poultry, pork, and beef products. U.S. exporters have assisted Panamanian officials in making inspection visits to U.S. plants. There have been no instances of a U.S. plant failing to be certified, but inspections have been delayed many times for various reasons, including lack of personnel and budgetary constraints in the responsible Panamanian ministries. The United States considers it a high priority to obtain Panama's system-wide recognition of the U.S. meat inspection system, in place of the current plant-by-plant approach. This effort will be a primary focus during the upcoming FTA negotiations.

While importers of non-agricultural products must register them with the Ministry of Commerce and Industry before distribution or sale in Panama, procedures for registration are straightforward and evenly applied. There are no comprehensive labeling or testing requirements for imports, except for food and pharmaceutical products.

When the United States launches FTA negotiations in 2004, it will simultaneously initiate an active working group dialogue on SPS barriers to agricultural trade that will meet alongside the negotiations and will also continue to meet and work on resolution of SPS issues after the negotiations conclude.

GOVERNMENT PROCUREMENT

Panama's government procurement regime is governed by Law 56 and managed by the Ministry of Economy and Finance (MEF). The law provides for a transparent bidding process for government contracts, but allows for exceptions, such as procurements for national defense. The Panamanian Government has generally handled bids in a transparent manner, although occasionally U.S. companies have complained of mishandling of certain procedures. Some disaffected companies have withdrawn from consideration. However, formal complaints have not been pursued, usually because of interest in other business, fear of reprisals, and lack of confidence in the appeals process. While Panama made a commitment at the time of its WTO accession, to become a party to the WTO Government Procurement Agreement (GPA), its efforts to accede to the GPA have stalled. Although the Panama Canal Authority (PCA) has generally followed transparent and fair bidding processes, the United States has been particularly disappointed by the Government of Panama’s failure to include the PCA in its accession offer. The U.S. government will seek to address the issue of the PCA within the context of bilateral free trade agreement negotiations.

EXPORT SUBSIDIES

Panamanian law allows any company to import raw materials or semi-processed goods at a duty of three percent for domestic consumption or processing, or duty free for export production, excluding 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 2002, and a project to extend these benefits is now being promoted by the private sector.

Because of its WTO obligations, Panama revised its export subsidy policies in 1997-98. The government originally had stated its intention to phase out its Tax Credit Certificate (CAT), given to firms producing certain non-traditional exports, by the end of 2001. But during the WTO Ministerial Conference in November 2001, the Government of Panama asked for and received an extension for the use of CATs. The waiver to continue use of a CAT has been extended to 2005. The policy allows exporters to receive CATs equal to 15 percent of the export's national 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 become stricter in defining national value added, attempting to reduce the amount of credit claimed by exporters.

A number of industries that produce exclusively for export, such as shrimp farming and tourism, are exempted 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.

A new domestic subsidy called the Certificate to Foment Industry (CFI), which would replace the CATs when that program ends, is currently under consideration by Panama's Legislative Assembly. Panamanian authorities have stated that the CFI will be consistent with Panama's WTO obligations.

The Tourism Law of 1994 (Law 8) allows deduction from taxable income of 50 percent of any amount invested by Panamanian citizens in tourism development.

Law 25 of 1996 provides for the development of "export processing zones" (EPZ's) 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 re-exported. The government also provides other tax incentives to EPZ companies and EPZ provisions.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Protection of intellectual property rights (IPR) in Panama has improved significantly in recent years. Specialized courts have been created to hear intellectual property-related cases. The Government of Panama has also created a specialized IPR prosecutor's office. Intellectual property policy and practice in Panama is the responsibility of an Inter-Institutional Committee on IPR. This committee consists of representatives from six government agencies and operates under the leadership of the Vice-Minister of Foreign Trade. It coordinates enforcement actions and develops strategies to improve compliance with the law.

Copyrights

Panama's 1994 copyright law modernized copyright protection in Panama, providing for payment of royalties, facilitating the prosecution of copyright violators, protecting computer software, and making certain copyright infringements a felony. Although the lead prosecutor for IPR cases in the Attorney General's Office has taken a vigorous enforcement stance against piracy and counterfeiting, the Copyright Office remains small and ineffective, and Panama's judicial system has not provided speedy and effective remedies in civil and criminal piracy cases brought under the law. Given Panama's role as a transshipment point, Panama is susceptible to trading in pirated and counterfeit goods.

The government of Panama is signatory to the WIPO Copyright Treaty and the WIPO Performances and Phonographs Treaty, but the Copyright Office has been slow to draft and implement further improvements to the Copyright Law. Nevertheless, the office has proposed to establish new offenses, such as for Internet-based copyright violations, and to enhance border measures. It has already raised the penalties for infractions. Legislation drafted with technical assistance from SIECA (the Central American Economic Integration System) has not yet become law.

Patents

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. The law's most important feature 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.

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.

INVESTMENT BARRIERS

Panama maintains an open investment regime that is receptive to foreign investment. Over the years the country has focused its efforts on bolstering its reputation as an international trading, banking, maritime, and services center**.** Until recently, the Panamanian government was unresponsive to some foreign investors. For example, a few firms that are closely regulated by, or hold concessions from the Government of Panama, encountered a lack of cooperation from certain officials and abrupt changes related to terms of various concessions or contracts. In 2003, the Government of Panama addressed these problems constructively by re-opening discussions with the U.S. Government under the rubric of the Ad Hoc Investment Commission, which had been used successfully in the past to resolve concerns of U.S. investors. The resolution of a number of these disputes during the past year helped make possible the November 2003 announcement that both countries plan to move forward with bilateral negotiations for a free trade agreement in 2004.

In accordance with the terms of the U.S.-Panama Bilateral Investment Treaty, Panama places no restrictions on the nationality of senior management. Panama does restrict foreign nationals to 10 percent of the blue-collar work force, and specialized or technical foreign workers may number no more than 15 percent of all employees in a business.

A 1998 investment law aimed to enhance new investment in Panama by guaranteeing that investors will have no restrictions on capital and dividend repatriation, foreign exchange use and disposal of production inside a limited number of sectors in the economy. The spirit of the law is that for ten years, investors will not suffer any deterioration of the conditions prevailing at the time the investment was made. The guarantees are related to new laws that may be enacted in the future affecting fiscal, customs, and labor regimes.

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 of 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. Although a regulatory framework to implement the law is still being worked out, the law is expected to have a favorable impact on many sectors of Panama's services dominated economy, particularly the maritime sector.

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. In addition, allegations of corruption persist, not only in the judicial system, but also possibly in government procurement and at the municipal level.

PARAGUAY

TRADE SUMMARY

The U.S. trade surplus with Paraguay was $435 million in 2003, an increase of $46 million from $389 million in 2002. U.S. goods exports in 2003 were $489 million up 12.9 percent from the previous year. Corresponding U.S. imports from Paraguay were $53 million, up 22.1 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 2002 was $114 million, down from $414 million in 2001.

IMPORT POLICIES

Paraguay has a relatively open trade regime. Paraguay is a member of MERCOSUR (Common Market of the South), a common market and customs union comprised of Argentina, Brazil, Paraguay and Uruguay. Since 1995, Paraguay has increased many of its external tariffs on products from non-MERCOSUR countries in order to conform to the MERCOSUR Common External Tariff (CET) of up to 23 percent. The tariffs on the 399 items on Paraguay's list of exceptions to the CET will be increased annually until they reach parity with the CET in 2006.

For exports to Paraguay, a Paraguayan consulate in the country from which the exports originate must certify specific documentation, such as the commercial receipt, certificate of origin, and cargo manifest. If there is no Paraguayan consulate in the country where the exports originate, 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 regulations make it difficult for exporters to ensure they are following the most current regulations, and could cause dispatch delays in shipments and lead to unexpected fines.

Paraguay is obligated to implement the World Trade Organization (WTO) Agreement on Customs Valuation; however, it has not yet notified its implementing legislation and checklist to the relevant WTO Committee.

GOVERNMENT PROCUREMENT

In the past, U.S. companies have protested non-transparent procurement procedures, citing bid specifications that favor a preferred bidder and allowance for more than one of a parent company’s subsidiaries to each submit bids. Other complaints included the discriminatory use of bid procedures to disqualify a non-preferred bidder, declaring the absence of bids when a non-preferred bidder submitted the best bid, and not requiring preferred bidders to comply with tender requirements. The new administration of President Duarte has launched major transparency initiatives, however, in particular the publication on the Internet of all government tenders and of information on bidders as of January 2004. All pending tenders have been reviewed by the Comptroller General’s Office and several have been suspended or cancelled because of perceived improprieties in the adjudication process. Paraguay is not a member of the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Paraguay belongs to the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the World Intellectual Property Organization (WIPO). It is also a signatory to the Paris Convention, Berne Convention, Rome Convention, the Phonograms Convention, and the WIPO Copyright, and Performances and Phonograms Treaties. In January 1998, the United States Trade Representative (USTR) identified Paraguay as a Priority Foreign Country under the Special 301 provisions of the Trade Act of 1974, and in February 1998, the United States initiated a Section 301 investigation of Paraguay's acts, policies and practices regarding intellectual property.

Paraguay is currently subject to Section 306 monitoring. In November 1998, the U.S. Government and the Government of Paraguay signed a comprehensive Memorandum of Understanding (MOU) on the protection of intellectual property, which allowed the U.S. to remove Paraguay from its Priority Foreign Country status and to terminate the Section 301 investigation. In the MOU, the Paraguayan Government committed 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. The two Governments negotiated a new MOU in December 2003, which focuses on areas that are still of concern, especially the lack of effective enforcement of intellectual property rights.

Copyrights, Trademarks and Patents

Paraguay continues to be a transshipment point for pirated and counterfeit goods to large neighboring markets, in particular Brazil. However, there have been notable successes, including the destruction of several multi-million dollar, high-technology pirate CD factories, the seizure of millions of blank and pirated CD’s, the destruction of large amounts of counterfeit goods and the imposition of significant fines and jail terms. The Duarte administration has been particularly active and focused in its fight against piracy, counterfeiting and contraband, declaring it a national priority. Initial results have been promising, but much work remains to be done.

A high profile trademark case in December 2001 resulted in the imposition of a prison sentence of two and a half years and a heavy fine for the offenders, but no one convicted of intellectual property infringement crimes in Paraguay has ever served time in prison. There have been two cases in which offenders were sentenced to prison terms. The December 2001 case is still under appeal. In the other case, the offender fled the country.

OTHER BARRIERS

Law 194/93 established the legal regime governing relationships between foreign companies and their Paraguayan representatives. Modeled after the 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 such just cause, thus leading to expensive out-of-court settlements. In several cases, however, the courts have upheld rights of foreign companies to terminate representation agreements after just cause was established, mainly lack of sales performance from local representatives. This law may discourage U.S. investment through fear of potential lawsuits.

Privatization

Paraguay has an uneven record on privatization. Political pressures have impeded the process, as the 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 at privatizing the telecommunications company failed in 2002, due to intense political pressure and allegations of mishandling.

PERU

TRADE SUMMARY

The United States' trade deficit with Peru was $700 million in 2003, an increase of $323 million from $377 million in 2002. U.S. goods exports in 2003 were $1.7 billion, up 9.2 percent from the previous year. Corresponding U.S. imports from Peru were $2.4 billion, up 24.1 percent from 2002. Peru is currently the 46th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Peru in 2002 was $3.2 billion, up from $3.1 billion in 2001. U.S. FDI in Peru is primarily in the mining sector.

Free Trade Area Negotiations

In November 2003, the United States announced its intention to begin free trade negotiations with Colombia, Peru, Ecuador and Bolivia, the four Andean Trade Preference Act beneficiary countries. The negotiations will begin on May 18, 2004 with Colombia, as well as any of the other countries that has demonstrated its readiness to begin. The Andeans collectively represented a market of about $7 billion for U.S. exports in 2003, and are home to about $4.5 billion in U.S. foreign direct investment. A free trade agreement with these countries would extend the list of countries in the Americas with which the United States has completed free trade agreements. The negotiation will complement the goal of completing a Free Trade Area of the Americas (FTAA). The U.S. Government will seek to address the issues described in this chapter within the context of our bilateral free trade agreement negotiations.

IMPORT POLICIES

Tariffs

Tariffs apply to virtually all goods exported from the United States to Peru, although rates have been lowered over the past few years. Under the current system, a 12 percent tariff applies to 45 percent of the products imported into Peru; four percent and seven percent tariffs apply to about 23 percent and 15 percent of goods, respectively; and, 17 percent and 20 percent tariffs apply to most of the rest. The government maintains some "temporary" tariff surcharges on agricultural goods to protect local production and domestic investment in the sector. In 2002, the tariff rate for most capital goods was reduced from 20 percent and 12 percent to seven percent. On December 31, 2003, the Ministry of Economy and Finance announced the reduction of tariffs from seven percent to four percent for more than one thousand capital goods, which account for 95 percent of the items previously set at the seven percent level.

Certain sensitive agricultural products – *e.g.*, corn, rice, sugar and powdered milk – are subject to a "price band," or variable levy, which fluctuates to ensure that the import prices of such products equal a predetermined minimum import price. This levy is the difference between the minimum import price and an international reference price plus an unpublished adjustment for insurance, freight and other factors. A top U.S. agricultural market access priority is the elimination of this price band system.

Non-tariff Measures

Almost all non-tariff barriers, including subsidies, import licensing requirements, import prohibitions, and quantitative restrictions have been eliminated. However, the following imports are banned: used clothing, used shoes, used tires, remanufactured vehicle parts, cars over five years old and trucks over eight years old. Used cars and trucks that are permitted to be imported 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. Import licenses are required for firearms, munitions and explosives, chemical precursors (since these can be diverted to illegal narcotics production), ammonium nitrate fertilizer, wild plant and animal species, and some radio and communications equipment.

There are still significant trade barriers imposed by SENASA, the Government of Peru's animal and plant health agency, on agricultural products including poultry, live animals and animal genetic material. Among the affected products are:

- Poultry Products: Peru established an import ban on U.S. poultry products due to the presence of Avian Influenza and Newcastle disease. Recently, it eliminated the ban on chicks and hatching eggs, except from the eight states. Government action on poultry meat is pending.

- Beef and beef products: SENASA now requires that products be certified to have been born, raised and slaughtered in the country of origin.

- Paddy Rice: Peru has a ban on paddy rice imports from the United States. SENASA is currently conducting a Pest Risk Assessment that if successful will result in lifting the ban. However, a decision is overdue.

GOVERNMENT PROCUREMENT

In 2000, in an effort to support national companies, Peru began adding 15 points (on its rating scale of 100) to Peruvian firms bidding on government procurement contracts. In January 2002, the government raised the point preference an additional five points, for a total of 20, until 2005. U.S. pharmaceutical and medical equipment firms have raised concerns about this practice with regard to bidding on Health Ministry purchases. U.S. firms contend that the 20 point margin is excessive, giving unfair advantage to Peruvian competitors that would otherwise lose these bids on cost or technical grounds. Since 2001, Peru has also distinguished between national and international bidding processes, reserving certain solicitations for participation by domestic firms only. Peru is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Peru is a member of the World Intellectual Property Organization (WIPO). It is also a member of the Paris Convention, Berne Convention, Rome Convention, Geneva Phonograms Convention, Brussels Satellites Convention, Universal Copyright Convention, the WIPO Copyright Treaty (WCT), and the WIPO Performances and Phonograms Treaty (WPPT). Peru remains on the U.S. Trade Representative's "Special 301" Watch List. Concerns remain about the adequacy of IPR law enforcement, particularly with respect to the relatively weak penalties that have been imposed on IPR violators by the criminal justice courts.

Copyrights

Peru's 1996 Copyright Law is generally consistent with the TRIPS Agreement. Peru joined the WCT in July 2001 and the WPPT 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. Indecopi's enforcement has recently come under fire by a national association of music publishers, which claims that their members are not receiving royalties due them.

Despite Peruvian government efforts to increase enforcement, including increased raids on large-scale distributors and users of pirated material, piracy remains widespread. The International Intellectual Property Alliance estimates that piracy levels in Peru for recorded music reached 98 percent in 2003 with damage to U.S. industry estimated at $87 million, while motion picture piracy declined slightly to 45 percent of the market for a loss of an estimated $4 million.

Patents and Trademarks

Peru's 1996 Industrial Property Rights Law provides the framework for more effective protection for patents. In 1997, based on an agreement reached with the U.S. Government, Peru resolved several inconsistencies with the WTO TRIPS Agreement provisions on patent protection and most-favored nation treatment for patents.

However, the U.S. pharmaceutical and agrochemical industries continue to have concerns about Peru's protection of patents. Government of Peru health authorities approved the commercialization of new drugs which were the bioequivalents of already approved drugs, thereby denying the originator companies the exclusive use of their data. In effect, the government of Peru is allowing the test data of registered drugs from originator companies to be used by others seeking approval for their own pirate version of the same product. Also, U.S. companies are concerned that the government of Peru is implementing a policy that a company that had patented a compound for one use cannot subsequently patent a second use of that compound, putting Peru at odds with international norms. Although Peruvian law provides the means for effective trademark protection, counterfeiting of trademarks and imports of pirated merchandise remain widespread.

SERVICES BARRIERS

Basic Telecommunications Services

In the WTO negotiations on basic telecommunications services, concluded in March 1997, Peru made commitments on all basic telecommunications services, with full market access and national treatment to be provided as of June 1999. Advancing that timetable by almost a year, the government and the dominant telecommunications services provider reached an agreement to end the monopoly of the former state-owned telephone companies in 1998. Peru is continuing the process of developing a competitive telecommunications market and lowered its interconnection rates for most types of telephones in 2001. However, concerns remain about the independence and strength of the government regulatory body established to oversee the sector and monitor the former monopoly. In addition, U.S. industry has complained about the lack of transparency in the regulatory decision-making process and the persistently high interconnection rates for calls to mobile networks.

INVESTMENT BARRIERS

National treatment for foreign investors is guaranteed under Peru's 1993 constitution. Foreign investment does not require prior approval, except in banking and defense-related industries.

Arbitration is a constitutionally guaranteed alternative to the courts. Several U.S. companies have processed complaints through this procedure with mixed results.

Peruvian law restricts the majority ownership of broadcast media to Peruvian citizens. Foreigners are also restricted from owning land within 50 kilometers of a border but can operate within those areas through special authorization. National air and water transportation are restricted to domestic operators, although some flexibility applies. In July 2001, inter-urban land transportation was also reserved to Peruvian carriers. There are no prohibitions on the repatriation of capital or profits. 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 national interests) or more than 30 percent of the total company payroll, although some exemptions apply.

ANTICOMPETITIVE PRACTICES

U.S. telecommunications firms have complained that Peruvian government regulatory oversight has been insufficient, allowing the former monopoly provider, owned by Spain’s Telefonica, to engage in unfair practices that hinder competition.

ELECTRONIC COMMERCE

The Peruvian government is moving to put in place legislation that will facilitate electronic commerce. It has already passed laws giving legal status to digital signatures, creating a framework for electronic contracts, and making it illegal to tamper with, destroy or interfere with computer systems or data.

OTHER BARRIERS

Several U.S. firms have complained that executive branch ministries, regulatory agencies and the judiciary lack the resources, expertise and independence necessary to carry out their respective duties. Peru’s weak judicial sector is a particular problem. Commercial disputes that end up in the Peruvian judicial system often languish, may be tried in competing jurisdictions, and can have unpredictable outcomes. The Toledo Administration has begun to address institutional weaknesses in the executive branch and is laying the foundations for judicial reform.

PHILIPPINES

TRADE SUMMARY

The U.S. trade deficit with the Philippines was $2.1 billion in 2003, a decrease of 1.6 billion from 2002. U.S. goods exports in 2003 were $8.0 billion, up 9.8 percent from the previous year. Corresponding U.S. imports from the Philippines were $10.1 billion, down 8.4 percent. Philippines is currently the 19th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to the Philippines were $1.5 billion in 2002 (latest data available), and U.S. imports were $1.3 billion. Sales of services in the Philippines by majority U.S.-owned affiliates were $1.2 billion in 2001 (latest data available), while sales of services in the United States by majority Philippines-owned firms were $18 million.

The stock of U.S. foreign direct investment (FDI) in the Philippines in 2002 was $4.1 billion, up from $3.3 billion in 2001. U.S. FDI in the Philippines is concentrated largely in manufacturing, and finance sectors.

IMPORT POLICIES

Tariffs

In January 2003, the Philippines government announced a reversal in tariff policy and indicated that it would undertake a comprehensive review of all tariff lines. By early 2004, the Tariff Commission had issued its recommendations for increased tariffs in several sectors and a slow down of its tariff reduction plans in others. While the increased tariffs remain below WTO bound rates, they represent a reversal of the hard fought reforms of successive previous Philippine administrations during the 1990s.

Previous progress on tariff liberalization took shape through a series of reform programs beginning in 1995 that gave most-favored nation (MFN) tariff rates to all goods (except sensitive agricultural products). These tariffs 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 President Arroyo in October and December 2003, respectively, raised tariff rates on more than 1,000 product lines and maintained 2003 rates for an even greater number of product lines. Products affected include industrial goods produced domestically, such as chemical fertilizers, cements, consumer products such as apparel and footwear, and raw materials. The orders raise rates on these products from the current rates of between 3 percent to 10 percent to between 5 percent and 20 percent. These rates are expected to remain in effect until 2007.

The Common Effective Preferential Tariff (CEPT) Agreement for the ASEAN Free Trade Area (AFTA) requires that tariff rates among ASEAN members on a broad range of products be reduced to between zero percent and 5 percent, while quantitative restrictions and other non-tariff barriers are to be eliminated. ASEAN members agreed on a firm timetable leading up to the full realization of AFTA in 2003. President Arroyo signed an executive order on January 9, 2003, which temporarily suspended the AFTA tariff reduction schedule on petrochemical resins and certain plastic products. As allowed for under AFTA, Singapore sought and won compensation from the Philippines for failing to lower Philippine petrochemical tariffs.

Automobile Sector Tariffs

PHILIPPINES

On April 17, 2001, the Arroyo Administration issued an order lowering the tariff on automotive vehicle components from 10 percent to 3 percent under the Philippine government's Commercial Vehicle Development Program, a program designed to rationalize the auto industry and transform the Philippines into a regional hub for automotive production.

To promote local assembly under the Philippine Motor Vehicle Development Program, imports of finished automobiles (completely built-up units) and motorcycles have been subject to the highest duty rate applied to non agricultural products. As part of the comprehensive tariff review, the 30 percent tariff rate for finished automobiles and motorcycles was extended through 2007 by Executive Order 241, reversing a previous order that scheduled a drop to 5 percent in 2004. Completely knocked-down vehicles imported under the Motor Vehicle Development Program are scheduled to decline to 5 percent in 2004 from the current 10 percent.

The Philippines imposes a 30 percent tariff on motorcycles and a 3 percent tariff on crude oil and most refined petroleum products.

Safeguards

The Safeguard Measures Act, effective August 10, 2000, authorizes the Secretary of Trade and Industry or the Secretary of Agriculture to raise a tariff or, in the case of an agricultural good, impose a quantitative restriction, to protect a domestic industry from an import surge. 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 government has responded that, under certain circumstances, the time to comment can be extended administratively to 21 days.

In November 2001, the Philippine government implemented safeguards to protect local cement producers from imports. These safeguards still remain in effect. The interagency Tariff Commission is currently reviewing a safeguard request by local industry for protection against imported float glass and mirror glass.

Agriculture Tariffs and Import Licensing

The Philippines maintains high tariff rates on sensitive agricultural products, including grains, livestock 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 (E.O. 83, 84 and 91), which 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 2002 levels with the exception of pork, poultry, processed meats, corn, coffee and vegetables. Tariffs on other less-sensitive goods were maintained at 7 percent in 2003 while tariffs for several vegetables such as lettuce, broccoli and cauliflower were raised from 7 percent to between 20 percent - 25 percent.

Among sensitive agricultural products, 15 items (at the four-digit HS level) are subject to a minimum access volume (MAV) and tariff-rate quotas (TRQs). Several products with significant market potential for the United States are subject to TRQs, including corn (with an in-quota tariff rate of 35 percent and for 2003/2004 an out-of-quota tariff rate of 50 percent), poultry meat (in-quota and out-of-quota tariff rates equalized at 40 percent on July 1, 2003), and pork (in-quota rate of 30 percent through 2004, out-of-quota at 40 percent through 2004).

The United States had expressed concerns in the past that TRQs for pork and poultry meat were administered in a manner that allocated the vast majority of import licenses to domestic producers who had no interest in importing. Following intensive consultations, the U.S. and Philippine governments concluded a Memorandum of Understanding in February 1998 that resolved the United States' primary concerns over the Philippine TRQ system. The U.S. Government continues to closely monitor the operation of the Philippines TRQ system and the allocation and distribution of import licenses. While import permits are issued and MAV fill-rates are improving, permit issuance is often unpredictable, which has made some importers reluctant to apply for permits. The practice creates the appearance of discretionary licensing, a system which could be WTO-inconsistent.

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. Among the criteria the Secretary is mandated to consider in determining whether to approve importation is whether there is serious injury or threat of injury to a domestic industry that produces like or directly competitive products.

Excise Tax on Distilled Spirits

The Philippines differentiates between domestically produced and imported spirits in its excise tax regime, discriminating heavily against imported spirits. Distilled spirits produced from indigenous materials (such as coconut palm, cane, and certain root crops) are subject to a specific tax of 8.96 pesos per proof liter. Distilled spirits produced from other raw materials (which would apply to most imports) are subject to a specific tax ranging from 84 pesos to 336 pesos per proof liter (depending on the net retail price per 750 ml bottle). Wines with an alcohol content of 14 percent or less by volume are assessed an excise tax of 13.44 pesos per liter, while wines with an alcohol content greater than 14 percent but less than 25 percent alcohol content by volume are charged an excise tax of 26.88 pesos per liter. Fortified wines (containing greater than 25 percent alcohol content) are taxed as distilled spirits. Depending on the net retail price per bottle, an excise tax of 112 pesos per liter for wines or 336 pesos per liter for sparkling wines is assessed.

A bill pending in the House of Representatives since 2002 would revert the tax rates to more equitable levels through indexation. The bill would also reclassify alcohol and tobacco products based on their net retail prices in order to ensure that the appropriate tax rate is applied. Most importantly, the bill would address the inherent bias of the present structure in favor of locally manufactured brands of distilled spirits produced from native materials. This bill continues to be deferred and action is not expected prior to mid-2004 at the earliest.

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 larger engine displacement, including those from the United States. The new 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, including Asian utility vehicles (AUVs) will now be taxed under the new system.

Under the new excise tax scheme vehicles are divided into four brackets based on their price. The approved tax rates are as follows: (1) for vehicles with a manufacturer's price of PHP600,000 and below, the tax will be only 2 percent; (2) those priced over PHP600,000 to PHP1.1 million, the tax will be PHP12,000 plus 20 percent of the amount in excess of PHP600,000; (3) those priced over PHP1.1 million to PHP2.1 million, the tax will be PHP112,000 plus 40 percent of the amount in excess of PHP1.1 million; and (4) those over PHP2.1 million, the tax will be PHP512,000 plus 60 percent of the amount in excess of PHP2.1 million. The Secretary of Finance is considering indexing the brackets reflecting the manufacturer's net price every two years.

Quantitative Restrictions

The National Food Authority administers quantitative restrictions on rice imports. The minimum access volume (quota) for rice is 194,135 metric tons for 2003 and 224,005 metric tons for 2004. Both in and out-of-quota tariffs are 50 percent. Rice import demand is expected to continue growing in the Philippines due to persistent shortfalls in local production and rapid population growth (2.4 percent annually). Due to this restriction, rice is commonly illegally imported or smuggled into the country from various countries, including Thailand and Vietnam.

In 2003, the Philippine Department of Agriculture opened up the importation of rice to the private sector. Prior to this, only the National Food Authority could legally import rice. While the opening to private sector participation is a welcome development, the U.S. Government has raised concerns that the existing plan to transfer import rights to domestic rice farmers ("Farmers as Importers" and "Farmers as Distributors") may result in discriminatory treatment against imports.

Other Import Restrictions

The Philippines maintains other import restrictions. Since April 15, 1999, the National Telecommunications Commission (NTC) has required cellular telephone service providers or authorized equipment dealers to obtain an import permit prior to importation of cellular phone handsets.

Customs Barriers

The Philippine government has made progress during the last several years toward bringing its customs regime into compliance with its WTO obligations. It enacted legislation, R.A. 8181 (1996) and R.A. 9135 (2001) and a series of supporting regulations, which provide the legal context for the Philippines' implementation of the WTO Agreement on Customs Valuation. With these measures, the Philippines discontinued 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 with the authority to create a post-entry audit unit, a risk management unit and a border control unit charged with IPR enforcement.

Notably, the 2001 law eliminated private sector involvement in the valuation process and clarified that reference values may be used as a risk management tool, but not as a substitute value for valuation purposes. The U.S. Government remains concerned, however, about reported private sector involvement in the valuation process, particularly in the activities of the Import Specialist Team, which has the authority to review all green lane entries for possible valuation-related offenses. The U.S. Government raised this issue during bilateral trade discussions during the past several years and will continue to closely monitor this issue.

Prior to March 31, 2000, the Philippines employed a preshipment inspection regime (PSI) operated by *Societe Generale de Surveillance*. Under the preshipment inspection system, U.S. exporters frequently reported abuses, including arbitrary and unjustified increases or uplifts' of the invoice value of imports, often on the basis of inappropriate or questionable information. Following the expiration of the preshipment inspection regime, the Philippine government 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.

Currently, all importers or their agents must file import declarations with the Bureau of Customs (BOC). The BOC then processes these entries 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). The BOC requires a documentary review of shipments channeled through the yellow lane, 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 added a "Super Green Lane" (SGL) , which is a facility for the importers acknowledged to be lowest risk. The import transactions of Super Green Lane importers are not covered by the selectivity system and thus are exempt from documentary and physical examination. Because of low throughput (only about 80 companies have made use of this facility so far), BOC, with USAID technical assistance, adjusted the cost to companies of accessing the facility. The new Super Green Lane facility was launched in December 2003. Use of these facilities is expected to increase to 120 low-risk importers by February 2004 and to approximately 1,200 low-risk importers by the end of 2004.

Despite these improvements, 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 continued to urge the Philippine government to improve administration of its customs regime. Two key areas where administration could be strengthened are improving classification of entries and providing precise descriptions of imported articles to reduce discretionary authority of customs officials. During bilateral trade discussions in 2003, the Philippines reviewed progress on administrative reforms, including efforts to reduce average clearance time for goods passing through Customs and ongoing internal efforts to eliminate corruption. Reform and modernization within the Bureau of Customs is being supported through technical assistance by USAID and several other donor organizations.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Industrial Goods

Local inspection for compliance with mandatory Philippine national standards is required for 75 products, including cosmetics, medical equipment, lighting fixtures, electrical wires and cables, cement, pneumatic tires, sanitary wares, and household appliances. For goods not subject to mandatory 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 promote the use of generic drugs by requiring that the generic name of a particular pharmaceutical appear above its brand name on all packaging.

Agricultural Goods

The Philippine Department of Agriculture (DA) established plant health regulations in 1995 which 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.

The DA continues to use Veterinary Quarantine Certificates (VQCs) and import inspections to limit poultry meat imports. U.S. industry reports delays of up to one month in DA issuance of VQCs, and DA limits on the issuance of VQCs to holders of MAV licenses. The U.S. Government continues to urge the Philippine government to address this issue, which appears to be a WTO-inconsistent form of discretionary licensing.

In September 2002, the DA announced plans to introduce mandatory third-party Hazard Analysis and Critical Control Point (HACCP) inspections for all meat and dairy plants exporting to the Philippines as of April 1, 2003. In February 2003, however, the Philippine government postponed indefinitely implementation of this new regulation. The order would have required a third-party quarterly audit of all foreign meat and milk plants exporting to the Philippines for compliance with internationally recognized standards of the HACCP program. The United States and other countries raised serious concerns about the consistency of this new requirement with the Philippines WTO Sanitary and Phytosanitary commitments. U.S. industry estimated the proposed new requirement would result in losses of $55 million, roughly the value of U.S. trade to the Philippines in the affected commodities.

As of December 2003, public consultations were about to take place regarding a proposed regulation that would require all pet food importers to be DA accredited. The proposed pet food regulation will accredit an importer only after a mandatory physical inspection (the cost of which is to be charged to the importer) of the originating pet food plant. The United States has expressed concern over this proposed regulation, which duplicates inspections already undertaken by the U.S. Government and is without scientific basis. The United States is monitoring developments on this draft regulation.

GOVERNMENT PROCUREMENT

Although the Philippines is not a signatory to the WTO Government Procurement Agreement (GPA), the Philippine government has taken some modest initial steps to reform its procurement process. Nonetheless, in awarding contracts, the Philippine government continues to provide preferential treatment to local suppliers of pharmaceuticals, rice, corn, and iron/steel materials for use in government projects, and in locally-funded government consulting requirements. Contractors for infrastructure projects that require a public utility franchise (*i.e.*, water and power distribution, telecommunications, and transport systems) must be at least 60 percent Filipino-owned.

In January 2003, President Arroyo signed the "Government Procurement Reform Act." The law calls for public monitoring of the procurement process to promote greater transparency and competition, enhance the flow of information, and lessen discretion among agencies. It also establishes an electronic procurement system to serve as the single portal for all government procurement and requires that all bidders use standardized forms. However, the law allows, in the interest of availability and timeliness, the procuring entity to give preference to the purchase of domestically produced and manufactured goods, supplies and materials. Consulting services and infrastructure projects are exempt from this provision, putting foreign firms on equal footing with local firms in these sectors. For infrastructure projects, the law provides that, for the next five years, contractors whose head office is located in the province where the project will take place have the right to match the lowest offer made by a non-province based bidder. In addition to these concerns about discriminatory treatment against foreign firms, U.S. firms continue to raise concerns about corruption in government procurement.

In 1993, the Philippine government mandated 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 countertrade obligations at a minimum of 50 percent of the import price and set penalties for nonperformance of countertrade obligations. The U.S. Government continues to monitor implementation of these laws.

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. 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

To further promote the local assembly and export of vehicles from the Philippines, President Arroyo signed Executive Order 156 in October 2003. The export incentives program allows any auto manufacturer which exports finished vehicles from the Philippines to receive a benefit equivalent to $400 per vehicle. This benefit will be provided in the form of a reduced tariff rate on finished vehicles the manufacturer imports into the Philippines. The reduced tariff rates are: MFN rates of 30 percent and 20 percent will be reduced to 10 percent and the ASEAN Common External Preferential Tariff (CEPT) rate of 5 percent will become 1 percent for imports from the other ASEAN countries. This export incentive will be equivalent to $400 per unit exported for year one to two of the program, $300 for year three, and phased down to $100 by year five.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The U.S. Government continues to have serious concerns about intellectual property protection in the Philippines, despite President Arroyo's commitment to strengthen the IPR regime. In April 2003, for the third consecutive year, the U.S. Government named the Philippines to the Special 301 Priority Watch List. The U.S. concerns include the Philippine government's failure to implement key legislation, lack of sustained enforcement efforts and lack of judicial remedies. Optical media piracy has significantly increased in the past year, and the Philippines is now a net exporter of pirated optical media. The Philippines has become a haven for organized piracy and counterfeiting, as other countries in the region strengthen their enforcement efforts against violators of IPR.

The Intellectual Property Code

The 1997 Intellectual Property Code provides the 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; burdensome restrictions affecting contracts to license software and other technology; and the judiciary's lack of authority to order the seizure of pirated material as a provisional measure without notice to the suspected infringer.

PHILIPPINES

The Philippines government took several 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 Philippines Supreme Court adopted rules establishing *ex parte* authority in civil cases of IPR infringement. In June 2002, President Arroyo enacted legislation to comply with its 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 rules that could affect their operations and the provision exempting local farmers from licensing requirements.

In addition to its commitments under the WTO TRIPS Agreement, the Philippines is a party to the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the Berne Treaty on the International Recognition of the Deposit of Microorganisms, 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 Copyright Treaty in March 2002. The treaties took effect in October 2002.

President Arroyo signed into law the Optical Media Act on February 10, 2004. The new law is intended to regulate the import, export and production of optical disks, including the tools and materials involved in the replication of optical disks. Full implementation of this law, including prosecution of IPR violators, will be critical to its effectiveness. During bilateral trade discussions in 2003, the U.S. Government continued to raise concerns regarding insufficient legal protection and enforcement of IPR. The U.S. Government also urged the Philippines to enact legislation to address optical media piracy, adopt amendments that would extend further IPR protection to the Internet by accommodating electronic commerce and outlawing online piracy, and take further steps to combat piracy of textbooks and other protected printed materials. The U.S. Government, through various agencies, continues to provide technical assistance and training to strengthen capacity within Philippine agencies responsible for the protection of intellectual property.

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 estimates the annual losses due to copyright piracy in the Philippines in 2002 at $121 million. U.S. distributors report high levels of pirated optical disks of cinematographic and musical works, and computer games, business software, and widespread unauthorized transmissions of motion pictures and other programming on cable television systems. Trademark infringement in a variety of product lines also is widespread, with counterfeit or pirated merchandise openly available in both legitimate and illegitimate venues.

Serious problems continue to hamper the effective operation of agencies tasked with IPR enforcement. Many enforcement agencies suffer from a lack of resources while IPR issues remain a relatively low priority. Enforcement efforts such as raids and seizures often have only a temporary effect due to ineffective post-raid enforcement. Lack of effective interagency coordination also has had a negative impact on enforcement efforts. The Intellectual Property Code of the Philippines stipulates that the Intellectual Property Office (IPO) has jurisdiction to resolve disputes concerning alleged infringement and licensing. However, the IPO has been unable to effectively coordinate enforcement activities among the agencies responsible, including the Department of Justice, National Bureau of Investigation, Videogram Regulatory Board (to be replaced by the Optical Media Board), the Bureau of Customs, and the National Telecommunications Commission). The IPO's administrative complaint mechanisms have also been ineffective.

Nonetheless, the Philippine government has taken some administrative steps intended to strengthen enforcement. A customs administrative order in September 2002 strengthened the ability of the Bureau of Customs (BOC) to prohibit the importation of pirated products, and created an Intellectual Property Unit within the BOC to oversee IPR violations at ports of entry. The BOC is required to maintain an IPR registry where property holders may record their rights and other information to facilitate enforcement.

In addition, as a result of a memorandum of agreement that the BOC signed with the Videogram Regulatory Board in June 2003, the Philippine government has conducted more raids on suspected counterfeit products resulting in the seizure and destruction of pirated goods valued in the millions of dollars. Nonetheless, significant quantities of pirate products continue to enter the country.

The Philippines created specialized Intellectual Property Courts in 1995, but in practice those courts were not exclusive to IPR cases and thus lacked technical expertise. These courts remained subject to backlogs and delays. In June 2003, the Supreme Court issued a resolution transferring all IP cases to the newly designated Special Commercial Courts, effectively revoking the previously existing 34 special IPR courts. The Special Commercial Courts handle cases formerly adjudicated by the Securities and Exchange Commission, in addition to cases involving IPR issues. It is unclear whether the judges have sufficient time or adequate technical knowledge of IPR issues to be effective. Moreover, IPR cases are not considered serious crimes and take lower precedence in court proceedings.

In October 2003, a new law increased the compensation of judges, with the long-run objective of recruiting more judges to fill up court vacancies. The Department of Justice has also created a task force on intellectual property piracy, with 28 state prosecutors tasked to handle the preliminary investigation of IPR complaints filed with the task force.

There have been very few successful cases of prosecution and imprisonment. Some companies have invested significant resources with investigations and litigation, but many cases remain unresolved as long as a decade after the initial complaint. The Philippines has failed to establish punitive sanctions sufficient to serve as a deterrent to IPR violators. For example, the nominal damage awarded by the Philippine courts in most IPR cases adds little to the cost of doing business, with no risk of imprisonment.

SERVICES BARRIERS

Basic Telecommunications

The Philippine Constitution limits foreign ownership of telecommunications firms to 40 percent. During the WTO negotiations on basic telecommunications services, the Philippines made commitments on most basic telecommunications services and adopted some procompetitive regulatory principles contained in the WTO Reference Paper. It did not provide market access or national treatment for satellite services and made no commitments regarding resale of leased circuits/closed user groups. The Philippine government has yet to ratify the Fourth Protocol to the WTO General Agreement on Trade in Services (GATS), embodying its proposed obligations under the WTO Basic Telecommunications Agreement, despite U.S. urging.

In February 2003, the Philippine Long Distance Telephone Company (PLDT) and other major Philippine telephone companies announced on the same day, the same increase in termination rates for foreign carriers, and some cut off direct service to carriers which refused to pay. The U.S. Federal Communications Commission ruled that this action was anti-competitive and ordered U.S. companies to cease payments to the Philippine carriers involved. As of March 2004, all Philippine carriers had restored service and reached agreements with U.S. carriers. As a result, the FCC has now lifted the stop payment order with respect to all Philippine carriers.

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 practice permits 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 insurance system may provide coverage for government-funded projects. A 1994 administrative order extended this policy to public and private build-operate-transfer projects. 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

Pursuant to 1994 legislation, 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 branch 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 51 percent 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 own up to 100 percent of one locally incorporated commercial or thrift bank (up from the previous 60 percent foreign equity ceiling). However, for the first three years, such foreign investment may be made only in existing banks, reflecting the current emphasis of the Bangko Sentral ng Pilipinas (BSP, the central bank) on banking sector consolidation. 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.

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, 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.

The June 2001 Electric Power Industry Reform Act provides for the privatization of the transmission and distribution assets of the National Power Corporation. Transmission and distribution require a public utility franchise under the Act, which would be subject to a 40 percent foreign-ownership ceiling (1986 Constitution). Legislation facilitating the privatization of the national transmission grid, known as Transco, continues to languish in the Senate, although the Arroyo Administration has taken steps to sell transmission and generating assets without additional legislation. The privatization and modernization of the sector is considered critical to attracting additional foreign investment.

Practice of Professions

As a general rule, the Philippine Constitution reserves the practice of licensed professions (*e.g.*, law, medicine, nursing, accountancy, engineering, architecture, customs brokerage) to Philippine citizens. Philippine law (R.A. 8182) also requires that preference be given to Philippine citizens in the hiring of consultants and other professionals necessary for the implementation of projects funded by foreign assistance. Legislation signed in February 1998 (R.A. 8555) gives the Philippine President the authority to waive this and other preferences applicable to the procurement of goods and services funded with foreign assistance.

Shipping

The Maritime Industry Authority prohibits foreign-flagged vessels from engaging in the provision of domestic carriage services. The country's bareboat chartering laws stipulate that Philippine-flagged vessels should be manned by a Filipino crew and disallows foreign crew/officers, except as supernumeraries.

Express Delivery Services

Foreign air express couriers and airfreight forwarding firms must either contract with a 100 percent Filipino-owned business to provide delivery services or establish a domestic company with a minimum of 60 percent Philippine-owned equity. U.S. companies currently operate hub operations with the Philippines, made possible by partial open skies provisions. In 2003, the U.S. Government attempted to negotiate a full all-cargo open skies agreement with the Philippines government, including Seventh Freedom Rights, to enable the companies to provide more services to their customers. Seventh Freedom enables an air courier to shuttle between two countries without having to pass through its home country. During aviation talks in July 2003, the Philippines delegation claimed that Seventh Freedom was unconstitutional. The Philippines government is currently reviewing the issue. Nonetheless, on December 3, 2003, President Arroyo signed an executive order permitting Cargo Open Skies (including Seventh Freedom rights) for the two international airports located within the Clark and Subic economic zones.

INVESTMENT BARRIERS

The 1991 Foreign Investment Act contains two "negative lists" enumerating areas where foreign investment is restricted. The restrictions stem from a constitutional provision that permits the Philippine

Congress to reserve for Philippine citizens certain areas of investment. The scope of these lists was last revised on October 22, 2002. The Executive Branch will review the list again in 2004.

List A restricts foreign investment in certain sectors because of constitutional or other constraints. For example, the practice of licensed professions such as engineering, medicine, accountancy, environmental planning, and law is fully reserved for Filipino citizens. Also reserved for Filipino citizens are 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 marine resources, and manufacture of firecrackers and pyrotechnic devices. Up to 25 percent foreign ownership is allowed for enterprises engaged in employee recruitment and for public works construction and repair (with the exception of build-operate-transfer and foreign-funded or -assisted projects, that is, foreign aid, where there is no upper limit). 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), educational institutions, public utilities, commercial deep sea fishing, government procurement contracts, rice and corn processing (after 30 years of operation, before which time 100 percent foreign participation is allowed). Up to 40 percent foreign ownership of private land is allowed. Full foreign participation is allowed for retail trade enterprises with (1) paid-up capital of $2.5 million or more provided that investments for establishing a store is not less than $830,000, or (2) specializing in high end or luxury products, provided that the paid-up capital per store is not less than $250,000. Enterprises engaged in financing and investment activities, including securities underwriting, 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 gambling. This list also seeks to protect local small- and medium-sized firms by restricting foreign ownership to no more than 40 percent in nonexport firms capitalized at less than $200,000.

In addition to the restrictions noted in the "A" and "B" lists, the Philippines generally imposes a foreign ownership ceiling of 40 percent on firms seeking incentives with the BOI under the annual investment priorities plan. While there are exceptions to the ceiling, divestment to reach the 40 percent level is required within 30 years of the initial investment, or longer as allowed by the BOI. 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. However, the employer must train Filipino understudies and report on such training periodically. The positions of elective officers of enterprises (i.e., president, general manager and treasurer) are exempt from the labor market test and understudy requirements.

The 1987 Constitution 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.

Trade Related Investment Measures (TRIMS)

The BOI imposed industry-wide local content requirements under its Motor Vehicle Development Program were eliminated in July 2003. The U.S. Government is continuing to closely monitor Philippine implementation of this WTO commitment.

In 1995, pursuant to the WTO TRIMS Agreement, the Philippines notified the WTO of its maintenance of local content and foreign exchange balancing requirements to promote investment. 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 occurred in July 1, 2003.

Under a 1987 executive order, the soap and detergent industry is required to use a minimum of 60 percent of raw materials that do not endanger the environment, and prohibits imports of laundry soap and detergents containing less than 60 percent of such raw materials. The law is intended to require soap and detergent manufacturers to use coconut-based surface-active agents of Philippine origin. In 1999, the Philippine Department of Justice determined that this executive order conflicts with the Philippines' obligations under the WTO TRIMS Agreement and since then, while not repealed, the order has not been enforced.

The United States continues to monitor other TRIMS requirements. Regulations governing the provision of BOI-administered incentives impose a higher export performance for foreign owned enterprises (70 percent of production should be exported) than for Philippine owned companies (50 percent). A 1987 executive order requires that pharmaceutical firms purchase semisynthetic antibiotics from a specific local company, unless they can demonstrate that the landed cost of imports is at least 20 percent less than that produced by the local firm. 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.

TRIMS and Retail Trade

Legislation passed by the Philippine Congress in 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. In addition, prospective investors in the retail sector face a reciprocity requirement. The Retail Trade 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, requires the National Power Corporation (NPC) to privatize at least 70 percent of its generating assets within three years. Seventy-five percent of the funds used to acquire NPC assets must be inwardly remitted and registered with the Philippine 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 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

Technology transfer arrangements are defined as contracts involving the transfer of systematic knowledge for the manufacture of a product, the application of a process, or rendering of a service including management contracts, and 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.

ANTICOMPETITIVE PRACTICES

The 1987 Constitution provides the Philippine government with the authority to regulate or prohibit monopolies, and it also bans combinations in restraint of trade and unfair competition. However, there is 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, the 1961 Act to Prohibit Monopolies and Combinations in Restraint of Trade, 1949 Civil Code, the 1980 Corporation Code, the 1991 Price Act, and the 1932 Consumer Act. However, enforcement agencies do not effectively enforce these laws, as they do not have the resources or capability to challenge well-entrenched economic and political interests.

ELECTRONIC COMMERCE

The Electronic Commerce Law, signed June 2000, provides that business transactions entered into through an automated electronic system such as the Internet are functional and legal, equivalent to a written document protected under 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 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 act 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, and 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 a pervasive and longstanding problem in the Philippines. 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 suspected 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 Commission Against Graft and Corruption is tasked with prosecuting corruption cases linked to the former Marcos regime.

Soliciting/accepting and offering/giving a bribe are criminal offenses, punishable with 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, enforcement of anti-corruption laws has been inconsistent. The Philippine government launched an initiative to strengthen public and private governance, including anticorruption efforts, in cooperation with bilateral and multilateral aid donors in May 2000. To date, results of this initiative have been limited.

PHILIPPINES

An October 2000 USAID-funded survey of more than 600 randomly selected Philippine and foreign-invested enterprises in the capital region suggests that graft remains a serious problem at many levels in all branches of the Philippine government. Almost three-fourths of the enterprises surveyed had extensive or moderate personal knowledge of public-sector corruption on matters directly related to their sector of business. Nearly one-half believed companies need to give bribes to win public sector contracts, whether local or national. The Bureau of Customs; Bureau of Internal Revenue; Department of Public Works and Highways; Department of Education, Culture and Sports; and the Philippine National Police were rated as the most corrupt agencies. The Philippines is not a signatory to the OECD Convention on Combating Bribery.

Both foreign and domestic investors have expressed concern about 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 influenced by bribery, courts improperly issue Temporary Restraining Orders. Investors complain that these officials rarely have any background in economics, business, or a competitive economic system and that entrenched economic interests are able to manipulate the legal system and regulatory process to protect market position. For example, spectrum allocation and licensing in the telecommunications sector is well guarded by incumbent firms, despite regulations that require transparent distribution of these rights.

POLAND

TRADE SUMMARY

The United States' trade deficit with Poland was $567 million in 2003, an increase of $145 million from $422 million in 2002. U.S. goods exports in 2003 were $759 million, up 10.5 percent from the previous year. Corresponding U.S. imports from Poland were $1.3 billion, up 19.6 percent. Poland is currently the 60th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Poland in 2002 was $4.8 billion, up from $4.3 billion in 2001. U.S. FDI in Poland is concentrated in the manufacturing and banking sectors.

IMPORT POLICIES

Tariffs

Since 1989, Poland has steadily liberalized its tariff policy in line with its WTO commitments and with a strong bias in favor of its regional free trade partners (EU, EFTA, CEFTA, Estonia, Latvia, Lithuania, Israel, Turkey, Croatia, and the Faeroe Islands). In 2003, almost three-quarters of Poland's total industrial imports arrived duty free (from Poland's free trade partners), one quarter (including all imports from the United States) was subject to most favored nation (MFN) tariffs, and about three percent were subject to preferential tariff rates under Poland's Generalized System of Preferences (GSP) for developing countries. In 2002, Poland eliminated all tariffs on industrial products from the EU. Poland and the EU liberalized trade of about 500 non-sensitive agricultural goods in 2001 (grains and meat not included) and implemented follow-up agreements thorough 2003 that included a duty free tariff-rate quota (TRQ) for EU grain and duty free access for EU wine.

When it joins the EU on May 1, 2004, Poland will become part of the EU common market, implement the EU common external tariff (CXT) toward all non-EU trading partners, and terminate its bilateral free trade agreements. In general, U.S. exports will have easier access to the Polish market after Poland's EU accession and tariffs on most U.S. exports to Poland of industrial goods will drop. However, approximately three percent of current U.S. exports to Poland, especially agricultural goods, will face higher tariffs.

Poland's pre-EU accession tariff policy has disadvantaged U.S. exporters by steadily eliminating tariffs on goods from the EU and its free trade partners while maintaining MFN tariffs that exceed CXT levels. As a result, U.S. firms have faced a competitive disadvantage selling into Poland compared with EU firms. U.S. exporters of automobiles, auto parts, small aircraft, electrical generating equipment, mining equipment, lumber and wood products, pistachios, distilled spirits, wine, sporting goods, cosmetics, soybean meal, durum wheat, peanut butter, chocolate and non-chocolate confections have been particularly affected. The U.S. and Polish Governments have been engaged for some years in an effort to address this and other bilateral trade issues. In June 2001, the two sides agreed to a package of measures, including the suspension beginning in 2002 of Polish tariffs on a limited range of industrial and agricultural goods of interest to U.S. exporters, continued U.S. support for Poland's participation in the GSP program until it joins the EU, and the creation of a formal dialogue for addressing bilateral trade concerns. These measures went into effect in September 2002.

Poland applies very high duties of nearly 300 percent *ad valorem* on imported alcoholic beverages (52-105 percent ad valorem within quotas). As a result of Polish-EU pre-accession agreements, U.S. distilled spirits are at a competitive disadvantage and generally subject to an out-of-quota rate of 268 percent minimum compared to 75 percent minimum for EU product. Additionally, Poland's sugar law, effective since late August 2001, requires the use of Polish-grown agricultural resources (grain) in domestic isoglucose production.

Non-tariff Barriers

Certain agricultural products imported under import quotas are permitted entry only by individual import permits, whereas annual import quotas for some items are split equally into three-month quota amounts. Such import permits limit amounts to various maximum levels per permit; for example, 1,500 tons for non-EU wheat (5,000 for EU wheat) and 100 tons for pork and poultry. Such requirements hamper import prospects for certain bulk products that might otherwise be shipped in larger quantities on ocean-going vessels.

In 2003, Poland experienced drought-related wheat production shortages. In response, the Polish government will likely introduce for 2004 a 600,000 metric ton duty free quota for imported grain from countries including the United States.

Poland will fully implement veterinary certificates required by the EU for all red meat and poultry products entering Poland by May 1, 2004. Given the EU's restrictive sanitary procedures, a source of longstanding trade friction between the U.S. and the EU, U.S. exports of the aforementioned goods will be effectively blocked from entering Poland once Poland implements EU veterinary certificates. U.S. exports of these goods to Poland were worth $38 million in 2002. While exports of high quality U.S. beef and poultry products will be blocked, shipments of U.S. beef tripe and transshipments of poultry will likely continue consistent with EU regulations.

Poland requires import permits and certificates of disinfection abroad for imports of used clothes. These regulations remain in force until Poland joins the EU on May 1, 2004. At that time Poland will abolish automatic registration for imports of used clothes introduced in 2003, but the disinfection requirements will become stricter. In 2003, Poland passed new EU-compatible regulations on safety and labeling of imported used clothes.

Due to heavy state involvement in financing and delivering healthcare, Poland has a highly regulated pharmaceutical market with significant barriers to market access. Research-based pharmaceutical firms cite three main impediments: 1) a discriminatory pharmaceutical policy focused on the promotion of local industry; 2) unexplained delays in the registration of innovative drugs; and 3) the government's failure since 1998 to add new, innovative medicines to the list of drugs it will reimburse.

In the run-up to EU accession, Poland has been revising its customs and trade laws to mirror EU rules. These legislative changes aimed to protect the Polish market against subsidized imports and align Polish agricultural market rules with those of the EU. The changes also introduced instruments such as automatic registration, quotas, prohibitions, export subsidies and export charges.

Poland’s regulations on safeguards and antidumping procedures were amended in 2001 and 2002 to conform to WTO standards. The amendments will speed up safeguard proceedings. Amendments also require that measures imposed cannot violate international trade agreements concluded by Poland and may only be imposed for a limited time and in the form necessary to remedy the injury done to the Polish industry. The Economy Minister’s determination cannot be appealed in the administrative courts. The Ministry expects to complete the process of notification of these amendments to the WTO in early 2004.

In 2002, Poland commenced antidumping procedures and safeguard actions against imports of: carbide from all countries; ammonium nitrate from Ukraine; synthetic rubber (SBR) from the Czech Republic, Russia and Romania; some steel products from all countries; and shoes from China. New cases were initiated in 2003 on matches from all countries and cement from Belarus while Romania was dropped from the synthetic rubber case. When it joins the EU, Poland will discontinue the abovementioned antidumping procedures and safeguard actions and implement only those imposed by the EU on goods from non-EU sources.

Finally, the classification of products, which determines the applicable custom duty and value added tax (VAT), is often done inconsistently, arbitrarily, and sometimes even retroactively.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Harmonization of standards, certification, and testing procedures with those of the EU, including greater reliance on voluntary standards, is the main objective of Polish standards policy. Under the 1997 European Conformity Assessment Agreement, Poland agreed to introduce a EU-compatible certification system; to gradually align its regulations and certification procedures with those of the EU; to eliminate mandatory certification for products free from certification requirements in the EU; and to automatically provide a Polish "B" safety certificate to EU products subject to mandatory certification.

Until May 1, 2004, products manufactured in Poland or imported into Poland for the first time that can be of potential danger or serve to protect or save health, life or environment, are subject to certification with a reserved safety mark of the Polish Research and Certification Center or with a manufacturer’s declaration of compliance. A Polish "B" safety certificate has been required since 1997 for imports and domestic products and affects about 30 percent of all products marketed in Poland. Poland does not automatically accept the EU "CE" mark or international product standards. Non-acceptance of many international standards, certification, and conformity testing procedures are associated with long delays, involving expensive testing processes.

When Poland joins the EU on May 1, 2004, U.S. exporters should find it much easier to sell their goods in Poland. Poland will apply standards, testing, labeling, and certification rules compatible with those in the EU. The CE mark will be accepted automatically, and the Polish “B” safety certificates will no longer be required. Poland will implement the U.S.-EU Mutual Recognition Agreement on conformity assessment.

Poland’s periodic and arbitrary application of sanitary and phytosanitary standards has, on occasion, seriously disrupted trade. The most notable discriminatory practice has been the strict enforcement of a policy of zero tolerance of certain weed seeds that are common in imported U.S. grains and oilseeds (including ambrosia or ragweed seeds), despite the fact that Poland has ragweed and does not have a meaningful eradication program in place. This policy has resulted in substantial export losses for U.S. grains, oilseeds and products. It is unlikely, however, that Poland will be able to continue this policy after it joins the EU on May 1, 2004 since such weed seeds are not on the EU quarantine list. Import permits are still required for seeds, meat, and live animals. Approval procedures for the importation of new varieties of plants and livestock genetics have also created difficulties for U.S. firms.

In February 2001, Poland banned imports of meat and bone meal (MBM) from all countries due to concerns about Bovine Spongiform Encephalopathy (BSE). Previously, Poland had imported annually around 300,000 tons of MBM worth $100 million, mainly from the EU. Poland refused to permit imports of U.S. MBM as an alternative unless U.S. MBM undergoes costly heat and pressure treatments outlined in European Commission Decision 96/449/EC. Poland also banned imports of gelatin of bovine origin from all countries in February 2001. Despite these policies, Poland had its first confirmed case of BSE in May 2002 followed by eight more through November 2003.

A new EU-compliant law on labeling of packaged goods (found in Dziennik Ustaw 193 dated November 22, 2002) went into effect January 1, 2003. This new regulation contains EU required provisions concerning product names, label content, and sizes and measurements that must be used in label descriptions.

New laws concerning products of biotechnology were adopted in mid-2001. These regulations, which fundamentally mirror those of the EU, require labeling of food products when biotechnology content exceeds one percent. Since December 2001, the government has considered amending current biotechnology law to add traceability and stricter labeling requirements pending EU legislative actions. In early 2001, a variety of biotechnology soybeans became the first biotechnology item registered for domestic use in Poland, but no biotechnology crops are commercially produced. New biotechnology product import requirements, under which each importer of biotechnology soybean meal or corn is required to apply for a Ministry of Environment approved import permit, went into effect in 2002. The Ministry of Environment approved such import permit applications upon the recommendation of a Polish government commission. The import authorization permits could be valid for up to 10 years.

Poland's Ministry of Health published new regulations concerning food additives on February 5, 2001. These regulations are more compatible with current EU regulations and less restrictive than the former Polish food additives law.

GOVERNMENT PROCUREMENT

Problems with the public procurement process in Poland are common. U.S. and other foreign firms have complained about the lack of transparency in the process and some have voiced concerns about corruption. Changes to Polish public procurement law that would make it easier for U.S. firms to compete for contracts are expected to take effect when Poland joins the EU on May 1, 2004. The changes will include abolition of preferences for domestic bidders and domestic content. Until then, Poland’s procurement law does not cover most purchases by state-owned enterprises, which play a significant role in the nation's economy. The domestic performance section of the state-owned enterprise law requires 50 percent domestic content and gives domestic bidders a 20 percent price preference. Polish companies with foreign participation may qualify for "domestic" status. There is also a protest/appeals process for tenders thought to be unfairly awarded. Poland has been an observer to the WTO Government Procurement Agreement (GPA) since September 1997, but it will become subject to the GPA upon accession to the EU.

EXPORT SUBSIDIES

Upon acceding to the WTO in 1995, Poland implemented the Uruguay Round Agreement on Subsidies and Countervailing Measures and eliminated earlier practices of tax incentives for exporters. The Polish government offers drawback levies on raw materials from EU and CEFTA countries that are processed and re-exported as finished products within 30 days. Some politically powerful state-owned enterprises continue to receive direct or indirect production subsidies to lower export prices.

In 2002 and 2001, Poland amended laws and regulations governing export promotion to improve Poland’s export performance and comply with EU regulations and practices in OECD countries. Polish export promotion policy has a numerous tools and increasing resources at it disposal. Still, the lack of export credit and export promotion institutions pose a continuing weakness. The government’s export-stimulation efforts have not been very effective due to the low utilization of export support instruments by Polish enterprises and a lack of symmetry between the direct export support policy and the export development policy. Despite new measures and a sharp rise in funding, the volume of Polish exports covered by Government-backed risk insurance remains limited. Additionally, programs aimed at reviving exports to the Russian market through strengthening its insurance protection have not produced significant results. When Poland joins the EU, the competent European Union bodies will assume responsibility for direct support measures for export (financial instruments and information, promotion and training support). However, Poland will continue to be able to support exports through information, promotion and training measures that are not covered under EU law, assuming they do not violate EU rules on state aid.

The Agency for Agricultural Markets (AAM) supports the milk procurement price through intervention purchases or subsidies for storage of butter and non-fat dry milk (NFDM) plus export subsidies of NFDM. AAM holds tenders to allocate subsidies, which vary based on market conditions and available resources. Poland exports sugar using WTO-allowed export subsidies that cover one-third of exports, primarily to the former Soviet Union and the Middle East. Quotas for subsidized exports have been gradually reduced over the past several years. The government limited 2001 subsidized exports to 104,400 tons (113,482 tons raw sugar equivalent) per Poland's WTO commitments. Fees ranging from 2-16 percent on intervention prices were allocated to pay sugar export subsidies in 2003. Export subsidies for Polish rapeseed were implemented for the first time in late 2000. Such subsidies were applied to an estimated 27,000 tons in 2001 and 6,000 tons in 2002. These amounts were well within Poland’s WTO export subsidy ceilings in terms of quantity and value.

AAM implemented government grain export supports in 2002 in response to surplus domestic grain supplies and high levels of government held stocks. To reduce the surplus and bolster domestic grain market prices, AAM sold up to 600,000 tons of government wheat stocks to companies at below market prices through early 2003. Such sales were conducted under the government imposed condition that the wheat be exported anywhere but the EU.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

While Poland has significantly improved its legal framework for intellectual property protection, the level of IPR protection in Poland remains unsatisfactory. The principal problems are insufficient copyright and trademark enforcement and the continuing lack of effective mechanisms to protect pharmaceutical patents and test data.

The 1994 U.S.-Polish Bilateral Business and Economic Treaty provides for the protection of U.S. intellectual property. Poland’s Copyright Law offers strong criminal and civil enforcement provisions that cover literary, musical, graphical, software, and audio-visual works, as well as industrial patterns. Amendments to bring the Copyright Act into full compliance with Poland's TRIPS obligations were implemented in July 2000, providing full protection of all pre-existing works and sound recordings. Amendments to bring the Industrial Property Law, which governs patents and trademarks, into compliance with TRIPS obligations were implemented in August 2001.

U.S. copyright industries report that Poland suffers from high rates of piracy, in large part due to weak control of its eastern border and large outdoor markets. Copyright industry associations estimate the 2002 levels of piracy in Poland to be: 43 percent for sound recordings, 30 percent for motion pictures, 54 percent for business software, and 91 percent for entertainment software. Most pirated materials available - particularly CDs, CD-ROMs and DVDs - are produced in the former Soviet Union and other Eastern European countries. With better laws in place and improved cooperation between government and industry, copyright enforcement has improved in recent years. The government’s adoption in July 2003 of an anti-piracy action plan demonstrated a positive change in approach and has led to a noticeable reduction of piracy at the Warsaw Stadium. Poland’s cumbersome judicial system and the general lack of knowledge about IPR remain impediments and undermine deterrence efforts. To address this deficiency, hundreds of Polish judges and prosecutors received IPR training in 2002-2003.

Separately, pharmaceutical producers are harmed by policies that ignore the potential for patent violations and provide a substandard period of data exclusivity (protection for test data submitted to register pharmaceuticals). Currently, Polish law provides for a three-year period of data exclusivity. Since this period begins on the date of the product's first registration anywhere in the world, the actual period of protection is considerably less than three years. This law appears to be inconsistent with Poland's WTO TRIPS commitments and discourages foreign research and development pharmaceutical companies from investing and registering new drugs in Poland. From the day Poland joins the EU, the period of data exclusivity will be six or ten years (depending on the type of product) from the date of first registration in the EU, but may not exceed the life of the product's patent. Additionally, the Ministry of Health takes no steps to block the registration of generic versions of drugs that are still protected by a patent or for which a patent is pending. This systematic problem has already led to unnecessary legal disputes and forced two U.S. pharmaceuticals firms to launch court cases to defend their rights. In late 2001, Poland agreed to introduce upon joining the EU supplemental protection certificates (patent extensions), for drugs patented since January 1, 2000.

SERVICES BARRIERS

Poland has made progress in reducing barriers to services, but many remain, notably in the audiovisual and telecommunications sectors. In November 1997, the government enacted a rigid 50 percent European production quota for all television broadcasters, raising concerns about certain liberalization commitments made by Poland upon joining the OECD. Subsequent legislation passed in 2000 requires broadcasters to meet the 50 percent quota only where practicable, as specified in EU directives. Nevertheless, in response to EU pressure, successive governments have tried to introduce much stricter enforcement of the European production quota.

Liberalization of the telecommunications sector is progressing in some fields such as mobile telephony, data services, and integrated corporate services, but generally remains stifled by the former state monopoly, TPSA. TPSA still controls over 90 percent of the land telephony market. The government began to sell stakes in TPSA in October 1998, and agreed to open domestic long-distance service to competition in 1999 and international services in 2003. Parastatal enterprise France Telecom became TPSA's largest shareholder in 2001, but the government still retains significant control. In the mid 1990's, a number of competitive local exchange carriers bought licenses and started services; most have left the field because of TPSA's resistance to providing interconnection. Several competitors remain, providing local phone service for corporations and long distance service to both corporate and consumer markets. Government regulatory agencies, however, have made only token efforts to curb anticompetitive behavior by TPSA, which retains a monopoly over interconnection and a virtual monopoly in international long distance.

INVESTMENT BARRIERS

In its 2002 “Entrepreneurship-Development-Work” program the Polish government pledged to improve business conditions. Thus far, the results have been lackluster and the business community is advocating further steps to facilitate business development. Lack of transparency and of clearly stated rules in government decision-making processes, vague tax regulations and arbitrary interpretation of tax laws, over regulation of the economy, inefficient public administration, excessive fiscal burdens, and instances of corruption are regarded by companies as informal barriers to foreign investment.

Polish law permits 100 percent foreign ownership of most corporations. Exceptions include broadcasting, where foreign ownership is limited to 33 percent (when Poland joins the EU this cap will be eliminated for EU firms and raised to 49 percent for non-EU firms), and air transport, limited to 49 percent. No foreign investment is currently allowed in gambling. The cap on foreign ownership in telecommunications was lifted on January 1, 2001. Foreign firms are free to participate in the on-going privatization program, although this process has attracted relatively few U.S. firms, in part because of transparency concerns but also because of the unreliable regulatory environment and the overall slowdown in privatization activities in recent years. As a result of OECD accession, foreigners in Poland may purchase up to 4,000 square meters of urban land or up to one hectare of agricultural land without a permit. Larger purchases, or the purchase of a controlling stake in a Polish company owning real estate, require approval from the Ministry of Interior and the consent (not always automatic) of both the Ministries of National Defense and Agriculture.

ANTICOMPETITIVE PRACTICES

The Office for Competition and Consumer Protection, established in 1996, is empowered to fine state-owned and private firms that unduly prevent competition. This young institution has not yet received the political support needed to carry out its responsibilities fully. Competition law in Poland is generally governed by two pieces of legislation: the 1993 Law on Combating Unfair Competition and the 2000 Law on the Protection of Competition and Consumers.

ELECTRONIC COMMERCE

High interconnection charges have hindered the development of electronic commerce in Poland. At the end of 2001, less than 20 percent of companies used electronic commerce. Naturally, information technology (IT) companies lead the way: around 30 percent of IT companies sell and almost 60 percent buy through the Internet. In 2001, the Polish Parliament passed a law on electronic signature, a requirement for EU membership. Sales through the Internet are unrestricted, while merchandise purchases through the Internet are subject to the customary Value Added Tax (VAT) and customs duties. The Ministry of Finance and the Customs Service are considering tax regulations for software purchased and delivered via the Internet. Poland, like many of its European neighbors, is developing ways to apply taxes and other regulatory instruments to electronic commerce that will comply with EU law. Polish VAT regulations already identify factors for determining the location of a transaction (processing site) and the taxpayer (location of parties to a transaction). Internet transactions are located where the server processes the purchase. Similar principles apply to the sale of services. An important unresolved VAT-related matter is the issue of electronic invoices that clearly state the moment when a transaction was concluded. Determining factors for taxation of income from electronic commerce include the legal status of a foreign entity and the classification of goods. Digital technology products are distinguished by their proprietary status and licensing arrangements. Polish customs regulations remain vague about the free flow of digital products and services.

Poland is bringing rules on the transfer and protection of personal data into compliance with EU requirements. Since the EU believes that U.S. law does not provide adequate protection, companies may transfer personal data to parties in the U.S. only if the EU has designated those parties as a “safe harbor,” i.e. that the party meets EU data privacy guidelines. At least one U.S. firm operating in Poland has experienced problems in transferring personal data to its U.S. parent.

OTHER BARRIERS

Poland’s business climate suffers due to weak public administration. In particular, U.S. companies often complain that the Polish government’s customs and tax services seem hostile and give inadequate guidance, apply rules inconsistently, and use legal gray areas against companies. The bonus system used by the Polish customs and tax services is said to give inspectors an incentive to bring cases built on dubious interpretations of law. Punitive fines and interest are often imposed even when there is no evidence of malfeasance and no financial loss to the state. U.S. firms frequently complain that the understaffed and underfunded court system is an ineffective tool for protecting their legal rights and business interests. Commercial court cases can continue for years without resolving the dispute or assigning penalties. This results in difficulties enforcing contracts.

Corruption, while not a new problem, became significantly more apparent in 2002 and 2003 as a spate of new scandals was uncovered. One led to the creation of Poland's first special parliamentary investigative committee. According to surveys conducted by Transparency International, the perception of corruption in Poland has been risen every year but one between 1996 and 2004.

ROMANIA

TRADE SUMMARY

The United States' trade deficit with Romania was $363 million in 2003, a decrease of $84 million from $447 million in 2002. U.S. goods exports in 2003 were $367 million, up 47.8 percent from the previous year. Corresponding U.S. imports from Romania were $730 million, up 5.1 percent. Romania is currently the 74th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Romania in 2002 was $342 million, up from $280 million in 2001.

IMPORT POLICIES

Tariffs

Romania's trade policies are shaped primarily by its World Trade Organization (WTO) commitments and by its efforts to join the European Union (EU). Romania has a preferential trade agreement with the EU (Europe Agreement), and free trade agreements with its Central European neighbors (CEFTA) and European Free Trade Area (EFTA) countries.

Romania has bound most of its tariff rates at the WTO for both agricultural products (average rate of 109 percent) and non-agricultural products (average rate of 34.4 percent). Lower applied rates are generally used, resulting in average applied rates of 30.0 percent in the case of agricultural products and 16.2 percent in the case of non-agricultural products.

Romania acceded to the WTO's Information Technology Agreement and eliminated tariffs on products covered by the agreement effective January 1, 2000. High Most Favored Nation (MFN) rates on distilled spirits (90 percent *ad valorem* within a modest quota and 247.5 percent outside the quota), wine (144 percent), and textiles (12 percent to 32 percent) provided limited access to the Romanian market for these U.S. products.

Pursuant to its Europe Agreement, Romania is phasing out tariffs on products originating within the EU, while U.S. exports often face higher MFN duties. Exporters of U.S. products have voiced concerns about these tariff differentials vis-à-vis EU products, including distilled spirits, wheat, animal feed supplements, wine, rubber tires, upholstery, lightning arresters, switching gear for telephone lines, and commercial washers and dryers. In 2000, Romania and the EU reached an agreement on further trade liberalization in agricultural products. This agreement ends EU agricultural subsidies on goods exported to Romania in return for the elimination of Romania's tariffs on most EU agricultural products. As a result, U.S. agricultural products are put at a further disadvantage compared to EU products. The United States has been consulting with Romania about the tariff differential problem and encouraging it to reduce its applied rates to the EU's Common External Tariff (CET) rates for key products and sectors.

Non-tariff barriers

In 2001, rules were implemented for foreign direct investments exceeding the equivalent of $1 million which include a customs duty holiday for imports necessary for investment, and tax deductions of 20 percent of the total investment value. Exemptions from customs duties apply to exported goods, transiting goods, merchandise in customs warehouses (during the storage period), and goods imported and exported in the drawback system.

Many exporters complain that customs valuation can be inconsistent and arbitrary. The Romanian Customs Code provides for customs suspensions, which may be granted for specified periods of time:

inward processing, outward processing, bonded warehouse; temporary admission; transformation under customs control, and customs transit. A bank collateral equal to the amount of the duty may have to be pledged. Romania has also adopted simplified procedures similar to those used within EU.

A new value added tax (VAT) law, effective June 1, 2002, and a new Profit Tax Law, effective July 1, 2002, significantly modified prior legislation and abolished some incentives. The laws also include an expedited VAT refund procedure for taxpayers that meet certain conditions as follows: the elimination of hard currency cashing conditions, exemption from profit tax if operating in disadvantaged areas, and a reduced profit tax rate for Free Trade Zones and export activities. Overall, the VAT refund is an extremely inefficient process, often taking six to eight months to receive a refund.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Romania seeks to bring its standards in line with international and EU standards. Romanian standards of quality and safety are under the jurisdiction of the Romanian Standards Institute. Nearly 90 percent of all new standards match ISO or EU standards. For instance, Romania adopted international quality control standards, such as ISO 8402, 9000-9004 and 9004-2, and incorporated them into its national standardization system. Increasingly, purchasers are demanding that suppliers meet ISO standards to ensure the quality of products and services.

Romania has begun to harmonize sanitary and phytosantiary measures with those of the EU. Adoption and implementation of EU measures will have a severe impact on U.S. exports of poultry, beef and biotechnology products to Romania. The U.S. government has been working closely with Romanian officials to ensure U.S. products continue to have market access for these key products in the interim period leading up to Romania's accession to the EU.

GOVERNMENT PROCUREMENT

Romania is an observer to the WTO Government Procurement Agreement (GPA), but will become subject to the GPA when it joins the EU. With the exception of the procurement of armaments and public works, Romania's government procurement law covers purchases by central government bodies, the parliament, the presidency, the government and ministries, institutions of higher learning, and the judiciary, as well as state-owned enterprises.

State-owned companies with the status of commercial companies have their own internally elaborated purchasing policies based on commercial principles. Article 5 of Decree OG12/1993 establishes two key conditions for the participation of foreign suppliers: 1) Romanian suppliers are granted similar treatment in the country of origin of the foreign supplier; and 2) a Romanian supplier is either not available or cannot fulfill the conditions of the purchase. The Romanian government's web-based public procurement project, operational as of March 2002, is an important step forward in improving government efficiency and curbing institutional corruption. The electronic procurement system is used for basic standardized products. Romania's tender announcements, bid processing, and offer appraisal are entirely computer-based, and the list of ongoing and closed auctions, names of adjudicators, and closing prices are available to the public. The government asserts that the project has reduced costs, increased competition and allegedly saved $73 million.

EXPORT SUBSIDIES

In August 2003, the Romanian government approved export subsidies for 5,000 MT of poultry for any destination except European Union, valued at roughly $650,000. The government approved, but did not grant, subsidies for the export of 6,000 MT of beef.

ROMANIA

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Romania's criminal enforcement with respect to copyright piracy and trademark counterfeiting remains inadequate. Although legislation is fairly modern and comprehensive, enforcement remains very weak. Due to inadequate enforcement against copyright piracy, Romania remained on the Special 301 Watch List in 2003.

The rates of copyright piracy in Romania remain high, though the authorities have made gradual, limited improvements. But while legislative improvements allow for greater criminal prosecution, very few IPR cases are prosecuted and many prosecutors refuse to recognize IPR crime as a social harm. Despite a number of seizures, infringement is increasing as pirated CDs and DVDs are smuggled into Romania from Ukraine, China and Moldova. Moreover, police acknowledge that sources in Romania may be building capacity to start domestic production of pirated CDs.
Recently, the Phonogram Producer Union in Romania (UPFR) won a trial court case where the defendant was sentenced to one year in prison, required to pay substantial damages, and counterfeited CDs and tapes were seized. However, the Appeals Court reversed the decision, thereby setting a bad precedent not only for UPFR and the phonogram industry in Romania (most members are Romanian music record companies), but for the entire IPR industry. Industry groups are working to train judges and prosecutors in IPR law, and have proposed the idea of specialized IPR courts or magistrates. The appointment of a special IPR prosecutor in 2003 by the Prosecutor General may help efforts to combat IPR piracy.

Another area of focus is the illegal sale of counterfeit decoder devices. The stealing of video signal is hindering cable companies' efforts to upgrade networks and keep subscription rates as low as possible. Currently, Audio-Visual Law 504 of 2002 stipulates fines for the trading of counterfeit decoders. However, the law is not enforced, threatening profits of cable companies. One video provider estimates that for each legitimate subscriber, five others are fraudulently watching transmissions through counterfeit devices.

Romania's continued failure to protect confidential test data from unfair commercial use has a significant adverse impact on U.S. pharmaceutical producers.

SERVICES BARRIERS

In accordance with its Association Agreement with the EU, Romania was required to implement the EU Broadcast Directive that provides for European content quotas. However, Romania also included the where practicable provision of the Directive, which gives the government flexibility in implementing this rule. Specifically, Law 119 of 1999, which amended the Audio-Visual Law 48/1992, provides: ATV stations must gradually broadcast, as much as possible, and by appropriate means, at least 51 percent of the total broadcast time to European productions, minus news and sport shows, games, advertising and teletext services. The result is that out of the total broadcast, at least 40 percent must be Romanian. Many Romanian Parliamentarians regard reforming Romanian legislation to reflect EU requirements impractical because Romanian stations that comply with the requirement would dramatically lose market share and revenues.

As of August 2002, foreign lawyers not licensed in the practice of Romanian law can only provide legal advice on foreign or international law. They can, however, provide legal advice on Romanian legislation after passing a Romanian Lawyers Union Exam in Romanian Legislation and the Romanian Language. Foreign lawyers may work in Romania as individuals in law offices associated with Romanian firms or international law firms. However, due to the frequent legislative changes in this field, it is likely that these legal provisions will be modified.

Romanian law requires that doctors and health care professionals be Romanian citizens. This effectively hinders the provision of medical services by foreign medical professionals.

Foreign insurance companies must establish a partnership venture with a Romanian partner to enter the Romanian market. Romania has made limited GATS commitments for cross-border provision of insurance services.

During 2003, Romania phased in many commitments under the WTO Basic Telecommunications Agreement and adopted the pro-competitive regulatory principles contained in the WTO Reference Paper. Romania still needs to establish a transparent, non-discriminatory licensing system as specified in the WTO Reference Paper.

The government sold a strategic stake in the telephone company (Romtelecom) to the Hellenic Telecommunications Organization in 1998. Romtelecom’s monopoly on fixed-line telecommunications services expired on January 1, 2003. Rates are subject to governmental supervision. Other telecommunication segments (Internet service providers, mobile telephone service providers, cable communications, etc.) have been liberalized.

INVESTMENT BARRIERS

A controversial law on securities, Law 525/2002, requires that majority shareholders, owning 90 percent of the total stock in a firm, buy residual shares. This law is considered to be a compromise to provide very limited minority shareholder protection.

A continued impediment to foreign investment is Romania’s inconsistent legal and regulatory system. Tax laws change frequently and are unevenly enforced. Tort cases can require lengthy, expensive procedures, and judges’ rulings face uncertain enforcement.

ELECTRONIC COMMERCE

Romania has one of the highest incidences of Internet credit card fraud in Europe, which has discouraged international vendors from making payments electronically to Romania. The most common problems result from the use of stolen credit card numbers for the purchase of goods on the Internet. Romanian hackers have also attacked U.S. companies’ servers and stolen proprietary information. To counter the millions of dollars worth of credit card fraud each year, in 2002, the Romanian government passed an electronic commerce law that defines and punishes cyber crime. The law includes criminal sanctions for falsifying cyber-pay instruments, carrying out fraudulent financial transactions, accepting fraudulent financial transactions, or performing unlicenced cyber transactions.

Twenty banks in Romania have acquired at least one type of authorization from the Ministry of Communications and Information Technology for 27 distance access payment instruments of various types. The Ministry issued 12-month valid licenses in order to monitor how the banks used this instrument.

OTHER BARRIERS

Even though more than two-thirds of Romanian Gross Domestic Product is created by private entities, large state-owned enterprises and government-subsidized enterprises are major impediments to free and fair market competition. Preferential debt rescheduling, and total or partial cancellation of debts, including taxes by the Romanian government continues. In addition, allegations of non-transparent aid schemes to state companies and the firms of well-connected Romanians are prevalent.

The most common complaints of American companies operating in Romania are the frequency with which the government changes its laws, the instability of Romanian fiscal and tax legislation, and weak enforcement of existing laws. Concerns about judicial competence, lack of court impartiality, and corruption are also voiced by U.S. businesses. On a positive note, the Romanian government introduced a revised Fiscal Code, which took effect January 1, 2004. Unfortunately, implementing regulations will not be published before the Code goes into effect, creating near-term uncertainty about its application.

Employers and employees combined tax burden is 53.2 percent of employee wages. As a result, employers routinely understate employee salaries and compensate their work force by other means so that both avoid paying taxes. The high tax burden has also resulted in an extensive gray economy of Romanians working outside the customary employer-employee contract relationship.

Romanian tax legislation still is not OECD-consistent. Romania recently began to switch from Romanian Accounting Standards (RAS) to International Accounting Standards (IAS). The Ministry of Finance approved new accounting regulations in 2001 that aim to harmonizing RAS with both the EU’s 4th Directive and International Financial Reporting Standards (IFRS). The goal is that by fiscal year 2006, all Romanian companies except small enterprises should enforce IFRS. Beginning January 1, 2003, accounting standards harmonized with the European Directives (Order 306/2002) are also applicable to micro-enterprises and to companies that are not applying the accounting regulations harmonized with the EU’s 4th Directive and IFRS. Also, eight commercial banks in Romania have been selected to enforce IFRS beginning in 2003.

RUSSIA

TRADE SUMMARY

In 2003, the United States had a trade deficit with Russia of $6.1 billion, an increase of $1.7 billion from the 2002 deficit of $4.5 billion. U.S. goods exports to Russia totaled $2.4 billion in 2003, an increase of 2.2 percent from the previous year. Russia was the United States' 38TH largest export market in 2003. U.S. imports from Russia totaled approximately $8.6 billion in 2003, an increase of 25 percent from 2002 levels. The flow of U.S. foreign direct investment (FDI) into Russia in 2002 was $617 million, down from $709 million in 2001. U.S. FDI in Russia is concentrated largely in the banking and information sectors.

The 1991 United States-Union of Soviet Socialist Republics (USSR) Trade Agreement provides for normal trade relations (NTR) between the United States and Russia and governs other aspects of the bilateral trade relationship. The USSR signed the agreement in June 1990, and it was approved by the U.S. Congress in November 1991. The agreement, however, was not ratified during the existence of the USSR, and the United States offered the agreement (with minor technical changes) to Russia and each of the other emerging states of the former Soviet Union. Russia's parliament approved the agreement, making it possible for the United States to extend Most-Favored-Nation (now NTR) status to Russia on June 17, 1992.

Russia is in the process of negotiating terms of accession to the World Trade Organization (WTO). By the end of 2003, the Government of Russia had met twenty-one times with WTO members in formal Working Party meetings and many more times in informal Working Party sessions, plurilaterals, and bilaterally. Russia tabled its initial goods and services market access offers in February 1998 and October 1999, respectively. Russia has subsequently revised its goods and services offers and is currently actively engaged in negotiations with Working Party members on those offers.

IMPORT POLICIES

Russia continues to maintain a number of barriers with respect to imports, including discriminatory and prohibitive charges and fees and discriminatory licensing, registration, and certification regimes. Discussions continue within the context of Russia’s WTO accession to eliminate these measures.

Depressed purchasing power, which had been the most important factor restraining U.S. exports in recent years, has ameliorated gradually, allowing U.S. export levels to rise back to pre-1998 levels. While purchasing power shortfalls account for part of the depressed level of imports, Russian companies' expanded market share at the expense of imports, particularly in the food processing and light manufacturing sectors, also accounts for the continuing low levels of imports from the United States.

Russia has developed legislation in order to bring its customs regime into compliance with the requirements of the WTO. The Duma approved a new Customs Code on April 25, 2003, which was signed into law by President Putin on May 28. The new Customs Code simplifies customs procedures and establishes specific procedures for the application and payment of tariffs. The Russian Government drafted amendments to Chapter 21.1 of the Tax Code that set new customs valuations, but these amendments were withdrawn before Duma consideration. The Russian Government plans to resubmit the content of these amendments in the form of a separate and free-standing piece of legislation on customs valuation.

In January 2003, the Russian Government announced the imposition of a quota for poultry and tariff-rate quotas for pork and beef, which became effective in April and May 2003, respectively. The United States reached an agreement in principle with the Russian Government for market access parameters on poultry, pork and beef in September 2003. In November 2003, Russia announced quota allocations for U.S. poultry, pork, and beef for 2004, based on historical U.S. export levels, as provided for in the agreement.

Specific barriers to textile and apparel imports have not been observed in Russia, although Russia is not a major consumer of U.S. textile goods at present. Customs authorities continue to assess duties on the royalty value of imported audiovisual materials, such as TV master tapes and DVD masters, rather than basing these duties on the physical value of the material.

Since 1995, Russian import tariffs have generally ranged from five percent to 30 percent. In addition, a value-added tax (VAT) is applied to virtually all imports, and excise taxes are applied to a small selection of goods. The VAT, which is applied to the price of the imported good plus its tariff, was 20 percent in 2003. As of January 1, 2004, the VAT was reduced from 20 to 18 percent. Although pharmaceuticals and printed matter were exempt from the VAT and some food products and items for children (e.g., diapers) were taxed at a lower VAT rate of 10 percent, the government of Russia took steps to eliminate such special provisions in January 2002. Pharmaceutical importers have complained that new pharmaceuticals imported in clinical trials stage (i.e. prior to registration), which should be exempt from the VAT, were assessed the VAT because they could not produce a certificate of registration.

Import tariffs have declined in importance as a revenue source in recent years, but they remain significant. A major revision of the Russian tariff system took effect January 1, 2001. Under this tariff unification, tariffs were consolidated into major product groups (raw materials, semi-finished goods, foodstuffs and finished products) with tariffs ranging from five percent to 20 percent for nearly all tariff categories. However, many rates are accompanied by alternative minimum rates, making the actual applied rate less transparent. The tariff unification resulted in an overall lowering of tariff rates. In addition, there are limited exceptions to the rate scheme, including higher rates for automobiles (25 percent), and minor additional adjustments have been made. The Russian government proceeded with the tariff unification to help combat customs fraud and improve customs collections, and, while there have been some improvements in this regard, the overall weakness of Russian customs administration still leads to many abuses. Several industries complain of excessively high tariffs and discriminatory tariff policies over a range of sectors, including distilled spirits, deciduous fruit, processed food, and forest products.

Russian import tariffs on automobiles and aircraft present particular hindrances to U.S. exports to Russia. In the case of automobiles, combined tariffs, VAT and engine displacement-weighted excise duties can increase import prices by 70 percent for larger U.S.-made passenger cars and sport utility vehicles. In addition, the Russian government recently passed a new law which increased custom duties to 25 percent of the custom value for used cars between three and seven years, effective December 15, 2003. The Russian government has also declared protection of the domestic aircraft industry a priority, and the current import tariff on aircraft stands at 20 percent. When the import tariff is added to the VAT (20 percent in 2003 but lowered to 18 percent as of January 1, 2004) and other customs handling fees, the amount of total taxes paid on the importation of foreign aircraft exceeded 40 percent in 2003.

The Russian government continues tight controls on alcohol production, including: duplicative and strict licensing requirements, import quotas on all distilled spirits except cognac and brandy, export duties, and increased excise taxes. Many of these controls are intended to increase budget revenues. Import licenses are required for various other goods, including color TVs; sugar; combat and sporting weapons; self-defense articles; explosives; military and ciphering equipment; encryption software and related equipment; radioactive materials and waste including uranium; strong poisons and narcotics; raw and processed sugar; and precious metals, alloys and stones. Most import licenses are issued by the Russian Ministry of Economic Development and Trade or its regional branches and are controlled by the State Customs Committee. Import licenses for sporting weapons and self-defense articles are issued by the

Ministry of Internal Affairs. In some industries, such as pharmaceuticals and alcohol, activity licenses are also required.

Pharmaceutical products are included on reimbursement lists for state-provided healthcare without any objective and verifiable criteria. Reimbursement lists and state purchases do not adequately consider the quality and safety of the products, and, as a result, higher-priced imports are often discouraged.

STANDARDS, TESTING, LABELING AND CERTIFICATION

U.S. companies report that Russian standards and procedures for certifying imported products and equipment are non-transparent, expensive, time-consuming, and beset by redundancies. Russian regulatory bodies are reluctant to accept foreign testing centers' data or certificates. U.S. firms active in Russia have complained of the limited opportunity to comment on proposed changes in standards or certification requirements before the changes are implemented. Occasional jurisdictional overlap and disputes between different regulatory bodies compound certification problems.

On July 31, 1998, amendments to Russia's Law on Certification of Products and Services went into effect, which Russia claims generally meet the requirements of the WTO. The law allows a manufacturer to submit a declaration of conformity in the certification procedure for a limited number of products. The government of Russia has established a list of 200 products eligible for this procedure. Approximately 30 percent of the 22,000 Russian standards now conform to international norms.

On July 2, 2003, the “umbrella” Law on Standards (technical regulations and sanitary and phytosanitary (SPS) measures) came into force. The law is intended to bring Russia’s standards regime into closer compliance with WTO norms and streamline the adoption of standards and the certification process for imported goods. Under the provisions of this law, many currently mandatory standards will become voluntary. Implementation of this new law will result in the amendment of approximately 300 separate laws and regulations. At the end of an implementation period, any existing technical regulation which has not been revised in accordance with the new law will become voluntary.

The current Russian product certification regime makes it difficult to introduce products into the Russian market. Manufacturers of telecommunications equipment, construction materials and equipment, and oil and gas equipment have reported serious difficulties in obtaining product approvals. Certification is particularly costly and prolonged for telecommunications equipment, which is tested for compliance with standards established by not only the State Standards Committee (Gosstandart) but the Ministry of Communications as well. This process has been known to take as long as 12 to 18 months. The new Law on Communications (in effect from January 2004) now allows self-certification of some telecommunications equipment. The law also attempted to harmonize the regulations of the Ministry of Communications with those of Gosstandart. Manufacturers still are generally unhappy with certification procedures, but admit that the new law is a small step forward.

In December 2002, the Russian Ministry of Health put in place a mandatory conformity assessment requirement for pharmaceuticals. This certification requirement is duplicative of other certification requirements for pharmaceuticals and could lead to delays in the marketing of medicines. In addition to pharmaceuticals and telecommunications equipment, manufacturers of alcoholic beverages are also subject to duplicative certification requirements, with mandatory certification requirements imposed by Gosstandart and the Ministry of Health.

Russian SPS measures are burdensome and sometimes of questionable scientific or food safety value. As Russia continues its efforts to join the WTO, a more transparent, science-based and WTO-consistent SPS system will need to be developed. Bioengineered food products are likely to continue to attract regulatory attention from Russian authorities in the coming year, as companies continue to register new products and develop varieties for testing.

Russia has taken measures against U.S. poultry and beef exports due to alleged food safety concerns, although the scientific basis of these measures has often been questionable. In August 2002, the United States concluded intensive negotiations with Russia on a new veterinary certificate for U.S. poultry exports, following a ban earlier that year on all U.S. poultry exports to Russia. As part of the implementation of this new veterinary certificate, Russian veterinarians began re-inspections of U.S. processing and cold storage facilities in November 2002. Discussions on the criteria for these inspections continued through 2003, and in December 2003 preliminary agreement on the final outstanding inspection protocol issue (footwear) was reached. In December 2003, the Russian government announced a ban on U.S. beef due to concerns with BSE, although Russian officials have stressed the temporary nature of this measure and have announced that the quota share for U.S. beef will not be reallocated as a result.

Russia banned imports of U.S. beef in December 2003 with the detection of one positive case of Bovine Spongiform Encephalopathy (BSE) in the State of Washington. As of the publication of this report, the U.S. government is taking aggressive action and is working intensively to re-open the market as quickly as possible. In addition, the United States is working in the International Organization for Epizootics to revise international standards on BSE to reflect current scientific knowledge.

GOVERNMENT PROCUREMENT

Russian ministries and government agencies are frequent purchasers of equipment, goods and services for their own needs or for the needs of various domestic organizations or groups (i.e., the military, regional health organizations, or population centers located in remote areas). In April 1997, the Russian government established procedures for public tenders for some government procurement, but this process needs improvement and clearer guidelines. A draft law on the Purchase and Delivery of Products for State Needs was submitted to the Duma in March 2003 but has yet to be adopted. The law would eliminate restrictions upon the participation of foreign suppliers, ensure transparency of the government procurement mechanism, and eliminate possibilities for corruption. Domestic suppliers currently are not accorded many official advantages or privileges in competing for government procurement. Nonetheless, the Russian government shows a strong political bias toward supporting domestic industries.

Manufacturers of telecommunications equipment, construction materials and equipment, and oil and gas equipment have reported serious difficulties in obtaining product approvals. On January 13, 1999, an amendment to the Federal Law on Communications went into effect, which appears to encourage government agencies purchasing communications equipment to give priority to systems using Russian-produced equipment.

EXPORT SUBSIDIES

The Russian government's industrial policy guidelines emphasize export promotion and import substitution. In practice, there has been limited budgetary funding for such initiatives. In December 1999, then-acting President Putin proposed the establishment of a Russian export credit guarantee agency, but no action has been taken to date to implement this proposal. Russia has no direct export subsidies on agricultural products, although it has suggested in WTO accession talks that it would like to reserve the option to use agricultural export subsidies in the future.

The subsidy-like effect of Russia’s current domestic gas pricing policy is a key issue due to the potential adverse impact on certain U.S. industries. The price of gas for Russian industrial consumers is believed to be artificially low, and it is generally accepted that prices are below the full cost of production. The downstream effects of this pricing policy are significant, as gas sells on Russia’s domestic market for about $21-$24/tcm, while cost-recovery levels are at roughly $35-$40/tcm, and gas for export on the world market sells at $100-$120/tcm. Russia is currently considering numerous reform plans for the sector and has been gradually increasing domestic prices. However, the gas sector and Gazprom, Russia’s designated monopoly supplier, play a significant role in Russia’s economy. Consequently, the Russian Government is proceeding slowly and cautiously with reform of the sector. Therefore, while normal increases in domestic gas prices have been significant, the United States continues to seek an increase in energy prices in real terms to ensure that those prices cover total costs, including a reasonable rate of return on investment.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

According to industry sources, estimated losses to U.S. copyright industries due to copyright piracy (films, videos, sound recordings, books and computer software) exceeded $1 billion in 2003. Of special concern in 2003 were the continued large increases in illegal optical disc production far in excess of Russian demand, with pirated products intended not only for domestic consumption but also for export. The film industry estimates that over 80 percent of all DVDs on the Russian market are counterfeit. Piracy of motion pictures is estimated at approximately 80 percent of sales, piracy of music at approximately 66 percent of sales, and software piracy at approximately 88 percent of sales, all of which remained high in 2003. Although the Russian government established an interagency task force to combat piracy (IPR Commission), headed by then Prime Minister Kasyanov, in the fall of 2002, the Russian Government has taken few concrete steps to address optical media piracy and Russia remains a major source, destination and transhipment point for pirated optical media products.

As the copyright industries' estimated losses attest, piracy of U.S. videocassettes, films, music recordings, books, and computer software is extensive in Russia. The Russian government's Licensing Law, adopted in August 2001, did retain licensing for optical media producers and resulted in the suspension of several licenses in the Summer of 2003. However, U.S. copyright industries believe that this provision is inadequate to control optical media piracy.

U.S. and multinational companies also continue to report counterfeiting of patented and trade marked goods as a serious problem, especially for consumer goods, distilled spirits and pharmaceuticals. U.S. companies are required to take the necessary steps to protect their intellectual property, including registering their trademarks with the Russian Patent and Trademark Agency (Rospatent). Some U.S. companies have had difficulty registering and protecting well-known trademarks in Russia, although recently approved legislation has improved protection for well-known marks. The IPR Commission plans to more actively examine industrial property right issues, including pharmaceutical counterfeiting, in 2004.

Russia is a member of the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the Geneva Phonograms Convention, the Universal Copyright Convention and other major multilateral intellectual property conventions. The U.S.-Russia Bilateral Trade Agreement also requires Russia to provide protection for intellectual property. As part of Russia's accession to the WTO, Russia has passed a number of laws which will be required to fully meet obligations under the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). These include passage of amendments in 2002 and 2003 to Russia's laws on trademark and appellations of origin, patents, protection of layout designs for integrated circuits, plant varieties, and protection of computer software and databases. Russia still needs to pass amendments to its copyright law, which would provide protection of pre-existing copyrighted works and sound recordings, as required by the TRIPS Agreement and Bilateral Trade Agreement, and would implement obligations under the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO

Treaty on Performers and Performances Treaty (WIPO Digital Treaties). Several other TRIPS deficiencies remain in Russia's IPR regime, including lack of explicit protection for test data for pharmaceutical products and agricultural chemicals, a reciprocity requirement for protection of geographical indications, lack of the reversal of the burden of proof in process patent cases, and problems with enforcement authority.

There have been some marginal improvements in anti-piracy actions by Russian law enforcement agencies, including an increased number of raids by police, but overall enforcement of IPR remains inadequate. Enforcement actions depend on proactive initiatives by rights holders to investigate violations and then refer investigations to law enforcement agencies. Strengthened criminal penalties for IPR infringement went into effect on January 1, 1997, and even stronger penalties were adopted in Article 146 of the Criminal Code in 2003. But, while the Russian government has begun to pay more attention to enforcement, there are still few cases in which existing penalties have been applied. Even when violators have received jail sentences, the sentences are often suspended or general amnesties are issued, and imprisonment does not actually occur. In addition, goods seized during enforcement actions are rarely destroyed and consequently may return to the stream of commerce.

Administrative and judicial review bodies are beginning to become active in protecting IP in Russia, and the number of police and judges with relevant expertise is still small but is expanding. U.S. copyright industries believe that at the prosecutorial and judicial levels, officials often do not consider IP infringements to be serious offenses compared to other crimes, although an increasing number of prosecutors are willing to file cases related to copyright piracy. U.S. investors also consider the Russian court system to be 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 resolution of trademark and patent disputes.

SERVICES BARRIERS

Discrimination against foreign providers of non-financial services are, in most cases, not the result of federal law, but can stem from the abuse of power, sub-national regulations, and practices that may violate Russian law. For example, a few foreign providers of services have sometimes noted discrimination in obtaining licenses from local authorities. Foreign providers are forced to pay a range of fees that domestic companies allegedly bypass via bribes. The federal law on "Banks and Banking Activity of 1996" permits foreign banks to establish subsidiaries in Russia. The law allows the Central Bank to impose a ceiling on the total amount of foreign bank capital calculated as a percentage of the total bank capital in Russia. However, the Central Bank has never imposed a ceiling. Russia has been asked to clarify the situation and remove any limits as part of its WTO accession. The Central Bank has indicated that it does not want this limit to dissuade foreign banks from operating in Russia.

Since 1997, the Central Bank has required foreign banks to have a minimum of Euro 10 million in capital (the same requirement is applied to domestic banks) and to have at least 75 percent of the bank's employees and 50 percent of the bank's management board be of Russian nationality. Heads of foreign banks' Russian offices are required to be proficient in the Russian language. In the WTO talks, the U.S. has urged the Russian side to allow branches, as well as subsidiaries, to allow complete liberalization.

In the insurance sector, a law took effect in October 1999 that allowed foreign majority-owned non-life insurance companies to operate in Russia for the first time. Companies offering life and mandatory types of insurance, however, are subject to a 49 percent equity restriction. (This requirement was effectively grandfathered for the foreign firms that were active in Russia when it came into effect.) In addition, total foreign capital in the Russian insurance sector is limited to 15 percent. In September 2003, the Duma passed a law effectively exempting EU-based insurance companies from the 49-percent cap and raising the limit on total foreign charter capital in the sector to 25 percent. This law came into effect on January 17, 2004. The government of Russia has stated that access to the Russian insurance sector will be equalized for all potential foreign participants upon Russian accession to the WTO; however, until then, EU firms will enjoy an advantage over their counterparts from the United States and elsewhere, since they can offer life and mandatory forms of insurance in Russia directly, without the requirement to work through a majority Russian-owned partner. The new law retains the requirement that chief executives and chief accountants of foreign insurers operating in Russia be Russian citizens.

In the telecommunications sector, the new Law on Communications went into effect on January 1, 2004. The law provides the legal basis for the entire field for the next five to ten years. Its impact on the business of alternative telecommunications operators (many of which enjoy large foreign investment) could be substantial, since these companies will now fall under tighter government regulation. In particular, new regulations on interconnection (the process by which alternative operators connect their networks to the Russian public switched telephone network) place interconnection contracts and fees under tighter regulatory authority of the Ministry of Communications. The law states that interconnection contracts and fees should be non-discriminatory, but some alternative operators question how transparent the process will be. They also fear that interconnection fees will be raised ostensibly in order to subsidize network upgrades of the government-owned and ministry-controlled local and long distance operators. Many in the telecommunications industry were disappointed that the new law did not improve transparency in the licensing process. They complain about the Russian Government's lack of transparency in licensing and have criticized the five- to ten-year terms of the licenses, which they argue do not allow them sufficient time to recoup their investment. Russian policy in the telecommunications sector is a subject of debate in Russian WTO accession package, and current WTO members have expressed concern that the new law may deliberalize a now relatively open market, particularly through the adoption of new rules and regulations as set forth under the new law.

Russian entities with over 50 percent foreign ownership are prohibited from sponsoring television or 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.

Central Bank regulation 721-U required that purchases of foreign currency of greater than $10,000 for a limited number of imported services, mainly in the hospitality and tourism sector, must receive advance permission from the Ministry of Finance. While intended to combat capital flight, this measure had the potential to delay financial transactions and impede the participation of foreign firms in this sector. The Law on Currency Monitoring and Regulation was signed by President Putin on December 10, 2003 and is now in effect. The law eliminates the need for licenses but requires Central Bank notification in most circumstances unless specifically noted in the law. It also renders inapplicable Regulation 721-U. Under the new law, all currency controls will be lifted by 2007. Tax preferences formerly provided to Russian film producers were abolished effective January 1, 2002.

INVESTMENT BARRIERS

A Bilateral Investment Treaty (BIT) was signed between the United States and Russia in June 1992. The treaty was approved by the U.S. Senate in October of the same year, but it cannot enter into force until ratified by the Russian Duma. The Duma did not actively consider ratification of the BIT in 2003.

Despite the passage of a new law regulating foreign investment in June 1999, Russian foreign investment regulations and notification requirements can be confusing and contradictory. The law on foreign investment provides that a single agency (still undesignated) will register foreign investments and that all branches of foreign firms must be registered. The law does codify the principles of national treatment for foreign investors, including the right to purchase securities, transfer property rights, protect 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." The potentially large number of exceptions thus gives considerable discretion to the Russian government.

The law also 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 projects with a foreign charter capital of over $4.1 million and with a total investment of over $41 million. However, the lack of corresponding tax and customs regulations means that any protection afforded investors by this clause is only theoretical.

The new Land Code that was passed in 2001 allows equal treatment of domestic and foreign entities to buy land and buildings, although purchase of agricultural land by foreigners is still prohibited. Foreign entities are restricted from buying land close to federal borders and in areas that the President determines are critical to national security.

Current Russian legislation restricts foreign investment in the aerospace industry to less than 25 percent of an enterprise. Foreign investment in the natural gas monopoly, Gazprom, is formally limited to 20 percent, and in the electrical power giant, Unified Energy Systems, to 25 percent. In practice, these limits have been exceeded, and there is discussion of whether to eliminate or raise the limits. Foreign investment in Russian spirits concerns is limited to 49 percent. In 2001, the Duma rejected draft legislation which would have prohibited and/or allowed restriction of foreign investment in a wide range of sectors in the economy.

A major tax reform law that became effective January 1, 2001, reduced tax-related investment barriers. It substantially amends the VAT, excise taxes, personal income tax and unified social tax. The Government of Russia has stated that it plans to implement another round of tax reductions to reduce the tax burden to 31 percent of GDP by January 2005. The 2001 amendments established a flat income tax rate for residents and a 30 percent income tax rate for non-residents. In addition, six taxes were abolished entirely: the 1.5 percent social and housing turnover tax; the Employment Fund tax; the state border clearance fee; the vehicle tax; the vehicle acquisition tax; and the oil and lubricant product sales tax. The road users turnover tax, reduced from 2.5 percent to 1 percent of turnover, was abolished entirely in January 2003. Regions and municipalities received authority to grant exemptions to the regional portion of profits taxes. Some regions received specific regional exemptions, particularly the Leningrad oblast. However, regions will no longer be able to grant individual tax exemptions. Another amendment to the tax code enacted in 2001 lowered the corporate profit tax to 24 percent from 35 percent, effective on January 1, 2002.

Notable VAT tax changes since 2000, aside from the reduction in the VAT from 20 to 18 percent as of January 1, 2004, include VAT tax relief for small businesses; considerable clarification to deductibility rules; reduction of import VAT exemptions; and an attempt to provide a zero VAT tax on exports, although the VAT refund system still does not function well. Companies report that VAT refunds due to an exporter, which should be provided within three months after a claim is submitted, often do not occur on time, with a number of burdensome additional requirements for refund applied by customs and tax authorities. In addition, input VAT is often not refunded for a number of reasons, forcing exporters to avail themselves of the court system.

Duties on the production and export of oil have been adjusted several times over the past few years. In 2003, new legislation restored to the Government full discretion in establishing export duties on refined petroleum products. In 2004, the Government is expected to consider bills that would establish a differentiated tax on oil production and, more broadly, higher taxes in the oil sector.

Crime and corruption in commercial transactions and problems with the implementation of customs regulations also inhibit investment. Trade and investment would benefit, for example, from improved dispute resolution mechanisms, the systematic protection of minority stockholders rights, conversion to international accounting standards, and the adoption and adherence by companies to business codes of conduct. Initiatives are underway to address these shortcomings, either through regulation or government-sponsored voluntary codes of conduct. More transparent implementation of customs and taxation regulations is also necessary.

In 2003, President Putin signed legislation implementing legal amendments to Russia’s regime for production sharing agreements (PSAs). PSAs are designed for energy projects that require high capital expenditure and a long period before profits -- or significant tax revenues -- are generated. Implementation of these amendments severely restricts the opportunity for conclusion of future PSAs by limiting the number of energy deposits eligible for PSA status and by establishing, in effect, a right of first refusal for companies that may wish to bid to develop energy deposits on a non-PSA basis. International oil companies have insisted that PSA legislation, while not sufficient in itself, is a precondition for investment in certain major energy projects in Russia. The $2 billion invested to date in the Sakhalin II consortium and ExxonMobil's announcement that it is proceeding with a $12 billion development plan for Sakhalin I, both "grandfathered" PSA projects, demonstrate the tangible benefits to Russia of foreign energy investment on PSA terms.

Elsewhere in the energy sector, the $2.6 billion Caspian Pipeline Consortium (CPC) project, inaugurated in 2001, shows the vulnerability of projects to efforts to violate contracts and/or founding agreements. In 2002 and in 2003, the CPC had to resist bureaucratic pressure to designate it as a "natural monopoly," even though its founding agreements explicitly exempt it from application of the Law on Natural Monopolies. Such a designation could cast doubt on CPC shareholders’ discretion regarding transportation fees and access rights for the pipeline. In addition, local officials continue to insist that CPC pay port fees, despite the fact that its founding agreements explicitly exempt if from such fees. Elsewhere, non-transparent environmental regulations concerning environmental permitting and pipeline access remain of concern to potential U.S. investors. Central Bank restrictions on medium-term loans (more than 180 days) of hard currency for the purchase of imported inputs have also presented an obstacle to foreign investment projects in Russia's energy sector. Existing PSA projects include local content requirements or targets for equipment and local labor. Another provision in the existing PSA regime limits the total amount of foreign investment to 30 percent of Russia's "strategic" oil reserves. The precise meaning and significance of this restriction remain unclear.

Russia has assumed obligations under Article VIII of the IMF Articles of Agreement to permit free payment of current transactions, but the Central Bank continues to maintain controls on capital flows, despite several new currency control amendments enacted in 2001. The only major change was to lower from 75 percent to 50 percent the mandatory requirement to surrender hard currency by exporters, without reducing the 100 percent repatriation requirement. The proposed law on currency control under current government review would lower the surrender requirements to 30 percent, and would completely abolish them by 2007. Russia continues to maintain restrictions on profit repatriation with respect to investments in restructured Russian sovereign domestic debt (S accounts). However, while S accounts still exist, they are largely irrelevant, because all investors holding treasury bills in an S account were allowed to exit earlier, if they so chose, and there is a mechanism in place which allows current holders of S accounts to exit. Investors can also repatriate coupon payments on government and corporate bonds and invest in other bonds.) However, licenses are still required for most transactions transferring money into or out of Russia, with exporters incurring exchange fees and substantial compliance expenses. The proposed law would eliminate the licensing requirement in favor of simple notification, but it is not clear what ultimately will be approved.

Of potential concern to some investors are export tariffs imposed since 1999 by the Russian Federation, which have become a very significant revenue source for the government. Export tariffs are levied on a range of goods, including oil, gas, forest products, ferrous and non-ferrous metals and scrap, hides and skins. Export tariff rates for oil and gas, like excise rates, have been raised and lowered in parallel with changes in oil price levels.

A presidential decree signed in early 1998 provides investment incentives for large investments in the automobile industry that meet local content requirements. Although the decree is technically still in place, the Government of Russia has stated that no new contracts will be concluded under the law and that the law itself will be abolished in the near future. In practice, U.S. investors in this sector have faced difficulty in obtaining relief promised by the Russian Government from local content requirements and for special customs treatment.

Despite an aging civil aviation fleet and use of outmoded avionics and engines, replenishment of the Russian fleet has not proceeded. Current Russian law stipulates preferential treatment (tax holidays, guarantees on investment) 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 done away with altogether to make way for further investment. Some observers, however, doubt that recent proposals to raise the limit only to 49 percent would be sufficient to garner significant new capital infusions from abroad for Russia’s aircraft industry

In 1996, the United States and Russia concluded a Joint Memorandum of Understanding (MOU) reflecting U.S. concerns about barriers to the Russian civil aircraft market and the application of international trade rules to the Russian aircraft sector. The MOU states that U.S. aircraft manufacturers will be able to participate in the Russian market and share in its growth. The MOU also makes clear that the Russian aircraft industry will become fully integrated into the international economy over time. Russia pledged to eventually undertake the same international trade principles in the aircraft sector as the United States and many others have done as embodied in the WTO Agreement on Trade in Civil Aircraft. In the interim, the MOU commits Russia to take steps, such as the granting of tariff waivers, to enable Russian airlines to meet their needs for non-Russian aircraft on a non-discriminatory basis.

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. Specifically, the government is considering large-scale consolidation of the aircraft industry through mergers and privatizations. Additionally, to support leasing of Russian-manufactured aircraft, the Russian Government in August 2001 concluded deals with Ilyushin Finance and Finance Leasing Company (FLC). Under these deals the Russian Government will take a controlling interest in each company's aircraft leasing operations in exchange for an $80 million infusion of government money in Ilyushin's IL-96 project and $25 million in FLC's TU-214 project. In December 2003, the Russian government increased its ownership stake in each of the companies in the amount of almost 30 million dollars for Ilyushin Finance and almost 13 million dollars for FLC.

Aeroflot currently has 27 foreign aircraft (11 Boeings and 18 Airbus) in its fleet, which were acquired with tariff waivers. While Aeroflot can replace these 27 planes with other foreign planes without paying import duties, they currently cannot acquire more aircraft without paying import duties. Aeroflot's current quantity of foreign planes were granted waivers in exchange for Aeroflot's commitment to purchase six Ilyushin 96-300s. While Aeroflot and other Russian airlines have been vocal about seeking further tariff waivers, the Russian Government has been equally vocal in saying they will not be granted.

ELECTRONIC COMMERCE

Russian law does not currently provide identical legislative protection for both electronic and paper documents. Settlement issues need to be considered in conjunction with applicable currency control provisions. Registered trademarks are not recognized as entailing rights to the equivalent domain names and the property rights which trademarks secure for their registered owners are currently not protected for the purposes of Internet advertising and commerce through web sites. Tax implications from electronic commerce are unclear.

Electronic Russia (E-Russia) is a $2.6 billion, nine-year plan announced by President Putin in July 2001 to boost information technology and Internet usage in Russia. It includes proposals to improve the telecommunications infrastructure of the country and to implement legislation to facilitate electronic commerce. Unfortunately, during its first two years of existence E-Russia received only 20% of earmarked funds and completed few of its stated goals. In December 2003, the Ministry of Communications unveiled substantial changes to the program. In its current form, E-Russia will focus on coordinating efforts to introduce e-government to the Russian Federation.

A law on electronic digital signatures was approved by the Duma in December 2001 and was signed into law by President Putin in January 2002. The law defines electronic signatures strictly, making public-key technology the sole acceptable digital signature technology. The law also requires that hardware and software used in digital signature authentification be certified in Russia. This gives the Russian government the right to insist on decompilation of programs, and thus, access to the source code. An electronic commerce bill is also under consideration. This bill, while closely following an International

Chamber of Commerce model bill, nevertheless has problems, including the fact that it limits electronic transactions to the sale and purchase of moveable goods, services agreements, and shipments. The adoption of the new WIPO Digital Treaties also would promote the development of electronic commerce in Russia.

In 1999, the Ministry of Communications confirmed the existence of the System of Operative and Investigative Procedures (SORM-2), a series of regulations that require internet service providers in Russia to install special eavesdropping equipment on behalf of the Federal Security Service (FSB).

Though certain provisions were struck down by the Supreme Court of the Russian Federation in September 2000, SORM-2 still allows the Russian government to intercept voice and data (e.g., email transmissions) supposedly for reasons related to law enforcement. The ultimate impact of the law is still unclear. Though it requires the FSB to obtain a warrant before it accesses private information, there appears to be no mechanism to prevent unauthorized FSB access to Internet traffic. The FSB has never publicly commented on how effective the regulations have been in the prevention and investigation of criminal activities.

OTHER BARRIERS

Russia maintains export taxes on a variety of products. In May 1999, Russia imposed an export tariff on ferrous steel scrap of 15 percent (amounting to not less than 15 euros per metric ton). Additional certification requirements on ferrous steel scrap exports were adopted in 2001. At the time the export tariff was imposed, Russia was the world’s largest steel scrap exporter. Russian exports of steel scrap have since declined significantly, at a time when world demand and prices have been rising. The export tax provides an artificial advantage to Russian steel producers by increasing domestic steel scrap supply, providing producers with an unfair advantage in Russia and in third markets. Moreover, it constricts global supplies of a key steel input, which has the effect of raising prices of steel scrap for otherwise competitive producers elsewhere, including those in the United States.

Russian export tariffs on copper cathode have also created a market distortion which is promoting vertical integration within the Russian copper industry. Russia currently maintains a 10 percent export tariff on copper cathode and a 0 percent export duty on copper wire rod. As a result, it is advantageous to export the higher value-added product (copper wire rod). Russian copper wire rod producers can obtain favorable prices on copper cathode, since cathode producers cannot export their product for its fair market value.

SINGAPORE

TRADE SUMMARY

The U.S. trade surplus with Singapore was $1.4 billion in 2003, an increase of $2 million from 2002. U.S. goods exports in 2003 were $16.6 billion up 2.2 percent from the previous year. Corresponding U.S. imports from Singapore were $15.2 billion, up 2.4 percent. Singapore is currently the 11th 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 2002 (latest data available) and U.S. imports were $2.1 billion. Sales of services by majority U.S.-owned affiliates were $5.5 billion 2001 (latest data available).

The stock of U.S. foreign direct investment (FDI) in Singapore in 2002 was $61.4 billion, up from $26.7 billion in 2001. U.S. FDI in Singapore is concentrated in the manufacturing, wholesale, and information sectors.

A free trade agreement between the United States and Singapore was signed on May 6, 2003 and entered into force on January 1, 2004.

IMPORT POLICIES

Tariffs

With the exception of four tariff lines covering beer and certain alcoholic beverages, Singapore imposes no tariffs on imported goods. These four remaining tariffs have been eliminated under the U.S. -Singapore FTA and under Singapore's other FTAs . However, for social and/or environmental reasons Singapore levies high excise taxes on distilled spirits and wine, tobacco products, motor vehicles (all of which are imported), and gasoline. During the Uruguay Round of multilateral trade negotiations, Singapore agreed to bind 70.5 percent of its tariff lines. The U.S. -Singapore FTA binds all Singapore tariffs at zero for imports from the United States. Singapore does not impose any restrictions or duties on imports or exports of textiles and apparel. Singapore is a signatory to the WTO Information Technology Agreement (ITA). In addition to the U.S. -Singapore FTA and Singapore's FTAs with ASEAN, New Zealand, Japan, Aus tralia, and the European Free Trade Association, Singapore is negotiating FTAs with Canada, Mexico, India, Sri Lanka, Jordan, Bahrain, Panama and a trilateral agreement with Chile and New Zealand. Singapore is also part of the ASEAN-China FTA and ASEAN-India negotiations.

All imported goods (whether for domestic sale or re-export) are taxable under the Goods and Services Tax (GST), which is levied at five percent as of January 1, 2004, unless the goods are specifically given GST relief by the Director General of Customs. Goods kept in Free Trade Zones are not subject to GST, but are subject to GST if they later are imported into Singapore.

Import Licenses

All imports require an import permit, although for most goods this is largely a statistical requirement. Special import licenses are required for certain goods, including strategic items, hazardous chemicals, films and videos, arms and ammunition, as well as 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. Under the U.S. -Singapore FTA, Singapore now allows the importation of chewing gum with therapeutic value for sale, subject to certain provisions.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Under the Consumer Protection (Safety Requirements) Regulations (2002), 45 categories of electrical, electronics and gas home appliances and accessories are listed as controlled goods and require the compulsory stamp of approval given by the Singapore Government's standards and certification authority (SPRING Singapore). SPRING Singapore recognizes test reports issued by accredited testing laboratories and national certification bodies. To date, SPRING Singapore has registered more than 22,000 models of controlled goods. SPRING Singapore has also developed standards for certain sanitary and building products.

Labels are required on imported food, drugs, liquors, paints and solvents. Repackaged foods must be labeled to show (in English) the appropriate designation of the food content printed in capital letters at least 1/16 inch high; whether the foods are compounded, mixed or blended; the minimum quantity stated in metric net weight or measure, the name and address of the manufacturer or seller; and the country of origin.

GOVERNMENT PROCUREMENT

Government procurement is generally free and open. However, some U.S. firms have expressed concerns that government-owned and government-linked companies (GLCs) may receive preferential treatment in the government procurement process. The Singaporean Government strongly denies that it gives any preferences to GLCs or that GLCs give preferences to other GLCs. Singapore has been a party to the WTO Government Procurement Agreement (GPA) since 1997. The U.S. -Singapore FTA provides additional government procurement access to U.S. firms by expanding the contracts that are subject to FTA disciplines.

EXPORT SUBSIDIES

The Singapore Government does not directly subsidize exports, although it offers significant incentives to attract foreign investment, with most incentives directed at export-oriented industries. In addition to tax incentives and reimbursements to exporters for certain costs incurred in trade promotion, the government also offers grants to new service suppliers.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Intellectual property protection has improved since the late 1990s, leading to the removal of Singapore from the Special 301 Watch List in 2001. Nevertheless, problems have remained, including the availability of pirated optical disks, use of unlicensed software by businesses, the transshipment of pirated material through Singapore, and a burdensome process to get pirated material removed from Internet sites. The U.S.-Singapore FTA addresses these issues and provides enhanced protection for U.S. rights owners.

Enforcement

Although the production of pirated material and blatant storefront retail piracy has been sharply reduced (piracy rates for motion pictures and music are now around 20 percent), pirated optical disks continue to be available from vendors in street markets, apartment complexes, outside metro stations and at other high pedestrian volume locations. The Intellectual Property Rights Branch (IPRB) of the Singapore Police is working to address such activities, but targeting highly mobile pirates is a challenge. The software piracy level in Singapore, while among the lowest in Asia, remains static, and is almost double the level in the United States. The absence of criminal penalties for the use of unlicensed software means that many businesses use unlicensed software, resulting in estimated losses by the business software industry of over $30 million annually. Pursuant to its commitments under the U.S.-Singapore FTA, Singapore is in the process of amending its law to rectify this problem .

Singapore's continued retention of its "self help" policy on IPR enforcement, which treats IPR infringement differently than other theft crimes, has placed an undue and expensive burden on rights holders to initiate raids and prosecute pirates. Under the U.S. -Singapore FTA, Singapore has agreed to implement changes to the "self-help" policy, while committing that the government will continue to assume principal responsibility for enforcement.

Over the past two years, a number of local educational institutions (the majority government-operated) have signed agreements to come into compliance with their legal obligations to pay royalty fees to publishers in exchange for the right to duplicate copyrighted printed works for use in course materials. These agreements appear to resolve a longstanding problem. Some commercial copy centers routinely take orders to copy entire textbooks. While some raids have been conducted, their effectiveness is limited by court action dismissing cases based on trap purchases, under the argument that by undertaking the trap purchase, the copyright owner consented to the piracy. Some publishers complain that enforcement authorities have refused to confiscate infringing works unless they are explicitly included in a search warrant; however, authorities say they are prepared to seize any infringing articles found during a raid, even if not listed in a search warrant, subject to certain conditions.

Transshipment

Although it is a major transshipment and transit point for sea and air cargo, Singapore does not collect information on the contents and destinations of most transshipment and transit trade, which account for 80 percent of the cargo coming through the port. This lack of information makes enforcement against transshipment or transit trade in infringing products extremely difficult. In addition, it is unclear whether Singapore law provides for the seizure of infringing products that are being transshipped or in transit. Pursuant to commitments under the U.S. -Singapore FTA, Singapore passed legislation in November 2003 to provide for information sharing with customs authorities of its FTA partners, including the U.S.

Internet

Under the U.S. -Singapore FTA, Singapore agreed to enhance its legal framework to provide greater protection for digital works, and to modify requirements and procedures for removing infringing material from Internet sites, by July 1, 2004. Singapore also agreed to sign and ratify the WIPO Copyright Treaty or the WIPO Performances and Phonograms Treaty, which together set basic standards for protecting digital content, by December 31, 2004.

SERVICES BARRIERS

Basic Telecommunications

On April 1, 2000, Singapore removed 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. The former monopoly telecommunications service provider, Singapore Telecommunications (SingTel), which is 75 percent government-owned, faces competition in all market segments, including fixed-line, mobile, and paging services, although its main competitors, MobileOne and Starhub are also government-linked companies. However, there are concerns that SingTel charges other operators anticompetitive prices for the use of local leased circuits in the Singapore broadband business market. Under the U.S.-Singapore FTA, Singapore agreed to ensure that major suppliers of leased circuits services provide U.S. enterprises with leased circuit services at rates that are reasonable. A regulation was issued in December 2003 that regulates (and reduces) SingTel's wholesale price for its leased circuits; however, implementation of the regulation is on hold pending resolution of an appeal to the Ministry of Information, Communication, and the Arts.

Audiovisual and Media Services

The 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 also gives the Media Development Authority (MDA), which replaced the Singapore Broadcasting Authority (SBA), authority to waive this requirement. The MDA, which came into operation on January 1, 2003, is a merger of the SBA, Films and Publications Department and the Singapore Film Commission. The government also imposes limits on individual equity stakes in broadcasting companies. Part X of the Broadcasting Act states that no person shall, without prior approval, hold more than five percent of the shares issued by a broadcasting company (the limit was three percent before mid-2002). In practice, all current local radio and television broadcasters are government-owned or government-linked. Currently, Singapore Press Holdings (SPH) and MediaCorp are the only two newspaper licensees and broadcasting licensees. Prior to 2000, SPH held the principal newspaper license and MediaCorp the only broadcasting license; now each company operates in both sectors. The exclusivity given to Singapore Cable Vision as the sole provider of pay television services since 1995 ended on June 30, 2002. There were no bidders for a second pay television operating license in a government tender held in mid-2003.

Singapore restricts the use of satellite receiving dishes and has not authorized direct-to-home satellite television services. Under Part VI of the Broadcasting Act, the installation and operation of certain apparatus on which broadcasting services are received, including satellite receiving dishes, is prohibited except under license from the MDA. The Government does not routinely issue licenses for television receive-only satellite receiving systems. Satellite broadcasters that want to operate their own uplink facility must get a special license from MDA. Satellite broadcasters who do not have 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 five percent per shareholder (raised from three percent before mid-2002), unless the government approves a larger shareholding, and requires that all the directors of a newspaper company be Singapore citizens. The Act defines “newspaper” broadly as “any publication containing news, intelligence, reports of occurrences, or any remarks, observations or comments...printed in any language and published for sale or free distribution.” Newspaper companies must issue two classes of shares, ordinary and management, with the latter only available to citizens of Singapore or Singapore companies who have been approved by the government. Holders of management shares have an effective veto over board decisions.

Any importer, producer, distributor, or exhibitor of newspaper (including newsletters, magazines, periodicals) and audiovisual material, including every film or television program shown in Singapore, must be licensed by the MDA. Authority to issue permits for the distribution of publications is discretionary and subject to conditions; the government can deny or revoke permits without warning or without giving a reason. Some foreign news publications are "gazetted," *i.e.*, numerically limited by the government. The publications must carry printed approval notices or control stickers. Audiovisual content that is considered obscene, excessively violent, or capable of provoking racial or religious conflict is subject to censorship. Only organizations whose business is to exhibit films in cinemas or whose objective is to promote the appreciation of films are allowed to screen "Restricted (Artistic)" films. This category includes those films considered to have sexual, violent, religious, or racial themes.

SINGAPORE

Legal Services

Foreign law firms with offices in Singapore are unable to practice Singapore law, cannot employ Singapore lawyers to practice Singapore law, and cannot litigate in local courts. U.S. law firms can only provide legal services in relation to Singapore law 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. These conditions have been relaxed for U.S. law firms, pursuant to commitments made by Singapore under the U.S. -Singapore FTA. As of November 1, 2003, there is only one USJLV.

With the exception of law degrees from certain 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 U.S. -Singapore FTA, Singapore will recognize law degrees from four U.S. law schools.

Engineering and Architectural Services

While engineering and architecture firms can be 100 percent foreign-owned, the chairman and two-thirds of the firm’s board of directors must comprise engineers, architects, or land surveyors registered with local professional bodies. Singapore has relaxed this requirement for U.S. engineering and architecture firms under the provisions of the U.S.-Singapore FTA. Professional engineering work in Singapore must be under the control and management of a director of the corporation who: (1) is a registered owner of at least one share of the corporation if it is an unlimited corporation; (2) is a registered professional engineer ordinarily resident in Singapore; and (3) has a valid practicing certificate. In the case of a partnership, only registered engineers may have a beneficial interest in the capital assets and profits of the firm, and the business of the partnership must be under the control and management of a registered professional engineer who ordinarily resides in Singapore. Similar requirements apply to architectural firms. Singapore limits the schools it recognizes as acceptable for qualifying to sit for the local architect exam; in the case of U.S. graduates, it accepts the Bachelor of Architecture degree accredited to the U.S. National Architectural Accrediting Board. Applicants must also have a minimum of between 12 months and two years practical experience in Singapore.

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

There are legal distinctions between offshore and domestic banking units, and the type of license held (full, wholesale or offshore).

Prior to 1999, the Monetary Authority of Singapore had not issued new licenses for local retail banking for over two decades to either foreign or domestic institutions because it considered Singapore’s banking sector to be saturated. In addition to barring any other foreign banks from entering the retail market, existing foreign banks in Singapore were not allowed to open new branches, freely relocate existing branches, or operate off-premise Automated Teller Machines (ATMs). However, foreign banks were permitted to install electronic terminals at their corporate clients' premises, and to provide home banking services through telephone and personal computers. Aside from 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. Since then, the government has removed the 40 percent ceiling on foreign ownership of local banks and granted "qualifying full bank" (QFB) licenses to six foreign banks. A QFB license allows these banks to operate up to 15 customer service locations (branches or off-premise ATMs), up to ten of which can be branches; to relocate freely existing branches; and to share ATMs among themselves. They also can provide electronic funds transfer, point-of-sale debit services, accept Central Provident Fund (CPF) fixed deposits, and provide Supplementary Retirement Scheme and CPF Investment Scheme accounts. In December 2002, the government removed the 20 percent aggregate foreign shareholding limit on finance companies.

Despite liberalization, foreign banks in the domestic retail banking sector still face significant restrictions and are not accorded national treatment. Aside from the limit on the number of foreign QFBs and their customer service locations, the foreign QFBs are not allowed to access the local ATM network. Local retail banks do not face similar constraints. Some foreign charge card issuers also face problems because they are prohibited from allowing their local card holders from accessing 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 their own. Acquisition of 5 percent, 12 percent, and 20 percent or more of the voting shares of a local bank requires approval from the Minister of Finance. Moreover, in spite of lifting the formal ceilings on foreign ownership of local banks and finance companies, officials have indicated that they will not allow a foreign takeover of a local bank or finance company. Officials say they want local banks' share of total resident deposits to remain above 50 percent. Foreign penetration of the banking system in Singapore was comparatively high, with foreign banks holding about 40 percent of non-bank deposits.

The U.S.-Singapore FTA removes most of these restrictions, improving U.S. market access in retail banking in Singapore. The current ban on new licenses for full service banks will be lifted no later than June 30, 2005, and by January 1, 2007 for "wholesale" banks. Licensed full-service U.S. banks will be able to offer all their services at up to 30 locations in the first year after entry into force (January 1, 2004), and an unlimited number of locations within two years. Locally-incorporated subsidiaries of U.S. banks can apply for access to local ATM networks after June 30, 2006. Branches of U.S. banks will get to apply for access by January 1, 2008.

As of January 1, 2004, MAS has allowed one U.S. bank to enjoy increased opportunities, as promised in the U.S.-Singapore FTA. However, there are some concerns that the new and expanded regulatory requirements not negate the benefits of these additional business opportunities.

Restricted and Offshore Banking

In 2001, the MAS announced plans to replace the current licensing regime which distinguishes between on-shore and offshore activities to one which distinguishes between retail and wholesale activities. The restricted and offshore licenses are progressively being replaced by a Wholesale Bank (WB) license, which allows wholesale banks to conduct a wider range of activities than restricted or offshore banks. All WBs will be allowed to accept Singapore dollar fixed deposits above S$250,000, to offer Singapore dollar current accounts, and will not face any limits on the amount of Singapore dollar lending. Over time, the MAS will upgrade all Banks to WB status. The application process will also be open to new foreign bank entrants. License criteria include prudential considerations and the applicants' current scope of activities and future plans in Singapore.

Restrictions on Singapore Dollar Lending

Non-residents can borrow local currency freely if the proceeds are used in Singapore. Non-resident financial entities may also borrow local currency freely for their activities outside Singapore provided the proceeds are swapped or converted into foreign currency. There are no controls on the borrowing of Singapore dollars by residents.

Securities

In 1999-2000, the government launched a number of initiatives aimed at liberalizing Singapore's capital markets. As of January 2002, all trading restrictions formerly placed on foreign-owned stockbrokers were removed. However, aggregate investment by foreigners may not exceed 70 percent of the paid-up capital of dealers that are members of the SGX. New legislation, which took effect in October 2002 allows for the direct registration of foreign funds, provided the prospectus is from an entity registered as a foreign company in Singapore and the fund is approved by the MAS. Formerly, mutual funds and unit trusts had to be registered with the Registry of Companies and Businesses, under the Companies Act, before they could be marketed locally. In practice, this meant that foreign mutual funds had to be registered twice, once in the country of origin and again in Singapore.

Distribution Services

Most multi-level marketing arrangements, particularly where participants receive financial compensation for the recruitment of additional participants, are prohibited in Singapore. The restrictions apply equally to both local and foreign arrangements. In January 2002, the Ministry of Trade and Industry implemented its Multi-Level Marketing and Pyramid Selling (Excluded Schemes and Arrangements) Order, to clarify which kinds of multi-level marketing arrangements are legal in Singapore. Any Singapore-registered company or citizen/resident is also prohibited from promoting any overseas pyramid selling marketed through the Internet. Insurance businesses licensed under the Insurance Act and its subsidiary legislations, master franchise schemes, and direct selling schemes which 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. However, Singapore maintains limits on foreign investment in broadcasting, the news media, domestic retail banking, property ownership, and in some government-linked companies. The Singaporean Government has in the past conditioned approval of licenses to foreign financial service providers and telecommunications service providers on their agreement to performance requirements or commitments to transfer certain additional functions to Singapore. The U.S. -Singapore FTA prohibits and removes certain performance-related restrictions on U.S. investors, such as limitations on the number of service locations.

ELECTRONIC COMMERCE

There are no significant barriers hindering the development and use of electronic commerce in Singapore. The U.S.-Singapore 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 restrictions on broadcasting, as outlined in the Broadcasting Act. All Internal Service Providers (ISPs) must channel all incoming and outgoing Internet traffic through Internet Access Service Providers (IASPs) who function as main “gateways” to the Internet. IASPs must block access to one hundred Internet sites that the Singapore Government considers obscene, excessively violent, or likely to incite racial or religious conflict. The Singapore Government states that the list of sites is updated annually, but the list is not made public, and the process by which sites are placed on the list is not transparent. While other sites may be considered similarly objectionable, no effort is made to block access to sites beyond the one hundred listed sites. ISPs and IASPs are required to be licensed with the MDA. Internet Service Resellers, Internet Content Providers (ICPs), individuals who put up personal web pages, software developers and providers of raw financial information and news wire services do not have to register with the SBA, but ICPs or individuals who provide web pages for political or religious causes must be licensed by the MDA.

OTHER BARRIERS

Competition

Singapore has an extensive network of government-owned and government-linked companies (GLCs), which are active in many sectors of the economy. Some sectors, notably telecommunications, power generation/distribution, and financial services, are subject to sector-specific competition regulations and regulatory bodies. Some observers have raised concerns that GLCs may act in anticompetitive ways, a charge government officials strongly deny. The U.S. -Singapore 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.

Singapore does not have an umbrella competition law, although the Singapore Government has specific competition regulations governing the telecommunications, finance, media and power sectors. Under the U.S. -Singapore FTA, Singapore has committed to adopt a broad competition policy law by 2005. There are also obligations for greater transparency on government enterprises with substantial revenues or assets.

Transparency

The United States welcomes actions by Singapore to circulate more draft laws and regulations for public comment. It is our expectation that all legislation drafted to implement the U.S. – Singapore Free Trade Agreement will be made available for public comment in advance of finalization and submission to Singapore’s Parliament, keeping with the transparency obligations of the FTA.

SOUTH AFRICA

TRADE SUMMARY

The U.S. trade deficit with South Africa was $1.8 billion in 2003, an increase of $308 million from 2002. U.S. goods exports in 2003 were $2.8 billion, up 11.7 percent from the previous year. Corresponding U.S. imports from South Africa were $4.6 billion, up 15.0 percent. South Africa is currently the 34th largest export market for U.S. goods. U.S. exports of private commercial services (i.e., excluding military and government) to South Africa were $1.1 billion in 2002 (latest data available), and U.S. imports were $782 million. The stock of U.S. foreign direct investment (FDI) in South Africa in 2002 was $3.4 billion, up from $3.1 billion in 2001. U.S. FDI in South Africa is concentrated largely in manufacturing, services, and wholesale sectors.

South Africa has increasingly opened its market since 1994 by reducing tariff rates and non-tariff barriers. The South African government has stated its aim to open the market further in order to increase trade and to develop more competitive domestic industries. As a member of the Southern African Customs Union (SACU), South Africa began negotiations for a free trade agreement (FTA) with the United States in June 2003. The FTA negotiations provide an unprecedented opportunity for addressing trade constraints on U.S. exports to South Africa, including relatively high tariffs and import restrictions on certain U.S. exports; inadequate copyright protection for software, films, and music; and barriers in telecommunications and other key service sectors. South Africa is also negotiating or exploring possible free trade agreements with Mercosur, India, and China. Along with India and Brazil, South Africa was a founding member of the G-X coalition of countries formed prior to the September 2003 WTO Ministerial in Cancun.

IMPORT POLICIES

The South African International Trade Administration Commission (ITAC) came into operation in June 2003. ITAC, which replaced the Board on Tariffs and Trade, was established under Section 7 of the International Trade Administration Act of 2002. It has been tasked to establish an efficient and effective system for the administration of trade. ITAC's responsibilities include:

- TARIFF INVESTIGATIONS - The ITAC administers tariff-related programs, including the Motor Industry Development Program (MIDP) and the Duty Credit Certificate System (DCCS). Interested parties are entitled to approach ITAC with specific requests for tariff assistance.

- TRADE REMEDIES - The ITAC deals with antidumping and subsidized exports and, as soon as procedures are in place, safeguards.

- IMPORT AND EXPORT CONTROL - The ITAC issues import and export permits for certain items designated by the Minister under the authority of the International Trade Administration Act of 2003, which incorporates the Import and Export Control Act of 1963.

Import Control

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 and the objectives of control are as follows:

-- Secondhand goods: Import permits are granted only if such goods or substitutes are not manufactured domestically, constituting a de facto ban on such goods. These restrictions are designed to protect domestic industries such as clothing, motors, machinery and plastics, but also serve to discriminate against low-cost secondhand goods from the United States.

- Waste, scrap, ashes, and residues (Basil Convention): The objective of import controls of these goods is to protect human health and the environment.

- Other harmful substances: Imports of substances such as ozone depleting chemicals (Montreal Convention) and chemicals used in illegal drug manufacturing are controlled for environmental, health and social reasons.

- Goods subject to quality specifications, such as tires: This restriction permits monitoring of manufacturer adherence to specifications that enhance vehicle safety or protect human life.

Tariffs

To comply with its WTO commitments, since 1994 South Africa has reformed and simplified its tariff structure. It has reduced tariff rates from an import-weighted average tariff rate of more than 20 percent to 7 percent. Notwithstanding these reforms, importers have complained that South Africa's tariff schedule remains complex and can create uncertainty. The U.S.-SACU free trade agreement negotiations provide an opportunity to work with the South African government to lower these relatively high tariff rates. Tariff rates mostly fall within eight levels ranging from 0 percent to 30 percent, but some are higher, such as for specific textile and apparel items. The WTO has reported that tariff protection for agricultural products has actually increased slightly since 1997. In the Uruguay Round, South Africa agreed to a twelve-year phase-down of duties on textiles and apparel, but since then has unilaterally moved to a seven-year phase-down process. As of September 1, 2002, the following rates, which are also the end rates, apply:

Apparel	40 percent
Yarns	15 percent
Fabrics	22 percent
Finished goods	30 percent
Fibers	7.5 percent

Duty rates on cars, light goods, vehicles and minibuses are still at the high level of 38 percent, while the rate of duty on original motor parts is 29 percent. Under the terms of the Motor Industry Development Plan (MIDP), international companies that both import and export motor vehicles and parts are able to use export credits to reduce the import duties.

ITAC continued to receive many requests for tariff protection from industries, especially as the strong appreciation of the South African rand during 2002/2003 led to increased competition from imports that hurt the competitiveness of many South African companies. U.S. companies have cited tariffs as a barrier to trade in South Africa, along with port delays and congestion, customs valuation above invoice prices, theft of goods, import permits, antidumping measures, IPR crime, an inefficient bureaucracy and excessive regulation.

Dumping

The number of antidumping petitions filed in South Africa decreased during 2002-2003, with only two dumping cases investigated by ITAC during 2003. While no new antidumping investigations against imports from the United States were instituted in 2003, antidumping duties on U.S. poultry, first imposed in 2000, remain in force. In early 2004, ITAC also increased the MFN applied duty on imports of poultry offal, as requested by the domestic industry. In an important step to increase transparency and clarity on the dumping investigation processes, ITAC published new anti-dumping regulations for comment in November 2003.

Free Trade Agreement with the European Union

In 2000, South Africa and the European Union (EU) began to implement the trade provisions of their Agreement on Trade, Development and Cooperation, a free trade agreement (FTA). Under the agreement, South Africa and the EU will establish a free trade area over a transitional period of up to twelve years for South Africa, and up to ten years for the EU. The FTA provides for the reduction and eventual elimination of duties for approximately 85 percent of the products imported from the EU and 95 percent of the products exported by South Africa. Many key agricultural products were exempted from liberalization under the agreement. South African and EU negotiators announced at the end of 2003 that they would seek to accelerate the process towards freer trade in automobiles. U.S. firms exporting to South Africa are concerned that their products will be less competitive because of the preferences given to the EU. For example, there is a five percent differential between the duties on EU and U.S. trucks. U.S. companies are divided on whether they have been disadvantaged by the EU FTA.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Biotechnology

There has been an active debate in South Africa about products produced using agricultural biotechnology. The Genetically Modified Organisms Act (“the GMO Act”), which entered into force on December 1, 1999, aims to ensure that all activities involving the use of agricultural biotechnology (including production, import, release and distribution) will be carried out in such a way as to limit possible harmful consequences to the environment. Since 1999, some stores have promoted claims of selling a limited range of biotechnology-free products, while a few consumer groups have urged the Department of Health to introduce compulsory labeling of biotechnology products. The South African government issued draft regulations on the labeling of biotechnology products in mid-2002. The comment period has expired but the South African government has not yet issued the final regulation. Private sector trade groups indicated that the government consulted them in drafting the regulations, and that they had no serious problems with the draft. The government is reviewing the GMO Act for compliance with the new Biosafety Protocol that came into force in November 2003.

In June 2001, the South African government published the National Biotechnology Strategy for South Africa, a document that shows the South African government’s intent to stimulate the growth of biotechnology industries. The document states that biotechnology can make an important contribution to national priorities, particularly in the areas of human health, food security and environmental sustainability. Environmental and health groups continued to exert pressure on the South African government in 2003 to examine the safety of foods derived from agricultural biotechnology.

The University of the Free State has entered into an agreement with a German-based food diagnostic company and established a high-technology laboratory to test foods for genetically modified ingredients. The facility will enable exporters to ensure their products conform to strict labeling regulations in Europe and Asia, where producers are required to indicate if their goods contain agricultural biotechnology. Only goods with content of less than one percent can be labeled free of modification. South Africa has begun to grow genetically modified soybeans that are resistant to herbicides, and yellow and white maize that are resistant to insects. The use of these products is widespread in the food processing industry.

U.S. grain producers have raised concerns about South Africa's treatment of genetically modified "stacked events." 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" and requires only notification by producers, South Africa -- like the EU -- considers the combined "stacked events" as a new event, and requires a complete, *de novo* review for registration purposes. This requirement creates significant delays in registering products, causing U.S. exporters to lose export opportunities. At present, U.S. yellow corn is not approved for import by the government of South Africa due to delays in registering stacked events and other new events. As a result, if yellow corn were in short supply in South Africa in 2004, importers would have to apply to the government for a special waiver in order to import U.S. yellow corn, with the guarantee that the U.S. yellow corn would be milled near the port to ensure that it cannot be planted.

In September 2003, the South African government's support for genetically modified crops came under fire at the Congress of South African Trade Unions (COSATU) when delegates debated a draft resolution calling on the government to place a moratorium on the introduction of food containing genetically modified ingredients. The Department of Agriculture has already approved commercial production of genetically modified maize and soybeans for human and animal consumption, as well as genetically engineered cotton. There are also various field trials underway for other genetically modified crops, such as canola and potatoes. The draft resolution calls on government to convene a summit to debate food safety and agricultural biotechnology.

In August 2003, South Africa acceded to the Cartagena Protocol, the international treaty aimed at protecting the world's biodiversity from the risks posed by introducing genetically modified organisms. The protocol forms part of the United Nations Convention on Biological Diversity, and will allow countries to reject imports of modified products if those countries can provide valid scientific reasons. Trade activists campaigning for a moratorium on biotechnology crops welcomed this development, reasoning that it will force the National Department of Agriculture to overhaul legislation and to increase public participation in future decisions. These trade activists expect the South African government will have to redraft the Genetically Modified Organisms Act to bring it in line with the protocol, which came into effect in November 2003. Biowatch, an environmental lobby group, has taken legal action against the National Department of Agriculture in order to obtain information on how it made decisions on issuing licenses for modified crops.

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 assert that the region should develop common policy and regulatory systems that are based on either the Cartagena Protocol or the African Model Law on Biosafety. The heads of SADC member states also agreed to develop national biotechnology policies and strategies and to increase their efforts to establish national biosafety regulatory systems. Member states were also urged to commission studies on the implications of biotechnology for agriculture, the environment, public health and socio-economics.

Agricultural Standards

The Directorate of Plant Health and Quality within the National Department of Agriculture is responsible for setting standards for certain agricultural and agricultural-related products. These standards include aspects such as composition, quality, packaging, marketing, and labeling, as well as physical, physiological, chemical, and microbiological analyses. These standards are published pursuant to the Agricultural Product Standards Amendment Act of 1998 and the Liquor Products Act of 1989 in the form of regulations for products to be sold on the local market and in the form of standards and requirements for products that are intended for export. U.S. distilled spirits producers have complained that South

African regulations that require a minimum alcohol content by volume (a.b.v.) for whisky, rum, and other products limit the marketing of U.S.-origin spirits that meet the international standard of 40 percent a.b.v.

The South African government requires prospective importers to apply for an import permit for certain controlled products. The import of irradiated meat from any source is still banned by public health officials. U.S. horticultural producers have complained about various South African phytosanitary barriers on the importation of apples, cherries, and pears from the United States. They estimate that, if these barriers were removed, U.S. exports of each of these fruits could increase by $5 million to $25 million in annual sales to South Africa. U.S. producers have also expressed concern about unnecessary SPS requirements for some grains, pork, poultry, and horticultural products.

In order to fulfill South Africa’s commitment under the WTO Marrakesh Agreement on market access, the National Department of Agriculture published the rules and procedures regarding the application for market access permits for agricultural products on October 24, 2003. The permits will be issued to importers registered with the South African Revenue Service (SARS) and the Department of Trade and Industry (DTI) for importation of the agricultural products listed in the Table of Import Arrangements. Permits will be allocated as follows:

- 10 percent to importers who have not imported over the past 3 years (“new importers”),

- 10 percent to Small, Medium, and Micro Enterprise importers (“SMME Importers”),

- 80 percent to importers who have imported the products over the past 3 years (“historical importers”).

GOVERNMENT PROCUREMENT

Government purchases are by competitive tender for project, supply, and other contracts. The South African government uses its position as both buyer and lawmaker, however, to promote the economic empowerment of historically disadvantaged individuals (HDIs) through its Black Economic Empowerment (BEE) program. Regulations set a legal framework and formula for allowing preference points to HDIs when tendering for a government procurement contract. Points are awarded based on such criteria as a percentage of HDI ownership and the percentage of HDI managers.

While many U.S. companies operating in South Africa have significant programs that support HDIs, they have concerns about the lack of clarity and consistency in the BEE rules. A major concern is whether HDI equity ownership will become mandatory and a cost of doing business with the South African government. Companies have stated their hope that regulations implementing the Preferential Procurement Policy Framework Act announced in 2001 will increase transparency in government procurement by establishing clear rules for preferential awarding of government contracts to firms with black ownership or shareholders.

The South African government introduced an Industrial Participation (IP) program in 1996. All government and parastatal purchases or lease contracts (goods, equipment or services) with an imported content equal to or exceeding $10 million (or the rand equivalent thereof) are subject to an IP obligation. This obligation requires the seller/supplier to engage in commercial or industrial activity equaling or exceeding 30 percent of the imported content of total goods purchased under government tender. The program is intended to benefit South African industry by generating new or additional business.

The private sector developed a Financial Services Sector Charter in 2003 that employs a scorecard to measure core BEE components such as human resource development, procurement and enterprise development, access to financial services, empowerment financing, and ownership and control. The information and communications technology sector is also working on a BEE charter. On January 7, 2004 President Mbeki signed into law the Broad-Based Black Economic Empowerment Act, the legislation enacting the BEE strategy. The Act directs the Minister of Trade and Industry to develop a strategy for BEE, issue codes of good practice, encourage the development of industry specific charters, and establish a BEE Advisory Council to review progress in achieving BEE objectives.

In December 2003, the National Treasury published a Draft Code of Good Practice for BEE in Public Private Partnerships (PPPs). Following the consultation process, the Minister of Finance will submit a final draft to the Minister of Trade and Industry for consideration by the BEE Advisory Council. The code will then be issued as a complement to the Broad-based BEE Act. The Code of Good Practice sets out the targets for BEE to be achieved in PPPs and provides clarity to bidding private parties.

South Africa is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Under the Duty Credit Certificate Scheme, the government of South Africa offers duty credit certificates to South African exporters of textiles and clothing. Other incentives are available for the promotion of manufactured exports. SACU also has several duty drawback regimes for agricultural and non-agricultural products.

In September 1995 the South African government established the Motor Industry Development Program (MIDP) in order to assist the South African auto industry. This program includes measures to promote exports and introduces a phased reduction in import tariffs. The MIDP allows vehicle assemblers and component manufacturers to offset vehicle and component exports against similar imports. The ability to rebate import duties by exporting allows importers to bring in vehicles at lower effective rates of duty. It also enables assemblers to use import credits to source components at close-to international prices. In late 2002, the government extended the program from 2007 to 2012.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Legal Regime

Property rights, including intellectual property rights, are protected under a variety of laws and regulations. The South African parliament passed two IPR-related laws at the end of 1997 -- the Counterfeit Goods Act and the Intellectual Property Laws Amendment Acts -- in order to enhance IPR protection. The Department of Trade and Industry (DTI) administers these acts. Although South Africa’s intellectual property laws and practices are generally in conformity with those of the industrialized nations, there are deficiencies in enforcement and in guaranteeing the protections afforded under these laws. The U.S.-SACU free trade agreement negotiations will seek to address some of the shortcomings in South Africa’s IPR protection regime.

The U.S. software industry has cited three principal deficiencies in the 1978 Copyright Act:

- Lack of criminal penalties for end user piracy. South African law currently provides that the sale of infringing software is a criminal offence, but there is no criminal penalty for end users.

- Lack of presumptions relating to copyright subsistence and ownership. Amending the law to add subsistence presumptions would reduce the procedural burden on rights holders in proving their cases.

- Non-deterrent civil damages. Amending the law to introduce statutory damages to cover end users and to ensure that compensatory damages serve as a deterrent would improve IPR protection. The current statutory provisions on damages are not considered to be sufficient to serve as a deterrent.

Until these changes are made in the law, the enforcement of individual copyright claims is complicated by the lack of evidentiary presumptions in the law, requiring use of an expensive registration system or submission of extensive proof of copyright subsistence and ownership. Amendments have been considered for years, but relatively little has been done in this area.

In 2001, South Africa introduced measures to enhance enforcement of the Counterfeit Goods Act. The South African government appointed more inspectors, designated more warehouses for counterfeit goods, destroyed counterfeit goods, and improved the training of customs, border police, and police officials. In the first three quarters of 2003, South African authorities seized over 144,000 pirate DVDs, though this amount is estimated to be only a small portion of the amount of pirate DVDs smuggled into the country. Despite these efforts, the International Intellectual Property Alliance estimates total losses from copyright piracy in South Africa in 2002 at over $84 million, including $39 million in business software applications and $30 million in motion pictures. Although law enforcement authorities often cooperate with the private sector in investigating allegations of counterfeit trade, there are concerns about laxity in enforcement of IPR laws against imports of pirated goods. Complainants can take both civil and criminal action against offenders.

South Africa is a member of the Paris Union and acceded to the Stockholm Text of the Paris Convention for the Protection of Intellectual Property. South Africa is also a member of the World Intellectual Property Organization (WIPO) but has yet to ratify the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

Software/Audio Visual IPR Issues

Software piracy still occurs frequently in South Africa. Between February and March 2001, the Business Software Alliance (BSA) gave South African organizations a one-time opportunity to legalize their software by registering. The campaign received 608 registrations to legalize pirated or illegally installed software, representing over 60,000 desktop personal computers. An independent research firm, International Planning and Research Corporation, conducted a survey for the BSA during 2001. It found that the local piracy rate dropped from 45 percent to 38 percent. Piracy in the video and sound industry also continues to be a concern. The Motion Picture Association estimated video piracy at 10 percent and optical disk piracy at 40 percent in 2003.

SERVICES BARRIERS

Telecommunications

South Africa has made a series of WTO commitments on value-added telecommunications and basic telecommunications services and has adopted the WTO reference paper on pro-competitive regulatory principles. The South African government also committed to license a second supplier no later than January 1, 2004, to compete against the current monopoly supplier, Telkom, in long-distance, data, telex, fax, and private leased circuits services. Despite the end of Telkom's exclusivity period in May 2002, Telkom has been able to continue its monopoly because of the absence of a second network operator. Nineteen percent of the shares of the new operator will be reserved for BEE groups and 30 percent will be allocated to the telecommunications divisions of Eskom (the state energy utility) and Transnet (the transport parastatal), which already have some infrastructure in place. Equity interest from either foreign or domestic investors in the second national operator (SNO) will make up the remaining 51 percent and provide capital and technical expertise needed to compete with the incumbent operator.

In November 2003, the Minister of Communications announced that the government would license the SNO and would name an equity partner by the end of the year. In December 2003, the Minister of Communications announced that 26 percent of the equity in the SNO would be sold to a combined entity of two consortia. These consortia originally applied separately for the equity stake in the SNO. The remaining 25 percent will be retained by the government and warehoused for the foreseeable future. This decision allowed the SNO to move forward and allowed South Africa to meet the WTO deadline of having a competitor to Telkom in place by January 1, 2004. The initial public offering (IPO) for the partly privatized Telkom took place in March 2003 when it was listed on both the Johannesburg Stock Exchange and the New York Stock Exchange.

Internet Service Providers (ISPs) and value-added network services (VANS) have cited problems with Telkom in the past. Telkom refused to provide new facilities to VANS operators, claiming that VANS and ISPs are resellers of basic services and thus were infringing on Telkom's monopoly. This problem is made even more acute by South Africa's failure to liberalize resale services between 2000 and 2003, as it committed to do under its WTO schedule on basic telecommunications. Telecommunications is one of the areas being addressed in the U.S.-SACU free trade agreement negotiations. South Africa's telecommunications regulatory authority, ICASA, has sole authority to determine whether these services are illegal. In the past, service providers have complained about ICASA ineffectiveness in asserting its authority over Telkom and have pursued remedies in the Pretoria High Court. Telkom also often challenges decisions taken by ICASA, leading to delays in implementing rulings. The Amended Telecommunications Act of 2001 allows only Telkom and the SNO to provide voice over Internet protocol (VOIP) services, and it appears to expand the definition of a public switched telecommunications service (PSTS) to include the provision, repair, and maintenance of any other telecommunications apparatus. The Ministry of Communications is considering legislation that will strengthen the regulatory authority of ICASA.

Interested parties continue to raise questions concerning the consistency of these and other provisions of the Amended Telecommunications Act with South Africa's WTO obligations. The United States continues to monitor South Africa pursuant to section 1377 of the Trade Act of 1988 for compliance with its WTO commitments. ICASA sought to improve competition in the telecommunications sector in 2003 by legalizing call-back services. In addition, the Pretoria High Court ruled in 2003 that a similar practice known as least-cost routing was not illegal.

South Africa passed an electronic commerce bill on July 31, 2002, designed to encourage use of the Internet in business transactions. The new law is controversial because of the uncertainty of its impact on the ".za" domain name, Internet retailing, encryption providers, unsolicited e-mail, and government access to private databases. For example, the bill would give the South African government sole control of the ".za" domain name in contrast to international norms, and would require retailers to provide a mandatory seven-day return policy for all products, including music and software.

Other Services

The United States has in the past shown interest in reaching an open skies air transport agreement with South Africa. During negotiations in May 2001, however, South Africa indicated that it would not agree to open skies, preferring instead incremental liberalization of the existing air transport agreement. Open skies agreements provide for open route rights, capacity, frequencies, designations, and pricing, as well as opportunities for cooperative marketing arrangements, including code-sharing and airline alliances. South

African Airways (SAA), the national airline wholly-owned by the transport parastatal Transnet, had previously noted concerns about U.S. airlines exercising fifth-freedom rights in Africa and thereby impinging on one of SAA's strategic markets.

Private firms raised concerns about the clarity of the provisions of the new Postal Services Amendment Bill of 2003. In response, the Postal Regulator held a series of workshops with industry and assured firms that they would continue to be able to provide door-to-door service for postal items weighing less than one kilogram. The officials committed to work with industry to submit additional amendments to the legislation that would clarify the law.

ANTICOMPETITIVE PRACTICES

Ownership Patterns

There is an historical legacy of concentrated ownership in some sectors of the South African economy. During the apartheid years, a large portion of the South African population was entirely excluded from ownership of business enterprises. Moreover, government policies from 1961 to 1994 prohibited some successful companies such as South African Breweries, Anglo American (including DeBeers) and SASOL from investing abroad. They therefore expanded their activities locally. As a result, conglomerates with considerable market power developed in the South African marketplace. This situation has been changing, as many of the major players have been expanding internationally and have listed on foreign stock exchanges. Together with the more effective competition authority and strong sectoral initiatives to enlarge the share of black participation in the economy, South Africa's business environment is becoming more competitive and more open to new entrants (including U.S. companies).

Sectors such as energy, transport and telecommunications have also historically been controlled or dominated by parastatals. These sectors are gradually restructuring and opening up for competition from the private sector. The privatization program of the South African government, although moving slowly, is also starting to bring a change in ownership patterns.

ELECTRONIC COMMERCE

Effective July 31, 2002, all companies that conduct business in South Africa via electronic commerce must comply with the new Electronic Communications and Transactions Law. The new law was designed to facilitate electronic commerce but may increase regulatory burdens and introduce uncertainty into the future of electronic commerce in the country. 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.

SOUTH AFRICA

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 for government employees, or deportation for foreign citizens. South Africa boasts no fewer than ten agencies engaged in anti-corruption activities. Some, like the Public Service Commission (PSC), Office of the Public Protector (OPP), and Office of the Auditor-General (OAG), are constitutionally mandated and 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 and an impediment to, and a cost of, doing business in South Africa. The South African police forces have not been effective or well accepted in many communities because of their historical role in enforcing minority rule, their lack of training, and internal crime and corruption within the forces. The levels of crime, especially violent crime, are a deterrent to attracting U.S. companies to 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 in 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 improved the transparency of government spending, especially with regard to off-budget agencies and parastatals. Notwithstanding these efforts, businesses complain about the lack of certainty and consistency in interpreting and implementing some government policies.

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 in particular categories that may enter the country, and because corporate permits allow investors to make blanket applications for the people they need. It is not clear whether these corporate permits fall in or out of the quota system. The Trade and Industry Minister has suggested that the South African government may need to revise the law to acquire critically needed skills in South Africa. Home Affairs officials oppose moving away from quotas because it might mean reverting to the Aliens Control Act, wherein an employer had to establish the clear need for a skill. The Minister of Home Affairs has said that the new law is an enormous improvement over the previous legislation and places South Africa on a par with other countries, especially with respect to investors and intra-company transfer permits.

Southern African Customs Union

South Africa has been a member of the Southern African Customs Union (SACU) since its inception in 1910. The SACU Agreement was renegotiated in 1969 following the independence of Botswana, Swaziland, and Lesotho. Namibia joined SACU in 1990. SACU aims to promote free trade and cooperation on customs matters among its five member states. There are currently no internal tariff barriers between SACU members but because of different tax regimes, there are some tax adjustments that occur at the borders. All SACU members except Botswana share a common currency as members of the Common Monetary Area. Imports from outside SACU are subject to a common external tariff. The SACU governments signed a new agreement in October 2002 setting out the responsibilities of the Council of Ministers, the Customs Union Commission, and the Secretariat. SACU began negotiations on a free trade agreement with the United States in June 2003. SACU has also concluded a revised trade agreement with the SADC countries that would eliminate almost all duties on SACU-SADC trade

Because of 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. For example, soda ash from Botswana comes into South Africa at a zero percent duty, whereas, soda ash from the U.S. faces a 5.5 percent duty. South Africa does not produce soda ash, but the duty on imported soda ash was introduced for the benefit of Botswana. Moreover, a legal complaint from Botswana’s soda ash producer under South Africa’s competition law threatens to block U.S. exports. The South African Competition Commission has pursued the claim as a “per se” offense, without making any judgment on the U.S. soda ash producer’s impact on competition or consumers. If the South African Supreme Court does not grant an appeal so that the legal merits of the case can be argued, U.S. soda ash exports would be adversely affected. If the tariffs on U.S. soda ash were eliminated, U.S. exports of soda ash to South Africa could increase from less than $8 million to $25 million, closer to its historical level.

SRI LANKA

TRADE SUMMARY

The U.S. trade deficit with Sri Lanka was $1.7 billion in 2003, an increase of $14 million from 2002. U.S. goods exports in 2003 were $155 million, down 10 percent from the previous year. Corresponding U.S. imports from Sri Lanka were $1.8 billion, down 0.2 percent. Sri Lanka is currently the 104th largest export market for U.S. goods.

The United States is Sri Lanka's largest export market and the destination for $1.8 billion (or 38 percent) of exports, predominantly garments. Sri Lanka's garment industry is heavily dependent on the United States, with 63 percent of all garment exports bound for the United States.

Sri Lanka's exports face many challenges. The largest export, garments, will face increased competition in a quota-free era when the WTO Agreement on Textiles and Clothing expires in 2005. Products from cheaper sources also threaten most other sectors. In order to meet these challenges, there are new efforts to diversify exports, expand tourism, improve competitiveness and increase foreign employment opportunities. The Government also hopes to take advantage of Sri Lanka's strategic location on shipping routes, make use of the Indo-Lanka free trade agreement, sign free trade agreements with other countries, and establish Sri Lanka as a regional hub for manufacturing, commerce and transport.

IMPORT POLICIES

Sri Lanka has one of the most liberal trade regimes in South Asia. Sri Lanka's main trade policy instrument is the import tariff. A few years ago Sri Lanka set out to have a simplified transparent two-band tariff system. The country has deviated from this policy recently and the tariff structure is now subject to an increasing number of changes. Currently, there are 6 tariff bands of 2.5percent, 5 percent,10 percent, 15 percent, 20 percent and 25 percent. Textiles, crude oil and wheat are free of duty. There are also a number of deviations from the 6-band tariff policy. Tobacco and cigarettes carry 75 percent and 100 percent duties, respectively. In addition, there are specific duties on 46 items, including about 12 agricultural products. These specific duties are aimed at protecting domestic producers. However, they remain below Sri Lanka's bound agricultural tariff rate of 50 percent in the WTO. There is no clear tariff policy on agriculture. Furthermore, 31 items carry an *ad-valorem* or a specific duty (whichever is higher). There is intermittent use of exemptions and waivers. "Regaining Sri Lanka", the Government's policy framework, proposes a strongly pro-trade package that includes moving towards a stable low uniform rate and reducing non-tariff barriers. The Government has established a Tariff Advisory Council to examine these issues. The finance minister recently announced that they would reduce the 6 tariff bands to 5.

There are other charges on imports:
1) a 10 percent import duty surcharge;
2) a 1 percent ports and airports development levy (PAL) on imports;
3) a Value Added Tax (VAT) of 15 percent;
4) an excise fee on some products such as aerated water, liquor, wines, beer, motor vehicles and cigarettes;
5) an Export Development Board fee on all imports where the customs duty is more than 45 percent; and
6) port handling charges.

VAT and excise duties are levied on imports and domestic producers.

Import Licensing

A total of 353 items at the 6-digit level of the Harmonized Tariff Schedule (HST) code remain under license control, mostly for health and national security reasons. There is a 0.1 percent fee on import licenses.

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 c.i.f. value. The scheme has operated quite successfully. Major companies have not faced problems. Sri Lanka Customs complains of "fly by night" companies undervaluing goods brought in from Dubai and China. Customs is also in the process of installing an Electronic Data Interchange (EDI) system to support an automated cargo clearing facility. When implemented, this system should improve customs administration and facilitate trade.

Agriculture

Following is a list of agricultural trade barriers facing US exporters.

Poultry and meat: There is an unofficial ban on the import of chicken meat, ostensibly to protect the local industry. Importers have been discouraged from applying for licenses to import U.S. chicken. A Singaporean-owned poultry company in Sri Lanka dominates the domestic market with an approximately 80 percent market share. United States chicken could compete effectively if allowed into the market. Imports of duck and turkey from the United States are permitted only from states free of avian influenza. Imports of beef from the United States are banned due to fears of bovine spongiform encephalopathy.

Wheat: The Government is considering adopting phytosanitary regulations for wheat. Such a move could affect U.S. wheat exports to Sri Lanka. Urocystis agropyri syn Urocystis tritici' and Neovossia indica syn Telletia indica' are the organisms that are under review for possible prohibition.

STANDARDS TESTING, LABELING AND CERTIFICATION

At present there are 84 items that come under the Sri Lanka Standards Institution (SLSI) mandatory import inspection scheme. Importers have to obtain a clearance certificate from the SLSI to sell their goods. SLSI accepts letters of conformity from foreign laboratories, but retains the discretion to take samples and perform tests. The list of items under the SLSI inspection scheme is to be expanded by another 25 items in 2004.

There is discussion within some sections of health and environment sectors to introduce a labeling requirement for imports of bioengineered food, but no requirements are in place currently. A new labeling regulation has come into effect which relates to the information that should appear on a label of any prepackaged food product offered for sale, transported or advertised for sale in Sri Lanka, including imported food.

GOVERNMENT PROCUREMENT

Sri Lanka is not a member of the WTO Government Procurement Agreement. Government procurement of goods and services is mostly done through a public tender process. Some tenders are open only to registered providers. The Government publicly subscribes to principles of international competitive bidding, but charges of corruption and unfair awards continue. All tenders presented for Cabinet approval now need to be routed through a cabinet subcommittee chaired by the Minister of Finance. There are no professional evaluation experts in Sri Lanka. Tender board members are routinely pulled from other jobs B applying limited evaluative capacity and lengthening the tender process.

EXPORT SUBSIDIES

Exporting companies approved by the BOI, are generally entitled to corporate tax holidays and concessions. Exporters receive institutional support from the Export Development Board in marketing. Sri Lanka Export Credit Insurance Corporation (SLECIC) issues insurance policies and guarantees to exporters.

Imports for exporting industries and BOI approved projects usually are exempted from VAT. For some others, the VAT is refunded. There are no major complaints regarding VAT refunds. The airports and ports levy on imports for export processing is 0.5 percent.

INTELLECTUAL PROPERTY (IPR) PROTECTION

Local agents of U.S. and other international companies representing recording, software, movie, and consumer product industries continue to complain that 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 establish themselves in Sri Lanka.

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 Madrid Agreement for the elimination of false or deceptive indication of source on goods, the Nairobi Treaty, the Patent Co-operation Treaty, the Universal Copyright Convention and the Convention establishing the World Intellectual Property Organization (WIPO). Sri Lanka’s intellectual property law is based on the WIPO model law for developing countries. Sri Lanka and the United States signed a Bilateral Agreement for the Protection of Intellectual Property Rights in 1991, and Sri Lanka is a party to the WTO Trade-Related Intellectual Property Rights (TRIPS) Agreement.

In November 2003, a new intellectual property law came into force. This law meets both U.S.-Sri Lanka Bilateral IPR Agreement and TRIPS obligations to a great extent. The law will now govern copyrights and related rights, industrial designs, patents for inventions, trademarks and service marks, trade names, layout designs of integrated circuits, geographical indications, unfair competition and undisclosed information. All trademarks, designs, industrial designs and patents must be registered with the Director General of Intellectual Property.

Infringement of IPR is a punishable offense under the new law, and IPR violations are subject to both criminal and civil jurisdiction. Relief available to owners under the new law includes injunctive relief, seizure and destruction of infringing goods and plates or implements used for the making of infringing copies, and prohibition of imports and exports. Penalties for the first offense include a prison sentence of 6 months or a fine of up to $5,000.The penalties could double for the second offense. Enforcement, however, is a serious problem, as is public awareness of IPR. The domestic implementing legislation under the old law was very weak and the Government did not act as an enforcer of IPR laws. Aggrieved parties had to seek redress of any IPR violation through the courts, a frustrating and time-consuming process. The Director of Intellectual Property and international experts have begun IPR legal and enforcement training for customs and police officials. An active US Embassy-led IPR working group comprising affected industries is also working closely with the Sri Lanka Government to pursue more aggressive enforcement and enhance public awareness.

It will take time before new procedures and court precedents are established under the new law. In addition, Sri Lanka needs to ratify and conform to the WIPO Performances and Phonograms Treaty

(WPPT) and the WIPO Copyright Treaty (WCT). Sri Lanka is completing its accession to the WTO Information Technology Agreement.

SERVICES BARRIERS

Sri Lanka has opened the services sector to foreign investment. Foreign investment of 100 percent is allowed in a range of service sectors such as banking, insurance, telecommunications, tourism, stock brokerage, construction of residential buildings and roads, supply of water, mass transportation, telecommunications, production and distribution of energy, professional services and the establishment of liaison offices or local branches of foreign companies. These services are regulated and subject to approval by various government agencies. The screening mechanism is non-discriminatory and, for the most part, routine. Some other services have restrictions on foreign investment.

Banking

Foreign commercial banks are allowed to open branch offices in Sri Lanka, subject to an economic needs test. Foreigners are allowed to hold 100 percent equity in banks. Bank ownership is subject to limits on individual ownership. Individual/company share ownership of a bank is limited to 15 percent of equity; group of companies 20 percent and promoters 25 percent. Currently, there are twelve foreign commercial banks operating in Sri Lanka.

Listed below are the main constraints faced by the commercial banking sector:

1) restriction of banking business by government ministries and departments to state-owned banks;
2) restriction on speculative foreign exchange trading by commercial banks; Banks are allowed to buy or sell foreign exchange for commercial transactions only;
3) a VAT on profit before tax and salaries;
4) inadmissibility of electronic documents in courts; and
5) the absence of laws to protect and facilitate electronic commerce. Several laws are being drafted to permit electronic transactions; They include an electronics transactions law, a computer crimes law, a data protection law, and a code for administration of ATMs and Credit Card Operations.

Insurance

One hundred percent foreign investment is allowed in insurance. Foreign insurance companies are required to incorporate in Sri Lanka to undertake insurance business. The Government has recently privatized the state-owned insurance companies. Sri Lankans with access to foreign currency can obtain foreign insurance policies. Resident Sri Lankans are otherwise prohibited from obtaining foreign insurance

policies except for health and travel. A major insurance company has reported difficulty in penetrating government business due to corruption. Sri Lanka’s insurance regulatory body retains powers to introduce minimum and maximum tariffs for various insurance products.

Telecommunications

The telecommunications sector is the most dynamic service industry in Sri Lanka. There is one fixed line operator, Sri Lanka Telecom (SLT), two wireless local loop operators and four mobile phone operators. Several private operators also provide radio paging, data communication, internet service and satellite link-ups. The Government of Sri Lanka sold a 35 percent stake in SLT to NTT of Japan in 1997. The Government sold a further 12.5 percent stake of SLT in 2003 to the public. SLT has recently acquired a mobile phone operator. Due to the past monopoly status under Government control, SLT continues to own most of the national telephone infrastructure (switches) and the main international switches, and continues to dominate the sector affecting the competitiveness of other operators. All other operators are privately owned.

In early 2003, the Government liberalized international telecommunications and issued 29 (non- facilities based) gateway licenses, ending the SLT monopoly over international telephony. Since then, international outgoing call rates have dropped sharply. However, since new licensees are not allowed to establish facilities based operations, they are forced to use the international switches of the four facilities based licensees (including SLT and Lanka Internet, which has U.S. equity). This restricts access to cheaper bandwidth by other operators.

A key problem facing the telecommunications sector is restricted interconnection. The Regulatory Authority has failed to enforce regulations provided under the Telecommunications Act to establish an efficient and transparent interconnection regime.

SLT and the two wireless operators have formed an unofficial cartel to control local gateways and restrict interconnection to other operators. This has adversely affected the operations of other telecom and Internet operators and new international gateway licensees who are unable to make use of their licenses due to lack of interconnection by the three local exchange operators. Spectrum management is also weak and frequencies are not properly allocated which affect telecommunication operators.

Quotas on foreign films

The state-owned National Film Corporation’s (NFC) approval is required to import films. There is a quota restriction on imports of English language films, which is currently set at 100 per year. There are controls on screening of films: except for 6 top cinemas, all other theaters in Sri Lanka are required to screen at least 60 percent local films. The theaters exempted from the rule are free to screen foreign films without any restrictions. The NFC also charges a tax of $0.31 per ticket for foreign films. The charge on tickets for local films is only $0.04. NFC, which is instituted by an Act of Parliament, has wide powers that can be used to effectively restrict foreign film imports.

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 attached to 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. The Department also grants visas for expatriates 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 scheme 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 (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.

Education

Movement of people for education is not restricted. Foreign students are allowed to study in private schools in Sri Lanka, or follow other professional study courses. Foreign teachers also work in private schools in Sri Lanka.

Doctors

The Sri Lanka Medical Council allows qualified foreign doctors and medical specialists to work in Sri Lanka. They have to be sponsored by a medical institution or an non-government organizations, and are required to obtain temporary registration from the Sri Lanka Medical Council (SLMC). Many Indian doctors have been issued resident work visas recently to work in an Indian-owned hospital in Sri Lanka.

Accountants

All big four international accounting firms are represented, together with most of the second tier international firms. The Institute of Chartered Accountants of Sri Lanka (ICASL) membership is required to conduct audits and discharge other statutory duties in Sri Lanka.

Engineers and architectural services

Over the years, most foreign funded projects have used foreign consultants and contractors.

INVESTMENT BARRIERS

Sri Lanka actively pursues foreign investment. One hundred percent foreign investment is allowed in most manufacturing and services sectors.

Foreign investment is not permitted in the following businesses: non-bank money lending; pawn-brokering; retail trade with a capital investment of less than $1 million (with one notable exception: the BOI permits retail and wholesale trading by reputed international brand names and franchises with an initial investment of not less than $150,000); providing personal services other than for the export and tourism sectors; coastal fishing; education of students under 14 years for local examinations; and the awarding of local university degrees.

Investment in additional 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; fishing; timber-based industries using local timber; mining and primary processing of non-renewable national resources; growing and primary processing of tea, rubber, coconut, rice, cocoa, sugar and spices; and, finally, the production for export of goods subject to international quota.

Foreign investment restrictions and government regulations also apply to air transportation, coastal shipping, lotteries, large-scale mechanized gem mining, and "sensitive" industries such as military hardware, dangerous drugs 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, foreign investors can face difficulties operating here. Problems range from difficulties in clearing equipment and supplies through customs speedily to getting 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, telecommunication and water supplies.

Government treatment of foreign investors in the privatization process has been largely non-discriminatory. Recently, however, the government sold part of the retail operations of state-owned Ceylon Petroleum Corporation (CPC) to a foreign entity without a formal tender process. A major U.S. supplier that had earlier acquired a government-owned lubricant plant, and obtained exclusivity in the sale of lubricants in CPC outlets until mid-2004, has complained that the government had reneged on the terms of the exclusivity agreement.

Foreign-owned companies' access to local credit markets was liberalized recently and such firms can now borrow rupee funds without the approval of the Central Bank. Foreign-owned companies, BOI approved firms and exporters can access dollar denominated loans. Applications for dollar denominated loans from local firms are considered on a case-by-case basis and not encouraged.

Capital Repatriation

Sri Lanka has accepted Article VIII status of the IMF and has liberalized exchange controls on current account transactions. 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.

There are also no barriers, legal or otherwise, to the expeditious remitting of corporate profits and dividends for foreign enterprises doing business in Sri Lanka. Remittance of business fees (management fees, royalties and licensing fees) is also freely permitted. Funds for debt service and capital gains of BOI-approved companies exempted from exchange control regulations are freely permitted. Other foreign companies remitting funds for debt service and capital gains require Central Bank approval. Prior to Central Bank approval they also need a tax clearance certificate.

All stock market investments can be remitted without prior approval of the Central Bank. Investment returns can be remitted in any convertible currency at the legal market rate. Controls on capital account (investment) transactions usually prohibit foreigners from investing in debt and fixed income securities. One exception has been the Central Bank’s local market dollar denominated bond issues in 2001-2002, which were opened to foreign investors. Allowing foreign investment in corporate debentures and government bonds has been proposed by the GSL.

Local companies require Central Bank approval to invest abroad. The process of granting approval for such investments was streamlined in 2002, resulting in an increase in approvals.

ELECTRONIC COMMERCE

See above section under Services Barriers on Banking.

OTHER BARRIERS

Delays in litigation are a problem. For example, a US 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 going on with the company suffering financial losses as a result. In many disputes, defendants resort to obtaining injunctions, stay orders or postponements to drag cases on for years. The Government has established a commercial court to hear business litigation, but delays are still common.

List of other significant barriers:

1) IPR: Lack of IPR protection.
2) Banking: Restriction of government banking business to state owned banks.
3) Telecommunications: Dominance of telecommunications infrastructure by partly state-owned Sri Lanka Telecom (SLT) and lack of interconnection to other telecom and internet operators.
4) Government Procurement: Lack of transparency and corruption.
5) Agriculture: Import ban on chicken meat and beef from the United States.

SWITZERLAND

TRADE SUMMARY

The U.S. trade deficit with Switzerland was $2.0 billion in 2003, an increase of $408 million from 2002. U.S. goods exports in 2002 were $8.7 billion, up 11.3 percent from the previous year. Corresponding U.S. imports from Switzerland were $10.7 billion, up 13.7 percent. Switzerland 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 Switzerland were $6.7 billion in 2002 (latest data available), and U.S. imports were $6.6 billion. Sales of services in Switzerland by majority U.S.-owned affiliates were $5.9 billion in 2001 (latest data available), while sales of services in the United States by majority Switzerland-owned firms were $31.4 billion.

The stock of U.S. foreign direct investment (FDI) in Switzerland in 2002 was $70.1 billion, up from $60.7 billion in 2001. U.S. FDI in Switzerland is concentrated mainly in the wholesale, banking and manufacturing sectors.

IMPORT POLICIES

The simple average tariff in Switzerland on imports of agricultural products is 34.3 percent, while the average for manufactured products is 2.3 percent. Due to high tariffs on certain agricultural products and preferential tariff-rates for other countries, Switzerland is a relatively difficult market for many U.S. agricultural products to enter. The U.S. share of the agricultural import market is about 3.8 percent.

Imports of nearly all agriculture products, no matter the country of origin, are subject to import duties and variable import quotas. The Swiss agricultural sector remains among the most heavily subsidized in the world. Swiss statistics show that 3,100 farms were forced out of business over the last two years, representing a decline of 2.2 percent per annum. However, the number of organic farms grew by eight per cent between 2001 and 2002, representing 9.6 percent of all exploited land and 11 percent of total Swiss agricultural output.

In its 2003 annual report, the OECD expressed concerns that farmers in many OECD countries remain shielded from world market signals. Prices received by farmers in Switzerland are more than 100 percent higher than world market prices. The OECD estimates that Switzerland subsidizes more than 70 percent of its agriculture, compared with 35 percent in the European Union. According to the A2007 Agricultural Program recently adopted by the Swiss Parliament, the funds allocated to Swiss agriculture will increase by $47 million (SFr 63 million), totaling $10.6 billion (SFr 14 billion) from 2004 to 2007. However, milk quotas will be abolished starting in May 2009.

Federal direct payments for food and agriculture increased from $1.7 billion (SFr 2.3 billion) in 2001 to $1.83 billion (SFr 2.4 billion) in 2002, and are set to increase by 5 percent over the next three years. Following severe summer droughts, in September 2003, the federal government agreed to increase payments for Swiss farmers most severely affected. In 2002, the Swiss government had already increased agricultural subsidies by $24.8 million (SFr 37 million) for the 2003 federal budget.

Agricultural tariff-rate quotas also present problems for U.S. exporters, since Swiss regulations often allocate quotas to importers that have incentives to purchase domestic products. This practice has increased protection for domestic producers and in some cases, such as potato products, has effectively blocked U.S. imports. Although public resistance to agricultural biotechnology products or the use of growth hormones remains strong, U.S. agricultural exports to Switzerland have shown solid growth in recent years. If Switzerland removed impediments to trade in the agriculture sector, U.S. industries estimate that U.S. exports would increase by $25 million.

SWITZERLAND

STANDARDS, TESTING, LABELING AND CERTIFICATION

Switzerland has taken a case-by-case approach to bio-engineered products since voters rejected a moratorium on biotechnology research and products in 1998. Bio-engineered foods and additives need approval for consumer marketing through certification by the Federal Food Safety Office, and the manufacturer of bio-engineered food products must submit detailed information concerning the modifications. The Swiss authorities must review the product for toxicity, resistance to antibiotics, and allergenic characteristics. Bio-engineered products that are substantially equivalent to a conventional organism may have an easier path to approval. Swiss approval of agricultural products from modern biotechnology generally mirrors approvals by the European Commission. Certificates of approval are valid for five years.

Switzerland has required labeling for foods containing bio-engineered products since 1996. In 1999, the Government of Switzerland modified its regulations to require labeling only if the percentage of bio-engineered ingredients reaches one percent. A notable exception to the labeling requirement is the use of substances in the production process extracted or refined from bio-engineered substances, such as refined soy oil. According to Swiss officials, these ingredients do not require a biotechnology label because testing cannot show they are derived from bio-engineered commodities.

The pharmaceutical industry has been influential in deflecting harmful regulation and maintaining a receptive market climate. The animal feed industry has succeeded in reaching consumers for agricultural biotechnology products via a transparent approval system. However, the planting of bio-engineered seed crops faces difficult environmental approval hurdles, including a renewed joint effort of consumer and farm organizations to enforce a time-limited moratorium on the introduction of agri-biotechnology.

The most significant barriers for bio-engineered food and agricultural products in Switzerland stem from policies by the major food retailers and Swiss farmers not to purchase such products. Swiss groups opposed to bio-engineered products in the food chain have been very effective in convincing supermarket purchasing executives and Swiss farm groups to boycott agricultural products, such as food, feed and seed, derived from biotechnology.

Since January 2000, imports of fresh meat and eggs produced in a manner not permitted in Switzerland must be clearly labeled as such. Methods not allowed in Switzerland include the use of growth hormones, antibiotics, and other anti-microbial 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 not doing so. Swiss inaction has blocked three plants that the United States requested be listed since early 2002. The Swiss government has made clear that the situation is due to its dissatisfaction with current U.S. regulations that block certain Swiss processed beef exports to the United States due to sanitary and disease reasons.

GOVERNMENT PROCUREMENT

Switzerland is a signatory of the WTO Government Procurement Agreement. On the cantonal and local levels, a law passed by Parliament in 1995 provides for nondiscriminatory access to public procurement. The United States and Switzerland reached an agreement in 1996 to expand the scope of public procurement access on a bilateral basis.

According to the July 2002 revised Ordinance on Public Procurement, all private or state-owned companies such as utilities, transportation, communications, defense, and construction that submit tenders for government procurement must make their bids public if the contract exceeds $148,800 (SFr 250,000). Total Swiss federal government procurement is approximately $2.5 billion (SFr 4.2 billion), and foreign purchases totaled $446 million (SFr 750 million). Cantonal and communal governments carry out many public projects B their procurement is 2-3 times that of the federal government.

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. 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 are published in the Swiss Official Gazette of Commerce (www.shab-online.admin.ch). Tender documents can be obtained free from the Gazette’s website. There is no requirement to have a local agent to bid.

EXPORT SUBSIDIES

In recent decades, agriculture has lost its relative importance in the Swiss economy (though not in society or politics), and preservation in its current form has been due largely to governmental intervention and support. The Swiss system for protecting and aiding its farmers is now undergoing reform, both to reduce budgetary outlays and in response to pressure from consumers and Switzerland’s trading partners. WTO agreements require Switzerland to eliminate non-tariff barriers, reduce export subsidies, make binding commitments on its schedule of agricultural tariffs, and decrease levels of domestic support payments. Consequently, the Swiss agricultural sector will gradually become more responsive to market forces and open to foreign goods. The Swiss government has ratified an agreement with the EU under which both sides will remove dairy product import quotas by 2008.

SERVICES BARRIERS

Financial Services

Foreign insurers wishing to do business in Switzerland are required to establish a subsidiary or a branch in Switzerland and may offer only those types of insurance for which they are licensed in their home countries. Foreign lawyers are not forbidden to work in Switzerland, but there are practical and legal limits to their activities. For example, a foreign lawyer not licensed in Switzerland must follow carefully the complex requirements of several international conventions to obtain testimony or to serve process in civil matters in Switzerland.

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), share the mobile telephone market, and each of the companies also owns third generation mobile telephony licenses (UMTS). Southern Bell Corporation’s 40 percent stake in Sunrise’s parent company represents the only significant U.S. presence in the Swiss telecommunications market. The incumbent state monopoly, Swisscom, has often blocked the Swiss government’s efforts to open the market to competition. For example, Swisscom won a Swiss Supreme Court decision in 2001 against a Competition Commission decision to unbundle the local loop and provide leased lines at cost-oriented prices. In response, the government has begun the legal process of reforming the telecommunications law and the law's implementing ordinances in order to create the necessary legal authority for the regulator to implement the initiative.

In February 2003, the Swiss Cabinet approved a proposal for a two-pronged telecommunications reform package. A portion was accomplished by regulatory reform needing only the approval of the Swiss Cabinet, while the rest will go through Parliament as legislative reform.

The regulatory reform took effect on April 1, 2003 and gave the independent regulator, the Competition Commission (ComCom), legal authority to order Swisscom to provision leased lines at cost-oriented prices. On November 7, 2003, ComCom ordered Swisscom to lower its interconnection rates by 25 percent to 35 percent, starting January 1, 2004. The ComCom decision is retroactive for the past three years and will ultimately force Swisscom to reimburse tens of millions of Swiss francs to Sunrise and MCI WorldCom, Swisscom's direct competitors. As expected, Swisscom criticized ComCom's decision, claiming its rates were in line with EU standards, and announced that it would challenge the ruling in court.

The cabinet submitted a bill to Parliament in November 2003 to amend the 1997 Telecom Act and give ComCom more robust authority to order Swisscom to unbundle the local loop. In addition, the provisions ensuring effective competition would be strengthened and consumer protection and the protection of personal data improved. Parliament will not likely pass the bill before 2005. Swisscom has stated that it also will challenge any such legislation in court.

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 yet defined) in the products offered within a region. Beginning in 2004, the government may levy a nominal development tax on a region's movie theater tickets if the appropriate diversity is not present. The development tax receipts would be used to finance new theaters that would offer greater diversity in the films being shown within a region.

INVESTMENT BARRIERS

Switzerland welcomes foreign investment and accords national treatment. 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.

The major laws governing foreign investment in Switzerland are the Swiss Code of Obligations, the Lex Friedrich/Koller, the Securities Law, and the Cartel Law. There is no screening of foreign investment (except land ownership and national security establishments), nor are there any sectoral or geographical preferences or restrictions. Following the implementation of the Swiss-EU bilateral agreement on the free movement of persons on June 1, 2002, all restrictions on work by EU and EFTA citizens have been removed. Cantons have also been granted extensive decision making powers when allowing foreigners to buy a property. Investment areas considered national security establishments include 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. The Swiss Cartel Law specifically allows cartels unless the government concludes that they are harmful to society or the economy.

While Switzerland enacted a stronger anti-cartel law in 1996, which gave increased power to the competition commission to prohibit/penalize cartels, the country's anti-cartel regime remains weak by U.S. and EU standards. For example, the 1996 law allows firms engaged in anticompetitive behavior to avoid penalties for first violations after receiving a warning to cease the anticompetitive practice. Penalties and fines for subsequent violations are not particularly severe. In June 2003, the Swiss Parliament adopted a revised competition bill, which is expected to take effect on April 1, 2004. The most significant improvements in the revised law include the possibility to sanction anticompetitive behavior without prior warning, with a maximum fine of ten percent of a firm's total combined revenue for the past three years. Whistle blower companies that cooperate with regulators will be eligible for a reduced fine (leniency program). Regulations on parallel imports remain unchanged. Those covered by copyright and trademark protection are subject to international exhaustion treatment. The parallel import of patented products such as pharmaceuticals will remain restricted, although permitted to ensure against excessive price fixing.

Discussions over the extension of international exhaustion to patented products have encountered a lukewarm response from conservative political parties. The Swiss Competition Commission also argued that because patented products are still protected under U.S. and EU law, Switzerland should not be placed at a disadvantage vis-à-vis its main trading partners. The Swiss definition of a cartel will remain unchanged, and Switzerland will adhere to the EU definition of market power. In general, the Competition Commission considers vertical agreements with less than 20 percent of market share as insignificant, whereas others potentially face a fine. Cartels with more than 50 percent of market share will be fined. Restrictions on the sale of components or spare parts are also considered anti-competitive and generally are already unlawful. The impact of the revised competition law on overall price-levels is nevertheless expected to be limited. A typical household's basket of consumer goods consists of more than 70 percent of items that are neither subject to government regulation nor traded internationally, and thus will not be affected by the revised law. Most of the top 100 U.S. export goods to Switzerland during 2002 are designed for industrial, rather than consumer, use.

In the automobile sector, the Competition Commission implemented new rules during 2002 that greatly weakened special antitrust exemptions in the automobile industry. The new regulations forbid manufacturers to implement a higher Swiss Price outside Switzerland, a practice that prevented Swiss car buyers from shopping in neighboring countries for better deals.

ELECTRONIC COMMERCE

The proportion of Swiss citizens using computers and the Internet is high (63 percent), and the government generally supports the development of electronic commerce with a minimum of regulatory interference. Switzerland is following the lead of the EU with respect to Internet privacy issues. Swiss law stipulates that personal data may not pass to a foreign country if that country does not offer an adequate level of data protection.

In January 2001, Parliament began work on legislation that would recognize the validity of electronic signatures. The lower house of Parliament adopted the new legislation in July 2003, which should be approved by the upper house during 2004. Swiss authorities are promoting electronic government services with a goal of providing services more efficiently and making Switzerland more competitive as a business location.

TAIWAN

TRADE SUMMARY

The U.S. trade deficit with Taiwan was $14.1 billion in 2003, up $346 million from 2002. U.S. goods exports during the same period were $17.5 billion, down 4.9 percent from the previous year. Corresponding U.S. imports from Taiwan were $31.6 billion, down 1.7 percent. Taiwan is the 9th largest export market for U.S. goods and 6th largest market for agricultural products.

U.S. exports of private commercial services (i.e., excluding military and government) to Taiwan were $4.8 billion in 2002 (latest data available), and U.S. imports were $5 billion.

The stock of U.S. foreign direct investment (FDI) in Taiwan in 2002 was $10.1 billion, up from $9.1 billion in 2001. U.S. FDI in Taiwan is concentrated largely in the finance, manufacturing, and wholesale sectors.

OVERVIEW

In the second half of 2003, Taiwan recovered quickly from the recession induced by the Severe Acute Respiratory Syndrome (SARS) epidemic and the war in Iraq. Strong demand for its exports in the Peoples Republic of China (PRC), the United States, and other markets as well as a large influx of foreign direct and portfolio investment, produced GNP growth of 3.2 percent, one of the highest rates in the region. Strong foreign demand should continue to drive growth for Taiwan's export-oriented economy in 2004, and GNP should reach 4.5 to 5 percent. Also in 2003, a huge influx of foreign direct and portfolio investment helped to propel the stock market index upward by nearly 50 percent, a trend that has continued into 2004. The overall economic upturn, coupled with a cut in the land tax, ended the five-year recession in the real estate market, which in turn contributed to a significant improvement in the health of the banking system. By the end of 2003, the Non-Performing Loan (NPL) ratio for the banking system had fallen to 4.3 percent, its lowest level in six years. Unemployment in December of 2003 declined to a 30-month low of 4.6 percent.

IMPORT POLICIES

Tariffs

In November 2003, Taiwan’s Legislative Yuan approved a comprehensive tariff schedule revision to comply with the 2002 version of the Harmonized Commodity Description and Coding System of the World Customs Organization, Taiwan’s Free Trade Agreement with Panama, and Taiwan's accession commitments to the WTO. The revised tariff schedule became effective in early 2004. As a result of this revision, the average nominal tariff rate on imported goods in 2004 is expected to be slightly lower than the 6.3 percent rate in 2003, falling to 5.5 percent by 2007. However, U.S. industry continues to request that Taiwan lower tariffs on imports of large motorcycles, paper and paper products, plywood, wine, canned soup, biscuits, cookies, snack foods, mixed vegetable juices, potato and potato products, table grapes, apples, and citrus products.

Upon Taiwan’s accession to the WTO in January 2002, Taiwan implemented a tariff-rate quota (TRQ) system on small passenger cars, three categories of fish and fish products, and a number of other agricultural products. On January 1, 2003, in accordance with its WTO accession commitments, Taiwan made additional tariff cuts and increased TRQ amounts on these products. In October 2003, Taiwan announced tariff reductions and TRQ increases for the year 2004. Certain of these items of interest to U.S. exporters, including chicken meat, pork belly, and poultry and pork variety meats will be fully liberalized in 2005.

Taiwan has notified the WTO that it maintains Special Safeguards (SSGs) for a number of agricultural products covered by TRQ's. SSGs, permitted under Article 5 of the Agreement on Agriculture, allow 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. The United States has raised concerns over Taiwan's SSGs both in Taipei and Geneva. SSGs will also come into play once certain commodity imports are fully liberalized in 2005.

Licensing and Other Restrictions

In order to comply with its WTO commitments, Taiwan eliminated import controls on over 94 percent of 10,725 official import product categories. Currently, 549 product categories require import permits from the Board of Foreign Trade. Imports of 58 categories are "restricted", including ammunition and some agricultural products. These items can only be imported under special circumstances, and their importation is effectively banned.

Agricultural and Fish Products: Prior to 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. TRQ's on a number of products of interest to the United States (chicken meat, pork belly and offal, and poultry offal) will be eliminated on January 1, 2005 when these imports will be fully liberalized.

Rice: Before Taiwan's WTO accession, imports of rice were banned. During 2002, rice imports were subject to a minimum market access quota that covered both public- and private-sector imports. The United States raised concerns with Taiwan's late implementation of its rice import system in 2002, including cancellation of mark-up price reductions for several private sector tenders, and use of a "ceiling price" for public sector tenders. Despite these difficulties, U.S. suppliers were able to gain a majority of the rice import market during 2002. Nevertheless, the United States remains concerned with Taiwan's implementation of a tariff-rate quota for rice imports for 2003 and thereafter, as it appears more trade restrictive than the 2002 system and inconsistent with Taiwan's WTO commitments. As a result of these concerns, in January 2003 the United States, as well as Australia and Thailand, formally objected to Taiwan's proposed rice import system at the WTO. Discussions regarding alleviation of U.S. concerns continue with Taiwan officials.

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. In 2003, some legislators proposed lower excise taxes on salt-added cooking wine, contrary to Taiwan's WTO commitments, but these legislators failed.

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. However, primarily due to resistance by organized labor, the privatization of the TTLC has been postponed until 2005.

Wood Products: Taiwan has revised building codes in line with international practices. 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. U.S. wood products companies have raised concerns that this practice is restrictive and does not encourage wood use in construction. The continued use of a special committee 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. The importation of motorcycles with engines larger than 150 cc was liberalized in July 2002 as part of Taiwan's WTO commitments. In mid-2003 Taiwan agreed to set emissions standards for motorcycles over 700 cc in line with international standards, a step which the U.S. motorcycle industry supported. The U.S. Government 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

Industrial and Home Appliance Products: Industrial and home appliance products (such as air-conditioning and refrigeration equipment) are subject to testing requirements before clearing customs. Tests on each shipment include "batch-by-batch inspection" (BBI) and "registration of product certification" (RPC). The previous BBI system was available for use by manufacturers or importers until December 31, 2003. After consultations with the U.S. Government regarding concerns with unnecessarily burdensome requirements proposed for imports of these products, on January 1, 2004 Taiwan adopted a dual-track approach, which allows the manufacturers or importers to choose the RPC scheme or a BBI inspection with Type Approval. For those products that adhere to the ISO 9000 quality management system, an alternative factory inspection module was introduced. The manufacturers or importers may choose the module most appropriate to them when applying for registration under the RPC scheme.

Sanitary and Phytosanitary Measures: As a member of the WTO, Taiwan must abide by the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (including notification of such measures). In 1999, 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* standards and, in some cases, U.S. pesticide residue standards for imported fruits and vegetables. However, concerns have been raised in a number of areas regarding whether Taiwan plant and animal quarantine measures are based on sound science and are the least trade restrictive while providing adequate protection to agriculture.

Beverage Alcohol Products: On December 31, 2001, immediately before its WTO accession, Taiwan implemented new regulations requiring major ingredient labeling for beverage alcohol products. Although these regulations related to international trade, the United States was not informed by Taiwan in advance of their implementation. Bilateral meetings were conducted in 2002 to discuss this requirement and as a result, enforcement of the ingredient labeling requirement was delayed until July 2003. In December 2003, Taiwan’s legislature passed the Tobacco and Alcohol Administrative Law, which will enable the Ministry of Finance to eliminate ingredient labeling requirements for beverage alcohol products.

Agricultural Biotechnology Products: Taiwan authorities generally have taken a cautious, but fairly rational approach to trade in agricultural biotechnology products as embodied by the Department of Health's (DOH) February 2000 regulatory decisions. Risk assessment documentation on agricultural biotechnology corn and soybeans were required to be submitted to 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 offered an opportunity for life science companies to obtain interim approval for those products that are currently commercialized. Mandatory labeling on all foods with over 5 percent agricultural biotechnology products content will be required in 2005. No disruptions to trade have resulted from Taiwan's regulations. However, with a number of products entering the regulatory approval pipeline and a lack of investment in a strong regulatory infrastructure, delays in approvals are likely to become more frequent.

Medical Devices: Registration and approval procedures for medical device imports are complex and time-consuming, and have been the subject of long-standing complaints by U.S. firms. The registration process requires redundant testing, and foreign manufacturers must re-register new products even though they are based on previously approved devices. In addition, it is unclear 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. The adoption of the U.S. Food and Drug Administration's medical device classification system in June 2000 was welcomed by industry. However, Taiwan's implementation of this system will require re-registration in 2004 of previously approved products. Taiwan has identified both the medical device and pharmaceutical sectors as priorities for local development, resulting in Taiwan's agencies favoring the interests of local companies over foreign firms.

Pharmaceuticals: Taiwan's lengthy pharmaceutical registration process slows market entry for new drugs that have already been approved in advanced economies and also imposes unnecessary costs on drugs that have been approved in Taiwan. In May 2001, the DOH announced a requirement for firms to submit voluminous amounts of proprietary manufacturing data as part of the registration and approval process for both new drugs and those already on the market. The amount of such "validation" data requested by Taiwan far exceeded international norms. In response to concerns raised by the United States and its industry, the DOH had postponed implementation of this requirement. In December 2002, the United States and Taiwan exchanged letters in which Taiwan affirmed its commitment to adhere to international practices as applied in advanced economies, and agreed that firms can demonstrate validation status by either undergoing DOH inspection or providing documentary evidence. In August 2003, DOH and the U.S. industry reached agreement on validation data resolutions. Left unresolved were the specifics of the inspection criteria and what DOH would require from the companies in subsequent stages of the validation schedule. Discussions between the United States and Taiwan to resolve remaining issues are ongoing.

Taiwan also uses various methods to lower assigned prices on innovative drugs. Such methods include "reference pricing" (assigning a lower price when a drug is approved for an additional use) and lowering assigned prices arbitrarily. In addition, significant differences exist between the functionality and quality of imported pharmaceutical products and those made in Taiwan, yet Taiwan continues to restrict consumer choice and limit U.S. market access through disproportionate reimbursement of domestically manufactured drugs. To address these outstanding concerns of foreign pharmaceutical firms, Taiwan announced a reimbursement pricing plan in March 2003. In this plan, the DOH and the Bureau of National Health Insurance agreed to find ways to include a "reward for innovation" component in its pricing mechanism for new drugs. However, industry representatives have criticized the new drug pricing mechanism as non-transparent and believe the reimbursement prices will not achieve the stated objective. Discussions between the United States and Taiwan on this issue are ongoing.

In July 2002, Taiwan introduced a "global budget" system in which hospitals receive lump sums for discretionary spending. Critics contend that global budgeting encourages hospitals to increase their requests for illegal discounts on pharmaceuticals as budget pressures grow and also tends to discourage hospital use of innovative medicines.

Other issues: Taiwan banned imports of U.S. beef in December 2003 with the detection of one positive case of Bovine Spongiform Encephalopathy (BSE) in the State of Washington. As of the publication of this report, the U.S. government is taking aggressive action and is working intensively to re-open the market as quickly as possible. In addition, the United States is working in the International Organization for Epizootics to revise international standards on BSE to reflect current scientific knowledge.

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 to the GPA, its accession has not yet 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 market for public procurement projects. 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 accession to the GPA. Taiwan agreed to establish new procedures providing for the independent review of complaints that arise during the tendering process, to encourage its procuring entities to make use of mediation procedures, and to cooperate fully when such procedures are invoked. Despite these commitments, Taiwan officials have continued to incorporate provisions in its public procurement tenders that appear to be inconsistent with the GPA although Taiwan is not yet a party to that agreement. Further, the lack of transparency in the government procurement process as well as the review process for complaints remains a serious issue. U.S. participation in Taiwan’s government procurement market continues to decline as a result of these practices. The United States continues to remain concerned with the government procurement environment.

EXPORT SUBSIDIES

The Taiwan Government provides incentives to industrial firms in export processing zones and to firms in designated "emerging industries." Some of these programs may have the effect of subsidizing exports. Taiwan has notified the WTO of these programs and, as part of its WTO accession, committed to amend or abolish any subsidy programs inconsistent with WTO rules. Amendments of relevant laws, such as the Statute for Establishment and Management of Economic Processing Zones and the Statute for Establishment of Scientific Industrial Parks, to eliminate improper subsidies, went into effect upon Taiwan's WTO accession. The United States continues to monitor Taiwan's compliance with the commitments it undertook as part of its WTO accession, including those obligations associated with the Agreement on Subsidies and Countervailing Measures.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

IPR protection continues to be a serious and contentious issue between the United States and Taiwan. The U.S. International Intellectual Property Alliance estimates that Taiwan's weak IPR protection caused trade losses to the United States of at least $382 million in 2003, not including losses from business software piracy. Regarding pharmaceutical products, the U.S. Government is concerned with the growing incidence of counterfeits in the Taiwan market and the lack of adequate data protection. Another area of concern is the lack of adequate protection for the packaging, configuration, and outward appearance of all products. U.S. industry has complained about delays in court cases and how Taiwan's judiciary continues to experience difficulties in handling technical cases. Generally, U.S. IPR holders find that court procedures themselves constitute barriers and that penalties for intellectual property violations are inadequate to deter violators. Because of these concerns, in April 2003, Taiwan was placed on the U.S. Special 301 Priority Watch List for the third year in a row.

The Taiwan Government extended 2002’s “Action Year for IPR Protection” to subsequent years in an attempt to combat serious problems in intellectual property protection. Taiwan's Intellectual Property

Office has cooperated with police and other agencies since 2000 to implement island-wide efforts to deter the counterfeiting and pirating of patented, trademarked or copyrighted goods. In 2003, these efforts appear to have led to intensified enforcement efforts against the production of illegal optical media although high piracy rates continue to exist. The Ministry of Economic Affairs and Ministry of Justice worked extensively with the Business Software Alliance since the spring of 2002 on a campaign to press businesses and government agencies to use licensed software. As a result, the software piracy rate fell from 54 percent in 2002 to 43 percent in 2003.

Regarding Taiwan's legal infrastructure to protect IPR, necessary amendments to the copyright law proposed in 2002 were passed by the legislature in June 2003, but some amendments were changed significantly. Although the requirement that rights-holders file a complaint before police can conduct enforcement actions was lifted, provisions allowing *ex officio* seizure by Customs officials and prohibiting the circumvention of technical protection measures were eliminated and minimum sentences were repealed. In addition, provisions to address Internet piracy were removed from the final bill. Industry believes the current law is weaker than the law it replaced. The government has attempted to mitigate the negative effects of the new law through the promulgation of administrative guidelines. These measures, combined with increased frequency of raids against night markets and inspections of optical media factories, have significantly reduced the number of pirated optical media products for sale at retail levels. Nevertheless, we are seeing increasing numbers of pirated optical media for sale in non-traditional retail channels, including anonymous ordering from catalogues for home delivery and using the Internet to market illegal goods. Production appears to be shifting from the large optical media plants to small, custom optical media burning operations. Despite several recent arrests, recent indictments of peer-to-peer Internet service providers, and lengthy sentences, the optical media piracy rate remains high.

In response to U.S. and industry requests to protect optical media products and curtail the illegal manufacture of such goods, Taiwan passed an optical media law on October 31, 2001. The law was fully implemented effective May 2002. Manufacturers currently must apply for production licenses and report any changes to the authorities. Violators face a maximum three-year jail sentence and a fine of approximately $86,000. Licensing for new plants and for manufacturers of stampers and masters is not addressed under the legislation and the Taiwan government has not addressed this continuing U.S. industry concern. The U.S. government will continue to press the Taiwan government to implement a comprehensive and effective optical media law.

The U.S. Government also is concerned with the growing incidence of counterfeit pharmaceutical products in the Taiwan market and the lack of adequate data protection for these products. While the Taiwan government has taken some action against criminal organizations responsible for counterfeit products, the threat to public health continues to exist. Also, the United States is concerned that Taiwan has not fully provided data exclusivity for pharmaceutical products, a TRIPS commitment and a disincentive for pharmaceutical producers to introduce new products into the Taiwan market.

The lack of adequate protection for the packaging, configuration, and outward appearance of products, an area of IPR known as "trade dress," is another area of concern. Despite provisions in Taiwan's Fair Trade law designed to protect unregistered marks and other packaging features, misleading copying of U.S. products by local manufacturers remains a problem.

Taiwan's judiciary continues to experience difficulties in handling technical cases, and U.S. industry has complained about long delays in court cases. Often conflicting or unclear lines of bureaucratic authority stymie IPR enforcement efforts. Further, "Power of Attorney" requirements are arbitrary and occasionally capricious. Generally, U.S. IPR holders find that court procedures themselves constitute barriers and that penalties for intellectual property violations are inadequate to deter violators. The United

States continues to assist in remedying the weaknesses of the judicial system by holding seminars on criminal enforcement.

SERVICES BARRIERS

Financial Services

Taiwan continues to liberalize its financial market beyond its WTO accession commitments. In January 2001, the Securities and Futures Exchange Commission (SFEC) lifted the restriction on employment of foreigners by domestic Taiwan 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 GDR for equity stocks after the GDR is issued. In July 2003, the SFEC lifted the ceiling limit of US$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. Foreign portfolio investors are required to complete registration rather than seek advance approval. All offshore foreign portfolio investors may trade in Taiwan's stock market regardless of their size, except for investment in hedge funds and investors from the PRC. 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.

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, the Department of Insurance (DOI) permitted life insurance companies to sell investment-linked products. The DOI 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. The DOI adopted a three-stage premium rate liberalization program for non-life insurance. Effective January 1, 2002, insurance firms were allowed to set premium rates for large face-value fire insurance policies and fire insurance policies sold to multinational corporations. The target date for total liberalization is January 2008, but the liberalization date for an individual insurance firm can be advanced if it has a good credit reputation and its capital adequacy ratio reaches 300 percent.

The DOI adopted a transparent approval procedure for insurance policies in January 2001. Prior approval is not required for products whose policy clauses are identical or very similar to existing products of other companies. New products are subject to prior approval, but the DOI's reviewing time may not exceed 90 days after it receives an application. If the DOI does not respond to an application within 90 days, the non-response becomes a *de facto* approval by the DOI. The DOI has opened its reinsurance market, although a bill to revoke the Central Reinsurance Corporation Statute is still pending. The Central Reinsurance Corporation, the only reinsurance firm in Taiwan, was privatized in July 2002. In August 2002, the DOI lowered the capital requirement for entering the reinsurance market, strongly in favor of foreign reinsurance firms over domestic competitors.

Legal Services

Following Taiwan's accession to the WTO, foreign lawyers are permitted to practice law in Taiwan either by setting up individual practices (single lawyer) or entering into partnerships with local counterparts. In order to practice domestic law, foreign lawyers must pass the local bar examination and use the Chinese language when appearing before the court or submitting written briefs. If the foreigner does not meet these qualifications, local lawyers working for, or in cooperation with, the foreign lawyer may represent the foreign lawyer's interests on domestic law issues. When practicing international or foreign law, foreign lawyers do not need to pass the language or bar examinations and are not required to hire or partner with local lawyers.

Telecommunications Services

Following the issuance of licenses to three fixed line telecommunications service providers in 2000, the Directorate General of Telecommunications' (DGT) announced in October 2003 three proposals on the criteria regarding the issuance of additional fixed-line licenses. However, opposition from existing fixed line firms against easing existing restrictions is likely. DGT plans to issue licenses not only for long-distance and international services but also for integrated networks and city call services. Capital requirements for integrated network, city-call, long-distance/international services under these three proposals could be as high as NT$16 billion, NT$12 billion, and NT$2 billion, respectively. Requirements for integrated and city-call fixed-line licensees could be as high as 400,000 lines, but 60,000 lines could be sufficient for commencing services.

Existing fixed-line operators face serious difficulties in negotiating reasonable interconnection arrangements at technically feasible points in the network of the dominant carrier, Chunghwa Telecom (CHT). These companies are concerned with the slow response of the regulator to resolve these difficulties. Taiwan's Ministry of Transportation and Communications (MOTC) has failed to declare local loop unbundling as a "bottleneck" as suggested by DGT. This has allowed CHT to refuse to provide equal access services or to agree to facilities-sharing requests from other telecommunications suppliers. Three fixed-line operators are still negotiating with CHT to resolve these issues. The Premier announced in November 2003 that the government will invest a total of NT$35 billion in the next five years to help local governments resolve the "last mile" problems for telecommunications end-users. The plan will also include 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 state-owned CHT.

Taiwan’s telecommunications regulatory body, DGT and the state-owned former monopoly CHT are under the purview of the MOTC, creating a potential conflict of interest. DGT lacks the full authority, independence, and resources to effectively resolve telecommunications-related disputes. Two draft laws, "Communications and Broadcasting Basic Law" and the statute for the organization of the proposed Cabinet-level "National Communications and Broadcasting Commission (NCC)”, have been introduced by the Cabinet. The Basic Law was passed on December 27 and the reorganizing statue is currently pending in the legislative process. The NCC will be an independent regulatory body that will unify regulatory authority now split between DGT for wired or wireless communications and the Government Information Office for radio and television broadcasting.

In June 2003 the DGT announced regulations governing equal access service, allowing Type I subscribers to select the long distance and international network service of other enterprises. In August 2003 the DGT amended regulations to open Taiwan’s mobile virtual network operator (MVNO) market and began licensing in September 2003. The MVNO 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. In November 2003 the 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. However, international submarine cable firms remained limited to only one gateway for their links from the cable landing site to network providers while they are permitted to build their own backhaul facilities.

Taiwan’s telecommunications market saw a merger of KG Telecom and Far EasTone in October 2003. The merger will likely transform the competitive landscape of Taiwan's telecommunications market, allowing the merged entity opportunities to become one of the top players in Taiwan, in addition to CHT and Taiwan Cellular. It is expected that the merged entity will generate significant synergies. The United States continues to monitor Taiwan's progress in the telecommunications sector.

INVESTMENT BARRIERS

Taiwan continues to relax investment restrictions in a host of areas, but foreign investment remains prohibited in just a handful of industries such as agriculture, wireless broadcasting, oil exploration of Taiwan's coastal area, public utilities, and postal services. Foreign investors in the telecommunications sector are subject to a 60 percent ownership limit, with the limit on direct foreign investment raised from 20 percent to 49 percent in 2002. In February 2003, Taiwan lifted its ban on foreign investment in liquor production, though prior approval is required. Similarly, in January 2004, foreign investment restrictions on cigarette production were removed, though prior approval is required. Foreign ownership in airlines is limited to 33 percent. The 50 percent foreign ownership limit on air cargo forwarders and air cargo terminals was eliminated when Taiwan became a WTO member. Foreign ownership on 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. Imports of gasoline and liquid natural gas were opened to the private sector in January 2002.

ANTICOMPETITIVE PRACTICES

In the cable TV market, U.S. program providers contend that the island's two dominant multi-system operators (MSOs) frequently collude to inhibit fair competition. Control by the two 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. This new law is expected to resolve issues such as masking advertisements and market dominance.

ELECTRONIC COMMERCE

Taiwan's approach to e-commerce and related issues is still evolving. A law protecting personal on-line data was approved in 2001. A positive development is the Electronic Signature Law, passed by the Legislative Yuan in late October 2001. This law 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. Still under discussion is a proposal to assess duties for software sold and downloaded over the Internet. If implemented, such a policy would appear to run counter to the Doha Declaration that WTO Members would maintain their current practice of not imposing customs duties on electronic transmissions.

THAILAND

TRADE SUMMARY

The U.S. trade deficit with Thailand was $9.3 billion, a decrease of $594 million over the last year. U.S. goods exports to Thailand rose by 20.2 percent to $5.8 billion, while U.S. imports from Thailand grew at a slower pace, 2.6 percent, to $15.2 billion.

U.S. exports of private commercial services (i.e., excluding military and government) to Thailand were $1.1 billion in 2002 (latest data available), and U.S. imports were $810 million.   Sales of services in Thailand by majority U.S.-owned affiliates were $2.3 billion in 2001 (latest data available).

The stock of U.S. foreign direct investment (FDI) in Thailand in 2002 was about $20 billion, based on a recent survey by the American Chamber of Commerce, Thailand. According to the U.S. Department of Commerce, total accumulated U.S. FDI in Thailand on a historical cost basis was $6.9 billion in 2002, up from $6.4 billion in 2001. U.S. FDI in Thailand is concentrated largely in manufacturing, mining, and finance sectors.

FREE TRADE AGREEMENT NEGOTIATIONS

The U.S. government announced in February 2004 that it intended to initiate free trade agreement (FTA) negotiations with Thailand. Having concluded an FTA with Singapore in May 2003, the United States is seeking to advance President Bush’s Enterprise for ASEAN Initiative, an initiative aimed at enhancing U.S. relations with ASEAN countries. The United States has numerous concerns about Thailand’s trade and investment regime, which it hopes to address through these FTA negotiations. These include high tariffs and non-tariff barriers on both industrial and agricultural goods; restrictions on access to the services market; deficiencies in Thailand’s intellectual property rights and customs regimes; and other issues.

IMPORT POLICIES

Thailand's high tariff structure remains a major impediment to market access in many sectors. The country's average applied MFN tariff rate is 14.5 percent. The highest tariff rates apply to imports competing with locally produced goods, including agricultural products, autos and auto parts, alcoholic beverages, fabrics, paper and paperboard products, restaurant equipment, and some electrical appliances. In some cases, tariffs on unfinished and intermediate products are higher than on related finished products. In the aftermath of the 1997-98 financial crisis, the Thai government increased duties, surcharges, and excise taxes on a range of "luxury" imports, including wine, passenger cars, and wool carpets. Some tariff increases have corresponded with implementation of trade liberalization measures; for example, tariffs on completely knocked down (CKD) auto kits increased from 20 percent to 33 percent when local content requirements were eliminated in the automotive industry in December 1999. Thailand also imposes a 60 percent duty on motorcycles. At the request of the U.S. Government, the Thai government reviewed its tariff classification for motion picture film imports, which established different tariff rates for the audio and video negatives, resulting in much higher duties for audio negatives. As a result of the review, a tariff rate of 10 baht ($0.25) per meter was implemented for 35 mm audio and video negative film imports.

The Thai government is behind its schedule in implementing its WTO and ASEAN Free Trade Area (AFTA) tariff reduction commitments and rationalizing its complicated tariff regime, which currently has 46 rates. Nonetheless, it continues to lower selected import duties in line with WTO and AFTA commitments, and, as of October 2003, had reduced tariffs on 1,108 items, mostly on raw materials and inputs not produced locally. In September 2003, the Thai government announced tariff reductions on 1,391 items, but these have yet to be implemented.

THAILAND

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. In March 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 is scheduled to restore the VAT to 10 percent on October 1, 2005, but it has scheduled and annulled the VAT restoration three times since 2001.

Agriculture and Food Products

High duties on agriculture and food products remain the main 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 rationalized under the Thai government’s plan.

Duties on imported consumer-ready food products range between 30 percent and 50 percent, the highest in the ASEAN region. 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 an unusually high 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 exceptions of wine and spirits, there are no longer specific duties for 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 are as high as 61 percent, and the average tariff rate is 24.42 percent. Moreover, duties on many high-value fresh and processed food products will remain high at between 30 to 40 percent even after reductions under WTO commitments. As of December 2002, tariffs on apples stood at 10 percent, while pears and cherries remain as high as 60 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, although Thailand has been relatively open to imports of feed ingredients, including corn, soybeans, and soymeal, in recent years. Still, the Thai government has issued new and 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 muted by a Thai government requirement that corn imports arrive between March and June, a seasonal provision not provided for in Thailand’s WTO schedule. This limitation 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 2003, in-quota corn imports (54,4440 mt) will be subject to a 20 percent tariff rate, while out-of-quota corn is subject to a 73.8 percent tariff. There are unlimited import quotas for soybeans, for which the import duty is 5 percent, provided that specific domestic purchase requirements are met.

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, $114 per ton on offal that do not appear to reflect the real costs of import administration. Sanitary and phytosanitary standards for certain agricultural products also often appear to be applied arbitrarily and without prior notification. The Thai government began inspections of meat plants in supplier countries in January 2003, but has delayed implementation in some countries, including the United States.

U.S. agricultural exports of agricultural, fish, and forestry products to Thailand, which dropped dramatically in the aftermath of the 1997 financial crisis to $440 million in 1998, have recovered and reached $742 million in 2003. However, U.S. industry estimates that its potential exports to Thailand could reach as much as $900 million annually if Thailand's tariffs and other trade-distorting measures were substantially reduced or eliminated and the economy recovered to pre-crisis levels.

Automotive Sector

Thailand’s import duties and taxes are among the highest in ASEAN. In response to the financial crisis, the Thai government in October 1997 raised tariffs on passenger cars and sport utility vehicles to 80 percent, up from 42 percent and 68 percent, respectively. Current tariff rates on parts and components range from 40 percent to 60 percent, while tariffs on raw materials for parts production are 35 percent. Thailand's excise tax structure discriminates against passenger vehicles by taxing them at a rate of 35 percent to 48 percent while pickup trucks are taxed at a rate of only 3 percent. Customs valuation issues have been particularly acute in the auto 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. Thailand's current applied tariffs on some clothing products, as published on the APEC Website, are listed as 60 percent or more depending on whether a specific unit duty is applied.

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.

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 detailed and often proprietary business information about the manufacturing process and composition of the food be provided in applications for food product registration.

Customs Barriers

Thailand took significant steps to improve its customs practices in 2003, based on discussions held under the U.S. Thai Trade and Investment Framework Agreement (TIFA). 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 and recognize that the Thai government is committed to improving its customs procedures and facilitating trade.

Thai Customs is taking steps to fully implement the transaction value methodology required by the WTO Customs Valuation Agreement through compliance with related WTO requirements, proposed legislation and improved procedures and training. As part of its effort to improve the transparency and efficiency of customs procedures, Thailand has implemented a *de minimis* threshold, exempting goods valued 1,000 baht or less from formal entry procedures and has increased the low-value informal clearance threshold to 40,000 baht (USD 1000) from 20,000 baht (USD 500). Thailand also has taken action to expand customs clearance working hours, to increase the use of electronic and paperless customs procedures, and to create an English-language version of the Customs Department website.

Despite this progress, the Thai government needs to make further progress to enhance the transparency and efficiency of its customs regime. 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 value of imports. Such legislation is required for Thailand to be in full compliance with WTO rules. Some industry representatives report inconsistent application of the WTO transaction valuation methodology or consistent use of arbitrary values. In addition, while Thailand has taken steps to streamline its customs appeals procedures, some businesses complain that the process still is too lengthy and not yet fully transparent.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Thailand's Food and Drug Administration (TFDA) requires standards, testing, labeling, and certification permits for the importation of all food and pharmaceutical products, as well as certain medical devices. Many U.S. companies consider the cost, duration, and complexity of the permitting processes to be 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 genetically modified foods, modeled on the Japanese system, was put into effect in May 2003.

The Thailand Industrial Standards Institute (TISI) is the national standards organization under the Ministry of Industry. TISI is empowered to give product certifications according to established Thai standards and is an accredited body for ISO and HACCP certifications in Thailand. The Thai government requires a compulsory 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.

Thailand bans large-displacement motorcycle traffic from its tollways, including large motorcycles that are engineered to be ridden safely at highway speeds. In 2000, Thailand adopted motorcycle emissions regulations that are an amalgamation of standards and tests used elsewhere in the world, resulting in standards among the most severe in the world. Enforcement of these standards has been non-transparent and even the advanced low-emission technology used by U.S. industry has difficulty meeting Thailand's standards.

GOVERNMENT PROCUREMENT

Thailand is not a signatory to the WTO Agreement on Government Procurement, although in the past Thai officials have evinced support for a WTO Agreement on Transparency in 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 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 15-percent price advantage over foreign bidders in initial bid round evaluations.

A "Buy Thai" directive from the Prime Minister's office enacted in 2001 has raised additional concerns about the Thai government procurement policies. Reversing a long-standing non-discriminatory government procurement policy, "Buy Thai" has impeded market access of foreign suppliers in selected sectors, notably personal computers. While Thailand officially 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 competition for bids.

A procuring government agency or state enterprise reserves 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 are frequently made, including charges of bias on major procurements. Despite the official commitment to transparency in government procurement, U.S. companies and Thai media regularly report allegations of irregularities.

Regulations promulgated in May 2000 formalized a Thai government practice requiring a counter trade transaction on government procurement contracts valued at more than 300 million baht, on a case-by-case basis. A counter-purchase of Thai commodities valued at not less than 50 percent of the principal contract may be required. As part of a counter-trade 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 May 2003, 196 counter trade agreements were signed, resulting in exports valued at 33 billion baht.

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 until December 2005. Low interest loans provided under the Export Market Diversification Promotion Program for exporters targeting new markets ended in December 2003.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Widespread commercial IPR counterfeiting and piracy continues at high levels, despite the passage of significant IPR legislation and a good working relationship between foreign business entities and Thai enforcement authorities. U.S. copyright industries reported an estimated annual trade loss of more than $188 million in 2002 from IPR infringement in Thailand. An increasing volume of pirated and counterfeited products manufactured in Thailand are exported. Thailand has been on the U.S. Special 301 Watch List since November 1994.

The United States and Thailand have held extensive consultations on IPR issues under the TIFA. In June 2003, the United States provided Thailand with a proposed IPR Action Plan. This plan includes detailed proposals for action to be taken on enforcement, legislative/regulatory, and judicial issues. Key among these are: (1) revisions to the optical disk legislation currently pending before Parliament and expeditious passage of this legislation; (2) a clear improvement in Thailand's IPR enforcement record through sustained, aggressive, and coordinated enforcement efforts; and (3) improvements in the draft Copyright Act amendments currently under consideration and passage of these amendments.

On the legislative front, the Thai Parliament passed a Trade Secrets Act in March 2002. The latest available draft of the Trade Secrets Act allows a government agency to disclose trade secrets to protect any "public interest" not having a commercial interest, provided the agency takes "regular measures to protect such trade secrets from unfair commercial use." The U.S. Government has raised concerns that this language would provide authorities with overly broad authority that could deny the protection of approval-related data against unfair commercial use. The Thai Food and Drug Administration and Department of Agriculture are drafting regulations to implement the Act, and public hearings on the draft are expected in May 2004. Thailand's remaining piece of legislation related to the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), a Geographic Indications Act, was passed by the Parliament in September 2003 and is scheduled to take effect in April 2004.

Thailand's IPR enforcement efforts have been inconsistent. Although conviction rates are very 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 stepped-up levels of enforcement with intimidation against rights holders' representatives and enforcement authorities. In 2003, the Ministry of Commerce took the lead in promoting interagency cooperation on IPR enforcement issues, forging two Memorandums of Understanding between enforcement agencies (Thai police and the Thai Customs Department) and rights holders to better coordinate operations. While these agreements prompted improved retail enforcement leading up to and during the October 2003 APEC Leaders Meeting in Bangkok, retail piracy returned soon thereafter. Despite several attempts throughout 2003, the Thai government has yet to successfully sustain enforcement actions against pirate retailing and counterfeiting operations.

The Thai Parliament passed legislation in the fall of 2003 to fully authorize the establishment of the Special Investigation Department (SID). In its work on IPR enforcement, SID is expected to focus on major infringing production, warehousing and trafficking operations, as well as those activities associated with organized crime. 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. This amendment would allow police and other law enforcement officials to seize and investigate funds and suspected bank accounts. These amendments are to be introduced in Parliament in 2004.

The Thai government established a specialized intellectual property court in1997, which has improved judicial procedures and imposed tougher penalties. Criminal cases generally are disposed of within 6 to 12 months from the time of a raid to the rendering of a conviction. However, authorities 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

Amendments to Thailand's patent regime designed to meet TRIPS obligations entered into effect in September 1999. However, 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 some parts of patent search for novelty and preparation of application to academic institutions in order to speed up the registration process. The increased availability of counterfeit pharmaceutical products in Thailand also is a growing concern.

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, storage, 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 the WIPO treaties. The amended draft has been approved by the Cabinet and is expected to be introduced in Parliament in 2004. Although Thai authorities undertook some action against pirate cable operators in 2003, cable piracy has continued to spread rapidly throughout the country.

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 the National Broadcasting Commission and new regulations for cable operators.

A new draft Optical Disk Control bill, in the drafting stages since 1999, passed a first reading in the House in the fall of 2003 and will be taken up by the Senate for passage in 2004. This legislation is designed to enhance the authority and capabilities of the Thai government to act against operators of illicit optical disk factories and to control the production materials and machines of legal producers. U.S. copyright industries continue to express serious concerns over the rapid and unchecked growth of optical media piracy in Thailand.

Trademarks

The Thai government amended the 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 in the 1998 IPR action plan. 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

Slow moving bureaucratic reform of the Thai telecommunications legal regime is a significant obstacle to investment in the Thai telecommunications sector. Most significantly, the National Telecommunications Commission (NTC), the independent industry regulator mandated by the 1997 constitution responsible for licensing, spectrum management, and supervision of telecommunications operators, has yet to be formed because of political disagreements over the composition of the commission. Significant progress has been made in recent months, as 14 finalists have been selected for the commission; the Senate is expected to choose the seven commissioners by mid-year. Until the NTC is formed, however, controversial issues such as licensing, interconnection, competition, tariff rebalancing, and standards making will remain unresolved, and licenses for new Independent Service Providers (ISP) and many value-added services cannot be issued.

The Thai government has allowed foreign participation in the telecommunications sector since 1989, but state-owned enterprises continue to control the market. While Thailand committed under the WTO to fully liberalize its telecommunications sector by January 2006, regulatory delays will make this deadline difficult to meet.

In November 2001 Thailand enacted a Telecommunications Business Law that lowered the permitted percentage of foreign ownership in telecommunication companies from 49 percent to 25 percent. However, the Thaksin Administration publicly stated its intention in 2002 to amend the Telecommunications Business Law to return the foreign ownership limit to 49 percent. Legislation has been introduced to achieve this goal, but it is not expected to be passed until mid-2004.

In 2002, the Thai government established the Information and Communication Technology (ICT) Ministry to oversee the telecommunications sector. Under the Ministry’s purview, among other issues, are corporatization and privatization of the Telephone Organization of Thailand (TOT) and Communications Authority of Thailand (CAT), devising a new framework for concession conversion, and implementing an interconnection regime. Although the formation of the ministry should serve to advance telecommunication industries in the future, the failure to form a independent regulatory body prevents much progress in the sector.

In July 2002, TOT, a former state-owned telecommunications monopoly, was finally corporatized (shares still owned by the state were issued) as a precursor to privatization as part of the Telecommunication Development Master Plan and the Corporatization Act 1999. The Cabinet approved the corporatization of the CAT on July 8, 2003 in accordance with the same plan. The CAT was separated and corporatized into two distinct business entities, the CAT Telecom Public Company Limited and the Thailand Post Company Limited. The planned privatization of TOT has been repeatedly delayed due to poor market conditions for the sale of TOT shares and the privatization of CAT is not expected until after the completion of TOT privatization. Meanwhile, Prime Minister Thaksin has stated a desire for TOT and CAT to merge before privatization. Moreover, further challenges to privatization remain. Concession contracts granted to private telecommunications operators by the former state-owned monopolies for terms of 20 to 30 years will have to be addressed. Resolution of this issue has proved to be very difficult; at least two previous plans were withdrawn following public opposition.

The 1997 Thai Constitution and the Frequency Management Act of 2000 also required the establishment of an independent regulatory body for the broadcast sector, known as the National Broadcasting Commission (NBC). The NBC will be responsible for regulating radio and television broadcast businesses. Like the NTC, the NBC has not been formed yet due to political disagreements over the composition of the commission.

The Thailand Post Company, Ltd. is a state enterprise that has been corporatized. The Postal Committee, which is under the Ministry of Information and Communication Technology, is the regulator of postal services in Thailand. The provisions of the Postal Act B.E. 2477 (1934) cover basic postal (letters and postcards) and personal information. Any enterprises providing express delivery services not related to personal information as provided by the Act (such as parcel post) fall outside the purview of the Postal Committee.

THAILAND

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, U.S. investments are exempted from the general restriction on foreign equity participation in law firms. Thus, while U.S. investors may own law firms in Thailand, U.S. citizens and other foreign nationals may not provide legal services (with the exception of "grandfathered" non-citizens). 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. Significant restrictions remain on foreign participation in the sector, however. 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.

In the aftermath of the financial crisis and in response to commitments made during 1997 WTO financial services negotiations, Thailand took major steps to liberalize its banking industry.   Foreigners are permitted to own up to 100 percent of Thai banks and finance companies for ten years from the date of acquisition. However, new capital invested in these ventures after the ten-year period must be provided by domestic investors until foreign-held equity shares fall to 49 percent. In the late 1990s, the Thai government encouraged foreign investors to help re-capitalize Thai financial institutions by taking large equity positions in domestic firms, and a total of four out of thirteen Thai commercial banks are now majority-owned by foreign banks.

Foreign banks operating in Thailand are still disadvantaged, however. Most notably, foreign banks are limited to three branches, only one of which may be in Bangkok. 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 to 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 (TAMC) 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 participating in construction and civil engineering. Construction firms must also be registered in Thailand (*i.e.*, establish a commercial presence). The Thai government regulates the billing rates of foreign architectural, engineering, and construction firms. Current practice places a ceiling on billing for these services by foreign firms. Thailand also imposes a nationality requirement for licensing as an architect or engineer.

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.

Express Delivery Services

The 49-percent limit on foreign ownership in land transport (trucking) hampers investment in and growth of express delivery services. Express delivery firms prefer to have the option of control of items throughout the supply of the service, including both air and ground-based operations in order to speed the movement of goods.

Healthcare Services

Thai government policy is highly restrictive in the healthcare services sector (*e.g.*, hospital, dental, physician services), particularly the lack of transparency relating to hospitals and possibility of foreign ownership, administration, and equity shares in treatment facilities. Thailand has offered no medical services commitment in the current General Agreement on Trade in Services negotiations.

Retail Services

Thailand does not have specific legislation that deals directly with retail services. However, other laws, such as the 1975 Town Planning Act and the Trade Competition Act of 1999, include provisions relating to retail services. The Town Planning Department has implemented a regulation on zoning to curb the expansion of large stores in congested areas. The Trade Competition Act established a Trade Competition Commission with the authority to place limitations on market share and revenues of firms with substantial control of individual market sectors, to block mergers, and other forms of business combinations, and to levy fines for price fixing and other proscribed activities.

INVESTMENT BARRIERS

The rights of U.S. investors in Thailand are secured by the U.S.-Thailand Treaty of Amity and Economic Relations (AER) and the U.S.-Thailand Tax Treaty of 1996. The Alien Business Act lays out the overall framework governing foreign investment and employment in Thailand. The Act generally does not affect projects established with Board of Investment promotion privileges or export businesses authorized under the Industrial Estate Authority of Thailand Law, and will not supersede provisions of bilateral treaties, such as the AER.

The U.S. Government sought Thai government confirmation that AER investors are exempt from an October 2002 ministerial regulation that stipulates minimum capital requirements for foreign companies beginning operations in Thailand. The Thai government is not imposing the requirement on AER investors, and a ministerial regulation confirming the exemption is pending final government approval.

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. It eliminated these measures in the auto sector by the January 1, 2000 deadline established by the TRIMS Agreement, and the milk and dairy processing measures by the December 2003 deadline.

ELECTRONIC COMMERCE

The Thai government has placed a high priority on the development of electronic commerce and approved an electronic commerce framework in October 2000. However, an undeveloped legal infrastructure and limited Internet penetration constrain development of electronic commerce. A new Electronic Transactions Act entered into force in April 2002, but is awaiting the Thai Cabinet’s issuance and approval of a royal decree required to implement this law. The Thai government plans to pass four additional, related bills. A computer crimes bill was approved by the Cabinet in September 2003 and an electronic funds transfer bill, a data protection bill, and the national information infrastructure bill currently are being drafted.

The large role played by the Communication Authority of Thailand (CAT) is an obstacle to the development of the Internet and electronic commerce. Its mandatory share ownership (CAT, 32 percent; CAT employees, 3 percent) of all licensed Internet Service Providers (ISP) and its monopoly on international telecommunications services impose high costs on online business. Required divestment of its ISP interests has not been implemented. When constituted, the National Telecommunications Commission, which currently is being formed, (see telecommunications services section above) is expected to develop new market rules.

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 and permitting; 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 (NLED) significantly constrain the availability of many imported products.

The Thai government retains authority to set price ceilings for 20 goods and services, including medicines, sound recordings, milk, sugar, fuel oil, and chemical fertilizer. Price control review mechanisms are non-transparent. Price control determinations are sometimes based on outdated assumptions, including 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 telecom sectors, to influence prices in the local market. In 2003, the Thai government considered imposing price controls on optical disks, but opted not to in response to strong concerns expressed by rights holders and the U.S. Government.

The Thai government has made considerable 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 new 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.

TURKEY

TRADE SUMMARY

The U.S. trade deficit with Turkey was $884 million in 2003, an increase of $481 million from $403 million in 2002. U.S. goods exports in 2003 were $2.9 billion, down 6.7 percent from the previous year. Corresponding U.S. imports from Turkey were $3.8 billion, up 7.7 percent. Turkey is currently the 31st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Turkey in 2002 was $1.9 billion, up from $1.7 billion in 2001. U.S. FDI in Turkey is primarily in the manufacturing, wholesale, and banking sectors.

IMPORT POLICIES

Tariffs and Quantitative Restrictions

As a result of its 1996 customs union with the European Union (EU), Turkey applies the EU's common external customs tariff for third country (including U.S.) imports and imposes no duty on non-agricultural items from EU and European Free Trade Association (EFTA) countries. The simple average tariff for industrial products from the United States and other third countries dropped to 4.4 percent in 2003. Turkey's harmonization of trade and customs regulations with those of the EU and the overall decline in tariff rates benefits third country exporters.

Turkey maintains high tariff rates (25 percent average Most-Favored-Nation rate) on many food and agricultural products to protect domestic producers. Imports of animal products carry the highest tariffs, with *ad valorem* rates ranging up to 227.5 percent on meat products and edible meat offal. The Turkish government often increases tariffs during the domestic harvest or during times of high stocks. In 2003, the government increased the tariff on corn from 20 percent to 70 percent. High feed prices have had a negative impact on Turkish livestock industries, particularly for beef and poultry. Duties on fruits range from 61 percent to 149 percent. Processed fruits, fruit juices and vegetable tariffs range between 41 percent and 138 percent. Turkey also levies high duties as well as excise taxes and other domestic charges on imported alcoholic beverages that increase wholesale prices by more than 200 percent.

Import Licenses and Other Restrictions

While import licenses generally are not required for industrial products, products which need after-sales service (e.g., photocopiers, advanced data processing equipment, diesel generators) require licenses. In addition, non-tariff barriers result in costly delays, demurrage charges, and other uncertainties that stifle trade for many agricultural products.

Private traders report that Turkish import policies are often implemented in a nontransparent manner. Moreover, gaps in communication between Ankara and regional offices often result in improper implementation of regulations. Turkey is in the process of rewriting its import regulations for agriculture products in order to comply with EU regulations. However, some new regulations have not been fully conformed to EU requirements. For many products, no written standards exist. For example, despite repeated requests, Turkey failed to provide guidelines for red meat imports. For the past four years, the Ministry of Agriculture and Rural Affairs (MARA), through its quarantine service, issued no import licenses for rice prior to the domestic harvest. In July 2003, Turkey stopped issuing licenses and has not yet lifted this ban.

The import process for alcoholic beverages is exceedingly complicated, requiring both MARA control certificates and TEKEL (a parastatal company) permits. The operations of TEKEL have been privatized and recent legislation provides private companies with more control over alcoholic beverage import and distribution. Despite these changes, non-tariff barriers, arduous document requirements, and high duties continue to limit trade in alcoholic beverages. Recent changes in Turkish law call for continued liberalization of the spirits and tobacco market over a five-year period, which should improve the competitive environment.

Industry has raised concerns that Turkey applies discriminatory price controls for imported pharmaceuticals. Under a regulation passed in February 2004, the Turkish government allows higher prices for domestically produced generic drugs.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Turkish government has not consistently notified the WTO of changes in import policies and phytosanitary requirements, and implementation has been arbitrary. Importers have had increasing difficulty in obtaining information on sanitary and phytosanitary certifications. Turkey often requires laboratory testing on items not normally subject to testing by trading partners, often without any scientific basis. Finally, the GOT often requires phytosanitary certification on quality issues that are normally handled in private contracts.

The government requires laboratory tests and certification that quality standards are met for the importation of foods, human and veterinary drugs, and medical equipment and appliances intended for use by humans.

GOVERNMENT PROCUREMENT

Turkey is not a signatory of the WTO Government Procurement Agreement. Although its laws require competitive bidding procedures for tenders, U.S. companies have been frustrated by lengthy and often complicated bidding and negotiating processes. Some tenders, especially large projects involving co-production, are frequently opened, closed, revised, and opened again.

In 2003, a new public tender law entered into force. The law establishes an independent board to oversee public tenders and lowers the minimum bidding threshold at which foreign companies can participate in state tenders. However, the law gives a price preference of up to 15 percent for domestic bidders. Amendments to the law in 2003 enlarged the definition of domestic bidder to include corporate entities established under Turkish law, including those established by foreign companies. However, the preference does not apply to domestic bidders that form a joint venture with foreign bidders.

Military procurement generally include an offset requirement in tender specifications. The offset guidelines were recently modified to encourage foreign direct investment and technology transfer.

The entry into force of a Bilateral Tax Treaty between the United States and Turkey in 1998 eliminated the application of a 15 percent withholding tax on U.S. bidders for Turkish government contracts.

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 standards. Historically, wheat and sugar have been the main subsidized commodities. Export subsidies, ranging from 10 percent to 20 percent, are granted to sixteen agricultural or processed agricultural products. The Turkish Eximbank provides exporters with credits, guarantees, and insurance programs. Certain tax credits also are available to exporters.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

There have been some improvements in Turkey's intellectual property rights regime in recent years, but serious problems persist. Beginning in 1995, the Turkish Parliament approved a series of patent, trademark and copyright laws in connection with Turkey's customs union with the EU and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). In view of Turkey's legislative progress, USTR moved Turkey from the Special 301 Priority Watch List to the Watch List in the 2002 review, where it remained in 2003.

Turkey's 2001 copyright law substantially modernized the legal regime, providing deterrent penalties for copyright infringement. However, Turkey is not a party to the World Intellectual Property Organization (WIPO) Internet treaties (including the WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty) which include important provisions designed to protect digital content. For example, Turkey currently does not prohibit circumvention of technological protection measures. In addition, the Turkish courts have failed to impose deterrent penalties on pirates as provided in the copyright law. They have instead applied the Turkish Cinema Law, which has much lower penalties. The copyright industries' key concern is for improved enforcement. Currently, the police generally do not intervene in pirate production or sales unless the right holder specifically requests that they do so. In March 2004, the Turkish Parliament approved legislation banning street sales of all copyright products and authorizing law enforcement units to make seizures. The same law, however, also reduces penalties for piracy.

In 1995, new patent, trademark, industrial design, and geographic indicator laws revamped Turkey's foundation for industrial property protection. Turkey also acceded to a number of international conventions, including the Stockholm Act of the Paris Convention, the Patent Cooperation Treaty, and the Strasbourg Agreement. Although the Turkish Patent Institute (TPI) was established in 1994 to support technological progress, protect intellectual property rights and provide public information on intellectual property rights, it is currently understaffed.

In accordance with the 1995 patent law and Turkey's agreement with the EU, patent protection for pharmaceuticals began on January 1, 1999. Turkey has been accepting patent applications since 1996 under with the TRIPS agreement "mailbox" provisions. The patent law does not, however, contain interim protection for pharmaceuticals in the research and development "pipeline."

The key intellectual property concern for research-based pharmaceutical companies is Turkey's lack of protection from unfair commercial use for confidential test data, which is required by the TRIPS Agreement. U.S. industry contends that at least 165 products benefitting from such unfair commercial use have been approved or are pending review by the Turkish Health Ministry, and that the lack of protection costs U.S. companies some $400 million annually in lost sales. Patent holders have also noted that the Health Ministry has accepted applications to register generic copies of products protected by patents.

Trademark holders also contend that there is widespread and often sophisticated counterfeiting of their marks in Turkey. The industry believes that Turkey is a significant exporter of counterfeit products to developed country markets.

SERVICES BARRIERS

Telecommunications Services

State-owned Turk Telekom currently provides voice telephony and most value-added and basic telecommunications services. In the WTO negotiations on Basic Telecommunications Services, Turkey made commitments to provide market access and national treatment for all services at the end of 2005, and permitted value-added telecommunications services to be licensed to the private sector with a 49 percent limit on foreign equity investment. In the interim, Turkey committed to provide national treatment for mobile, paging and private data networks. In 2000, the Turkish government passed a law unilaterally accelerating the opening of the market for basic telephone services to January 1, 2004. A 2001 law provides for liberalization of areas under the Turk Telekom monopoly once the state's share in that company falls below 50 percent. The Turkish government has not yet issued implementing regulations. These laws also created an independent regulatory body - the Telecommunications Regulatory Board - and made licensing criteria publicly available. U.S. firms complain that the licensing process still lacks transparency and that revenue sharing with Turk Telekom is required where competition is permitted. There are three private cellular operators in Turkey, with a fourth license held by Turk Telekom.

The Turkish government plans to announce its strategy for privatizing Turk Telekom in the near future. In November 2003, the Transport and Communications Minister said that the Council of Ministers had agreed on a block sale of a majority stake in Turk Telekom by the end of May 2004, with a possible sale of additional shares to the public after that date. The Minister stated that foreign investors would be eligible to buy a majority stake in the company.

Other Services Barriers

There are restrictions on establishment in financial services, the petroleum sector, broadcasting, aviation and maritime transportation (see Investment Barriers section). A 2003 law on work permits for foreigners repealed earlier legislation defining certain professions and services open only to Turkish citizens. This has significantly broadened the range of occupations in which foreigners can be engaged, but there are still restrictions for doctors, attorneys and several other professions.

INVESTMENT BARRIERS

The U.S.-Turkey Bilateral Investment Treaty (BIT) entered into force in May 1990. Turkey has a liberal investment regime in which foreign investments receive national treatment. Once approved, firms with foreign capital are treated as local companies. However, private sector investment is often hindered, regardless of nationality, by: excessive bureaucracy; political and macroeconomic uncertainty; weaknesses in the judicial system; high tax rates; a weak framework for corporate governance; and frequent, sometimes unclear, changes in the legal and regulatory environment.

Almost all areas open to the Turkish private sector are fully open to foreign participation, but establishments in the financial and petroleum sectors require special permission. The equity participation ratio of foreign shareholders is restricted to 20 percent in broadcasting and 49 percent in aviation, value-added telecommunications services, and maritime transportation. Nonetheless, once investors have committed to the Turkish market, they sometimes find the rationale for their initial investments significantly undercut by arbitrary legislative action.

The Turkish government accepts binding international arbitration of investment disputes between foreign investors and the state; this principle is enshrined in the U.S.-Turkey BIT. For many years, there was an exception for concessions involving private (primarily foreign) investment in public services. In 1999, the Parliament passed a package of amendments to the constitution allowing foreign companies access to international arbitration for concessionary contracts. In 2000, the Turkish government completed implementing legislation for arbitration. In 2001, the Parliament approved a law further expanding the scope of international arbitration in Turkish contracts.

In 2003, Parliament passed legislation that streamlined the process of establishing a company in Turkey, and which eliminated screening of foreign investors in favor of a notification system, provided national treatment for foreign-owned entities in acquisition of real estate, and abolished specific minimum capital requirements for foreign investors.

The Turkish government passed legislation in February 2001 that will introduce a fully liberalized energy market, under which private firms will develop projects with the approval of an independent regulatory body, but little progress has been made in privatizing power generation and distribution.

ANTICOMPETITIVE PRACTICES

As part of its customs union agreement with the EU, Turkey has pledged to adopt EU standards concerning competition and consumer protection. In 1997, a government Competition Board commenced operations, putting into force a 1994 competition law. Government monopolies in a number of areas, particularly alcoholic beverages and telecommunications services, have been scaled back in recent years. These monopolies, along with the concentration of private sector ownership in other areas, are a barrier to certain U.S. products and services.

Corruption

Corruption is perceived to be a major problem in Turkey by private enterprise and the public at large.

Corruption appears to be most problematic in government procurement, with frequent allegations that contracts are awarded on the basis of personal and political relationships between business representatives and government officials. The judicial system is also perceived to be susceptible to external political and commercial influence to some degree. U.S. firms have sometimes alleged that corruption, or at a minimum, nontransparent practices, have been a barrier to direct foreign investment. American companies operating in Turkey have complained about the solicitation of community contributions with varying degrees of pressure, by municipal or local authorities.

The Turkish government conducted two significant anti-corruption operations in 2001, one in the energy ministry and the other in the public works ministry. Several individuals were charged with corruption and wrongdoing in government contract tenders. Parliament continues to probe corruption allegations involving senior officials in previous governments, particularly in connection with energy projects. In 2003, after the government intervention in a bank owned by the Uzan group, evidence of corrupt practices at the bank was discovered.

Turkey ratified the OECD antibribery convention, and passed implementing legislation providing that bribes of foreign officials, as well as domestic, are illegal and not tax deductible. In 2003, Turkey ratified the convention on Combatting Bribery of Foreign Public Officials in International Transactions, the Council of Europe's Civil Law on Corruption and the UN Convention against Transnational Organized Crime. The GOT has signed the Council of Europe's Criminal Law on Corruption, but has not ratified it. The Turkish Government signed the UN Convention Against Corruption in December 2003.

OTHER BARRIERS

Energy

In 2001, the Turkish Government cancelled 46 contracted power projects based on the build-operate-transfer (BOT) and transfer-of-operating-rights (TOR) models. Turkey’s constitutional court ruled in

2002 that the government would have to either honor the contracts or compensate the companies involved. To date, the Turkish government has not commenced negotiations with the companies, one of which has launched an international arbitration case. In 2002, the government required BOT projects already in operation -- which include U.S.-owned companies -B to apply for new licenses from the new Energy Market Regulatory Authority (EMRA), and has pressed the companies to unilaterally lower their prices while the license application process is still underway.

Cola tax

Punitive taxation of cola drinks (raised in 2002 to 47.5 percent under Turkey's Special Consumption Tax) discourages investment by major U.S. cola producers.

Corporate Governance

Weaknesses in the protection of minority shareholder rights and regulatory oversight have left some American companies at a disadvantage in disputes with Turkish partners.

UKRAINE

TRADE SUMMARY

The U.S. trade deficit with Ukraine was $51 million in 2003. U.S. goods exports in 2003 were $231 million, down 9.4 percent from the previous year. Corresponding U.S. imports from Ukraine were $282 million, down 22.2 percent from 2002. Ukraine is currently the 88th largest export market for U.S. goods. The flow of U.S. foreign direct investment (FDI) into Ukraine was $272 million in 2003, an increase from $235 million in 2002.

Trade relations between the United States and Ukraine are governed by the 1992 United States-Ukraine Trade Agreement which provides for normal trade relations (NTR) between the United States and Ukraine and governs other aspects of the bilateral trade relationship. Ukraine is not a member of the World Trade Organization (WTO), but it is in the process of negotiating terms of accession.

IMPORT POLICIES

Ukraine continues to maintain a number of barriers with respect to imports, including discriminatory fee and certification regimes. Import tariffs generally range from 2 percent to 50 percent, and combined with high value-added tax (VAT) (currently 20 percent) and excise taxes these charges can act as a hindrance to U.S. exports to Ukraine. Import tariffs are particularly high with respect to petroleum products (5-40 EUR/ton) and distilled spirits (7.5 EUR/1liter). The import tariff on alcohol amounts to an *ad valorem* tariff of 50 percent to 100 percent.

Excise taxes generally range from 5 percent to 100 percent. Four categories of imports were subject to discriminatory excise taxes in 2003: alcohol, tobacco, petroleum products, and automobiles. Excise duty rates are assessed as a percentage of the sum of the declared customs value, customs duties, and fees paid for importing products. On October 24, 2002 President Kuchma signed a law On amending some laws of Ukraine on Taxation, Production, and Circulation of Excisable Goods, which became effective on January 1, 2003. This law increased excise rates on alcohol, beer and gasoline. The discriminatory tax regime for alcohol was scheduled to be eliminated effective January 1, 2004.

Import licenses are required for some goods, primarily pesticides, alcohol products, CD production inputs, some industrial chemical products and equipment containing them, official foreign postage stamps, excise marks, officially stamped/headed paper, and checks and securities. The U.S. distilled spirits industry reports particularly burdensome import permit requirements for alcohol products, under which certificates of conformity are issued to importers only after officials of the Ukrainian Government have conducted an exhaustive and costly inspection of the producer’s facilities. In some cases, these practices haves led exporters to withdraw their products from the Ukrainian market.

The U.S. Embassy in Kiev estimates that Ukrainian barriers to U.S. agricultural goods cost U.S. producers between $10 million to $25 million annually. Talk of increasing tariffs and introducing quotas, possibly limiting imports of U.S. poultry into Ukraine's tax-free Free Economic Zones (FEZs), may further hamper U.S. exports.

Sales of U.S. non-agricultural goods and services, including agricultural and food processing equipment, electrical power equipment and oil and gas pumps, are generally not hampered by non-tariff barriers, and Ukrainian importers typically find ways to circumvent existing import restrictions, e.g., by importing through FEZs.

STANDARDS, TESTING, LABELING AND CERTIFICATION

UKRAINE

Foreign investors regard Ukraine's product certification system and licensing procedures as some of the most serious obstacles to trade, investment, and ongoing business. The standardization-certification body in Ukraine is the State Committee for Technical Regulation and Consumer Protection, the former "DerzhStandard of Ukraine. As of June 2002, DerzhStandard had a network of 143 accredited certifying bodies and 824 testing laboratories (centers) throughout Ukraine.

U.S. businesses have complained that the standards and certification procedures affecting the consumer goods industry: (1) lack constant, clearly defined standards and regulations; (2) include registration schemes that are not feasible for mass trade; (3) lack procedural flexibility; (4) involve complex and lengthy import licensing procedures; (5) impose overly complex and expensive certification requirements; (6) are unevenly enforced; and (7) involve high certification and licensing fees. While the standards process has been significantly streamlined over the past two years, it remains complex and is subject to frequent changes.

While Ukrainian law formally stipulates equal treatment of domestic and foreign companies, U.S. businesses often experience arbitrary application of the law against foreign companies, and discrimination against foreign companies is common. Although Ukraine belongs to international standardization bodies, such as the International Standards Organization, it often fails to recognize foreign product certificates unless recognition is mandated through an international treaty signed by Ukraine.

Ukraine applies a range of sanitary and phytosanitary (SPS) measures that are not consistent with the international, science-based approach to regulation. The certification and approval process is lengthy, duplicative, and expensive, with politics and corruption often behind arbitrary application of regulations.

In 2001, Ukraine's Chief Veterinarian abruptly banned the importation of U.S. poultry and red meat, alleging that several U.S. production practices were not in accordance with a new interpretation of existing Ukrainian veterinarian requirements. Poultry imports finally resumed in the fourth quarter of 2003 under a new veterinary license. Ukraine continues to limit red meat imports by approximately $500,000 due to a ban on hormone additives in feed.

The government of Ukraine restricts imports of a number of other U.S. agricultural products, allegedly for reasons of food safety. Exports of dried-egg products, potentially valuing $2 million, are restricted allegedly due to salmonella. In addition, bans on producers of biotechnology may cost American farmers $2 million in lost sales of corn and soybeans. U.S. pork exports are impacted by regulations regarding trichinosis.

Numerous certification bodies in Ukraine effectively operate as independent (often monopolistic) entities on a profit basis, turning over just 20 percent of their fees to the state. The State Committee for Technical Regulation and Consumer Protection does not properly supervise or enforce pricing rules. Consequently, agencies do much of their legislative and interpretive work with little or no coordination. Many products require multiple certificates from different agencies, with local, regional and municipal authorities often requesting additional documentation beyond that required by central bodies. Some companies report that they have been required to pay exorbitant additional fees (up to $20,000) to purchase equipment needed to test ingredients that have been used safely for many years.

On October 15, 2003, the Cabinet of Ministers of Ukraine issued Resolution #1611 requiring that goods subject to mandatory certification be accompanied by the original, letterhead copies of state-issued certificates with holographic marks. This measure entered into force on February 1, 2004 and will be expensive and disruptive to business.

Ukraine has begun regulation of accreditation and certification, and regulatory reform has been introduced at the regional and municipal levels. Further reform is needed, however, as government employees are underpaid and the shadow economy provides many opportunities for corruption.

While costs related to business registration have been reduced, Ukraine still requires numerous permits to conduct business and engage in foreign trade. According to U.S. telecommunications industry sources, access to the Ukrainian market is impeded by numerous burdensome certification and licensing procedures for equipment.

GOVERNMENT PROCUREMENT

Government procurement is conducted under Ukraine's Law on Procurement of Goods, Works and Services Using State Funds, which came into force on February 22, 2000. Under this law, all government procurement of goods and services valued above EUR 40,000 must be conducted via tenders (either open, or open with pre-qualification). Open international tenders must be conducted when procurement is financed by any entity outside Ukraine. Information on government procurement is published in the "State Procurement Bulletin" by the Ministry of the Economy and European Integration. Among the problems still faced by foreign firms (particularly for smaller procurements) are: (1) the absence of public notice of tender rules; (2) the failure to state tender requirements; (3) covert preferences in tender awards; (4) awards made subject to conditions that were not part of the original tender; and (5) the lack of an effective avenue for firms to air grievances over contract awards or an effective means to resolve disputes. Ukraine is not a signatory of the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

The Ukrainian government continues to maintain some industrial policies aimed at import substitution and export promotion, although these practices are reportedly decreasing. Some Ukrainian enterprises are not required to pay taxes, do not pay for energy usage, clear transactions by offsetting mutual debts, and receive free or below-cost government inputs.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Trade sanctions remain in place on a number of Ukrainian exports to the United States due to Ukraine’s failure to put in place an effective licensing regime for the manufacture of compact disks. Ukraine was named a Priority Foreign Country in both the 2003 and 2002 Special 301 reviews. Ukraine was elevated from the Special 301 Watch List, on which it appeared in 1998, to the Priority Watch List in 1999 due to growing optical media piracy in Ukraine.

In an effort to address the piracy problem, in June 2000 the United States and Ukraine agreed to the U.S.-Ukraine Joint Action Plan to Combat Optical Media Piracy. As a result of Ukraine's failure to enact most of the plan's provisions, USTR designated Ukraine a Priority Foreign Country in March 2001, launched a Section 301 Investigation of Ukraine's IPR regime, and, following review, revoked Ukraine's benefits under the U.S. Generalized System of Preferences (GSP) program in August 2001. Ukraine's inability to pass appropriate legislation to establish a licensing regime for the manufacture of compact disks -- the Joint Action Plan's most important provision -- led USTR to announce trade sanctions in the amount of $75 million on December 20, 2001. The sanctions, which went into effect on January 23, 2002, affect a number of Ukrainian products, including metal products, footwear, and chemicals. The Government of Ukraine has drafted amendments to the existing optical media licensing law to address the law’s inadequacies, but the Ukrainian Rada has failed to pass these amendments on several occasions. While piracy has been reduced as a result of Ukraine’s efforts since 2001, Ukraine’s optical media law remains deficient and Ukraine remains a key transit country for pirate products.

As part of its ongoing efforts to negotiate accession to the WTO, Ukraine has adopted legislation to bring its legislative regime further into compliance with the WTO Agreement on Trade- Related Aspects of Intellectual Property Rights (TRIPS Agreement). Despite these efforts, however, legal protection and enforcement remain weak. In addition to optical media piracy, patent and trademark violations are common in Ukraine, and U.S. industries report rampant counterfeiting of pharmaceuticals and consumer products. The Ukrainian Ministry of Health reportedly does not check the validity of patents when it issues them to market pharmaceuticals in Ukraine.

In order to increase IPR enforcement, the Ministry of Internal Affairs and the State Customs Service have set up units to deal exclusively with IPR violations. The State Department of Intellectual Property has trained 20 inspectors to enforce Ukraine's CD licensing regime. These understaffed units cannot, however, adequately deal with the enormous number of IPR infringements. In many cases, the rights holder must actively and continually engage with the Ministry of Internal Affairs or the State Customs Service to obtain enforcement.

The judicial system does not provide reliable recourse against IPR infringement, because the number of judges trained in IPR law remains low and enterprises generally lack the confidence in the Ukrainian judicial system to seek a court settlement. Legal experts and government officials have called for the formation of a special patent court in Ukraine to adjudicate IPR cases, but to date there has been no concrete action towards this end.

SERVICES BARRIERS

Ukraine has few explicit restrictions on services. Foreign professionals are permitted to work in Ukraine, but the lack of transparency and the multiplicity of licensing authorities hinders foreign access to the Ukrainian services market. A local content requirement exists for radio and television broadcasting, although it has not been stringently enforced. Foreign insurance firms are permitted to operate in Ukraine, but they cannot open branches, a requirement that impedes participation of foreign businesses in Ukraine.

INVESTMENT BARRIERS

An underdeveloped banking system, poor communications networks, a difficult tax and regulatory climate, crime and corruption, and a weak legal system create major obstacles to U.S. investment in Ukraine.

Ukraine's burdensome and frequently-changing tax structure has been a major hindrance to foreign investment and business development. In 2003, Ukraine passed legislation on tax reform, establishing a flat rate on Personal Income Tax of 13 percent and lowering Enterprise Profit Tax from 27 percent to 25 percent. After the President twice vetoed laws reducing Value Added Tax (VAT) from 20 percent to 17 percent, the Parliament postponed lowering the VAT until 2005.

The accumulation of VAT refund arrears has also been a serious obstacle for foreign and domestic exporters in Ukraine. The stock of arrears was 2.9B in local currency (hryvnia) at the end of 2002 and 4.4B hryvnia at the end of August 2003. The 2004 budget includes a plan to reduce 1.9B hryvnia of these arrears this year, but the VAT system will require further reform in order to prevent additional accumulation of arrears.

Combined payroll taxes (mainly for pensions) remain high at an average of 37.5 percent. There are frequent changes in other tax laws and regulations, such as import duties and excise taxes, often with little advance notice, giving companies little time to adjust to new requirements. Improvements are being made in tax filing and collection procedures, although these still differ significantly from those in western countries. The Chairman of the State Tax Administration established an advisory committee on the tax problems of foreign companies, which has been functioning for about two years and has achieved resolution of some difficult issues brought before it by U.S. and other foreign companies.

The United States has a Bilateral Investment Treaty (BIT) with Ukraine, which took effect on November 16, 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. U.S. investors, however, face numerous day-to-day problems and regard recourse under the BIT as only a last resort.

To attract investment and remove obstacles to trade, Ukraine created eleven Free Economic Zones (FEZs), and nine Priority Development Territories (PDTs), reportedly covering some 10 percent of Ukrainian territory. In August 2002, the Cabinet of Ministers introduced a moratorium on the establishment of FEZs and PDTs until January 1, 2005. There is no single, clear law that regulates the FEZs. Legislative loopholes permit companies to misuse FEZ status, and to avoid taxes and import duties. Profits from such activity are used to finance political campaigns.

Privatization rules generally apply to both foreign and domestic investors, and, in theory, relatively level playing field exists. In practice, however, the privatization process continues to lack transparency. Clear qualification requirements for advisors need to be established, and recognition of procedures and financial information need to be more public, complete, and timely. Phased implementation of a 2002 privatization which provides for the cash sale of majority shareholdings in several strategic large-scale enterprises, has been patchy. A number of large-scale privatizations conducted since early 2000 have been marked by unclear, non-transparent and changing regulations and by heavy political interference.

ELECTRONIC COMMERCE

The Internet and electronic commerce are underdeveloped in Ukraine. Recently, the Ukrainian Parliament voted in favor of two draft laws to control the Internet. A third draft law “On Monitoring of Telecommunications,” is being considered.

On November 19, 2003 the Parliament passed the law “On Telecommunications,” which would oblige Internet service providers to purchase, install and maintain all monitoring equipment necessary for the carrying out of operational and investigative measures by the authorized bodies. These expenses will be incurred by service providers. If this law is put into effect, there will be no inviolability of e-mails. The potential effect of this legislation on electronic commerce is unknown.

OTHER BARRIERS

Ukraine imposed an export duty of 30 euros per metric ton on ferrous steel scrap during the second quarter of 2002. This export duty has contributed to a decline in scrap exports from Ukraine, at a time when global demand and prices for steel scrap are rising. The export tax provides an artificial advantage to Ukrainian steel producers by increasing domestic steel scrap supply, providing producers with an unfair advantage in Ukraine and in third markets. Moreover, it constricts global supplies of a key steel input, which has the effect of raising prices of steel scrap for otherwise competitive producers elsewhere, including those in the United States.

UZBEKISTAN

TRADE SUMMARY

The United States registered a trade surplus of $173 million with Uzbekistan in 2003. U.S. goods exports to Uzbekistan were $257 million in 2003, an 85.3 percent increase from 2002. U.S. imports from Uzbekistan were $84 million in 2003.

The U.S.-Uzbekistan Bilateral Trade Agreement, which came 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. Uzbekistan is currently in the process of negotiating terms of accession to the World Trade Organization (WTO).

IMPORT POLICIES

The government of Uzbekistan restricts imports in many ways, including high import duties, licensing requirements for importers and wholesale traders, restricted access to retail space for sellers of imported items, physical closing of borders to shuttle traders and limited access to hard currency and local currency (soum).

Excise taxes are applied in a highly discriminatory manner to protect locally produced goods. According to reports from foreign investors, official tariffs are combined with unofficial, discriminatory charges resulting in total charges amounting to as much as 100 to 150 percent of the actual value of the product, making imported products virtually unaffordable. For example, imported liquor is reportedly subject to an excise tax of 90 percent in contrast to an excise tax of 40 percent to 65 percent applied to domestic liquors. Additionally, imported automobiles are subject to duties totaling approximately 150 percent by the time they reach the consumer.

Fears of a surge of imports caused the government of Uzbekistan to drastically restrict imports in 2002 through the imposition of official and unofficial import surcharges. Moreover, the government of Uzbekistan began requiring retailers to present certificates of origin and customs receipts for imported products upon the request of tax or customs authorities confiscating goods found without such certificates. Surveys of foreign companies consistently concluded that restrictions on access to local currency, necessary in order to transact business and pay employees, remain one of the worst of the many serious obstacles to doing business in Uzbekistan.

Due to the government of Uzbekistan's acceptance of the International Monetary Fund's Article VIII agreement as of October 15, 2003, dramatic legislative changes took place in the country's import registration system and overall import regime. The government of Uzbekistan eliminated its import registration system, which verified import prices (in an attempt to prevent over-invoicing) and rationed access to foreign exchange. However, the Government continues to restrict consumer goods imports in order to prevent hard currency flows and curb the threat of devaluation of the soum. The procedure importers must go through in order to buy foreign exchange has been substantially streamlined and now includes only three steps, each reportedly taking more than 2-3 business days each. The first largely technical step, is the registration of an import contract at the importer's bank. As a second step, the importer must register the contract with the customs committee. The paperwork is designed to ensure the proper disclosure of the customs value of the goods as well as their places of origin. Finally, on behalf of the importer, the commercial bank submits an application for hard-currency conversion to the Central Bank. The Central Bank then approves the application and allocates the requested amount of foreign exchange to the bank during a national trading session of foreign currency held by the Central Bank. The whole procedure takes between 5 and 7 days for most importers.

Clearance of import contracts with the state consulting company is no longer needed for customs registration, although the regulation requiring the registration has not been abolished. Reportedly, the State Customs Committee is still refusing to register old import contracts for goods from Kazakhstan and Kyrgyzstan dating back to 1999. The State Customs Committee still turns down about 5 percent of contracts submitted for registration, purportedly because of mistakes found in documents. Finally bank dealers report cases when the Central Bank did not approve applications for conversion for some of their clients who needed large sums of hard currency.

In addition to the official barriers, the customs clearance process is full of unofficial bureaucratic obstacles that lead to significant processing delays of two to three months, even for U.S.-Uzbek joint ventures. Other problems include arbitrary seizures of goods and frequent official and unofficial changes in customs procedures. Excessive documentation also makes the Uzbek importing process costly and time consuming. The lack of proper equipment and legislative regulations provide an environment in which customs officials on duty can arbitrarily make their own decisions on search and seizure procedures. The current procedures also create an intense rent-seeking environment.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The system of standardization, accreditation and certification and the implementation of the Sanitary and Phytosanitary (SPS) Agreement in Uzbekistan still present significant barriers to trade. According to international practice, there should be a mandatory application of technical regulations, but standards should be voluntary. Currently, Uzbekistan applies mandatory technical regulations, including certain standards, which are not compliant with international practices. Uzbekistan is in the process of drafting a new law on technical regulations that would be compliant with international system of standardization, metrology, accreditation, certification and the SPS Agreement.

The Uzbek government is in the process of introducing an international accreditation system. Currently, the following legislative acts are operating in the field of SPS to varying degrees of international acceptance: Law on State Sanitary Control, Law on Veterinary Services (or Medicine), Law on Nature Protection, Law on the Quarantine of Plants, and Regulation of the Chief Inspection on Quarantine of Plants.

The government of Uzbekistan accepts U.S. manufacturers’ self-certifications of conformance to foreign product standards and environmental restrictions. A new requirement, effective as of June 2003, requires that all products be labeled in Russian and Uzbek. Although this does not initially appear to be a traditional barrier to trade, the fact that other entities, including Government of Uzbekistan enterprises, are not held to this same standard presents unequal treatment of foreign companies.

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, with 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 must be completed on a tender basis. However, many tenders are announced with short deadlines and are awarded to companies that provide the most lucrative insider deals. Uzbekistan is not a signatory of the WTO Agreement on Government Procurement.

There are numerous cases reported of the Uzbek government’s failure to comply with contract obligations in relation to the process of procuring equipment, equipment pricing, and payment guarantees. There are several cases in which a U.S. company provided equipment from a government tender and was not paid for the equipment or goods.

EXPORT SUBSIDIES

The government of Uzbekistan's policies of import substitution and infant industry protection ensure that some form of export subsidy would apply to local industries. Export subsidies exist in the automotive sector, where local manufacturers are exempt from taxes, including value-added tax (VAT), customs duties and profit tax, totaling approximately 65 percent of their assumed profits.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Significant deficiencies remain in Uzbekistan's regime for the protection of IPR. The 1994 United States-Uzbekistan Bilateral Trade Agreement includes commitments on the protection and enforcement of IPR, a number of which have not yet been fulfilled. In addition, as part of its ongoing efforts to join the WTO, Uzbekistan must take steps to bring its IPR legislation into compliance with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). Contrary to its bilateral obligations, Uzbekistan is not yet a member of either the Berne Convention for the Protection of Literary and Artistic Works or the Geneva Phonograms Convention, and Uzbek law does not provide protection for pre-existing works or sound recordings.

In addition, Uzbek law does not provide adequate authority to enforce IPR violations, and Uzbekistan has not yet amended its Criminal Code to include deterrent penalties for IPR violations, as required by the 1994 Bilateral Trade Agreement. Enforcement of IPR laws in Uzbekistan is also extremely weak. Due to lax enforcement, illegal optical media exports are currently allowed to freely cross the borders for sale in Uzbekistan.

In order to address deficiencies in its legal regime, the Uzbek parliament made minor changes to the Uzbek copyright law and added trademark protections in December 2000. Amendments in the 2000 session included additional protection to national authors and producers of sound recordings; however, they did not cover protections for all works and recordings. In October 2003, the government of Uzbekistan announced plans to amend a number of laws in order to bring Uzbekistan's IPR regime more fully into compliance with Uzbekistan's bilateral obligations and the requirements of the TRIPS Agreement. Work on these laws continues, and consultations are underway with the government of Uzbekistan to insure that Uzbek IPR laws are amended consistent with bilateral and international obligations. In February 2004, the government of Uzbekistan announced its intention to join both the Berne Convention and the Geneva Phonograms Convention.

SERVICES BARRIERS

For years, the largest barrier to foreign services firms entering the Uzbek market has been difficulty in currency conversion. However, the government's adoption of currency convertibility in October 2003 should ease the process of conversion. In the past, these provisions could only be waived by a special presidential decree granting the company the right to do business in dollars. To date, only a state-owned insurance company, Uzbekinvest, established under a special presidential decree and an American-Uzbek joint venture, UzAig, are allowed to conduct business in dollars. Although the Government of Uzbekistan has created an insurance supervisory board, there is not yet a system of licensing insurance companies. Services firms, therefore, can currently only operate in Uzbekistan on the basis of a governmental decree.

Uzbekistan imposes a ten percent withholding tax on reinsurance premiums for insurers in countries that, like the United States, do not have a double taxation treaty with Uzbekistan. 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 and insurance firms may not operate in Uzbekistan except in a subsidiary capacity (a common requirement in other CIS countries) and are required to maintain a charter capitalization fund of $20 million. For Uzbek firms, the Government of Uzbekistan determines the required size of the charter funds on a case-by-case basis, leading to an unfair business environment.

INVESTMENT BARRIERS

To be considered an enterprise with foreign investment under Uzbek law, a firm must be at least 30 percent foreign-owned and have initial foreign equity of $150,000. Normally this equity is hidden through assets such as equipment or technical expertise. Although reduced from previous levels, these capital requirements are still high enough to exclude foreign investment by small companies. The Government of Uzbekistan has postponed consideration of proposals to ease these requirements further. U.S.-owned companies in Uzbekistan face cumbersome regulations and licensing requirements. Profit repatriation remains extremely difficult for foreign-owned companies, due to the lack of convertibility of the soum. Although the government of Uzbekistan legally adopted currency convertibility on October 15, 2003, a case has yet to arise in which foreign companies have been allowed to convert profits into hard currency for sums larger than a few hundred thousand dollars.

In the past, businesses were required to register with numerous government organizations and obtain licenses from separate entities. However, in 2001, the government of Uzbekistan attempted to introduce legislation to create a one stop shop to make the company registration process easier. These one stop shops are located in local government offices (Hokimiyats) throughout Uzbekistan and have reportedly improved individuals' abilities to form new businesses. Unfortunately, even with the new regulations, businesses discover local and federal regulatory road blocks that force them to continue the bureaucratic process at a minimum of between five and ten locations.

Uzbekistan's Tax Code, introduced for the first time only in 1998, lacks a few important provisions. For example, it allows no credit for VAT on capital imports, including plant, machinery and buildings. This 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. Their earnings are taxed once when earned by the enterprise in Uzbekistan and then taxed again when remitted to the foreign parent. Another significant problem in the Uzbek Tax Code involves the classification of expenses. Many expenses that are deductible for the purposes of calculating taxable profits are not deductible under the Uzbek Tax code, thereby increasing the effective profits tax burden in comparison to other countries. In most countries, expenses such as advertising and business travel are not subject to taxation. However, in Uzbekistan, travel is not deductible and advertising is only deductible based on an archaic formula.

Two factors increase labor costs for foreign firms in Uzbekistan. Corporate income tax rates, although reduced in 2003, still total 20 percent, and the mandatory contribution for insurance from the payroll is currently 37.2 percent for 2003, a rate significantly higher than other similar countries. While most Uzbek companies do not comply with their tax duties, foreign investors generally feel obliged to adhere to the law. The government of Uzbekistan imposed minimum salary requirements in 2001 to obligate foreign firms to pay full taxes on their employees. U.S. companies have 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 detrimental to individual private investors and the business community at large.

Companies are particularly concerned with the consistent and fair application of the Foreign Investment Law, which contains a number of specific protections for foreign investors.

Because of the relatively prohibitive tax and regulatory environment in Uzbekistan, foreign investors in Uzbekistan whose projects would not be economically viable under the existing legislation are required to seek tax and regulatory abatements in the form of Cabinet of Ministers decrees, which are required to be signed by the President in order to be approved. While legally carrying less authority than a law, such decrees have been a generally effective means through which foreign investors in strategic industries (e.g., mining, oil and gas, and large manufacturing) contract for such investment projects. This process is lengthy and uncertain, however, and lacks the necessary transparency required to attract significant investment over the longer term. Despite the protections that such decrees have on the surface, investors working under Cabinet of Ministers decrees have still faced significant regulatory and bureaucratic impediments. In particular, corporate profit projections that are commonly utilized in many developing countries have very little merit in Uzbekistan, as the investment climate, even for those fortunate companies with a Cabinet of Ministers decree, is constantly in flux.

TRADE RESTRICTIONS AFFECTING ELECTRONIC COMMERCE

The electronic commerce industry is terribly undeveloped in Uzbekistan, due to a non-market based economy and under-developed technology in the sector. In 2002, the government of Uzbekistan eliminated the monopoly previously held by a state-owned enterprise on access to external (international) Internet connections. While the government of Uzbekistan had not enforced this monopoly, the removal of this formal barrier to entry for Internet service providers (local and foreign) was a step towards a more open trading environment for electronic commerce.

OTHER BARRIERS

Persons doing business in Uzbekistan note that if they are engaged in a sector in which either the Government of Uzbekistan or an Uzbek-controlled firm is a competitor, they face increased bureaucratic hurdles and currency conversion problems. Often competitors are not allowed in the sector. Businesses also complain that they lack recourse under Uzbek law to international arbitration. Moreover, the judiciary in Uzbekistan is not independent. In the event of disputes, courts usually favor firms that are controlled or owned by the state. Trade disputes involving foreign-owned businesses are common and have proven to be nearly impossible to resolve even with high-level intervention from senior U.S. policymakers and legislators.

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 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 ninety 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 on which they are received. Even small purchases, such as office supplies, must be paid for via bank transfer. Use of petty cash is not allowed. Uzbek companies handle this problem with salary withdrawals for non-existent staff. Western accounting practices prevent American companies from using these deceptive practices, and instead companies are required to wait for potentially a week or more for a wire transfer to arrive before, for example, the copy machine or printer can be locally repaired in the official sector.

Bribery and other corrupt practices are common and represent another barrier to trade. Local and international entrepreneurs face bribes from a number of officials (tax, customs, police, fire/health/safety inspectors, and labor inspectors at the local, regional, and national levels). These problems are 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.

The regulatory framework for joint ventures in Uzbekistan is extremely prohibitive to profitable trade. Many international corporations complain that the Government of Uzbekistan demands excessive documentation from corporations, including numerous financial reports, a significant indication of the heavy-handed control the Government places on foreign companies doing business in Uzbekistan.

VENEZUELA

TRADE SUMMARY

The United States' trade deficit with Venezuela was $14.3 billion in 2003, an increase of $3.6 billion from $10.7 billion in 2002. U.S. goods exports in 2003 were $2.8 billion, down 35.9 percent from the previous year. Corresponding U.S. imports from Venezuela were $17.1 billion, up 13.6 percent. Venezuela is currently the 33rd largest export market for U.S. goods.

U.S. exports of private commercial services (i.e., excluding military and government) to Venezuela were $2.9 billion in 2002 (latest data available), and U.S. imports were $454 million. Sales of services in Venezuela by majority U.S.-owned affiliates were $4.7 billion in 2001 (latest data available).

The stock of U.S. foreign direct investment (FDI) in Venezuela in 2002 was $10.8 billion, up from $10.6 billion in 2001. U.S. FDI in Venezuela is concentrated largely in the mining, manufacturing and utilities sectors.

IMPORT POLICIES

Tariffs

Venezuela has been using the tariffs under the Andean Community's price-band system since 1995 for certain agricultural products, including feed grains, oilseeds, oilseed products, sugar, rice, wheat, milk, pork and poultry. Yellow corn was added to the price-band system in 1996, and processed poultry was added in 2001. *Ad valorem* rates for these products are adjusted according to the relationship between market commodity reference prices and established floor and ceiling prices. When the reference price for a particular market commodity falls below the established floor price, the compensatory tariff for that commodity and related products is adjusted upward. Conversely, when the reference price exceeds the established ceiling, the compensatory tariff is eliminated. Floor and ceiling prices are set once a year based on average prices during the past five years. Venezuela publishes these prices each April.

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, most importantly, the restrictive use of import licenses and permits. Management of tariff-rate quota (TRQ) commitments by the government of Venezuela has been arbitrary and non-transparent and has negatively affected trade in basic agricultural commodities as well as processed products. The Venezuelan government has denied the issuance of import licenses for both in-quota and over-quota quantities, even though importers are willing to pay the over-quota tariff for additional product.

U.S. agricultural exporters advise that the Venezuelan government also fails to open the quotas on time and for some products, such as pork, the government has refused to "activate" the quota at all. Venezuela announced in late 2001 that it would not grant import licenses for corn until all domestic white corn had been marketed, resulting in an effective import ban. Venezuela also has restricted the issuance of import licenses for sorghum, soybean meal, yellow grease, pork, poultry, oilseeds, and some dairy products. The government of Venezuela no longer publishes information on license requests or license issuance.

Assembled passenger vehicles constitute an exception to the generalized 20 percent maximum tariff and are subject to 35 percent import duties.

Non-Tariff Measures

VENEZUELA

In response to the rapid decline of the national currency, the bolivar, after a two-month general strike which halted oil production, the Central Bank of Venezuela stopped trading bolivars on January 22, 2003. President Chavez then announced the creation of an Exchange Administration Board (CADIVI) on February 5. Throughout 2003, CADIVI continued to have difficulty processing requests for authorization of foreign exchange in an efficient and timely manner, although there has been improvement over time. Despite the promulgation of procedures, regulations, and some authorizations of transactions, by the end of the year the official system had supplied only $3.6 billion, approximately three months' worth of transactions in a non-regulated Venezuelan economy. Delays of over sixty days from the time of authorization to access foreign currency until disbursement by a bank are common under the current system. Under the exchange control administration, import currency certificates are granted to companies on a case-by-case basis only for products pre-approved by the government for import. Although the number of currency certificate approvals has been increasing during 2003, industry representatives note that CADIVI is operating with a significant backlog in approvals and liquidations.

Agricultural products have received the majority of dollar allocations under the CADIVI system because most basic food products are on the import list. Even so, the problems with coordinating the timing of access to dollars, approval of import permits and licenses, and contracting for shipments have led to numerous delays and cancelled shipments. Trade in higher-value products, such as apples, pears, grapes, nectarines, and other fruits and nuts has been dramatically reduced because they are not included among the list of high priority products for which foreign exchange is available under the current currency controls.

Venezuela also requires that importers obtain sanitary and phytosanitary (SPS) permits from the Ministries of Health and Agriculture for most pharmaceutical and agricultural imports. In 2002 and 2003, the government increasingly appeared to use this requirement to restrict agricultural and food imports without providing evidence of a scientific basis, which raises concerns about the consistency of these practices with World Trade Organization (WTO) requirements. The Venezuelan government continues to issue SPS permits in a wholly discretionary manner without citing SPS concerns, and this restriction in particular affects trade in pork, poultry, beef, apples, grapes, pears, nuts, onions, and potatoes.

Although the government of Venezuela 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. Importation of yellow corn is dependent upon the purchase of local sorghum and/or white corn. Soybean imports are dependent upon the purchase of "locally produced" soybean meal and permits for grape and black bean imports have been tied to the purchase of local product. The use of absorption requirements is extremely subjective because Venezuela lacks a good statistical system to track levels of domestic crop production.

This discretionary use of import licensing and permitting procedures to curtail agricultural imports has become a major problem for the United States and other countries. Venezuelan government officials have been notified by various countries that these and other licensing practices appear to be inconsistent with Venezuela's WTO commitments. As a result, in November 2002, the United States Trade Representative 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 consultations and posed questions to the government of Venezuela.

Venezuela prohibits the importation of used cars, used buses, used trucks, used tires, and used clothing. No other quantitative import restrictions exist for industrial products.

Venezuelan officials continue to discuss plans to improve customs procedures to better control the entry of illicit merchandise. The Venezuelan Commission on Antidumping and Safeguards has started investigations on the importation of steel and paper products as well as clothing and footwear. It appears that deficient customs procedures and contraband were contributing factors in those industries' calls for protection.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Some Venezuelan importers of U.S. products have alleged that the government of Venezuela applies product standards more strictly to imports than to domestic products. The certification process is expensive, increasing the cost of U.S. exports relative to domestic products. The Venezuelan Commission for Industrial Standards normally requires certification from independent laboratories located in Venezuela but at times accepts a certificate from established standards institutes abroad.

Venezuela implemented a new tire rim standard without giving industry an opportunity to comment on the proposed regulation. Although the government notified the WTO Technical Barriers to Trade Committee, the notification took place after the official comment period had passed. U.S. industry reports that the standard fails to recognize international tire rim standards and imposes very costly testing and marking requirements upon foreign manufacturers and distributors of rims wishing to sell in Venezuela.

On June 5, 2003, the government of Venezuela passed Decree 2444, which requires importers of goods to Venezuela to obtain pre-shipment inspections of all imports. Four companies are certified to do these inspections: Bivac Venezuela (Veritas Group), SGS Trade Assurance Services, COTECNA, and Intertek Foreign Trade Standards.

U.S. industries have raised concerns regarding Venezuela's enacted labeling regulation for clothing and footwear. The labeling regulation appears overly restrictive. Of primary concern to U.S. exporters is the requirement that labels be customized to include detailed information about the importer or retailer of the goods.

GOVERNMENT PROCUREMENT

Venezuela's government procurement law covers purchases by government, national universities, and autonomous state and municipal institutions. The law requires a contracting agency to prepare a budget estimate for a given purchase 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, Decree 1892 establishes a five 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 size domestic enterprises.

In the international arena, the government of Venezuela reinstituted state controlled purchases of basic food products for its new internal distribution system, Mercal. The state-trading entity, CASA, has purchased sugar, rice, wheat flour, black beans, milk powder, edible oil, margarine, poultry, and eggs from a variety of countries. Technical assistance in contracting and purchasing has been provided by the Cuban state trading enterprise ALIMPORT. The private sector has complained that CASA has an unfair advantage in that its access to dollars is assured, and it has no problems with obtaining import licenses and permits.

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

Venezuela is a member of the World Intellectual Property Organization (WIPO). It is also a member of the Berne Convention for the Protection of Literary and Artistic Works, the Geneva Phonograms Convention, the Universal Copyright Convention, and the Paris Convention for the Protection of Industrial Property.

The Venezuelan Industrial Property Office (SAPI) has been successful in improving its service to the business community, but protection of IPR is hindered by the lack of adequate resources for the Venezuelan copyright and trademark enforcement police (COMANPI) and for the special IPR prosecutor's office. The Venezuelan government is also working to have a new Industrial Property Law approved by the National Assembly, as well as to promote the ratification of the WIPO Internet treaties. Unfortunately, pirated music and videos remain readily available in the informal sector. In the 2003 Annual Review, Venezuela remained on USTR's Special 301 "Watch List."

Patents and Trademarks

Venezuela provides the legal framework for patent and trademark protection through Andean Community Decision 486 and the 1955 National Industrial Property Law. Andean Community Decision 345 covers patent protection for plant varieties. While the government introduced legislation in early 1996 to update the 1955 Industrial Property Law and to bring Venezuela into compliance with the WTO Trade Related Aspects of Intellectual Property Rights (TRIPS), the draft legislation was sidelined by President Chavez's constitutional reform process. However, the National Assembly is debating a new Industrial Property Law, which may address many of the outstanding TRIPS issues. A customs bill, which includes provisions for border controls designed to be consistent with TRIPS to impede the importation of pirated goods, became law in November 1998, and a revision is currently pending.

In February 2002, and continuing through 2003, Venezuela’s food and drug regulatory agency (INH) began approving the commercialization of new drugs which were the bioequivalents of already approved drugs, thereby denying the originator companies the exclusive use of their data. In effect, the government of Venezuela is allowing the test data of registered drugs from originator companies to be used by others seeking approval for their own pirate version of the same product. Also, U.S. companies are concerned that the government of Venezuela is implementing a policy that a company that had patented a compound for one use cannot subsequently patent a second use of that compound. This puts Venezuela at odds with international norms.

Copyrights

The Venezuelan copyright and trademark enforcement branch of the police (COMANPI) continues to provide copyright enforcement support with a small staff of permanent investigators. A 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 copyright protection.

Andean Pact Decision 351 and Venezuela's 1993 Copyright Law provide the legal framework for the protection of copyrights. The 1993 Copyright Law is modern and comprehensive and extends copyright protection to all creative works, including computer software. A National Copyright Office was established in October 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. However, COMANPI, the Copyright Office's enforcement arm, can only act based on a complaint by a copyright holder; it cannot carry out an arrest or seizure on its own initiative, thereby weakening its enforcement capacity.

SERVICES BARRIERS

Venezuela maintains restrictions in a number of service sectors. For example, all professions subject to national licensing legislation (e.g., engineers, architects, economists, business consultants, accountants, lawyers, doctors, veterinarians, and journalists) are reserved for those individuals who meet Venezuelan certification requirements. In addition, only Venezuelan nationals may be licensed as architects. Some (particularly government-related) accounting and auditing functions require Venezuelan citizenship, and only Venezuelan nationals may act as accountants for companies with public stock greater than 25 percent. Also, foreign professionals wishing to work in Venezuela must revalidate their credentials at a Venezuelan university on the condition of reciprocity. A foreign lawyer cannot provide legal advice on foreign or international law without being licensed in the practice of Venezuelan law.

To provide engineering services, foreigners are required to establish a commercial presence. Foreign consulting engineers must work through local firms or employ Venezuelan engineers. There is a law for public tenders that gives preferential treatment to Venezuelan companies if they have the capability to carry out the work and/or if the project is financed by public funds. Foreign capital is restricted to a maximum of 19.9 percent in professional associations.

Venezuela limits foreign equity participation (except from other Andean Community countries) to 20 percent in enterprises engaged in television and radio broadcasting, Spanish language newspapers, and professional services whose practice is regulated by national laws. 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.

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. 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.

Financial Services

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. Only local insurers may insure imports that receive government-approved tariff reductions or government financing.

New rules governing civil aviation, maritime activities, and transportation insurance also have been issued in the package of 49 laws passed under enabling powers by President Chavez. Many of the laws still need implementing regulations, and the entire package has been challenged in the Supreme Court. The National Assembly is reviewing 15 of the most contentious laws. The impact of the legislation remains unclear.

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 President Chavez gradually has halted further privatization. In early 2000, a U.S. power generating company successfully took control, by means of a stock swap, of Electricidad de Caracas (EDC), the local electrical company that provides power to the Caracas metropolitan area.

Foreign investment continues to be restricted in the petroleum sector. The exploration, production, refining, transportation, storage, and foreign and domestic sale of hydrocarbons is reserved to the state. However, private companies may engage in hydrocarbons-related activities through operating contracts or through equity joint ventures with state owned oil company PDVSA. The Venezuelan constitution reserves ownership of PDVSA to the Venezuelan government. However, it does allow the sale of subsidiaries and affiliates of PDVSA to foreign investors. In the early 1990's, the Venezuelan government created an "oil sector opening" 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 this process. PDVSA and foreign oil companies signed 33 operating contracts for marginal fields after three rounds of bidding.

The Hydrocarbons Law of 2001 has raised concerns in the industry because it mandates a minimum 50 percent national participation in future projects and increases most royalties from 16.67 percent to 30 percent. The Gaseous Hydrocarbons Law offers more liberal terms, and Venezuela’s government has sought foreign investment to develop offshore natural gas deposits near the Orinoco delta.

The government passed legislation in 1998 with provisions that could introduce domestic and foreign competition into the domestic gasoline market. The law allows foreign and non-governmental Venezuelan investors to own and operate service stations, though the government retains the right to set product prices.

A range of other natural resources - including iron ore, coal, bauxite, gold, nickel, and diamonds - is gradually being opened to greater private investment by means of strategic alliances. However, in both the gold and diamond sectors the government has unilaterally terminated some concessions granted to certain private companies, alleging failure to comply with the terms of the concession.

VIETNAM

TRADE SUMMARY

The U.S. trade deficit with Vietnam was $3.2 billion in 2003, an increase of $1.4 billion from $1.8 billion in 2002. U.S. goods exports in 2003 were $1.3 billion up 128.3 percent from the previous year. Corresponding U.S. imports from Vietnam were $4.6 billion, up 90.2 percent. Vietnam is currently the 52nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Vietnam in 2002 was $179 million, up from $141 million in 2001.

IMPORT POLICIES

Tariffs

Vietnam's tariff schedule was rationalized in 1992 and simplified in 1999, following Vietnam's accession to the ASEAN Free Trade Area (AFTA). Currently, there are three sets of tariff rates: most favored nation (MFN) rates that apply to about 75 percent of total imports from about eighty countries that have bilateral trade agreements with Vietnam, including the United States; Common Effective Preferential Tariff (CEPT) rates that apply to imports from ASEAN countries; and general tariff rates (50 percent higher than MFN) that apply to all other countries. Under the terms of the U.S.-Vietnam Bilateral Trade Agreement (BTA), Vietnam is obligated to reduce significantly tariffs by an average of about one-third to one-half on a broad range of U.S. imports over a period of three years.

On September 1, 2003, a new tariff system took effect that is based on the eight digit Harmonized System and conforms to ASEAN's Harmonized Tariff Nomenclature (AHTN). The new system consists of 10,689 lines (4200 more than the old one), of which 5,300 lines are at four and six digits and 5,400 lines are at eight digits. There are now fifteen tariff rates (down from twenty) and the simple average tariff rate increased from 16.8 percent to 18.2 percent. In implementing the new tariff system, the Government of Vietnam raised tariff rates on 195 items and reduced them on 106. Protection on 72 items, except for PVC powder and granules and welding steel tubes, was converted from price differential surcharges to tariffs. Tariff rates on petrol and oils (heading 2709 and 2710) are not specified in the new schedule.

The National Assembly retains authority over setting tariff bands for each product and the government is free to adjust applied tariffs within the bands. There is no online published tariff schedule, and it is often difficult to determine when and how much tariffs have changed.

Non-tariff barriers

Non-tariff barriers (NTB's) were introduced in Vietnam when the country shifted from a centrally controlled economy toward market trade in the late 1980s to early 1990s and quickly became a key component of Vietnam's trade policy. In the past few years, Vietnam has made significant progress in reducing the use of NTBs and, under the terms of the BTA, Vietnam agreed to eliminate all non-tariff barriers, including import and export restrictions, quotas, licensing requirements, and controls for all product and service categories over a period of three to seven years, depending on the product.

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, toxic chemicals, "depraved and reactionary" cultural products, firecrackers, some children's toys, cigarettes, 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, various encryption devices, and encryption software.

Quantitative restrictions and non-automatic licensing: Vietnam has been phasing out the use of quantitative restrictions on imports. The following products remain subject to quantitative restrictions: sugar, petroleum products, cement and clinker, some common chemicals, chemical fertilizer, paint, tubes and tires, paper, silk, ceramic (construction), construction glass, construction steel, some engines, some types of automobiles, motorcycles, bicycles and parts, and ships and vessels. Quantitative limitations on exports in most sectors have been eliminated as well, with the exception of textiles, garments, and a list of sensitive items. In May 2003, the Prime Minister issued a decision to implement tariff-rate quotas on certain agricultural products that were not previously under quotas. Cotton, tobacco materials, and salt are the three items on "trial" implementation as of July 01, 2003. During the "trial" period, import licenses for those items are granted in line with the demand level to set up a volume of quotas for the following years. Milk materials, corn, and poultry eggs are the remaining targeted items to be implemented sometime in 2004.

Foreign invested enterprises are not permitted to import goods freely in Vietnam. Foreign invested enterprises are allowed only to import goods used as inputs in the manufacturing process, as well as machinery equipment, transportation means and materials used in the construction and installation of their project in accordance with their investment license.

Special authority regulation: Previously, importers required approval from the relevant ministry(ies) to import many goods. This system was changed in 2001. Now, seven ministries and agencies are responsible for overseeing a system of 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: In 1998, the State Bank of Vietnam (SBV) issued a foreign exchange surrender requirement for all exporters, including foreign invested enterprises. A series of reductions decreased this requirement from 80 percent of foreign exchange balances to 30 percent as of May 2002. In April 2003, Government Decision 46 reduced the foreign exchange surrender requirement to zero percent.

May 2000 amendments to the Law on Foreign Direct Investment (FDI) 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 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 abroad profits and other legal income upon presentation of relevant documents to the 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 is phasing out minimum import prices in its customs valuation system. The number of commodity groups subject to a minimum value was reduced from 34 in 1997 to seven in 2000. These include: beverages of all kinds; tires, rubber inner tubes and mud-resistant fronts used for cars, motorcycles and bicycles; floor tiles and sanitary wares; construction glass and vacuum flasks; engines; electric fans; motorcycles; and, unprocessed tobacco.

Under the BTA, Vietnam is now obligated to apply transaction value for U.S. imports and to ensure that no administrative fee or charge imposed by customs authorities in connection with importing or exporting any good will exceed the actual cost of the service provided by Customs. Vietnam has also committed to apply transaction value to imports from ASEAN countries. In June 2002, the Government issued Decree 60 establishing rules for customs valuation based on transaction value, in accordance with WTO principles. Decree 60 applies to goods imported from countries to which Vietnam has made a commitment on customs valuation. Despite the fact that no exceptions are included in the BTA, Decree 60 reserves Vietnam the right to apply minimum tax calculation prices on a number of items "in order to protect the State's interests and domestic production." The Ministry of Finance, in coordination with other ministries and agencies, is drafting the list of exempted items.

Trading rights: Under the terms of the BTA, three years after the entry-into-force of the agreement, enterprises with capital directly invested by U.S. nationals and companies in production and manufacturing will be able to engage in trading activities in most products and will be able to enter into joint ventures with Vietnamese partners to engage in trading activities in all products, as long as the U.S. partner holds no more than a 49 percent share in the venture. Seven years after entry-into-force of the BTA, U.S. companies will be able to establish wholly owned trading companies in Vietnam. The right to trade in certain goods is subject to a phase in period.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Ministry of Science and Technology publishes a list of imports and exports requiring state quality control. The items are listed with their HS numbers and are grouped under functional agencies including the Ministry of Public Health, the Ministry of Agriculture and Rural Development, the Ministry of Industry, the Ministry of Fisheries, and the Ministry of Science and Technology. The system is complicated and not always transparent: some items are subject to national standards; some are subject to regulations of the functioning agencies; and some are subject to both. Other items are subject to GOCT (the standards system that was created by the Soviet Union which now applies only to explosives and explosive accessories). Exporters and importers must have permits from the functioning agencies or a receipt showing an inspection is in process for the controlled items at the time they go through customs.

GOVERNMENT PROCUREMENT

Government procurement practices can be characterized as a multi-layered decision-making process, which often lacks transparency and efficiency. Although the Ministry of Finance allocates funds, various departments within the ministry or agency involved determine government procurement needs. Competition for government procurements may take any of several forms: sole source direct negotiation, limited tender, open tender, appointed tender, or special purchase. Currently, ministries and agencies have different rules on minimum values for the purchase of material or equipment, which must be subject to competitive bidding. High-value or important contracts such as infrastructure (except World Bank, Asian Development Bank, UNDP, or bilateral official development assistance projects) require bid evaluation and selection and are awarded by the Prime Minister's office or any other competent body. No consolidated or regular official listing of government tenders exists; however, some solicitations are announced in the both Vietnamese and English language newspapers.

EXPORT SUBSIDIES

Export credit is very limited in Vietnam. The Export Promotion Fund managed by the Ministry of Finance, provides subsidies in the form of interest rate support and direct financial support (to first-time exporters, for exports to new markets, or for goods subject to major price fluctuations). The Fund also provides 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.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Vietnam is a member of the World Intellectual Property Organization (WIPO) and is a signatory to the Paris Convention for Industrial Property. It has acceded to the Patent Cooperation Treaty and the Madrid Agreement. While not yet a party to the Berne Convention, Vietnam agreed under the 1997 U.S.-Vietnam Bilateral Copyright Agreement to provide U.S. copyrights protection on a national treatment basis in accordance with the terms of that convention. Under the terms of the BTA, Vietnam was obligated by December 2003 to make its system for protecting IPR, including enforcement, consistent with the WTO TRIPS agreement. Considerable progress has been made over the past few years in establishing the legal framework for IPR protection. New legislation this year included regulations on protection of architectural copyright, layout of integrated circuits and border measures. However, the legal reform process is not yet complete.

Enforcement of IPR protection remains extremely weak. The BTA requires the government of Vietnam to provide expeditious remedies to prevent and deter infringement of IP rights, including particular 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 there are infringements. The National Office of Intellectual Property (NOIP), under the Ministry of Science and Technology (MOST), administers Vietnam's patent and trademark registration systems. NOIP has made significant progress in recent years to build adequate capacity to record 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. Although the BTA requires national treatment for IPR fees, industrial property fees charged to foreign organizations and individuals are significantly higher than the fees charged to Vietnamese nationals.

Copyrights

The Copyright Office of Vietnam is under the control and supervision of the Ministry of Culture and Information. Significant progress has been made in putting in place the laws 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. Industry estimates of piracy rates for software, music, and videos run as high as 99 percent. Local police authorities often are slow to act on administrative orders fining infringement and enforcing court decisions.

SERVICES BARRIERS

Under the terms of the BTA, Vietnam agreed for the first time to liberalize a broad array of services sectors, including telecommunications, accounting, banking, and distribution services, and to apply MFN treatment to U.S. services suppliers in all sectors and for all modes of supply (with itemized exceptions). The BTA also incorporated the WTO Agreements on Trade in Services (GATS) (except Paragraphs 3 and

4), Annex on Movement of Natural Persons, Annex on Telecommunications (except Paragraphs 6 and 7), and the Telecommunications Reference Paper. Vietnam's commitments to liberalize market access on services are phased in over specified time periods depending on the sector. The commitments by sector are as follows:

Accounting, Auditing, and Bookkeeping Services: For the first three years under the BTA, licenses will be granted on a case-by-case basis. The company must employ at least five persons with licenses to be a CPA in Vietnam who have practiced in Vietnam for more than one year. For the first two years under the BTA, firms with U.S. equity will only be allowed to supply services to foreign-invested enterprises and foreign funded projects in Vietnam. Branching is not permitted.

Taxation Services: For the first five years under the BTA, licenses will be granted on a case-by-case basis, and firms with U.S. equity will only be allowed to supply services to foreign-invested enterprises and foreign funded projects in Vietnam. Branching is not permitted.

Architectural, Engineering, and Computer Services: For a period of two years from the date of establishment and operation, U.S.-owned companies may only provide services with foreign-invested enterprises in Vietnam. U.S. companies have to be legally registered in the United States. Branching is not permitted.

U.S. companies and companies with U.S. directly-invested capital are not permitted to carry out topographic, construction, geological, meteorological, and environmental investigations; or technical investigations for designing rural-urban construction plans, unless otherwise authorized by the Government of Vietnam.

Legal Services: Under the terms of the BTA, 100 percent equity ownership in companies, joint ventures, and branches is permitted. U.S. lawyers may not appear before Vietnamese courts. However, U.S. firms may advise on Vietnamese law if they hire persons with Vietnamese law degrees who satisfy the requirements applied to like Vietnamese practitioners. Branches of law firms may receive a five-year renewable license. In July 2003, the government promulgated Decree 87 significantly reforming the regulatory framework for the operations of foreign law practices and foreign law firms. The decree substantially broadened the scope of practice of foreign law firms in Vietnam. Foreign law practices are permitted to provide advice on foreign and international law in the areas of business, investment and commerce, which had been prohibited previously. By virtue of these reforms, foreign law firms may now offer a full range of legal services and employ Vietnamese lawyers.

Advertising Services and Market Research: Vietnam has not agreed to provide market access for advertising services for wines and cigarettes or for the cross-border supply of market research services. U.S. companies in these sectors may initially only establish a commercial presence through joint ventures or business cooperation contracts with Vietnamese partners. U.S. investment is limited to 49 percent of the legal capital for the first five years under the Bilateral Trade Agreement, 51 percent for years six and seven, and is unlimited after that. Vietnam has not agreed to ensure national treatment for the cross-border supply of market research services.

Management Consulting: U.S. companies may only establish a commercial presence through joint ventures or business cooperation contracts. After the BTA has been in effect for 5 years, enterprises with 100 percent U.S. ownership will be permitted.

Telecommunication Services: Initially, the provision of basic telecommunications services, value-added telecommunications services, and voice telephone services are only permitted through business contracts with Vietnamese gateway operators. According to the terms of the BTA, by December 2003, (December

2004 in the case of Internet services), U.S. value-added telecommunications service providers may establish joint ventures with Vietnamese partners with up to 50 percent equity ownership. These joint ventures may not, however, construct their own long-distance and international circuits. Four years after entry-into-force of the BTA, U.S. basic telecommunications service suppliers can establish joint ventures with Vietnamese partners with up to 49 percent U.S. equity ownership. These joint ventures may not, however, construct their own long-distance and international circuits. Six years after entry-into-force of the Agreement, U.S. voice telephone service providers may establish joint ventures with Vietnamese partners with up to 49 percent U.S. equity ownership.

Audiovisual Services: Vietnam has not agreed to provide market access or national treatment for cross-border supply or consumption abroad of audiovisual services. U.S. service suppliers may establish a commercial presence only through a business cooperation contract or joint venture with a Vietnamese partner. For the first five years after entry-into-force of the BTA, U.S. ownership may not exceed 49 percent. After five years, U.S. ownership may not exceed 51 percent.

Construction and Related Engineering Services: Vietnam has not agreed to provide market access or national treatment for the cross-border supply of construction and related engineering services. Branches are not permitted. For the first three years after their establishment and operation, 100 percent U.S.-owned enterprises may only provide services to foreign-invested enterprises in Vietnam. U.S. companies must be legally registered for operation in the United States.

Distribution Services: Vietnam does not provide market access or national treatment for the cross-border supply of distribution services. Three years after entry-into-force of the BTA, U.S. service providers may establish joint ventures with Vietnamese partners with up to 49 percent U.S. equity. After six years, U.S. ownership in joint ventures will be unlimited. After seven years, companies with 100 percent equity will be allowed. One retail outlet per firm may be established upon entry into force of the BTA, while additional outlets will be considered on a case-by-case basis. For some agricultural and industrial products, market access in this sector is subject to additional limitations, which will be phased out over a period of three to five years. There are a limited number of products for which Vietnam did not commit to allow distribution services.

Educational Services: Vietnam will not provide market access or national treatment for the cross-border supply of educational services. For the first seven years after entry-into-force of the BTA, U.S. companies may only establish a commercial presence through a joint venture. After that, schools with 100 percent U.S.-invested capital may be established. Foreign teachers employed by educational units with U.S.-invested capital must have five years teaching experience and be recognized by the Ministry of Education.

Insurance Services: Vietnam has agreed to allow market access for the cross-border supply of insurance services to enterprises with foreign invested capital or foreigners working in Vietnam; reinvestment services; insurance services in international transportation; insurance brokering and reinsurance brokering services; and advisory, claim settlement, and risk assessment services. Three years after entry-into-force of the BTA, U.S. companies can establish joint ventures with Vietnamese partners with up to 50 percent U.S. equity participation. After five years, 100 percent U.S.-invested companies may be established.

Companies with U.S.-invested capital cannot provide insurance for motor vehicle third party liability, insurance in construction and installation, insurance for oil and gas projects, or insurance for projects and construction of high danger to public security and environment. Three years after entry-into-force of the BTA, this limitation is eliminated for joint ventures. After six years, this limitation is eliminated for companies with 100 percent U.S. capital.

For the first 5 years after entry-into-force of the BTA, any company with U.S. capital must reinsure part of the accepted liabilities (currently at a minimum rate of twenty percent) through the Reinsurance Company of Vietnam.

Banking: Vietnam has not agreed to provide market access or national treatment for the cross-border provision of banking services, except for financial information services and advisory, intermediation, and other auxiliary services. U.S. banks may establish branches, joint ventures with Vietnamese banks, wholly owned U.S. financial leasing companies or joint venture financial leasing companies with Vietnamese partners.

For the first three years after entry-into-force of the BTA, the only legal form apart from banks and leasing companies in which U.S. companies may provide financial services is through joint ventures with Vietnamese banks. During the first nine years, U.S. equity in joint venture banks must be between 30 percent and 49 percent. After nine years, 100 percent equity participation in subsidiary banks will be allowed.

The right of U.S. banks to accept Vietnamese currency deposits on the same basis as domestic banks is phased in over eight years for business clientele and ten years for retail depositors. After this, U.S. bank branches will be entitled to full national treatment. Vietnam is fulfilling this commitment by gradually allowing U.S. banks to increase the amount of deposits in Vietnamese Dong (i.e. the local currency) relative to the branch's legal paid-in capital with the ratio presently at 250 percent. (Prior to entry-into-force of the BTA, this ratio was 25 percent.) In addition, financial institutions with U.S. equity cannot issue credit cards on a national treatment basis until eight years after entry-into-force of the BTA. U.S. banks are now allowed to place automatic teller machines outside their office on a national treatment basis.

Vietnam reserved the right to limit, on a national treatment basis, equity investment by U.S. banks in privatized Vietnamese state-owned banks.

U.S. bank branches, subsidiaries, or U.S.-Vietnam joint ventures must obtain a license to establish a commercial presence in Vietnam. A U.S. parent bank must provide minimum capital of $15 million to establish a branch. Establishing a U.S.-Vietnam joint venture bank or a U.S. bank subsidiary requires minimum capital of $10 million.

For the first three years after the entry-into-force of the Agreement, financial institutions with 100 percent U.S. equity ownership may not take an initial mortgage interest in land use rights. After three years, these institutions will be allowed to take an initial mortgage interest in land-use rights held by foreign-invested enterprises, and may use mortgages or land-use rights for the purpose of liquidation in case of default.

Establishing a wholly owned subsidiary of a U.S. financial leasing company or a joint venture leasing company requires three consecutive profitable years, and $5 million in legal capital.

For the first three years under the BTA, Vietnam is not obligated to provide national treatment with respect to access to central bank rediscounting, swap, and forward facilities. However, in 2003, the State Bank of Vietnam allowed one U.S. bank with branches in Vietnam (and some local banks) to provide swap service on a pilot basis.

Non-banking Financial Services: The BTA allows 100 percent U.S. equity in financial leasing and in other leasing after 3 years.

Securities-Related Services: Vietnam has not agreed to provide market access or national treatment for the cross-border supply of securities-related services. Non-bank U.S. securities service suppliers may only establish a commercial presence in Vietnam in the form of a representative office.

Health-Related Services: U.S. operators may provide services through the establishment of 100 percent U.S.-owned operations, joint ventures with Vietnamese partners or through business cooperation contracts. The minimum investment capital is $20 million for a hospital, $2 million for a polyclinic, and $1 million for a specialty unit.

Tourism and Travel-Related Services: U.S. companies may establish a commercial presence to provide hotel and restaurant services, provided that this is done in conjunction with investment for the construction of a hotel. The commercial presence may take the form of a business cooperation contract, a joint venture with Vietnamese partners, or a company with 100 percent U.S. equity investment.

There are limitations with respect to travel agencies and tour operators. U.S. companies supplying these services may establish a commercial presence only through a joint venture with Vietnamese partners and can initially only contribute 49 percent of the capital. Three years after entry-into-force of the BTA, 51 percent participation will be allowed, and all limitations will be abolished after five years. Tourist guides in joint ventures must be Vietnamese citizens. Service supplying companies with U.S.-invested capital may only supply inbound service.

INVESTMENT BARRIERS

At present, the government of Vietnam maintains an extensive investment licensing process, which is characterized by stringent and time consuming requirements that are frequently used to protect domestic interests, limit competition, and allocate foreign investment rights among various countries. Foreign businesses are permitted to remit profits, share revenues from joint ventures, incomes from services and technology transfers, legally owned capital, and properties in hard currency. Foreigners are also allowed to remit abroad 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 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 treatment of 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 questionable.

In addition, Vietnam is obligated under the BTA gradually 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. Vietnam currently imposes a number of performance requirements with respect to the establishment of an investment and/or the receipt of a benefit or incentive. Vietnam retains restrictions on foreign shareholding in Vietnamese companies, although the ratio has been raised from twenty to thirty percent. In March 2003, the government issued Decree 27 amending the Law on Foreign Investment, removing trade balancing requirements and foreign exchange controls. In April, the government issued a decision to reduce the foreign exchange surrender requirement to 0 percent.

Decree 27 also now allows foreign investors to recruit Vietnamese workers directly, without having to go through labor recruitment agencies. However, in September, Vietnam issued Decree 105, which provides that all enterprises operating in Vietnam may only employ foreign nationals at the lesser of 1) a maximum rate of 3 percent of their total work force or 2) 50 persons. In response to complaints from the foreign business community, the government has stated that it will issue legislation clarifying the decree and providing exemptions for certain sectors and types of employment.

In the BTA, Vietnam committed to gradually shift to an investment registration regime for most sectors. According to Decree 27, the following types of investment are no longer subject to investment licensing: investment projects that export eighty percent of products; investments in "encouraged" or "specially encouraged" projects located in industrial zones (with some exceptions); and investment in the manufacturing sector with a value of up to $5 million in investment capital.

ELECTRONIC COMMERCE

To date, electronic commerce has not made much progress 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. However, recent developments to facilitate the growth of electronic commerce in Vietnam include legal acceptance of e-signatures and implementation of the electronic inter-bank transaction system. The number of online transactions has been increasing. The Ministry of Trade has the lead in drafting a new ordinance on electronic commerce, which is expected to come into effect in September 2004.

The government of Vietnam continues to attempt to keep close control on all websites established in Vietnam. In October 2002, the government of Vietnam passed a new regulation on the establishment and modification of websites. The regulation requires domestic and foreign agencies, organizations, and enterprises to obtain a license from the Ministry of Culture and Information before establishing new websites. The Ministry then has 30 days to make a decision on granting the license. The regulation also requires diplomatic and other foreign entities to obtain written approval from the Ministry of Foreign Affairs (MFA) before requesting a license from MOCI. Vietnam may also require organizations to request permission from MOCI before making changes to the content of their existing websites based on licensing requirements in the regulation.

OTHER BARRIERS

U.S., other foreign, and domestic firms have identified corruption in Vietnam in all phases of business operations as an obstacle to their business activities. Vietnam scored a 2.6 out of a possible high score of 10 points on Transparency International's Corruption Perception Index. In large part due to a lack of transparency, accountability, and media freedom, widespread official corruption and inefficient bureaucracy remain serious problems that even the Communist Party of Vietnam and the government of Vietnam admit they must address on an urgent basis. Competition among government agencies for control over business and investments has created a confusion of overlapping jurisdictions and bureaucratic procedures and approvals, which in turn create opportunities for corruption. Low pay for government officials and woefully inadequate systems for holding officials accountable for their actions compound the problems. Implementation of the government of Vietnam's public administration reform program, developed with the assistance of the World Bank, as well as Vietnam's obligations under the transparency provisions of the BTA promise some improvement in the situation in the medium to long term, but it appears unlikely there will be much improvement in the near term.

Vietnam maintains a policy of bias in favor of domestic-market oriented industries, particularly those dominated by state-owned enterprises. Although all registered firms, regardless of ownership, can engage legally in foreign trade, barriers exist that discourage trading by non-state enterprises. For example, stringent regulatory requirements demanded by ministries prevent private firms from exporting rice or importing fertilizer. Also, monopolies in production result in monopolies in trading, as in the case of coal. The tariff structure also favors domestic industries, particularly those dominated by state-owned enterprises. Most lower tariffs are on items predominantly used by those enterprises as inputs.

In April 2003, the United States and Vietnam concluded a textile trade agreement. The textile agreement assists U.S. domestic manufacturers by including Vietnam within the global textile quota regime and helps our importers by providing certainty and avoiding the unpredictability of frequent, random, unilateral limits. This agreement also contains a labor provision. Both parties reaffirm their commitments as members of the ILO and also indicate their support for implementation of codes of corporate social responsibility as one way of improving working conditions in the textile sector. The agreement also calls for a review of progress on the goal of improving working conditions in the textile sector through consultations between the U.S. Department of Labor and the Vietnamese Ministry of Labor, Invalids, and Social Affairs.