EUROPEAN UNION

TRADE SUMMARY

The U.S. goods trade deficit with the European Union (EU) was $93.4 billion in 2008, a decrease of $13.8 billion from $107.2 billion in 2007. U.S. goods exports in 2008 were $274.5 billion, up 11.0 percent from the previous year. Corresponding U.S. imports from the EU were $367.9 billion, up 3.8 percent. EU countries, together, would rank as the largest export market for the United States in 2008.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to the EU were $179.2 billion in 2007 (latest data available), and U.S. imports were $133.1 billion. Sales of services in the EU by majority U.S.-owned affiliates were $402.5 billion in 2006 (latest data available), while sales of services in the United States by majority EU-owned firms were $336.0 billion.

The stock of U.S. foreign direct investment (FDI) in the EU was $1.4 trillion in 2007 (latest data available), up from $1.2 trillion in 2006. U.S. FDI in the EU is concentrated largely in the nonbank holding companies, finance/insurance, and manufacturing sectors.

OVERVIEW

The U.S. economic relationship with the EU is the largest and most complex in the world. The enormous volume of transatlantic trade and investment promotes economic prosperity on both sides of the Atlantic, and the United States and the EU continue to pursue initiatives to create new opportunities for transatlantic commerce. At their April 2007 Summit, U.S. and EU leaders launched the Framework for Advancing Transatlantic Economic Integration (Framework), with the goal of fostering cooperation and reducing trade and investment barriers through a multi-year work program in such areas as regulatory cooperation, intellectual property rights, investment, secure trade, financial markets, and innovation. The Transatlantic Economic Council, a senior-level group of U.S. and EU officials, was tasked with overseeing the implementation of the Framework, with input from the Transatlantic Business Dialogue, the Transatlantic Consumers Dialogue, and the Transatlantic Legislators Dialogue.

Despite the generally positive character of the U.S.-EU trade and investment relationship, U.S. exporters and investors in some sectors face chronic barriers to entering or expanding their presence in the EU market. A number of these barriers have been highlighted in this report for many years, persisting despite repeated efforts to resolve them through bilateral consultations or, in some cases, the dispute settlement provisions of the WTO.

Several EU trade restrictions have received significant attention from the U.S. Government in recent years. Barriers to access for key U.S. agricultural exports continue to be a source of particular frustration. Even where EU agricultural tariff barriers are relatively low, U.S. exports of commodities such as beef, poultry, soybeans, pork, and rice have been restricted or excluded altogether due to EU nontariff barriers or regulatory approaches that do not reflect science-based decision making or a sound assessment of actual risks to consumers or the environment. The United States continues to be concerned about EU and Member State measures that subsidize the development, production, and marketing of large civil aircraft. In addition, certain EU Member State policies governing pharmaceuticals and health care products are generating concerns related both to market access and to healthcare innovation. This year's report also outlines concerns of U.S. exporters with respect to a number of EU policies that could disrupt trade in critical sectors, such as the new EU chemicals regulation.

INDUSTRIAL PRODUCTS

WTO Information Technology Agreement

The United States continues to raise serious concerns about EU duties on several high-technology products covered by the WTO Information Technology Agreement: LCD computer monitors, set top boxes with a communication function, and certain multifunction digital machines (*i.e.,* devices that can scan/print/copy/fax). After numerous discussions with the EU in both bilateral and multilateral settings, on May 28, 2008, the United States filed a request for consultations under WTO dispute settlement procedures. Japan and Chinese Taipei also requested consultations on May 28 and June 12, 2008, respectively. The United States and the EU held formal consultations in June and July, but failed to resolve the dispute. On August 18 the United States, Japan, and Chinese Taipei made a joint request for the establishment of a dispute settlement panel to determine whether the EU is acting consistent with its WTO obligations. On September 23, the WTO Dispute Settlement Body agreed to establish such a panel and dispute settlement proceedings are ongoing.

Standards and Regulatory Barriers

As the use of traditional trade barriers such as tariffs declines, U.S. exporters of manufactured and agricultural products increasingly view EU regulatory measures as impediments to market access. U.S. firms frequently cite inadequate transparency in the development and implementation of EU regulations, insufficient economic and scientific analysis to support good regulatory decisions, and a lack of meaningful opportunity for non-EU stakeholders to provide input on draft EU regulations and standards. In particular, many U.S. exporters view the EU's growing use of what it considers the "precautionary principle" to restrict or prohibit trade in certain products, in the absence of a scientific basis for doing so, as a pretext for market protection.

Given the extensive U.S.-EU economic relationship, EU standards activities are of considerable importance to U.S. exporters. Standards-related problems continue to impede U.S. exports. These problems include a general inability of U.S. stakeholders to participate in the development of EU standards and difficulty meeting certain EU standards that are design-based, rather than performance-based.

Chemicals

While supportive of the EU's objectives of protecting human health and the environment, the United States has concerns with the EU's new chemicals regulation, REACH (Registration, Evaluation, Authorisation and Restriction of Chemical substances), which entered into force June 1, 2007. REACH impacts virtually every industrial sector, from automobiles to textiles, because it regulates chemicals on their own, in preparations, and in products. It imposes extensive registration and testing/data requirements on tens of thousands of chemicals, extends costly and burdensome requirements to downstream users of chemicals, and could lead to premature/unnecessary substitution of many chemicals. REACH will also subject certain chemicals to an authorization process. Under that process, those chemicals may not be placed on the EU market, except as authorized for specific uses by the new European Chemicals Agency (ECHA). It will have significant impacts on U.S. manufacturing exports, especially for small- and medium-sized enterprises (SMEs), and could lead companies to shift some production from the United States to the EU.

Specific trade concerns with REACH include, but are not limited to: (1) likelihood for differential enforcement of REACH across the Member States; (2) continued uncertainty regarding the scope and

applicability of the provisions relating to articles (*i.e.*, products); (3) differential treatment with respect to "phase-in substances," particularly the substances contained in imported cosmetic products; (4) requiring registration of reacted monomers in polymers; (5) potential chilling effect on commerce of having a substance placed on the candidate list; (6) transparency issues in the development of the REACH Implementation Projects; (7) protection of business proprietary information in the supply chain and the Substance Information Exchange Fora (SIEFs); (8) operation of, and potential trade ramifications caused by, the Only Representative provision; and (9) high costs and burdens imposed by the regulation, particularly for SMEs.

For example, the candidate list identifies substances that are to be considered for authorization and related restrictions. Substances are nominated by Member States, Competent Authorities or ECHA. Nomination may be made whether or not the substance poses a risk in particular concentrations or for particular end uses and channels of exposure, and without considering information on the risks to consumers of using an alternative substance or not using an alternative if one does not exist. Many companies believe the candidate list will be used as a "black list," causing companies to discontinue use of substances on the list. If purchasers demand products free of candidate list substances, suppliers may be obliged to undertake costly reformulations despite the lack of risk or exposure. Moreover, such a change could result in the use of substances for new uses where information may not yet be available or risks understood.

Another example is the requirement for manufacturers and importers of polymers to register reacted monomers in many circumstances. EU polymer manufacturers are working with those monomers, and thus there is a clear opportunity for occupational and environmental exposure in the EU. But there does not appear to be a scientific basis for importers of polymers to register reacted monomers—those monomers no longer exist as individual substances in polymers and are not available for exposure. Besides the unnecessary costs of collecting information on substances that do not create any risk of exposure in the EU, industry is concerned that the requirement may also force these polymer importers to disclose confidential business information.

Bilaterally, as well as at the WTO Technical Barriers to Trade Committee, the United States will continue to seek to have such concerns addressed. These concerns have been echoed by a number of other trading partners as well.

Cosmetic Products

The EU's cosmetic products directive calls for an EU-wide ban on animal testing within the EU for cosmetic products and an EU-wide ban on the marketing or sale of cosmetic products that have been tested on animals, whether such testing has occurred inside or outside the EU. This will prohibit the sale in the EU of U.S. cosmetic products tested on animals as of 2009 or 2013 (depending on the type of test), or earlier if the EU has approved an alternative testing method. The bans will go into effect in 2009 and 2013 whether or not there are validated non-animal tests by these dates.

To minimize possible trade disruption, the United States and the European Commission have embarked on a joint project to develop harmonized, alternative, non-animal testing methods. The project involves cooperation between the U.S. Interagency Coordinating Committee on the Validation of Alternative Methods and the European Center for the Validation of Alternative Methods (ECVAM). The aim is to develop agreed alternative testing methods that would be submitted to the OECD process for international validation. The validation of alternative methods is a long and expensive process, taking an average of seven years. The EC is actively encouraging ECVAM to pursue alternative methods in the near term.

Electrical and electronic equipment

In January 2003, the European Union adopted two directives in an effort to address environmental concerns related to the growing volume of waste electrical and electronic equipment. The Waste Electrical and Electronic Equipment (WEEE) Directive focuses on the collection and recycling of electrical and electronic equipment waste. The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS) Directive addresses restrictions on the use of certain substances in electrical and electronic equipment, such as lead, mercury, cadmium, and certain flame-retardants.

Under the WEEE Directive, as of August 2005, producers are held individually responsible for financing the collection, treatment, and recycling of the waste arising from their new products. Producers have the choice of managing their waste on an individual basis or participating in a collective scheme. Waste from old products is the collective responsibility of existing producers based on their market share. The WEEE Directive required that by December 31, 2006, Member States ensure a target of at least four kilograms of electrical and electronic equipment per inhabitant per year is being collected from private households. The policy is intended to create an incentive for companies to design more environment friendly products.

Under the RoHS Directive, as of July 1, 2006, the placing on the EU market of electrical and electronic equipment containing lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBBs), and polybrominated diphenyl ethers (PDBEs) has been prohibited, with some limited exemptions. A European Commission Decision, published on August 18, 2005, established maximum concentration values of 0.1 percent by weight in homogeneous materials for lead, mercury, hexavalent chromium, PBB, and PDBE and 0.01 percent by weight in homogeneous materials for cadmium.

Some U.S. companies seeking to comply with the RoHS Directive claim to face significant commercial uncertainties. Firms assert that they lack sufficient, clear, and legally binding guidance from the EU on the product scope of the RoHS Directive and, in cases where technically viable alternatives do not exist, businesses face a lengthy, uncertain, and nontransparent exemption process. The European Commission will consider RoHS exemption requests on an ongoing basis, and will be regularly reviewing the need for existing exemptions. Some exporters claim that the uncertainty about RoHS provisions is having an adverse impact on companies, as they must make practical design, production, and commercial decisions without adequate information.

Increasing the uncertainty for U.S. manufacturers is the fact that enforcement of RoHS is being managed at the Member State level. In the absence of a common approach to approval and established EU-wide standards and test methods, a product may be deemed compliant in one country and noncompliant in another.

Given the substantial impacts of RoHS substance bans on international trade, the United States has urged the European Commission to ensure that sufficiently detailed guidance is provided in order to give companies seeking to comply with RoHS commercial certainty. The United States has also urged the European Commission to make the exemption process more efficient and transparent so that companies can have definitive answers more promptly on whether and how the directive will apply to their products. It has also urged moving towards greater harmonization of approaches among Member States in the implementation and enforcement of RoHS and WEEE.

Energy-Using Products

The EU framework directive promoting ecological design for energy-using products entered into force on August 11, 2005. As of October 2008, Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, the Netherlands, Romania, Slovakia, Spain, Sweden, and the UK had reported to the European Commission full or partial transposition of the directive into law. Through this directive, the EU means to regulate the integration of energy efficiency and other environmental considerations at the design phase of a product. Once in place, design requirements will become legally binding for all products sold in the EU. The legislation commits the European Commission to adopt "implementing measures," which will be developed after completion of a series of technical studies covering various products, including lighting, office equipment, heating equipment, domestic appliances, air conditioning, consumer electronics, and energy losses from standby modes. In December 2008, the Commission adopted and published the first implementing measure on standby modes. The directive sets out requirements for CE marking (declaration by the manufacturer that the product meets the appropriate provisions of the relevant legislation implementing the directive) for the items covered by implementing measures. The impact of the measures on SMEs in particular will be considerable because of the need for product life-cycle analysis. There is concern about adverse impacts on design flexibility and new product development and introduction, as well as increased administrative burdens.

Lawnmowers

The Outdoor Power Equipment Industry Association has objected to a French Ministry of Agriculture market surveillance action to block imports of side-discharge ride-on lawnmowers that are not equipped with a "skirt," a requirement France asserts is designed to protect bystanders from inadvertently inserting their limbs into the moving parts of the mower's transmission. This requirement has negatively impacted an estimated $350 million of U.S. exports of lawnmowers to France and has not been notified to the WTO.

According to industry, there are several problems with the French requirement. First, the requirement differs from the requirements mandated by other EU Member States. In addition, industry claims that these unique requirements would impose unnecessary costs on U.S. manufacturers, noting that the accident data cited by the Ministry does not support the need for the requirement, and that the requirement could actually prove dangerous by introducing new safety risks. Further, the French requirement appears inconsistent with the EU Machinery Directive, which permits lawnmowers to circulate in the EU with the CE mark if they conform to the relevant European Committee for Standardization (CEN) standards (EN 386). France has not implemented the EU Machinery Directive and, consequently, the European Garden Machinery Manufacturers Federation filed an infringement complaint with the European Commission. The Commission's consideration of the industry petition is pending.

Pharmaceutical Products

The United States has concerns regarding some EU and Member State policies affecting market access for pharmaceutical products. The United States has raised concerns about problems with procedural non-transparency and lack of stakeholder access to pricing and reimbursement processes. The United States is following with interest European deliberations on steps to increase the availability of pharmaceutical product information to consumers, as a means of promoting consumer awareness and access to medicines. The United States continues to be engaged with the EU and individual Member States on these matters.

The U.S. pharmaceutical industry has raised concerns with pharmaceutical market access practices, government pricing, and reimbursement systems in the Czech Republic, Finland, France, Germany, Hungary, Italy, Poland, Slovenia, and Sweden.

Uranium

The United States is concerned that EU policies may unjustifiably restrict the import into the EU of enriched uranium and downstream goods such as nuclear fuel, nuclear rods, and assemblies. Since 1992, the EU has maintained strict quantitative restrictions on imports of enriched uranium to protect its domestic producers. Since 1994, these restrictions have been applied in accordance with the terms of the Corfu Declaration, a joint European Council and European Commission policy statement that has never been made public or notified to the WTO. The Corfu Declaration appears to impose explicit quotas on imports of enriched uranium, limiting imports to only about 20 percent of the European market. The United States believes that Russia is the major supplier of imports under this regime. The United States has raised concerns about the justification for the import quotas and the nontransparent nature of the Corfu Declaration and its application. Furthermore, the United States will closely monitor whether EU agreements under negotiation with Russia in the nuclear area alter EU application of the Declaration and follow WTO rules.

AGRICULTURAL AND FOOD PRODUCTS

Biotechnology

Since 1998, the European Union's Council of Ministers has not assembled a qualified majority of EU Member States in support of the approval of any agricultural biotechnology food, livestock feed, or seed product, even though the EU's own scientific authority has offered a positive safety assessment for every product it has reviewed. In addition, while the European Commission has granted approval for a limited number of biotechnology products under its own legislative authority, there have been no approvals of biotechnology products for cultivation within the EU since 1998. The EU continues to lack a biotechnology approval process that is predictable and that is driven by scientific, rather than political, considerations.

In May 2003, the United States initiated a WTO dispute settlement process aimed at addressing the EU's *de facto* moratorium on approvals of biotechnology products and the existence of individual Member State marketing prohibitions on biotechnology products that had previously been approved by the EU. The WTO panel issued its report on September 29, 2006, finding that EU and Member State measures were inconsistent with WTO rules. The WTO Dispute Settlement Body (DSB) adopted the report on November 21, 2006. The Parties agreed on a one-year "reasonable period of time" (RPT), expiring on November 21, 2007, for the European Union to come into compliance with the DSB's recommendations and rulings; the deadline was subsequently extended to January 11, 2008. When the RPT expired in January 2008, the United States took the first steps toward a resumption of dispute settlement procedures, submitting a request to the WTO for authority to suspend concessions. Under an agreement with the EU, however, proceedings on the U.S. request were suspended to provide the EU an opportunity to demonstrate meaningful progress on the approval of biotechnology products. U.S. and European Commission officials held several rounds of consultations during 2008 on the EU's biotechnology application backlog.

Even when the EU does approve a particular biotechnology product, EU biotechnology legislation permits individual Member States to invoke their own national bans under a so-called "safeguard" clause. The WTO panel found nine of those Members State bans to be WTO-inconsistent, and in the years since

the initiation of the WTO dispute, EU Member States have continued to adopt additional bans. In June 2005, EU environment ministers rejected, by a qualified majority, eight Commission proposals to lift safeguard measures imposed by five Member States against biotechnology maize. In September 2007, the European Court of Justice upheld an earlier decision, which Austria had appealed, against Upper Austria's effective ban on growing biotechnology crops, on the grounds that there was no scientific evidence to support the ban. On December 18, 2006, the European Commission presented a proposal to lift import and cultivation bans in Austria, and the Council rejected this measure by qualified majority. On May 7, 2008, the Commission ordered Austria to lift the import ban on the varieties MON810 and T25, after Austria had failed to obtain a qualified Council majority against this decision. On February 9, 2008, France imposed a ban on cultivation of MON810, invoking the safeguard clause, and announced that its ban would remain in place contingent on the outcome of the EU process for re-approving MON 810 that had been under way since April 2007. In February 2009, an EU regulatory committee failed to mount a qualified majority for or against a Commission proposal that France and Greece remove their bans on the cultivation of MON810; the decision on whether the French and Greek bans may remain in place will next be considered by the European Council. In early March, a qualified majority of the European Council rejected a Commission proposal to require Austria and Hungary to lift their bans on cultivation of MON810.

Continuing delays in the EU's biotechnology product approval process exacerbate the already substantial disparity between U.S. and EU approvals, creating further trade problems. Under the EU's implementation of its biotechnology legislation, the presence in U.S. conventional crop shipments of even minute traces of biotechnology crops that have been approved in the United States, but not in the EU, can make the conventional crops unsellable in the EU.

Co-existence: In accordance with the EU guidance document on the co-existence of biotechnology and conventional crops, which recommends a regional approach to co-existence issues, a number of Member States (including France, Spain, Denmark, Germany, Italy, the Netherlands, and Austria) have drafted new co-existence laws or have chosen to provide guidance to industry. While the decrees and laws vary substantially from country to country, they generally require extensive control, monitoring, and reporting of biotechnology crop plantings. The strict and cumbersome co-existence regulations further discourage the adoption of biotechnology crops within the EU.

Traceability and Labeling: EC Regulations 1829/2003 and 1830/2003, which entered into force in April 2004, include mandatory traceability and labeling for all biotechnology and downstream products. The traceability rules include a requirement that information that a product contains, or is produced from, biotechnology products must be transmitted to operators throughout the supply chain. Operators must also have in place a standardized system to maintain information about biotechnology products and to identify the operator by whom and to whom it was transferred for a period of five years from each transaction. The requirements include an obligation to label food products containing or produced from biotechnology crops.

In response to these burdensome directives, some U.S. food producers have reformulated their products to eliminate the use of biotechnology products. Food producers have expressed concern about needing to find expensive or limited alternatives. The directives have a negative impact on a wide range of U.S. exports, including processed food exports. A spring 2006 European Commission report on the implementation of the traceability and labeling directive was largely inconclusive, because of the limited number of products containing biotechnology material that had entered the EU market.

Member State Measures

Austria: The Austrian Biotechnology Law allows, in principle, the planting of biotechnology crops, but Austria has adopted a national ban on MON810, the only biotechnology product currently approved for planting in the EU. In addition, in the event Austria allowed a biotechnology product to be planted, strict and complicated rules on liability and compensation would present a further barrier. All nine Austrian provinces have passed biotechnology bills to protect their organic and small-scale agricultural sectors. Under current Austrian rules, biotechnology events that have not been approved by the EU must not be detectable in conventional seeds ("zero tolerance"), but approved events may be present in conventional and organic seeds up to 0.1 percent. All major Austrian supermarket chains have banned biotechnology products from their shelves, even those labeled according to EC regulations.

Cyprus: Cyprus has adopted a number of restrictive biotechnology policies. The government has consistently voted against applications for new bioengineered crops considered by the EU. In 2007, the Cypriot House of Representatives passed a law (the first of its kind in the EU) that requires local stores to place all bioengineered products (defined as products with a biotechnology content above 0.9 percent) on separate shelves, under a sign clearly declaring them as containing genetically modified organisms, or "GMOs." Former President Papadopoulos referred the legislation to the Cypriot Supreme Court for a ruling on procedural grounds. In February 2008, the Supreme Court supported the President's procedural objection, and the bill never entered into force.

The government has declared as "GMO-free" area under the Natura 2000 project (corresponding to 11.5 percent of the land area of the island). Local environmentalists and others have persistently pressured the government of Cyprus to declare all of Cyprus "GMO-free." Largely as a result of this pressure, the government in October 2008 issued a tender for a study aimed at establishing that co-existence between bioengineered and conventional crops is impossible in Cyprus. Application requirements for new biotechnology crops are also stricter in Cyprus than in other EU countries, while permits for such crops must be renewed every five years. Biotechnology products already licensed in the EU may circulate in Cyprus freely, but biotechnology organisms must be separately approved in Cyprus, even if they are already licensed in other EU countries. In January 2008, the European Commission asked Cyprus to repeal 2007 legislation banning the importation and sale of biofuel products made from biotechnology plants. So far, Cyprus has failed to comply, risking EU sanctions of around 10 million euros annually.

France: Under the lead of the Ministry of Environment, the government of France has taken a number of steps that have impeded the trade and development of agricultural biotechnology products. As noted above, France banned the cultivation of MON810 in January 2008, following a scientific review by a new interim biotechnology authority. Although this review did not raise any health or safety concerns, the government invoked the "safeguard" clause, freezing cultivation of MON810, which had grown from 500 hectares in 2005 to 22,000 hectares in 2007. The European Food Safety Authority (EFSA) subsequently found, in October 2008, that there was no science to justify the safeguard measure.

Germany: In February 2008, the German government passed an amendment to the biotechnology law of March 2006 that essentially keeps Germany's burdensome biotechnology requirements in place. These requirements include 100 percent accessibility to field registrations; 100 percent farmer liability; plant distance requirements of 150 meters between conventional and bioengineered crops, and 300 meters between bioengineered crops and organic fields; and giving German Laender (states) the option of implementing even more burdensome measures, including distance rules for "nature protection" purposes. The current biotechnology regulations limit the number of bioengineered plantings.

Greece: Greece continues to vote against bioengineered varieties that even EFSA has concluded are safe and despite support from a large number of Greek farmers and Greece's agricultural science community, which favor possible field tests in Greece. Ministerial decisions for the 0.5 percent threshold on adventitious presence of transgenic material in corn seed shipments from the United States and "no presence" of such material in cottonseeds for planting have remained in force since 2002. In September 2008, the Greek Ministry of Rural Development and Food announced more burdensome controls on genetically engineered organisms in grain and feed imports originating in third countries, including EU Member States Romania and Bulgaria. Greek customs authorities require 100 percent sampling and testing of agricultural shipments. Importers have protested these measures, characterizing them as nontariff barriers that do not comply with EU free trade regulations.

Hungary: Extensive biotechnology research is taking place in Hungary, and the Hungarian government has allowed field tests for herbicide-resistant corn, wheat, and other crops. At the same time, Hungary's moratorium on corn varieties containing MON810 has remained in effect since 2005. The Hungarian measure bans the production, use, distribution, and import of hybrids derived from MON810 lines. Additionally, Hungary's 2007 "co-existence regulation," with its restrictive rules, imposes a further barrier to the commercial use of any biotechnology plant variety. Hungary has not yet prepared national application rules for the EU biotechnology regulations on food and feed and traceability and labeling.

Italy: In March 2006, the Italian high court ruled that co-existence legislation enacted by the Italian Parliament was unconstitutional and that Italy's regions are responsible for the development of co-existence legislation. Although several regions, particularly those representing the major corn growing areas, have worked to draft regulations that will allow the introduction of biotechnology crops, there remains concern that the legislation enacted in many regions will discourage biotechnology crop planting.

Lithuania: Currently no biotechnology crops are grown in Lithuania and no biotechnology field trials have been conducted. In 2006, the German company BASF applied for a permit to field-test transgenic rape seed in Lithuania. In April 2007, the Ministry of the Environment decided not to issue the permit. The Government of Lithuania noted in its decision that it took into account public opinion and the opinions of the Ministries of Agriculture, Environment, and Health. In 2007, the Lithuanian government also rejected Monsanto's application for biotechnology corn trials.

Poland: In 2008, the government of Poland postponed until the end of 2012 the implementation of a ban on the use of biotechnology crops in animal feed. The ban was originally to come into effect August 1, 2008, but was opposed by a coalition of feed manufacturers, meat producers, and farmers. Nevertheless, Poland continues to oppose EU approval of new bioengineered products. In response to pressure from the European Commission, as well as a ruling by the European Court of Justice, Poland is updating a law that had made selling biotechnology seeds illegal. The initial draft of the new law gives local officials the right to decide on biotechnology cultivation, however, and it contains potential criminal penalties for unauthorized planting. The draft would also create obstacles to genetic research, including for animal clones.

Portugal: Portugal was one of the first EU countries to implement a co-existence regulation and to establish rules for declaring biotechnology-free zones. These regulations restrain the expansion of biotechnology corn by implementing isolation zones between biotechnology, traditional, and organic corn production, and allow municipalities to declare biotechnology-free zones that restrict farmer production. Since many farmers own small properties and reside in some of the municipalities considering this regulation, it is difficult for them to meet these zoning requirements. Biotechnology crop production has slowly increased, however, reaching 4,700 hectares in 2008, but growth in production will be restrained by these regulations.

Romania: Romania's accession to the EU has resulted in a reversal of the country's biotechnology policy. In 2006, Romania was the largest planter of biotechnology soybeans in Europe. When it joined the EU in 2007, however, Romania banned all biotechnology soybean cultivation.

Beef

Since the 1980s, the EU has banned the use of hormonal substances that promote growth in food-producing animals. Because the use of growth-promoting hormones is approved by the U.S. Food and Drug Administration, and is common in U.S. beef cattle production, the EU ban has prohibited the export to the EU of most beef from cattle raised in the United States. The United States launched a formal WTO dispute settlement proceeding in May 1996 challenging the EU ban. In 1998, the WTO ruled that the EU's ban was inconsistent with the WTO SPS Agreement because it was not based on a scientific risk assessment. In 1999, the WTO authorized the United States to impose additional duties on EU products with an annual trade value of $116.8 million. At present, the United States continues to apply 100 percent duties on imports from the EU valued at $116.8 million.

In September 2003, the EU announced the entry into force of an amendment (EC Directive 2003/74) to its hormone ban that recodified the permanent ban on the use of the hormone *estradiol*-17â for growth-promotion purposes, and established provisional bans on the five other growth promoting hormones included in the original EU legislation. The EU argued that the implementation of this new directive brought it into compliance with the earlier WTO ruling and that U.S. sanctions were no longer justified. The United States maintained that the revised EU measure could not be considered compliant with the WTO's recommendations and rulings in the earlier hormones dispute, and that the additional U.S. import duties therefore remained authorized.

In November 2004, the EU requested WTO consultations with the United States on this matter. A WTO panel issued its report in this dispute in March 2008. The panel found that the United States had committed two procedural errors by continuing its sanctions after the EU claimed compliance, but that the EU's ban remained inconsistent with the requirements of the SPS Agreement. The EU filed an appeal in May 2008 and the United States filed a cross-appeal on the panel's procedural findings. The Appellate Body issued its report on October 16, 2008, reversing the panel's procedural findings in favor of the United States and concluding that the U.S. import duties may remain in place unless and until the EU demonstrates compliance. The Appellate Body also reversed certain of the panel's findings regarding the consistency of the EU's revised ban with the WTO SPS Agreement, ultimately leaving unanswered the question of whether the revisions to the ban have brought the EU into compliance.

On December 22, 2008, the EU submitted a request for formal WTO consultations with the United States on the issue of whether the recodified 2003 hormone ban brought the EU into compliance with its obligations under the SPS Agreement. The United States and the EU held consultations at the WTO in February 2009.

During 2008, the United States and the European Commission also continued longstanding talks on a possible interim settlement of the beef hormone issue, under which the United States would lift the additional duties on EU imports in exchange for additional access to the EU market for so-called "hormone-free" beef. In November, following the Commission's failure for several months to negotiate a specific amount of new market access for hormone-free beef, the United States initiated a formal review of the beef hormones import retaliation list under section 301 of the Trade Act, collecting comments from the public on the possible revision of the list, which had not changed since 1999. On January 15, 2009, the U.S. Trade Representative issued a notice in the *Federal Register* announcing that additional duties would be collected on a modified list of EU imports beginning on March 23, 2009. Negotiations between

the United States and the EU on a possible interim settlement resumed in February. In mid-March, the U.S. Trade Representative announced that implementation of the trade action announced on January 15 would be delayed by one month, to April 23, to enhance the prospects for successful negotiations.

Poultry

In 1997, the EU adopted a prohibition on the import of poultry products that have been processed with chemical treatments designed to reduce microbial surface contamination. The EU has further prohibited the marketing of poultry as "poultry meat" if it has been processed with these pathogen reduction treatments (PRTs). In late 2002, the U.S. Government requested that the EU approve the use in the processing of poultry intended for the EU market of four PRTs that are commonly used by U.S. poultry processors: chlorine dioxide, acidified sodium chlorite, trisodium phosphate, and peroxyacids.

Between 1998 and 2008, various EU agencies issued scientific reports relating to PRT poultry, the cumulative conclusion of which is that the importation and consumption of poultry processed with PRTs poses no risk to human health. The United States therefore questions whether there is an adequate scientific basis for the EU ban on imports of poultry processed with PRTs.

In May 2008, the Commission, after years of delay, finally prepared a proposal that purported to approve the use of the four PRTs, subject to certain requirements, in the processing of poultry. These requirements, however, were highly trade restrictive, and did not appear to be based on science. The Commission submitted the proposal to the Standing Committee on the Food Chain and Animal Health (SCoFCAH) for consideration. In June, SCoFCAH overwhelmingly rejected the Commission proposal 26-0, with the United Kingdom abstaining. Soon after this vote, the European Parliament, in a vote of 526 to 27, with 11 abstentions, adopted a non-binding resolution that instructed the Commission not to submit the PRT proposal to the Council. On December 19, 2008, the European Agriculture and Fisheries Council rejected the Commission's proposal, also 26-0, with the United Kingdom abstaining.

On January 16, 2009, the United States requested consultations with the EU on whether the EU's failure to approve the four PRTs for which the United States had requested approval in 2002 was consistent with the EU's commitments under various WTO agreements, including the WTO SPS Agreement.

Member State Measures

Finland and Sweden: In their EU accession agreements in 1995, Sweden and Finland received derogations allowing them to enforce for an indefinite period stricter salmonella controls for food products and stricter border controls for live animals (quarantine) than those maintained by other EU Member States. Imports of fresh or frozen beef, pork, poultry, and eggs from other EU countries and third countries must be certified to be free from salmonella in accordance with Commission Regulation 1688/2005. These special certification requirements are burdensome to U.S. exporters.

Romania and Bulgaria: The EU has granted Romanian and Bulgarian domestic meat-processing facilities a transition period, ending in 2009, for the adoption of certain EU poultry and pork meat requirements. Imports from non-EU sources, such as the United States, however, must immediately comply with the EU requirements, which raises a serious concern. This change has nearly halted trade in what was previously the top U.S. agricultural export to Romania, frozen broiler chickens.

Wine

On March 10, 2006, the European Union and the United States signed an agreement on certain aspects of wine trade, the planned first part of a broader agreement to remove barriers to bilateral trade in wine. The agreement, which went into effect upon signature, is intended to eliminate the uncertainties caused by the EU's temporary, piecemeal derogations for current U.S. wine-making practices and by restrictions placed on U.S. wine labels, including the use of so-called "traditional terms" (terms used with certain other expressions, often geographical indications, to describe a wine's characteristics, such as "ruby" or "tawny"). The agreement did not provide for the automatic acceptance of new wine-making practices, nor did it include a permanent solution for the use of traditional terms, among other issues. It did, however, provide for additional negotiations with a view toward concluding one or more agreements to further facilitate trade in wine. These negotiations began in June 2006, and continued through 2008. Meanwhile, the United States is carefully monitoring compliance with the current agreement.

Bananas

In 2001 the EU reached separate understandings with the United States and Ecuador setting out the means for reaching a resolution to the long running dispute regarding trade in bananas. The 2001 understandings required that, by January 1, 2006, the EU put in place a tariff-only regime for bananas. The understandings further required the EU to seek waivers of its GATT Article I and XIII obligations in order to continue, temporarily, a modified banana import regime incorporating tariff-rate quotas and import licensing requirements. The Article I waiver, as finally granted by the WTO, required that the future tariff-only regime result in at least maintaining total market access for MFN banana suppliers.

On January 1, 2006, the EU instituted a new banana import regime which combined a 176 euro/metric ton MFN tariff level with a zero duty tariff-rate quota in amounts up to 775,000 metric tons for bananas originating in Africa, Pacific, and Caribbean countries with which the EU maintains a preferential trading relationship. In February and July 2007, Ecuador and the United States, respectively, requested the establishment of compliance panels (under Article 21.5 of the WTO Dispute Settlement Understanding), challenging the consistency of this regime with the EU's WTO obligations. A panel report in the U.S. proceeding was issued in May 2008, finding that the EU's regime was in violation of GATT Articles I and XIII. A panel report in the Ecuador proceeding found similarly, and in addition found that the MFN tariff being applied by the EU was in excess of the EU's bound commitments, and therefore in violation of GATT Article II. The EU appealed both reports. The Appellate Body issued its report on November 26, 2008, upholding the findings that the EU was in violation of GATT Articles I, II, and XIII.

The EU continues to seek a negotiated solution that will address trading partners' complaints about its banana import policies. The United States insists that the EU's import regime uphold the EU's multilateral commitment to put in place a WTO compatible structure that at least maintains total market access for non-preferential banana suppliers. While the United States does not directly export bananas to the EU, this is an issue of considerable importance to U.S. companies involved in the production, distribution, and marketing of bananas.

Animal By-Products

EC Regulation 1774/2002, which regulates the importation of animal by-products not fit for human consumption, went into force in May 2004. Despite extensive United States-EU technical discussions that addressed many problems, an estimated $100 million in U.S. animal by-product exports to the EU remain adversely affected to some degree by Regulation 1774/2002. The U.S. exports most affected by this regulation are dry pet food, tallow, other animal protein products, and some hides and skins. The

regulation's effect on products further downstream, such as certain *in vitro* diagnostic products that may use animal by-products, is unclear.

In 2007 and 2008, the European Commission approved several amendments to the regulation, addressing some of the problems it created. The most important amendments for U.S. exporters related to pet food. The Commission is considering major revisions of the regulation that could help resolve additional issues, including allowing increased market access for tallow, but it has not yet offered details on specific product coverage or timetables. The United States will continue to seek the elimination of remaining impediments to U.S. exports of animal by-products, particularly tallow for industrial use.

EU Enlargement

In anticipation of the accession of Romania and Bulgaria to the EU on January 1, 2007, the United States, in December 2006, entered into negotiations with the EU within the framework of GATT provisions relating to the expansion of customs unions. Upon their accessions, Romania and Bulgaria were required to change their tariff schedules to conform to the EU's common external tariff schedule, resulting in increased tariffs on certain agricultural and other products imported into Romania and Bulgaria from the United States and other countries. Under General Agreement on Tariffs and Trade 1994 (GATT 1994) Articles XXIV:6 and XXVIII, the United States is entitled to compensation from the EU to offset these tariff increases. The expansion of preexisting EU tariff-rate quotas (TRQs) to account for the addition of Romania and Bulgaria to the EU common market is another key element of the negotiations. In 2009, the United States will seek to conclude an appropriate bilateral compensation agreement with the EU and to ensure that its benefits are implemented as soon as possible.

Mycotoxins

EU regulations set maximum limits on mycotoxins for a variety of foodstuffs, including cereals, fruit, and nuts. In many cases, including for almonds and peanuts, the EU limits are lower than maximums set by the U.S. Food and Drug Administration. EU testing of imported wheat for vomitoxin and ochratoxin at ports of entry creates uncertainty, increases commercial risk, and is potentially disruptive to trade.

The United States contributed to the development within the Codex Alimentarius Commission of science-based international standards for aflatoxin total in almonds, hazelnuts and pistachios, which were adopted in the summer of 2008. The EU also supported the new international standards and is expected to increase its aflatoxin levels for nuts in the coming months to bring them in line with the newly adopted Codex levels.

A major concern for the United States remains the EU regulations with respect to the level of aflatoxin B1, which is one of the components of aflatoxin total. No international limit was developed for B1, but scientific data gathered over the past few years indicate that the actual ratio between aflatoxin B1 and aflatoxin total is much higher than 50 percent, as assumed in current EU legislation. The United States is concerned that, in its effort to comply with the 2008 Codex requirements, the EU might maintain a restrictive B1 limit.

In recent years, an increasing number of U.S. almond shipments have been rejected at EU ports because import controls had found excessive levels of aflatoxin. To address this problem, a voluntary aflatoxin sampling plan was implemented by the U.S. almond industry in coordination with the EU and USDA. The program has had positive results, and USDA and the U.S. industry are making progress toward formal EU recognition of U.S. origin testing and certification for aflatoxins for U.S. almonds.

Canned Fruit Subsidies

The new EU Common Market Organization for fruit and vegetables came into effect on January 1, 2008. Implementing rules, covering fresh and processed products, are designed to encourage the development of Producer Organizations as the main vehicle for crisis management and market promotion. Although export subsidies have been eliminated, processing aid subsidies are only gradually being phased out in favor of decoupled Single Farm Payments, limited by national envelopes. At the end of a five-year transitional period, the EU expects to "fully decouple" its support for the sector. Hidden subsidies remain an ongoing concern for the United States. The 1985 United States-EU Canned Fruit Agreement attempted to impose some discipline on EU fruit processing subsidies. Despite this agreement, EU growers and producers, particularly in the peach industry, continued to receive a range of assistance payments, including producer aid, market withdrawal subsidies, sugar export rebates, producer organization aid, and regional development assistance. The United States continues to monitor and review EU assistance in this sector, evaluating potential trade distorting effects.

Vitamins and Health Food Products

France: France transposed the EU's food supplement directives 2002/46/EC and 2006/37/EC by government decree on March 20, 2006. The scope of the government decree is broader than the directives, however, as it included plants and plant-based substances in addition to food supplements. The list of 147 plants and plant-based substances was issued separately. The maximum levels for vitamins and minerals in food supplements that France adopted in May 2006 have been criticized by U.S. industry as lacking a scientific basis and as too restrictive of trade. The Commission will propose maximum and minimum EU levels in early 2009.

Greece: In implementing the 2002 directive (2002/46/EC), Greece restricted the sale of protein-based meal replacement products to pharmacies and specialized stores, limiting the ability of U.S. companies to sell such products through direct sales.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Overview

The EU and its Member States support strong protection for intellectual property rights (IPR). In the EU-U.S. Action Strategy endorsed at the June 2006 United States-EU Summit, the United States and the EU committed to enforcing IPR in third countries, with each side further committing to enforce IPR at its border. In addition, the United States and the EU are working together to advance negotiations for an Anti-Counterfeiting Trade Agreement intended to set high-level standards for enforcement and international cooperation in the fight against IPR counterfeiting and piracy.

In 2006, the European Commission issued communications on strengthening the criminal law framework to combat intellectual property infringement, and undertook a renewed effort to introduce an EU-wide patent, known as a Community patent. Efforts to create a Community patent, however, appear to have stalled.

The United States has raised concerns regarding the IPR practices of the EU and its Member States both through the annual Special 301 review process and through WTO dispute settlement procedures. The United States continues to engage with the European Commission and individual Member States on these matters.

Patents

Despite the fact that patent filing costs have decreased in the EU, patent filing and maintenance fees in the EU and its Member States remain significantly higher than in other countries. Fees associated with the filing, issuance, and maintenance of a patent over its lifespan far exceed those in the United States.

Data Protection

EU Directive 2004/27/EC provides protection against unfair commercial use of test and other data submitted for marketing approval of pharmaceutical products. Most Member States provide this protection, although some of the new Member States may need to improve their levels of protection to meet EU standards, for example, with respect to the duration of the protection required by the EU.

Geographical Indications (GIs)

The United States has long had concerns about the EU's system for the protection of GIs. In a WTO dispute launched by the United States, a WTO panel found that the EU regulation on food-related GIs was inconsistent with EU obligations under the TRIPS Agreement and the General Agreement on Tariffs and Trade of 1994. In its report, the panel determined that the EU regulation impermissibly discriminated against non-EU products and persons, and agreed with the United States that the EU could not create broad exceptions to trademark rights guaranteed by the TRIPS Agreement. The panel's report was adopted by the WTO Dispute Settlement Body (DSB) on April 20, 2005. In response to the DSB's recommendations and rulings, the EU published an amended GI regulation, Council Regulation (EC) 510/06, in March 2006. The United States continues to have some concerns about this amended regulation and is carefully monitoring its application.

Member State Measures

The United States continues to have concerns about IPR protection and enforcement in several Member States, including Bulgaria, the Czech Republic, Greece, Hungary, Italy, Poland, Romania, Spain, and Sweden, among others. The United States will continue to monitor the adequacy and effectiveness of IPR protection and enforcement in these Member States, including through the annual Special 301 review process.

Bulgaria: U.S. industry reports growing IPR concerns in Bulgaria, particularly with respect to increased Internet piracy, decreased cooperation between Bulgarian IPR officials and the private sector, and difficulties obtaining information from Internet service providers (ISPs) to combat Internet piracy.

Czech Republic: Despite increased efforts by customs officials, the Czech Republic continues to struggle with significant piracy and counterfeiting in open-air markets along the border.

Greece: Piracy and counterfeiting in Greece continue to raise concerns. Enforcement has proven particularly problematic, and penalties for violators are usually not imposed at deterrent levels.

Hungary: Hungary's implementation of its IPR action plan and its IPR enforcement activities need improvement.

Italy: Street vendors continue openly to sell pirated and counterfeit goods. Deterrent-level sentences are rarely handed down for cases of IPR infringement. The judicial branch and law enforcement agencies

have recently instituted new training programs and senior government officials have urged stronger enforcement and sentencing, but these efforts have not yet resulted in significant changes.

Poland: Border enforcement became stronger with Poland's entry into the Schengen Zone, although markets selling pirated goods continue to flourish along the border with Germany. Internet piracy of movies and music continues to present a problem.

Romania: Although there has been a decrease in pirated optical discs sold by street vendors, piracy remains a problem, particularly on the Internet.

Spain: Internet downloading of copyrighted material continues to grow rapidly in Spain. With government encouragement, content provider companies and ISPs have discussed measures to discourage inappropriate Internet use, but so far without results.

Sweden: Internet piracy is a problem in Sweden, and the government's enforcement efforts have not been effective. During 2007 and 2008, the government took several potentially helpful steps to address the problem, but progress has been slow.

SERVICES BARRIERS

Telecommunications

Both the EU's WTO commitments covering telecommunications services and the EU's Common Regulatory Framework for Electronic Communications Networks and Services (Framework Directive) have encouraged liberalization and competition in the European telecommunications sector. All EU Member States made commitments in the WTO to provide market access and national treatment for voice telephony and data services. The Framework Directive imposes additional liberalization and harmonization requirements on Member States, and the Commission has taken action against Member States that have not implemented the Framework Directive. Implementation of these requirements has been uneven across Member States, however, and significant problems remain in many markets, including with the provisioning and pricing of unbundled local loops, line-sharing, co-location, and the provisioning of leased lines.

Member State Measures

Enforcement of existing telecommunications legislation by national regulatory authorities (NRAs) has been characterized by unnecessarily lengthy and cumbersome procedures in France, Italy, Austria, and Portugal, among others. The European Commission has also found that incumbents in Germany, Greece, Spain, Italy, Ireland, Austria, Finland, and Sweden have slowed the development of competition by systematically appealing their national regulators' decisions.

Austria: Austria has moved toward a more open and competitive telecommunications market and has implemented the relevant EU directives. The Austrian NRA carries out market reviews and imposes remedies where necessary, *e.g.*, in all wholesale markets found to be non-competitive. In some cases, however, the application of remedies is delayed or their effectiveness is questionable. Operators and the NRA are concerned the NRA lacks sufficient enforcement tools. Competing carriers continue to report that the incumbent fixed network operator tends to create new obstacles to local loop unbundling, delaying full competition.

The incumbent, Telekom Austria, is the market leader in fixed-line networks, mobile telephony, and Internet access (including broadband). A number of companies compete with Telekom Austria in the mobile telephony market, although recent takeovers have led to increased concentration in the mobile phone sector, and the number of mobile providers dropped from six in early 2006 to four in 2007. Consumer prices for fixed-line voice telephony, mobile communication, and broadband have declined, but pricing is nontransparent.

Finland: Finland has one of the most mature mobile markets in Europe, but fierce competition and a tough regulatory environment have created a difficult market for mobile operators. Mobile call charges in Finland continue to be the cheapest in Western Europe, although rates in Finland have risen slightly in recent years.

Finnish mobile phone operators have systematically appealed the significant market power decisions of the Finnish NRA. Several recent cases (*e.g.*, Elisa and Sonera), appeals for which have taken as long as three years to five years, underscore the high degree of regulatory uncertainty that operators currently face.

France: The French NRA, ARCEP, together with the French Competition Council, have asserted this year that the French retail mobile telephony market is not sufficiently competitive. France announced last year that it would implement a series of measures designed to increase Internet usage in France, including promotion of the development of mobile virtual network operators and preparations for the roll-out of a national fiber-to-the-home network. ARCEP has also recommended the implementation of a "best practice" that the operator already established in a building install the last increment of fiber on behalf of third-party operators. Full unbundling continues to be the most popular offer on the DSL high-speed wholesale market. In the first quarter of 2008, the number of unbundled accesses rose by 198,000.

Germany: Germany has made slow progress in introducing competition to some sectors of its telecommunications market. New entrants report they continue to face difficulties competing with the partially state-owned incumbent, Deutsche Telekom AG (DT), which retains a dominant position in a number of key services, including local loop and broadband connections. On the positive side, the passage of the Telecommunications Act in 2003, as well as subsequent amendments, have led to an increase in competition in the German market, enabling competitors to gain more than 20 percent of the local calling market and 51 percent of retail DSL connections.

In 2006, the German government amended the Telecommunications Act to boost customer protection rules, requiring more transparent pricing and billing, and to introduce liability limitations for service providers. The amended Telecommunications Act includes a provision to authorize the regulatory agency to grant "regulatory holidays" for services in new markets. Since that time, competitors have repeatedly expressed concerns that DT should not obtain a regulatory holiday with respect to the lucrative fiber optic network it is installing in order to provide triple-play services (digital telephone, television, and Internet services). The United States has raised concerns on this issue with the German government. In addition, the European Commission initiated infringement proceedings immediately after this provision of the amended Act entered into force.

One U.S. trade association representing competitive telecommunications carriers has complained that competitive carriers continue to experience long delays in obtaining access to and use of wholesale internet protocol (IP) and asynchronous transfer mode (ATM) bitstream access, services DT is required to offer to competitors. Although DT’s reference interconnection offers for both services have been approved by the German federal regulatory agency, Die Bundesnetzagentur, and some contracts have been signed between DT and competitive carriers, there continue to be technical problems in actually

obtaining the services, a situation that hampers the ability of competitors to compete in the German market. Competitive carriers dependent on unbundled local loops offered by DT for competitive service have raised concerns about DT's recent proposal to raise rates for ULLs by over 20 percent.

Luxembourg: In 2005, Luxembourg began revising administrative procedures to implement the EU Framework Directive. Despite these efforts, the state-owned Post and Telecommunication Company continues to dominate the nation's telecommunications market.

Poland: The Polish telecommunications sector is fully liberalized and open to foreign investment. Nevertheless, the former state-run monopoly, Telekomunikacja Polska S.A. (TPSA), still controls 80 percent of the market for fixed-line telephone subscriptions. The market is more competitive in other sectors, including Internet and mobile services. As Poland begins investing in new infrastructure needed for the Euro 2012 soccer championships, additional opportunities for U.S. companies to supply telecommunications equipment and services may arise. The Office of Electronic Communications (UKE), Poland's national regulatory agency, continues to try to stimulate competition. For much of 2008, UKE conducted a feasibility study on splitting TPSA into two companies, separating infrastructure management from services. The final decision has been complicated by TPSA demands for UKE to suspend deregulation in exchange for a commitment by TPSA to invest 20 billion zlotys ($8 billion) in infrastructure improvements needed for Euro 2012, an issue of national pride for Poland.

Television Broadcasting and Audiovisual Services

Member State Measures

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

France: France continues to apply the EU Broadcast Directive restrictively. France's implementing legislation, which was approved by the European Commission in 1992, imposes requirements for European programming (60 percent) and for French programming (40 percent) that exceed the requirements of the Broadcast Directive. Moreover, these quotas apply to both the regular and prime time programming slots, and the definition of prime time differs from network to network. The prime time restrictions pose a significant barrier to U.S. programs in the French market. In addition, radio broadcast quotas that have been in effect since 1996 specify that 40 percent of songs on almost all French private and public radio stations must be Francophone.

In addition to the broadcasting quotas, cinemas must reserve five weeks per quarter for the exhibition of French feature films, and four weeks per quarter for theaters that include a French short-subject film during six weeks of the preceding quarter. Operators of multiplexes may not screen any one film with more than two prints, or through interlocking, in such a way as to account for more than 30 percent of the multiplex's weekly shows. Theatrically released feature films are not allowed to advertise on television.

Italy: Legislation approved in 1998 that made Italy's television broadcast quota stricter than the EU Broadcast Directive remains in effect. The legislation makes 51 percent European content mandatory during prime time and excludes talk shows from the programming that may be counted toward fulfilling the quota. A 1998 regulation requires 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, for the showing of EU films.

Spain: For every three days that a film from a non-EU country is screened – in its original language or dubbed into one of Spain's languages – one EU film must be shown. This ratio is reduced to four to one if the cinema screens a film in an official language of Spain and keeps showing the film in that language during all sessions of the day.

Postal and other Delivery Services

U.S. express delivery service suppliers have expressed concern that postal monopolies in many EU Member States restrict their market access and create unfair conditions of competition. On October 1, 2007, EU Transport Ministers approved a plan to liberalize postal services by 2011. Eleven Member States (Cyprus, Czech Republic, Greece, Hungary, Latvia, Lithuania, Luxembourg, Malta, Poland, Romania, and Slovakia) were permitted to delay the opening of their postal markets until 2013.

Member State Measures

Belgium: While the Belgian Post has taken some modest steps in recent years to liberalize, industry competitors continue to express concerns about market access. The Belgian postal regulator, BIPT, appears to lack a mandate to ensure competition and to prevent abuse of the dominant position of the historic postal operator, and it continues to define postal services more broadly than does current EU legislation. A January 2006 law introduced a new licensing regime as well as a compensation fund for universal service. The licensing regime would provide revenue to the Belgian Post if liberalization proved unprofitable due to its universal service obligation. Under the current legal framework, private express delivery operators appear to be covered by the licensing regime as well as by the obligation to contribute to a compensation fund for universal postal service. Belgian and foreign express delivery operators continue to argue that they should be excluded from the scope of the universal service obligation because their services are clearly distinct from conventional postal services by virtue of their value added characteristics.

Germany: In February 2005, the federal regulatory agency, Die Bundesnetzagentur, took action against Deutsche Post AG (DPAG) in response to complaints from competitors. The regulator's ruling forbids DPAG from hindering or discriminating against rival small- and medium-sized providers of mail preparation services, especially those collecting and presorting letters and feeding mail items weighing less than 100 grams into DPAG's sorting centers. This ruling follows an October 2004 move by the European Commission to initiate a treaty infringement procedure against Germany for failing to mandate that DPAG offer unbundled access to competitors. Some U.S. companies have indicated they might be interested in providing services such as sorting. In September 2007, the European Commission opened a formal investigation to assess whether DPAG was overcompensated for carrying out its universal service obligation.

By the end of 2007, Germany had abolished all entry hurdles to the domestic post and postal services market, becoming one of the first EU member states to end its postal monopoly. Since market opening, DPAG has remained the dominant market player, but it is no longer the only supplier of standard letter mail below 50 grams. Despite full liberalization of the mail market, competition is still adversely affected by some restraints and entry barriers. From the point of view of DPAG's competitors, the regulation on mandatory working conditions and the value added tax (VAT) exemptions for DPAG still hinder companies from gaining market share. The European Commission is currently investigating the VAT exemption for certain postal services in Germany and other countries. Meanwhile, the German government has initiated a new settlement for VAT on DPAG's postal services, which is expected to take effect in 2009.

Healthcare Services

Ireland: U.S. healthcare firms have faced difficulties entering Ireland's hybrid public-private health system. To generate sufficient revenues to justify investments in Irish hospitals and equipment, U.S. firms usually seek to treat both private and public patients. The treatment of public patients, however, requires a Service Level Agreement from the Health Service Executive (HSE), the administrative agency that oversees Ireland's hospital system. U.S. firms report difficulties in securing such an agreement from the HSE.

In the health insurance market, Ireland had espoused "risk equalization," whereby private insurers were required by law to compensate the Voluntary Health Insurance (VHI) Board, a formerly quasi-governmental but now private body, for the additional risk that it accepts in offering community (or equal) rating for policy holders of different ages and medical profiles. Compensation was to be paid to VHI once a certain threshold based on the number of insured was reached, but the Irish government had not clarified the formula for determining the threshold. This ambiguity had been a factor in discouraging U.S. insurance firms from entering the Irish market. In July 2008, the Irish Supreme Court overturned the risk equalization scheme, stating that the plan was based on "a wrong interpretation of the law." With VHI being the primary beneficiary of risk equalization, this ruling will reduce VHI's income by an estimated 40 million euros annually, which to date had offset the premium costs to the consumer. There is speculation that another risk equalization plan could be introduced in the future. This uncertainty has been a factor in discouraging U.S. insurance firms from entering the Irish market.

Legal Services

Austria, Cyprus, Greece, Hungary, Lithuania, Malta, and Slovakia require EU nationality for full admission to the Bar, which is necessary for the practice of EU and Member State law. Belgium and Finland require EU nationality for legal representation services.

Austria: U.S. nationals cannot represent clients before Austrian courts and authorities, and cannot establish a commercial presence in Austria. Informal cooperation with Austrian partners is possible, however.

Bulgaria: Bulgaria maintains several limitations on the provision of legal services, including a nationality requirement for obtaining the qualification as a Bulgarian lawyer and restrictions on the ability of foreign law firms to establish in Bulgaria and to use their own names. In February 2009, the European Commission sent Bulgaria a formal letter of inquiry that asked the government to address the consistency of these and other legal provisions with Article 43 of the EC Treaty and with Directive 98/5/EC.

Czech Republic: U.S.-educated lawyers may register with the Czech Bar and take an equivalency exam, but they may only practice home country (U.S.) law and international law, not Czech law. To represent clients in Czech courts, U.S. lawyers must first undergo a three-year legal traineeship and pass the Czech Bar exam. U.S. law firms may operate in the Czech Republic by setting up a separate partnership or limited liability company, but some U.S. firms would prefer to establish as branches of a U.S. partnership. These firms may employ U.S. attorneys that are attached to their staffs as "advisors."

Finland: Citizens of countries outside the European Economic Area (EEA) can practice domestic and international law and represent clients in court, but they are not entitled to the title of Asianajaja (Attorney at Law). Only a Finn or an EEA citizen who meets certain requirements may be accepted as an Asianajaja. In addition to conferring prestige, the Asianajaja designation helps in the solicitation of

clients, because Asianajaja may be held accountable for their actions by the Board of the Bar Association and by the Chancellor of Justice, while other lawyers and legal advisers are not subject to such oversight.

France: Following a 1992 reform that merged two legal professions into a single "avocats" profession, non-EU lawyers wishing to practice law in France must apply for a license from the French Bar and pass the French Bar exam. EU lawyers, in contrast, may qualify to practice law in France under agreements on the mutual recognition of diplomas. For non-EU firms, the ability to derive benefits from the mutual recognition agreements is limited to those that can establish as branches of firms registered elsewhere in the EU.

Hungary: U.S. lawyers may provide legal services only under a "cooperation agreement" in partnership with a Hungarian legal firm.

Ireland: In general, lawyers holding degrees from non-Irish law schools who wish to practice Irish law and appear before Irish courts must either pass transfer examinations or retrain as lawyers under the direction of the Law Society of Ireland. Only lawyers who have either been admitted to the Bar of England, Wales, or Northern Ireland; practiced as an attorney in New York, California, Pennsylvania (with five years experience required in Pennsylvania), or New Zealand; or admitted as lawyers in either an EU or a member state of the European Free Trade Association are entitled to take the transfer examination.

Slovakia: Slovak law requires lawyers holding credentials from, and law firms registered in, non-EU countries to register with the Slovak Bar Association to practice home country and international law in Slovakia. In the past several years, however, no U.S. attorneys have been able to register. The United States is concerned that the Slovak Bar has consistently tried to limit foreign lawyers' ability to practice law in Slovakia based on their interpretation of the Slovak Advocacy Act.

Accounting and Auditing Services

Greece: U.S. access to the Greek accounting market remains limited. A 1997 presidential decree established a method for fixing minimum fees for audits and established restrictions on the use of different types of personnel in audits. The decree also prohibited auditing firms from doing multiple tasks for a client, thus raising the cost of audit work. While the restrictions in the 1997 Decree apply equally to Greek and foreign accountants, the restrictions are especially burdensome to U.S. and other foreign accounting firms because they make it difficult for those firms to take full advantage of the capabilities of their staffs and the diversity of their practice areas.

Architectural Services

Austria: Only citizens of EU and European Economic Area member states are eligible to obtain a license to provide independent architectural services in Austria.

Financial Services

Poland: Foreign service providers have requested that Poland treat independent legal persons as a single taxable person (*i.e.*, VAT grouping), as allowed by the EU VAT Directive. VAT grouping is already employed by the United Kingdom, the Netherlands, Ireland, Germany, Austria, Denmark, Finland, Sweden, Romania, Belgium, Hungary, and the Czech Republic. (Since January 1, 2008, groups of companies established in Spain have also been able to opt for the new regime of VAT grouping). VAT

grouping would allow financial service providers to recover VAT charges that they incur when making intra-company payments for supplies, including labor costs.

Energy Services

Cyprus: The European Commission agreed to qualify Cyprus as an emerging and protected market for natural gas under Articles 22 and 28 of EU Directive 2003/55/EC. The government of Cyprus then established the Public Company for Natural Gas (PCNG), with its ownership split between the government and the quasi-governmental Electricity Authority of Cyprus (EAC). The government owns 56 percent of PCNG and the EAC 44 percent. PCNG will have a monopoly over the purchase, importation, processing, and sale of natural gas through a land-based LNG terminal in the Vasilikos area of Cyprus. The EAC's participation in PCNG reinforces its overwhelmingly dominant position in the energy sector. The EAC's effective control over natural gas prices and power distribution could adversely affect foreign power suppliers and will act as a deterrent to new entrants in the energy market. Cyprus government officials claim that 10 percent of PCNG will be available to private investors in the future to keep the market open to newcomers. According to press reports, the Cyprus Stock Exchange (CSE) is in discussions with the Ministry of Finance to turn PCNG into a publicly traded company with lower percentage participation for both the government and the EAC. In the CSE's opinion, this will open PCNG to even more investors and allow for more strategic investor participation.

EU Enlargement

The EU has submitted three notifications to Members of the WTO concerning the modification of existing commitments under the General Agreement on Trade in Services (GATS) by newly acceded members of the European Union. In accordance with GATS Article XXI, the EU was required to enter into negotiations with any other WTO member that indicated that it was affected by the modification of existing commitments. The United States and EU successfully negotiated a compensation package, which was agreed on August 7, 2006. To date, however, the European Commission has failed to secure the approval of EU Member States, which is necessary to implement the agreement.

INVESTMENT BARRIERS

Overview

The European Commission shares competence on investment issues with Member States. EU Member States negotiate their own bilateral investment protection and taxation treaties and generally retain responsibility for their investment regimes. In many areas, individual Member State policies and practices have a more significant impact on U.S. firms than do EU-level policies and practices.

Under the 1993 Maastricht Treaty, free movement of capital became an EU responsibility and capital controls both among EU Member States and between EU members and third countries were lifted. A few Member State barriers remain in place, in some cases in apparent contravention of EU law. Right of establishment issues, particularly regarding third countries, are a shared competence between the EU and the Member States. The division of this shared competence varies from sector to sector based on whether the EU has issued regulations in a particular sector. Direct branches of non-EU financial service institutions remain subject to individual Member State authorization and regulation.

The EU requires national treatment for foreign investors in most sectors. EU law, with a few exceptions, requires that any company established under the laws of one Member State must, as a Community undertaking, receive national treatment in all Member States, regardless of the company's ultimate

ownership. As discussed below, however, EU law imposes some restrictions on U.S. and other foreign investments, and other restrictions have been proposed.

Ownership Restrictions and Reciprocity Provisions

EU Treaty Articles 43 (establishment) and 56/57 (capital movements) have helped the EU to achieve one of the most hospitable climates for U.S. investment in the world, but some restrictions on foreign direct investment remain in place. The right to provide maritime transport services is currently restricted by certain EU Member States. EU banking, insurance, and investment services directives currently include "reciprocal" national treatment clauses under which a financial services firm from a third country may be denied the right to establish a new business in the EU if the EU determines that the investor's home country denies national treatment to EU service providers. The right of U.S. firms to national treatment in this area was reinforced by the EU's GATS commitments.

After years of discussion, the Council of Ministers finally agreed in March 2004 on a directive on takeover bids (Takeover Directive). The original proposal would have banned any national legislation allowing companies to prevent hostile takeovers through the use of defensive measures (*e.g.*, "poison pills" or multiple voting rights). The final directive makes it optional for Member States and companies to maintain a regime that rules out these defensive measures. The European Parliament debated whether to limit the benefits of the new directive to companies that apply the same provisions, (*e.g.*, limiting the right of a board to take defensive measures or to mitigate the role of restrictions on share transfers or voting in a takeover bid). Article 12.3 of the final text is ambiguous as to whether the limitation would apply to non-EU firms, although the preamble of the legislation states that the application of the optional measures is without prejudice to international agreements to which the EU is a party.

The Takeover Directive was due to be implemented by Member States by May 20, 2006. Implementation was delayed, however. By February 2007, 17 Member States had transposed the directive or adopted necessary framework rules. Other member states implemented the directive over the 2007-8 period.

Under the 1994 Hydrocarbons Directive (Directive 94/22/EC), an investor may be denied a license to explore for and exploit hydrocarbon resources if the investor's home country does not permit EU investors to engage in those activities under circumstances "comparable" to those in the EU. These reciprocity provisions thus far have not affected any U.S.-owned firms.

On September 19, 2007, the European Commission released the Third Energy Package, consisting of two draft directives and three draft regulations designed to promote internal energy market integration and to enhance EU energy security. Specifically, the package proposed separating energy production and supply from transmission through the forced unbundling of major EU energy firms. This concept has been watered down in Council and by Parliament revisions to allow member states to opt for a model that would allow a vertically integrated firm to create an "independent" transmission subsidiary whose independence would be overseen by the regulatory authorities. As noted above, the package also includes a "Third Country Clause" that provides for an assessment of whether a potential acquisition of an electricity or gas network in an EU Member State by a company from a third country fully complies with the EU's rules on unbundling and whether it potentially provides a threat to the Member State's or the EU's security of energy supply, in which case the EU may prohibit the acquisition. The EU could not reach final agreement on the Third Energy Package during the latter half of 2008, and significant differences between the current European Council and European Parliament versions of the package remain to be bridged. Commission, Council, and Parliament officials are optimistic that a political agreement can be reached during the spring of 2009, however, before the Parliament begins its election cycle.

Like governments elsewhere in the world, EU institutions and Member State governments deliberated in 2008 on policies aimed at responding to the growth of sovereign wealth funds (SWFs) and other assets owned or controlled by governments. The Commission, in early 2008, considered the establishment of an investment review process that would focus on specific "strategic" sectors, such as energy, but decided against moving forward to create such a process. The Commission is currently reviewing Member State investment review laws and proposals for compliance with EU treaty language on the free movement of capital and the right of establishment.

Member State Measures

Austria: While European Economic Area (EEA) Member State banks may operate branches on the basis of their home country licenses, banks from outside the EEA must obtain Austrian licenses to operate in Austria. However, if a non-EEA bank has already obtained a license for the operation of a subsidiary in another EEA country, it does not need a license to establish branch offices in Austria.

Bulgaria: Local companies in which foreign partners have controlling interests must obtain licenses to engage in certain activities, including production and export of arms and ammunition; banking and insurance; exploration, development, and exploitation of natural resources; and acquisition of property in certain geographic areas. The insolvency rules in Bulgaria's Commercial Code and changes to its Law on Public Offering of Securities (2005) have greatly improved the legislative protection for minority shareholders, but enforcement of the law's provisions is inadequate and corporate governance remains weak. On February 23, 2007, the United States and Bulgaria signed the Treaty on Avoidance of Double Taxation. The Treaty and a protocol annex were ratified in 2008 by both the U.S. Senate and the Bulgarian Parliament.

Cyprus: Cypriot law imposes significant restrictions on the foreign ownership of real property. Persons not ordinarily resident in Cyprus (whether of EU or non-EU origin) may purchase only a single piece of real estate (not to exceed three donums, or roughly one acre) for private use (normally a holiday home). Exceptions can be made for projects requiring larger plots of land (*i.e.*, beyond that necessary for a private residence), but they are difficult to obtain and are rarely granted. Upon its accession to the EU, Cyprus received a five year derogation on this issue, and the restriction on property acquisition for EU citizens not normally resident in Cyprus will expire in May 2009. The restrictions will continue to apply, however, to non-EU residents, including U.S. nationals.

Tertiary education investment restrictions: Cypriot legislation on foreign investment in tertiary education distinguishes between colleges and universities. Investment in universities, defined as institutions with no fewer than 1,000 students enrolled in a diverse range of classes and curricula, is encouraged. Foreign (including non-EU) investors can set up or acquire a university in Cyprus by simply registering a company on the island and following a set of nondiscriminatory criteria. By contrast, non-EU investment in colleges is discouraged. Non-EU investors can set up or acquire a local college by registering a company in Cyprus or elsewhere in the EU, provided that the company has EU-origin shareholders and directors. As a consequence, non-EU investors are not allowed to participate in the administration of local colleges, whether as directors or shareholders.

Investment restriction in media companies: Cyprus also restricts non-EU ownership of local mass media companies to 5 percent or less for individual investors and 25 percent or less for all foreign investors in each individual media company.

Construction: Under the Registration and Control of Contractors Laws of 2001 and 2004, the right to register as a construction contractor in Cyprus is reserved for citizens of EU Member States. Non-EU entities are not allowed to own a majority stake in a local construction company. Non-EU natural persons or legal entities may bid on specific construction projects, but only after obtaining a special license from the Cypriot Council of Ministers.

Professional recognition of real estate agents: The current law licensing real estate agents to practice in Cyprus, last amended in 2007, creates significant barriers to entry into the profession. The law recognizes only licensed individuals (not companies) to act as authorized real estate entities and licenses are only granted to individuals who have served as apprentices to licensed individuals for up to five years (recently changed from eight years). The amended law also fails to address the operation of franchises. Existing real estate agents are trying to use the law to restrict new entrants in the local real estate market. To obtain a license to practice real estate in Cyprus, an individual must seek approval from the Licensing Board, which is made up of seven members, four of whom are real estate agents. The government of Cyprus is currently reviewing the law after the European Commission found it overly restrictive.

Professional recognition of medical doctors: As of October 2007, Cyprus complies fully with EU Directive 2005/36, allowing doctors who are either EU citizens or spouses of EU citizens to register to practice medicine in Cyprus. Doctors from non-EU countries can register only in "extreme cases."

France: There are generally few screening or prior approval requirements for non-EU foreign investments in France. But France has raised concerns that sovereign wealth funds could buy up "strategic" companies whose stock prices have fallen steeply in the wake of the financial crisis. Near the end of 2008, President Sarkozy announced the establishment of a "strategic investment fund" that would take stakes in companies with "key technologies." The fund would be run as a "strategic priority" by the *Caisse des Depots et Consignations*, a state-owned financial institution, under parliamentary supervision.

Pursuant to a November 2004 law that streamlined the French Monetary and Financial Code, however, the State Council was directed to define a number of sensitive sectors in which prior approval would be required before acquisition of a controlling equity stake. A December 2005 government decree (Decree 2005-1739 of 30 December 2005) lists 11 business sectors in which the French Ministry of Economy, Finance, and Industry has the right to monitor and restrict foreign ownership through a system of "prior authorization." In addition, the government implemented the EU Takeover Directive with a March 31, 2006 bill (*"loi du 31 mars 2006 relative aux offres publiques d'acquisition*") that also includes specific measures related to hostile takeovers. Implementing legislation allows companies to resort to a U.S.-style "poison pill" takeover defense, including granting existing shareholders and employees the right to increase their leverage by buying more shares through stock purchase warrants at a discount in case of an unwanted takeover. The government has also asked the *Caisse de Depots et Consignations*, France's largest institutional investor, to work as a domestic buffer against foreign takeovers by increasing its stake in French companies. The French government has thus demonstrated an inclination in certain sectors to intervene in potential transnational mergers and to otherwise signal an interest in defending French private "champions" from foreign takeover attempts. The Financial Market Authority (*Autorites des Marches*, AMF) has announced its intention to reduce from 33 percent to 25 percent or 30 percent the threshold of shares or voting rights that obliges a company to launch a formal takeover. AMF may also implement a scheme limiting voting rights to avoid "creeping control of French companies." The Finance Ministry becomes involved in mergers and acquisitions when the government uses its "golden share" in state-owned firms to protect national interests.

Germany: Germany's 2002 takeover law was marginally changed by the implementation of the EU Takeover Directive. Germany made use of its "opt-out" right and retained measures that allow firms to

ward off hostile takeover bids – first at the shareholder level, where management may be given authority at annual shareholder meetings to take necessary measures to guard against unwanted takeover interest; and, second, at the management level, where the managing board may take protective measures upon approval by the supervisory board, bypassing the need for shareholder approval altogether. The EU directive offers companies the choice either to abide by the German law or to "opt-in" to the EU regulation. Companies using the "opt-in" may limit their waiver of Germany's protective measures to companies that also have no measures in place to fend off hostile takeover bids.

Germany passed legislation in July 2004 requiring notification by foreign entities of investments expected to exceed 25 percent of the equity of German firms engaged in the production of armaments and cryptology technology used for classified government communications. Following an inter-ministerial review, the government may veto such sales within one month of receipt of a notification. The German government expanded the scope of the law in 2005 to include tank and tracked-vehicle engines.

Germany's Cabinet approved an amendment to the Foreign Trade Act that would permit reviews of foreign (non-EU) investments of 25 percent of the equity of German firms in cases where a threat to national security or public order is perceived. The proposed legislation is slated for Parliamentary approval in early 2009.

In November, 2008, the European Commission formally asked Germany to modify the 1960 law privatizing Volkswagen (VW law) following a Court of Justice ruling of 23 October 2007 (C-112/05). The Court found that three provisions of the VW law (automatic representation of public authorities on the board; a 20 percent voting cap; and a 20 percent blocking minority) grant unjustified special rights to German public authorities (the Land of Lower Saxony and potentially also the Federal Government) and that, by maintaining them in force, Germany is in breach of EC Treaty rules on the free movement of capital. A draft law amending the VW law, which is currently in the legislative approval process, abolishes the provisions providing for the representation of public authorities on the board and the 20 percent voting cap, but does not modify the provision establishing a 20 percent blocking minority. The Commission's request is in the form of a "reasoned opinion," the second stage of infringement procedures. Failure to reply satisfactorily within two months may trigger a decision to refer the case to the European Court of Justice.

Greece: Greek authorities consider local content and export performance criteria when evaluating applications for tax and investment incentives. Such criteria are not prerequisites for approving investments, however.

Prospective non-EU investors in Greece's mining, maritime, air transport, broadcast, and banking sectors are required to obtain licenses and other approvals that are not required of Greek or EU investors. In the mining industry, for example, non-EU investors need special approval from the Greek cabinet for the use and exploitation of mines. An additional approval from the Ministry of Defense is required for purchases by foreign investors of land in border areas and on certain islands. In the banking sector, non-EU banks are subject to a special minimum capital requirement. EU banks established in other EU countries (or a U.S. bank with a subsidiary in the EU) are not subject to this requirement.

In November 2008, the European Commission sent Greece a formal "reasoned opinion" request to eliminate the restrictions on investment in strategic companies introduced by Greek Law 3631/2008. The law in question establishes: (1) an *ex-ante* authorization system, under which the acquisition of voting rights by shareholders other than the State is limited to 20 percent, unless prior approval has been granted by the Inter-ministerial Privatization Committee; and (2) an *ex-post* approval system, under which certain important corporate decisions, as well as certain decisions concerning specific management matters, need,

for their validity, the approval of the Minister of Economy and Finance. The Commission argues that the restrictions introduced by the law represent unjustified obstacles to EC Treaty rules on the free movement of capital and freedom of establishment. Failure to satisfactorily reply within two months may trigger the decision to refer the case to the European Court of Justice.

Italy: On September 13, 2007, the government of Italy approved a legislative decree incorporating the EU Takeover Directive into Italian law. The decree was passed by Parliament in November and went into force in December. The new regulation will require the target of a hostile takeover or merger bid to obtain authorization from shareholders before undertaking defensive measures. It also includes a "break-through rule" on the most common pre-bid defensive tactics (*i.e.*, shareholder voting agreements). The new regulation is aimed at protecting minority stockholders and permitting Italian companies to defend themselves from takeover attempts by companies from countries whose merger and acquisitions laws do not provide similar protection for shareholders.

Lithuania: Some foreign investors, including U.S. citizens, report difficulties in obtaining and renewing residency permits. U.S. citizens can stay in Lithuania no more than 90 days without a visa (and no more than 180 days during a single calendar year). Those who stay longer face fines and deportation. The current residency permit process is not user-friendly. In principle, Lithuanian embassies abroad are able to initiate the application process for residency permits. In practice, U.S. citizens are only able to begin the residency permit process upon arrival in Lithuania. Decisions by the Migration Office regarding the issuance of residency permits may take up to six months.

Non-Lithuanians are generally not able to buy agricultural or forestry land. As part of its EU accession agreement, however, the Lithuanian Government must eliminate this restriction by 2011.

Romania: Due to a lack of long-term predictability, Romania's legal and regulatory system poses a continuing impediment to foreign investors. Tax laws change frequently. Tort cases often require lengthy, expensive procedures. Court rulings often do not follow precedent.

GOVERNMENT PROCUREMENT

Since the EU is a party to the WTO Agreement on Government Procurement (GPA), all 27 EU Member States are also subject to the GPA. The GPA is incorporated into EU Public Procurement Directive 2004/18.

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

While U.S. suppliers participate in EU government procurement, the lack of availability of statistics on public procurements conducted in EU Member States makes it difficult to accurately assess the level of participation.

Member State Measures

Member States have their own national practices regarding government procurement. Some Member States require offsets in defense procurement, defined as a contract condition or undertaking that encourages local development or improves a party's balance of payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade, and similar actions or requirements. The GPA does not cover all defense procurement. A brief discussion of several Member State practices of particular concern to the United States follows.

Austria: U.S. firms continue to report a strong pro-EU bias in government contract awards. U.S. industry has repeatedly claimed that invitations for bids for the government's vehicle fleet are tailored for German competitors. In major defense purchases related to national security, most government procurement regulations do not apply, and offset requirements can reach up to 200 percent of the value of the contract. Defense offsets in Austria are linked to political considerations and transparency remains limited.

Czech Republic: U.S. and other foreign companies express concern about the lack of transparency in the public procurement process. A 2006 law on government procurement was intended to bring the Czech Republic into compliance with EU legislation, but it did little to improve procurement transparency. Over 50 percent of all public construction contracts awarded in 2006 fell under the 6 million Czech koruna threshold (equivalent to $350,000) and thus were not subject to the transparency requirements of the new law. Of the remaining construction contracts, the government offered only one-third through open and competitive tenders.

France: France has a strong and extremely competitive aerospace and defense manufacturing base. The French government continues to maintain shares in several major defense contractors. It is difficult for non-European firms to participate in the French defense market. Even where there is competition among European suppliers, French companies are often selected as prime contractors.

Greece: Greece imposes onerous qualification requirements on companies seeking to bid on public procurement tenders. Companies must submit documentation from competent authorities indicating that they have paid taxes, have not been in bankruptcy, and have paid in full their social security obligations for their employees. All board members and the managing director of companies that want to participate in procurements must submit certifications from competent authorities that they have not engaged in fraud, money laundering, criminal activity, or similar activities. It is difficult for U.S. firms to comply with these requirements because there are no competent authorities that issue these types of certifications in the United States. Companies are allowed to submit sworn, notarized, and translated statements from corporate officers, but there is considerable confusion among Greek authorities as to how U.S. firms may comply with these requirements. Greece also continues to require offsets as a condition for the awarding of defense contracts.

Ireland: Government procurement in Ireland is generally tendered under open and transparent procurement regulations. U.S. companies have raised concerns, however, that they have been successful in only a few national and regional government tenders, particularly for infrastructure-related projects. U.S. firms complain that lengthy processes for budgetary decisions delay procurements, and that unsuccessful bidders often have difficulty obtaining information regarding the basis for a tender award. Once awarded a contract, companies can experience significant delays in finalizing contracts and commencing work. Successful bidders have also found that tender documentation does not accurately describe the conditions under which contracts are to be performed.

Italy: Procurement authority is widely dispersed, with over 22,000 contracting agencies at the national, regional, and local levels (including municipalities, hospitals, and universities). Italy's public procurement sector is noted for its lack of transparency and its corruption, which have created obstacles for some U.S. firms. Laws implemented in the mid-1990s have reduced corruption, but it still exists, especially at the local level.

Lithuania: The public procurement process in Lithuania is not always transparent. There are persistent complaints that some tenders are so narrowly defined that they appear tailored to a specific company. Since 2003, the Lithuanian government has often required offset agreements as a condition for the award of contracts for procurement of military equipment.

Portugal: U.S. firms continue to face stiff competition when bidding against EU firms on public procurements in Portugal. The Portuguese government tends to favor EU firms, even where bids from U.S. firms appear technically superior or lower in price. There is a general lack of transparency in procurement procedures. U.S. firms appear to be more successful when bidding as part of a consortium or as part of a joint venture with Portuguese or other EU firms.

Romania: Romania requires offsets as a condition for awarding of defense contracts.

Slovenia: The Slovenian government has indicated that it intends to improve the transparency of its public procurement process. A Ministry for Public Administration effort to create an electronic procurement system has stalled, however. U.S. firms continue to express concerns that the public procurement process in Slovenia is non-transparent. Many U.S. bidders report that European firms are favored and usually win contracts even where they offer more costly goods and services and their ability to deliver and service their products is questionable. This is a problem across the entire range of public procurement, but it seems most prevalent in medical equipment and defense procurement.

Spain: U.S. construction companies consider Spanish public sector infrastructure projects closed to them. During the past 10 years, when the Spanish construction sector was growing strongly, at least two major U.S. construction firms closed their Spanish offices due to insufficient business. U.S. construction and engineering firms were interested, for example, in the Spanish government's major program to build large desalinization plants. After reviewing project documents, however, the firms concluded that outside bidders would not be seriously considered and chose not to submit bids. Of 10 desalinization plant contracts that have been awarded, all but one were awarded to Spanish firms.

United Kingdom (UK): The UK defense market is, to an increasing extent, defined by the terms of the December 2005 Defence Industrial Strategy (DIS), which highlights specific sectors and capabilities that the government believes are necessary to retain in the United Kingdom. In these areas, procurement will generally be based on partnerships between the Ministry of Defence and selected companies. DIS does not preclude partnerships with non-UK companies, and U.S. companies with UK operations may be invited by the Ministry of Defence to form partnerships in key programs in the future. Outside of those areas of partnership highlighted in the DIS, defense procurement is to a large extent an open and competitive process. There have been examples of noncompetitive procurements in recent years, however, as well as instances where the initial selection of a U.S. supplier was overturned and the contract awarded to a domestic supplier.

SUBSIDIES

Government Support for Airbus

Over many years, the governments of France, Germany, Spain, and the United Kingdom have provided subsidies to their Airbus-affiliated companies to aid in the development, production, and marketing of Airbus large civil aircraft. These governments have financed between 33 percent and 100 percent of the development costs for all Airbus aircraft models (launch aid) and have provided other forms of support, including equity infusions, debt forgiveness, debt rollovers, and marketing assistance, including political and economic pressure on purchasing governments. The EU's aeronautics research programs are driven significantly by a policy intended to enhance the international competitiveness of the European civil aeronautics industry. EU governments have spent hundreds of millions of euros to create infrastructure for Airbus programs, including 751 million euros spent by the City of Hamburg to drain the wetlands that Airbus is currently using as an assembly site for the A380 "superjumbo" aircraft. French authorities also spent 182 million euros to create the AeroConstellation site, which contains additional facilities for the A380. The beneficiary of more than $6 billion in subsidies, the Airbus A380 is the most heavily subsidized aircraft in history. Some EU governments have also made legally binding commitments of launch aid for the new Airbus A350 aircraft, even though Airbus has barely begun to repay the financing it received for the A380.

Airbus SAS, the successor to the original Airbus consortium, is owned by the European Aeronautic, Defense, and Space Company (EADS), which is now the second largest aerospace company in the world. Accounting for more than half of worldwide deliveries of new large civil aircraft over the last few years, Airbus is a mature company that should face the same commercial risks as its global competitors.

In October 2004, following unsuccessful U.S.-initiated efforts to negotiate a new United States-EU agreement that would end subsidies for the development and production of large civil aircraft, the United States submitted a WTO consultation request with respect to the launch aid and other subsidies that EU governments have provided to Airbus. Concurrent with the U.S. WTO consultation request, the United States also exercised its right to terminate the 1992 United States-EU Bilateral Agreement on Large Civil Aircraft. The WTO consultations failed to resolve the U.S. concerns, however, and a renewed effort to negotiate a solution ended without success in April 2005.

On May 31, 2005, the United States submitted a WTO panel request. The WTO established the panel on July 20, 2005, and panel proceedings are currently ongoing. The United States has consistently noted its willingness to negotiate a new bilateral agreement on large civil aircraft, even while the WTO litigation proceeds, but it has insisted that any such agreement must end launch aid and other direct subsidies for the development and production of such aircraft.

Government Support for Airbus Suppliers

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

was disbursed. Belgium claims that its A380 support was structured in accordance with the 1992 bilateral agreement and covers nonrecurring costs.

France: In addition to the launch aid that the French government provided for the development of the Airbus A380 super jumbo and A350 aircraft, France provides aid in the form of reimbursable advances to assist the development by French manufacturers of products such as planes, aircraft engines, helicopters, and on-board equipment. French appropriations supporting new programs in these areas in 2008 (as of late October) totaled 177.2 million euros, of which 20.1 million euros were committed to the A380. Overall 2008 appropriations, including 79.9 million euros in support of research and development in the aeronautical sector, amount to 257.1 million euros. In July 2008, Airbus, the parastatal *Caisse des Dépôts et Consignations*, and the Safran Group announced the launch of the AEROFUND II equity fund, capitalizing 75 million euros destined for the French aeronautical sector. The equity fund's objective is to support the development of the small- and medium-sized subcontracting companies that supply the aeronautical sector.

Spain: The recently completed Puerto Real factory in Spain's Andalucia region is responsible for constructing 10 percent of Airbus' A380 aircraft. Spain's Ministry of Industry, Tourism, and Trade currently subsidizes A380 construction through an agreement to provide 376 million euros in direct assistance through 2013.

The regional government of Andalucia has channeled an additional 13 million euros in State General Administration regional incentive funds and 17.5 million euros of its own funds into A380 project subsidies. Spain has provided numerous additional grants to Airbus' parent company, EADS.

United Kingdom (UK): UK government support for Airbus has most recently included investment in the Integrated Wing Program, announced in December 2006. The Department for Business, Enterprise, and Regulatory Reform (DBERR) and selected regional development agencies will provide half of the funding for the £34 million program, with the remainder drawn from Airbus and participating suppliers. The Integrated Wing Program is one of 12 key technologies identified in the National Aerospace Technology Strategy, which largely directs UK government investment in strategic aerospace capabilities.

On September 15, 2008, GKN plc. announced that it was buying Airbus's wing component factory near Bristol, England, for £136 million. The same day, the British government announced that it would provide £60 million in repayable launch aid to the company to help it develop advanced composite wing components for the Airbus A350. The government also announced an additional £50 million in funding to support research and technology development for Airbus wing projects. This money will be paid through the Technology Strategy Board's research and development program.

Government Support for Aircraft Engines

United Kingdom: In February 2001, the UK government announced its intention to provide up to £250 million to Rolls-Royce to support development of the Trent 600 and 900, two additional engine models for large civil aircraft. The UK government characterized this engine development aid as an "investment" that would provide a "real rate of return" from future sales of the engines.

The European Commission announced its approval of a £250 million "reimbursable advance" without opening a formal investigation into whether the advance constituted illegal state aid under EU law. According to a Commission statement, the "advance will be reimbursed by Rolls-Royce to the UK government in case of success of the program, based on a levy on engine deliveries and maintenance and

support activity." Detailed terms of the approved launch aid were not made public. To date, none of the launch aid for the Trent 600 and 900 has been repaid.

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

France: In 2005, the French government-owned engine manufacturer, Snecma SA, merged with Sagam, a technology and communications firm, to form the SAFRAN Group. The government supports the SAFRAN SaM146 propulsive engine program with a reimbursable advance of 140 million euros.

Regional Aircraft

In July 2008, Bombardier Aerospace announced an investment of £519.4 million in Northern Ireland to support the design and manufacture of the wings for its 110–130 seat CSeries family of aircraft. In an agreement with DBERR, the Northern Ireland Executive has offered assistance to the investment of £155 million. This includes a maximum of £130 million (Northern Ireland contribution of £78 million) of repayable Launch Investment assistance for the CSeries and up to £25 million Selective Financial Assistance. The United States is closely monitoring government assistance associated with this program to ensure compliance with WTO rules.

CUSTOMS ADMINISTRATION

Notwithstanding the existence of customs laws that govern all EU Member States, the EU does not administer its laws through a single customs administration. Rather, there is a separate agency responsible for the administration of EU customs law in each of the EU's 27 Member States. No EU institutions or procedures ensure that EU rules on classification, valuation, origin, and customs procedures are applied uniformly throughout the 27 Member States of the EU. Moreover, no EU rules require the customs agency in one Member State to follow the decisions of the customs agency in another Member State with respect to materially identical issues.

On some questions, where the customs agencies in different Member States administer EU law differently, the matter may be referred to the Customs Code Committee (Committee). The Committee is an entity established by the Community Customs Code to assist the European Commission (Commission). The Committee consists of representatives of the Member States and is chaired by a representative of the Commission. While, in theory, the Committee exists to help reconcile differences among Member State practices and thereby help to achieve uniformity of administration, in practice its success in this regard has been limited.

Not only are the Committee and other EU-level institutions ineffective tools for achieving the uniform administration and application of EU customs law, but the EU also lacks tribunals or procedures for the prompt review and EU-wide correction of administrative actions relating to customs matters. Instead, review is provided separately by each Member State's tribunals, and rules regarding these reviews can vary from Member State to Member State. Thus, a trader encountering non-uniform administration of EU customs law in multiple Member States must bring a separate appeal in each Member State whose agency rendered an adverse decision. Moreover, administrative decisions of the Member States have no EU-wide effect, nor are the decisions of one EU Member State's customs authority binding on the customs authorities of the other Member States.

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

The United States has raised each of the preceding concerns with the EU in various fora, including the WTO Dispute Settlement Body. The concerns have taken on new prominence in light of the expansion of the EU and the focus of the Doha Development Agenda on trade facilitation. In the trade facilitation negotiations, Members are considering proposals that would clarify the requirement of GATT 1994 Article X that all WTO Members – including WTO Members that are customs unions, such as the EU – uniformly apply and give effect to a Member's customs laws, regulations, procedures, administrative decisions, and rulings. EU officials claim the Modernized Community Customs Code (MCCC), which formally entered into force in 2008, will streamline customs procedures and that it will apply uniformly throughout the customs territory of the Community. Implementation of the MCCC is expected to be completed by 2013. The United States intends to monitor its implementation closely, focusing on its impact on uniform administration of EU customs law.

ELECTRONIC COMMERCE

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

The EU Data Protection Directive (1995/46) allows the transmission of EU data to third countries only if those countries are deemed by the European Commission to provide an adequate level of protection by reason of their domestic law or of their international commitments (Article 25(6)). Currently, the Commission has recognized Switzerland, Canada, Argentina, Guernsey, and the Isle of Man as third countries that provide an adequate level of protection. Since the U.S. does not yet benefit from a blanket adequacy finding, the Commission has undertaken work to recognize a series of specific and limited programs and agreements as providing adequacy. The most important of these is the U.S. Department of Commerce's Safe Harbor Program, but others include the United States-EU agreement on the transfer of Air Passenger Name Records to the U.S. Bureau of Customs and Border Protection.

The Safe Harbor Program provides U.S. companies with a simple, streamlined means of complying with the EU rules. It is the result of an agreement that allows U.S. companies that commit to a series of data protection principles (based on the Data Protection Directive), and that publicly state their commitment by "self-certifying" on a dedicated website (http://www.export.gov/safeharbor), to continue to receive and transfer personal data from the EU. Signing up to the Safe Harbor is voluntary, but the rules are binding on signatories. A failure to fulfill commitments made under the Safe Harbor framework is actionable either as an unfair or deceptive practice under Section V of the Federal Trade Commission Act or, for air carriers and ticket agents, under a concurrent Department of Transportation statute.

Outside of the programs that explicitly enjoy an adequacy finding, U.S. companies can only receive or transfer employee and customer information from the EU under one of the exceptions to the directive's adequacy requirements or if they demonstrate that they can provide adequate protection for the transferred data. These requirements can be burdensome for many U.S. industries that rely on data exchange across the Atlantic.

In recent years, a number of U.S. companies have faced obstacles to winning contracts with European governments and private sector customers because of public fears in the EU that any personal data held

by these companies may be collected by U.S. law enforcement agencies. The United States is working to inform European stakeholders on how personal data is protected in the United States.

The United States actively supports the Safe Harbor framework and encourages EU institutions and Member States to continue to use the flexibility offered by the Data Protection Directive to avoid unnecessary interruptions in data flows to the United States. Furthermore, the United States expects the EU and Member States to fulfill their commitment to inform the United States if they become aware of any actions that may interrupt data flows to the United States.