2009 National Trade Estimate Report on

FOREIGN TRADE BARRIERS

UNITED STATES TRADE REPRESENTATIVE

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LIST OF FREQUENTLY USED ACRONYMS

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

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

FOREWORD

The 2009 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the twenty-fourth in an annual series that surveys significant foreign barriers to U.S. exports. This document is a companion piece to the President's Trade Policy Agenda published in February. The issuance of the NTE Report initiates the elaboration of an enforcement strategy that will decide how best to use this valuable tool in the future.

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

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

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

SCOPE AND COVERAGE

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

Trade barriers elude fixed definitions, but may be broadly defined as government laws, regulations, policies, or practices that either protect domestic products from foreign competition or artificially stimulate exports of particular domestic products. In the coming years, we also intend to focus on the monitoring and enforcement of labor and environment standards within our Free Trade Agreements. This action is critically important to create a foundation for more broad-based economic growth and fair competition in and between FTA partners and beyond.

This report classifies foreign trade barriers into ten different categories. These categories cover government-imposed measures and policies that restrict, prevent, or impede the international exchange of goods and services. They include:

- Import policies (*e.g.*, tariffs and other import charges, quantitative restrictions, import licensing, customs barriers);

- Standards, testing, labeling, and certification (including unnecessarily restrictive application of sanitary and phytosanitary standards and environmental measures, and refusal to allow producers to self-certify that their products conform to local standards, even where self-certification would meet all legitimate objectives);

- Government procurement (*e.g.*, buy national policies and closed bidding);

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

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

- Services barriers (*e.g.*, limits on the range of financial services offered by foreign financial institutions,[1] regulation of international data flows, and restrictions on the use of foreign data processing);

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

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

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

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

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

This report discusses the largest export markets for the United States, including: 58 nations, the European Union, Taiwan, Hong Kong, the Southern African Customs Union and one regional body. Some countries were excluded from this report due primarily to the relatively small size of their markets or the absence of major trade complaints from representatives of U.S. goods and services sectors. However, the omission of particular countries and barriers does not imply that they are not of concern to the United States.

In this Foreword, we are also providing an update on progress the Administration has made in reducing trade-related barriers to the export of greenhouse gas intensity reducing technologies (GHGIRTs), as called for by the Energy Policy Act of 2005. In October 2006, pursuant to section 1611 of the Act,[3] USTR prepared a report that identified trade barriers that face U.S. exporters of GHGIRTs in the top 25 greenhouse gas (GHG) emitting developing countries and described the steps the United States is taking to reduce these and other barriers to trade.[4] The Act also calls for USTR to report annually on progress made with respect to removing the barriers identified in the initial report. USTR submitted the first annual progress report in October 2007; this report, as well as the initial report, are available at http://www.ustr.gov. As noted in the October 2007 report, USTR will submit further annual progress reports as part of the NTE Report.

As described in the initial 2006 GHGIRT report, barriers to the exports of GHGIRTs are generally those identified in the NTE with respect to other exports to the 25 developing countries: *e.g.*, lack of adequate and effective intellectual property rights protections; lack of regulatory transparency and sound legal infrastructure; state-controlled oil and energy sectors, which are often slower to invest in new technologies; cumbersome and unpredictable customs procedures; corruption; import licensing schemes; investment restrictions, including requirements to partner with domestic firms; and high applied tariff rates for some countries. Progress in removing such barriers is noted below in the appropriate country chapter of the report. The reader is also referred to USTR's "Special 301" report pursuant to section 182 of the Trade Act of 1974. The "Special 301" report describes the adequacy and effectiveness of intellectual property rights protection and enforcement of U.S. trading partners; the 2009 report will be released in April 2009.

Concerning relevant multilateral activities, the United States continues to exercise leadership within the World Trade Organization in pushing for increased liberalization of global trade in environmental goods and services, including GHGIRTs. As noted in last year's report, the United States, together with the European Communities (EC), submitted a ground-breaking proposal in 2007 as part of the WTO Doha Round negotiations to increase global trade in and use of environmental goods and services, including GHGIRTs. The proposal lays the foundation for an innovative new environmental goods and services agreement (EGSA) in the WTO and would include a commitment by all WTO Members to remove barriers to trade in a specific set of climate-friendly technologies. The United States is also continuing its efforts in APEC to build awareness and promote trade liberalization of environmental goods and services (EGS) in APEC through its new EGS work program.

The merchandise trade data contained in the NTE report are based on total U.S. exports, free alongside (f.a.s.)[5] value, and general U.S. imports, customs value, as reported by the Bureau of the Census, Department of Commerce. (NOTE: These data are ranked according to size of export market in the Appendix). The services data are from the October 2008 issue of the Survey of Current Business (collected from the Bureau of Economic Analysis, Department of Commerce). The direct investment data are from the September 2008 issue of the Survey of Current Business (collected from the Bureau of Economic Analysis, Department of Commerce).

TRADE IMPACT ESTIMATES AND FOREIGN BARRIERS

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

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

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

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

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

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

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

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

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

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

March 2009

Endnotes

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

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

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

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

The United States Government led efforts to launch the Organization for Economic Cooperation and Develpoment (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Antibribery Convention). In November 1997, the United States and 33 other nations adopted the Antibribery Convention, which currently is in force for 37 countries, including the United States. (Israel signed the Convention on March 11, 2009, and thus will become the 38th Party.) The Antibribery Convention obligates its parties to criminalize the bribery of foreign public officials in the conduct of international business. It is aimed at proscribing the activities of those who offer, promise, or pay a bribe. (For additional information, see http://www.export.gov/tcc and http://www.oecd.org).

The United States played a critical role in the successful conclusion of negotiations that produced the United Nations Convention Against Corruption, the first global anti-corruption instrument. The Convention was opened for signature in December 2003, and entered into force December 14, 2005. The Convention contains many provisions on preventive measures countries can take to stop corruption, and requires countries to adopt additional measures as may be necessary to criminalize fundamental anticorruption offenses, including bribery of domestic as well as foreign public officials. As of early March 2009, 141 countries, including the United States, have signed the Convention, and there are 132 parties including the United States.

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

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

[3] Section 1611 of the Act amends the Global Environmental Protection Assistance Act of 1989 (Public Law 101-240) to add new Sections 731-39. Section 732(a)(2)(A) directs the Department of State to identify the top 25 GHG emitting developing countries for the purpose of promoting climate change technology. The Secretary of State has submitted its report to Congress identifying these 25 countries. Section 734 calls on the United States Trade Representative "(as appropriate and consistent with applicable bilateral, regional, and mutual trade agreements) [to] (1) identify trade-relations barriers maintained by foreign countries to the export of greenhouse gas intensity reducing technologies and practices from the United States to the developing countries identified in the report submitted under section 732(a)(2)(A); and (2) negotiate with foreign countries for the removal of those barriers."

[4] These 25 countries were identified in the Department of State's 2006 **"**Report to Congress on Developing Country Emissions of Greenhouse Gases and Climate Change Technology Deployment." They are: China; India; South Africa; Mexico; Brazil; Indonesia; Thailand; Kazakhstan; Malaysia; Egypt; Argentina; Venezuela; Uzbekistan; Pakistan; Nigeria; Algeria; Philippines; Iraq; Vietnam; Colombia; Chile; Libya; Turkmenistan; Bangladesh; and Azerbaijan. In 2008, Morocco replaced Azerbaijan on the list. The United States-Morocco Free Trade Agreement contains commitments, *inter alia*, to promote intellectual property rights, effectively enforce environmental laws, improve transparency, eliminate tariffs on GHGIRTs and open Morocco's market to U.S. environmental services firms.

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

ANGOLA

TRADE SUMMARY

The U.S. goods trade deficit with Angola was $16.8 billion in 2008, an increase of $5.6 billion from $11.2 billion in 2007. U.S. goods exports in 2008 were $2.1 billion, up 65.4 percent from the previous year. Corresponding U.S. imports from Angola were $18.9 billion, up 51.2 percent. Angola is currently the 62nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Angola was $876 million in 2007 (latest data available), down from $1.4 billion in 2006.

IMPORT POLICIES

Tariffs and Nontariff Measures

Angola is a Member of the World Trade Organization (WTO) and the Southern African Development Community (SADC). In March 2003, Angola agreed to adhere to the SADC Protocol on Trade, which seeks to facilitate trade by harmonizing and reducing tariffs and by establishing regional policies on trade, customs, and methodology. However, Angola has delayed implementation of this protocol until 2010 so that the country can revive domestic production of non-petroleum goods, which remains low as a result of years of civil war and economic underdevelopment. The government is concerned that early implementation of the SADC Protocol on Trade would lead to a large increase in imports, particularly from South Africa.

A new tariff schedule came into force in September 2008 that exempts duties on the import of raw materials, equipment, and intermediate goods for industries and reduces tariffs on 58 categories of basic goods. A new tax was also established on imports of luxury products, which are now subject to a 1 percent surcharge. Personal customs fees and transportation taxes were revoked by the new statute and are no longer charged. Besides the duties themselves, additional fees associated with importing include clearing costs (2 percent), VAT (2 percent to 30 percent depending on the good), revenue stamps (0.5 percent), port charges ($500 per day per 20 foot container or $850 per day per 40 foot container), and port storage fees (free for the first 15 days, then $20 per 20 foot container or $40 per 40 foot container per day).

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

Customs Barriers

Administration of Angola’s customs service has improved in the last few years but remains a barrier to market access. The Angolan government implemented a new customs code in January 2007 which follows the guidelines of the World Customs Organization (WCO), WTO, and SADC. However, as of late 2008, port clearance time averaged one month and importers commonly face additional delays, often the result of capacity constraints at the Port of Luanda. For instance, shipping containers, although cleared, may be physically inaccessible because they are behind other containers.

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

Required customs paperwork includes the "Documento Unico" (single document) for the calculation of customs duties, proof of ownership of the good, bill of lading, commercial invoice, packing list, and specific shipment documents verifying the right to import or export the product. Any shipment of goods equal to or exceeding $1,000 requires a clearing agent. The number of clearing agents has increased from 55 in 2006 to 162, but competition among clearing agents has not reduced fees, which often range between 1 percent and 2 percent of the value of the declaration.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

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

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

GOVERNMENT PROCUREMENT

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

Angola is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Angola is a party to the World Intellectual Property Organization (WIPO) Convention, the Paris Convention for the Protection of Industrial Property, and the WIPO Patent Cooperation Treaty. Intellectual property is protected by Law 3/92 for industrial property and Law 4/90 for the attribution and protection of copyrights. Intellectual property rights are administered by the Ministry of Industry (trademarks, patents, and designs) and by the Ministry of Culture (authorship, literary, and artistic rights). Each petition for a patent that is accepted is subject to a fee that varies by type of patent requested.

Although Angolan law provides basic protection for intellectual property rights and the National Assembly is working to strengthen existing legislation, IPR protection remains weak due to a lack of enforcement capacity. However, government officials have made efforts to confiscate and destroy pirated goods. On September 18, 2008 Angola’s Economic Police burned 2.5 tons of medicines, CDs, and DVDs in a public event aimed at curbing the sales of pirated merchandise in Angola. According to Angola’s National Department for the Protection of Intellectual Property Rights, the owners of the pirated goods were sentenced to up to six months in jail or fined approximately 110,000 Kwanza (approximately $1,500). The government has also worked with international computer companies on anti-piracy measures. No suits involving U.S. intellectual property are known to have been filed in Angola.

INVESTMENT BARRIERS

Angola is formally open to foreign investment, but its regulatory and legal infrastructure is not adequate to facilitate much foreign direct investment outside the petroleum sector or to provide sufficient protection to foreign investors. Smaller, non-extractive firms tend to have a more difficult time conducting business in Angola than larger, multinational corporations engaged in extractive industries. In 2003, Angola created the National Private Investment Agency (ANIP) and replaced its 1994 Foreign Investment Law with a new Law on Private Investment (Law 11/03). The 2003 law lays out the general parameters, benefits, and obligations for foreign investment in Angola. It encourages foreign investment by providing equal treatment for domestic and foreign investors, offering fiscal and customs incentives, and simplifying the investment application process. However, the law is vague on profit repatriation and includes weak legal safeguards to protect foreign investors. For example, several foreign construction companies abruptly lost their quarrying rights in 2007. In addition, many provisions of the law are subordinate to other sectoral legislation, allowing other government ministries to override some of the protections and incentives offered by the investment law.

Angolan law has no provisions for international arbitration and requires that any investment dispute be resolved in Angolan courts. Angola has not ratified major international arbitration treaties. The World

Bank's "Doing Business in 2009" survey estimates that commercial contract enforcement – measured by the amount of time elapsed between the filing of a complaint and the receipt of restitution – generally takes more than 1,000 days in Angola. A law on voluntary arbitration law that would provide the legal framework for speedier, non-judicial resolution of disputes has been drafted, but not yet approved.

Angola's previous foreign investment law expressly prohibited foreign investment in the areas of defense, internal public order, and state security; in banking activities relating to the operations of the Central Bank and the Mint; in the administration of ports and airports; and in other areas of the state's exclusive responsibility by law. Although the 2003 Law on Private Investment does not explicitly restate these prohibitions, these areas are assumed to remain off-limits to foreign investors.

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

Obtaining the proper permits and business licenses to operate in Angola is time-consuming and adds to the cost of investment. The World Bank "Doing Business in 2009" report ranked Angola at 168 out of 181 countries surveyed on time taken to register a business -- an average of 156 days compared to a regional average of 63 days. The 2003 investment law provides that ANIP and the Council of Ministers should take no more than two months to approve a contract with an investor.

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

OTHER BARRIERS

Corruption

Corruption is prevalent due to rent-seeking behavior by powerful officials, vague laws protecting personal property, the lack of adequately trained government staff, low civil service salaries, dependence on a centralized bureaucracy and antiquated regulations dating back to the colonial era. The process to register a company is complicated and may involve up to 14 steps with many different government ministries. Investors are often tempted to seek quicker service and approval by paying gratuities and other facilitation fees.

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

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

Recovering from War

Angola's badly damaged and neglected infrastructure substantially increases the cost of doing business for investors. Poor roads, destroyed bridges, and mined secondary routes raise transportation costs. The country is in the process of rebuilding its communications, energy, transportation, and road infrastructure. Domestic and international communications are improving, but communication networks are oversubscribed in the provinces and sometimes in the capital city of Luanda, and coverage can be unreliable. Frequent interruptions plague water and power supplies, while power surges can damage electronic equipment. Increased overhead for investors includes outlays for security services, back-up electrical generators, and cisterns. However, rebuilding infrastructure is a major policy objective of the Angolan government. The government budgeted $7.5 billion in 2007 for restoration of public infrastructure to address these deficiencies.

ARAB LEAGUE

The impact of the Arab League boycott of commercial ties with Israel on U.S. trade and investment in the Middle East and North Africa varies from country to country. While it remains a serious barrier for U.S. firms operating in the region, the boycott has extremely limited effect on U.S. trade and investment in most Arab League countries. The 22 Arab League members include the Palestinian Authority and the following states: Algeria, Comoros, Djibouti, Egypt, Iraq, Jordan, Lebanon, Libya, Mauritania, Morocco, Somalia, Sudan, Syria, Tunisia, Yemen, and the Gulf Cooperation Council (GCC) countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates).

The United States has long opposed the Arab League boycott through both words and action. U.S. Government officials have repeatedly urged Arab League member states to end enforcement of the boycott. Many agencies play a role in this effort. In particular, the Department of State and the National Security Council take the lead in raising U.S. concerns with political leaders in Arab League member states. The U.S. Departments of Commerce and the Treasury, along with the United States Trade Representative, monitor boycott policies and practices of Arab League member states and, aided by U.S. embassies, attempt to lend advocacy support to firms facing boycott-related pressures from host country officials.

Under U.S. antiboycott legislation enacted in 1978, U.S. firms are prohibited from responding to any request for information that is designed to determine compliance with the boycott and are required to report receipt of any such request to the U.S. Department of Commerce's Office of Antiboycott Compliance (OAC). Part of U.S. officials' efforts thus involves noting for host country officials the persistence of illegal boycott requests and those requests' impact on both U.S. firms and on the countries' abilities to expand trade and investment ties with the United States. In this regard, Department of Commerce OAC officials periodically visit Arab League member states to consult with appropriate host country counterparts; the most recent such visit, which included State Department officials, occurred in March 2008.

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

While the legal structure of the boycott in the Arab League itself has remained unchanged, enforcement of the boycott remains the responsibility of individual member states, and enforcement efforts vary widely from country to country. Some member governments of the Arab League have consistently maintained that only the Arab League as a whole can revoke the boycott. Other member governments support the view that adherence to the boycott is a matter of national discretion, and a number of states have taken steps to dismantle various aspects of it. Attendance by Arab League member governments of periodic meetings of the CBO is inconsistent; the U.S. Government has on numerous occasions indicated to Arab League members that attendance at these meetings is not conducive to improving trade and investment ties, either with the United States or within the region. A number of governments have responded that they only send representatives to CBO meetings in an observer capacity.

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

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

The legal status of Iraq's boycott laws is ambiguous. There is an existing law from 1956 which provides for an office charged with the enforcement of the boycott. Coalition Provision Authority (CPA) Order 80 amended Iraq's trademark law to remove boycott requirements from Iraqi trademark law. Recent efforts by the Iraqi Office of Trademark Registration to enforce the boycott have not been met with success. Other Iraqi government officials, including at the ministerial level, have asserted that the boycott is no longer in force as a practical matter. Nonetheless, U.S. companies continue to encounter prohibited requests in documentation prepared by certain Iraqi ministries, parastatals, and private sector entities. U.S. Government authorities have addressed these on a case-by-case basis and are working with the Iraqi government to put in place a legal structure that removes boycott-related impediments to trade. Senior Iraqi officials are aware that enforcement of the boycott would jeopardize Iraq's ability to attract foreign investment. U.S. embassy officials continue to engage regularly with the government of Iraq to resolve remaining discrepancies between Iraqi government policies and individual entity practices.

There are no specific laws on the books in Yemen regarding the boycott, though Yemen continues to enforce the primary aspect of the boycott. However, Yemen is implementing its 1995 governmental decision to renounce observance of the secondary and tertiary aspects of the boycott and does not have an official boycott enforcement office. Yemen remains a participant in annual meetings of the CBO in Damascus.

Lebanese law essentially provides for enforcement of the Arab League boycott. Although it is not clear how completely the law encompasses all three aspects of the boycott, Lebanon definitely continues to enforce the primary boycott. The cabinet has reportedly resumed voting to include new CBO-recommended companies on Lebanon's national boycott list (after a period in which such votes went the other way). Government contacts report that Lebanon continues to view attendance at CBO meetings as important, because Lebanon lobbies at those meetings against blacklisting certain companies.

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

The situations in individual GCC countries are as follows:

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

Kuwait reports that it has not applied a secondary or tertiary boycott of firms doing business with Israel since 1991, and continues to adhere to the 1994 GCC decision. Kuwait claims to have eliminated all direct references to the boycott in its commercial documents as of 2000 and affirms that it has removed all firms and entities that were on the boycott list due to secondary or tertiary aspects of the boycott prior to 1991. Kuwait still applies a primary boycott of goods and services produced in Israel and there is no direct trade between Kuwait and Israel. However, the government states that foreign firms have not encountered serious boycott-related problems for many years. Kuwait's boycott office is supervised directly by the Director General for Customs. Kuwaiti officials reportedly regularly attend Arab League boycott meetings, although whether they are active participants is unclear.

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

Qatar does not have any boycott laws on the books and does not enforce the boycott, although it does usually send an embassy employee to observe the CBO meetings in Damascus. An Israeli trade office opened in Qatar in May 1996; however, Qatar ordered that office closed in January 2009 in protest against the Israeli military action in Gaza. October 2007 information indicated that there was in that year officially about $2 million in trade between the two countries; real trade, including Israeli exports of agricultural and other goods shipped via third countries, could have been at least double the official figures. Qatari policy permits the entry of Israeli business travelers who obtain a visa in advance. Such persons have still sometimes encountered difficulties obtaining visas, though those problems were often resolved by the local trade office working with its contacts at a higher level. Despite closure of the Israeli trade office in early 2009, the government has said trade with Israel can continue and Israelis can still visit the country. Some Qatari government tender documents still include outdated boycott language, though the U.S. embassy is unaware of boycott language used in any documents in 2008.

In accordance with the 1994 GCC decision, Saudi Arabia modified its 1962 law imposing a boycott on Israel so that the secondary and tertiary boycotts were terminated and are no longer enforced in the Kingdom. In light of its accession to the WTO in 2005, the Saudi government re-issued the original directive confirming that these two aspects of the boycotts are not to be applied in Saudi Arabia. The

Ministry of Commerce and Industry (MOCI) established an office to address any reports of boycott-related violations, and that office appears to take its responsibility in this regard seriously. The MOCI met with the U.S. Commerce Department's OAC in September 2005 and February 2006 to discuss methods for ensuring Saudi commercial documents and tenders are in compliance with antiboycott regulations. Reported violations appear to reflect out-of-date language in recycled commercial and tender documents. Saudi companies have been willing to void or revise that language when they are notified of its use. Saudi Arabia is obligated to apply WTO commitments to all current WTO members, including Israel.

Also in accordance with the 1994 GCC decision, the United Arab Emirates (UAE) does not implement the secondary and tertiary aspects of the boycott. The UAE has not renounced the primary aspect of the boycott; however, the degree to which the government enforces the primary boycott is unclear. According to data from the U.S. Department of Commerce, U.S. firms continue to face a relatively high number of boycott requests in the UAE (the high volume of U.S.-UAE trade may be contributing to this phenomenon) which the government explains is mostly due to the use of outdated documentation, especially among private sector entities. The United States has had success in working with the UAE to resolve specific boycott cases, and the government continues to take steps to eliminate prohibited boycott requests. The UAE has issued a series of circulars to public and private companies explaining that enforcement of the secondary and tertiary aspects of the boycott is a violation of Emirati policy. These circulars urge entities to amend relevant documents to include boycott-free language agreed to by the UAE and U.S. Department of Commerce officials. The Emirati authorities report that compliance with these requests has been high and is ongoing. The Ministry of Economy also reports it conducts periodic checks of entities' compliance efforts.

In recent years, press reports occasionally have surfaced regarding officially-sanctioned boycotts of trade with Israel by governments of non-Arab League member states, particularly some member states of the 57 member Organization of the Islamic Conference (OIC), headquartered in Saudi Arabia (Arab League and OIC membership overlaps to a considerable degree). Information gathered by U.S. embassies in various non-Arab League OIC member states does not paint a clear picture of whether the OIC institutes its own boycott of Israel (as opposed perhaps to simply lending support to Arab League positions) or of the degree of boycott activity in these countries. Pakistan and Bangladesh, for example, reportedly do impose a primary boycott on trade with Israel, but the U.S. Government is not aware of U.S. company complaints of enforcement by either country of secondary or tertiary aspects of such a boycott.

ARGENTINA

TRADE SUMMARY

The U.S. goods trade surplus with Argentina was $1.7 billion in 2008, an increase of $348 million from $1.4 billion in 2007. U.S. goods exports in 2008 were $7.5 billion, up 28.7 percent from the previous year. Corresponding U.S. imports from Argentina were $5.8 billion, up 29.7 percent. Argentina is currently the 32nd largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Argentina were $2.8 billion in 2007 (latest data available), and U.S. imports were $1.2 billion. Sales of services in Argentina by majority U.S.-owned affiliates were $4.4 billion in 2006 (latest data available), while sales of services in the United States by majority Argentina-owned firms were $56 million.

The stock of U.S. foreign direct investment (FDI) in Argentina was $14.9 billion in 2007 (latest data available), up from $13.9 billion in 2006. U.S. FDI in Argentina is concentrated largely in the nonbank holding companies, mining, and manufacturing sectors.

IMPORT POLICIES

Tariffs

Argentina's import tariffs range from 0 percent to 35 percent, with an average applied tariff rate of 17 percent in 2008 (up from 14 percent in 2007). Argentina is a member of the MERCOSUR common market, formed in 1991 and comprised of Argentina, Brazil, Paraguay, and Uruguay. MERCOSUR's common external tariff (CET) averages 11.7 percent and ranges from 0 percent to 35 percent *ad valorem*, with a limited number of country-specific exceptions. Currently, Argentina maintains over 800 exceptions to the CET on capital goods (for which the CET is 14 percent but for which Argentina allows duty-free entry), computing and telecommunications goods, chemicals, sugar and an additional diversified group of 100 products. Tariffs may be imposed by each MERCOSUR member on products imported from outside the region which transit at least one or more MERCOSUR members before reaching their final destination. Full CET product coverage, which would result in duty-free movement within MERCOSUR, was originally scheduled for implementation in 2006, but has been deferred until December 31, 2009.

In October 2008, Argentina adopted a decision (issued by MERCOSUR in September 2007), to increase the CET to either 26 percent or 35 percent (from a prior ceiling of 20 percent) on several hundred tariff lines of textiles, footwear, and automobiles and auto parts.

While the majority of tariffs are levied on an *ad valorem* basis, Argentina charges compound rates consisting of *ad valorem* duties plus specific levies known as "minimum specific import duties" (DIEM) on products in several sectors, including textiles and apparel, footwear, and toys. These DIEMs were supposed to expire on December 31, 2007, but were extended until December 31, 2010. These import duties do not apply to goods from MERCOSUR countries and cannot exceed the value of an equivalent 35 percent *ad valorem* tariff.

High *ad valorem* tariffs affect U.S. exports across several key sectors, including automobiles, auto parts, electronics, chemicals, plastics, textiles, and apparel.

Since 2007, Argentina has imposed a specific duty safeguard on imports of recordable compact discs. The safeguard is scheduled to be phased out by May 2010.

Nontariff Barriers

Argentina imposed new customs and licensing procedures and requirements in October 2008 which, combined with a series of measures implemented in July 2007 and August 2007, could make importing U.S. products and products from third-country U.S affiliates more difficult. The measures include additional inspections, port-of-entry restrictions, expanded use of reference prices, and requirements for importers to have invoices notarized by the nearest Argentine diplomatic mission when imported goods are below reference prices. A number of U.S. companies with operations in Argentina have initially expressed concern that the October 2008 measures could delay and make imports of intermediate and final goods from the United States and from their third-country affiliates more costly. While measures introduced in 2007 applied mainly to goods from China, India, Hong Kong, North and South Korea, Indonesia, Malaysia, Pakistan, the Philippines, Taiwan, Thailand, Singapore, and Vietnam, the 2008 measures are not country-specific. In response to U.S. Government inquiries, Argentine government officials have asserted that all of these measures are nondiscriminatory and WTO-consistent.

Customs External Note 87/2008 of October 2008 establishes administrative mechanisms that could restrict the entry of products deemed sensitive, such as textiles, apparel, footwear, toys, electronic products, and leather goods, among others. The stated purpose of the measure is to prevent under-invoicing. While restrictions are not country-specific, they are to be applied more stringently to goods from countries considered "high risk" for under-invoicing, and to products considered at risk for under-invoicing as well as trademark fraud. The full text of the Note is at http://www.infoleg.gov.ar/infolegInternet/anexos/145000-149999/145766/norma.htm. In October 2008 discussions with the U.S. Government, members of the U.S. private sector noted no additional unusual import processing delays and agreed to alert U.S. officials to any significant changes in import processing times related to the new measures.

Another measure, Disposition 16/2008, went into effect on November 5, 2008, and imposed new "automatic" license requirements on 1,200 different types of consumer goods, which collectively represented approximately $3.1 billion in imports in 2007 (about 7 percent of total imports that year). Products affected include food and drink, pet food, computer and audio equipment, cars, bicycles, cameras, mattresses, telephones, toys and watches. The licenses will, according to public comments by the Secretary of Industry, be issued 48 hours to 72 hours after application.

Customs Resolution 52 of 2007 restricts the ports-of-entry for numerous goods, including sensitive goods classified in 20 Harmonized Tariff Schedule (HTS) chapters (*e.g.* textiles, shoes, electrical machinery, metal and certain other manufactured goods, and watches). Partial limitations on ports-of-entry are applied to plastic household goods, leather cases and apparel, porcelain and ceramic tableware and ornaments, household glass goods, imitation jewelry, household appliances, pots and pans, computers, car parts, motorcycles and parts, bicycles and parts, lamps, and toys. The government of Argentina has listed products limited to certain ports-of-entry, and the ports-of-entry applicable to those products at http://www.infoleg.gov.ar/infoleg Internet/anexos/130000-134999/131847/norma.htm.

Depending on their country of origin, many of these products are also subject to Customs External Note 58 of 2007, which revised some reference prices and set new ones on over 7,000 tariff lines. This Note expands selective, rigorous "red channel" inspection procedures (via Resolution 1907 of 2005 and amplified by Customs External Note 55 in 2007) to a broader range of goods and requires importers to provide guarantees for the difference of duties and taxes if the declared price of an import is lower than its reference price.

Customs External Note 57 of 2007, which the government of Argentina indicated was designed to discourage under-invoicing and fraudulent under-payment of customs duties, requires importers of any goods from designated countries which are invoiced below the reference prices to have the invoice validated by both the exporting country's customs agency and the appropriate Argentine Embassy or Consulate in that country. The government of Argentina has made the list of reference prices and applicable countries (the Annex to Customs External Note 58) available at http://www.infoleg.gov.ar/infolegInternet/anexos/130000-134999/131630/notaext58-2007-sup.doc.

Since 2005, the government of Argentina has required non-automatic licenses on shoes, requiring certificates that are valid for only 120 days and whose issuance involves procedures that, according to the private sector, are burdensome. There is an automatic license requirement for most footwear imports; the government of Argentina says this requirement is needed for informational purposes. Some U.S. companies, however, claim it is designed to delay footwear imports.

Also since 2005, the government has required non-automatic import licenses for toys. Obtaining a license requires review by three different offices in the Ministry of Economy. The process generally takes 120 days, partly due to a backlog of license applications. Once issued, the certificates are valid for 60 days. Previously high and variable specific duties on toys were reduced to a maximum 35 percent *ad valorem* equivalent tariff in January 2007.

Also since 2005, the government of Argentina has requested private sector companies to negotiate and abide by sector-specific voluntary price caps aimed at limiting price increases on key components of the consumer price index, especially in Argentina's basic consumption basket. Sectors in which voluntary price accords have been negotiated include a variety of foodstuffs, personal hygiene and cleaning products, and pharmaceuticals. Informally controlled gasoline and diesel fuel prices have risen significantly in 2008, but remain significantly below prices in neighboring countries. The government, which had largely frozen public utility electricity and natural gas rates since 2002, has recently allowed selective increases targeting industrial and large users, through these rates remain significantly below those of neighboring countries.

Argentina prohibits the import of many used capital goods. Used capital goods which can be imported are subject to a 6 percent import tariff. Some used machinery imports are allowed, but only if repaired or rebuilt. The Argentina-Brazil Bilateral Automobile Pact also bans the import of used self propelled agricultural machinery, unless it is rebuilt. Imports of used clothing are prohibited through June 2010, except when donated to government or religious organizations, as established by Resolution 367 in 2005. Argentina prohibits the importation and sale of used or re-treaded tires, used or refurbished medical equipment, including imaging equipment, and used automotive parts.

A fee of 0.5 percent to fund the government of Argentina's compilation of trade data is assessed on most imports (90 percent of all HTS lines).

A draft law (D-6172-05) currently pending in Argentina's Chamber of Deputies would restrict the sale of dietary supplements to pharmacies.

Customs Procedures

In 2008, Argentina's Federal Administration for Public Revenue revised certificate of origin requirements for a long list of products with nonpreferential origin treatment, including textiles, motorcycles, steel products and household appliances through External Note 2 (which replaced External Note 13 from 2006).

In 2005, AFIP Resolution 1811 modified the import-export regime applied to couriers. It reduced the maximum value of express delivery service shipments from $3,000 to $1,000 for which simplified customs clearance procedures are applied. Additionally, couriers now are considered importers and exporters of goods, rather than transporters, and also must declare the tax identification codes of the sender and addressee, both of which render the process more time consuming and costly. These regulations increase the cost not only for the courier, but also for users of courier services. The U.S. Government has raised these policies with the Ministry of Federal Planning, Public Investment and Services; the Directorate of Customs; and the Secretariat of Air Transport.

EXPORT POLICIES

Following the 2002 currency devaluation, the government of Argentina imposed export taxes on all but a few exports, including significant export taxes on key hydrocarbon and agricultural commodity exports, in order to generate revenue and increase domestic supplies of these commodities to constrain domestic price increases. In many cases, the export tax for raw materials is higher than that of the processed product to encourage development of domestic value added production. Crude hydrocarbon export taxes are indexed to world commodity benchmarks. Total export tax revenue in 2007 was equal to 11.8 percent of the value of all Argentine exports (up from 10.3 percent in 2006), including goods not subject to export taxes.

Other export taxes continue to be actively managed by the government of Argentina. In November 2007, export taxes on the following major agricultural commodities were increased: soybeans to 35 percent; soybean oil and soybean meal to 32 percent; corn to 25 percent; wheat to 28 percent; sunflower seeds to 32 percent; and sunflower meal and sunflower oil to 30 percent. The export tax on biodiesel was increased from 5 percent to 20 percent in 2007, with a 2.5 percent rebate. The differential taxes between raw and processed products create large incentives to process those commodities locally - particularly for soybeans, which are turned into oil and in turn provide the feedstock for Argentina's rapidly growing biodiesel industry.

In 2008, the Argentine Congress passed legislation that mandated grain traders to pay increased taxes on exports registered prior to the increase in export taxes, if they could not prove that they had acquired the grains and oilseeds prior to the tax increase. The government of Argentina is now seeking to collect retroactively export taxes on an estimated 24 million tons of grain exports. The U.S. Government has raised concerns about these efforts to collect export taxes retroactively with senior Argentine government officials, noting that they prejudice U.S. company interests and adversely affected Argentina's investment climate.

Along with applying high export taxes, the government of Argentina requires export registration for major commodities before an export sale can be shipped. This process has been used to control the quantity of goods exported, thereby guaranteeing domestic supply. Prior to the increases in export taxes in November 2007, the export registration process was closed for soybeans, corn, and wheat. Export registrations of wheat, corn, beef, and dairy products continue to be subject to periodic restrictions to guarantee domestic supplies. The government of Argentina also implemented Resolution 543 in May

2008, which imposes additional time restrictions on grain and oilseed exports. Under current requirements, exporters are required to export the product within 45 days of registration, with an extension of this time period up to 180 days only possible for exporters who pay the export tax in advance of receiving the export license.

Export taxes on beef and other restrictions on beef exports have been applied with the aim of increasing local supply and avoiding further increases in domestic beef prices. The government of Argentina increased controls on beef exports in the first half of 2008 in order to guarantee domestic supplies. While increasing the beef export quota to approximately 45,000 tons per month, the government also implemented a new system by which beef packing plants are required to have at least 75 percent of their warehouse capacity full to be able to export the excess above that level. The National Organization of Control of Agricultural Commercialization administers the Registry of Export Operations under the provisions of Resolution 3433/2008 of August 27, 2008. All exports must be registered and the government has the authority to reject or delay exports depending on domestic price and supply conditions.

Exporters may claim reimbursement for some domestically paid taxes, including value added tax (VAT) reimbursements. The average non-VAT export reimbursement rate is 4.2 percent of export value. The government eliminated some non-VAT reimbursements for food products (including milk and dairy products, and vegetable oils) in 2005 to influence domestic prices of those goods, but reinstated some in 2006.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

In 2000, Resolution 287 established strict labeling requirements for footwear and textiles with respect to, *inter alia*, print size, attachment to the garment, and information contained (including country of origin and importer name). Importers complain that such requirements significantly delay import processing.

Sanitary and Phytosanitary Measures

In 2002, Resolution 816 established a framework for all agricultural product imports overseen by the Argentine Animal and Plant Inspection and Food Safety Agency (SENASA). This resolution authorizes SENASA to inspect those processing and packing plants that intend to export to Argentina. In 2006 and 2007, SENASA requested several plant inspections prior to issuance of import permits. The United States is currently seeking SENASA recognition of equivalency for the U.S system, rather than undergoing plant-by-plant inspections. This process has begun with U.S. poultry products.

Argentina banned imports of U.S. poultry products in 2002 due to concerns of Avian Influenza and Exotic Newcastle Disease. In September 2005, Argentina allowed for the importation of poultry genetics (day-old chicks and hatching eggs). The United States continually urged Argentina to fully open its market to all poultry products. In November 2008, Argentina conducted an equivalency systems audit of the U.S. poultry inspection system. A successful system audit would avoid the need for implementing plant-by-plant inspections for poultry and potentially other products subject to Resolution 816.

The government of Argentina banned import of all products of ruminant origin, including beef and lamb, from the United States after a case of Bovine Spongiform Encephalopathy (BSE) was discovered in Washington State in December 2003. In August 2006, Argentina issued Resolution 315, in which it adopted import requirements consistent with the World Organization for Animal Health (OIE) requirements with regard to BSE for dairy products, bovine semen and embryos, hides and skins, and other similar products. The government of Argentina has not, however, implemented revised requirements to reflect the May 2007 OIE decision, which classified the United States as "controlled risk" for BSE. The United States continues to engage with the relevant Argentine government agencies to open its market for all beef and beef products from the United States on the basis of the OIE guidelines and the OIE's classification of the United States as "controlled risk" for BSE.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Argentina's lack of adequate and effective intellectual property protection remains a concern for the United States. Argentina has been on the Special 301 Priority Watch List since 1996. Although cooperation has improved between Argentina's enforcement authorities and the U.S. copyright industry, and the Argentine Customs authority has taken steps to improve enforcement, the United States encourages stronger IPR enforcement actions to combat the widespread availability of pirated and counterfeit products. Civil damages have not proven deterrent and in criminal cases the judiciary is reluctant to impose deterrent penalties, such as prison sentences.

Argentine customs and other government authorities generally cooperate with U.S. industry efforts to stop shipments of pirated merchandise. In 2007, Argentine customs, in close collaboration with the private sector, instituted a program in which registered trademark owners are notified of imports using their trademarks. Working with those trademark owners, customs authorities have significantly increased seizures of goods with counterfeit trademarks. However, insufficient resources and slow court procedures have hampered the overall effectiveness of enforcement efforts. End-user piracy of business software, motion picture piracy, and book piracy remains widespread. The legal framework regarding Internet piracy provides few incentives to investigate and punish those who post infringing materials.

Inadequate border controls further contribute to the regional circulation of pirated goods. Argentine customs authorities are authorized to detain imported merchandise based on the presumption of copyright or trademark violations. Law 25986, passed in December 2004, expanded this authority to detain imported goods presumed to violate all other intellectual property rights, including patents or industrial designs. However, this portion of the law was never implemented, and in December 2008, it was modified to explicitly limit border enforcement to copyright and trademark violations.

The National Intellectual Property Institute (INPI) started to grant product patents for pharmaceuticals in October 2000. Although issuance of these patents has been slow since that time, INPI took a number of steps to reduce the backlog, including the implementation in 2005 of fast-track procedures, and opportunities in 2005 and 2007 for companies to prioritize their patent applications before INPI. Representatives of U.S. companies with significant interest in patented product sales in Argentina say that the patent issuance process has slowed in 2008, and that the backlog of patent applications is growing. The U.S. Government has highlighted the impact of this growing backlog on U.S. company interests to Argentine government officials. In addition, judicial processes for preliminary injunctive relief for patent infringement have so far been slow in practice.

The United States remains concerned about the lack of effective protection against unfair commercial use of test data submitted to ANMAT (the Argentine equivalent of the U.S. Food and Drug Administration) in conjunction with the application for marketing approval of pharmaceutical products.

Copyright piracy remains a significant problem. Although Argentina ratified the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty in 1999, some implementation issues remain to be resolved.

Enforcement of copyrights on recorded music, videos, books, and computer software remains inconsistent. The International Intellectual Property Alliance estimates that the trade losses in 2008 were $340.1 million, an increase from $306.7 million in 2007. In addition, the government has not eliminated unlicensed software used in government offices.

Biotechnology

The United States and Argentina have been closely allied in the area of agricultural biotechnology, including as co-complainants in a WTO dispute challenging the EU moratorium on transgenic crops and in discussions on the implementation of the Cartagena Biosafety Protocol. However, the Argentine government has not enforced an intellectual property regime to ensure that companies developing new biotechnology crops are reasonably compensated and guarantee future investment in agricultural biotechnology. Argentina currently produces approximately 47 million tons of soybeans from biotechnology seed, the vast majority of which, according to U.S. private sector estimates, are produced without payment to the U.S. owners of the technology. Efforts are currently underway to rectify this situation. The U.S. Embassy is actively working with the Argentine government, as well as with interested U.S. companies, to support these efforts.

SERVICES BARRIERS

Audiovisual Services

U.S. industry remains concerned with the added costs associated with exporting movies to Argentina due to measures governing the showing, printing and dubbing of films - and the practice of charging *ad valorem* customs duties on U.S. exports based on the estimated value of the potential royalty generated from the film in Argentina rather than solely on the value of the physical materials being imported.

Financial Services

Under the WTO General Agreements on Services, Argentina has committed to allow foreign suppliers of noninsurance financial services to establish all forms of commercial presence and has committed to provide market access and national treatment to foreign suppliers of noninsurance financial services. The only significant remaining barrier is the limit on lending for foreign bank branches based on local paid-in capital, as opposed to the parent bank's capital.

GOVERNMENT PROCUREMENT

Law 25551 of 2001 establishes a national preference for local industry for most government purchases where the domestic supplier bid is no more than 5 percent to 7 percent (the latter figure for small or medium-sized businesses) higher than the foreign bid. The preference applies to tender offers by all government agencies, public utilities, and concessionaires. There is similar legislation at the provincial level. These preferences serve as barriers to participation by foreign firms.

Argentina is not a signatory to the WTO Agreement on Government Procurement, but it is an observer to the WTO Committee on Government Procurement.

INVESTMENT BARRIERS

Argentina's common automotive policy with Brazil (Bilateral Automobile Pact), introduced in 2002 and modified in 2004, 2006, and 2008, significantly restricts bilateral trade in automobiles and automotive parts. (Under the 2008 accord, in effect until 2013, for each $100 of exports Brazil sells to Argentina, Argentina may ship up to $250 worth of vehicles and automobile parts back to Brazil. For each $100 of Argentine exports, the Brazilian automobile industry can ship up to $195 to Argentina.) There is substantial U.S. investment in automobile manufacturing in Argentina, as well as significant trade of U.S. cars between their U.S. affiliates in Argentina and Brazil. These U.S. firms have optimized their regional production, in some cases through substantial investment in new Argentine production facilities, in line with evolving Bilateral Automobile Pact restrictions.

The Argentine parliament approved a bill to nationalize Argentina's private pension system and transfer pensioner assets to the government social security agency in November 2008. Compensation to investors in the privatized pension system, including to U.S. investors, is pending negotiation as of this writing.

Exchange and Capital Controls

Hard currency export earnings, both from goods and services, must be cleared in the local foreign exchange market, with some exceptions. Time limits to fulfill this obligation range from approximately 60 days to 360 days for goods (depending on the goods involved) and 135 working days for services. For certain capital goods and situations where Argentine exports receive long-term financing not exceeding six years, Argentine exporters face more liberal time limits. The maximum foreign exchange clearance allowed for hydrocarbon exports is 30 percent of total revenues. There is no maximum for exports of certain minerals, re-exports of some temporary imports, and exports to Argentine foreign trade zones. Foreign currency earned through exports may be used for some foreign debt payments.

To combat capital flight and to encourage the return of billions held by Argentines outside the formal financial system (both offshore and in-country), much of it legitimately earned money that was not taxed, Argentina's legislature approved a tax moratorium and capital repatriation law that would provide a tax amnesty for persons who repatriate undeclared offshore assets during a six-month window. The law entered into force December 24, 2008. Under the law, government tax authorities are prohibited from inquiring into the provenance of declared funds, and some critics have raised concerns that this could facilitate money laundering. Implementing regulations are to be promulgated in early 2009, which will clarify that transactions under this law will be subject to existing laws, rules, and regulations related to the prevention of financial crimes, and will also reportedly include a requirement that transfers from abroad originate in countries that comply with international money laundering and terrorism financing standards. Top level Government of Argentina officials have indicated that they will ensure all Argentine legislation, including this law, abides by Argentina's obligations as a member of the Financial Action Task Force (FATF) and the Financial Action Task Force of South America (GAFISUD). In January, the Argentine government took over the Presidency of GAFISUD for 2009.

Argentina has expanded its capital control regime since 2003, with the stated goal of avoiding the potentially disruptive impact of large short-term capital flows on the nominal exchange rate. In May 2005, the government issued Presidential Decree 616 revising registration requirements for inflows and outflows of capital and extended the minimum investment time period from 180 days to 365 days. The Decree also expanded the registration requirement to include "all types of debt operations of residents that could imply a future foreign currency payment to nonresidents" and requires that all foreign debt of private Argentine residents, with the exception of trade finance and initial public debt offerings that bring foreign exchange into the market, must include provisions that the debt need not be repaid in less than 365 days. Since 2004, both foreign and domestic institutional investors are restricted to total currency transactions of $2 million per month, although transactions by institutions acting as intermediaries for others do not count against this limit.

The Ministry of Economy implemented Decree 616 through resolutions in 2005 and 2006 that imposed more restrictive controls on the following classes of inbound investments: inflows of foreign funds from private sector debt (excluding foreign trade and initial public offerings of stock and bond issues); inflows for most fiduciary funds; inflows of nonresident funds that are destined for the holding of Argentine pesos or the purchase of private sector financial instruments (excluding foreign direct investment and the primary issuance of stocks and bonds); and investments in public sector securities purchased in the secondary market. These inflows are subject to three restrictions: (a) they may not be transferred out of the country for 365 days after their entry; (b) proceeds from foreign exchange transactions involving these investments must be paid into an account in the local financial system; and (c) a 30 percent unremunerated reserve requirement must be met, meaning 30 percent of the amount of such transactions must be deposited in a local financial entity for 365 days in an account that must be denominated in dollars and pay no interest. In March 2009 the Argentine government amended Decree 616 to suspend the 30 percent reserve requirement during the period March 1 to August 31, 2009, in order to facilitate the return of funds under the December 2008 tax moratorium and capital repatriation law. As of September 2006, a deposit is not required for capital inflows aimed to finance energy infrastructure works. Furthermore, as of January 2008, a deposit is not required for inflows for the purchase of real estate property by foreigners as long as the foreign exchange liquidation occurs on the day of settlement (and transfer of the title). Violations are subject to criminal prosecution. In October 2007, the Central Bank introduced new control measures, banning all foreign entities from participating in Central Bank initial public offerings; however, foreign firms may still trade Central Bank debt instruments on the secondary market.

Bilateral Investment Treaty

Fifteen U.S. investors have submitted claims to investor-state arbitration under the United States-Argentina Bilateral Investment Treaty (BIT). Some of these cases claim that measures imposed by Argentina during the financial crisis that began in 2001 breached certain BIT obligations.

ELECTRONIC COMMERCE

Argentina does not allow the use of electronically produced air waybills, limiting their ability to speed up customs processing and the growth of electronic commerce transactions.

AUSTRALIA

TRADE SUMMARY

The U.S. goods trade surplus with Australia was $11.9 billion in 2008, an increase of $1.3 billion from $10.6 billion in 2007. U.S. goods exports in 2008 were $22.5 billion, up 16.9 percent from the previous year. Corresponding U.S. imports from Australia were $10.6 billion, up 22.9 percent. Australia is currently the 14th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Australia were $10.4 billion in 2007 (latest data available), and U.S. imports were $5.9 billion. Sales of services in Australia by majority U.S.-owned affiliates were $26.6 billion in 2006 (latest data available), while sales of services in the United States by majority Australia-owned firms were $7.2 billion.

The stock of U.S. foreign direct investment (FDI) in Australia was $79.0 billion in 2007 (latest data available), up from $68.5 billion in 2006. U.S. FDI in Australia is concentrated largely in the nonbank holding companies, manufacturing, and mining sectors.

FREE TRADE AGREEMENT (FTA)

The United States-Australia FTA entered into force on January 1, 2005. Since then, the U.S. and Australian governments have met annually to address issues that have arisen under the FTA. Under the FTA, trade in goods and services as well as foreign direct investment have continued to expand. Under the FTA, more than 99 percent of U.S. exports of manufactured goods are now duty-free. The FTA will also eliminate tariffs within 10 years of entry into force on textiles.

In September 2008, the United States announced its intention to begin negotiations to join the Trans-Pacific Strategic Economic Partnership agreement, a high-standard FTA between Singapore, Chile, New Zealand, and Brunei Darussalam, intended to serve as a vehicle for Trans-Pacific economic integration. Shortly after the U.S. decision to join the negotiations, Australia, Peru, and Vietnam indicated their interest in participating as well.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Sanitary and Phytosanitary Measures

The Australian government maintains a stringent regime for the application of sanitary and phytosanitary (SPS) measures, which restricts imports of many agricultural products. The FTA created a forum for U.S. and Australian SPS authorities which has facilitated scientific cooperation and the resolution of specific bilateral animal and plant health issues between the two countries. The United States is continuing to seek access for a number of products including apples, stone fruit, raspberries, and fresh and frozen poultry meat. On apples, the New Zealand government requested the establishment of a WTO dispute panel in December 2007 to review Australia's import conditions for New Zealand apples, a case that raised many of the same issues as in the outstanding U.S. request to Australia for access of Pacific Northwest apples. Australian quarantine policies also effectively prohibit the importation of whole grain. More recently though, trial shipments of U.S. Dried Distillers Grain have been granted permission for importation.

Australia currently prohibits the importation of bovine products from countries that have reported one or more indigenous cases of Bovine Spongiform Encephalopathy (BSE). Such countries are classified by Australia as "Category D risk countries." In November 2007, Australia reported that, since it deems the United States to be a Category D country, it would not restore market access for U.S. beef products. The United States will continue to press Australia to provide full access for U.S. beef in accordance with the Organization for Animal Health BSE guidelines.

Biotechnology

Australia has a detailed risk assessment-based regulatory framework for dealings with biotechnology. All foods with biotechnology-derived content of more than 1 percent must receive prior approval and be labeled. U.S. manufacturers and others in the supply chain find meeting these biotechnology food labeling requirements can be onerous, particularly for processed food, which accounts for a large share of U.S. agricultural exports. To date, biotechnology-derived cotton, carnations, and canola varieties are the only agricultural crops approved for commercial release into the environment. U.S. export opportunities for other biotechnology crops, especially feed grains such as whole corn and soybeans, are limited.

GOVERNMENT PROCUREMENT

Australia is the only major industrialized country that is not a signatory to the WTO Agreement on Government Procurement. However, under the FTA, the Australian government opened its government procurement market to U.S. suppliers, eliminating discriminatory preferences for domestic suppliers and using fair and transparent procurement procedures.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Australia generally provides for strong IPR protection and enforcement. Australia has also been an active participant in efforts to strengthen international IPR enforcement by negotiating an Anti-Counterfeiting Trade Agreement (ACTA).

Copyrights

Australia amended its Copyright Act in December 2006 following extensive consultations with stakeholders and the new Act entered into force in 2007. The amended Act also implemented FTA provisions concerning circumvention of technological protection measures used in connection with the exercise of copyright. The United States is reviewing implementation of these new provisions, including exceptions provided for in the law, to ensure consistency with FTA requirements.

Locally replicated recordable DVDs (DVD-Rs), videocassettes copied from video compact discs (VCDs) and DVDs, illegally parallel-imported DVDs, and pirated VCDs continue to be the major threat to Australia's otherwise low rate of piracy of audiovisual materials. Pirated DVDs imported from Asia also are an emerging problem. The United States will continue to raise its concerns over these issues with Australia.

Patent Protection

Australia maintains a provision in its FTA implementation law that establishes, among other things, severe penalties for a rights holder who is found to provide a false certification regarding a patent enforcement action. Industry representatives claim that this provision, which is specific to the pharmaceutical sector, poses a disincentive for patent holders who are considering whether to defend their patent rights through legal action.

Trademarks and Geographical Indications

In 2008, Australia began a review of penalties and additional damages in its Trademark Act. The United States will monitor these deliberations to ensure that proposed amendments are consistent with FTA obligations.

SERVICES BARRIERS

Telecommunications

The Australian government has reduced its equity share in Telstra to 17 percent, reducing concerns about its conflicting roles as regulator and owner of the dominant operator. The United States remains concerned, however, about foreign equity limits in Telstra, which are still capped at 35 percent. U.S industry remains concerned about the ability of Telstra to abuse its monopoly power and its aggressive use of litigation to delay regulatory outcomes. Alleged abuses include delays in making an acceptable public offer for access to its network and inflated pricing of wholesale services such as leased lines and interconnection with both its fixed and mobile network. Up to 40 disputes with competitors over access to Telstra's network are reportedly subject to ongoing regulatory or judicial proceedings.

In 2006, the Australian government rejected a proposal by Telstra to raise significantly certain network access rates. Final decisions remain to be taken on such rates and the access Telstra will provide when it introduces its "Next Generation Network" over the next three years to five years. The United States will continue monitoring developments to ensure that Telstra's introduction of a new network architecture does not undermine the ability of competitors to obtain reasonable access to services and customers where Telstra is dominant. The United States also will monitor the planned National Broadband Network to ensure that competitors are able to obtain reasonable access to services and customers.

Audiovisual Trade Barriers

Under the FTA, existing requirements on Australian local content remained, but the agreement limited or prohibited their extension to other media or means of transmission. Australia maintains strict domestic content requirements on all free-to-air television programming broadcast between 6:00 a.m. and midnight. Australia's Broadcasting Services Amendment Act requires subscription television channels with significant drama programming to spend 10 percent (with the FTA allowing flexibility, under certain circumstances, to increase this up to 20 percent) of their programming budgets on new Australian drama programs. Australian radio industry quotas require that up to 25 percent of all music broadcast between 6:00 a.m. and midnight be "predominantly" Australian in origin/performance.

Media

Foreign investment in the media sector, irrespective of the share, is subject to prior approval by the Treasurer. A 2006 law opened up two reserved digital channels for new digital services such as mobile television or new in-home services, permitted commercial free-to-air television stations to broadcast one standard definition multi-channel from 2009, and allowed full multi-channeling no later than the time of the digital switchover (2010-2012). It also relaxed restrictions on cross-media ownership, with some restrictions in smaller media markets.

INVESTMENT BARRIERS

Pursuant to Australia's Foreign Investment Law, its Foreign Investment Review Board (FIRB) screens in advance potential foreign investments in Australia above a threshold value of A$50 million ($34 million). The FIRB may deny approval of particular investments above that threshold on national interest grounds, although it rarely has done so. The FTA, however, exempts all new "greenfield" U.S. investments from FIRB screening. The FTA also raised the threshold for screening of most U.S. acquisitions of existing investments in Australia from A$50 million ($34 million) to A$800 million ($540 million) (indexed annually).

OTHER BARRIERS

Commodity Boards and Agricultural Support

The Australian government recently liberalized exports of bulk wheat, having previously liberalized exports of containerized wheat. The Australian Wheat Board (AWB) traditionally held the monopoly export rights for all bulk wheat exported from Australia. The export of bulk wheat from Australia is now monitored by a new government body called Wheat Exports Australia. Bulk exports, although now liberalized, must obtain a license from this body prior to shipment. Numerous grain exporters, including AWB, are now licensed to export under the new system.

Pharmaceuticals

The FTA addressed transparency and certain regulatory concerns and established an independent review process for innovative medicines. The FTA also established a Medicines Working Group that has helped facilitate a constructive dialogue between the United States and Australia on health policy issues. U.S. industry continues to seek the right to submit for review drugs that have been accepted for some indications but rejected for others.

Blood Plasma Products and Fractionation

Foreign companies face substantial barriers to the provision of blood plasma products in the Australian market. While foreign blood products may be approved for sale in Australia, the monopoly contract granted by the Australian government to an Australian company makes it virtually impossible for foreign firms to sell their products in Australia except to fill shortages or provide products not otherwise available in Australia. In late 2006 Australia completed a review, required under the FTA, of its arrangements for the supply of blood fractionation services. Although the Australian government recommended that states adopt the tendering process prescribed in the Government Procurement chapter of the FTA, state health ministers in March 2007 decided to retain the current monopoly arrangement.

BAHRAIN

TRADE SUMMARY

The U.S. goods trade balance with Bahrain went from a deficit of $33 million in 2007, to a surplus of $291 million in 2008. U.S. exports in 2008 were $830 million, up 40.3 percent from the previous year. Corresponding U.S. imports from Bahrain were $539 million, down 13.7 percent. Bahrain is currently the 82nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Bahrain was $60 million in 2007 (latest data available), down from $138 million in 2006.

IMPORT POLICIES

Upon entry into force of the United States-Bahrain Free Trade Agreement (FTA) in August 2006, 100 percent of bilateral trade in consumer and industrial products became duty free. Bahrain will phase out tariffs on the remaining handful of agricultural product lines by 2015. Textiles and apparel trade is duty free, promoting new opportunities for U.S. and Bahraini fiber, yarn, fabric and apparel manufacturing.

As a member of the Gulf Cooperation Council (GCC), Bahrain applies the GCC common external tariff of 5 percent for most non-U.S. products, with a limited number of GCC-approved country-specific exceptions. Bahrain's exceptions include alcohol (125 percent) and tobacco (100 percent). Some 432 food and medical items are exempted from customs duties entirely.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Standards

Bahrain generally follows international or GCC standards, and the development of standards in Bahrain is based on the following principles: no unique Bahraini standard is to be developed if there is an identical draft GCC standard in existence or in the process of being developed; and developing new Bahraini standards must not create trade barriers. As part of the GCC Customs Union, the six Member States are working toward unifying their standards and conformity assessment systems. However, each Member State currently continues to apply either its own standard or a GCC standard, resulting in a complicated situation for U.S. businesses. GCC Member States do not consistently send notification of new measures to WTO Members and the WTO Committee on Technical Barriers to Trade (TBT) or allow WTO Members an opportunity to provide comments.

In May 2008, the GCC Standards Committee approved two new standards for the labeling and expiration periods of food products. The new GCC standards eliminate the long standing requirement that at least one-half of a product's shelf life be valid when a product reaches a port of entry in GCC Member States. Officials from the Gulf Standards Organization (GSO) have stated that GCC Member States will accept use of the terms "best by" and "best before" as meeting the date labeling requirement for shelf-stable products. The United States has requested written confirmation of this situation.

The total number of GCC standards adopted as Bahraini standards currently stands at 1,020. Bahrain mandates compliance with 320 of those standards, whereas the rest remain voluntary. There are also approximately 434 draft GCC standards under development, including a revised vehicle identification number location requirement that has elicited concern from at least one U.S. manufacturer; the Bahraini

Ministry of Industry and Commerce has been responsive and has pledged to carefully weigh these concerns.

Conformity Assessment

The GCC Standards Committee is currently developing a conformity assessment scheme to be adopted ultimately by each of the six Member States and has set 2010 as a deadline for full implementation by each Member State. The United States is working to establish a dialogue between U.S. and GCC technical experts to discuss this proposed scheme with the goal of helping to ensure that it is developed, adopted, and applied in accordance with WTO rules.

Sanitary and Phytosanitary Measures

In May 2007, Bahrain notified WTO Members of proposed procedures meant to harmonize food safety import requirements for all GCC Member States. The United States and other WTO Members provided comments outlining significant concerns with the procedures, which, as currently drafted, do not appear to have a clear scientific basis and would substantially disrupt food exports to GCC Member States from their trading partners. The GCC Member States indicate that they are developing a response to these comments, and the United States has established a dialogue between U.S. and GCC technical experts to discuss the procedures and potential amendments to address the concerns raised.

GOVERNMENT PROCUREMENT

The Tender Board plays an important role in ensuring a transparent bidding process, which the government of Bahrain recognizes as vital to attracting foreign investment. The Tender Board awarded tenders worth $874 million in 2007, an increase of 26 percent over 2006. The FTA requires procuring entities in Bahrain to conduct procurements covered by the FTA in a fair, transparent and nondiscriminatory manner.

In 2002, Bahrain implemented a new government procurement law to ensure transparency and reduce bureaucracy in government tenders and purchases. The law specifies procurements on which international suppliers are allowed to bid. The Tender Board is chaired by a Minister of State who oversees all tenders and purchases with a value of BD10,000 ($26,525) or more.

Bahrain is not a signatory to the WTO Agreement on Government Procurement, but it became an observer to the WTO Committee on Government Procurement in December 2008.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In the FTA, Bahrain committed to provide strong IPR protection and enforcement. Bahrain passed IPR legislation and regulations to implement these commitments in the areas of copyrights, trademarks, patents, and enforcement, among others.

As part of the GCC Customs Union, the six Member States are working toward unifying their IP regimes. In this respect, the GCC is preparing a draft common trademark law. All six Member States are expected to adopt this law as national legislation in order to implement it. The United States has outlined specific concerns with the trademark law and has established a dialogue between U.S. and GCC technical experts to ensure that the law complies with the Member States' international and bilateral obligations.

INVESTMENT BARRIERS

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

Starting in January 2001, foreign firms and GCC nationals may own land in Bahrain. Non-GCC nationals may own high-rise commercial and residential properties, as well as property in tourism, banking, financial and health projects, and training centers, in specific geographic areas.

In 2006, the Cabinet passed an edict opening ownership of "free hold" properties now being constructed throughout the Kingdom. The edict was specific that all nationalities may own commercial or investment properties. Only high-rise residences, and a few specific residential properties in large projects, may be owned free hold.

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

BOLIVIA

TRADE SUMMARY

The U.S. goods trade deficit with Bolivia was $122 million in 2008, an increase of $37 million from $85 million in 2007. U.S. goods exports in 2008 were $389 million, up 40.1 percent from the previous year. Corresponding U.S. imports from Bolivia were $511 million, up 40.9 percent. Bolivia is currently the 105th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Bolivia was $262 million in 2007 (latest data available), down from $282 million in 2006.

IMPORT POLICIES

Tariffs

Bolivia has a three-tier tariff structure. Capital goods designated for industrial development may enter duty-free, non-essential capital goods are subject to a 5 percent tariff, and most other goods are subject to a 10 percent tariff. However, in October 2007, the administration of President Evo Morales enacted a Supreme Decree that reduced rice and corn tariffs to zero.

Nontariff Measures

Supreme Decree 27340, dated January 31, 2004, banned the importation of certain types of used clothing, including old, destroyed, or useless articles of apparel, used bedding and intimate apparel, used shoes, and certain destroyed or useless textile articles (rags, cords, string, and rope). U.S. industry reports that imports of other types of used clothing, while not banned from import into Bolivia, may be subject to other nontariff trade barriers.

According to industry officials, Bolivian customs often does not agree with official invoices that are presented. In those instances, importers are typically expected to pay tariffs based on whatever valuation the local customs authority deems to be 'fair value' for the shipment. U.S. officials are continuing to monitor the situation.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Sanitary and Phytosanitary Measures

Bolivia's National Animal and Plant Health and Food Safety Service *(Servicio Nacional de Sanidad Agropecuaria e Inocuidad*) or SENASAG appears to apply some standards differently to third countries than to fellow Andean Community members. Bolivia continues to ban U.S. live cattle, beef and beef products based on Bovine Spongiform Encephalopathy (BSE) restrictions that are inconsistent with the May 2007 World Organization for Animal Health (OIE) classification of the United States as a "controlled risk" country for BSE. OIE standards specify that trade in live cattle and in beef and beef products of a "controlled risk" country should be permitted, provided that the appropriate specified risk materials are removed from the beef. U.S. officials continue to engage Bolivia's authorities in pursuit of science-based import requirements with respect to such trade. Bolivia, along with Ecuador, Peru, and an Andean Community representative, participated in an August 2008 trip organized by the U.S. Department of Agriculture to evaluate the U.S. live cattle system in hopes of improving access for U.S. live cattle to these nations. SENASAG is underfunded and is having difficulty carrying out its mission. There has been government pressure to involve SENASAG in political affairs and to distance SENASAG from U.S. technical assistance.

GOVERNMENT PROCUREMENT

Government expenditures account for a significant portion of Bolivia's Gross Domestic Product. The central government, sub-central governments (state and municipal levels), and other public entities remain important buyers of machinery, equipment, materials, and other goods and services. In an effort to encourage local production, the Bolivian government changed its procurement and contracting of service rules in July 2007 (Supreme Decree 29190, dated July 11, 2007). Government procurements under $1 million in value must be awarded to Bolivian producers. Importers of foreign goods can participate in these procurements only when locally manufactured products and service providers are unavailable or when the Bolivian government does not select a domestic supplier; in such cases, the government can call for international bids.

Bolivia is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In 1999, the Bolivian government established the National Intellectual Property Rights Service (SENAPI) to oversee IPR issues. The organization initiated a USAID-supported restructuring process in early 2003, but that process has not yet been completed. Currently the office is focused on the registration of traditional knowledge.

Industry and the U.S. Government continue to have concerns over protection and enforcement of IPR in Bolivia.

Supreme Decree number 29004, issued in January 2007, establishes a "Prior Announcement" requirement for pharmaceutical patents to allow the government, with the input of various interest groups, to determine whether the issuance of a pharmaceutical patent would "interfere with the right to health and access to medicines." Industry asserts that this additional step in the patent application process increases delays, raises questions of confidentiality of proprietary information, and creates an additional requirement to the process for obtaining a patent.

Enforcement

The 1992 Copyright Law recognizes copyright infringement as a public offense, and the 2001 Bolivian Criminal Procedures Code provides for the criminal prosecution of IPR violations. Despite these legal protections, IPR enforcement efforts are sporadic. Deterrent penalties need to be applied in civil and criminal cases. Border enforcement also remains weak. Video, music and software piracy rates are among the highest in Latin America, with the International Intellectual Property Alliance estimating that piracy levels in 2006 reached 100 percent for motion pictures, 90 percent for recorded music and 82 percent for software piracy.

INVESTMENT BARRIERS

In the mid-1990s, the Bolivian government implemented its "capitalization" (privatization) program. The program differed from traditional privatizations in that the funds committed by foreign investors could only be used to acquire a 50 percent maximum equity share in former state-owned companies.

Bolivia has signed bilateral investment treaties with several countries, including the United States. The United States–Bolivia Bilateral Investment Treaty (BIT) entered into force in June 2001. The treaty guarantees recourse to international arbitration, which may permit U.S. companies to obtain damages in disputes that cannot be adequately addressed in the Bolivian legal system, where judicial processes are alleged to be prolonged, non-transparent, and occasionally corrupt. In 2006, however, the new Bolivian administration announced its intention to renegotiate its bilateral investment treaties. In October 2007, Bolivia became the first country ever to withdraw from the International Center for the Settlement of Investment Disputes (ICSID), a World Bank body that referees contract disagreements between foreign investors and host countries.

President Morales nationalized the telecommunications industry in May 2008, and the gas transport industry in June 2008. He has publicly announced that additional industries, including electricity, water, and the transportation sector, could also be nationalized.

Article 359 of the Bolivian Constitution of 2009 stipulates that all hydrocarbon deposits, whatever their state or form, belong to the government of Bolivia. No concessions or contracts may transfer ownership of hydrocarbon deposits to private or other interests. The Bolivian government exercises its right to explore and exploit hydrocarbon reserves and trade related products through the state-owned firm Yacimientos Petrolíferos Fiscales Bolivianos (YPFB). The law allows YPFB to enter into joint venture contracts for limited periods of time with national or foreign individuals or companies wishing to exploit or trade hydrocarbons or their derivatives.

In May 2005, Bolivia adopted Hydrocarbons Law 3058, which required producers to sign new contracts within 180 days and imposed a 32 percent direct hydrocarbons tax on production. The law required operators to turn over all of their production to the state and re-founded YPFB, assigning the state responsibility for controlling the entire hydrocarbons production chain. In May 2006, the Bolivian government issued Supreme Decree 28701. The Decree generally reinforced the provisions of the 2005 Hydrocarbons Law – claiming state ownership of production, requiring companies to sign new contracts within 180 days, and mandating YPFB to take control of the hydrocarbons chain. YPFB signed new contracts with production companies in October 2006 and took control over the distribution of gasoline, diesel, and LPG to gas stations.

The state also had a legal mandate to gain a 51 percent stake in all of the companies operating in the sector that were part of the privatizations (called "capitalization") that took place in the 1990s. Leading up to May 2008, this process was still incomplete, and private companies owned a majority of shares in Chaco (Pan American Energy), Andina (Repsol), and Transredes, the principal pipeline operator, partially owned by Ashmore Energy International (AEI), headquartered in Texas, and Shell. In May 2008, President Morales announced that the government would obtain a 51 percent ownership control over these three capitalized companies, as well as outright ownership of the German/Peruvian controlled Bolivian Logistical Hydrocarbon Company (CLHB), which had been fully privatized in the 1990s. Except for CLHB, which considers the Bolivian government's move expropriation, the other three companies all appear willing to sell the necessary shares to the government; the real sticking point is who will have operational control. By October 2008, the government had acquired back a majority of the shares in the capitalized companies and had also fully nationalized the pipeline operator Transredes.

The "nationalization" of the hydrocarbon industry remains incomplete and YPFB is struggling to carry out its broad mandate due to a lack of technical capacity and resources. Regional strikes have occurred and complaints of indiscriminate contracting, lack of a coordinated policy, and logistical incompetence have all been aired publicly. Moreover, from late 2007 through 2008, diesel shortages have been commonplace (especially in Santa Cruz) and shortages of liquefied natural gas (LNG) canisters are becoming more frequent throughout the country.

Outside the hydrocarbons sector, foreign investors face few legal restrictions, although a possible change to the mining code could require all companies to enter into joint ventures with the state mining company, COMIBOL. The new Bolivian constitution, as approved by national referendum in January 2009, also includes requirements for state involvement in natural resource companies. The constitution calls for limitations on foreign companies' access to international arbitration in the case of conflicts with the government and states that all bilateral investment treaties must be renegotiated to adjust to the new provisions. However, until a treaty is renegotiated or terminated, the constitution protects the integrity of all international agreements.

BRAZIL

TRADE SUMMARY

The U.S. goods trade balance with Brazil went from a deficit of $1.0 billion in 2007, to a surplus of $2.5 billion in 2008. U.S. goods exports in 2008 were $32.9 billion, up 33.6 percent from the previous year. Corresponding U.S. imports from Brazil were $30.5 billion, up 18.8 percent. Brazil is currently the ninth largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Brazil were $9.8 billion in 2007 (latest data available), and U.S. imports were $4.0 billion. Sales of services in Brazil by majority U.S.-owned affiliates were $17.7 billion in 2006 (latest data available), while sales of services in the United States by majority Brazil-owned firms were $995 million.

The stock of U.S. foreign direct investment (FDI) in Brazil was $41.6 billion in 2007 (latest data available), up from $33.1 billion in 2006. U.S. FDI in Brazil is concentrated largely in the manufacturing, finance/insurance, and nonbank holding companies sectors.

IMPORT POLICIES

Tariffs

Brazil's import tariffs range from 0 percent to 35 percent, with an average applied tariff rate of 11.5 percent in 2008. Brazil's average bound tariff in the WTO is significantly higher at 31.4 percent. Given the fact that there are large disparities between bound and applied rates, U.S. exporters face greater uncertainty because Brazil has the ability to raise its applied rates to bound levels in an effort to manage prices and supply.

Brazil is a member of the MERCOSUR common market, formed in 1991 and comprised of Argentina, Brazil, Paraguay, and Uruguay. MERCOSUR's Common External Tariff (CET) averages 11.7 percent and ranges from 0 percent to 35 percent *ad valorem*, with a limited number of country-specific exceptions. Currently, Brazil maintains 100 exceptions to MERCOSUR's common external tariff (CET). Tariffs may be imposed by each MERCOSUR member on products imported from outside the region which transit at least one MERCOSUR member before reaching their final destination. Full CET product coverage, which would result in duty-free movement within MERCOSUR, was originally scheduled for implementation in 2006, but has been deferred until December 31, 2009.

High *ad valorem* tariffs affect U.S. exports across diverse sectors including automobiles, auto parts, electronics, chemicals, plastics, textiles, and apparel.

Nontariff Barriers

Brazil applies federal and state taxes and charges to imports that can effectively double the actual cost of importing products into Brazil. The complexities of the domestic tax system, including multiple cascading taxes and tax disputes among the various states, pose numerous challenges to U.S. companies operating in Brazil.

A number of imports are prohibited, including foreign blood products, and all used consumer goods such as machinery, automobiles, clothing, medical equipment, and tires. Brazil also restricts the entry of certain types of remanufactured goods (*e.g.* earthmoving equipment, automotive parts, and medical equipment) through onerous import licensing procedures. Additionally, Brazil only allows the importation of such goods if they are not produced domestically. A 25 percent merchant marine tax on long-distance freight at Brazilian ports puts U.S. agricultural products at a competitive disadvantage to MERCOSUR products. Brazil applies a 60 percent flat import tax on most manufactured retail goods imported via mail and express shipment by individuals that go through a simplified customs clearance procedure called RTS (simplified tax regime). Goods with a value of over $3,000 cannot be imported using this regime.

Import Licensing/Customs Valuation

All importers must register with the Secretariat of Foreign Trade (SECEX) to access Brazil's "SISCOMEX" computerized trade documentation system. SISCOMEX registration requirements are onerous, including a minimum capital requirement; however, the SISCOMEX system, updated in early 2007, has cut the wait time for import-export license processing almost in half. Fees are assessed for each import statement submitted through SISCOMEX. Most imports into Brazil are covered by an "automatic import license" regime. Brazil's non-automatic import licensing system covers imports of products that require authorization from specific ministries or agencies, such as beverages (Ministry of Agriculture), pharmaceuticals (Ministry of Health), and arms and munitions (National Defense Ministry). Although a list of products subject to non-automatic import licensing procedures is published on the Brazilian Ministry of Development, Industry and Trade website (http//:www.desenvolvimento.gov.br/sitio/interna/interna.php?area=5&menu=272&refr=246), specific information related to non-automatic import license requirements and explanations for rejections of non-automatic import license applications are lacking. These measures have made importing into Brazil less transparent and more cumbersome for U.S. exporters.

Additionally, specific issues have arisen regarding Brazil's usage of import licensing requirements in certain sectors. For example, Brazil's non-automatic import license system for toys was implemented at the end of 2005, shortly before Brazil's safeguard mechanism for toys was set to expire. U.S. companies have reported that in evaluating the applications for import licenses for toy entries, SECEX has relied on determinations regarding customs valuation level. Evaluation of these import license applications involves a lengthy process, with some importations subject to additional scrutiny and delays resulting from customs valuation determinations. Companies have reported delays in excess of 90 days for the approval of import license applications.

U.S. companies continue to complain of onerous and burdensome documentation requirements, which are required before certain types of goods can enter Brazil even on a temporary basis. For example, the Ministry of Health's regulatory agency, ANVISA, must approve product registrations for imported pharmaceuticals, medical devices, health and fitness equipment, cosmetics, and processed food products. Currently, the registration process at ANVISA takes from three to six months for new versions of existing products, but can take over six months to register products new to the market. Registration of certain pharmaceutical products can take over one year, since ANVISA requires that a full battery of clinical testing be performed in Brazil, regardless of whether or not the drug already has FDA approval.

U.S. companies have also complained that customs officials often apply a higher dutiable value based on a retail price rather than recognizing the company's stated transaction value.

In recent years, Brazil has become a more active user of antidumping and safeguard remedies. Since November 2007, Brazil has initiated three antidumping investigations involving U.S. exports (including biaxially oriented polypropylene film, butyl acrylate, and supercalendered paper). In addition, Brazil has initiated a safeguard investigation (recordable CDs and DVDs), affecting nearly $37 million in U.S. exports.

EXPORT POLICIES

Export Subsidies

In October 2007, Brazil restored tax breaks to exporters with the enactment of Law 11529 with the stated intention of helping industries hurt by the strengthening of the national currency, the real. This law allows certain Brazilian industrial sectors (textiles, furniture, ornamental stones, woodworking, leatherworking, shoes, leather goods, heavy and agricultural machinery manufacturers, apparel, and automotive – including parts) to apply tax credits under the social integration (PIS) and social security (COFINS) programs to the purchase of capital goods, both domestic and imported, to be used for manufacturing finished products. The law also expands the government's program for exporting companies purchasing capital goods. To be exempt from paying the 9.25 percent PIS-COFINS tax on these purchases, companies normally must prove they derive at least 70 percent of their revenues from exportation. This benchmark was lowered to 60 percent for companies in the sectors covered by the legislation.

The Air Transport Association of America (ATA) and its member airlines were concerned with the government of Brazil's delay in sending proposed legislation eliminating the PIS-COFINS tax on international jet fuel in Brazil. This tax did not comply with international agreements or with the International Civil Aviation Organization's Policies on Taxation in the Field of International Air Transport, to which Brazil is a signatory country. ATA, the International Air Transport Association, and U.S. airlines coordinated a successful campaign by sending letters urging the government of Brazil to promptly implement legislation to eliminate the PIS-COFINS tax. On September 25, 2008, the Brazilian government published a resolution eliminating the PIS-COFINS from the refinery price. The elimination of the tax represents savings of approximately $97 million per year to the fuel costs of international flights for carriers operating out of Brazil.

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

Brazil's Special Regime for the Information Technology Exportation Platform (REPES) introduced in 2005 suspends, for a five year period, PIS-COFINS taxes on goods and information technology services imported by companies that commit to export software and information technology services to the extent that those exports account for over 80 percent of their annual gross income. The Special Regime for the Acquisition of Capital Goods by Exporting Enterprises (RECAP) suspends these same taxes on new machines, instruments and equipment imported by companies that commit for a period of at least three years to export goods and services such that they account for at least 80 percent of their overall gross income for the previous calendar year.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Standards

A number of U.S. companies have raised concerns with respect to Brazil's standards development process across sectors. For example, Brazil is developing standards for a range of electrical products that are seemingly based not only on International Electrotechnical Commission standards but MERCOSUR standards as well; according to U.S. industry, this could create barriers for many products that include U.S. technology and meet U.S. or relevant international standards.

In May and June 2008, Brazil notified the WTO of numerous proposed changes to their technical regulations for wine and distilled spirits. U.S. industry raised concerns that the regulations would set quality and identity standards that are not in conformity with international practices, are not justified by health and safety considerations, and could bar a number of U.S. distilled spirits and wine exports to Brazil. Brazil responded that the regulations would only apply to domestic production and, thus, would not affect imports.

In late 2006, Brazil adopted a regulation which requires companies to submit economic information (some of it proprietary), including projected worldwide pricing intentions, in order to register and re-register certain medical devices. Registration is a requirement for these products to be placed on the Brazilian market. The United States continues to express its concern that Brazil's National Health Surveillance Agency (ANVISA) requires the submission of certain economic data with each registration that does not appear to be related to the safety and efficacy of medical devices and is unnecessarily costly and burdensome. U.S. industry has indicated that some of the information required by ANVISA is impossible to provide, either because that information does not exist, or because information exists, but is sensitive commercial information or is only available if obtained from other companies, which raises potential antitrust issues. Brazil and the United States are currently engaged in discussions aimed at resolving the issue.

U.S. companies have complained that Brazil has not identified a standard for sulfite tolerance for dehydrated potatoes, restricting U.S. exports.

Certification

Because Brazil's National Telecommunications Regulatory Agency does not accept test data generated outside of Brazil (except in a few limited cases), and virtually all testing for information technology (IT) and telecommunications equipment must be conducted by testing labs in Brazil. There are concerns that this requirement of "in country" testing significantly increases the costs of exporting equipment to Brazil.

Sanitary and Phytosanitary Measures

While some progress has been made in the area of sanitary and phytosanitary measures, significant issues remain that restrict U.S. agricultural and food exports to Brazil. For example, due to the 2003 discovery of a Bovine Spongiform Encephalopathy (BSE) positive animal in the United States, Brazil prohibits the importation of all U.S. cattle, beef, and beef products. World Organization for Animal Health (OIE) guidelines provide for scientifically-based conditions under which all beef and beef products from animals of any age can be safely traded from all countries regardless of BSE status as long as the appropriate Specified Risk Materials (SRMs) are removed. In May 2007, the OIE classified the United States as "controlled risk" for BSE. The United States continues to press Brazil to implement import requirements for U.S. live cattle, beef, and beef products on the basis of science, the OIE guidelines, and the U.S. "controlled risk" classification.

Brazil continues to limit the import of poultry meat and table eggs from the United States without a scientific basis for its actions. As a result, U.S. poultry meat exports, which exceeded $1.1 million in 2004, dropped to $218,000 in 2007. Exports during the first 10 months of 2008 fell 47 percent compared to the same period in 2007.

Brazil also maintains phytosanitary restrictions that prevent importation of specific types of wheat grown in certain areas of the United States despite scientific evidence that objectively demonstrates that the risk to Brazil of removing these restrictions is negligible. Through technical dialogue, U.S. and Brazilian officials will continue to pursue the development and application of science-based sanitary standards for trade in U.S. agricultural products.

Biotechnology

Agricultural biotechnology in Brazil is rigorously regulated under a risk-based system which provides for safety norms and inspection mechanisms for activities that involve genetically engineered organisms (and their by-products), establishes the National Biosafety Council (CNBS), re-structures the National Biosafety Technical Commission (CTNBio), and sets the National Biosafety Policy. The system also includes provisions for stem cell research in Brazil. Biosafety Law 11,460 of March 21, 2007 improved the voting process for approval of individual biotechnology events by the CTNBio. As of June 18, 2008, all approvals of biotechnology events in Brazil by the CTNBio are conclusive and cannot be appealed to the CNBS, which considers only issues of social and economic interests. This decision eliminates a major constraint for the approval of biotechnology events in Brazil. Although hurdles still remain, progress has also been made in addressing protection of intellectual property rights as it relates to biotechnology.

Reciprocity

Brazil requires that the U.S. Department of Agriculture's export certificates for animals and plants and their by-products be authenticated by a Brazilian consulate in the United States before shipping. This results in extra cost and unnecessary delays in exports of agriculture products to Brazil. The United States does not have a comparable requirement. U.S. efforts over the last three years to seek modifications to this Brazilian law, which dates from 1934, have thus far yielded little change.

GOVERNMENT PROCUREMENT

U.S. companies have found it difficult to participate in Brazil's public sector procurement unless they are associated with a local firm. Without a significant in-country presence, U.S. companies regularly face significant obstacles in winning government contracts and are often more successful in subcontracting with larger Brazilian firms. Regulations allow a Brazilian state enterprise to subcontract services to a foreign firm only if domestic expertise is unavailable. Additionally, U.S. and other foreign firms may only bid to provide technical services where there are no qualified Brazilian firms available.

Brazilian government procurement policies apply to purchases by government entities and state-owned companies. Brazil has an open competition process for major government procurements. Under Brazilian law, price is to be the overriding factor in selecting suppliers. By law, the Brazilian government may not make a distinction between domestic and foreign-owned companies during the tendering process;

however, when two equally qualified vendors are considered, the law's implementing regulations provide for a preference to Brazilian goods and services.

Brazil's regulations on the procurement of information technology goods and services requires federal agencies and parastatal entities to give preferences to locally produced computer products based on a complicated and nontransparent price/technology matrix. However, Brazil permits foreign companies that have established legal entities in Brazil to compete for procurement-related multilateral development bank loans.

Most government procurement is open to international competition, either through direct bidding or participation in consortia. However, many of the larger bids (*e.g.* military purchases) can lead to unilateral single source procurement awards. The value of current pending military procurements exceeds $1 billion.

Brazil is not a signatory of the WTO Agreement on Government Procurement (GPA).

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Brazil has made important progress in enhancing the effectiveness of intellectual property enforcement, particularly with respect to pirated audiovisual goods. Nonetheless, shortcomings in some areas of IPR protection and enforcement continue to represent barriers to U.S. exports and investment.

Patents and Trademarks

The United States continues to raise concerns regarding Brazil's Law 10196 of 2001, which includes a requirement that National Health Surveillance Agency (ANVISA) approval be obtained prior to the issuance of a pharmaceutical patent. On June 23, 2008, ANVISA issued Resolution RDC 45 standardizing, to some extent, the procedures for review of such patent applications. Nonetheless, ANVISA's role in reviewing pharmaceutical patent applications remains non-transparent and has contributed to an increasing backlog in the issuance of patents.

Although Brazil's patent application backlog remains high, estimated at over 150,000 applications, the national patent office has taken concrete steps to streamline processing, including an upgrade of its outdated computer system. Over the past two years it has increased the number of patent examiners over 200 percent and has plans to further increase the number of examiners from the current level of 238 to 473 full-time examiners by the end of 2010, at the same time increasing median salaries 50 percent to retain experienced employees. By the end of 2008, the National Institute of Industrial Property (INPI) expected to increase its patent processing capacity from the current 20,000 applications per year to 30,000 per year. In mid-2006, INPI instituted a new system of streamlined, paperless processing for trademarks. The system, titled "*e-Marcas*," enables new trademark applications to be filed with INPI via the Internet. By the end of 2009, INPI looks to adopt a similar system for new patent applications. The U.S. Patent and Trademark Office (USPTO) is working with INPI to help that agency in its modernization efforts. In July 2008 the USPTO and Brazilian IPR regulator INPI signed a Memorandum of Understanding that will serve as a vehicle for continued cooperation on IPR issues, such as training and efforts to reduce the patent and trademark backlog.

The United States is also concerned about Brazil's protection against unfair commercial use of test data generated in connection with obtaining marketing approval for pharmaceutical products. Law 10603 of 2002 on data confidentiality covers pharmaceuticals for veterinary use, fertilizers, agro-toxins, and their components and related products. The law does not cover pharmaceuticals for human use.

Copyrights

Brazil is not a party to the World Intellectual Property Organization (WIPO) Copyright Treaty or the WIPO Performances and Phonograms Treaty (collectively the "WIPO Internet Treaties").

Despite ongoing enforcement gains, piracy remains a serious problem. The International Intellectual Property Alliance (IIPA) estimates losses due to piracy of copyrighted materials in Brazil totaled at least $1.19 billion in 2008.

Intellectual Property Licensing

Patent and trademark licenses between Brazilian and foreign companies must be recorded with, and approved by, INPI and registered with the Central Bank of Brazil. Licensing contracts must contain detailed information about the terms of the agreement and royalties to be paid. In such arrangements, Brazilian law limits the amount of royalty payments that can be taken as a tax deduction, which consequently acts as a *de facto* cap on licensing fees. Royalty remittance must go through the Central Bank of Brazil.

SERVICES BARRIERS

Audiovisual Services

Foreign ownership of cable companies is limited to 49 percent, and the foreign owner must have a headquarters in Brazil and have had a presence in the country for the prior 10 years. Foreign cable and satellite television programmers are subject to an 11 percent remittance tax. The tax, however, can be avoided if the programmer invests 3 percent of its remittances in co-production of Brazilian audiovisual services. National cable and satellite operators are subject to a fixed title levy on foreign content and foreign advertising released on their channels. Law 10610 of 2002 limits foreign ownership in media outlets to 30 percent, including the print and "open broadcast" (non-cable) television sectors. Open television companies are also subject to a regulation requiring that 80 percent of their programming content be domestic in origin.

Law 10454 of 2002 aims to promote the national film industry through creation of the National Film Agency (ANCINE) and through various regulatory measures. The law imposes a fixed title levy on the release of foreign films in theaters, foreign home entertainment products, and foreign programming for broadcast television.

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

Brazil also requires that 100 percent of all films and television shows be printed locally. Importation of color prints for the theatrical and television markets is prohibited. Domestic film quotas also exist for theatrical screening and home video distribution.

Express Delivery Services

U.S. express delivery service (EDS) companies face significant challenges in the Brazilian market due to numerous limitations established by the Brazilian government such as high import taxes, a new, partially functioning automated express delivery clearance system, low maximum value limits for express export and import shipments, and the possible approval of a damaging postal reform law that could undermine current levels of market access for private EDS companies.

The Brazilian government charges a 60 percent duty for all goods that are imported through the Simplified Customs Clearance procedure that express delivery mail uses. This is much higher than the External Tariff Code Duty (ETCD), the normal code used for regular service of shipments, which is 25 percent. Receita Federal, the agency charged with levying taxes, claims that the 60 percent duty is less than the ETCD when the harmonized code is added in on normal shipments. U.S. industry contends that it is more, noting that the 60 percent tax frightens potential customers away. In addition to the high taxes, Brazilian Customs has established maximum value limits of $10,000 for export and $3,000 for import by EDS companies. These restrictions severely impair the Brazilian express delivery market's growth potential and also impede U.S. exporters doing business with Brazil.

The U.S. Government is engaging the Brazilian government on use of ATA Carnets. The ATA Carnet, an internationally accepted customs document, would facilitate the temporary importation of commercial samples, professional equipment, and goods for exhibitions and fairs.

Financial Services

U.S. companies wanting to enter Brazil's insurance market must establish a subsidiary, enter into a joint venture, or acquire or partner with a local company.

INVESTMENT BARRIERS

There is neither a bilateral investment treaty nor a bilateral double taxation treaty in force between the United States and Brazil.

Customer Care Support Law

Brazil enacted a law in December 2008 (Decree 6523 – SAC) that implements numerous new requirements for customer support and call centers operating in Brazil. The provisions of the law are perceived as onerous, expensive, and adverse to private business. Among the many provisions are a requirement for companies to operate customer service call centers 24 hours a day, year-round, an obligation to preserve recorded call records for a minimum of 90 days and written records for 2 years in a central, easily accessible database, and a requirement to provide requested information to customers immediately and to resolve the complaint within 5 business days. Others provisions include the right of the consumer to cancel contracts over the phone without dispute or penalty should the issue involve unsolicited service or incorrect billing, The enforcement of the decree and sanctions given noncompliance are covered under article 56 of Law 8078, adopted in 1990.

BRUNEI DARUSSALAM

TRADE SUMMARY

The U.S. goods trade deficit with Brunei was $3 million in 2008, a decrease of $262 million from $265 million in 2007. U.S. goods exports in 2008 were $112 million, down 20.1 percent from the previous year. Corresponding U.S. imports from Brunei were $114 million, down 71.8 percent. Brunei is currently the 142nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Brunei was $28 million in 2007 (latest data available), up from $27 million in 2006.

IMPORT POLICIES

Tariffs

Brunei has bound nearly 93 percent of its tariff lines. The average bound rate is 25.8 percent. Applied rates averaged 4.8 percent and ranged from 0 percent to 30 percent in 2007. With the exception of a few products – including coffee, tea, tobacco, and alcohol – tariffs on agricultural products are zero. Roughly 130 products including alcoholic beverages, tobacco, coffee, tea, petroleum oils, and lubricants are subject to specific rates of duty and higher rates of overall protection.

Brunei offers lower tariff rates to many Asia-Pacific countries under its various preferential trade agreements. As a member of the Association of South East Asian Nations (ASEAN), Brunei is lowering intraregional tariffs as agreed under the ASEAN Free Trade Agreement. Brunei, as per its commitments, has cut more than 99 percent of its tariffs on ASEAN imports to the 0 percent to 5 percent range. Brunei also is lowering tariffs on a preferential basis through regional trade agreements between ASEAN and China, Korea, and Japan, with Chile, Singapore, and New Zealand as part of the Trans-Pacific Strategic Economic Partnership, and as part of its Economic Partnership Agreement with Japan.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Halal Certification

Brunei's stringent system of *abattoir* approval involves a lengthy process, including on-site inspections carried out by government officials, for every establishment seeking to export meat and poultry to Brunei.

Under the *Halal* Meat Rules that came into force in April 1999, all meat, poultry, and processed meat and poultry products are subject to *halal* certification before importation. For meat to be declared *halal*, two representatives from the Brunei Religious Council have to be present on site to ensure that strict *halal* regulations are adhered to during the entire process, from slaughtering of the animals up to the final packing process. The production line must not be contaminated with non-*halal* products, nor can it be converted to a non-*halal* production line. Because of these strict rules, exporters from only a handful of countries have been approved by the Board issuing permits.

GOVERNMENT PROCUREMENT

All procurement is delegated to the Ministries, Departments and the State Tender Board of the Ministry of Finance. Purchases up to a B$250,000 ($168,000) threshold are approved by the Minister of the relevant

Ministry, but the State Tender Board's approval is required for purchases above this value. Most invitations for Open Tenders or Quotations (procurements below the B$250,000 threshold) are published in a government-published bi-weekly newspaper, but often are selectively tendered only to locally registered companies. Tenders above B$250,000 must be approved by the Sultan in his capacity as Minister of Finance based on the recommendation of the State Tender Board. There is often a lack of transparency in the award process, with tenders sometimes not being awarded or being retendered for reasons not made public.

Military procurement is a closed process. The Ministry of Defense selectively invites companies to bid on large procurements. Similarly, Royal Brunei Technical Services, a semi-government-owned military procurement firm, does not publish open tenders.

Brunei is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Brunei has high piracy rates and the government's track record on enforcement is weak. Pirated optical discs and unlicensed software are openly sold in shops throughout Brunei and the government has done little to restrict the operations of these shops. Counterfeit goods are available in department stores, and industry reports that the sale of illegal copies of movies, music recordings and games for electronic devices in Brunei is pervasive. The government has conducted few raids or prosecutions of IPR crimes in recent years, although the police, the Attorney General's Chambers, and Customs officers say they are trying to improve their enforcement capabilities.

Brunei approved new patent regulations in 1999, but these have not yet been put into effect. As a result, applicants can register patents only through re-registration of a Malaysian, Singaporean, or UK-registered patent with the Registry of Patents under the Attorney General's Chambers. Amendments to the copyright order that would impose stiffer criminal sanctions are being considered, but they are not yet finalized.

OTHER BARRIERS

Transparency is lacking in many areas of Brunei's economy. Brunei has not yet notified its state trading enterprises to the WTO Working Party on State Trading Enterprises despite a strong government presence. This government presence usually takes the form of State-owned monopolies in key sectors of the economy such as oil and gas, telecommunications, transport, and energy generation and distribution. In addition, Brunei's foreign investment policies are unclear, in particular the limits on foreign equity participation and the sectors in which investment is restricted. This creates uncertainty among investors and providing scope for government discretion in policymaking.

CAMBODIA

TRADE SUMMARY

The U.S. goods trade deficit with Cambodia was $2.3 billion in 2008, a decrease of $67 million from 2007. U.S. goods exports in 2008 were $154 million, up 11.0 percent from the previous year. Corresponding U.S. imports from Cambodia were $2.4 billion, down 2.1 percent. Cambodia is currently the 131st largest export market for U.S. goods.

In 2008, the United States and Cambodia continued their active engagement and dialogue under the 2006 Trade and Investment Framework Agreement (TIFA). This dialogue is intended to promote greater trade and investment between the two countries, and help monitor and support Cambodia's efforts to implement its WTO commitments. The TIFA also provides a forum to address bilateral trade issues and allows the two countries to coordinate on regional and multilateral issues.

IMPORT POLICIES

Tariffs

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

Nontariff Barriers

Import restrictions and non-automatic licensing: Importers are required to have approval from relevant government agencies to import certain products including pharmaceutical products, live animals and meat, precious stones, as well as agricultural inputs such as pesticides, herbicides, seeds, fertilizer, and animal vaccines. Imports of weapons, explosives, and ammunition also require a license.

U.S. companies identify nontransparent licensing processes and the lack of laws or regulations mandating office fees and licensing approval periods as a major impediment to trade. This lack of transparency creates opportunities for corruption, while the broad discretion exercised by the ministries responsible for administering the license application process has also led to lengthy delays.

Customs: Cambodia has not yet completed its implementation of the WTO Customs Valuation Agreement. Cambodia had been given a transition period of until January 2009 but will need additional time to complete the implementation of its commitments.

Both local and foreign businesses have raised concerns that the Customs and Excise Department engages in practices that are nontransparent and that often appear arbitrary. Importers frequently cite problems with undue processing delays, unnecessarily burdensome paperwork, and formalities driven by excessively discretionary practices. The United States and Cambodia continue to discuss the implementation of Cambodia's customs practices under the TIFA.

Taxation: Cambodia levies a 10 percent value added tax on goods and services, which is supposed to be applied to all goods and services. To date, however, the Cambodian government only has imposed the VAT on large companies. The government is in the process of expanding the base to which the VAT is applied.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Cambodia is developing standards and other technical measures based on international standards, guidelines, and recommendations. It passed the Law on Standards in 2007 creating the Institute of Standards in Cambodia (ISC) within the Ministry of Industry, Mines, and Energy. The ISC is Cambodia's enquiry point for the WTO Technical Barriers to Trade (TBT) Committee.

Quality control of foodstuffs and plant and animal products is currently under the Department of Inspection and Fraud Repression (CamControl) of the Ministry of Commerce. Currently CamControl is the national contact point for the Codex Alimentarius Commission (Codex). It has primary responsibility for the enforcement of sanitary and phytosanitary (SPS) quality and safety requirements under the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). Cambodia has not yet notified the WTO of its official SPS enquiry point.

Cambodia was provided a transition period until January 2007 to implement its WTO TBT Agreement commitments and until January 2008 to implement its SPS Agreement commitments. The United States and Cambodia discussed progress being made to implement these commitments during TIFA consultations in 2008 and will continue to work with Cambodia to ensure full implementation of these agreements, including working towards a fully functioning SPS enquiry point and national notification authority.

GOVERNMENT PROCUREMENT

Cambodia's government procurement regime is governed by a 1995 sub-decree. The sub-decree requires public tenders for all international purchases over 200 million riel ($50,000) for civil work and 100 million riel ($25,000) for goods. Despite these clear regulations, the conduct of procurement is often non-transparent. The Cambodian government often provides short time frames to respond to public announcements of tenders, which frequently are not widely publicized. Cambodia is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR)

Cambodia has made progress in implementing the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, but comprehensive enforcement remains problematic. The 1996 U.S.-Cambodia Bilateral Trade Agreement (BTA) contained a broad range of IPR obligations that were to be phased in. In 2002, Cambodia adopted the Law Concerning Marks, Trade Names and Acts of Unfair Competition in order to implement its TRIPS Agreement obligations. It also maintains an effective trademark registration system, registering more than 30,000 trademarks (over 5,500 for U.S. companies) under the terms of a 1991 sub-decree, which also has prevented the unauthorized registration of U.S.-owned trademarks.

Still, Cambodia has not yet passed legislation to implement commitments undertaken in the BTA in the areas of encrypted satellite signals, or semiconductor layout designs. Work also remains ongoing on draft legislation to implement obligations with respect to trade secrets. Cambodia enacted a copyright law in January 2003, which split the responsibility for copyrights and related rights between the Ministry of Culture, which handles phonograms and optical media recordings, and the Ministry of Information, which deals with printed materials. Copyright enforcement remains weak, but Cambodian officials have said they will begin enforcing copyrights more vigorously as the government develops capacity. Pirated CDs, videos, software, and other copyrighted materials are widely available in Cambodian markets. Although Cambodia currently is not a major center for the production or export of pirated goods, local businesses report Cambodia is becoming an increasingly popular source of pirated material due to weak enforcement of its IPR laws. The U.S. Government will continue to work with Cambodia under the TIFA to support full implementation of its BTA and WTO commitments.

SERVICES BARRIERS

Legal Services

Under the WTO Agreement on Trade in Services, Cambodia agreed to allow foreign lawyers to supply legal services with regard to foreign law and international law. It also agreed to allow them to supply certain legal services with regard to Cambodian law in "commercial association" with Cambodian law firms. The commitment defines "commercial association" as any type of commercial arrangement, without any requirement as to corporate form. Recent efforts by domestic law firms to propose a 49 percent equity limitation on foreign firms and restrictions on their forms of commercial arrangement, although unsuccessful, have exposed ambiguity in Cambodia's regulatory regime and introduced a measure of legal uncertainty for firms in the sector.

INVESTMENT BARRIERS

Cambodia has one of the most liberal investment laws in the region, but potential investors say they are often deterred by excessive bureaucracy and corruption. The World Economic Forum's 2008 competitiveness survey ranked Cambodia 109 out of 134 countries surveyed, a slightly better ranking than the previous year. In 2009, the World Bank-International Finance Corporation ranked Cambodia 135 out of 181 on business climate, up from 145 out of 178 the previous year. Cambodia's improvement in these rankings has been attributed to continued progress made on the implementation of WTO-related reforms and the enactment of the Secured Transaction Law and the Bankruptcy Law.

Cambodia's constitution restricts foreign ownership of land. Foreign investors may use land through concessions and renewable leases.

ELECTRONIC COMMERCE

Electronic commerce is a new concept in Cambodia. Online commercial transactions are extremely limited, and internet access is still in its infancy. The government has not imposed any specific restrictions on products or services traded via electronic commerce but no legislation exists to govern this sector. The Cambodian government is currently drafting electronic commerce legislation.

OTHER BARRIERS

Corruption: Corruption is a significant concern for foreign businesses and investors. In 2008, Transparency International ranked Cambodia 166 out of 180 countries it surveyed, down from 162 out of 180 in 2007. Both foreign and local businesses have identified corruption in Cambodia as a major obstacle to business and a deterrent to attracting foreign direct investment. Cambodia undertook efforts to draft and enact anticorruption legislation in 2004. To date, however, the law remains in draft form and further progress awaits passage of the revised penal code, which may be passed by early 2009. The U.S. Government will continue to discuss concerns related to governance and corruption with Cambodia under the TIFA.

Judicial and Legal Framework: Cambodia's legal framework is incomplete and unevenly enforced. While numerous trade and investment laws have been passed over the past five years, many business-related draft laws are still pending. The judicial system is often arbitrary and subject to corruption. Many Cambodian and foreign business representatives perceive the court system to be unreliable and susceptible to external political and commercial influence. To address these concerns, the Cambodian government has announced plans to establish a commercial arbitration center and commercial court in 2009. Disputes can be resolved through international arbitration or the International Center for Settlement of Investment Disputes (ICSID), but most commercial disputes are currently resolved by negotiations facilitated by the Ministry of Commerce, the Cambodian Chamber of Commerce, and other concerned institutions.

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

CAMEROON

TRADE SUMMARY

The U.S. goods trade deficit with Cameroon was $489 million in 2008, an increase of $325 million from $164 million in 2007. U.S. goods exports in 2008 were $125 million, down 5.9 percent from the previous year. Corresponding U.S. imports from Cameroon were $614 million, up 106.6 percent. Cameroon is currently the 139th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Cameroon was $71 million in 2007 (latest data available), down from $114 million in 2006.

IMPORT POLICIES

Tariffs

Cameroon is a Member of the WTO and the Central African Economic and Monetary Community (in French, CEMAC), which includes Gabon, the Central African Republic, the Republic of Congo, Chad, and Equatorial Guinea. CEMAC countries maintain a common external tariff on imports from non-CEMAC countries. In theory, tariffs have been eliminated within CEMAC, and only a value added tax should be applied to goods traded among CEMAC members. There has been some delay, however, in achieving this goal, and currently both customs duties and value added taxes are being assessed on trade within CEMAC.

Cameroon applies CEMAC's common external tariff (CET), which is entirely *ad valorem* and has five tariff rates: duty-free for certain pharmaceutical preparations and articles, books and brochures, and aircraft; 5 percent for essential goods; 10 percent for raw materials and capital goods; 20 percent for intermediate goods; and 30 percent for consumer goods. However, Cameroon's import duties differ from the CET on about 300 tariff headings. The average import duty in Cameroon is 19.1 percent. There are additional fees assessed on imports that vary according to the nature of the item, the quantity of the particular item in the shipment, and even the mode of transport. As a result, average customs charges are much higher than the official tariff rates would suggest.

Nontariff Measures

Importers are required to register with the local Ministry of Trade and to notify the customs collection contractor of all imports. Export-import companies must register with – and secure a taxpayer's card from – the Ministry of Finance prior to registering with the Ministry of Trade. CEMAC has no regional licensing system. Agents and distributors in Cameroon must register with the government, and their contracts with suppliers must be notarized and published in the local press.

Documentation of bank transactions is required if the value of the imported goods exceeds CFA 2 million (approximately $4,000). Pre-shipment inspection certificates require a "clean report of findings" from the customs collection contractor. For certain imports, such as used clothing, certificates of noninfestation are also required. A service fee of CFA 25,000 (approximately $50) is required for imported second-hand automobiles.

Cameroon engages in some questionable customs valuation practices. For three commonly subsidized goods – beet sugar, flour, and metal rebar – Cameroon assesses duties on its own estimated cost of production, rather than based on the transaction value of the goods or another customs valuation methodology set forth in the WTO Customs Valuation Agreement. Duties on all other goods are assessed on the basis of the transaction value posted on the commercial invoice. The government has contracted with the Swiss company Societe Générale de Surveillance to issue importation declarations prior to loading at the port of origin.

Customs fraud remains a major problem, and protracted negotiations with customs officers over the value of imported goods are common.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

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

GOVERNMENT PROCUREMENT

Cameroon is not a signatory to the WTO Agreement on Government Procurement (GPA), but it is an observer to the WTO Committee on Government Procurement. The Government Procurement Regulatory Board administers public sector procurement. Local companies typically receive preferential price margins and other preferential treatment in government procurement and development projects, though these preferences are gradually being reduced. In June 2006, the government committed to begin assessing its procurement system against World Bank criteria and to ensure effective application of a law barring participation of persons or companies who have violated procurement rules.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Cameroon is a party to the World Intellectual Property Organization Convention, the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, and the Patent Cooperation Treaty. IPR enforcement faces challenges due to corruption within enforcement agencies, the lack of resources dedicated to IPR enforcement and a general lack of awareness of IPR. A few companies have complained of piracy but struggle to find practical legal recourse to enforce their rights. Cameroonian artists' organizations have publicly criticized the lax enforcement of copyright and related rights and have generated substantial public discussion on the importance of protecting IPR through vocal campaigns highlighting the damaging effect of widespread music piracy. The U.S. Government sponsored participation by a number of Cameroonian officials in U.S.-based intellectual property rights training in 2008.

SERVICES BARRIERS

Telecommunications

Cameroon has eliminated many restrictions on foreign trade in services and is gradually privatizing its telecommunications sector. The Cameroon Telecommunications Regulatory Board regulates the sector and issues licenses for new companies to operate. Two mobile telephone firms, South African MTN and French Orange, currently operate in Cameroon, and state-owned phone operator CAMTEL has launched a mobile service. Initial efforts to privatize CAMTEL collapsed in 2006 when the two top bidders withdrew their offers. The government has indicated that it still intends to privatize CAMTEL, but as of the end of 2008 the government had yet to indicate its next steps. A number of companies are now moving into local Very Small Aperture Terminal (VSAT) systems for data transmission, international telephone service and Internet access.

Insurance

Foreign firms are not permitted to establish 100 percent foreign-owned subsidiaries. Participation in the market must be with a local partner.

INVESTMENT BARRIERS

Despite a number of recent government initiatives, Cameroon's investment climate remains challenging.

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

Local and foreign investors, including some U.S. firms, have found Cameroonian courts unreliable, susceptible to external political and commercial influence, and too costly to resolve their contract or property rights disputes. Additionally, even with a favorable court judgment, enforcement of such a ruling under local law can be problematic.

U.S. companies have expressed concern that the Ministry of Labor has made it more difficult for investors to sell their assets in Cameroon by requiring companies involved in share sales to make termination-of-contract payouts to contractual employees even when the contracts in question are being assumed by new owners. The issue appears to arise only when the divesting investors are foreign. This issue has been under review by the Cameroonian government the past 3 years but has not yet been resolved. The United States raised this issue and its negative impact on U.S. companies with the Minister of Labor in 2008.

OTHER BARRIERS

Corruption is a significant concern for foreign businesses and investors and appears to be pervasive throughout the public and business sectors. The judicial system, characterized by long delays and under-staffing in the areas of financial and commercial law, has imposed major additional expenses on some U.S. companies operating in Cameroon. Cameroon ratified the United Nations Convention against Corruption in February 2006, but has yet to implement most of its provisions. The United States actively raises the need to reduce corruption and works to counter alleged corruption affecting U.S. companies.

CANADA

TRADE SUMMARY

The U.S. goods trade deficit with Canada was $74.2 billion in 2008, an increase of $6.0 billion from $68.2 billion in 2007. U.S. goods exports in 2008 were $261.4 billion, up 5.0 percent from the previous year. Corresponding U.S. imports from Canada were $335.6 billion, up 5.8 percent. Canada is currently the largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Canada were $42.9 billion in 2007 (latest data available), and U.S. imports were $24.6 billion. Sales of services in Canada by majority U.S.-owned affiliates were $88.8 billion in 2006 (latest data available), while sales of services in the United States by majority Canada-owned firms were $53.4 billion.

The stock of U.S. foreign direct investment (FDI) in Canada was $257.1 billion in 2007 (latest data available), up from $230.0 billion in 2006. U.S. FDI in Canada is concentrated largely in the manufacturing, finance/insurance, and mining sectors.

A Trading Relationship Based on Free Trade

The United States and Canada conduct the world's largest bilateral trade relationship, with total merchandise trade (exports and imports) exceeding $597 billion in 2008. The North American Free Trade Agreement (NAFTA) entered into force on January 1, 1994, replacing the United States-Canada Free Trade Agreement, which entered into force in 1989. Under the NAFTA, the United States and Canada progressively eliminated tariff and nontariff barriers to trade in goods; improved access for services trade, established rules on investment, strengthened protection of intellectual property rights, and created an effective dispute settlement mechanism. Under the terms of the NAFTA, Canada eliminated tariffs on all remaining industrial and most agricultural products imported from the United States on January 1, 2008. The United States, Canada and Mexico agreed to the NAFTA with "side agreements" on labor and environment. Under these side agreements the parties are, among other things, obligated to effectively enforce their environmental and labor laws. The agreements also provide frameworks for cooperation among the parties on a wide variety of labor and environmental issues.

IMPORT POLICIES

Agricultural Supply Management

Canada uses supply management systems to regulate its dairy, chicken, turkey, and egg industries. Canada's supply management regime involves the establishment of production quotas; producer marketing boards to regulate the supply and prices farmers receive for their poultry, turkey, eggs, and milk products; and border protection achieved through tariff-rate quotas. Canada's supply management regime severely limits the ability of U.S. producers to increase exports to Canada above the tariff-rate quota levels and inflates prices Canadians pay for dairy and poultry products. The United States has pressed for expanded in-quota quantities for these products as part of the negotiations regarding disciplines on tariff-rate quotas in the WTO Doha Round agricultural negotiations.

Early in 2008, Canada announced its intention to proceed with finalizing the implementation of the WTO Special Agricultural Safeguard (SSG) for its supply-managed goods. The SSG is a provision that allows additional duties to be imposed on over-quota trade when import volumes rise above a certain level, or if prices fall below a certain level.

Canada's new compositional standards for cheese entered into force on December 14, 2008, and could severely limit U.S. access to the market. These new regulations limit the ingredients that can be used in cheese making, set a minimum for raw milk in the cheese making process, and make cheese importers more accountable for ensuring that imported product is in full compliance. The regulations are also applicable to cheese that is listed as an ingredient in processed food. The United States is closely monitoring the implementation of these new measures. Canada continues to maintain a prohibitive tariff of 245 percent on U.S. exports of breaded cheese sticks.

Ministerial Exemptions

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

Continued progress was made in 2008 concerning the implementation of the Technical Arrangement Concerning Trade in Potatoes between the United States and Canada. This arrangement is designed to provide U.S. potato producers with predictable access to Canadian Ministerial exemptions which are necessary to import potatoes.

Restrictions on U.S. Grain Exports

Canada has varietal registration requirements on its wheat. On August 1, 2008, Canada eliminated a portion of the varietal controls by no longer requiring that each registered variety of grain be visually distinguishable based on a system of Kernel Visual Distinguishability (KVD) requirements. This KVD requirement limited U.S. access to Canada's grain market, since U.S. varieties could not be registered for use in Canada. While this policy change is a step in the right direction, it will take years before U.S. wheat varieties go through the field trials that will determine whether the varieties will be registered for use in Canada. In the meantime, U.S. wheat, regardless of quality, will continue to be sold in Canada as "feed" wheat at sharp price discounts compared to Canadian varieties.

Personal Duty Exemption

The United States continues to urge Canada to facilitate cross border trade for returning residents by relaxing its taxation of goods that Canadian tourists purchase in the United States. Canada's allowance is linked to the length of a tourist's absence from Canada and allows C$50 for tourists absent for at least 24 hours, and C$400 and C$750 for visits exceeding 48 hours and 7 days, respectively.

Wine and Spirits

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

The Canadian Wheat Board and State Trading Enterprises (STEs)

The United States has longstanding concerns about the monopolistic marketing practices of the Canadian Wheat Board. The United States seeks a level playing field for American farmers, including through the elimination in the Doha Round agricultural negotiations of the monopoly power of exporting STEs.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Restrictions on Fortification of Foods

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

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

Restrictions on Container Sizes

Canada is the only NAFTA country to impose mandatory container sizes on a wide range of processed fruit and vegetable products. The requirement to sell in container sizes that exist only in Canada makes it more costly for U.S. producers to export their products to Canada. For example, Canada's Processed Products Regulations (Canada Agricultural Products Act) require manufacturers of baby food to sell in only two standardized container sizes: 4.5 ounces (128 ml) and 7.5 ounces (213 ml).

SOFTWOOD LUMBER

The Softwood Lumber Agreement (SLA) was signed on September 12, 2006, and entered into force on October 12, 2006. Its implementation settled massive litigation in U.S. and international venues and resulted in the revocation of antidumping and countervailing duty orders on softwood lumber from Canada. The SLA is designed to create a downward adjustment in softwood lumber exports from Canada into the United States when demand in the United States is low through the imposition of export measures by Canada. The Softwood Lumber Committee, established pursuant to the SLA, met in May 2008 and December 2008 to discuss a range of implementation issues and Canadian provincial assistance programs for softwood lumber industries.

On March 30, 2007, the United States requested formal consultations with Canada to resolve concerns regarding Canada’s implementation of the export measures, in particular the operation of the Agreement’s surge mechanism and quota volumes, as well as several federal and provincial assistance programs that benefit the Canadian softwood lumber industry. After formal consultations failed to resolve these concerns, the United States requested international arbitration under the terms of the SLA on August 13, 2007, challenging Canada’s implementation of the import surge mechanism and quota volumes. On March 4, 2008, the arbitral tribunal agreed with the United States that Canada violated the SLA by failing to properly adjust the quota volumes of the Eastern Canadian provinces in the first six months of 2007. However, the Tribunal did not find that the same adjustment applies to British Columbia and Alberta. The first arbitration under the SLA concluded in February 2009. In that arbitration, the tribunal found that Canada violated the SLA by failing to properly calculate regional quota volumes for the eastern provinces during the first half of 2007. In a February 2009 decision, the tribunal ordered Canada to cure the breach within 30 days and prescribed compensatory adjustments to the export measures to remedy the breach.

The United States filed a second request for arbitration on January 18, 2008, challenging a number of assistance programs implemented by Quebec and Ontario, which the United States believes are inconsistent with Canada’s obligations under the anti-circumvention provision of the SLA. An award in this arbitration is expected in late 2009.

TECHNOLOGY PARTNERSHIP CANADA

Technology Partnership Canada (TPC) is a Canadian government program that supports the research and development activities of select industries. Established in 1996, TPC provided loan funding for so-called "pre-competitive" research and development activities for companies incorporated in Canada. Although TPC was targeted at a number of industries, a disproportionate amount of funding had been provided to aerospace and defense companies. The Canadian government restructured the TPC program in 1999 after a WTO Dispute Panel requested by Brazil determined that it provided an illegal subsidy. In 2006, Canada's Minister of Industry closed the program to new TPC applicants except for the aerospace and defense sectors. According to government of Canada figures, as of July 2008, approximately C$381million has been paid back to the government out of approximately C$3.7 billion that has been committed in TPC investments.

In 2007, the government of Canada established the Strategic Aerospace and Defence Initiative (SADI), replacing Technology Partnership Canada (TPC). The SADI "provides repayable support for strategic industrial research and pre-competitive development projects in the aerospace, defence, space and security industries." There is no minimum or maximum limit on how much a company can apply to receive through SADI, although typically SADI is expected to contribute about 30 percent of a project's eligible costs. SADI repayment is generally based on a royalty applied to the company's gross business revenues. To receive funding through SADI, the level of assistance from all government sources (federal, provincial, territorial, municipal) shall not normally exceed 75 percent of a project's eligible costs. The first SADI funds were disbursed in early 2008; SADI is expected to invest nearly C$900 million between 2007 and 2012, with funding to reach a maximum of C$225 million per year.

In 2008, the Canadian federal government and the Quebec provincial government announced aid to Bombardier not to exceed C$350 million (federal) and C$118 million (provincial) to support the launch of a new class of Bombardier "C Series" regional jets. This financial aid is independent of the SADI program, and the conditions of the arrangement have not been made public. The United States has long been opposed to market-distorting aircraft launch aid for civil aircraft and has expressed to Canada its expectation that any such aid would be provided in a manner consistent with its international obligations.

GOVERNMENT PROCUREMENT

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

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Canada is a member of the World Intellectual Property Organization (WIPO) and is a Party to several international intellectual property agreements, including the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works. Canada is also a signatory to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (together the WIPO Internet Treaties), which set standards for intellectual property protection in the digital environment. Canada has not yet ratified or implemented either treaty. In June 2008, Canada introduced legislation to implement the WIPO Treaties and to provide improved copyright protection, but no action was taken on the bill before national elections were called in September 2008.

The United States hopes that Canada will quickly reintroduce copyright legislation that will ratify and fully implement the two WIPO Internet Treaties, including prohibiting the manufacture and trafficking in circumvention devices, and enact a limitation-of-liability for Internet service providers that effectively reduces copyright infringement on the Internet by using the "notice-and-takedown" model, rather than the less effective "notice-and-notice" model.

U.S. intellectual property owners are concerned about Canada's weak border measures and general enforcement efforts. The lack of *ex officio* authority for Canadian Customs officers makes it difficult for them to seize shipments of counterfeit goods. To perform a civil seizure of a shipment under the Customs Act, the rights holder must obtain a court order, which requires detailed information on the shipment. In addition to pirated software, many stores sell and install circumvention devices that allow pirated products to be played in a legitimate console. Once pirated and counterfeit products clear Canadian Customs, enforcement is the responsibility of the Royal Canadian Mounted Police (RCMP) and the local police. The RCMP lacks adequate resources, training, and staff for this purpose. Few prosecutors are willing or trained to prosecute the few cases that arise. Where an infringement case has gone to trial, the penalties imposed can be insufficient to act as a deterrent.

With respect to camcording, however, Canada has achieved some success in protecting and enforcing intellectual property rights. In June 2007, Canada enacted Bill C-59 which makes unauthorized camcording of theatrically exhibited motion pictures a federal criminal offense. Industry reports that this new law has had a deterrent effect; since the new law was enacted, several individuals have been arrested, and one individual was convicted in November 2008.

In 2006, Canada put in place data protection regulations. There are currently legal challenges to those regulations. The U.S. pharmaceutical industry has expressed concern with the nature of infringement-related proceedings in conjunction with the approval of copies of patented drugs. The industry has also expressed concerns related to draft pharmaceutical pricing guidelines, specifically with respect to the regulatory burden that would be placed on pharmaceutical manufacturers.

SERVICES BARRIERS

Audiovisual and Communications Services

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

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

The CRTC also requires that the English and French television networks operated by the Canadian Broadcasting Corporation not show popular foreign feature movies between 7 P.M. and 11 P.M. The only non-Canadian films that may be broadcast during that time must have been released in theaters at least two years previously and not be listed in the top 100 of Variety Magazine's top grossing films for at least the previous 10 years. Non-Canadian channels must be pre-approved ("listed") by the CRTC. For other services, such as specialty television and satellite radio services, the required percentage of Canadian content varies according to the nature of the service. Canadian licensees may appeal the listing of a non-Canadian service which is thought to compete with a Canadian pay or specialty service. The CRTC will consider removing existing non-Canadian services from the list, or shifting them into a less competitive location on the channel dial, if they change format to compete with a Canadian pay or specialty service.

A concern of Canada’s television industries is the spread of unauthorized use of satellite television services. Industry has estimated that between 520,000 to 700,000 households within cabled areas use unauthorized satellite services. The Canadian Broadcasting Industry Coalition has estimated that piracy costs the Canadian broadcasting system $400 million per year. Of this number of illegal users, it is estimated that over 90 percent are involved in the "black market" (*i.e.*, signal theft without any payment to U.S. satellite companies), with the remainder subscribing via the "gray market" where the unauthorized user does in fact purchase the signal from a U.S. satellite company, but only by pretending to be a U.S. resident.

Distributors of theatrical films in Canada must submit their films to six different provincial or regional boards for classification. Most of these boards also classify products intended for home video distribution. The Quebec Cinema Act requires that a sticker be acquired from the *Régie du Cinéma* and attached to each pre-recorded video cassette and DVD at a cost of C$0.40 per unit. The Quebec government has reduced the sticker cost to C$0.30 for Quebecois films, films in French, and English and French versions of films dubbed into French in Quebec.

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

Telecommunications Services

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

INVESTMENT BARRIERS

General Establishment Restrictions

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

Investment Canada Act (ICA)

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

- The government of Canada must be notified of any investment by a non-Canadian to establish a new Canadian business (regardless of size);

- An investment is reviewable if there is an acquisition of an existing Canadian business and the asset value of the Canadian business being acquired equals or exceeds the following thresholds (which are adjusted annually based on changes in Canadian gross domestic product):
  - For investors from non-WTO Members, the review threshold is C$5 million for direct acquisition and over C$50 million for indirect acquisition;
  - Investors from WTO Members benefit from higher direct acquisition thresholds. As of January 1, 2008, the review threshold for investors from WTO Members is C$295 million. Indirect acquisitions by investors from WTO Members are not reviewable, but are subject to notification; and
  - All investments in four sectors (uranium, financial services, transportation services, and cultural businesses) are reviewable at the following thresholds: C$5 million for a direct acquisition and over C$50 million for an indirect acquisition.

Industry Canada is the reviewing authority for most investments, except for those related to cultural industries, which come under the jurisdiction of the Department of Heritage. The ICA sets time limits for the reviews. The Minister of Industry has 45 days to determine whether or not to allow a proposed investment. The Minister can unilaterally extend the 45 day period by an additional 30 days by sending a notice to the investor prior to the expiration of the initial 45 day period. Further extensions are permitted if both the investor and the Minister agree to the extension. Prior to 2008 no investments had been denied under the *Investment Canada Act*, although in some instances acquisitions were approved only after prospective investors have agreed to fulfill certain conditions.

In April 2008, the Federal Minister of Industry denied the application by American firm ATK of Minnesota to acquire the space-related business assets of Vancouver-based MDA for $1.3 billion, finding that the proposed acquisition did not provide a "net benefit" to Canada. *The Investment Canada Act* provides the statutory basis for the Minister to determine whether the proposed acquisition is of "net benefit" to Canada, which is the key to approving or rejecting the proposed acquisition. When determining "net benefit" consideration is given to several factors including the effect of the investment on employment, competition, technological development, product innovation and product variety in Canada (see Section 20 of the Investment Canada Act).

In December 2008, the Newfoundland House of Assembly passed Bill 75, which set in motion a process by which the province will take ownership of certain timber rights, water and hydroelectric rights, land rights, physical assets (including dams and power stations), and other assets owned by AbitibiBowater, a company incorporated in the State of Delaware and headquartered in Montreal. Under the legislation, all of AbitibiBowater's assets, except for its pulp and paper mill, will be owned by Nalcor, a recently established provincial Crown corporation. Although the provincial government indicated that some compensation may be paid for hydroelectric assets, it remains unclear if compensation will represent the full value of the assets. The United States continues to follow developments in this matter.

Publishing Policy

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

Film Industry Investment

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

CHILE

TRADE SUMMARY

The U.S. goods trade balance with Chile went from a deficit of $684 million in 2007, to a surplus of $3.9 billion in 2008. U.S. goods exports in 2008 were $12.1 billion, up 45.5 percent from the previous year. Corresponding U.S. imports from Chile were $8.2 billion, down 9.0 percent. Chile is currently the 25th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Chile were $1.8 billion in 2007 (latest data available), and U.S. imports were $868 million. Sales of services in Chile by majority U.S.-owned affiliates were $4.9 billion in 2006 (latest data available), while sales of services in the United States by majority Chile-owned firms were not available in 2006 ($2 million in 2003).

The stock of U.S. foreign direct investment (FDI) in Chile was $12.6 billion in 2007 (latest data available), up from $11.4 billion in 2006. U.S. FDI in Chile is concentrated largely in the finance/insurance, manufacturing, mining, and banking sectors.

IMPORT POLICIES

Tariffs

The United States-Chile Free Trade Agreement (FTA) entered into force on January 1, 2004. Under the FTA, the Parties eliminated tariffs on 87 percent of bilateral trade immediately and will establish duty free trade in all products within a maximum of 12 years.

Chile has one of the most open trade regimes in the world. The uniform applied tariff rate for virtually all goods is 6 percent. There are several exceptions to the uniform tariff. For example, higher effective tariffs will remain for wheat, wheat flour, and sugar during the 12 year transition period under the FTA due to the application of an import price band system. Importers also must pay a 19 percent value added tax (VAT) calculated on the customs value plus import tariff. In the case of duty free imports, the VAT is calculated on the customs value alone.

Import Controls

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

EXPORT POLICIES

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

In accordance with its commitments under the FTA, Chile is eliminating, over a transition period, the use of duty drawback and duty deferral for imports that are incorporated into any goods exported to the United States. Full drawback rights are allowed for the first eight years from entry into force of the FTA. Beginning with year 9 in 2013, the amount of drawback allowed is reduced until it reaches zero by year 12 in 2016.

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

Chile also offers a Guarantee Fund (*Fondo de Garantia*) for small and medium enterprises (SMEs). Through this fund, Chile guarantees access to credit provided by financial institutions and technical cooperation agencies to SMEs. This Guarantee Fund benefits all those nonagricultural entrepreneurs whose annual gross sales do not exceed $8.2 million, and agricultural producers with annual gross sales less than $460,000.

Chile's Development Promotion Agency (CORFO) provides access to medium- and long-term financial credit for exporting companies. It also provides credit to their export clients abroad. The maximum loan for Chilean exporters is $3 million. The credits for foreign clients are granted through commercial banks in the destination country. The program has been designed for Chilean companies with annual sales of up to $30 million that export goods and services. Through the Coverage of Bank Loans to Exporter program (COBEX), CORFO provides loan default risk coverage to the banks that give loans to SMEs. Coverage can be up to 50 percent of the balance of unpaid capital on loans made to eligible exporters. This benefit is only available for exporting companies with annual sales (domestic and international) of up to $20 million.

Export Controls

Chilean customs authorities approve and issue export reports. Exported goods must generally be shipped within 90 days from the date of the export report, but this period may be extended under certain conditions. Exporters may freely dispose of hard currency derived from exports. As with imports, exporters may use the formal or informal exchange market. Large firms must report all exports to the Chilean Central Bank, except for copper exports, which are authorized by the Chilean Copper Commission. Duty free import of materials used in products for export within 180 days is permitted with prior authorization. Free-zone imports are exempt from duties and VAT if re-exported.

Nontariff Barriers

Chile maintains a complex price band system for wheat, wheat flour, and sugar that will be phased out by 2016 under the FTA for imports from the United States. The price band system was created in 1985 and is intended to guarantee a minimum and maximum price for the covered commodities. When certain cost, insurance, and freight (CIF) prices (as calculated by Chilean authorities) fall below the set minimum price, a special tax is added to the tariff rate to raise the price to the minimum price. The government sets a minimum import price that is normally higher than both international and Chilean domestic prices. Beginning in 2008, the minimum price is adjusted downward by 2 percent per year, until 2014, when

Chile's President will evaluate whether to continue the price band system or eliminate it prior to the 2016 FTA commitment. Mixtures (*e.g.*, high fructose corn syrup) containing more than 65 percent sugar content are now subject to the sugar price band system.

The export/import process requires non-Chilean companies operating in the country to contract the services of a specialized professional called a Customs Agent. The Customs Agent is the link between the exporter/importer and the National Customs Service. The Agent's mission is to facilitate foreign trade operations and to act as the official representative of the exporter/importer in the country. Agent fees are not standardized. This is an extra cost borne by non-Chilean companies operating in country.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Sanitary and Phytosanitary Measures

Prior to the FTA, many of Chile's trade restrictive sanitary and phytosanitary (SPS) requirements prevented the entry of a number of U.S. agricultural and food exports. The FTA created a SPS committee between the Parties that meets annually to discuss issues and to attempt to resolve trade concerns.

In December 2003, Chile closed its market to all U.S. live cattle, beef and beef products due to the detection of a Bovine Spongiform Encephalopathy (BSE) positive animal in the United States. In July 2005, Chile agreed to partially re-open the market for U.S. deboned beef from animals under 30 months of age. World Organization for Animal Health (OIE) guidelines permit all U.S. beef and beef products from cattle of all ages to be traded, with appropriate Specified Risk Materials (SRMs), as defined by the OIE, removed. The United States will continue to work with Chile to achieve a full re-opening of Chile's market to live cattle, beef and beef products from the United States, in line with OIE guidelines and through the use of established fora. The Chilean government is expecting to update their regulations on beef and beef products by the first half of 2009.

GOVERNMENT PROCUREMENT

The Chilean government's Communications and Information Technology Unit (UTIC) coordinates, promotes, and advises the Chilean Government on the development of information technology in several areas. The UTIC was particularly successful in creating comprehensive reform of Chile's procurement system. Electronic procurement has made business opportunities with the Chilean government more transparent, reduced firms' transaction costs, increased opportunities for feedback and cooperation between firms and public agencies, and sharply reduced opportunities for corruption.

Each government entity in Chile generally conducts its own procurement. Chile's law requires public bids for large purchases, although procurement by negotiation is permitted in certain cases. Foreign and local bidders in government tenders must register with the Chilean Bureau of Government Procurement. They must also post a bank or guaranteed bond, usually equivalent to 10 percent of the total bid, to ensure compliance with specifications and delivery dates. Through the Information System for Procurements and Public Contracts for the Public Sector (http://www.chilecompras.cl), any interested supplier may offer products or services and register as a potential supplier in government procurement, free of charge.

The FTA requires procuring entities to use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures for procurement covered by the agreement. It also includes nondiscriminatory provisions that require Chilean entities covered by the FTA to allow U.S. suppliers to participate in their procurement on the same basis as Chilean suppliers.

The FTA covers the procurement of most Chilean central government entities, 15 regional governments, 11 ports and airports, and 346 municipalities.

Chile is not a signatory to the WTO Agreement on Government Procurement, but it is an observer to the WTO Committee on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Concerns about the weakening of protection and enforcement of intellectual property rights in Chile were reflected in the January 2007 decision to place Chile on the Special 301 Priority Watch List. Chile remained on the Priority Watch List for 2008. The primary concerns relate to patents and protection of undisclosed test and other data submitted to obtain regulatory approval in the pharmaceutical sector and piracy of copyrighted movies, music, and software.

The United States will continue to work with Chile to improve enforcement and ensure Chile meets its obligations under the FTA. In April 2008, the Chilean Congress passed a law (introduced in 2000) that creates the National Institute of Industrial Property (INAPI), replacing the existing Department of Industrial Property. INAPI is a technical and legal agency in charge of all the administrative actions related to industrial property registration and protection. INAPI will have regulatory and enforcement authority and will be overseen by the Presidency of the Republic, through the Ministry of Economy.

In October 2008, the Chilean Senate approved the Patent Cooperation Treaty (PCT). According to the government of Chile, implementation of the PCT is expected, together with inauguration of INAPI, in the first quarter of 2009.

Protection of pharmaceutical patents and undisclosed test and other data in Chile continues to be a concern. Chile has yet to establish a consistently effective and transparent system to address the concerns of patent holders, who report that Chile has permitted the marketing of unauthorized copies of patented pharmaceutical products. In addition, the United States remains concerned as well about reports that Chile has inappropriately relied on undisclosed test and other data submitted in connection with the approval of innovative drug products in order to approve generic versions of these drugs. In January 2008, the Ministry of Health issued draft regulations for public discussion directed to protecting undisclosed test and other data; the regulation is still in draft form.

Chile amended its copyright law in 2003. In addition, legislation is still pending in the Chilean Congress to amend Chile's copyright and trademark law to provide amended provisions on copyright and trademark use including penalties for IPR violations and an assessment of Internet Service Provider liability in such cases. Further, draft legislation to ratify the International Convention for the Protection for New Varieties of Plants 1991 was introduced in the Chilean Congress in November 2008.

Enforcement

The United States is concerned by weak enforcement of intellectual property rights of copyrighted and trademarked goods. Despite active enforcement efforts by the police, piracy of computer software and video and music recordings remains widespread. Attempts to enforce copyrights in Chile have met with considerable delays in the courts and lenient punishments. According to the International Intellectual Property Alliance, estimated losses due to the piracy of copyrighted materials in Chile totaled $130 million in 2008.

SERVICE BARRIERS

Chile's relatively open services trade and investment regime stands in contrast to its very limited commitments under the WTO General Agreement on Services. Commitments in services under the FTA are far more extensive, with market access commitments covering a wide range of sectors, including computer and related services, telecommunications, audiovisual services, construction and engineering, tourism, advertising, express delivery, professional services, distribution services, adult education and training services, and environmental services.

Financial Services

Chile made WTO financial services commitments in banking services and in most securities and other financial services. However, Chile's WTO Commitment Schedule in the securities sector did not include asset fund management (mutual funds, investment funds, foreign capital investment funds, and pension funds). Foreign-based insurance companies cannot offer or contract insurance policies in Chile directly or through intermediaries. However, there are currently no barriers to entry into the Chilean market by foreign-based insurance companies.

INVESTMENT BARRIERS

Chile maintains an open investment regime and does not screen foreign investment, with the exception of foreign investment projects with the Chilean government worth more than $5 million which are entitled to the benefits and guarantees of Decree Law 600, and under which the Foreign Investment Committee of the Ministry of Economy signs a separate contract with each investor. That contract stipulates the time period of the investment's implementation. Under Decree Law 600, profits from an investment may be repatriated immediately, but no original capital may be repatriated for one year.

Foreign investors in Chile may own up to 100 percent of an enterprise and are not required to maintain ownership for any set period of time. Foreign investors have access to all sectors of the economy with limited exceptions in coastal trade, air transportation, and the mass media. Chile permits investment in the fishing sector to the extent that an investor's home country reciprocally permits Chilean nationals to invest in that sector. Investors domiciled abroad may bring foreign currency into Chile under Chapter 14 of the Foreign Exchange Regulations of the Central Bank. This allows the investor to sell foreign currency freely through the formal or informal exchange market.

The FTA further strengthened the legal framework for U.S. investors operating in Chile. All forms of investment are protected under the FTA, including enterprises, debt instruments, concessions, contracts, and intellectual property. The FTA also explicitly prohibits certain restrictions on investors, such as the requirement to buy domestic rather than imported inputs.

The United States and Chile allow transfers both into and out of their territories related with an investment to be carried out freely and without delay. These transfers should be made in a currency of wide usage and at the exchange rate observed in the market at the time of the transfer. However, under the FTA, Chile may establish restrictions on payments or transfers associated with speculative or short-term investments in the event of a financial or economic crisis, for a period of up to one year. During this time, the investor would not be able to invoke the conflict resolution system in force under the FTA for dealing with investor-state disputes.

There is no bilateral double taxation treaty in force between the United States and Chile.

CHINA

TRADE SUMMARY

The U.S. goods trade deficit with China was $266.3 billion in 2008, an increase of $10.1 billion from $256.2 billion in 2007. U.S. goods exports in 2008 were $71.5 billion, up 9.5 percent from the previous year. Corresponding U.S. imports from China were $337.8 billion, up 5.1 percent. China is currently the third largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to China were $14.2 billion in 2007 (latest data available), and U.S. imports were $8.8 billion. Sales of services in China by majority U.S.-owned affiliates were $10.0 billion in 2006 (latest data available), while sales of services in the United States by majority China-owned firms were $167 million.

The stock of U.S. foreign direct investment (FDI) in China was $28.3 billion in 2007 (latest data available), up from $23.4 billion in 2006. U.S. FDI in China is concentrated largely in the manufacturing sector.

When China acceded to the WTO on December 11, 2001, it committed to implement a set of sweeping reforms over time that required it to lower trade barriers in virtually every sector of the economy, provide national treatment and improved market access to goods and services imported from the United States and other WTO Members, and protect intellectual property rights (IPR). All of China's key commitments should have been phased in by December 11, 2006, two years ago. Consequently, China is no longer a new WTO member, and the United States has been working to hold China fully accountable as a mature member of the international trading system, placing a strong emphasis on China's adherence to WTO rules.

Aided, at times, by prodding from the United States and other WTO Members since acceding to the WTO, China has taken steps to reform its economy, making progress in implementing a broad set of commitments. Although not complete in every respect, China's implementation of its WTO commitments has led to significant increases in U.S.-China trade, including U.S. exports to China, while deepening China's integration into the international trading system and facilitating and strengthening the rule of law and economic reforms that China began nearly three decades ago. However, more still needs to be done.

In 2008, U.S. industry focused less on the implementation of specific commitments that China made upon entering the WTO and more on China's shortcomings in observing basic obligations of WTO membership, as well as on Chinese policies and practices that undermine previously implemented commitments. At the root of many of these problems is China's continued pursuit of problematic industrial policies that rely on repeated and extensive Chinese government intervention intended to promote or protect China's domestic industries. This government intervention, evident in many areas of China's economy, is a reflection of China's historic, yet unfinished, transition from a centrally planned economy to a free-market economy governed by the rule of law.

During the 15 years of negotiations leading up to China's WTO accession, the United States and other WTO Members worked hard to address concerns created by China's historic economic structure. Given the state's large role in China's economy, the United States and other WTO Members carefully negotiated conditions for China's WTO accession that would, when implemented, lead to significantly reduced levels of government intervention in the market and significantly fewer distortions in trade flows.

Through the first few years after China's accession to the WTO, China made noteworthy progress in adopting economic reforms that facilitated its transition toward a market economy. However, beginning in 2006 and continuing throughout 2007 and 2008, progress toward further market liberalization began to slow. It became clear that some Chinese government agencies and officials have not yet fully embraced key WTO principles of market access, nondiscrimination, and transparency. Differences in views and approaches between China's central government and China's provincial and local governments also have continued to frustrate economic reform efforts, while China's difficulties in generating a commitment to the rule of law have exacerbated this situation.

In 2008, the United States further intensified its frank bilateral engagement with China. The United States also took enforcement actions at the WTO in key areas where dialogue had not resolved U.S. WTO-related concerns.

The United States brought two new WTO cases against China in 2008. In March 2008, the United States challenged restrictions that China had placed on foreign suppliers of financial information services, as well as China's failure to establish an independent regulator in this sector. The European Communities (EC) and later Canada joined in this challenge. In November 2008, following several months of constructive discussions, the parties welcomed China's agreement to resolve all of their concerns through a settlement. Joined by Mexico, the United States initiated another WTO case against China in December 2008, challenging an industrial policy that generated a vast number of central, provincial, and local government programs promoting increased worldwide recognition and sales of famous brands of Chinese merchandise, as well as other favored Chinese products through what appear to be prohibited export subsidies.

In addition, the United States continued to pursue four other WTO cases in 2008. In one of those cases, a challenge brought by the United States, the EC, and Canada to China's use of prohibited local content requirements in the automobile sector, a WTO panel ruled in favor of the United States and other complaining parties in March 2008, and the WTO's Appellate Body upheld that ruling on appeal in December 2008. In a WTO challenge to several prohibited tax subsidy programs, China followed through on the parties' earlier settlement by eliminating all of the subsidies at issue by January 1, 2008. In January 2009, the WTO issued a ruling supporting most elements of the U.S. challenge to key aspects of China's IPR enforcement regime. The fourth WTO case active in 2008 is a challenge to market access restrictions affecting the importation and distribution of copyright-intensive products such as books, newspapers, journals, theatrical films, DVDs, and music. The United States expects the WTO panel to make its decision in 2009.

While pursuing these multilateral enforcement initiatives, the United States also pursued intensified, focused, bilateral dialogue with China. Working together, the United States and China pursued a set of formal and informal bilateral dialogues and meetings, including numerous working groups and plenary meetings under the auspices of the United States-China Joint Commission on Commerce and Trade (JCCT), established in 1983, and the United States-China Strategic Economic Dialogue (SED), launched in December 2006. Through these avenues, the United States sought resolutions to particular pressing trade issues and encouraged China to accelerate its movement away from reliance on government intervention and toward full institutionalization of market mechanisms. This bilateral engagement produced more near-term results in 2008 than in 2007, largely because China's leadership displayed an increased willingness to work constructively and cooperatively with the United States. In fact, the two sides were able to achieve incremental but important progress in numerous areas. For example, China agreed to delay publication of final rules on information security certification that would have potentially barred several types of U.S. high-technology products from China's market, so that experts from both sides could discuss the best way forward. China confirmed that state-owned enterprises would base their software purchases solely on market terms without Chinese government intervention or directives favoring domestic software. China agreed to eliminate all remaining duplicative testing and inspection requirements for imported medical devices. China lifted long standing Avian Influenza-related bans on poultry imports from several U.S. states, and China also agreed to allow several U.S. pork processing plants to resume exports to China. China committed to submit an improved offer as soon as possible in connection with its accession to the WTO's Government Procurement Agreement. China agreed to additional market access for foreign suppliers in the banking and securities sectors. China also established notice-and-comment procedures for trade-related and economic-related regulations. At the same time, the United States and China agreed to continue discussions in a number of other important areas, including, for example, IPR, steel trade, insurance, medical device pricing and tendering policies, sanitary and phytosanitary (SPS) measures, and transportation and environmental goods and services, among other areas. The two sides also launched bilateral investment treaty negotiations.

However, despite extensive dialogue, Chinese policies and practices in several areas continued to cause concern for the United States and U.S. stakeholders in 2008, as is detailed below and in the 2008 USTR Report to Congress on China's WTO Compliance. USTR is concerned that since 2006, China is trending toward a less open trade regime with diverse new measures that signal new restrictions on market access and foreign investment in China. In 2008, U.S. stakeholders have pointed to further evidence of such a trend, including the setting of unique Chinese national standards, the tremendous expansion of the test market for China's home-grown 3G telecommunications standard, China's government procurement practices, an array of policies promoting and protecting "pillar industries," the promotion of famous Chinese brands of merchandise using what appear to be prohibited export subsidies, the continued and incrementally more restrictive use of export quotas and export duties on a large number of raw materials, additional restrictions on foreign investment in China, and the continuing consideration of "national economic security" when evaluating mergers and acquisitions, among other significant restrictive practices.

In addition to the new restrictions indicated above, several areas of past concern continue to cause concern for the United States and U.S. stakeholders. First, the lack of effective IPR enforcement remains a major challenge, as counterfeiting and piracy in China remain at unacceptably high levels and cause serious economic harm to U.S. stakeholders across the economy. U.S. industries hesitate to market leading edge technology in China due to the high probability of piracy. Second, in a number of sectors, China has continued resorting to industrial policies that limit market access for non-Chinese origin goods and foreign service providers, and that offer substantial government resources to support Chinese industries and increase exports. Third, arbitrary practices by Chinese customs and quarantine officials can delay or halt shipments of agricultural products into China; SPS standards with questionable scientific bases and a lack of transparency in the regulatory regime frequently cause confusion for traders in agricultural commodities. Fourth, while improvements have been made in some areas, in others such as banking, insurance, telecommunications, construction and engineering, legal, and other services, Chinese regulatory authorities continue to frustrate efforts of U.S. providers to achieve their full market potential in China through overly burdensome licensing and operating requirements. China has also so far failed to open up its market to foreign credit card companies and resisted calls to further liberalize in many other service sectors. Fifth, transparency remains a core concern across virtually all service and industry sectors, as many of China's regulatory regimes continue to lack the necessary transparency, frustrating efforts of foreign and domestic businesses to achieve the full potential benefits of China's WTO accession.

Overall, while China has a significantly more open and competitive economy than it did 30 years ago, and China's WTO accession has led to the removal of many trade barriers, there are barriers to trade that have yet to be dismantled. Meanwhile, many provincial governments have, at times, strongly resisted reforms that would eliminate sheltered markets for local enterprises or reduce jobs and revenues in their jurisdictions, although they have also supported market access for foreign investors that do not pose a threat to local vested interests.

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

IMPORT BARRIERS

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

Trading Rights

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

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

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

Consistent with the terms of China's Protocol of Accession to the WTO, the importation of some goods, such as petroleum and sugar, is still reserved for state trading enterprises. In addition, for goods still subject to tariff-rate quotas (TRQ), such as grains, cotton, vegetable oils, and fertilizers, China reserves a portion of the in-quota imports for state trading enterprises, while it makes the remaining portion (ranging from 10 percent to 90 percent, depending on the commodity) available for importation through non-state traders. In some cases, the percentage available to non-state traders increases annually for a fixed number of years. (For further information, please refer to the section below on Tariff-Rate Quotas.)

However, China has not yet given foreign entities trading rights for the importation of copyright-intensive products such as theatrical films, DVDs, music and sound recordings, books, newspapers, and journals. Under the terms of China's Protocol of Accession to the WTO, China's trading rights commitments appear to apply fully to these products, since they are not among the products for which China reserved the right to engage in state trading. As a result, trading rights for these products should have been automatically available to all Chinese enterprises, Chinese-foreign joint ventures, wholly foreign-owned enterprises, and foreign individuals as of December 11, 2004. Nevertheless, China continues to wholly reserve the right to import these products to state trading enterprises. As a result, in April 2007, the United States filed a request for WTO dispute settlement consultations with China concerning market access restrictions in China on copyright-intensive products such as theatrical films, DVDs, music, books, newspapers, and journals. The WTO panel was established in late November 2007, and the European Communities (EC), Japan, Korea, Taiwan, and Australia joined as third parties. Proceedings before the WTO panel took place in July and September 2008, and the panel is expected to issue its decision in 2009. (For further information, please refer to the section below on Audiovisual and Related Services.)

Import Substitution Policies

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

Income Tax Preferences

Measures issued by the Ministry of Finance and the State Administration for Taxation (SAT) made income tax preferences available to foreign-invested firms in connection with their purchases of domestically manufactured equipment. These refunds were not available in connection with purchases of imported equipment or equipment assembled in China from imported parts. A similar measure made an income tax refund available in connection with domestic firms' purchases of domestically manufactured equipment for technology upgrading. However, in the Memorandum of Understanding signed with the United States to settle the prohibited subsidies WTO dispute, China agreed to end all of these preferences by January 1, 2008.

Automotive Parts

In May 2004, China issued a new automobile industrial policy, the *Policy on Development of the Automotive Industry,* which included provisions discouraging the importation of automotive parts and encouraging the use of domestic technology in new vehicles assembled in China.

In 2005, China issued regulations implementing the new automobile industrial policy. One measure that generated strong criticism from the United States, the EU, Japan, and Canada was the *Administrative Rules on Importation of Automobile Parts Characterized as Complete Vehicles*, which was issued in February 2005 and became effective in April 2005. These rules impose charges that unfairly discriminate against imported automotive parts and discourage automobile manufacturers in China from using imported automotive parts in the assembly of vehicles. In March and April 2006, the United States, the EU, and Canada initiated dispute settlement proceedings against China at the WTO. In March 2008, a WTO panel ruled in favor of the United States and the other complaining parties, finding that China's rules discriminate against imported auto parts and are inconsistent with several WTO provisions, including Article III of the GATT 1994. China appealed the panel's decision to the WTO's Appellate Body, and in December 2008 the Appellate Body upheld the panel's finding that the measures are inconsistent with China's WTO obligations. In January 2009, China stated that it would comply with the recommendations and rulings of the WTO.

Steel

China issued a new Steel and Iron Industry Development Policy (Policy) in July 2005. Although many aspects of this new policy have not yet been implemented, it includes a host of objectives and guidelines that raise serious concerns. For example, the Policy requires that foreign enterprises seeking to invest in Chinese iron and steel enterprises possess proprietary technology or intellectual property in the processing of steel. Given that foreign investors are not allowed to have a controlling share in steel and iron enterprises in China, this requirement would seem to constitute a *de facto* technology transfer requirement, raising questions given China's commitments under its Protocol of Accession to the WTO not to condition investment rights or approvals on the transfer of technology. The Policy also appears to discriminate against foreign equipment and technology imports. Like other measures, the Policy encourages the use of local content by calling for a variety of government financial supports for steel and iron projects utilizing newly developed domestic equipment. Even more troubling, however, it calls for the use of domestically produced steel manufacturing equipment and domestic technologies whenever domestic suppliers exist, raising questions, given China's commitment under its Protocol of Accession to the WTO not to condition the right of investment or importation on whether competing domestic suppliers exist. The Policy is also troubling because it prescribes the number and size of steel producers in China, where they will be located, the types of products that will and will not be produced, and the technology that will be used. This high degree of government direction and decision-making regarding the allocation of resources into and out of China's steel industry raises concerns because of the commitment that China made in its Protocol of Accession to the WTO that the government would not influence, directly or indirectly, commercial decisions on the part of state-owned or state-invested enterprises.

China's steel production has grown rapidly and at a faster rate that the growth in its domestic steel consumption. China became the largest steel exporting economy in 2006 and its steel exports have increasingly become subject to trade remedy actions by other economies in the past two years.

In March 2006, the United States and China held the inaugural meeting of a new JCCT dialogue on the steel industry. Since then, the two sides have held three more Steel Dialogue meetings, with the most recent one taking place in October 2008. In bilateral and multilateral meetings, the United States has argued that China has acted to impose different levels of taxes on different exports of steel products and steelmaking inputs in a manner that appears to encourage the export of certain value added steel products. In response to the financial downturn in the fall of 2008, China rapidly reduced or removed export duties on many, but not all, steel products. The United States has cautioned China that accelerating efforts to offset falling steel demand in China using these policies is likely to increase trade tensions.

Semiconductors

China's Tenth Five-Year Plan called for an increase in Chinese semiconductor output from $2 billion in 2000 to $24 billion in 2010. In pursuit of this policy, China has attempted to encourage the development of China's domestic integrated circuit (IC) industry through, among other things, discriminatory VAT policies. As discussed below in the section on value added taxes, the United States initiated formal WTO consultations with China in March 2004 to address this problem. The United States continues to monitor closely new financial support that China is making available to its domestic IC producers for consistency with the WTO Subsidies Agreement's disciplines.

Fertilizer

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

Telecommunications Equipment

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

Tariffs and Other Import Charges

Under the terms of its WTO accession, China committed to substantial annual reductions in its tariff rates, with most of them taking place within five years of China's WTO accession. The largest reductions took place in 2002, immediately after China acceded to the WTO, when the overall average tariff rate fell from over 15 percent to 12 percent. By 2006, China's average bound rate had fallen to 10 percent.

U.S. exports continue to benefit from China's participation in the Information Technology Agreement (ITA), which requires the elimination of tariffs on computers, semiconductors, and other information technology products. China began reducing and eliminating these tariffs in 2002 and continued to do so in the ensuing years, achieving the elimination of all ITA tariffs on January 1, 2005, as the tariffs dropped to zero from a pre-WTO accession average of 13.3 percent. U.S. exports of ITA goods performed well in 2008. They were projected to total $13 billion by the end of the year, increasing by 3 percent from January through September 2008, when compared to the same time period in 2007.

China completed its timely implementation of another significant tariff initiative, the WTO's Chemical Tariff Harmonization Agreement, in 2005. U.S. exports of chemicals covered by this agreement increased by more than 23 percent from January through September 2008, when compared to the same time period in 2007, and were on pace to surpass the 2007 total of $8.3 billion.

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

U.S. exports of some bulk agricultural commodities, especially soybeans and cotton, have increased dramatically in recent years, and continue to perform strongly.. Exports of soybeans rose to more than $7.2 billion in 2008, a 76 percent increase over the previous year. Higher prices in 2008 account for some of this increase. Cotton exports in 2008 remained strong at $1.6 billion, though decreasing from a record $2.1 billion in 2006. Exports of forestry products such as lumber decreased by 9 percent over 2007 to $520 million in 2008. Fish and seafood exports rose 3 percent to $553 million in 2008, and set another new record. Meanwhile, exports of consumer-oriented agricultural products increased by 26 percent to $1.3 billion in 2008.

Tariff Classification

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

Customs Valuation

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

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

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

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

Border Trade

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

Antidumping, Countervailing Duty, and Safeguard Measures

Since acceding to the WTO, China has emerged as a significant user of antidumping measures. At the end of 2008, China had a total of 108 antidumping measures in place (some of which predate China's membership in the WTO) affecting imports from 18 countries and regions, and 14 antidumping investigations in progress. Chemical products remain the most frequent target of Chinese antidumping actions.

The Ministry of Commerce's (MOFCOM) predecessor agencies – MOFTEC and SETC – issued most of the rules and regulations MOFCOM uses to conduct its antidumping investigations. While these measures generally represent good faith efforts to implement the relevant WTO commitments and to improve China's pre-WTO accession measures, they also contain vague language, have gaps in areas of practice, and allow inordinate discretion in their application. In addition, with China now conducting several expiry reviews of measures involving U.S. and other products, it is essential that it issue regulations governing such proceedings. Meanwhile, China's handling of antidumping investigations and reviews continues to raise concerns in key areas such as transparency and procedural fairness. Concerns with transparency, including access to information, are especially acute with regard to the injury portion of investigations. To date, China has not initiated a countervailing duty investigation. China's only safeguard measure was removed at the end of 2003 after being in place for less than two years.

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

Nontariff Barriers

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

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

Tariff-Rate Quotas (TRQs)

As part of its WTO accession commitments, China was to establish large and increasing TRQs for imports of wheat, corn, rice, cotton, wool, sugar, rapeseed oil, palm oil, soybean oil, and fertilizer, with most in-quota duties ranging from 1 percent to 9 percent. Under these TRQ systems, China places quantitative restrictions on the amount of these commodities that can enter at a low "in quota" tariff rate, and any imports over that quantity are charged a prohibitively high duty. Each year, a portion of each TRQ is to be reserved for importation through non-state trading entities. China's Protocol of Accession to the WTO sets forth specific rules for administration of the TRQs, including increased transparency and reallocation of unused quotas to end users that have an interest in importing. China phased out the vegetable oil TRQs in 2006, but currently maintains a TRQ regime on six agricultural products including wheat, cotton, corn, rice, wool, and sugar, as well as three chemical fertilizers including di-ammonium phosphate.

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

While NDRC was implementing the systemic changes in 2004, exports of some bulk agricultural commodities from the United States showed substantial increases, largely due to market conditions. In particular, despite some continuing problems with NDRC's handling of the cotton TRQs, U.S. cotton exports totaled a record \$1.4 billion in both 2004 and 2005, followed by a record of \$2.1 billion in 2006. U.S. cotton exports to China remained strong in 2008, totaling \$1.6 billion. In addition, U.S. wheat exports totaled \$495 million in 2004, as the TRQ allocations for wheat did not appear to act as a limiting factor, but exports declined significantly to \$79 million in 2005 and to less than \$150,000 in 2008. The drop in U.S. wheat exports was due to higher production and lower prices in China, which reduced China’s overall import demand.

Meanwhile, the administration of China’s TRQ system for fertilizer, handled by the State Economic and Trade Commission (SETC) and subsequently MOFCOM, has suffered from systemic problems since China’s WTO accession. By 2007, this system was still operating with insufficient transparency, and administrative guidance still seemed to be affecting how the allocated quota was used. U.S. fertilizer exports to China have declined throughout the post-WTO accession period, due in part to continuing problems with MOFCOM's administration of the fertilizer TRQ system and in part to increasing subsidization and resulting overcapacity of China's domestic fertilizer industry. U.S. fertilizer exports to China decreased from $676 million in 2002 to $232 million in 2006.

In October 2006, perhaps in an attempt by the central authorities to constrain provincial and local efforts to build further unneeded capacity, the Tariff Policy Commission of the State Council announced a temporary reduction of the in-quota tariff rate for fertilizer from 4 percent to 1 percent, effective November 2006. Although it was initially anticipated that U.S. fertilizer exports to China might increase following this reduction and the scheduled phase in of foreign enterprises’ rights to engage in wholesale and retail distribution of fertilizer within China, U.S. fertilizer exports sharply declined again in 2007 and 2008.

Import Licenses

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

Additionally, China’s Ministry of Agriculture (MOA) mandates the registration licensing procedure for animal feed ingredients and feed additives. The license applicants have reported that in order to secure licenses, they had to provide product or manufacturing details, which can be business confidential information. MOA’s registration period can be unpredictable, and license applicants complain that the evaluation process often lacks transparency.

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

Little improvement in the QIP system has taken place over the last six years, and in 2008, traders continued to be concerned that the rules and regulations of the QIP system remain available as an administrative tool to limit the quantity of imports. However, traders remain hesitant to press AQSIQ for change, because they believe they would risk reprisals. Many of them would at least like AQSIQ to eliminate the quantity requirements that it unofficially places on QIPs. These quantity requirements have been used often by AQSIQ during peak harvest periods to limit the flow of commodity imports. Eliminating this requirement would help to ensure that QIPs do not interfere with the market.

In 2004, China implemented regulations requiring foreign scrap suppliers to register with AQSIQ (see the "Scrap Recycling" section below). According to AQSIQ, the registration serves to prevent disreputable foreign scrap suppliers from sending sub-standard or illegal scrap and waste to China. The application process has been opaque, with foreign companies experiencing significant delays in receiving notification from AQSIQ. In 2007, the three-year license expired for many foreign scrap suppliers, and AQSIQ required them to renew their licenses in a process that lacked transparency and predictability.

INTERNAL POLICIES

Non-discrimination

All China Federation of Trade Union (ACFTU) Fees

In 2008, the ACFTU, China's only legal trade union, intensified a campaign to organize ACFTU chapters in foreign-invested enterprises, particularly large multinational corporations. The enterprises being targeted operate both in industries in which the employees are highly-skilled, high-wage, white-collar professionals performing high-end services like consulting, software development, accounting, and financial services, as well as in manufacturing and service industries with a physical component to their work. The workers at these enterprises are required to accept the ACFTU as their representative; they cannot instead select another union or decide not to have any union representation.

At present, the principal motivation for the ACFTU's campaign seems to be monetary. When a chapter is established, the enterprise is required to pay fees to the ACFTU, often through the local tax bureau, equaling 2 percent of total payroll, regardless of the number of union members in the enterprise. The ACFTU's campaign may also be discriminatory. This is both because it does not appear to be directed at private Chinese companies and because it appears to specifically target Fortune 500 companies, creating a disproportionate impact on U.S.-invested companies. The United States is currently trying to better understand this situation and assess its effects on U.S.-invested companies and their workers.

Taxation

Income Taxes

Foreign investors, including those who have used investment as an entry point to the Chinese domestic market, have benefited from investment incentives such as tax holidays and grace periods, which allow them to reduce substantially their tax burden. Domestic enterprises have long resented rebates and other tax benefits enjoyed by foreign invested firms.

In addition, some of the income tax preferences available to domestic and foreign invested enterprises appeared to be prohibited under WTO rules and were challenged by the United States and Mexico in a WTO dispute settlement proceeding initiated in early 2007. As discussed above in the section on Import Substitution Policies and below in the section on Export Subsidies, China committed to eliminate the prohibited subsidies at issue by January 1, 2008.

In fact, China passed a new unified *Corporate Income Tax Law* in March 2007 that came into effect on January 1, 2008 and eliminated many of the tax incentives previously available to foreign invested enterprises. The new tax law introduced a unified 25 percent corporate tax rate, replacing the two different rates that had applied to domestic and foreign invested enterprises. The Chinese government announced it would phase in the uniform tax rates over a five year period during which foreign invested enterprises would see their tax rates increase from 15 percent in 2007 to 18 percent in 2008, 20 percent in 2009, 22 percent in 2010, 24 percent in 2011, and 25 percent in 2012. The law includes two exceptions to the new 25 percent flat rate: the first states that income tax rates for small businesses with small profits will be 20 percent, and the second allows qualified high technology companies registered in special economic zones to be exempt from income taxes for any earnings booked within the recognized zones for the first two years, after which earnings are assessed at 12.5 percent. Additional incentives are available for venture capital and for investments in resource and water conservation, environmental protection, and work safety. Preferential tax treatment will also apply, as it had under the old law, to investments in agriculture, forestry, animal husbandry, fisheries, and infrastructure. The tax changes will likely result in narrower profit margins for foreign invested enterprises in China. The law may also result in a reduction in measured foreign direct investment, as it will close a "round-tripping" loophole in which money from China is sent overseas and brought back to China as "foreign investment" to take advantage of preferential tax treatment policies.

Value Added Taxes (VAT)

Application of China's single most important revenue source – the VAT, which ranges between 5 percent and 17 percent, depending on the product – continues to be uneven. Importers from a wide range of sectors report that, because taxes on imported goods are reliably collected at the border, they are sometimes subject to application of a VAT that their domestic competitors often fail to pay. As discussed above in the section on Import Substitution Policies, the United States was successful in obtaining China's agreement to remove discriminatory VAT policies favoring domestically produced semiconductors. In addition, China's selective exemption of certain fertilizer products from the VAT has operated to the disadvantage of imports from the United States.

Meanwhile, China maintains measures that provide preferential VAT treatment for foreign invested enterprises when purchasing equipment and other products. In the Memorandum of Understanding (MOU) China signed to settle the WTO prohibited subsidies dispute, China committed to ensuring that imported products received no less favorable treatment than that accorded domestic products under this preference. In addition, China committed in the Memorandum of Understanding to end VAT exemptions available to foreign invested enterprises with regard to imported equipment used to produce their products, provided that they exported 100 percent of their production, as discussed below in the section on Export Subsidies.

China retains an active VAT rebate program for exports, although rebate payments are often delayed and in some cases have been reduced. China has halted refunds for some products in high demand domestically in order to discourage their export. In September 2006, China sought to discourage exports by eliminating VAT rebates for exports of coal, nonferrous metal and waste and scrap, silicon, and certain primary wood products, among other products, and by lowering existing VAT rebates for a variety of steel, nonferrous metal, textiles, and ceramics products.

In 2007, China implemented two additional significant changes to its VAT rebates in an attempt to control overexpansion of production capacity in particular sectors: (1) rebates were reduced on 2,268 commodities (37 percent of all export categories) deemed likely to trigger trade disputes; and (2) VAT refunds were eliminated for 533 other products which were either resource intensive or heavily polluting in the manufacturing process. Exports affected by the partial rebate reduction include textiles, apparel, shoes, hats, paper products, goods made from plastic and rubber, and furniture. The rebate rates for these products dropped from between 13 percent and 17 percent to between 5 percent and 11 percent. Exports affected by the VAT refund elimination include leather, chlorine, dyes and other chemical products, certain industrial chemicals (not including refined chemical products), some fertilizers, metal carbide and activated carbon products, certain lumber and single use wooden products, unalloyed aluminum poles and other nonferrous metal processed goods, segmented ships, and nonmechanical boats. These products had export VAT rebate rates between 5 percent and 13 percent. These adjustments follow VAT rebate adjustments implemented in November 2006 and April 2007 on a wide range of semi-finished and finished steel products, as part of an effort to discourage unneeded creation of production capacity for these products in China. Despite these efforts, however, overall Chinese exports of steel products in 2007 increased significantly over 2006 levels. Moreover, since these export VAT rebate reductions did not target all steel products, there appeared to be a shift in Chinese steel production and exports of steel products for which full export VAT rebates were still available, as discussed below in the section on Export Duties, Licenses, and Quotas. China's exports of these value added steel products to the U.S. market increased significantly during 2006 and 2007. Another significant change to China's VAT policy in 2007 was the elimination of the VAT rebate for 84 grain and oilseed products, ranging from 5 percent to 17 percent. The impetus behind the elimination apparently stems from concerns over food security and inflationary pressures on domestic prices.

However, in 2008, China reversed course amidst an economic slowdown and raised VAT rebates on labor-intensive products such as clothing, textiles, and high value added electrical machinery products. On July 30, 2008, VAT rebates for certain textile and bamboo products were increased. On October 21, 2008, the Ministry of Finance (MOF) and the State Administration of Taxation (SAT) announced that VAT rebates for selected products for export would be increased with effect from 1 November 2008. Rebates were raised on 3,486 products including textiles, toys, garments, furniture, and some high value added electrical machinery. The products affected represent approximately one quarter of China's total exports. This represents the largest number of changes since 2004 with most of the rebates increasing from 9 to 13 percent. Specifically, the rebate on toys was raised from 11 to 14 percent, the rebate for high-technology and high value added electrical machinery products increased from 11 to 13 percent, and the rebate on clothing and textiles increased from 13 to 14 percent. On November 17, 2008, the Government announced VAT rebate increases for another 3,770 products effective 1 December 2008. On 19 November, the SAT and MOF promulgated another rebate increase for selected textile products, and on 29 December for another tranche of garment and textile products.

In an effort to develop its domestic integrated circuit (IC) industry, China began announcing discriminatory VAT policies in late 2001, although they did not become operational until 2004. Pursuant to a series of measures, China provided for the rebate of a substantial portion of the 17 percent VAT paid by domestic manufacturers on their locally produced ICs. A similar VAT rebate was available to imported ICs, but only if they had been designed in China. China charged the full 17 percent VAT on all other imported ICs. These policies disadvantaged U.S. exports of ICs to China, which totaled approximately $2 billion in 2003 and put pressure on foreign enterprises to shift investment in IC manufacturing to China. Following extensive but unsuccessful bilateral engagement, the United States initiated dispute settlement by requesting formal WTO consultations with China in March 2004. In the ensuing consultations, which took place in April 2004 in Geneva with third party participation by Japan, the EC, and Mexico, the United States laid out its claims under Article III of GATT 1994, which sets forth the WTO's national treatment principle. Through these consultations and a series of bilateral meetings in Washington and Beijing, a settlement was reached in July 2004, in which China agreed to withdraw the challenged measures.

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

Consumption Taxes

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

STANDARDS, TESTING, LABELING, AND CERTIFICATION

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

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

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

Nevertheless, in a number of sectors, concern has grown that China has pursued the development of unique national standards as the basis for its technical requirements, despite the existence of well-established international standards. Reliance on national standards could serve as a means of protecting domestic companies from competing foreign standards and technologies. The sectors affected include: automobiles, automotive parts, telecommunications equipment, wireless local area networks (see the "WAPI" section below), radio frequency identification technology, audio and video coding, fertilizers, food products, and consumer products, such as cosmetics. These China-specific standards, which sometimes appear to lack a particular technical or scientific basis, could create significant barriers to entry into China's markets, because of the high cost of producing products that comply with the China-specific standards.

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

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

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

Conformity Assessment Procedures

In August 2003, China required that the China Compulsory Certification (CCC) mark be applied to both Chinese and foreign products, covering more than 159 categories, such as electrical machinery, information technology equipment, household appliances, and their components. Since then, U.S. companies continue to complain that the regulations lack clarity regarding the products that require a CCC mark. They also have reported that China is applying the CCC mark regulations inconsistently and that many domestic products required by CNCA's regulations to have the CCC mark are still being sold without it. U.S. companies in some sectors also complain that CCC certification requirements and procedures remain difficult, time consuming, onerous, and costly. For example, the procedures subject manufacturing facilities to on-site inspection by CNCA or its designee and require the manufacturing facilities to bear the cost of the inspection. In addition, small and medium-sized U.S. companies without a presence in China find it particularly burdensome to apply for CCC mark exemptions, such as for replacement and re-export, because China requires the applications to be done in person in the Beijing offices of CNCA. China also continues to require the CCC mark for products that would no longer seem to warrant mandatory certification, such as low-risk products and components.

To date, CNCA has accredited 14 certification and 153 testing bodies to test and certify for purposes of the CCC mark. Despite China's commitment that qualifying minority, foreign-owned (upon China's accession to the WTO), and majority foreign-owned (two years later) joint venture conformity assessment bodies would be eligible for accreditation and would be accorded national treatment, China so far has not accredited any foreign-invested conformity assessment bodies. As a result, exporters to China are often required to submit their products to Chinese laboratories for duplicative tests that have already been performed abroad, resulting in greater expense and a longer time to market. One U.S. based conformity assessment body has entered into a MOU with China allowing it to conduct follow-up factory inspections (but not primary inspections) of manufacturing facilities that make products for export to China requiring the CCC mark. However, China has not been willing to grant similar rights to other U.S. based conformity assessment bodies, claiming that it is only allowing one MOU per country, the rationale for which has not been explained. Many U.S. testing labs, as well as the U.S. exporters that rely on their services, find China's foreign accreditation requirements for CCC mark certification unwarranted and overly restrictive.

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

In other conformity assessment contexts, some importers report that foreign companies' products can only be tested in certain designated laboratories and that limited testing and certification capacity means that evaluations sometimes take much longer than international best practice would suggest is appropriate.

U.S. companies also cite problems with a lack of transparency in the certification process, burdensome requirements, and long processing times for certifications. Some companies have also expressed concern about business confidential information and intellectual property remaining protected when they submit samples and related information for mandatory testing. Technical committees that evaluate products for certification are generally drawn from a pool of government, academic, and industrial experts that companies fear may be too closely associated with their competitors, and thus could produce an inherent conflict of interest. In some cases, laboratories responsible for testing imported products are affiliated with domestic competitors, making the possibility of intellectual property theft more likely.

Wireless Local Area Networks (WLAN) Authentication and Privacy Infrastructure (WAPI)

A particularly significant example of China's development of unique technical requirements, despite the existence of well-established international standards, arose in May 2003, when China issued two standards for encryption over WLANs, applicable to domestic and imported equipment containing WLAN (sometimes referred to as Wi-Fi) technologies. Conformance to these standards was scheduled to become mandatory in June 2004. The standards incorporated the WAPI encryption algorithm for secure communications. This component of the standards differed significantly from internationally recognized standards. China sought to enforce the use of WAPI by mandating a particular algorithm (rather than mandating the need for encryption, and leaving the choice of the algorithm to the market) and providing the necessary algorithm only to a limited number of Chinese companies. Had the standard become mandatory, U.S. and other foreign manufacturers would have been compelled to work with and through these companies, some of which were competitors, and provide them with their proprietary technical product specifications. Following high-level bilateral engagement, China agreed in April 2004 to postpone indefinitely implementation of WAPI and to work within international standards bodies on future development of wireless standards. This commitment led China to submit WAPI for consideration in the International Organization for Standardization (ISO) and the International Electrotechnical Commission's (IEC) Joint Technical Committee 1 (ISO/IEC JTC1). In 2006, following balloting of

ISO/IEC JTC1 members, the proposed WAPI amendment did not get enough votes to be accepted as an international standard.

In December 2005, the Ministry of Finance, MIIT, and NDRC jointly issued the Opinions for Implementing Government Procurement of Wireless Local Areas Network, which became effective in February 2006. This measure appears to require all government agencies, quasi-government bodies and government-affiliated organizations, when procuring WLAN and related products using fiscal funds, to give priority to WAPI-compliant products.

Third Generation (3G) Telecommunications Standards

For some time, the U.S. telecommunications industry has been very concerned about increasing interference from Chinese regulators, both with regard to the selection of 3G telecommunications standards and in the negotiation of contracts between foreign telecommunications service providers and their Chinese counterparts. In response to U.S. pressure to take a market-based and technology-neutral approach to the development of next generation wireless standards for computers and mobile telephones, China announced at the April 2004 JCCT meeting that it would support technology neutrality with regard to the adoption of 3G telecommunications standards and that telecommunications service providers in China would be allowed to make their own choices about which standard to adopt, depending on their individual needs. China also announced that Chinese regulators would not be involved in negotiating royalty payment terms with relevant right holders. However, by the end of 2004, it had become evident that there was still pressure from within the Chinese government to ensure a place for China's home-grown 3G telecommunications standard, known as TD-SCDMA.

In 2005, China's regulators continued to take steps to promote the TD-SCDMA standard and continued their attempts to influence negotiations on royalty payments, both for this technology, and the two other 3G technologies, all of which incorporate intellectual property owned by foreign companies. More recently, in February 2006, China declared TD-SCDMA to be a "national standard" for 3G telecommunications, raising concerns among U.S. and other foreign telecommunications service providers that Chinese mobile telecommunications operators will face Chinese government pressure when deciding what technology to employ in their networks. As a result, the United States again raised the issue of technology neutrality in connection with the April 2006 JCCT meeting. At that meeting, China restated its April 2004 JCCT commitment to technology neutrality for 3G standards, agreeing to ensure that mobile telecommunications operators would be allowed to make their own choices as to which standard to adopt. China also agreed to issue licenses for all technologies employing 3G standards in a technologically neutral manner that does not advantage one standard over others. On January 7, 2009, China issued 3G licenses for each of the three major standards, including the homegrown TD-SCDMA standard, as well as the wideband-CDMA (W-CDMA) standard, popular in Europe, and the CDMA-2000 standard that is popular in the United States. However, the test market for the TD-SCDMA standard had previously received central government approval, if not direction, for infrastructure investments specific to technologies based on this standard worth billions of dollars. (For further information, please refer to the section below on Telecommunications Services.)

Proposed Mandatory Testing and Certification for Certain Information Technology Products

In August 2007, China notified to the WTO TBT Committee a series of 13 proposed regulations mandating that certain information technology products be certified for information security functions. The proposed regulations appear to require testing and certification to Chinese national standards for information security, which may be different from international standards used in the global market. It is also unclear whether use of the Chinese standards will require access to algorithms held by Chinese regulators, and if so, on what basis those algorithms will be made available. The proposed regulations also appear to expand the CCC mark product scope to the area of information security, which is normally not subject to conformity assessment procedures for private sector use under international practice. At the time China notified the proposed regulations to the WTO TBT Committee, China requested that comments be provided within 60 days of the notification, but did not specify implementation dates for the proposed regulations. Subsequently, in a January 28, 2008 announcement, AQSIQ indicated that all of the 13 regulations would be mandatory for all covered products as of May 1, 2009.

The United States and other WTO members expressed serious concerns to China about these proposed regulations in numerous bilateral meetings, including during the run-up to the September 2008 JCCT meeting, as well as at meetings of the TBT Committee in March, June, and November 2008 and during China's second Trade Policy Review, held in May 2008. At the September 2008 JCCT meeting, China announced that it would delay publication of final implementing regulations while Chinese and foreign experts continue to discuss the best ways to ensure information security in China. The United States continues to monitor this issue.

New Chemical Registration

In September 2003, China's State Environmental Protection Administration (SEPA), since renamed the Ministry of Environmental Protection in 2008, issued a regulation requiring manufacturers and importers of new chemicals (chemicals not previously registered with SEPA) to apply to SEPA's Chemical Registration Center (CRC) for approval and to provide extensive test data to substantiate the physical properties, consumer safety, and environmental impact of the new chemical. U.S. industry's primary concerns are that CRC has not been able to make decisions on the approval of new chemicals in a timely manner and that the approval rules and testing requirements are not transparent or accessible. According to the most recent information available from U.S. industry, only a small number of new chemical applications have been approved.

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

Restriction of Hazardous Substances

MII and six other Chinese agencies jointly issued the *Administrative Measures on the Control of Pollution Caused by Electronic Information Products* (China RoHS) that took effect in March 2007. China notified its broad framework for China RoHS in September 2005 to the WTO TBT Committee and notified additional regulatory provisions in May 2006.

China RoHS restricts the use of lead, mercury, cadmium, hexavalent chromium, poly-brominated bi-phenyls (PBB) and poly-brominated di-phenyl ethers (PBDE) in certain electrical, electronics, information technology, and communication products. China RoHS is being implemented in two phases. The Phase I implementation, which became effective in March 2007, involves labeling and marking requirements for a long list of products. The pending Phase II implementation involves in-country testing and certification using China's CCC mark system; however, many details, including the effective date and the product catalogue to which it will be applicable, remain unclear.

U.S. companies have expressed concern about China's plans to require in-country testing and certification using the CCC mark system for products listed in the catalogue (currently under development). The planned requirement would ban the sale and import of products that exceed the maximum concentration value allowed for the hazardous substances.

Scrap Recycling

Scrap exports from the United States to China exceeded $6.2 billion in 2007, making scrap one of the United States' largest exports to China by value. In late 2003, AQSIQ issued a notice requiring overseas scrap material exporters to register with AQSIQ. The stated purpose of the new requirement was to better monitor the entry of scrap shipments into China reportedly due to frequent receipt of dangerous waste and illegal material in past overseas shipments. At the start of the registration program, foreign scrap suppliers faced problems with short application periods and lack of clarity in the requirements for registration. Since then, AQSIQ has improved the registration process, including by establishing a website for foreign suppliers to apply and receive notification of their registration status. In 2008, U.S. scrap suppliers continued to report unexplained delays in application approvals and faced problems with new requirements imposed with little or no notice. To assist U.S. exporters in better understanding and navigating China's registration program, the United States and China convened a transparency dialogue under the auspices of the SED to share information on this process and to discuss ways to make the licensing and inspection process more transparent and predictable. The United States is also encountering problems with China's pre-shipment inspection requirements for scrap exports conducted by Chinese-authorized inspectors at the shipment origin point.

Medical Devices

In China, two separate authorities — the State Food and Drug Administration (SFDA) and AQSIQ — enforce regulations with similar, but not identical, requirements for selected medical devices. This potential overlapping and unclear delineation of responsibilities can result in additional and unnecessary regulatory procedures with no demonstrable public health benefit. For example, Decree 95, issued by the AQSIQ in June 2007, would have imposed an onerous examination and supervision regime on imported medical devices, introducing additional testing and inspection redundancy to the certification schemes administered by the SFDA and in some cases, CNCA. The United States, working closely with U.S. industry, raised these concerns in meetings with AQSIQ and MOFCOM during the run-up to the December 2007 JCCT meeting, and AQSIQ, on November 30, 2007, issued a notice suspending implementation of Decree 95. In a further step to streamline the registration process, in September 2008 the SFDA and AQSIQ jointly announced they will require only one test, one report, one fee, and one factory inspection for medical devices. Industry welcomed this commitment, as the reduction of redundancies should cut the medical device approval time in half, providing U.S. industry with more timely access to China's medical device market.

Despite China's general WTO commitment to base its regulations on international standards, the SFDA has not adopted a quality systems approach, which focuses on design and manufacturing systems, processes, and procedures for ensuring quality products, but relies on product testing to determine the safety and efficacy of medical devices, which does not address key safety issues like consistency of good manufacturing processes. China should adopt a system based on quality systems inspections in which a single product registration license is issued by a single regulatory authority. Adopting a quality systems approach will reduce redundancies, streamline work processes, and reduce errors and waste when accompanied by a process of continuous monitoring and improvement.

Patents Used in Chinese National Standards

In late 2004, concerns arose following the SAC's issuance of the draft *Provisional Regulations for National Standards Relating to Patents (Provisional Regulations)* and public statements by key Chinese government officials that appeared to contemplate compulsory licensing of patented technologies that are used for national standards in China. The initial draft Provisional Regulations excluded compulsory national standards in patents; however, it remains unclear whether subsequent drafts also exclude such language, since no other drafts have been released for public comment. U.S. stakeholders continue to be concerned due to recent Chinese government officials' public comments suggesting that patent holders might be required to share their patented technologies on a royalty-free basis in order to participate in the standards development process. Standards organizations have varying patent policies depending upon the nature of the organization. Accredited standards developing organizations typically require disclosure of intellectual property in the standards developing process, and support "reasonable and nondiscriminatory" (RAND) policies, requiring that right holders make any intellectual property incorporated in the standards developed within the organizations available to all interested parties on RAND terms. Typically, licensing terms are then negotiated between the right holder and parties interested in implementing the standards.

The United States urged China to circulate an updated draft of the Provisional Regulations for public comment and will continue to monitor developments in this area, including future revision of China's Standardization Law. In 2006, the Chinese Electronic Standardization Institute (CESI), a Chinese government institution, released draft intellectual property policy rules for standards-setting organizations (SSOs). These draft rules envisage Chinese government involvement in standard-setting processes, including a requirement that SSOs obtain government approval for patent claims. Such government involvement could be exercised in a way that impacts private party transactions. This could raise concerns under certain circumstances. The United States is following China's treatment of intellectual property in SSOs, including the development and finalization of CESI's rules as well as the development of SAC's revised Provisional Regulations. The United States is also following with interest recent court decisions regarding patents in standards, including the July 2008 response letter from the Supreme People's Court to the Liaoning Higher People's Court suggesting that when a patent holder engages in a standard setting process, others' use of a patented technology incorporated into a standard should not be considered infringing and that fees paid to the patent holder under such circumstances should be significantly lower than the normal license fee. The United States also understands that China is revising its new standardization law and will continue to monitor developments in this area in 2009. (See also, the section below on Intellectual Property Rights Protection.)

Sanitary and Phytosanitary (SPS) Measures

In 2008, China's SPS measures continued to pose serious problems for U.S. agricultural producers exporting to China. While market access for U.S. soybeans was maintained, little progress was made in 2008 in addressing SPS barriers for raw beef, poultry, and pork products, while market entry requirements for processed foods and horticultural products remain burdensome. In 2008, China's market continued to be closed to U.S.-origin beef and beef products because of China's Bovine Spongiform Encephalopathy (BSE)-related import ban. China also continued to maintain several state-level Avian Influenza bans on poultry, imposing two additional state-level bans while lifting six others.

The United States has concerns about China's failure to provide adequate risk assessments and a science based rationale for its SPS measures, as required by the WTO SPS Agreement. For example, in 2008, China was unable to provide a science-based rationale for import restrictions on U.S. beef products and some U.S. poultry and pork products, as described below. In addition, China's regulatory authorities continued to issue significant new SPS measures without first notifying them to the SPS Committee and providing WTO Members with an opportunity to comment.

BSE-Related Bans on Beef and Low-Risk Bovine Products

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

To date, China still has not provided any scientific justification for continuing to maintain its ban, nor has it identified any of the administrative and regulatory steps necessary to lift the ban, even though the OIE has determined that the United States is a "controlled risk" country for BSE. The OIE provides for conditions under which trade in all beef and beef products from animals of any age can be safely traded, and the United States expects China to provide access to U.S. beef and beef products in accordance with the OIE guidelines and the United States' OIE classification as "controlled risk". At the end of June 2006, after three inconclusive rounds of negotiations, China's food safety regulators unilaterally announced a limited market opening, restricted to the entry of U.S. deboned beef from animals 30 months of age or less. One month later, they followed up that announcement with an announcement of 22 onerous entry conditions, many of which were unrelated to BSE. Jointly negotiated protocols, and accompanying export certificates, are normal measures necessary for the export of any livestock products from the United States to China or other trading partners. In May 2007, Vice Premier Wu Yi offered to open China's market to deboned and bone-in beef from animals 30 months or less, although the remaining onerous entry conditions were unchanged. These unilateral announcements had no practical effect, because, as with any trading partners seeking to engage in livestock trade, the United States and China would have had to agree on language for actual export certificates before the trade could resume. Since then, the United States has pressed China to reconsider its position and to negotiate an appropriate protocol in light of China's WTO SPS Agreement obligations and relevant OIE guidelines.

At the same time that it banned U.S. cattle, beef, and processed beef products, China also banned low-risk or "safe to trade" bovine products (*i.e.*, bovine semen and embryos, protein-free tallow, and non-ruminant feeds and fats) even though they are deemed safe to trade by the OIE, irrespective of a country's BSE status. In November 2004, U.S. and Chinese officials finalized and signed protocols that would enable the resumption of exports of U.S. origin bovine semen and embryos, contingent on facility certification by China's regulatory authorities, as well as a resumption of exports of U.S.-origin nonruminant feeds and fats. In July 2005, China finally announced the resumption of trade in bovine semen and embryos, following certifications for 52 U.S. facilities made earlier in the year. However, trade in U.S.-origin non-ruminant feeds and fats did not resume, as China's regulatory authorities insisted on a series of onerous, detailed, and unnecessary information requirements that do not appear to be consistent with OIE guidelines and contrast sharply with U.S. requirements. As a result of further negotiations in December 2005, export certificates were finalized, and trade resumed in early 2006. Meanwhile, trade in protein-free tallow had not resumed by the end of 2006, as U.S. and Chinese officials had not reached agreement on provisions of a protocol. In February 2007, China notified the WTO that importers no longer had to provide the BSE Cosmetic Certificate to the Cosmetic, Toiletry, and Fragrance Association, removing one hurdle to U.S. cosmetics suppliers.

Avian Influenza (AI)

As of January 2009, poultry exports to China are banned from Arkansas, Idaho, and Virginia. Additionally, China bans the importation of U.S. origin poultry products that are transshipped through states where low pathogenic notifiable avian influenza (LPNAI) has been detected. The OIE modified the AI chapter in 2006 to incorporate two types of notifiable LPNAI. Prior to 2006, only high pathogenic avian influenza was notifiable.

China's current AI related import suspensions appear to be inconsistent with OIE guidelines. OIE guidelines clearly distinguish between requirements for regaining AI-free status and requirements for the safe trade in poultry and poultry products. OIE guidelines do not require AI-free status for trade to continue when LPAI detections occur. The United States continues to push for Chinese compliance with OIE guidelines and a total lifting of all bans on the importation of U.S. origin poultry and poultry products due to LPAI detections.

Zero Tolerance for Pathogens and Animal Drug Residues

In recent years, China has intermittently applied SPS-related requirements on imported raw meat and poultry that do not appear to be based on a risk assessment or scientific principles. One requirement establishes a zero tolerance limit for the presence of salmonella bacteria. A similar zero tolerance limit exists for Escherichia Coli and Listeria pathogens. Meanwhile, the complete elimination of these enteropathogenic bacteria is generally considered unachievable by the international scientific community without first subjecting raw meat and poultry to a process of irradiation. Moreover, China apparently does not apply this same standard to domestic raw poultry and meat, raising potential national treatment concerns.

In 2008, despite assurances from China's regulatory authorities that they were in the process of revising China's pathogen standards, little progress was seen. At the September 2008 JCCT, China did agree to re-list several U.S. poultry plants that had earlier been de-listed for alleged violations of zero tolerance standards for pathogens or detection of certain chemical residues. Although this step did not address the important underlying need for China to revise its pathogen standards, it did enable some U.S. poultry plants to resume shipment to China. Currently, four U.S. pork plants and one U.S. poultry plant remain de-listed by China for alleged violations of zero tolerance standards for pathogens or detection of certain chemical residues. Despite positive results from USDA Food Safety and Inspection Service investigations of the plants, and extensive follow-up efforts by U.S. regulatory officials, these plants have not been re-listed as approved to ship product to China.

Meanwhile, China continues to maintain maximum residue levels (MRLs) for certain veterinary drugs that appear to be inconsistent with Codex Alimentarius Commission standards and appear to lack a scientific basis. U.S. regulatory officials have encouraged their Chinese counterparts to adopt standards that are scientifically based, safe, and minimally trade disruptive. In the case of one particular veterinary drug, ractopamine, which is approved by the U.S. Food and Drug Administration for use in U.S. pork production, China maintains a zero tolerance limit even though it has not conducted a risk assessment. U.S. officials have requested that China quickly complete a risk assessment for this product and establish MRLs that are scientifically based.

Food Additive Standards

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

Biotechnology Regulations

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

In early 2007, MOA issued and implemented some troubling new regulations without circulating them for public comment in advance or consulting with relevant stakeholders, including the United States and U.S. industry. For example, in January 2007, MOA added a new requirement that biotechnology seed companies turn over key intellectual property as part of the application process when seeking safety certificates. While many of these requirements were eliminated in 2008, the Chinese application process still includes information and technology requests that appear to go beyond the information needed to complete safety and environmental assessments. In March 2007, MOA halted a pilot program, which had been developed over two years of bilateral discussions, aimed at allowing the review of products under development in the United States prior to completion of the U.S. approval process. As a result, the MOA approval process would only begin after the completion of the U.S. approval process. This means that even if the MOA approval process proceeds quickly, trade may still be disrupted, as importers will need time to apply for vessel based safety certificates and Quarantine Inspection Permits, both of which require valid safety certificates for biotechnology products and can take up to 30 working days to process. At the JCCT meeting in December 2007, in response to U.S. engagement, China agreed to eliminate the requirement that technology companies submit viable biotechnology seeds for the development of testing methodology when applying for import registration. In 2008, MOA also increased the number of times that technology developers can submit new dossiers or information from two to three times per year, which has improved companies' ability to submit information and data in a timely manner. In September 2008, China also approved the first foreign "second generation" biotechnology event. Several other second generation biotechnology events are in the application pipeline at MOA.

Despite some progress in China's maturing regulatory and legal systems for biotechnology products, potential disruptions to trade arise due to an asynchronous approval process, excessive data requests, and at times, duplicative testing requirements, an onerous process for extension of existing certificates, and duplicative requirements for discontinued products. Investment restrictions also constrain foreign companies' ability to increase product development in China and maintain control over important genetic resources.

Food Labeling

The U.S. processed food industry has registered concerns with a number of standards and labeling requirements on its exports to China. The meat industry in particular is concerned with labeling regulations issued in late 2002. Chinese agricultural importers and importers of processed foods are also concerned about labeling requirements for products containing material developed through the use of biotechnology, such as soybeans and corn. The June 2001 biotechnology regulations issued by MOA require labeling of bulk commodities, but implementation has been limited and sporadic. Future implementation of these measures remains uncertain.

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

EXPORT REGULATION

Export Duties, Licenses, and Quotas

Despite China's commitment since its accession to the WTO to eliminate all taxes and charges on exports, including export duties, except as included in Annex VI to the Protocol of Accession or applied in conformity with Article VIII of GATT 1994, China has continued to impose restrictions on exports of raw materials, including quotas, related licensing requirements, and duties, as the Chinese government has continued to guide the development of downstream industries. These export restrictions are widespread. For example, China maintains export quotas and sometimes export duties on antimony, bauxite, coke, fluorspar, indium, magnesium carbonate, molybdenum, rare earths, silicon, talc, tin, tungsten, and zinc, all of which are of key interest to U.S. downstream producers. Furthermore, effective August 2008, China temporarily raised the export tariff on coke from 25 to 40 percent.

These types of export restrictions can significantly distort trade. In the case of China, the trade-distortive impact is exacerbated because China is the world's leading producer of each of the raw materials (except for molybdenum and bauxite, for which China is the world's second leading producer).

China's export restrictions affect U.S. and other foreign producers of a wide range of downstream products, such as steel, chemicals, ceramics, semiconductor chips, refrigerants, medical imagery, aircraft, refined petroleum products, fiber optic cables, and catalytic converters, among numerous others. The export restrictions can create disadvantages for these foreign producers by artificially increasing China's export prices for their raw material inputs, which also drives up world prices. At the same time, the export restrictions can artificially lower China's domestic prices for the raw materials due to significant domestic oversupply, enabling China's domestic downstream producers to produce lower-priced products from the raw materials and thereby creating significant advantages for China's domestic downstream producers when competing against foreign downstream producers both in the China market and in export markets.

Despite extensive U.S. engagement in this area, which began shortly after China's WTO accession, China appears to have maintained its policies for these input materials. In fact, over time, China has increased the artificial advantages afforded to its downstream producers by making the export quotas more restrictive and by imposing or increasing export duties on many raw materials at issue.

As discussed above in the section on Value Added Taxes, China also attempts to manage the export of many intermediate and downstream products by raising or lowering the VAT rebate available upon export and sometimes by imposing or retracting export duties. These practices have caused disruption, uncertainty, and unfairness in the markets for particular products.

Sometimes the objective of these adjustments appears to be to make larger quantities of a product available domestically at lower prices than the rest of the world. For example, China decided in 2006 to eliminate the 13 percent VAT rebate available on the export of refined metal lead and then, in 2007, imposed a duty of 10 percent on refined metal lead exports. These actions caused a steep decline in China's exports of this intermediate product and have contributed to a sharp rise in world prices, which have gone from approximately $1,300 per metric ton (MT) at the time of China's elimination of the export VAT rebate in 2006 to approximately $3,200 per MT in recent months. Meanwhile, Chinese domestic prices have reportedly declined because of China's captive refined metal lead production, giving China's downstream producers a substantial competitive advantage over foreign downstream producers.

In other recent situations, China has reduced or eliminated VAT export rebates in an attempt to rein in out-of-control expansion of production capacity in particular sectors. In some instances, the adjustments have benefited U.S. producers by slowing significant increases in low-priced exports from China to the United States. However, the adjustments can also have harmful consequences, whether or not intended. For example, in November 2006 and April 2007, China reduced export VAT rebates that had been available on a wide range of semi-finished and finished steel products, as part of its efforts to discourage further unneeded creation of production capacity for these products in China. At the same time, these export VAT rebate reductions did not target all steel products, and the result was that Chinese steel producers shifted their production to steel products for which full export VAT rebates were still available, particularly steel pipe and tube products, causing a significant increase in exports of these products, many of which found their way into the U.S. market.

To date, China has been willing to take certain steps toward remedying some of the unintended consequences of its measures when the United States has brought them to China's attention. In July 2007, for example, China issued a notice extending export VAT rebate reductions to most steel pipe and tube products, with the notable exception of oil country tubular goods.

Export Subsidies

In its Protocol of Accession to the WTO, China committed to eliminate all subsidies prohibited under Article III of the WTO Agreement on Subsidies and Countervailing Measures, including all forms of export subsidies on industrial and agricultural goods, upon its accession to the WTO in December 2001.

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

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

Through the remainder of 2006, the United States pressed China to withdraw the notified subsidies that appeared to be prohibited, which included both export subsidies and import substitution subsidies, benefiting a wide range of industries in China principally through income tax and VAT exemptions and reductions. However, China was unwilling to commit to the immediate withdrawal of these subsidies. Accordingly, the United States, with Mexico as a co-complainant, initiated a challenge to these subsidies under the WTO's dispute settlement procedures in early 2007. The WTO established a panel in August to hear the dispute. Following extensive dialogue with China, the United States and Mexico suspended the dispute settlement proceedings with China on November 29, 2007 when China agreed to eliminate all of the prohibited subsidies at issue by January 1, 2008.

Shortly after China acceded to the WTO, U.S. corn exporters began to express concern that China was subsidizing its corn exports. In 2002 and 2003, it appeared that significant quantities of corn had been exported from China, including corn from Chinese government stocks, at prices that may have been 15 percent to 20 percent below domestic prices in China. As a result, U.S. corn exporters were losing market share for corn in their traditional Asian markets, such as South Korea and Malaysia, while China was exporting record amounts of corn. In 2004, however, trade analysts began to conclude that, because of several economic factors, including changes in the relationship between domestic prices and world prices, China was trending toward becoming a net importer of corn. One result appears to be that China's exports are largely made on a commercial basis. In December 2007, the Ministry of Finance announced several measures aimed at curbing grain and oilseed exports. The measures that affect corn exports include the elimination of the 13 percent VAT rebate and a temporary export tax of 5 percent, effectively halting corn exports.

Concerns about other potential export subsidies have emerged. The United States has developed serious concerns regarding China's "Famous Brand" initiatives, designed to promote the development of global Chinese brand names and increase sales of Chinese branded merchandise around the world. These initiatives appear to incorporate export subsidies (generally prohibited by applicable WTO rules) that unfairly disadvantages U.S. manufacturers, farmers, ranchers, and workers. In December 2008, the United States requested WTO dispute settlement consultations regarding these programs, with Mexico and subsequently Guatemala joining as co-complainants. Under WTO rules, parties that do not resolve a matter through consultations within 60 days may request the establishment of a WTO dispute settlement panel.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

With its accession to the WTO, China assumed obligations to adhere to international standards for the protection and enforcement of IPR held by U.S. and other foreign companies and individuals in China.

As part of the WTO accession process, China overhauled its legal regime and put in place a comprehensive set of laws and regulations aimed at protecting the IPR of domestic and foreign entities in China. Many officials in China, led by President Hu Jintao, Premier Wen Jiabao, and then Vice Premier Wu Yi, continued to voice China's commitment to protecting IPR, and China has taken steps to address a number of specific concerns raised by the United States.

At the same time, improvements in China's legal framework are still needed. In addition, China has continued to demonstrate little success in actually enforcing its IPR laws and regulations, thereby depriving its legal regime of the deterrence needed to face the challenges created by widespread counterfeiting and piracy, as well as other forms of IPR infringement.

Weaknesses in China's enforcement system—criminal, civil, and administrative— contribute to China's poor IPR enforcement record. The United States sought to resolve specific concerns about China's high legal thresholds for criminal enforcement along with other concerns regarding weaknesses in China's laws concerning border enforcement and the enforceability of copyrights during the period before works obtain censorship approval. When bilateral attempts to address these concerns did not succeed, the United States requested WTO dispute settlement consultation in April 2007. A WTO panel was composed in December 2007, and it circulated its decision in January 2009, finding for the United States on two out of three claims.

An exacerbating factor contributing to China's poor IPR protection is China's maintenance of import and distribution restrictions affecting legitimate copyright-intensive products, such as theatrical films, digital video discs, music, books, newspapers, and journals, as well as related foreign service suppliers. These restrictions create a time delay for introduction of IPR protected goods that help to ensure that infringing products continue to dominate those sectors within China. As discussed above in the sections on Trading Rights and Distribution Services, the United States is addressing these restrictions in another WTO dispute filed in April 2007.

In 2008, the United States retained China on the Special 301 Priority Watch List because of continuing concerns regarding IPR protection and enforcement. China's share of infringing goods seized at the U.S. border, for example, stood at 85 percent in 2008, according to U.S. customs data. The United States was able to use the JCCT process in September 2008 to secure a renewed commitment from China to engage in cooperative discussions, including through regular meetings of the JCCT IPR Working Group, on a range of IPR issues, such as IPR and innovation, China's development of guidelines on IPR and standards, public-private discussions on copyright and Internet piracy challenges including infringement on user-generated content sites, and reduction of the sale of pirated and counterfeit goods at wholesale and retail markets, among other areas of mutual interest. China and the United States also agreed at the JCCT to sign two memoranda of understanding on strategic cooperation to improve the administration and effectiveness of copyright and trademark protection and enforcement in October 2008.

Legal Framework for IPR

In most respects, China's framework of laws, regulations, and implementing rules on IPR remains largely satisfactory. Notably, China has recently acceded to the WIPO Internet treaties. However, reforms are needed in a number of key areas. In particular, more work is needed at both the national level and the provincial level to meet the challenges of Internet piracy in the face of the rapid growth of Internet access in China. Right holders have pointed to a number of continuing deficiencies in China's criminal measures. For example, procedural burdens, such as an inability to investigate based on suspicion of criminality, also weaken the criminal IPR system. China's thresholds for criminal enforcement also create concerns although China did lower one important threshold in the run up to the WTO dispute brought by the United States.

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

Since 2003, China has periodically issued new IPR measures. The U.S. Government has reviewed these measures through bilateral discussions and subsequent TRIPS Council reviews, and along with U.S. right holders, the United States has provided written comments to China on many of these proposed measures, including regulations for the protection of copyrights on information networks and on drafts of the *Patent Law* amendments.

In 2008, China announced an updated Action Plan for revising its legal regime in order to better protect IPR. Among other things, this Action Plan sets out China's intentions for revising various laws and other measures, including the *Patent Law*, which passed the National People's Congress in December 2008, the *Trademark Law*, and related measures. The United States has been assessing the potential ramifications of the contemplated revisions for U.S. right holders. China has also been working on other proposed legal measures that could have significant implications for the intellectual property rights of foreign right holders. In particular, China issued an *Anti-monopoly Law* in August 2007, which became effective in August 2008, and under this law is considering issuing rules relating to the treatment of IPR by standards setting organizations. (See section on "Patents Used in Chinese National Standards").

In June 2008, China also issued its long-awaited National IP Strategy, a policy document intended to encourage and facilitate the effective creation, development, and management of intellectual property in China. The document addresses strengthening IPR protection, preventing IPR abuses, and fostering a culture of IPR in China. The strategy also identifies key sectors in which China seeks to obtain foreign patents and technology standards. Other goals include improving patent quality and improving protection for geographical indications, genetic resources, traditional knowledge, folklore, and layout-designs of integrated circuits. Notably, the document mentions that China will explore the establishment of courts of appeal for IP cases.

The United States has repeatedly urged China to pursue additional legislative and regulatory changes. Using both bilateral meetings and the annual transitional reviews before the WTO's TRIPS Council, the United States' efforts have focused on persuading China to improve its legal regime in critical areas, such as criminal, civil, and administrative IPR enforcement and legislative and regulatory reform. For example, obstacles that have been noted in the area of criminal enforcement include China's high criminal thresholds, the lack of criminal liability for certain acts of copyright infringement, the profit motive requirement in copyright cases, the requirement of identical trademarks in counterfeiting cases, and the absence of minimum, proportional sentences and clear standards for initiation of police investigations in cases where there is a reasonable suspicion of criminal activity. At the same time, the United States has also been pressing China to consider a variety of improvements to its administrative and civil enforcement regimes. While some of these issues do not raise specific WTO concerns, all of them will continue to detract from China's enforcement efforts until addressed.

Given the modern challenges of piracy in the digital environment, the United States has also sought improvements in China's copyright protection in the context of electronic information networks. China took an important step in May 2006, when the State Council adopted an important Internet-related measure, the *Regulations on the Protection of Copyright Over Information Networks*, which went into effect in July 2006. This measure demonstrates China's determination to improve protection of the Internet-based right of communication to the public. Several aspects of this measure nevertheless would benefit from further clarification. For example, China could clarify that certain Internet "deep linking" and other services that effectively encourage or induce infringements are unlawful. The promulgation of this measure was a welcome addition to the National Copyright Administration's *Measures for Administrative Protection of Copyright on the Internet*, which requires Internet service providers to take remedial actions to delete contents that infringe on copyrights upon receipt of a complaint from the right holder, or face administrative penalties ranging from confiscation of illegal gains to fines of up to RMB 100,000 (approximately $14,600).

Moreover, while the United States is pleased that China acceded to the WIPO Internet treaties in 2007, China still needs to fully implement those obligations into its domestic regime. These treaties still reflect important international norms for providing copyright protection over the Internet, and in the case of China, are especially important, given the rapidly increasing number of Internet users in China, many of whom have broadband access.

The United States also remains concerned about a variety of weaknesses in China's legal framework that do not effectively deter, and may even encourage, certain types of infringing activity, such as the "squatting" of foreign company names, designs; and trademarks; the theft of trade secrets; the registration of other companies' trademarks as design patents and vice versa, the use of falsified or misleading license documents or company documentation to create the appearance of legitimacy in counterfeiting operations; and false indications of geographic origin of products. The United States has continued to discuss these and other problems with China and seek solutions for them. In a positive development, the State Administration of Industry and Commerce (SAIC) announced in August 2007 that it was launching a six month campaign targeting the unauthorized use of well-known trademarks and company names in the enterprise registration process.

In the pharmaceuticals sector, the United States continues to have a range of concerns. The United States has urged China to provide greater protection against unfair commercial use of undisclosed test and other data submitted by foreign pharmaceuticals companies seeking marketing approval for their products. The United States has also encouraged China to undertake a more robust system of patent linkage and to consider the adoption of a system of patent term restoration. In addition, built-in delays in China's marketing approval system for pharmaceuticals continue to create incentives for counterfeiting, as does China's inadequate regulatory oversight of the production of active pharmaceutical ingredients by domestic chemical manufacturers. In 2008, as in prior years, the United States sought to address all of these issues as part of its broader effort to work with China to improve China's regulatory regime for the pharmaceuticals sector.

With respect to China's patent-related laws, right holders have noted that the narrow scope of patentable subject matter makes patents for transgenic plants and animals and methods of treatment or diagnosis virtually unobtainable. Concerns have been raised that changes in the recently enacted Patent Law will require disclosure of origins of genetic resources used in the completion of an invention, and that claims in a patent application may be rejected on the basis that this disclosure requirement is not met. Also, U.S. industry has expressed frustration over the quality of design patents being issued, due in part to the lack of a better system of examining design patent applications.

IPR Enforcement

Although China's central government displayed strong leadership in modifying the full range of China's IPR laws and regulations in an effort to implement China's WTO obligations, effective IPR enforcement has not been achieved, and IPR infringement remains a serious problem in China. IPR enforcement is hampered by a lack of coordination among Chinese government ministries and agencies, and between sub-national authorities and the central government, a lack of training, resource constraints, lack of transparency in the enforcement process and its outcomes, and local protectionism and corruption.

Despite repeated antipiracy campaigns in China and an increasing number of civil IPR cases filed in Chinese courts, overall piracy and counterfeiting levels in China remained unacceptably high in 2008. IPR infringement continued to affect products, brands, and technologies from a wide range of industries, including films, music and sound recordings, publishing, business and entertainment software, pharmaceuticals, chemicals, information technology, apparel, athletic footwear, textile fabrics and floor coverings, consumer goods, food and beverages, electrical equipment, automotive parts and industrial products, among many others. Furthermore, limitations on the operations of trade associations representing foreign right holders in China, including restrictions on the number of employees, hamper the ability of those organizations to assist right holders in effectively using China's legal system to support IPR enforcement.

U.S. industry estimates that levels of piracy in China across most lines of copyright products for the recording/music industry remains at 90 percent based on data for 2008, while business software piracy rates were approximately 80 percent. These figures indicate little or no overall improvement over 2007. Trade in pirated optical discs continues to thrive, supplied by both licensed and unlicensed factories and by smugglers. Small retail shops continue to be the major commercial outlets for pirated movies and music (and a variety of counterfeit goods). As a result of a sustained campaign by municipal management authorities and others, some reduction in street sales of pirated goods in well-trafficked areas has been noted. Piracy of books and journals and end user piracy of business software also remain key concerns, although improvements have been seen in business software piracy rates. China's regulatory authorities did take initial steps to address text book piracy on university campuses in late 2006 and 2007, and there were some positive developments in fighting university textbook piracy in 2008. However, Internet piracy is increasing, as is piracy over dedicated networks such as those of universities, although the National Copyright Administration (NCA) began to undertake campaigns to combat Internet piracy.

With respect to software piracy, China issued new rules during the run up to the 2006 JCCT meeting that require computers to be pre-installed with licensed operating system software and that require government agencies to purchase only computers satisfying this requirement. Combined with ongoing implementation of previous JCCT commitments on software piracy, the hope is that these rules will contribute to significant further reductions in industry losses due to software piracy. According to the U.S. software industry, China's software piracy rate dropped 10 percentage points between 2003 and 2007. However, the U.S. software industry also reports that compliance with these rules has fallen from approximately 65 percent in 2006 to 50 percent in 2008. Achieving sustained reductions in end user software piracy will therefore require more enforcement by China's authorities, followed by high profile publicity of fines and other remedies imposed.

Although China has committed to taking aggressive action against movie piracy, including enhanced enforcement for titles not yet authorized for distribution, right holders have monitored China's efforts and report little meaningful improvement in piracy of pre-release titles in several major cities. For that reason, the lack of copyright protection for works that have not been approved for release in China was one of the issues raised in the United States' 2007 WTO dispute challenging deficiencies in China's IPR enforcement regime.

In the customs enforcement area, the United States is encouraged by the Customs Administration's increased efforts to provide effective enforcement against counterfeit and pirated goods destined for export and the Customs Administration's agreement in 2007 to cooperate with U.S. customs authorities to fight exports of counterfeit and pirated goods. Nevertheless, the United States remains concerned about various aspects of the *Regulations on the Customs Protection of Intellectual Property Rights*, issued by the State Council in December 2003, and the Customs Administration's May 2004 implementing rules, which were intended to improve border enforcement. These rules allow seized counterfeit trademark goods to be publicly auctioned only after removing the infringing mark. Returning these goods to the marketplace with only the infringing mark removed, however, could confuse consumers and harm the reputation of the legitimate product, facilitating, rather than deterring, further acts of infringement involving these goods.

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

As in prior years, the United States worked with central, provincial, and local government officials throughout China in 2008 in a sustained effort to improve China's IPR enforcement, with a particular emphasis on the need for dramatically increased utilization of criminal remedies as well as the need to improve the effectiveness of civil and administrative enforcement mechanisms. A variety of U.S. agencies held regular bilateral discussions with their Chinese counterparts and have conducted numerous technical assistance programs for central, provincial, and local government officials on international IPR standards, IPR enforcement methods, and other rule of law issues. In addition, in September 2008, the United States and China resumed work under the JCCT IPR working group. The United States also organized another annual roundtable meeting in China in November 2008 designed to bring together U.S. and Chinese government and industry officials.

The United States' efforts to seek improvements in China's IPR enforcement have also benefited from cooperation with other WTO Members both on the ground in China and at the WTO during meetings of the TRIPS Council. For example, several WTO Members participated as supportive third parties in the United States' two April 2007 IPR-related WTO cases against China. Previously, Japan and Switzerland had joined the United States in making coordinated requests under Article 63.3 of the TRIPS Agreement in order to obtain more information about IPR infringement levels and enforcement activities in China. In addition, the United States and the EC have increased coordination and information sharing on a range of China IPR issues over the last two years. China's membership in the Asia-Pacific Economic Cooperation (APEC) forum also brings increased importance to APEC's work to develop regional IPR best practices.

China is also making genuine efforts to improve IPR enforcement, and cooperation between the United States and China has resulted in some successful enforcement actions. For example, China's Ministry of Public Security (MPS) has engaged with U.S. law enforcement authorities on enforcement initiatives as part of the Intellectual Property Criminal Enforcement Working Group of the U.S.-China Joint Liaison Group for Law Enforcement Cooperation. This working group focuses on the development of joint U.S.-China operations to combat transnational IPR crimes, particularly crimes committed by organized criminal groups and crimes that threaten public health and safety. In July 2007, this collaboration with MPS resulted in the largest ever joint U.S.-China piracy investigation and prosecution, code named "Operation Summer Solstice." This joint operation netted seizures of more than 290,000 counterfeit software discs worth more than $500 million and arrests of more than 25 Chinese nationals, and it also eliminated numerous illicit manufacturing plants in China. This joint operation is believed to have dismantled the largest piracy syndicate of its kind in the world, estimated to have distributed more than 2 billion copies of counterfeit Microsoft software.

Moreover, a domestic Chinese business constituency is also increasingly active in promoting IPR protection and enforcement in China. In fact, Chinese right holders own the vast majority of design patents, utility models, trademarks, and plant varieties in China and have become the principal filers of invention patents. In addition, most of the IPR enforcement efforts in China are now undertaken at the behest of Chinese right holders seeking to protect their interests.

U.S. industry has confirmed that some of China's special campaigns, such as the "Mountain Eagle" campaign against trademark infringement crimes that ended in 2006, have in fact resulted in increased arrests and seizures of infringing materials, although the disposition of seized goods and the outcomes of criminal cases remain largely obscured by lack of transparency. The 2008 Action Plan announced that China will launch more special crackdown efforts with regard to various IPR infringement problems. The United States has urged China to use its implementation of such efforts as an opportunity to tackle emerging enforcement challenges, particularly the sale of pirated and counterfeit goods on the Internet. In addition, the United States has applauded China's aim to use this opportunity to examine the potential benefits of specialized national IPR courts and has suggested that China also consider the benefits of specialized prosecutors, providing faster trademark examination, and ensuring that the resources available to local administrative, police, and judicial authorities charged with protecting and enforcing intellectual property rights are adequate to the task. The United States will continue to pursue these efforts in 2009.

Despite its many positive efforts to improve IPR enforcement, however, China pursues other policies that continue to impede effective enforcement. These policies led the United States to resort to the WTO dispute settlement mechanism in April 2007 where, as discussed above, the United States is seeking needed changes to China's legal framework. These changes should be an important objective for China, given the need for greater deterrence in China's current enforcement regime. At the same time, other changes are needed on the market access side. As discussed above, China maintains market access barriers, such as import and distribution restrictions, which discourage and delay the introduction of numerous types of legitimate foreign products into China's market. These barriers create additional incentives for infringement of copyrighted products like books, newspapers, journals, theatrical films, DVDs, and music, which inevitably lead consumers to the black market, again compounding the severe problems already faced by China's enforcement authorities.

SERVICES BARRIERS

The market for services in China has significant growth potential in both the short and long term.

However, China imposes restrictions in a number of services sectors that prevent or discourage foreign suppliers from gaining or further expanding market access. For example, for certain sectors, China does not grant new licenses or maintains a licensing review process that is opaque or slow-moving. In certain cases, China imposes foreign equity limitations or other discriminatory measures on foreign suppliers. High minimum capital requirements plague other sectors. China also sometimes applies overly burdensome regulatory regimes or other restrictions.

Insurance Services

China continues to maintain certain market access barriers for the insurance sector. Foreign life insurance companies can only be established as joint ventures, with foreign equity capped at 50 percent. In addition, China's markets for third party liability automobile insurance and for political risk insurance are closed to foreign participation.

In addition, although the situation has shown some recent improvement, U.S. and other foreign companies continue to have difficulty expanding their operations (internal branches) once they have established an initial presence in China. The Chinese Insurance Regulatory Commission (CIRC) is not always consistent in following its own deadlines for reviewing and approving internal branch applications from foreign life and non-life companies. Foreign companies also report difficulties in applying for and receiving multiple, concurrent internal branch approvals. In September 2008, CIRC imposed a moratorium on new sales offices for insurance companies (domestic and foreign) which further restricts opportunities for internal expansion.

The United States also has expressed concerns to the Chinese government regarding a draft CIRC regulation, the "Administrative Method of the Equity Interest in Insurance Companies," which would unfairly shut out foreign insurance companies from holding multiple investments in Chinese domestic insurance companies.

In addition, the United States has urged the relevant Chinese authorities to ensure that China Post, which has been granted a license to supply insurance through its existing network of Post facilities, is not given advantages in terms of how it is regulated and is required to provide distribution possibilities for insurance products of other companies.

Private Pensions—Enterprise Annuities

U.S. and other foreign companies have found it difficult to obtain a license to participate in China's market for "enterprise annuities" services (private pensions similar to the U.S. 401(k) system), which will grow in importance as China develops alternatives to its underfunded social security system. China has licensed very few foreign operators and only for limited elements of the full package of enterprise annuities services. The United States remains very concerned that China's licensing process has been closed again and has urged China to re-open its licensing process and ensure that such licensing procedures do not impose quotas on the number of licenses granted to qualified suppliers.

Banking Services

The Regulations for the Administration of Foreign-Funded Banks, issued in November 2006, allow foreign banks to compete in all lines of banking business on the same terms as domestic banks. These regulations, however, require foreign banks to incorporate in China. Moreover, the regulations mandate that only foreign-funded banks that have had a representative office in China for two years and that have total assets exceeding $10 billion can apply to incorporate in China. After incorporating, these banks only become eligible to offer full domestic currency services to Chinese individuals if they can demonstrate that they have operated in China for three years and have had two consecutive years of profits.

To date, numerous foreign banks have received approval to convert to subsidiaries. In 2008, the first application to issue local currency debit and credit cards was approved, though administrative barriers have hindered the approval of other applications and the actual issuance of RMB cards. Also in 2008, the CBRC announced that foreign banks would be allowed to trade and underwrite bonds on the interbank market, albeit via a gradual phasing-in process.

Foreign banks seeking to operate in China through branches instead of through subsidiaries saw some relaxation of prior restrictions, but not enough to effectively allow them to compete in the retail domestic currency business. Specifically, foreign bank branches can continue to take deposits from, and make loans to, Chinese enterprises in domestic currency, but they can only take domestic currency deposits of RMB1 million ($133,000) or more from Chinese individuals and cannot make any domestic currency loans to Chinese individuals. Foreign bank branches also cannot issue domestic currency credit cards to Chinese enterprises or Chinese individuals.

The rules on the establishment of Chinese-foreign joint venture banks remain a concern. China continues to follow a 2003 regulation that defines a "Chinese bank" as one that has less than 25 percent foreign ownership, with no single foreign investor having over 19.9 percent ownership (the so-called 20/25 rule). China draws a distinction between domestic and foreign companies through different treatment and seasoning rules. Under this bifurcated regulatory structure, if a Chinese bank were to sell over 25 percent of its shares to foreign investors, it would be classified as a foreign bank and fall under separate rules, which would reduce its permitted scope of business. While the November 2006 State Council regulations virtually eliminate any significant differences in rules for locally-incorporated foreign banks and domestic Chinese banks, the possibility of increasing foreign stakes in Chinese banks above the 25 percent threshold, thus falling under the regulatory scrutiny for foreign banks, and continuing the full range of banking business has not been tested.

Securities Services

In December 2005, China instituted a moratorium on foreign investment in the securities sector, claiming the need to better regulate domestic companies and further develop the sector. In December 2007, as follow up to an SED commitment, China announced that it had lifted the moratorium on the securities sector, and several foreign firms have begun discussions with potential joint venture partners. Since that time, China has begun to license some new Chinese-foreign joint ventures. However, China continues to apply a 33 percent foreign equity limit on the sector (as well as a 49 percent foreign equity limit for the asset management sector).

In late 2007, China issued rules that allow foreign joint venture securities firms to gradually expand their scope of business over an extended timeframe. However, the regulations contain a number of troublesome aspects that will continue to limit competition in the sector, whether for new entrants or for acquisitions of shares in existing companies.

Financial Information Services

In September 2006, Xinhua issued the *Administrative Measures on News and Information Release by Foreign News Agencies* within China. These regulations precluded foreign suppliers of financial information services from contracting directly with, or providing financial information services directly to, domestic Chinese clients. Instead, foreign financial information service suppliers would have to operate through a Xinhua-designated agent, and the one agent designated to date is a Xinhua affiliate.

Xinhua told foreign financial information service suppliers that the new rules would not be applied to them until after an implementing measure was issued; however, Xinhua subsequently required foreign financial information service suppliers to conclude agreements with the Xinhua affiliate before renewing their annual licenses. Foreign financial information service suppliers continued to operate, but without renewed licenses.

In 2008, the United States and the EC initiated WTO dispute settlement proceedings against China (later joined by Canada), after it had become clear that Xinhua was not prepared to remove the 2006 rules. In November 2008, an MOU was signed in which China committed to address all of the concerns that had been raised by the United States, the EC, and Canada. Among other things, China has agreed to establish an independent regulator, to eliminate the agency requirement for foreign suppliers, and to permit foreign suppliers to establish local operations in China, with all necessary implementing measures issued by April 30, 2009, effective no later than June 1, 2009. In January 2009, China took a step to fulfilling its commitment by formally changing the regulator of these financial information services from Xinhua to the State Council.

Electronic Payments Processing

In the Services Schedule accompanying its Protocol of Accession to the WTO, China committed to remove market access limitations and provide national treatment for foreign suppliers providing "payment and money transmission services, including credit, charge, and debit cards," with this commitment becoming effective with regard to the domestic (RMB) currency business of retail clients. China also committed to allow the provision and transfer of financial information; financial data processing; and advisory, intermediation, and other financial services auxiliary to payments and money transmission services. These electronic payments and related commitments were to be implemented by no later than December 11, 2006.

The United States remains concerned that China has not yet issued regulations to allow foreign companies to operate electronic payment systems for single brand, RMB-denominated credit cards. China Union Pay (CUP), an entity created by the People's Bank of China and owned by participating Chinese banks, remains the sole authorized provider of electronic payment services in China.

Retailing Services

In September 2008, China announced that it had delegated authority for foreign retail outlet approvals to the provincial government level, a positive step in streamlining and facilitating approvals for foreign retail outlets. The United States will monitor how this new licensing process works in practice. In addition, the United States has explained the importance of China applying any zoning requirements on a non-discriminatory basis and not imposing additional "informal" minimum capital requirements on foreign retailers.

Sales Away From a Fixed Location

Since 2005, China has significantly liberalized its regime for direct selling services, and a number of foreign direct sellers have received licenses to operate. However, a number of concerns remain. First, since May 2007, China has not approved any new applications for direct selling licenses, even though a number of companies (both foreign and domestic) have applied for such licenses. In addition, China maintains unduly burdensome "service center" establishment requirements, caps and other restrictions on sales force compensation, and discriminatory qualification requirements.

Express Delivery Services

Although several foreign, including U.S., express delivery companies are expanding their operations in China, a number of aspects of China's express delivery regime continue to cause concerns. The United States is seeking assurances that China's laws and regulations for the express delivery sector do not discriminate against foreign companies and are not overly burdensome on their operations.

U.S and other foreign companies recently have been confronted with new developments relating to China's draft *Postal Law* that would severely hinder their growth in China's domestic express market (pick-up and delivery within China). The draft *Postal Law*, under consideration by the National People's Congress, would exclude foreign express delivery companies from China's domestic market for express delivery of documents. If that element of the Law is retained, it would place foreign companies at a severe disadvantage *vis-a-vis* Chinese domestic express delivery companies which are permitted to provide a full scope of business, including both package and document delivery. The draft Postal Law also includes other troubling elements, including the lack of a clear definition of the postal monopoly, the imposition of universal postal fund taxes on express delivery companies (rather than on the users of the postal system), and a licensing system for express delivery companies that seems overly burdensome.

In most economies, express delivery services are not regulated directly or subject to licensure. For this reason, foreign companies also have raised concerns about how the China State Postal Bureau's (SPB) new authority to license and regulate the express delivery sector will be implemented. Although China has asserted that SPB's express delivery "standards" (promulgated in September 2007) are "voluntary," recent actions by the SPB, including work to establish a first ever China Express Association (CEA), which may be given certain delegated regulatory authority, suggest otherwise. U.S. and other foreign express delivery companies are concerned that any express delivery standards may cover operational issues, including many commercial decisions such as weight, package examination, transit time, and personnel requirements, which would normally remain within the purview of individual companies in the marketplace.

U.S. and other foreign express delivery companies also are concerned about the proliferation of provincial level express delivery industry associations, including the interest of such associations in "self-discipline agreements" that may contain troubling provisions on pricing and competition.

On the related issue of air freight forwarding, wholly foreign-owned express delivery companies cannot qualify for an Air Transport Agency license and therefore do not have the ability to directly load cargo on Chinese domestic or international flights, but instead must work through a Chinese agent.

Construction, Engineering, Architectural, and Contracting Services

In September 2002, the Ministry of Construction (re-named the Ministry of Housing and Urban-Rural Development in 2008) and the Ministry of Foreign Trade and Economic Cooperation (now MOFCOM) issued the *Rules on Administration of Foreign-Invested Construction Enterprises* (known as Decree 113) and *Rules on the Administration of Foreign-Invested Construction Engineering and Design Enterprises* (known as Decree 114). Decrees 113 and 114 create concerns for foreign firms by imposing more restrictive conditions than existed prior to China's WTO accession, when they were permitted to work in China on a project-by-project basis pursuant to Ministry of Construction rules. These Decrees, for the first time, require foreign-invested enterprises to incorporate in China, and they impose high minimum registered capital requirements and technical personnel staff requirements that are difficult for many foreign-invested enterprises to satisfy. Decree 113 also limits the scope of projects (in terms of size and scale) permitted to foreign-invested enterprises in comparison with the rights enjoyed by domestic companies.

Regarding Decree 113, the United States has urged China to broaden the scope of projects that can be undertaken. The United States also is asking China to reduce its minimum capital requirements and/or consider bonding and other guarantee arrangements in lieu of minimum capital. Implementing rules for Decree 114 became effective in January 2007. These rules are important, as U.S. companies have a very strong interest in providing engineering and design services in China. The implementing rules were generally positive, in that they temporarily lifted foreign personnel residency requirements imposed by Decree 114, and recognized the foreign qualifications of technical experts for licensing purposes. U.S. and other foreign companies would like to see these improvements in the implementation of Decree 114 made permanent. In addition, the United States has urged China to continue improvements to allow foreign design companies the same rights as domestic design companies to immediately apply for a comprehensive "Grade A" license (rather than being subject to more restrictive procedures under Circular 202).

In a related measure, Circular 200 imposes certain overly burdensome qualification requirements on foreign suppliers of project management services. Specifically, China does not allow foreign companies to provide project management services without already holding construction or design enterprise approvals.

Finally, like Decrees 113 and 114, the *Regulation on the Management of Foreign Invested Urban Planning Service Enterprises* (Decree 116) includes burdensome personnel requirements. Such restrictions effectively keep out smaller foreign urban design firms wishing to work in China. To encourage the further development of Chinese urban planning, foreign firms of all sizes should be welcomed to compete in China.

Logistics Services

In March 2008, China announced the establishment of a new Ministry of Transport (MOT) that would combine activities formerly conducted by the Ministry of Communication, the Civil Aviation Administration of China (CAAC), and the State Postal Bureau. The MOT does not include rail transport; which is administered separately by the Ministry of Railways.

MOT has been slow to approve applications by foreign logistics firms and is unwilling to issue nationwide trucking licenses, which limits the ability of foreign firms to build economies of scale. In addition, according to local regulations, trucks are not allowed daytime city access in almost all major Chinese cities. China's enforcement efforts are often targeted at foreign transport/logistics firms, while local firms are permitted to operate without being in full compliance.

There also are growing concerns about the use of inappropriate standards that may hinder market access for logistics firms. Companies have complained about AQSIQ standards issued in April 2005 that are unnecessarily burdensome since they establish artificial classifications categories of transport, warehousing, and multi-purpose activities. In addition, freight forwarding firms are concerned that their exclusion from these regulatory categories may prevent their participation in standards-setting activities.

Aviation and Maritime Services

Under the auspices of the SED, the United States and China negotiated an amended bilateral air services agreement that was signed in July 2007. The new agreement brings significant economic benefits to the U.S. aviation industry, passengers, shippers, and local communities. It is an important step to facilitate trade, investment, tourism, and cultural exchanges between the United States and China. By 2012, the agreement will add 12 new daily passenger flights that U.S. carriers may operate to the Chinese gateway cities of Beijing, Shanghai, and Guangzhou, more than doubling the number of flights allowed. The new agreement also provides for unlimited cargo flights to any point in China and allows an unlimited number of U.S. cargo carriers to serve the market as of 2011. Finally, it increases the available opportunities for U.S. carriers to code-share on other U.S. carriers' flights to China, and it commits China to begin negotiations, by 2010, on a timetable for the full liberalization of the bilateral civil aviation relationship.

In September 2008, the United States held technical consultations to discuss China's interpretation of the cargo hub provision in the aviation agreement, which was creating difficulties for a U.S. cargo carrier. While differences in interpretation remain, China agreed to approve the carrier's cargo schedule in a manner consistent with the aviation agreement.

In 2003, China took steps to liberalize the maritime services sector. The United States and China signed a far-reaching, five year bilateral maritime agreement, extended automatically for successive one year periods, which gives U.S. registered companies the legal flexibility to perform an extensive range of additional shipping and logistics activities in China. U.S. shipping and container transport services companies, along with their subsidiaries, affiliates, and joint ventures are also able to establish branch offices in China without geographic limitation. Under the framework of the 2003 agreement, the United States and China have annual consultations. The most recent round of negotiations was held in December 2008.

Telecommunications

Foreign participation in China's telecommunications market, including for both basic and value added telecommunications services, remains very limited. China maintains foreign equity restrictions and a multitude of other barriers in the telecommunications sector, including investment approval procedures that are non-transparent and lengthy. Although China has the world's largest fixed landline, mobile, and broadband markets measured by subscribership, the lack of opportunities for foreign service suppliers is striking. China's regulator for the sector, the Ministry of Information Industries and Technology (MIIT), while nominally separate from current telecommunications operators, maintains extensive influence and control over their operations and the overall structure of the market and continues to use its regulatory authority to disadvantage foreign firms.

China's foreign equity restrictions (a maximum of 49 percent foreign equity for basic telecommunications and 50 percent for value added telecommunications) severely diminish commercial opportunities in the sector.

Regarding basic telecommunications, not only has there been no new market entry in that sector over the past decade, China actually forced a consolidation of this sector in 2008, reducing the number of operators from seven to four operators—China Mobile, China Telecom, China Unicom and China Satcom. Since China's policy is to only permit foreign joint ventures with existing licensees, and these licensees are all majority state-owned enterprises, this has further reduced market access opportunities and has ensured that the market structure is entirely determined by governmental policy. Although not explicitly stated in rule or policy, China appears to apply an economic needs test to new entry in this sector to avoid "unhealthy competition." China also shows reluctance to authorize new services or technologies which might compete with the revenue of incumbent operators, such as voice over the Internet or WiFi over a mobile handset.

In September 2008, in response to a long-standing U.S. request and through State Council Decree 534, China reduced basic telecommunications capitalization requirements. However, they reduced them to RMB 1 billion (approximately $145 million), a level that is still excessively high and makes it commercially unattractive for most foreign operators to invest in the sector, particularly for leased line, resale, and corporate data services, which require no new building of facilities.

After years of delay and sustained U.S. pressure, MIIT finally issued licenses in January 2009 for third-generation (3G) mobile telecommunications services to the country's three state-owned telecommunications operators. There was no public announcement or details available regarding the application process for these licenses and the Chinese government clearly dictated the choice of technology for each company. China Mobile received a license to operate TD-SCDMA, the Chinese-developed 3G standard. China Telecom received a license for CDMA2000, the U.S. standard, and China Unicom received a license to operate W-CDMA, the European standard. Although this development provides significant opportunities for U.S. equipment and services suppliers, continued reports on plans to support and favor China's domestic 3G standard are troubling. As China considers making new spectrum available for new wireless services, improving the transparency of its licensing process will be a priority. (For further information, please refer to the section above on Third Generation (3G) Telecommunications Standards.)

Regarding value added telecommunications, although there are over 20,000 licensed domestic telecommunications value added suppliers in China, MIIT has issued only eleven value added licenses to foreign companies, including licenses to three U.S. companies. One difficulty foreign companies face in obtaining a license is the lack of clarity regarding which services a foreign-affiliated firm is permitted to offer. In addition, MIIT inexplicably seems to classify certain value added private network services ("IP-VPN") as value added when offered domestically, but as basic (and thus subject to lower foreign equity caps and higher capitalization requirements) when offered internationally. Chinese officials have indicated that they are open to liberalizing foreign participation in IP-VPN service; nevertheless, no foreign joint-venture has yet been licensed to offer this service.

The United States also has pressed China to make available its draft *Telecom Law* for review and comment. The most recent version made available for public comment was in 2005. China has been working on the draft Law for over 10 years, and it may be a vehicle for addressing certain market access and regulatory issues. MIIT still lacks a specific authorizing statute for its powers.

On-Line Services

China operates the world's most comprehensive Internet filtering regime, which affects a broad range of commercial activity conducted via the Internet. Chinese authorities routinely filter Internet traffic entering China, focusing primarily on the content they deem objectionable on political, social, or religious grounds. In 2002, China lifted filters on most major western news sites. Nevertheless, since then, foreign news websites have periodically been blocked, as happened for example, for several weeks during the 16th National Congress of the Communist Party of China in 2003. More generally, a 2005 Harvard University study reported that China has blocked sites on multiple occasions and identified routinely blocked sites that relate to Taiwan, the Falungong spiritual movement, Tibet, the Tiananmen Square incident, and Chinese opposition political parties. The study also identified routinely blocked sites that relate to various political topics including "boycott," "human rights," "pro-democracy," and "opposition."

Purely commercial sites that may simply be hosted on the same computer server as an unrelated site that is deemed objectionable also appear subjected to periodic blocking. Such practices can impede the ability of legitimate businesses to conduct cross-border trade.

Changes to Internet filtering can occur without warning or public explanation. For example, the popular Internet search engine Google was blocked completely in China for a few weeks starting in late August 2002, and again in late 2007. When Google became available again in September 2002, its "cached pages" feature remained blocked; that feature had previously allowed users in China to access "snapshots" of some web pages that were otherwise blocked in China. While all of these practices remain prevalent, the Harvard study found that China's filtering regime had become more targeted and fine-tuned than in 2002. For example, sites relating to specific topics such as Falungong and the Tiananmen Square incident were less accessible in 2005 while sites relating vaguely to topics such as revolution and Taiwan were more accessible. Although numbers appear limited, some websites related strictly to economic and business matters are also blocked.

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

Audiovisual and Related Services

China's desire to protect the revenues earned by the state-owned audiovisual and print media importers and distributors and concerns about politically sensitive materials result in continued restrictions on foreign providers of audiovisual services. Importation and distribution of books, newspapers, journals, sound recordings, videos, films, and television remain highly restricted. Inconsistent and subjective application of censorship regulations further impedes market growth for foreign providers. China's large black market for foreign digital video discs and other home entertainment video products continues to grow because these market access restrictions create a demand for pirated goods in the absence of legitimately licensed home or theatrical entertainment. As discussed above in the section on Trading Rights, the United States initiated a WTO dispute settlement case against China in April 2007 covering the importation and distribution restrictions applicable to certain copyright-intensive products. A decision by the WTO dispute settlement panel is pending.

At both the central and regional levels, inter-connected agencies under the State Administration for Radio, Film, and Television (SARFT) dictate the terms under which films can be produced and distributed. SARFT permits only one film importer and two film distributors (which are both components of the same monopoly managed by SARFT) to operate in China. For theatrical releases, the monopoly importer and distributor dictate the films that will be imported (currently limited by China to 20 revenue-sharing films a year), when they will be released in the market, and the box office revenue-sharing terms in a master contract agreement imposed unilaterally and uniformly on foreign studios by the Chinese government. In addition, the government sets strict guidelines with respect to the public screening of foreign films. Under *Regulations for the Administration of Films* Decree No. 342, Article 44, issued by the State Council in 2001, the total annual screening time for foreign films must not exceed one-third of the total screening time of all films (domestic and foreign).

Television quotas are also highly restrictive. The *Administrative Measures on the Import and Broadcast of Extraterritorial Television Programs* (No. 42), effective October 23, 2004, restricts foreign television drama and film programming to no more than 25 percent of total airtime, and other foreign programming to no more than 15 percent of total air time. Foreign programming, including animated programs, is banned on prime time between 7:00 P.M. and 10:00 P.M. on terrestrial stations. SARFT's *Interim Regulation on Digital Cable TV Pay Channels* (November 14, 2003) restricts foreign programming to a maximum of 30 percent of total airtime on pay television channels.

In addition to censorship reviews by Chinese authorities, which can delay the arrival of imported foreign films on Chinese movie screens, the Chinese government has historically decreed "black-out periods" during which no new revenue-sharing blockbuster foreign films may be released in order to prevent competition with Chinese films being released during the same period. Banning the release of new foreign titles during peak seasons not only hurts theatrical revenues but also contributes to increased piracy, as pirates meet immediate consumer demand for foreign titles by offering illegal downloads through the Internet, on pirate optical discs, and pirate video-on-demand channels.

Regulations restricting direct distribution by non-Chinese companies of imported theatrical films, home video, public performance video, and television products remain in force. China Film dictates the contractual terms, play dates, and other aspects of film exhibition. When Chinese entities contract for the rights to distribute titles in various home video formats, the differentiation between video rights and rights for home use or public use is often ignored; home video products are often used for public performance exhibitions in mini-cinemas and by some pay-television operators providing to hotels.

China Film also continues to require that film prints be made in local laboratories. The requirement pertains to theatrical distribution in most cases, and it applies to home video distribution in all cases. Local printing and duplication requirements reduce right holders' ability to control the quality of a film copy and may result in increased costs.

For sound recordings, China limits market access opportunities for imported sound recordings in a manner similar to the limitations imposed on films for theatrical release or home viewing. In addition, new barriers have recently been erected. The Ministry of Culture's *Opinion on the Development and Regulation of Network Music* bans foreign ownership of firms supplying digital music services, requiring that entities engaging in the online distribution of sound recordings in China be wholly Chinese-owned entities. This regulation was amplified in new rules established jointly by MII (re-named the Ministry of Industry and Information Technology in 2008) and SARFT in late 2007, explicitly restricting audio and video distribution services (including over electronic networks such as the Internet) to State-owned entities. Furthermore, foreign recordings are subject to conditions not required of domestic recordings, including the requirement that foreign recordings go through censorship review and be approved for online distribution even after being approved for physical distribution.

Investment in China's audiovisual sector is highly restricted. For video distribution companies and cinemas, joint ventures or cooperative firms must have at least RMB 5 million ($688,000) of registered capital, and foreign capital cannot make up more than 49 percent of the total share, except in certain cities where cinema investment is capped at 75 percent. For television production, joint ventures or cooperative firms must have a minimum capital requirement of RMB 2 million ($275,000), and foreign capital is capped at 49 percent. In February 2005, SARFT issued a circular placing further restrictions on foreign partners and requiring two-thirds of the programs of a joint venture or cooperative firm to have Chinese themes.

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

Tourism and Travel Services

In December 2007, the United States and China signed an MOU to facilitate Chinese group leisure travel to the United States and the marketing in China of U.S. destinations. However, foreign travel and tourism firms in China are still restricted from competing under the same conditions as Chinese firms. For example, wholly foreign-owned enterprises and Chinese-foreign joint ventures continue to be restricted in selling outbound travel packages and airline tickets. In addition, China requires all travel agents and airlines to connect into China's nationally owned and operated computer reservation system when booking airline tickets for domestic flights and outbound international flights. China also continues to apply an annual sales requirement on foreign travel agencies, although there are no such requirements for domestic agencies.

Education and Training Services

The Ministry of Education (MOE) continues to restrict participation by foreign educators and trainers. China permits only nonprofit educational activities that do not compete with the MOE-supervised nine years of compulsory education, thereby inhibiting much-needed foreign investment in the education sector. China also bans foreign companies and organizations from offering educational services via satellite networks.

Foreign universities may set up nonprofit operations. However, they must have a Chinese university host and partner to ensure that programs bar subversive content and that informational material that is imported is adapted to suit local conditions.

Legal Services

Foreign law firms face numerous restrictions on the scope and structure of their activities in China, as well as other barriers affecting market access. Current Chinese law prohibits foreign firms from practicing Chinese law, which means that they are unable to hire Chinese-qualified lawyers to practice Chinese law. China also maintains restrictions on cooperation with Chinese law firms (including investment and profit-sharing restrictions) that further limit market opportunities. In addition, foreign law firms are concerned that China may make it more difficult to provide other legal services (such as advisory and consultation services) that are currently widely regarded as permissible.

China also maintains separate, discriminatory regulatory requirements for foreign representative legal offices that are not applied to Chinese law firms (*Regulations on the Administration of Foreign Firm Representative Offices* of December 2001 and implementing regulations of July 2002). The measures appear to create an economic needs test for foreign law firms seeking to establish representative offices in China. In addition, a foreign law firm may not establish an additional representative office until its most recently established office has been in practice for three consecutive years. China also requires that representatives of foreign law firms must have practiced for no less than two years outside of China. New foreign representatives must undergo a lengthy approval process that can take more than one year, during which they must leave the country monthly to file for a renewal visa.

Substantial differences in official tax policies applied to the representative offices of foreign law firms in comparison with taxes applied to Chinese law firms, coupled with inconsistent enforcement policies, represent an additional hurdle to supplying legal services in China.

INVESTMENT BARRIERS

The volume of foreign investment in China grew by 14.8 percent in 2007 despite the introduction of significant new investment barriers. According to the United Nations Conference on Trade and Development's *2008 World Investment Report*, China received $83.5 billion in FDI in 2007 [latest data available]. China was the world's third-largest investment destination, after the United States and the United Kingdom. The World Bank's *Doing Business Report 2009* gave China a global ranking for "ease of doing business" of 83. In 2008, investors continued to complain of a lack of transparency, inconsistently enforced laws and regulations, weak intellectual property protection, corruption, a lack of transparency, and an unreliable legal system incapable of enforcing contracts and judgments.

China's leadership has repeatedly affirmed its commitment to further open China to foreign investment, including a strong statement at the JCCT meeting in December 2007 in which China reiterated its commitment to open investment and to the principle of nondiscrimination in investment regulation. However, there is rising concern that recent steps China has taken may increasingly discriminate against foreign investment. For example, SASAC in December 2006 issued the *Guiding Opinion Concerning the Advancement of Adjustments of State Capital and the Restructuring of State-Owned Enterprises*. Statements accompanying its release identified an expansive list of sectors deemed critical to the national economy including "pillar" industries such as equipment manufacturing, automotive, electronic information, construction, iron and steel, nonferrous metal, chemical, survey and design, and science and technology industries. SASAC committed to restrict foreign participation in these sectors by preventing further foreign investment in state-owned enterprises operating in these sectors. Furthermore, vague new language about economic security in China's *Provision on the Mergers and Acquisitions of Domestic Enterprises by Foreign Investors* adopted in 2006, that includes terms such as "national economic security" and "critical industries" raises concerns that such language could forebode increased protectionist policies. The *Foreign Investment Catalogue* issued in November 2007, further suggests China's investment policies may be becoming more selective in allowing foreign investment by actively targeting higher value added sectors (including high technology research and development, advanced manufacturing, energy efficiency, and modern agriculture and services) rather than basic manufacturing. It also appears that China is seeking to spread the benefits of foreign investment beyond China's comparatively wealthy coastal area by encouraging multinational businesses to establish regional headquarters and operations in Central, Western, and Northeast China.

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

Investment Requirements

Upon its accession to the WTO, China assumed the obligations of the Agreement on Trade Related Investment Measures (TRIMS Agreement), which prohibits investment measures that violate GATT Article III obligations to treat imports no less favorably than domestic products or GATT Article XI obligations not to impose quantitative restrictions on imports. In its Protocol of Accession to the WTO, China also specifically agreed to eliminate export performance, local content, and foreign exchange balancing requirements from its laws, regulations, and other measures, and not to enforce the terms of any contracts imposing these requirements. In addition, China agreed that it would no longer condition importation or investment approvals on these requirements or on requirements such as technology transfer and offsets.

Although China has revised many laws and regulations to conform to its WTO investment commitments, some of the revised laws and regulations continue to raise WTO concerns, including ones that "encourage" technology transfers to China, without formally requiring it. U.S. companies remain concerned that this "encouragement" in practice can amount to a "requirement" in many cases, particularly in light of the high degree of discretion provided to Chinese government officials when reviewing investment applications. Similarly, some laws and regulations "encourage" exportation or the use of local content. Moreover, according to U.S. companies, some Chinese government officials in 2008, even in the absence of encouraging language in a law or regulation, still consider factors such as export performance and local content when deciding whether to approve an investment or to recommend approval of a loan from a Chinese policy bank, which is often essential to the success of an investment project. The United States and other WTO Members, including the EC and Japan, have raised concerns in this area during the annual transitional reviews conducted by the TRIMS Committee.

Investment Guidelines

Foreign Investment Catalogue

China's foreign investment objectives are primarily defined through its *Foreign Investment Catalogue*, which is revised every few years and was most recently updated in November 2007. The new Catalogue promulgated by the NDRC and MOFCOM, with State Council approval, took effect December 1, 2007, without an opportunity for any public comment. The November 2007 catalogue placed new restrictions on several industries, including chemicals, auto parts, rare earths processing, biofuel production, and edible oil processing, while the prohibitions and restrictions facing copyright-intensive products and genetically modified plant seeds remain in place. It also moved the mining of raw materials such as antimony, fluorite, molybdenum, tin, and tungsten from the "restricted" category to the "prohibited" category. From a positive standpoint, the catalogue encouraged foreign investment in highway cargo transport and modern logistics, while it removed from the "encouraged" category projects of foreign-invested enterprises that export all of their production.

Administrative Measures to Restrict Investment

In 2006 and 2007, Chinese regulators announced several measures that limit the ability of foreign firms to participate in investment in China's market.

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

In August 2006, MOFCOM and five other government agencies issued the *Provisions of Acquisition of Domestic Enterprises by Foreign Investment*, which became effective September 2006. This measure revised existing rules for mergers and acquisitions involving foreign investors and, among other things, established a legal basis for a "national economic security" review process that can block proposed transactions. Under the rules, foreign mergers and acquisitions of domestic enterprises that would result in "actual control" of a domestic enterprise in a "key industry" with "potential impact on national economic security" or that would alter control of a famous Chinese trademark or brand require MOFCOM approval. The rules also place MOFCOM in the role of determining if the domestic acquisition target has been appropriately valued and allowing MOFCOM to initiate an antimonopoly review of certain acquisitions by foreign companies. In March 2007, MOFCOM published guidelines setting out the requirements for the contents of the antimonopoly notifications under these rules. MOFCOM has rendered the notification and clearance process cumbersome, however, by refusing to meet with lawyers from foreign law firms representing the company who may be most familiar with the transaction. As of December 2008, no foreign merger or acquisition had been formally blocked based on the antimonopoly review provisions in these rules. Although implementing measures have not yet been issued, foreign investors have already found that they face greater difficulties purchasing controlling stakes in prominent Chinese firms in light of the other provisions of these regulations, and several proposed transactions have stalled. In one positive development, the rules now permit the use of foreign shares as consideration for the acquisition of Chinese companies, a change that could facilitate foreign investment in China. MOFCOM officials have indicated that the new Antimonopoly Law, which came into effect on August 1, 2008, will supersede the 2006 rules with respect to the antimonopoly review of mergers and acquisitions.

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

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

In 2007, China also continued to employ various sector-specific measures designed to impose new requirements on foreign investors. Measures affecting foreign investment in the automotive and steel sectors are discussed above in the section on import substitution policies. In August 2007, after several years of development, China issued its *Antimonopoly Law*, which became effective in August 2008. Although the final version of the law contained many improvements over drafts that had been previously circulated, some provisions are of concern. For example, one provision provides for the protection of the lawful operations of state-owned enterprises and government monopolies in industries deemed nationally important. The law also indicates that China will establish a review process to screen inward investment for national security implications. U.S. industry has expressed serious concern about China's increasing use of these and other investment restrictions, which can be used as protectionist tools by China's economic planners to shield inefficient or monopolistic Chinese enterprises from foreign competition.

Other Investment Issues

Venture Capital and Private Equity

In March 2003, new regulations took effect permitting the establishment of foreign-invested venture capital firms, including wholly foreign-owned enterprises aimed at funding high technology and new technology startups. These regulations lowered capital requirements, allowed foreign-invested firms to manage funds directly invested from overseas, and offered the option of establishing venture capital firms in a form similar to the limited liability partnerships used in other countries. Meanwhile, regulations that took effect in April 2001 allowed investment by foreign private equity firms, subject to limits on corporate structure, share issuance and transfers, and investment exit options.

Investment exit options have, to some extent, curbed foreign participation in China's venture capital and private equity sectors, though both forms of investment enjoy high growth rates. Most foreign venture capital and private equity investments in China are actually housed in offshore holding companies, which, as with other offshore FDI, could be transferred without Chinese government approval in the past. The Chinese Government issued new regulations in September 2006, however, that effectively shut down this method of transferring local assets to offshore "special purpose vehicles." The 2006 regulations require pre-approval by no less than six agencies for a Chinese company to transfer assets offshore to a foreign entity. Since the issuance of these rules, no approvals have been granted.

China, in September 2006, also implemented regulations that made it more difficult to list on foreign stock exchanges, but at the same time facilitated listing on the domestic A-share market. Though private equity investors have had success in listing in the A-shares market, these investors face a three year lock up period during which they may not cash in on their listed holdings.

The Chinese government issued new regulations for domestic venture capital firms in the fall of 2005, which took effect on March 1, 2006. The regulations aimed at cultivating China's domestic venture capital industry, streamlined the incorporation process, and relaxed capital requirements for venture capital firms. Though some restrictions remained in place for foreign-invested firms, the provisions eased overall foreign venture capital investment in China.

In June 2007, an amended *Partnership Law* took effect, which allowed the formation of limited partnership enterprises. The law limits investor liability and exempts partnership enterprises from corporate income tax. It governs only domestic partnership enterprises, however, and calls for foreign partnerships to be guided by Foreign Investment Partnership Regulations, which are currently in draft and in circulation with relevant government agencies. It is expected that the new regulations will have a negligible effect on foreign invested partnerships, including private equity and venture capital firms.

Holding Companies

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

China has begun to open its domestic equity markets to investments from foreign firms. Through the Qualified Foreign Institutional Investor (QFII) program, foreign securities firms may apply for QFII status, which permits limited access to the RMB-denominated A-share market. As of December 2008, China had granted QFII status to 72 foreign entities, with total quotas allotted totaling $12.8 billion. The Chinese government committed during the May 2007 SED meeting to announce an expansion of the quota to $30 billion, and did so on December 11, 2007.

Access to Capital Markets

Foreign invested firms in China are often unable to access domestic and international stock markets, to sell corporate bonds and equity, or to engage in normal merger, acquisition, and divestment activity. However, at the SED meeting in December 2007, China agreed to allow, in accordance with relevant prudential regulations, qualified foreign invested companies to issue RMB-denominated stocks, and qualified listed companies to issue RMB denominated corporate bonds. This move should ease some of the capital inflow pressure from foreign investment, a major concern of Chinese policy makers given excess liquidity and the recent rise in inflation in the domestic economy. Foreign exchange transactions on China's capital account can be concluded only with case-by-case official review and approvals are tightly regulated. Recent regulations permitting greater capital outflows and pronouncements by Chinese government officials encouraging Chinese firms to invest abroad suggest that China now recognizes that continued large capital inflows are not sustainable. To date, foreign firms remain generally satisfied because they are able to repatriate profits. At the same time, most major foreign firms prefer to reinvest their profits, not exit the Chinese market.

GOVERNMENT PROCUREMENT

China is not a signatory to the WTO Agreement on Government Procurement (GPA). In accordance with its commitment upon accession to the WTO, China became an observer to the WTO Committee on Government Procurement in 2002. China also committed, in its Protocol of Accession to the WTO, to initiate negotiations for accession to the GPA "as soon as possible." Based on its commitment at the April 2006 JCCT meeting, China initiated GPA accession by submitting its application for accession and initial offer of coverage in December 2007. In May 2008, the United States submitted its Initial Request for Improvements in China's Initial Appendix I Offer. At the JCCT meeting in September 2008, China committed to submit an improved offer as soon as possible. The United States and other GPA Parties have noted that significant improvements will be needed in China's initial offer to bring China's coverage to the level of other Parties' coverage. China submitted its responses to the Checklist of Issues for Provision of Information relating to its accession to the GPA in September 2008. In 2008, the United States and China held three rounds of negotiations on the terms and conditions of China's GPA accession and agreed to exchange information relating to their respective procurement systems in order to facilitate China's accession to the GPA. In December 2008, the United States responded to China's questions on the U.S. procurement system and U.S. coverage under the GPA.

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

In January 2003, China implemented a *Government Procurement Law* (GPL), which generally reflects the disciplines of the GPA and incorporates provisions from the United Nations Model Law on Procurement of Goods. However, the GPL also directs central and sub-central government entities to give priority to "local" goods and services, with limited exceptions. Since the adoption of the GPL, the Ministry of Finance (MOF) has issued various implementing measures, including regulations that set out detailed procedures for the solicitation, submission, and evaluation of bids for government procurement of goods and services and has helped to clarify the scope and coverage of the GPL. MOF also issued measures relating to the announcement of government procurement opportunities and the handling of complaints by suppliers relating to government procurement. The GPL does not cover tendering and bidding for public works projects, which represent at least one-half of China's government procurement market. Those projects are subject to China's *Bidding and Tendering Law* of 2000.

In 2005, China issued a measure that required preferences for products incorporating the WAPI standards in government procurement (see discussion above in the Standards, Technical Regulations, and Conformity Assessment Procedures section). In 2006, the State Council issued China's Medium-to-Long-Term Science and Technology Master Plan. The NDRC and other ministries and agencies are in charge of developing regulations to implement this strategy, which includes preferences for the purchase of domestic goods as an important industrial policy tool. In September 2007, the NDRC implemented provisional rules for electronic government projects, which mandate priority purchasing of domestic goods and services in national electronic government projects.

In December 2007, MOF issued two measures that would substantially restrict the Chinese government's purchase of foreign goods and services. One, the Administrative Measures on the Government Procurement of Imported Products, severely restricts government procurement of imported foreign products and technologies. The second measure, Administrative Measures for Government Procurement on Initial Procurement and Ordering of Indigenous Innovation Products, is directed at restricting government procurement of indigenous innovation products to Chinese products developed by domestic enterprises or research institutions. While China may maintain these measures until it completes its GPA accession, the United States has raised strong concerns with regard to them. The United States is closely monitoring developments and will continue to work with China and other GPA parties in an effort to ensure that China's accession to the GPA takes place expeditiously and on robust terms.

ELECTRONIC COMMERCE

China has experienced dramatic growth in Internet usage since 1999. According to the 20th Internet survey recently published by the China Internet Network Information Center (CNNIC), the number of Internet users in China reached approximately 298 million at the end of 2008, representing an increase of 42 percent over the previous year. Falling personal computer prices and the arrival of devices tailored for the Chinese market will further expand Internet access.

China has also experienced a dramatic increase in the number of domain names established. By the end of 2007, there were more than nine million domain names registered under ".cn," representing a fivefold increase over the previous year. CNNIC also reported that by the end of 2008, there were more than 100 million blogs in China, representing a dramatically growing source of online interaction. However, despite these developments, CNNIC reported that only 28 percent of surveyed Chinese Internet users frequently use the Internet for online shopping services. China is experiencing the rapid development of online businesses such as search engines, network education, online advertisements, audio-video service, paid electronic mail, short message, online job searches, Internet consulting, electronic trading, and online gaming.

The Chinese government recognizes the potential of electronic commerce to promote exports and increase competitiveness and has made some progress toward establishing a viable commercial environment. However, Chinese ministries have jurisdiction over electronic commerce and impose a range of burdensome restrictions on use of the Internet (*e.g.*, registration requirements for web pages and arbitrary and nontransparent content controls), stifling the free flow of information and the consumer privacy needed for electronic commerce to flourish. Content is still controlled and encryption is also regulated, as discussed more fully above (in the "Online Services" section), and the frequent blocking of websites (even those of a commercial nature) inhibits the predictability and reliability of using electronic networks as a medium of commerce.

A number of technical problems also inhibit the growth of electronic commerce in China. Rates charged by government-approved Internet service providers make Internet access expensive for most Chinese citizens. Slow connection speeds are another problem, although this is changing quickly as broadband connections become more readily available. By the end of 2008, nearly 90 percent of China's Internet users had broadband connections, representing an increase of 14 percentage points over 2006, and China Telecom is now reportedly the world's largest digital subscriber line, or DSL, operator. There are now more than 120 million broadband subscribers in China. At the same time, Internet penetration remains relatively low in China, and there is a large urban/rural divide in penetration rates (the urban penetration rate is six times higher than the rural penetration rate), so there is still significant room for growth.

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

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

ANTICOMPETITIVE PRACTICES

Competition Policy Laws and Regulations

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

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

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

The NPC in August 2007 passed China's first *Antimonopoly Law* (AML), which took effect in August 2008, and China is in the midst of drafting implementing regulations. The law is ambiguous about the ability of China's anti-monopoly enforcement authorities to tackle restraints on trade that are permitted by laws or administrative regulations, which remain common in China. In addition, late in the adoption process, the NPC added new language in Articles IV and VII that potentially can be relied upon to protect state-affiliated enterprises that are determined to be important to the national economy, and to make decisions based on macroeconomic factors (*e.g.*, social and employment goals) other than consumer welfare. Finally, Article XXXI of the AML states that China will establish a review process to review proposed inward investments for national security concerns. Some experts have expressed concern that the law could be used as a tool to target foreign firms and ironically shield local companies from competition. Implementation of the law will be key, and the United States is seeking to work with China, including through the provision of technical assistance, to ensure that the law is implemented in a transparent, market-driven, and nondiscriminatory manner.

Measures Restricting Inward Investment

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

As discussed above in the Investment Barriers section, these policies include the State Council's June 2006 *Opinions on the Revitalization of the Industrial Machinery Manufacturing Industries*, which calls for China to expand the market share of domestic companies in 16 equipment manufacturing industries. In August 2006, the Ministry of Commerce and five other agencies issued revised rules for foreign mergers and acquisitions, which, among other things, establish a vague "national economic security" basis for rejecting proposed transactions as well as an antimonopoly review for foreign transactions. In November 2006, the NDRC issued a Five Year Plan on foreign investment that seeks to restrict foreign acquisitions of leading Chinese enterprises, prevent the emergence of foreign capital monopolies, protect industrial security, and prevent abuse of intellectual property. In December 2006, SASAC published an expansive list of "critical economic sectors" in which China should restrict foreign participation. Finally, the Foreign Investment Catalogue issued in November 2007 suggests China's policies toward inward investment may be more selective, actively targeting higher value added sectors (including high technology research and development, advanced manufacturing, energy efficiency, and modern agriculture and services) rather than basic manufacturing.

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

OTHER BARRIERS

Transparency

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

In accordance with State Council regulations issued in December 2001, which require the publication of new or amended regulations 30 days before their implementation, almost all new or revised laws and regulations have been published (in Chinese) soon after issuance and prior to their effective date, an improvement over pre-WTO accession practice. These laws and regulations have been published in a wide variety of journals and on the Internet.

In late 2002, China designated the *China Foreign Economic and Trade Gazette* as the official journal for publishing trade-related measures. In March 2006, the State Council issued a notice directing all central, provincial, and local government entities to begin sending copies of all of their trade-related measures to MOFCOM for immediate publication in the MOFCOM Gazette. So far, adherence to the State Council's notice is far from complete.

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

At the June 2008 SED meeting, China agreed to publish in advance for public comment, subject to specified exceptions, all trade and economic-related administrative regulations and departmental rules that are proposed for adoption, and provide a public comment period of not less than 30 days from the date of publication. China further agreed to publish such measures for comment in a single location: the Chinese Government Legislative Information Website of the Legislative Affairs Office of the State Council. Since then, the United States has been monitoring the effectiveness of this commitment, and has found that publication of proposed measures has improved, but notes that China has yet to fully implement this commitment and publish all such proposed measures for comment in a single location.

Legal Framework

Laws and Regulations

Laws and regulations in China often contain provisions that are relatively general and ambiguous. While this approach allows the Chinese authorities to apply laws and regulations flexibly, it also results in inconsistency and confusion in application. Companies often have difficulty determining whether their activities contravene a particular law or regulation.

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

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

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

Commercial Dispute Resolution

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

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

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

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

Labor Issues

In recent years, China has expanded the scope of its national labor laws and regulations. Two important new labor laws went into effect in 2008; the *Labor Contract Law*, which clarifies the rights and obligations of workers and employers to promote better labor relations, and the *Labor Dispute Mediation and Arbitration Law*, which improves and streamlines the labor dispute resolution process. Despite legislative changes, China does not adhere to certain internationally recognized labor standards with respect to freedom of association and the right to engage in collective bargaining. There are many reports indicating that China does not effectively enforce its labor laws and regulations concerning issues such as minimum wages, hours of work, occupational safety and health, bans on child labor, and participation in social insurance programs. There are also persistent concerns about the use of forced prison labor.

The Chinese government is slowly developing a national pension system, unemployment insurance, medical insurance, and workplace injury insurance systems that require substantial employer contributions. These systems are still rudimentary and characterized by serious funding shortfalls, in part due to widespread noncompliance among domestic firms. A Chinese government audit report published in November 2006 revealed that more than RMB 7 billion ($875 million) of China's RMB 2 trillion ($250 billion) social security funds had been misappropriated. These insurance programs serve mainly urban residents. Rural residents and migrant workers, who make up the bulk of the work force, enjoy minimal social insurance coverage.

The cost of labor is low but rose steadily in 2008, until the onset of the global financial crisis.. There remains a large pool of surplus rural workers, many of whom seek work in urban areas, but skilled workers are in relatively short supply. Restrictions on labor mobility distort labor costs. China is gradually easing restrictions under the country's household registration system, which has traditionally limited the movement of workers within the country, in part due to the recognition that labor mobility is essential to the continued growth of the economy. Reportedly, wages for many migrant workers, especially construction workers, are often not paid on a monthly basis as required by China's national labor laws and regulations. Rising unemployment following the onset of the global economic crisis will likely lead to a leveling off of wages, and an increase in wage arrearages. The government response has been to stabilize employment by adopting policies to reduce financial burdens on employers and provide job placement and training services to laid-off workers.

Corruption

Many people expected that China's entry into the WTO, which mandated a significant reduction in tariffs, would in turn reduce incentives for smuggling-related corruption. Nevertheless, while WTO membership has increased China's exposure to international best practices and resulted in some overall improvements in transparency, corruption remains endemic. Chinese officials themselves admit that corruption is one of the most serious problems the country faces, and China's new leadership has called for an acceleration of the country's anticorruption drive with a focus on closer monitoring of provincial-level officials. According to Chinese state media sources, China launched an anticorruption campaign in 2006 targeting Communist Party of China officials and so far has punished more than 97,000 party officials.

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

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

Land Issues

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

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

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

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

Given the scarcity of land resources in China, the price of land-use rights and land allocation are important considerations from both a market access and competition standpoint and from the perspective of their effect on production and trade. It is therefore of some concern to the United States that the PRC government is recentralizing control over land administration, with the objective, in part, to ensure that land use-rights are allocated in accordance with a compulsory national land-use plan and state industrial development policies.

COLOMBIA

TRADE SUMMARY

The U.S. goods trade deficit with Colombia was $1.7 billion in 2008, an increase of $778 million from $876 million in 2007. U.S. goods exports in 2008 were $11.4 billion, up 33.7 percent from the previous year. Corresponding U.S. imports from Colombia were $13.1 billion, up 38.8 percent. Colombia is currently the 26th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Colombia was $5.6 billion in 2007 (latest data available), up from $4.6 billion in 2006. U.S. FDI in Colombia is concentrated largely in the mining and manufacturing sectors.

TRADE PROMOTION AGREEMENT

The United States-Colombia Trade Promotion Agreement (CTPA) was signed on November 22, 2006. Colombia's Congress approved the CTPA and a protocol of amendment in 2007. Colombia's Constitutional Court completed its review in July, 2008 and concluded that the Agreement conforms to Colombia's Constitution. In April 2008, the United States submitted to the U.S. Congress legislation that would approve the CTPA. The U.S. Congress did not act on the legislation primarily due to concerns regarding violence against labor unionists in Colombia. The Obama Administration has indicated that it will promptly, but responsibly, address the issues surrounding the CTPA.

The CTPA is a comprehensive free trade agreement. When the CTPA enters into force, Colombia will immediately eliminate most of its tariffs on U.S. exports, with all remaining tariffs phased out over defined time periods. The CTPA also includes important disciplines relating to: customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, and labor and environmental protection. Under the CTPA, U.S. firms will have better access to Colombia's services sector than other WTO Members have under the GATS. All service sectors are covered under the CTPA except where Colombia has made specific exceptions.

IMPORT POLICIES

Tariffs

Since the 1990s, Colombia has reduced customs duties and eliminated many nontariff barriers. Most duties have been consolidated into three tariff levels: 0 percent to 5 percent on capital goods, industrial goods, and raw materials not produced in Colombia; 10 percent on manufactured goods, with some exceptions; and 15 percent to 20 percent on consumer and "sensitive" goods. Exceptions include automobiles, which are subject to a 35 percent tariff, beef and rice subject to an 80 percent duty, milk products subject to a 33 percent tariff and other agricultural products, which fall under a variable "price band" import duty system. The price band system includes 14 product groups and covers 154 tariff lines, which, depending on world commodity prices, can result in duties exceeding 100 percent for important U.S. exports to Colombia, including corn, wheat, rice, soybeans, pork, poultry parts, cheeses, and powdered milk. While milk powder, rice, and white corn are subject to price bands, the mechanism for these products has been suspended and a fixed duty currently is being applied. The price band system also negatively affects U.S. access for products such as dry pet food, which contains corn. By contrast, processed food imports from Chile and countries bound by commitments under the Andean Community (Peru, Ecuador, and Bolivia) enter duty free.

When the CTPA enters into force, Colombia will immediately eliminate its price band system on trade with the United States. This, coupled with a preference clause included in the CTPA, will help U.S. exports compete more effectively in Colombia's market. Over half of the value of current U.S. agricultural exports to Colombia will enter duty free upon entry into force of the CTPA, including high-quality beef, a variety of poultry products, soybeans and soybean meal, cotton, wheat, whey, and most horticultural and processed food products. U.S. agricultural exporters also will benefit from duty free access through tariff-rate quotas (TRQs) on corn, rice, poultry parts, and dairy products.

Over 80 percent of U.S. exports of consumer and industrial products to Colombia will become duty free immediately upon implementation of the CTPA, with remaining tariffs phased out over 10 years. Colombia agreed to join the WTO Information Technology Agreement, removing tariffs and addressing nontariff barriers to information technology products.

Nontariff Measures

Nontariff barriers include discretionary import licensing, which has been used to restrict imports of milk powder and poultry parts. The CTPA contains provisions that should address this issue. The Colombian government maintains tariff-rate quotas for rice, soybeans, yellow corn, white corn, and cotton and requires that importers purchase local production in order to import under the tariff-rate quota. Under the CTPA, the government of Colombia committed to ensuring that access to a CTPA TRQ in-quota quantity will not be conditioned on the purchase of domestic production.

Colombia does not permit the importation of used clothing. Importers of used and remanufactured goods may apply for licenses to bring products into Colombia under limited circumstances. Industry reports that, in practice, approval is not granted, resulting in the effective prohibition of these imports. Under the CTPA, Colombia affirmed that it would not adopt or maintain prohibitions or restrictions on trade in remanufactured goods, and that certain existing prohibitions on trade in used goods would not apply to remanufactured goods. This will provide significant new export and investment opportunities for firms involved in remanufactured products such as machinery, computers, cellular phones, and other devices.

Colombia assesses a consumption tax on alcoholic beverages through a system of specific rates per degree (percentage point) of alcohol strength. Arbitrary breakpoints have the effect of applying a lower tax rate to domestically produced spirits and therefore create a barrier for imported distilled spirits. Under the CTPA, Colombia committed to eliminate the breakpoints for imports of distilled spirits within four years of entry into force of the agreement. Additionally, Colombia committed to eliminate practices that have restricted the ability of U.S. distilled spirits companies to conduct business in Colombia.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Sanitary and Phytosanitary (SPS) Measures

In 2006, the United States and Colombia formalized their recognition of the equivalence of the U.S. meat and poultry inspection systems, and reached agreement on the specific contents of U.S. sanitary certificates accompanying U.S. poultry and poultry products exported to Colombia. However, the Ministry of Agriculture through its sanitary and phytosanitary regulatory agency, the Colombian Agricultural Institute (ICA), has imposed separate import requirements that do not follow the World Organization for Animal Health's (OIE) recommendations and have negatively impacted U.S. exports of cooked poultry meat, poultry meal, and egg products. In addition, since August 2007, the National Institute for Surveillance of Food and Medicines (INVIMA) has been applying a zero tolerance policy for salmonella on meat imports, which has led to the rejection of several U.S. mechanically deboned poultry meat shipments.

Colombia requires companies to list the ingredients in pet food, as well as the percentage of those ingredients contained in the product, which U.S. companies consider to be proprietary information. In addition, no pet food may contain any bovine ingredients other than materials legally imported from a country recognized as free of Bovine Spongiform Encephalopathy (BSE). U.S. officials continue to engage Colombian authorities in pursuit of science-based import requirements with respect to such trade.

Colombia maintains a ban on the importation of live cattle from the United States due to BSE concerns. Colombia insists on addressing this issue through the Andean Community's SPS regulatory process. The U.S. Government is working to resolve this issue and secure a lifting of the ban.

GOVERNMENT PROCUREMENT

Under the CTPA, Colombia agreed to provide U.S. goods, services, and suppliers with national treatment. U.S. firms will have access to procurement by Colombia's ministries and departments, legislature, courts, and first-tier sub-central entities, as well as a number of Colombia's government enterprises, including its oil company. Once the CTPA enters into force, Colombia will not be able to apply Law 816 of 2003, which mandates preferential treatment to bids that provide Colombian goods or services, to procurement covered by the CTPA. Colombia is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

In 2007, the Colombian government reactivated a dormant program, which offers tax rebate certificates (known as "CERTs"), to exporters in certain sectors. The value of the CERT is worth 4 percent of total exports of designated goods. In an effort to ease the impact of an appreciating peso, the Colombian government issued CERTS in May and August of 2008 to exporters of textiles, clothing, shoes, leather, plastics, food, graphic arts, auto parts, furniture, and jewelry.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Colombian agencies that administer IPR – the Superintendence of Industry and Commerce (SIC), the Colombian Agricultural Institute (ICA), the Ministry of Social Protection, and the Ministry of Justice – are historically understaffed and underfunded. Extensive backlogs exist in the granting of patents, copyrights, and trademarks. The patent regime in Colombia provides for a 20 year protection period for patents and 10 year term for industrial designs; protection is also provided for new plant varieties. U.S. pharmaceutical and biotechnology companies are concerned with the limited scope of patentable subject matter, specifically with respect to improvements.

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

Enforcement

Enforcement of IPR has been slow and weak. Certain infractions are considered criminal offenses and perpetrators can be sentenced to prison and/or fined, but judges rarely impose those penalties. The Colombian government has made a concerted effort in recent years to enforce its intellectual property laws. Coordination between the Colombian government and the private sector is good, resulting in greater enforcement activities, such as raids and arrests. Despite these improvements, intellectual property industry representatives report that the level of intellectual property enforcement is still a major concern.

SERVICES BARRIERS

Implementation of the CTPA will require Colombia to accord substantial market access across its entire services regime, subject to a limited number of exceptions. Some restrictions, such as economic needs tests and residency requirements, still remain in sectors such as accounting, tourism, legal services, insurance, distribution services, advertising, and data processing.

Legal Services

The provision of legal services is limited to law firms licensed under Colombian law. Foreign law firms can operate in Colombia only by forming a joint venture with a Colombian law firm and operating under the licenses of the Colombian lawyers in the firm.

Financial Services

Colombia permits 100 percent foreign ownership of insurance firm subsidiaries. It does not, however, allow foreign insurance companies to establish local branch offices. Insurance companies must maintain a commercial presence to sell policies other than those for international travel or reinsurance. Colombia prohibits the sale of maritime insurance by foreign companies.

Colombian legislation permits 100 percent foreign ownership in financial institutions. Foreign banks must establish a subsidiary to operate in Colombia.

When the CTPA enters into force, Colombia will phase in further liberalization in financial services, such as allowing branching by banks and insurance companies and allowing the cross-border supply of international maritime shipping and commercial aviation insurance within four years of entry into force of the Agreement. Under the Agreement, mutual funds and pension funds will be allowed to seek advice from portfolio managers in the United States.

Transportation

Transborder transportation services are restricted in Colombia. Land cargo transportation must be provided by Colombian citizens or legal residents with commercial presence in the country and licensed by the Ministry of Transportation. Colombia's law permits international companies to provide cabotage services (*i.e.*, transport between two points within Colombian territory) "only when there is no national capacity to provide the service." Under the terms of the CTPA, Colombia committed to allow 100 percent foreign ownership of land cargo transportation enterprises in Colombia.

Telecommunications

Colombia currently permits 100 percent foreign ownership of telecommunications providers, and U.S. companies can obtain the right to interconnect with Colombian dominant suppliers' fixed networks at nondiscriminatory and cost-based rates. When the CTPA enters into force, U.S. firms will be able to lease lines from Colombian telecommunications networks on nondiscriminatory terms and re-sell most telecommunications services of Colombian suppliers to build a customer base.

One trade association has complained that the creation of a "convergent license" category has resulted in the imposition of licensing conditions that are burdensome for some carriers (particularly smaller carriers) because they require accounting separation, the posting of a performance bond, and – in the case of long distance service suppliers – a modification of the company's legal entity.

INVESTMENT BARRIERS

Foreign investment in Colombia is granted national treatment, and 100 percent foreign ownership is permitted in most sectors. Exceptions exist for national security, broadcasting, and the disposal of hazardous waste.

In 2008, Colombia abolished deposit requirements of up to 50 percent on foreign portfolio investment. The requirements had been imposed in 2007 in an effort to stem the appreciation of the Colombian peso.

Colombia agreed to strong protections for U.S. investors in the CTPA. When it enters into force, the Agreement will establish a stable legal framework for U.S. investors operating in Colombia. All forms of investment will be protected under the CTPA. U.S. investors will enjoy in almost all circumstances the right to establish, acquire, and operate investments in Colombia on an equal footing with local investors. The CTPA's investor protections will also be backed by a transparent, binding investor-state arbitration mechanism.

COSTA RICA

TRADE SUMMARY

The U.S. goods trade surplus with Costa Rica was $1.7 billion in 2008, an increase of $1.1 billion from $639 million in 2007. U.S. goods exports in 2008 were $5.7 billion, up 24.0 percent. Corresponding U.S. imports from Costa Rica were $3.9 billion, down 0.1 percent. Costa Rica is currently the 38th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Costa Rica was $3.5 billion in 2007 (latest data available), up from $3.3 billion in 2006. U.S. FDI in Costa Rica is concentrated largely in the manufacturing and wholesale trade sectors.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic (the Parties). Under the Agreement, the Parties are significantly liberalizing trade in goods and services. The CAFTA-DR also includes important disciplines relating to: customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environmental protection.

The Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006. The CAFTA-DR entered into force for the Dominican Republic on March 1, 2007, and for Costa Rica on January 1, 2009.

In 2008, the Parties implemented amendments to several textile-related provisions of the CAFTA-DR, including, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The Parties also implemented a reciprocal textile inputs sourcing rule with Mexico. Under this rule, Mexico provides duty-free treatment on certain apparel goods produced in a Central American country or the Dominican Republic with U.S. inputs, and the United States will provide reciprocal duty-free treatment under the CAFTA-DR on certain apparel goods produced in a Central American country or the Dominican Republic with Mexican inputs. These changes will further strengthen and integrate regional textile and apparel manufacturing and create new economic opportunities in the United States and the region.

Tariffs

As a member of the Central American Common Market, Costa Rica agreed in 1995 to harmonize its external tariff on most items at a maximum of 15 percent with some exceptions.

Under the CAFTA-DR, about 80 percent of U.S. industrial and consumer goods now enter Costa Rica duty free, with the remaining tariffs on these goods phased out by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter Costa Rica duty-free and quota-free, creating economic opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter Costa Rica duty free. Costa Rica will eliminate its remaining tariffs on virtually all agricultural products by 2020 (2022 for chicken leg quarters and 2025 for rice and dairy products). For certain agricultural products, tariff-rate quotas (TRQs) will permit some immediate duty-free access for specified quantities during the tariff phase out period, with the duty-free amount expanding during that period. Costa Rica will liberalize trade in fresh potatoes and onions through expansion of a TRQ, rather than by tariff reductions.

Nontariff Measures

Under the CAFTA-DR, Costa Rica committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. Costa Rica also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and all the CAFTA-DR countries agreed to share information to combat illegal transshipment of goods.

The establishment of the *Tecnología Informática para el Control Aduanero* (TICA) customs control system has significantly improved a traditionally complex and bureaucratic import process over the last year. Under the TICA system, the Costa Rican customs authority has changed its focus from the verification of goods to the verification of processes and data. Under the TICA system, customs officials have up to four years to review the accuracy of import declarations, which allows customs to facilitate the free flow of goods while gathering necessary documentation. The Costa Rican customs authority is now implementing the TICA system to process export documents as well.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Under current regulations, the Ministry of Health must test and register domestically produced or imported pharmaceuticals, feeds, chemicals, and cosmetics before they can be sold in Costa Rica. As implemented, this system appears to be enforced more rigorously on imported goods than on domestically produced goods. Regulations exist for imported goods, but older regulations do not always reflect current accepted international standards, including safety practices. In general, the newer the regulation, the more likely it reflects current international standards.

Costa Rica and the other four Central American Parties to the CAFTA-DR are in the process of developing common standards for the importation of several products, including distilled spirits, which may facilitate trade.

Sanitary and Phytosanitary Measures

Costa Rica also requires that all imported food products be certified as safe and allowed for sale in the country of origin in order to be registered. Certificates are not available for all U.S. products, and traders have expressed concern regarding the length of time it takes to register a product under this process, which can take months. The delays associated with fulfillment of these import requirements are burdensome and costly to U.S. exporters.

The Ministry of Agriculture and Livestock enforces certain sanitary and phytosanitary (SPS) measures that appear to be inconsistent with international standards, and the differences do not appear to be based on science (*e.g.*, zero tolerance for salmonella on raw meat and poultry products).

Costa Rica ratified the Cartagena Protocol on Biosafety in November 2006, but additional regulations are needed for Costa Rica to implement the Protocol. To date, imports of U.S. products have not been affected and continue to be imported under previous conditions (*i.e.*, only a phytosanitary import certificate is required).

Costa Rica has recognized the equivalence of the U.S. food safety and inspection system for beef, pork, and poultry, thereby eliminating the need for plant-by-plant inspections of U.S. producers.

In August 2008, Costa Rica fully opened its market to all U.S. beef and beef products in line with the World Organization for Animal Health (OIE) guidelines for "controlled risk" countries for Bovine Spongiform Encephalopathy (BSE). The OIE categorized the United States as "controlled risk" for BSE in May 2007. Prior to August 2008, Costa Rica prohibited imports of U.S. bone-in beef from cattle of any age and some offals and variety meats. Costa Rica based its import prohibition on the 2003 discovery of a BSE positive animal in the United States.

In 2008, Costa Rica and the other four Central American Parties to the CAFTA-DR notified to the WTO a set of microbiological criteria for all raw and processed food products imported into any of these countries. The United States has some concerns with these criteria and in May 2008 submitted comments to the five countries. The Central American countries are currently evaluating possible amendments to the proposed criteria.

The U.S. Food and Drug Administration plans to open an office in San Jose, Costa Rica in 2009 to help improve bilateral and regional cooperation on food safety and SPS issues.

GOVERNMENT PROCUREMENT

In recent years, a growing number of U.S. exporters and investors have reported unsatisfactory experiences participating in Costa Rican government procurements. For example, the Costa Rican government, through its Comptroller General, has occasionally annulled contract awards and required government agencies to rebid tenders to the advantage of large state-owned enterprises. The Costa Rican government has also substantially modified technical specifications midway through the procurement process. The bidders in these procurements were forced to bear the costs of revising their tenders to meet the modified specifications.

The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on procurements of most Costa Rican government entities, including key ministries and state-owned enterprises, on the same basis as Costa Rican suppliers. The anticorruption provisions in the Agreement require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties.

Costa Rica is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Tax holidays are available for investors in free trade zones, unless tax credits are available in an investor's home country for taxes paid in Costa Rica.

Under the CAFTA-DR, Costa Rica may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, under the CAFTA-DR, Costa Rica is permitted to maintain such measures through 2009, provided that it maintains the measures in accordance with its obligations under the WTO Agreement on Subsidies and Countervailing Measures.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In 2008, the United States continued to have concerns with Costa Rica's inadequate IPR enforcement. Although piracy of satellite television transmissions by the domestic cable television industry has been curtailed, U.S. industry continues to express concern that some apartment buildings and hotels continue to engage in satellite signal piracy. Unauthorized sound recordings, videos, optical discs, and computer software are also widespread. To date, initiatives including the formation of an intergovernmental IPR commission and the training of judges and prosecutors on IPR laws, have not produced significant improvements in the prosecution of IPR crimes. Deterrence is further undermined as IPR violators are not aggressively prosecuted by the Attorney General of Costa Rica, a fact that is frequently attributed to scarce resources and the higher priority that the Attorney General appears to have placed on prosecuting other types of criminal behavior.

Notwithstanding these and other concerns about IPR protection and enforcement, Costa Rica has taken significant steps to improve the protection and enforcement of IPR. Costa Rica strengthened its legal framework for the protection of IPR by substantially modifying its IPR laws and regulations in preparation for the entry into force of the CAFTA-DR. The CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of IPR, which are consistent with U.S. and international standards, as well as with emerging international standards, of protection and enforcement of IPR. Such improvements include state-of-the-art protections for patents, trademarks, undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, and digital copyrighted products such as software, music, text, and videos; and further deterrence of piracy and counterfeiting.

In late 2008, Costa Rica established a special prosecutor's office for IPR violations within the Office of the Attorney General. In addition, the government increased the budgets of the patent and trademark office and the copyright office. The number of trademark examiners has roughly tripled from 2006, and the number of trademarks registered has increased markedly. Patent registration continues to be problematic, as a program to contract-out technical patent reviews with two of Costa Rica's educational institutions has met with mixed success. However, a cooperative effort with the Pharmacists' Association has allowed many pharmaceutical patents to be registered, and five positions for in-house patent examiners with industry-competitive salaries have been opened and should soon be filled. Over three times the number of registered patents were issued in 2008 than in any of the previous three years. The copyright office has also tripled in personnel from 2006, and equipment has been upgraded.

SERVICES BARRIERS

Under the CAFTA-DR, Costa Rica granted U.S. services suppliers substantial access to its services market, including financial services. Costa Rica committed to provide improved access in sectors like express delivery and to grant new access in certain professional services that previously had been reserved exclusively to Costa Rican nationals. Costa Rica also agreed that portfolio managers in the United States would be able to provide portfolio management services to both mutual funds and pension funds in Costa Rica.

In 2008, Costa Rica made significant changes in its legal and regulatory framework intended to implement its CAFTA-DR commitments on insurance and telecommunications.

In particular, under the CAFTA-DR, Costa Rica has opened its insurance market, which previously was reserved for a state monopoly. U.S. insurance suppliers are now permitted to provide most forms of insurance, with the remainder of the market to be opened by 2011. U.S. insurance suppliers are able to operate as a branch or a subsidiary.

Under the CAFTA-DR, Costa Rica has also opened important segments of its telecommunications market, including private network services, Internet services, and mobile wireless services. Previously, Costa Rica's telecommunications market also was reserved for a state monopoly.

INVESTMENT BARRIERS

The CAFTA-DR establishes a more secure and predictable legal framework for U.S. investors operating in Costa Rica. Under the CAFTA-DR, all forms of investment are protected including enterprises, debt, concessions, contracts, and intellectual property. U.S. investors enjoy, in almost all circumstances, the right to establish, acquire, and operate investments in Costa Rica on an equal footing with local investors. Among the rights afforded to U.S. investors are due process protection and the right to receive fair market value for property in the event of an expropriation. Investor rights are protected under the CAFTA-DR through an impartial procedure for dispute settlement that is fully transparent and open to the public. Submissions to dispute panels and dispute panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.

The slow pace of Costa Rica's judicial system has been cited as a barrier by many U.S. investors. Another concern for U.S. investors is the frequent recourse to legal challenges before Costa Rica's constitutional court to review whether government authorities have acted illegally or to review the constitutionality of legislation or regulations. Some U.S. investors believe that such challenges have been used at times to thwart investments or hinder the quick resolution of disputes.

Several U.S. investors have complained of failures on the part of Costa Rican government entities to fulfill contractual commitments. For example, a United States-led airport management consortium and the lender of record maintain that the terms of its management/development agreement for San Jose's international airport have been repeatedly altered by the Costa Rican government. Unable to reach a resolution, the consortium and the government of Costa Rica agreed in 2008 to terminate the contract but also to extend the term of the contract until another entity is awarded the management/development rights for the airport. In late 2008, a U.S. company in conjunction with other international partners won the bid to negotiate with the government of Costa Rica. The Costa Rican government is close to concluding an agreement that would award the new consortium the management/development rights for San Jose's international airport. However, a decision by the government's rate-setting regulatory body (*i.e.*, lowering airport user fees) jeopardized the agreement until the same body reversed its position, resurrecting the agreement. Such action highlights the regulatory risk and uncertainty often associated with investment in Costa Rica.

ELECTRONIC COMMERCE

The CAFTA-DR includes provisions on electronic commerce that reflect its importance to global trade. Under the CAFTA-DR, Costa Rica has committed to provide nondiscriminatory treatment of digital products, and not to impose customs duties on digital products transmitted electronically.

OTHER BARRIERS

Under the CAFTA-DR, Costa Rica agreed to modify its dealer protection regime to provide more freedom to negotiate the terms of commercial relations and to encourage the use of arbitration to resolve disputes between parties to dealer contracts. In December 2007, Costa Rica enacted legislation intended to implement this commitment.

COTE D'IVOIRE

TRADE SUMMARY

The U.S. goods trade deficit with Cote d'Ivoire was $838 million in 2008, an increase of $399 million from $439 million in 2007. U.S. goods exports in 2008 were $254 million, up 57.2 percent from the previous year. Corresponding U.S. imports from Cote d'Ivoire were $1.1 billion, up 81.9 percent. Cote d'Ivoire is currently the 118th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Cote d'Ivoire was $180 million in 2007 (latest data available), down from $257 million in 2006.

IMPORT POLICIES

Cote d'Ivoire is a Member of the WTO, the West African Economic and Monetary Union (UEMOA), and the Economic Community of West African States (ECOWAS). As a member of the UEMOA Customs Union, Cote d'Ivoire does not charge tariffs on imports from the other seven UEMOA member countries. Imports from all other countries are subject to tariffs based on the UEMOA Common External Tariff (CET) schedule of 5 percent for raw materials and inputs for local manufacture, 10 percent for semi-finished goods, and 20 percent for finished products. For 2007, the simple average tariff for industrial goods was 11.6 percent.

A 1 percent charge is levied on the cost, insurance, and freight (CIF) value of imports except those destined for re-export, transit, or donations for humanitarian purposes under international agreements. There is also a 1 percent community levy on the CIF value of imports that goes to a compensation fund to assist UEMOA members, such as landlocked Niger, Burkina Faso, and Mali, which suffered from revenue losses following the implementation of the CET. There are special taxes on imports of fish (between 5 percent and 20 percent), rice (between 5 percent and 10 percent based on category), alcohol (45 percent), tobacco (between 5 percent and 20 percent), cigarettes (between 30 percent and 35 percent), certain textile products (20 percent), and petroleum products (between 5 percent and 20 percent). These special taxes are designed to protect national industries. The Customs Office collects a value added tax (VAT) of 18 percent on all imports. This tax computation is calculated on the CIF value added to the duty and any other fees. Cote d'Ivoire continues to apply minimum import prices (MIPs) to imports of certain products such as cooking oil, cigarettes, sugar, used clothes, concentrated tomato paste, broken rice, matches, copybook, tissues, polypropylene sacks, alcohol, and milk, although the WTO waiver allowing the application of MIPs on some products has long since expired.

There are no quotas on merchandise imports, although the following items are subject to import prohibitions, restrictions or prior authorization: petroleum products, animal products, live plants, seeds, arms and munitions, plastic bags, distilling equipment, pornography, saccharin, narcotics, explosives, illicit drugs, and toxic waste. Textile imports are subject to some authorization requirements by the Department of External Trade (under the Ministry of Commerce), but are generally open.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

All items imported into Cote d'Ivoire must have a certificate of compliance with relevant requirements to clear customs. The government has contracted two European companies to carry out all qualitative and quantitative verifications of goods imported into Cote d'Ivoire with a value exceeding CFA 1.5 million (approximately $3,000). All merchandise packaging must be clearly labeled as to its origin.

Manufactured food products must be labeled in French and have an expiration date. Standards generally follow French or European norms.

GOVERNMENT PROCUREMENT

Cote d'Ivoire has a generally decentralized government procurement system, with most ministries undertaking their own procurements. The *Bureau National d'Etudes Techniques et de Developpement*, the government's technical and investment planning agency and think tank, sometimes serves as an executing agency representing ministries in major projects that are financed by international institutions. The government publishes notices in the local press and sometimes publishes tenders in international magazines and newspapers. On occasion, there is a charge for the bidding documents.

The government created the "*Direction des Marches Publics,*" a centralized office of public bids in the Ministry of Finance to help ensure compliance with international bidding practices. While the procurement process is open, some well-entrenched foreign companies, through their relations with government officials, may retain a preferred position in securing bid awards. Many firms continue to point to corruption as an obstacle that affects procurement decisions. Cote d'Ivoire is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Cote d'Ivoire is a party to several international and regional intellectual property conventions. However, government enforcement of IPR continues to be a serious challenge.

The government's Office of Industrial Property (OIPI) is charged with ensuring the protection of patents, trademarks, industrial designs, and commercial names. The office faces an array of challenges, including inadequate resources, lack of political will, and the distraction of the ongoing political crisis. As a result, enforcement of IPR is largely ineffective. There are reports that foreign companies, especially from East and South Asia, flood the Ivorian market with all types of counterfeit goods. In addition, lack of customs checks in rebel-controlled western and northern border areas makes law enforcement action against trade in counterfeit textiles, pharmaceuticals, and vehicle parts difficult. In 2007, the Ministry of Industry, through the OIPI, prepared a draft law on protection of IPR at the border to provide legal provisions for addressing counterfeiting, but the law is still being reviewed within the Ivorian government. Cote d'Ivoire's law on mandatory registration of commercial names, which came into effect in February 2006, addresses concerns regarding commercial name infringement. Protection of authorship, literary, and artistic works are regulated by the Ivorian Office of Authors' Rights (BURIDA). BURIDA established a sticker system in January 2004 to protect audio, video, literary, and artistic property rights in music and computer programs. BURIDA's operations have been hampered by a long-running dispute between management and board members over policy and leadership issues, specifically with regard to who should direct the agency. To resolve the crisis at BURIDA, in March 2006, the Minister of Culture invoked a ministerial by-law to establish a temporary administration and a commission to study and propose a comprehensive reform of BURIDA. Since its establishment, the new administration has boosted the fight against audiovisual piracy including well-publicized raids against retail outlets and street vendors of pirate compact discs and digital video discs and legal proceedings against persons involved in copying of audiovisual materials. The agency, in conjunction with lawyers and magistrates, does help to promote IPR enforcement.

SERVICES BARRIERS

Prior approval is required for foreign investment in the health sector, travel agencies, and law and accounting firms. Majority foreign ownership of companies in these sectors is not permitted, though foreign companies currently operate in all these sectors in partnership with local firms and with government permission. While one U.S. bank is currently operating in Cote d'Ivoire, American insurance and reinsurance companies are not present in the Ivorian market.

Cote d'Ivoire does not formally require majority Ivorian ownership in most sectors other than those noted above, but it does maintain nationality-based restrictions in some professional services. For example, there are restrictions on the registration of foreign nationals by the accountants association unless they have already been practicing in Cote d'Ivoire for several years under the license of an Ivorian practitioner. In the case of legal services, Ivorian nationality is not required for legal advice, but is required for admittance to the bar and practicing law in court.

INVESTMENT BARRIERS

The government encourages foreign investment, but political instability since the 2002 conflict between government and rebel forces has substantially undermined investor confidence. Political violence and deterioration of the investment climate have also hampered privatization efforts, which have not moved forward since 2004. The Ouagadougou Political Agreement, signed in March 2007, lays out a roadmap to elections which could help resolve the political crisis and improve the investment climate.

The Ivorian investment code provides tax incentives for investments larger than $1 million, as well as land concessions for projects. However, the clearance procedure for planned investments that wish to take advantage of tax incentives is time-consuming and confusing. The Center for the Promotion of Investment in Cote d'Ivoire was established to act as a one-stop shop for investors to help alleviate this problem. Nevertheless, even when companies have complied fully with relevant requirements, tax exemptions are sometimes denied with little explanation, giving rise to accusations of favoritism and corruption.

ELECTRONIC COMMERCE

Electronic commerce is in its very early stages in Cote d'Ivoire. There are a number of barriers to growth, including the longstanding custom of paying with cash and the absence of widespread issuance and use of credit cards. Despite these barriers, individuals and businesses have begun experimenting with electronic commerce, and interest in the medium continues to gain ground.

OTHER BARRIERS

Many U.S. companies view corruption as a major obstacle to investment in Cote d'Ivoire. Corruption has the greatest impact on judicial proceedings, contract awards, customs, and tax issues. It is common for judges who are open to financial influence to distort the merits of a case. Corruption and the recent political crisis have affected the Ivorian government's ability to attract and retain foreign investment. Some U.S. investors have raised specific concerns about the rule of law and the government's ability to provide equal protection under the law.

To address concerns about corruption in the energy sector, the Ivorian Finance and Energy Ministries established the National Committee for the implementation of the Extractive Industries Transparency Initiative (EITI) in February 2008. The EITI is composed of members of the public and private sectors and civil society. In June 2008, the Ivorian government launched an investigation into corruption in the cocoa sector that led to the arrest of 23 cocoa sector officials. The investigating judge interviewed five ministers in the case: the Minister of Agriculture, the Minister of Animal Husbandry (formerly Minister of Agriculture), the Minister of National Reconciliation (formerly Minister of Agriculture), the Minister of Economy and Finance, and the Minister of Planning and Development (formerly Minister of Economy and Finance).

Ivorian law favors the employment of Ivorians over foreigners in private enterprises. Until recently, in order to reside in Cote d'Ivoire for more than three months, foreigners were required to have a "*carte de sejour*" that cost the equivalent of a month's salary each year. Representatives of UEMOA harshly criticized the requirement and claimed that it violated Article 91 of the UEMOA Treaty, which permits the free movement of persons for employment within the union. In November 2007, President Gbagbo signed a decree suspending the *carte de sejour* requirement for ECOWAS citizens. It does not appear that elimination of the *carte de sejour* requirement has had a significant effect on employment opportunities in Cote d'Ivoire.

DOMINICAN REPUBLIC

TRADE SUMMARY

The U.S. goods trade surplus with the Dominican Republic was $2.6 billion in 2008, an increase of $755 million from $1.9 billion in 2007. U.S. goods exports in 2008 were $6.6 billion, up 8.5 percent from the previous year. Corresponding U.S. imports from the Dominican Republic were $4.0 billion, down 5.7 percent. The Dominican Republic is currently the 33rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in the Dominican Republic was $933 million in 2007 (latest data available), up from $907 million in 2006. U.S. FDI in the Dominican Republic is concentrated largely in the manufacturing and wholesale trade sectors.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic (the Parties). Under the Agreement, the Parties are significantly liberalizing trade in goods and services. The CAFTA-DR also includes important disciplines relating to: customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environmental protection.

The Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006. The CAFTA-DR entered into force for the Dominican Republic on March 1, 2007, and for Costa Rica on January 1, 2009.

In 2008, the Parties implemented amendments to several textile-related provisions of the CAFTA-DR, including, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The Parties also implemented a reciprocal textile inputs sourcing rule with Mexico. Under this rule, Mexico provides duty-free treatment on certain apparel goods produced in a Central American country or the Dominican Republic with U.S. inputs, and the United States provides reciprocal duty-free treatment under the CAFTA-DR on certain apparel goods produced in a Central American country or the Dominican Republic with Mexican inputs. These changes will further strengthen and integrate regional textile and apparel manufacturing and create new economic opportunities in the United States and the region.

Tariffs

Under the CAFTA-DR, about 80 percent of U.S. industrial and consumer goods now enter the Dominican Republic duty-free, with the remaining tariffs phased out by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter the Dominican Republic duty-free and quota-free, creating economic opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

Under the CAFTA-DR, more than half of U.S. agricultural exports enter the Dominican Republic duty-free. The Dominican Republic will eliminate its remaining tariffs on nearly all agricultural goods by

2020. For certain agricultural products, tariff-rate quotas (TRQs) will permit some immediate duty-free access for specified quantities during the tariff phase out period, with the duty-free amount expanding during that period.

Nontariff Measures

The Dominican Republic's customs policies and procedures frequently provoke complaints by businesses, and arbitrary clearance requirements sometimes delay the importation of merchandise for lengthy periods of time. On July 1, 2001, the Dominican Republic agreed to apply the World Trade Organization (WTO) Agreement on Customs Valuation (CVA), whereby goods imported from WTO Members are assessed duties based on the transaction value, unless use of another valuation method specified in the CVA is necessary. The Dominican Republic requested and received a waiver from the WTO to exclude 31 items from application of the CVA. Duties on the excluded products are assessed on the basis of a minimum "reference value" assigned by the Dominican customs authority. However, U.S. exporters report that Dominican Customs has often used the list of reference values for products other than those covered by the WTO waiver.

On July 11, 2006, the Dominican customs authority announced that it would make adjustments to reference values due to high levels of undervaluation by businesses. Since that time Dominican importers and associations have complained to the U.S. Embassy that the Dominican customs authority has increased reference values for all products entering the country and refuses to accept an importer's commercial invoice as proof of price paid and thus dutiable value. The United States has raised this issue with the Dominican customs authority each time it has been reported to the U.S. Embassy.

The 17 percent tax on the first *matricula* (registration document) for all vehicles, which was set by the government in 2006, remains in effect.

Under the CAFTA-DR, the Dominican Republic committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. The Dominican Republic also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and all the CAFTA-DR countries agreed to share information to combat illegal transshipment of goods. On October 31, 2005, the United States and the Dominican Republic signed a Customs Mutual Assistance Agreement that allows customs officials to exchange information, intelligence, and documents designed to help prevent customs offenses. The agreement provides a basis for cooperation and investigation in the areas of trade fraud, money laundering, smuggling, export controls, and related security. The United States donated nonintrusive (X-ray) verification equipment that has upgraded and expedited the verification process. The Dominican customs authority is still in the process of expanding the project by either purchasing or leasing additional equipment, as well as through technical assistance from Korea.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Sanitary and Phytosanitary Measures

Sanitary permits have been used in the Dominican Republic as import licenses to control import levels of selected commodities and other products. The lengthy and unpredictable approval process for sanitary permits for shipments of U.S. meat and dairy products has been a serious problem. In connection with the implementation of the CAFTA-DR, the Dominican Republic issued regulations that would discontinue this practice. However, there are complaints from some U.S. companies that this practice continues to be a problem. U.S. officials have raised this issue with Dominican Republic authorities and will continue to monitor it closely.

In addition, the Ministry of Agriculture and Livestock enforces sanitary measures that appear to be inconsistent with international standards and the differences do not appear to be based on science (*e.g.*, zero tolerance for salmonella on raw meat and poultry products and for *Tilletia* on shipments of U.S. rice). During the CAFTA-DR negotiations, the governments created an intergovernmental working group to discuss sanitary and phytosanitary (SPS) barriers to agricultural trade. As a result of the work of this group, the Dominican Republic committed to resolve specific measures restricting U.S. exports to the Dominican Republic. In addition, the Dominican Republic has recognized the equivalence of the U.S. food safety and inspection systems for beef, pork, and poultry, thereby eliminating the need for plant-by-plant inspections of U.S. producers.

The Dominican Republic continues to prohibit imports of U.S. beef and beef products from cattle over 30 months of age, as well as all live cattle, due to the 2003 discovery of a Bovine Spongiform Encephalopathy (BSE) positive animal in the United States. Current World Organization for Animal Health (OIE) guidelines for BSE provide for conditions under which all beef and beef products from countries of any risk classification for BSE can be safely traded when the appropriate specified risk materials are removed. The OIE categorized the United States as "controlled risk" for BSE in May 2007. The United States continues to press the Dominican Republic to (1) base its import policies on science, the OIE guidelines, and the OIE's classification of the United States, and (2) put in place import requirements for BSE that allow for the entry of U.S. beef and beef products from cattle of any age as well as all live cattle.

GOVERNMENT PROCUREMENT

The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on procurements of most Dominican government entities, including key ministries and state-owned enterprises, on the same basis as Dominican suppliers. The anticorruption provisions in the Agreement require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties. Nevertheless, U.S. suppliers have complained that Dominican government procurement is not conducted in a transparent manner and that corruption is widespread.

The Dominican Republic is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

The Dominican Republic does not have export promotion schemes other than the tariff exemptions for inputs given to firms in the free trade zones. Under the CAFTA-DR, the Dominican Republic may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, under the CAFTA-DR, the Dominican Republic is permitted to maintain such measures through 2009, provided that it maintains the measures in accordance with its obligations under the WTO Agreement on Subsidies and Countervailing Measures.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

To implement its CAFTA-DR commitments, the Dominican government passed legislation in November 2006 to strengthen its IPR protection regime. The CAFTA-DR provides improved standards for the protection and enforcement of a broad range of IPR, which are consistent with U.S. and international standards, as well as with emerging international standards, of protection and enforcement of IPR. Such improvements include state-of-the-art protections for patents; trademarks; undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals; digital copyrighted products such as software, music, text, and videos; and further deterrence of piracy and counterfeiting.

Despite a strong copyright law, the existence of a specialized IPR office within the Attorney General's office, and some improvement in enforcement activity, piracy of copyrighted goods remains common. Audio recordings, video recordings, and software are often copied without authorization and, in the case of software, copies are often used without proper license. While the authorities have made some effort to seize and destroy pirated goods, they often fail to target those that are responsible for copying such copyrighted goods or those in the distribution network. Investigations are often hampered by a lack of resources and poor interagency cooperation, although in the case of television broadcast piracy, the Dominican government has improved coordination between responsible government agencies. U.S. industry representatives point to lengthy delays when cases are submitted for prosecution.

SERVICES BARRIERS

Under the CAFTA-DR, the Dominican Republic granted U.S. services suppliers substantial access to its services market, including financial services. Under the CAFTA-DR, U.S. financial service suppliers are allowed to establish subsidiaries, joint ventures, or branches for banks and insurance companies in the Dominican Republic. In addition, U.S. based firms are permitted to supply insurance on a cross border basis, including reinsurance, reinsurance brokerage, as well as marine, aviation, and transport insurance.

INVESTMENT BARRIERS

The CAFTA-DR establishes a more secure and predictable legal framework for U.S. investors operating in the Dominican Republic. Under the CAFTA-DR, all forms of investment are protected, including enterprises, debt, concessions, contracts, and intellectual property. In almost all circumstances, U.S. investors enjoy the right to establish, acquire, and operate investments in the Dominican Republic on an equal footing with local investors. Among the rights afforded to U.S. investors are due process protections and the right to receive fair market value for property in the event of an expropriation. Investor rights are protected under the CAFTA-DR by an impartial procedure for dispute settlement that is fully transparent. Submissions to dispute panels and panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.

In December 2007, a U.S. company filed a claim for arbitration against the government of the Dominican Republic under the investor-state dispute settlement procedures in Chapter 10 of the CAFTA-DR. The company alleges that the Dominican Republic expropriated its assets and breached several other obligations under Chapter 10. The claim is pending.

ELECTRONIC COMMERCE

Dominican law regulates electronic commerce, documents, and digital signatures. The CAFTA-DR includes provisions on electronic commerce that reflect its importance to global trade. Under the

CAFTA-DR, the Dominican Republic has committed to provide nondiscriminatory treatment of digital products, and not to impose customs duties on digital products transmitted electronically.

OTHER BARRIERS

U.S. companies have complained about a lack of transparency and corruption in many sectors, including the judicial system. While successful prosecutions of corrupt individuals and a general reduction in the civil case backlog are beginning to inspire business confidence, a sometimes lengthy and unpredictable judicial process still creates a degree of uncertainty for U.S. companies. For example, a 1999 Dominican Supreme Court decision regarding the imposition of new taxes on airlines found that the Dominican Congress must approve any such tax. Nevertheless, an apparently contradictory resolution was issued in October 2006 by the Dominican civil aviation authority, which imposed, without Dominican congressional approval, a new tax on all airlines to be paid in U.S. dollars.

Dealer Protection

The CAFTA-DR required the Dominican Republic to change its dealer protection regime to provide more freedom to negotiate the terms of commercial relations and to encourage the use of arbitration to resolve disputes between parties to dealer contracts. In November 2006, the Dominican Congress passed legislation to modify Law 173, the dealer protection law, to make future contracts of U.S. companies exempt from its restrictive provisions.

ECUADOR

TRADE SUMMARY

The U.S. goods trade deficit with Ecuador was $5.6 billion in 2008, an increase of $2.4 billion from $3.2 billion in 2007. U.S. goods exports in 2008 were $3.5 billion, up 17.5 percent from the previous year. Corresponding U.S. imports from Ecuador were $9.0 billion, up 47.5 percent. Ecuador is currently the 46th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ecuador was $673 million in 2007 (latest data available), up from $554 million in 2006. U.S. FDI in Ecuador is concentrated largely in the mining, manufacturing, and wholesale trade sectors.

IMPORT POLICIES

Ecuador's new constitution, issued in October 2008, establishes broad new guidelines for trade that could affect import policy and in some instances give priority to local production. These provisions require additional legislation to define how they would be implemented.

Tariffs

When Ecuador joined the WTO in January 1996, it bound most of its tariff rates at 30 percent or less, except for agricultural products in the Andean Price Band System (APBS). Ecuador's average applied MFN tariff rate was 11.7 percent in 2007 (latest data available). Ecuador applies a four-tiered structure with levels of 5 percent for most raw materials and capital goods; 10 percent or 15 percent for intermediate goods; and 20 percent for most consumer goods. 812 agricultural-related inputs (including planting seeds, agricultural chemicals, and veterinary products) enter Ecuador duty-free, up from 207 products in 2007.

As a member of the Andean Community (CAN), Ecuador grants and receives exemptions from tariffs (*e.g.*, reduced *ad valorem* tariffs and no application of the Andean Price Band System (APBS)), for products from the other CAN countries (Bolivia, Colombia and Peru). Currently, these countries have an Andean Free Trade Zone. They had agreed to apply Common External Tariffs (CET), as stated in CAN Decision 370, but implementation of the CET has been postponed until October 20, 2009.

Ecuador maintains the APBS on 153 agricultural products (13 "marker" and 140 "linked" products) imported from outside the CAN. The 13 "marker" products are wheat, rice, sugar, barley, white and yellow corn, soybeans, soybean meal, African palm oil, soy oil, chicken meat, pork meat, and powdered milk. Under the APBS, the basic (*ad valorem*) tariff is adjusted (increased or decreased) using a variable levy. The amount of the variable levy results from the relation between bi-weekly reference prices and floor and ceiling prices established by the CAN for each marker product. The price band works to maintain protection for the domestic industry by keeping tariffs high when world prices fall, and drops tariffs when world prices rise.

When Ecuador became a WTO Member it agreed to phase out its price band system, starting in January 1996, with a total phase-out by December 2001. No steps have been taken to phase out the price band system.

In October 2007, Ecuador increased tariffs on approximately 600 industrial and agricultural products, largely those that compete with local production. Products with tariff increases included liquor, cellular phones, major appliances, textile and leather manufactures, livestock, powdered milk, and ceramics. In November 2008, Ecuador increased tariffs for non-FTA partners to WTO ceiling rates for 940 products, including foodstuffs, household and consumer appliances, paper products, construction materials, and others. In January 2009, Ecuador imposed further measures including surcharges above the WTO tariff bindings on a wide range of goods and limitations on 2009 imports to 65-70 percent by value of 2008 imports for many other goods. Ecuador published the measures on January 22, 2009, with immediate effect, indicating that they are temporary in nature and will be in effect for one year. On February 18, 2009, Ecuador informed the WTO that it was taking the measures because of balance of payments problems. The U.S. Government is assessing the severity of the impact of Ecuador's measures on U.S. exporters.

Tariff-Rate Quotas

During the Uruguay Round, Ecuador agreed to establish tariff-rate quotas (TRQs) for a number of agricultural imports. In May of 2000, Ecuador created a TRQ Committee to administer and manage TRQs, which have remained constant. However, quota allocations are not always requested by importers because the tariffs under the APBS are often lower than the in-quota TRQ tariffs. At the same time, the TRQ Committee sometimes does not approve TRQ requests for certain products in order to protect local production. This outcome is common with products such as poultry and powdered milk.

Products subject to TRQs include wheat, corn, sorghum, barley, barley malt, soybean meal, powdered milk, frozen turkeys, and frozen chicken parts.

Nontariff Measures

Importers must register with the Central Bank through approved banking institutions to obtain import licenses for all products. Although Ecuador phased out the prior authorization requirement for most imports, it still requires prior authorization from the Ministry of Agriculture (MAG) for imports of more than 80 agricultural items originating in countries other than CAN members, as stated in COMEXI Resolution 383 of June 11, 2007. The list of products includes a number of commodities already within the APBS such as poultry, beef, dairy, horticultural products, corn, rice, palm oil, and soybean meal. For several of these imports, the Minister or a designee must provide prior import authorization. The MAG argues that the authorization is to ensure sanitary standards and tax rules are followed, but in some instances these justifications do not appear applicable.

Another administrative hurdle for agricultural importers is the MAG's use of "Consultative Committees" for import authorizations. Import authorizations are usually subject to crop absorption programs, which were to be eliminated as part of Ecuador's WTO accession in 1996. These committees, mainly composed of local producers, often advise the MAG against granting import authorizations for products such as corn, soybean meal, dairy products, and meats. The MAG often requires that all local production be purchased at high prices before authorizing imports. The impact of removing these barriers would mean an increase of U.S. exports of up to $20 million per year according to industry estimates.

The Ministry of Health is required to provide prior authorization for processed, canned, and packaged products in the form of a sanitary registration. Importers have concerns regarding the confidentiality of information they must provide on product formulas and compositions. In general, the bureaucratic procedures that importers must follow in order to obtain authorizations continue to be lengthy and cumbersome.

In December 2008, the government of Ecuador published new conformity assessment requirements for a broad range of products, including household and consumer appliances, footwear, brake fluids, and lubricants, among others. These requirements, which went into effect immediately, changed the way Ecuador confirmed compliance with safety and labeling standards for certain products, requiring certification by laboratories in Ecuador for domestic products or by accredited laboratories in the country of origin for imported products. Because publication and implementation were simultaneous, and because of the lack of timely WTO notification, importers were not able to comply with the new requirements and U.S. manufactured goods were held at the border. Despite new resolutions issued in January that repealed many of the problematic requirements, importers and U.S. manufacturers remain uncertain as to how they will be affected by new procedures slated to be promulgated by July 2009.

Ecuador assesses a special consumption tax (ICE) of 32 percent on imported and domestic spirits. However, the taxable base upon which Ecuador assesses the ICE differs for domestic and imported spirits. For imported spirits, the ICE is applied to the ex-customs value, which is then marked up 25 percent (*e.g.*, taxable base = [c.i.f. value + tariff + VAT] x 1.25); the ICE is assessed on this inflated value. In contrast, for domestic spirits, the ICE is assessed on the ex-factory price, and the 25 percent mark-up, although legally required, is not generally applied (*e.g.*, taxable base = [ex-factory value + VAT]). In both cases, the excise tax is based on arbitrary values and not on actual transaction values.

In December 2007, Ecuador's Constituent Assembly approved a new tax law, effective January 2008, which increased the ICE tax on a number of products, largely luxury items. The ICE tax increased for products that are largely imported rather than produced domestically, such as perfumes, luxury vehicles, all-terrain vehicles, airplanes, helicopters, and boats.

In October 2007, Ecuador passed a new Customs Law replacing its existing pre-shipment inspection (PSI) regime for imports with freight on board values of more than $4,000 with a risk analysis system run by the Ecuadorian Customs Agency. Under this system, low-risk importers should benefit from fewer physical inspections and expedited release of their cargo. The new law also includes changes to customs processes and requirements in an effort to reduce costs and minimize delays for importers.

Ecuador maintains bans on the import of used motor vehicles and spare parts, tires, and clothing. In April 2006, Ecuador’s Congress approved a Food and Nutrition Security Law. This bill invoked the precautionary principle and in practice briefly prohibited the use, handling, trade or import of any food products that may have contained organisms derived from biotechnology, since Ecuador did not possess appropriate institutions to provide proof of their safety. Ecuador’s Attorney General declared this law unenforceable due to technical errors in the text.

Health Code legislation passed by Congress in December 2006 reintroduced the provisions of the Food and Nutrition Security Law. However, imports continued normally, and implementing regulations were never issued.

Article 401 of Ecuador’s new constitution declares Ecuador free of transgenic seeds and cultivation. However, the President and National Assembly can allow for imports of transgenic seeds and cultivation under exceptional circumstance in the national interest. Article 15 states that the development, production, commercialization, and importation of genetically modified organisms that are harmful to human health or that are against food sovereignty or ecosystems are prohibited. These articles have not been interpreted or implemented.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Sanitary and Phytosanitary Measures

In November 2008, Ecuador's Animal and Plant Health Inspection Service (SESA) was replaced by a new entity, the Ecuadorian Agency for Quality Assurance in Agriculture (AGROCALIDAD), which plans to overhaul and improve Ecuador's sanitary and phytosanitary (SPS) regime. According to Ecuadorian importers, under SESA bureaucratic procedures required to obtain clearance appeared to discriminate against foreign products. Denials of SPS certification often appeared to lack a scientific basis and, in certain cases, appear to have been used in a discriminatory fashion to block the import of U.S. products that compete with Ecuadorian production. This occurred most often with beef, dairy products, and fresh fruit. In May 2007, the World Organization for Animal Health (OIE) classified the United States as a "controlled risk" country for Bovine Spongiform Encephalopathy (BSE), thereby clarifying that U.S. beef and beef products are safe to trade, provided that the appropriate specified risk materials are removed. Market access for U.S. beef, beef products, and live cattle is restricted based on CAN standards related to BSE. Ecuador participated in an August 2008 trip organized by the U.S. Foreign Agriculture Service (FAS) and the U.S. Animal and Plant Health Inspection Service (APHIS) with Peru, Bolivia, and an Andean Community representative to evaluate the U.S. live cattle system with a view to improving access for U.S. live cattle to these nations.

Although Ecuador has a number of SPS measures in place for imports of agricultural products, it has only made 56 SPS notifications to the WTO. This includes notifications regarding changes to regulations aimed at complying with bilateral, multilateral, and international agreements.

SESA follows the CAN's "Andean Sanitary Standards." Some standards applicable to third countries are different from those applied to CAN members. SESA also requires certifications for each product stating that the product is safe for human consumption or, in the case of live animals, that the animal is healthy, and that the country of origin or the area of production is free from certain exotic plant or animal disease.

U.S. firms report that the Izquieta Perez National Hygiene Institute (INHIP – the Ministry of Health's executive arm responsible for granting the sanitary registration certificate) accepts U.S. Certificates of Free Sale, not in lieu of sanitary registrations, but only as part of the many documents required for sanitary registration. In addition, onerous and inefficient procedures have delayed issuance beyond the 30 day limit required by the 2000 law *"Ley de Promocion Social y Participacion Ciudadana, Segunda Parte,"* and the average period for sanitary registration is seven to eight months.

GOVERNMENT PROCUREMENT

Foreign bidders must register and have a local legal representative in order to participate in government procurement in Ecuador. Bidding on government contracts can be cumbersome and relatively non-transparent. The lack of transparency subjects the procurement process to possible manipulation by contracting authorities.

In August 2008, Ecuador's Constituent Assembly passed a new public contracting law, which calls for priority for locally produced products and services in public purchases, although foreign suppliers can compete for the contracts. The law is in the process of implementation, and the government has not yet defined how it will establish priority for Ecuadorian suppliers. The law eliminates the requirement for contract awardees to obtain approval from the Attorney General and the Controller prior to being awarded a government contract. The law also creates a National Institute of Public Contracting to oversee transparency and timeliness of the contracting process. Bidders are required to register and submit bids for government contracts through an online system, which the government of Ecuador expects will improve transparency.

A large number of government-controlled companies (*e.g.*, fixed-line telephony providers, electric power generators and distributors, hospitals, and clinics) are not subject to Ecuador's rules on government procurement. Ecuador is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The legal tenets of Ecuador's IPR regime are provided for under a domestic IPR law enacted in 1998 and Andean Community Decisions 345, 351, and 486. Ecuador's 1998 IPR law provided an improved legal basis for protecting patents, trademarks, and trade secrets. However, Ecuador's IPR regime is weak in a number of areas, including enforcement.

Concerns remain regarding several provisions, including inadequate protection of undisclosed pharmaceutical test and other data submitted for marketing approval. In effect, the government of Ecuador is allowing the test data of registered drugs from originator companies to be relied upon by others seeking approval for their own version of the same product.

U.S. companies are also concerned that the Ecuadorian government does not provide patent protection to new uses of previously known or patented products. In addition, government of Ecuador health authorities continue to approve the commercialization of new drugs that are the bioequivalent of patented drugs, thereby denying the originator companies effective patent protection for innovative drugs. A modification to Ecuador's health code in late 2006 permits sanitary registrations without regard to whether or not a medication is patented.

Enforcement

Active local trade in pirated audio and video recordings, computer software, and counterfeit brand name apparel continues. The government of Ecuador, through the Ecuadorian Intellectual Property Institute (IEPI)'s Strategic Plan against Piracy, has committed to take action to reduce the levels of copyright piracy, including implementation and enforcement of its 1998 Copyright Law. However, weak copyright enforcement remains a significant problem, especially concerning sound recordings, computer software, and motion pictures. Although IEPI has voiced its concern, the government of Ecuador has not taken action to clarify that Article 78 of the 1999 Law on Higher Education does not permit software copyright infringement by educational institutions.

The International Intellectual Property Alliance (IIPA) estimates that pirated products accounted for 98 percent of the domestic record and music industry in Ecuador in 2007, with estimated damage due to music piracy of approximately $37 million. Ecuador has made limited progress in establishing the specialized IPR courts required by Ecuador's 1998 IPR law. In 2008, the Attorney General's Office hired three new IPR specialists to improve its service on IPR cases. The national police and the customs service are responsible for carrying out IPR enforcement, but do not always enforce court orders. Some local pharmaceutical companies produce or import counterfeit drugs and have sought to block compliance with Ecuador's intellectual property law.

IEPI and Ecuadorian Customs have increased enforcement actions in their areas of competence where they can act without a formal complaint by the rights holder, through administrative sanctions imposed by IEPI or through interception of counterfeit goods by Customs.

SERVICES BARRIERS

Telecommunications

In the area of basic telecommunications, Ecuador has only undertaken WTO commitments for domestic cellular services. Accordingly, it does not have market access or national treatment obligations for other domestic and international telecommunications services, such as fixed-line voice telephony and data transmission services. In addition, Ecuador has not committed to adhere to the pro-competitive regulatory commitments of the WTO Reference Paper.

INVESTMENT BARRIERS

The transparency and stability of Ecuador's investment regime are affected by inconsistent application and interpretation of its investment laws. This legal complexity increases the risks and costs of doing business in Ecuador. U.S. companies have resorted to local courts or alternative dispute resolution mechanisms such as chambers of commerce; others have pursued international commercial dispute resolution mechanisms as provided for in their contracts or under the United States-Ecuador Bilateral Investment Treaty (BIT). A number of U.S. companies operating in Ecuador, notably in regulated sectors such as petroleum and electricity, have filed for international arbitration resulting from investment disputes. Investors in more lightly regulated sectors have fewer disputes.

In October 2007, Ecuador notified the World Bank's International Centre for Settlement of Investment Disputes (ICSID) that Ecuador will not consent to ICSID arbitration for oil and mining issues, introducing additional uncertainty to the investment climate in the natural resources sectors.

Ecuador's new constitution recognizes local or regional arbitration centers, or other forums as agreed to by the parties, and could limit arbitration options for investors, but these provisions have not been implemented. The new constitution also includes provisions which could limit the availability of international arbitration in new Ecuadorian investment treaties. These provisions do not appear to apply to existing treaties.

Certain sectors of Ecuador's economy are reserved to the state. All foreign investment in petroleum exploration and development must be carried out under contract with the state oil company. U.S. and other foreign oil companies produce oil in Ecuador under such contracts. Foreign investment in domestic fishing operations, with exceptions, is limited to 49 percent of equity. Foreign companies cannot own more than a 25 percent equity in broadcast stations.

Several oil companies were involved in disputes with the government of Ecuador relating to the refund of value added taxes (VAT). In 2004, one of the disputing U.S. companies won a $75 million international arbitration award against the government of Ecuador. In March 2008, the government of Ecuador paid the award. In 2006, Ecuador's solicitor general initiated an investigation of the same company for allegedly transferring assets to another foreign company without obtaining the required government authorization. The government of Ecuador nullified the company's contract and seized the company's considerable assets in Ecuador. The U.S. company has initiated arbitration proceedings under the BIT; the government of Ecuador is participating in the proceedings. In September 2008, the arbitral panel ruled that it had jurisdiction over the case.

In 2006, Ecuador amended its hydrocarbons law, unilaterally increasing the share of revenues owed to the government to 50 percent under existing oil production sharing contracts. In October 2007, Ecuador issued an executive decree increasing the share of extraordinary petroleum revenues owed to the government to 99 percent. Foreign oil companies in Ecuador argued that operations would not be feasible under this scenario. In December 2006, April 2008, and June 2008, three U.S. companies initiated international arbitration proceedings based on the changes (while continuing to pursue negotiated solutions), as did other foreign oil companies. One of the U.S. companies reached agreement with the government of Ecuador to buy out its contract in July 2008 and has since left the country. The government of Ecuador has initiated negotiations with the remaining foreign companies to renegotiate their contracts.

U.S. investors in the electricity sector face problems of chronic underpayment, due in part to government-regulated prices and the inability to cut off consumers that do not pay their bills; government subsidies only partially offset these losses and are not available to all firms. A 2006 electricity reform law attempts to address some of the problems affecting the sector, but the problem of underpayment has not been resolved. A new electricity mandate issued in July 2008 establishes a single electricity tariff and consolidates the 19 state distributors into one, which could facilitate ease of payment to generators. However, the mandate has not yet been implemented.

EGYPT

TRADE SUMMARY

The U.S. goods trade surplus with Egypt was $3.7 billion in 2008, an increase of $690 million from $3.0 billion in 2007. .S. goods exports in 2008 were $6.0 billion, up 12.8 percent from the previous year. Corresponding U.S. imports from Egypt were $2.4 billion, down 0.3 percent. Egypt is currently the 36th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Egypt was $7.5 billion in 2007 (latest data available), up from $6.5 billion in 2006. U.S. FDI in Egypt is concentrated largely in the mining sector.

IMPORT POLICIES

In recent years, the Egyptian government has gradually liberalized its trade regime and economic policies, although the reform process has been somewhat halting. Under the leadership of Prime Minister Ahmed Nazif and a new ministerial economic team in place since 2004, the government has adopted a wide range of significant reform measures. However, the government needs to continue to reduce corruption, reform the cumbersome bureaucracy, and eliminate non-science based health and safety standards.

Tariffs

In 2004, the Egyptian government reduced the number of *ad valorem* tariff bands from 27 to 6, dismantled tariff inconsistencies, and rationalized national sub-headings above the six-digit level of the Harmonized System (HS). The government also eliminated services fees and import surcharges ranging from 1 percent to 4 percent. The government reduced its 13,000 line tariff structure to less than 6,000 tariff lines. These and other changes have significantly reduced requests for customs arbitration over the past four years.

In February 2007, a presidential decree further reduced import tariffs on 1,114 items, including foodstuffs, raw materials, and intermediary and final goods. The government also adopted the World Customs Organization (WCO) HS-2007 for classifying commodities. The changes reduced the weighted average of applied tariffs from 20.1 percent to 16.7 percent. These goods include many foodstuffs, raw materials, and intermediate goods, as well as some finished goods such as heaters. Vehicles, alcohol, and tobacco are the only items on which tariffs are still 40 percent or greater. Passenger cars with engines under 1,600 cc are taxed at 40 percent; cars with engines over 1,600 cc at 135 percent. In addition, cars with engines over 2,000 cc are subject to an escalating sales tax of up to 45 percent. Clothing also faces relatively high tariffs, although the 2007 decree reduced the rate from 40 percent to 30 percent. Tariffs on cloth were reduced from 22 percent to 10 percent, and yarn from 12 percent to 5 percent. In April 2008, Presidential Decree 103 introduced further reductions to customs tariffs on several items including processed foods, agricultural goods, paper products, cement and steel and related products, and some durable household goods. Various items such as rice, soya bean oil, cement (portland, aluminous, hydraulic, and white), toilet paper, and similar paper are now exempt from custom tariffs.

The 2007 decree also reduced tariffs on several agricultural commodities and food products. Among the reductions were those for fresh fruit, which dropped from 40 percent to 20 percent. Fruit represents less than 1 percent of U.S. agricultural exports to Egypt. Most key U.S. agricultural product exports to Egypt now enter at duties of 5 percent or lower; however, a number of processed food products such as potatoes and frozen vegetables retain tariff rates in excess of 30 percent. The value of total U.S. agricultural products to Egypt in 2007 was $1.8 billion. In the 2007 tariff reduction, Egypt lowered four tariff lines to make them consistent with Egypt's WTO bound tariff rates.

Significant barriers to trade for U.S. agricultural products remain, particularly for those of animal origin. In addition, the government continues to make abrupt import regime changes without notification or opportunity for comment. In 2006, the tariff rate on poultry was reduced from 32 percent to zero, but in 2007, the government re-imposed the 32 percent tariff. There is a 300 percent duty on wine for use in hotels, plus a 40 percent sales tax. The tariff for alcoholic beverages ranges from 1200 percent to 3000 percent.

Foreign movies are subject to tariffs and sales tax of about 30 percent for the complete version of the movie and 12 to15 percent for the negative.

Customs Procedures

The Ministry of Finance has committed to a comprehensive reform of Egypt's customs administration, reorganizing the Customs Authority to meet international standards. Modern customs centers are being established at major ports to test all proposed procedures, such as risk management, and new information technology systems are being implemented to facilitate communications among ports and airports. These systems are expected to be fully operational by June 2009. The Ministry of Finance in August 2008 finalized the draft of a new customs law to streamline procedures and facilitate trade. The draft has been shared with the private sector and other stakeholders. Once vetted by the Minister, the draft law will be sent to the Parliament for discussion and a possible vote.

Egypt joined the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention), completing its accession in 2007, upon ratification by the Egyptian parliament. Joining the convention requires participating governments to harmonize all customs procedures with those of the WCO standard to reduce barriers to trade and commerce. In complying with the convention, the Egyptian Customs Authority is adopting measures and procedures and retrofitting portions of the organization.

Import Bans and Barriers

Passenger vehicles may only be imported into Egypt within 12 months of the year of production.

The Egyptian Ministry of Health (MOH) prohibits the importation of natural products, vitamins, and food supplements. These items can only be marketed in Egypt by local companies that manufacture them under license, or prepare and pack imported ingredients and premixes according to MOH specifications. Only local factories are allowed to produce food supplements and to import raw materials used in the manufacturing process.

The Nutrition Institute and the Drug Planning and Policy Center of the MOH register and approve all nutritional supplements and dietary foods. The approval process requires 4 months to 12 months. Importers must apply for a license for dietary products. Annual renewal of the license costs approximately $500. However, if a similar local dietary product is available in the local market, registration for an imported product will not be approved.

The MOH must approve the importation of new, used, and refurbished medical equipment and supplies to Egypt. This requirement does not differentiate between the most complex computer-based imaging equipment and basic supplies. The MOH approval process entails a number of demanding steps.

Importers must submit a form requesting the MOH's approval to import, provide a safety certificate issued by health authorities in the country of origin, and submit a certificate of approval from the U.S. Food and Drug Administration or the European Bureau of Standards. The importer must also present an original certificate from the manufacturer indicating the production year of the equipment and certifying that new equipment is indeed new. All medical equipment must be tested in the country of origin and proven safe. The importer must prove it has a service center to provide after-sales support for the imported medical equipment, including spare parts and technical maintenance.

The Egyptian government supports the production of agricultural biotechnology and regulations exist for the review and approval of biotechnology seed. Recently, insect resistant corn was approved for planting. There are no specific regulations for the importation of genetically modified agricultural products. The Egyptian government maintains a general policy that allows agricultural commodities, such as corn and soybeans, produced through biotechnology to be imported, as long as the product imported is also consumed in the country of origin.

Other U.S. agricultural products, particularly those of animal origin, face barriers. Requirements for *Halal* certification complicate poultry importation. The government bans the import of poultry parts, such as leg quarters, and requires that Ministry of Agriculture officials be present to observe proper *Halal* slaughter, even though the poultry industry in the United States contracts with the Islamic Council of the United States to perform that service. More information on these regulations is available from Egypt's Trade Agreements Sector at http://www.tas.gov.eg/english.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Egyptian Organization for Standardization and Quality Control (EOS), which is affiliated with the Ministry of Trade and Industry, issues standards and technical regulations through a consultative process with other ministries and the private sector. Verification of compliance with standards and technical regulations is the responsibility of agencies including the Ministry of Health, the Ministry of Agriculture and, for imported goods, the General Organization for Import Export Control (GOEIC) in the Ministry of Trade and Industry.

Of Egypt's 5,000 standards, compliance with 543 is mandatory. EOS reports that it has harmonized such "mandatory standards" with international standards and that about 80 percent of its mandatory standards are based on standards issued by "international institutions" such as the Geneva-based International Organization for Standardization (ISO). In the absence of a mandatory Egyptian standard, Ministerial Decree Number 180/1996 allows importers to choose a relevant standard from seven "international systems" including ISO, European, American, Japanese, British, German, and for food, Codex. However, importers report that products that meet international standards and display international marks are often still subjected to standards testing upon arrival at the port of entry. Product testing procedures are not uniform or transparent, and inadequately staffed and poorly equipped laboratories often yield faulty test results and cause lengthy delays. Procedures are particularly cumbersome for products under the purview of the Ministry of Health.

The EOS also issues quality and conformity marks. The conformity marks are mandatory for certain goods that may affect health and safety. The quality mark is issued by the EOS upon request by a producer and is valid for two years. However, goods carrying the mark are still subject to random testing.

Import and export regulations put in place in 2005 increased transparency and liberalized procedures to facilitate trade. These regulations reduced the number of imported goods subject to inspection by GOEIC and allowed importers to use certifications of conformity from any internationally accredited laboratory inside or outside of Egypt for those goods still subject to inspection by GOEIC. The regulations also introduced a mechanism for enforcing intellectual property rights at the border and extended the preferential inspection treatment given to inputs for manufacturing to include inputs for the service industry. While these measures have improved Egypt's inspection regime, some exporters to Egypt report that the regulations are not applied consistently or uniformly. Garment exporters also report that decrees such as 515 and 770, which require garments to include the stitched name of the exporter, result in increased costs and delivery delays.

SANITARY AND PHYTOSANITARY MEASURES

In recent years the Egyptian government has made great strides in reducing the bureaucratic hurdles and time required for customs clearance of agricultural products by taking a more scientific approach to sanitary and phytosanitary (SPS) measures, which are designed to keep the food supply safe. Despite these improvements, importers of U.S. agricultural commodities continue to face non-transparent and arbitrary treatment of imports in a number of cases. For example, U.S. beef and beef products are still subject to strict import requirements that are not consistent with the World Organization for Animal Health (OIE) guidelines for trading with a "controlled" risk country. Eligible product only includes boneless beef including livers, hearts and kidneys from cattle less 30 months of age that originated in Mexico, Canada, or the United States.

Other food imports are sometimes subject to standards that appear to lack technical and scientific justification. Also, imports may have to comply with labeling and packaging requirements that some importers find burdensome. In addition, meat products can only be imported directly from the country of origin.

The Ministry of Trade and Industry is working with the Ministries of Health and Agriculture, among others, to review SPS standards and food product inspection procedures to ensure WTO compliance and prevent duplicative inspection. Egypt is in the process of strengthening the Technical Barriers to Trade (TBT) and SPS enquiry points under the EOS and Ministry of Agriculture. In July 2007, Ministry of Trade and Industry proposed the idea of establishing a food safety authority to be responsible for all food safety issues including standards and inspections. The idea was welcomed by Ministry of Health and Ministry of Agriculture that share responsibilities regarding food safety. A high-level steering committee of the three concerned Ministries was constituted, and working groups were initiated to prepare the necessary regulations, conduct gap analysis and study the current situation. As a result of these efforts, a law for the establishment of a new food safety authority was drafted and is already approved by the Cabinet of Ministers. The Parliament is discussing this law in the current session.

GOVERNMENT PROCUREMENT

Egypt is not a signatory to the WTO Agreement on Government Procurement (GPA).

A 1998 law regulating government procurement requires that technical factors, not just price, be considered in awarding contracts. A preference is granted to parastatal companies where their bid is within 15 percent of the price in other bids. In the 2004 Small and Medium-Sized Enterprises (SMEs) Development Law, SMEs were given the right to supply 10 percent of the goods and services in every government procurement. Egyptian law grants suppliers certain rights, such as speedy return of their bid bonds and an explanation of why a competing supplier was awarded a contract. However, concerns about transparency remain. For example, the Prime Minister retains the authority to determine the terms, conditions, and rules for procurement by specific entities.

In 2006, the executive regulations of the Tenders and Bids Law were amended to streamline procurement procedures. The changes shorten the period required between announcing tenders and the submission of bids, reduce the cost for tender documents, require procuring entities to hold pre-bid meetings to clarify items in tenders and include model contract terms that set out the rights and obligations of contractors. The amendments allow SMEs to obtain tender documents at cost.

Egyptian law also forbids the use of direct purchasing except for cases involving national security or national emergency, and a 2004 Prime Ministerial decree stipulates that all ministries must adhere strictly to that law.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Although Egypt has improved its IPR regime over past years, the United States still has significant concerns about IPR protection and enforcement in Egypt. The Egyptian government has made progress in strengthening some IPR laws and enforcement procedures, and engagement between the United States and Egypt on IPR issues has remained strong.

The Egyptian Patent Office reports that it has completed its technical examination of all applications filed in the "mailbox" for pharmaceutical patents; however, the United States is monitoring the situation to ensure the actual disposition of all applications filed in the mailbox and appropriate notifications to patent applicants.

The United States was encouraged by the Egyptian government's announcement in January 2007 of a new 120 day streamlined drug registration system for drugs carrying a U.S. FDA or European approval, although the United States continues to monitor the full implementation of this system. The United States continues to seek written clarification that Egypt's Ministry of Health provides adequate and effective protection against reliance on test and other data submitted for marketing approval of pharmaceutical products, and will continue to raise this issue in discussions with Egyptian IPR officials.

The U.S. copyright industry continues to report high levels of piracy in Egypt, including pirated movies, sound recordings, books and other printed matter, and computer software. The GOE has improved protection of computer software and taken steps to ensure that civilian government departments and schools use legitimate software. The Egyptian Center for Intellectual Property and Information Technology reports that Egyptian authorities are increasingly willing to enforce copyright protections related to information and communication technology. Egyptian IPR enforcement officials have been working closely with U.S. industries during the past year.

SERVICES BARRIERS

Egypt restricts foreign equity in construction and transport services to 49 percent. In the computer services sector, larger contributions of foreign equity may be permitted, such as when the Ministry of Communication and Information Technology determines that such services are an integral part of a larger business model and will benefit the country. Egypt limits the employment of non-nationals to 10 percent of an enterprise's general workforce and in computer-related industries requires that 60 percent of top-level management must be Egyptian within 3 years from the start-up date of the venture.

Banking

No foreign bank seeking to establish a new bank in Egypt has been able to obtain a license in the past 10 years.

The Government has divested itself from many joint venture banks; however, the efforts to restructure the remaining three state-owned banks have been mixed. The three remaining state-owned banks still control about 50 percent of the banking sector's total assets and the share of non-performing loans remain high.

Telecommunications

Telecom Egypt continues to hold a *de facto* monopoly since additional fixed-line licenses have not yet been issued by the National Telecommunications Regulatory Authority (NTRA.) The NTRA postponed a plan to issue a second license in mid-2008, as a response to the changes taking place in the international markets.

Transportation

The government is liberalizing maritime and air transportation services. The government's monopoly on maritime transport ended in 1998, and the private sector now conducts most maritime activities including loading, supplying, ship repair, and, increasingly, container handling. The Port of Alexandria now handles about 60 percent of Egypt’s trade. Renovations underway at the Port of Alexandria, thus far at a cost of about LE 300 million ($55 million) have increased handling capacity to 44 million tons per year, up from 32 million tons per year in 2004. The renovations included construction of deeper quays to receive larger vessels; re-design of storage areas, warehouses, and associated infrastructure; installation of new fiber optic cables for data transmission; installation of a more automated cargo management system; and renovation of the passenger cruise ship terminal. These renovations have resulted in a smoother flow of goods and services and have, combined with reforms in the Customs Authority, produced a sharp decrease in customs clearance times from three to four weeks in 2004 to about one week at present. However, when shipments are required to be approved by the General Organization for Import and Export Control (GOIEC), customs clearance may take between 11 days to 20 days.

Egypt and the United States concluded an Air Transport Agreement in 1964, and the countries have modified the agreement only twice since then, adding a security article in 1991, and in 1997 adding an amended route schedule, a limited agreement on cooperative marketing arrangement,s and a safety article. The agreement remains very restrictive and has no provisions on charter services. In the past, private and foreign air carriers have not been able to operate charter flights to and from Cairo without the approval of the national carrier, Egypt Air. The United States remains interested in replacing the restrictive 1964 agreement with an Open Skies air services agreement. In June 2008, Delta Air Lines resumed operation of non-stop service between Cairo International Airport and New York’s John F. Kennedy Airport. Egypt Air joined the Star Alliance in July of 2008 and has entered into a code share agreement with United Airlines.

Courier and Express Delivery Services

Private courier and express delivery service suppliers seeking to operate in Egypt must receive special authorization from the Egyptian National Postal Organization (ENPO). In addition, although express delivery services constitute a separate for-profit, premium delivery market, private express operators are required to pay ENPO a "postal agency fee" of 10 percent of annual revenue from shipments under 20 kilos. At the end of 2007, the government of Egypt announced its intent to take actions that caused significant concern for private courier and express delivery companies. These new policies would appear to grant ENPO even more extensive regulatory oversight over the private express delivery sector by increasing considerably the fees paid to ENPO and requiring private express delivery companies to receive prior ENPO authorization for their prices and other polices. Given that ENPO is not an independent regulator, there are strong concerns that these new proposed policies will negatively impact competition in the express delivery sector.

Other Services Barriers

Egypt maintains several other barriers to the provision of certain services by U.S. and other foreign firms. Foreign motion pictures are subject to a screen quota, and distributors may import only five prints of any foreign film. According to the Egyptian labor law, foreigners cannot be employed as export and import customs clearance officers, or as tourist guides.

INVESTMENT BARRIERS

Under the 1986 United States-Egypt Bilateral Investment Treaty (BIT), Egypt committed to maintaining an open investment regime. The BIT requires Egypt to accord national and MFN treatment (with certain exceptions) to U.S. investors, to allow investors to make financial transfers freely and promptly, and to adhere to international standards for expropriation and compensation. The BIT also provides for binding international arbitration of certain disputes.

Based on a review of Egypt’s investment policies, the OECD has invited Egypt to adhere to the OECD Declaration on International Investment and Multinational Enterprises. Egypt signed the Declaration in 2007, becoming the first Arab and first African country to join. During this process, Egypt agreed to review the restrictions on investors identified in the OECD’s 2007 Investment Policy Review of Egypt, such as certain limits in the tourism sector as well as the discriminatory treatment of foreign investors in construction and courier services.

ANTICOMPETITIVE PRACTICES

Under Egyptian competition law, a company holding 25 percent or more market share of a given sector may be subject to investigation if suspected of certain illegal or unfair market practices. The law is implemented by the Egyptian Competition Authority, which reports to the Minister of Trade and Industry. However, the law does not apply to utilities and infrastructure projects, which are regulated by other governmental entities.

In June 2008, Law 3/2005 on Protection of Competition and Prohibition of Monopolistic Practices was amended and passed by the People’s Assembly under Law 190/2008. The amendment sets the minimum fine for monopolistic business practices at LE 100,000 ($17,755) and the maximum at LE 300 million ($53.3 million). It also provides for doubling the penalty in cases where violations are repeated. The first trial under both new laws involved a cement cartel and was concluded in September 2008 with convictions and substantial fines. An appeal is now pending.

ELECTRONIC COMMERCE

Egypt's Electronic Signature Law 15 of 2004 established the Information Technology Industry Development Agency (ITIDA) to act as the e-signature regulatory authority and to further develop the information technology sector in Egypt. ITIDA would also supervise cyber crime under a draft law. The Ministry of State for Administrative Development (MSAD) is implementing an e-government initiative to increase government efficiency, reduce services provision time, establish new service delivery models, reduce government expenses, and encourage e-procurement. For example, the e-tender project is designed to allow all government tenders to be published online. Implementation required new legislation such as the Electronic Signature Law, Information Security and Cyber Crime Law, and Right to Information Law, which is being drafted.

OTHER BARRIERS

Pharmaceutical Price Controls

The Egyptian government controls prices in the pharmaceutical sector to ensure that drugs are affordable to the public. The government does not have a transparent mechanism for pharmaceutical pricing. The Pharmaceutical Committee in the MOH reviews prices of various pharmaceutical products and negotiates with companies to adjust prices based on a cost-plus formula. This method, however, does not allow price increases to compensate for inflation and the pricing policy has failed to keep pace with the rising cost of raw materials. About 85 percent of active pharmaceutical ingredients in Egypt are imported, and the depreciation of the Egyptian Pound has made imports increasingly expensive. In 2007, the government granted price increases for selected pharmaceutical products. However, the approved price increases to offset the negative impact on profit margins caused by the devaluation of the Egyptian Pound since mid-2000 have been minimal. In 2004, the government reduced customs duties on most imports of pharmaceutical inputs and products from 10 percent to 2 percent. In that same year, the MOH lifted restrictions on exporting pharmaceuticals to encourage pharmaceutical investment and exports.

EL SALVADOR

TRADE SUMMARY

The U.S. goods trade surplus with El Salvador was $236 million in 2008, a decrease of $34 million from $270 million in 2007. U.S. goods exports in 2008 were $2.5 billion, up 6.5 percent from the previous year. Corresponding U.S. imports from El Salvador were $2.2 billion, up 9.0 percent. El Salvador is currently the 59th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in El Salvador was $1.4 billion in 2007 (latest data available), up from $638 million in 2006.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic (the Parties). Under the Agreement, the Parties are significantly liberalizing trade in goods and services. The CAFTA-DR also includes important disciplines relating to: customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environmental protection.

The Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006. The CAFTA-DR entered into force for the Dominican Republic on March 1, 2007, and for Costa Rica on January 1, 2009.

In 2008, the Parties implemented amendments to several textile-related provisions of the CAFTA-DR, including, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The Parties also implemented a reciprocal textile inputs sourcing rule with Mexico. Under this rule, Mexico provides duty-free treatment on certain apparel goods produced in a Central American country or the Dominican Republic with U.S. inputs, and the United States provides reciprocal duty-free treatment under the CAFTA-DR on certain apparel goods produced in a Central American country or the Dominican Republic with Mexican inputs. These changes will further strengthen and integrate regional textile and apparel manufacturing and create new economic opportunities in the United States and the region.

Tariffs

As a member of the Central American Common Market, El Salvador agreed in 1995 to harmonize its external tariff on most items at a maximum of 15 percent with some exceptions.

Under the CAFTA-DR, about 80 percent of U.S. industrial and consumer goods now enter El Salvador duty-free, with the remaining tariffs phased out by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter El Salvador duty-free and quota-free, creating economic opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter El Salvador duty-free. El Salvador will eliminate its remaining tariffs on nearly all agricultural products by 2020 (2023 for rice and chicken leg quarters and 2025 for dairy products). For certain agricultural products, tariff-rate quotas (TRQs) will permit some immediate duty-free access for specified quantities during the tariff phase out period, with the duty-free amount expanding during that period. El Salvador will liberalize trade in white corn through expansion of a TRQ, rather than by tariff reductions.

Nontariff Measures

Under the CAFTA-DR, El Salvador committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. El Salvador also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and all the CAFTA-DR countries agreed to share information to combat illegal transshipment of goods. In addition, El Salvador has negotiated agreements with express delivery companies to allow for faster handling of their packages, but Salvadoran Customs and the delivery companies disagree on whether the agreements have been implemented. In particular, U.S. express delivery companies have raised concerns regarding customs clearance delays, acceptance of electronic documents, duty-free treatment of minimum-value merchandise, and the submission of a single manifest covering all goods contained in an express delivery shipment.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

El Salvador and the other four Central American Parties to the CAFTA-DR are in the process of developing common standards for the importation of several products, including distilled spirits, which may facilitate trade.

Sanitary and Phytosanitary Measures

El Salvador recognized the equivalence of the U.S. food safety and inspection system for beef, pork, poultry, and dairy, thereby eliminating the need for plant-by-plant inspections of U.S. producers.

El Salvador continues to prohibit imports of U.S. beef and beef products from cattle over 30 months of age, as well as live cattle over 30 months of age, due to the 2003 discovery of a Bovine Spongiform Encephalopathy (BSE) positive animal in the United States. Current World Organization for Animal Health (OIE) guidelines for BSE provide for conditions under which all beef and beef products from countries of any risk classification for BSE can be safely traded when the appropriate specified risk materials are removed. The OIE categorized the United States as "controlled risk" for BSE in May 2007. The United States continues to press El Salvador to (1) base its import policies on science, the OIE guidelines, and the OIE’s classification of the United States, and (2) put in place import requirements for BSE that allow for the entry of U.S. beef and beef products from cattle of any age as well as all live cattle.

El Salvador previously applied sanitary and phytosanitary (SPS) measures on imports of poultry, poultry products, and table eggs that had the effect of prohibiting imports of these products from the United States. In 2008, U.S. and Salvadoran officials agreed on the content of U.S. Department of Agriculture (USDA) export certificates for poultry, poultry products, and table eggs. El Salvador subsequently opened its CAFTA-DR poultry TRQ and began permitting imports of U.S. poultry and poultry products accompanied by the appropriate USDA export certificate. El Salvador also agreed to conduct inspections at the request of U.S. table egg production facilities and to issue import permits for imports of table eggs from U.S. facilities that it had inspected and approved and which are accompanied by the appropriate

USDA export certificate. The United States will continue to closely monitor El Salvador's implementation of its commitments on poultry, poultry products, and table eggs.

Importers must deliver samples of all foods for laboratory testing to the Ministry of Public Health, which, upon approval, issues the product registration numbers that allow them to be sold at retail outlets. Some processed foods approved for use in the United States were rejected after further analysis in El Salvador, thereby barring their sale. The United States has obtained access for U.S. products rejected by the Ministry of Public Health testing on a case-by-case basis. The United States continues to engage El Salvador on this issue.

In 2008, El Salvador and the other four Central American Parties to the CAFTA-DR notified to the WTO a set of microbiological criteria for all raw and processed food products imported into any of these countries. The United States has some concerns with these criteria and in May 2008 submitted comments to the five countries. The Central American countries are currently evaluating possible amendments to the proposed criteria.

GOVERNMENT PROCUREMENT

Government purchases of goods and services, including construction services, are usually open to foreign bidders.

The Public Sector Procurement and Contracting Law applies to the central government as well as to autonomous agencies and municipalities. The Ministry of Finance's Public Administration Procurement and Contracting Regulatory Unit establishes procurement and contracting policy, but all government agencies implement that policy through their own procurement and contracting units. Under the law, government purchases worth more than approximately $108,000 must be announced publicly and are subject to open bidding; those worth approximately $13,600 or more must also be announced publicly, but may be subject to bidding by invitation only; and for smaller purchases, government agencies are only required to evaluate at least three offers for quality and price. If a domestic offer is determined to be equal to a foreign offer, the government must give preference to the domestic offer. Under certain provisions of the law, such as "urgent" or "emergency" procurements, the head of a government agency or ministry may intervene to award the procurement to a supplier. For government procurement conducted with external financing or donations, separate procurement procedures may apply.

Under the CAFTA-DR, procuring entities must use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on procurements of most Salvadoran government entities, including key ministries and state-owned enterprises, on the same basis as Salvadoran suppliers. For procurement covered by the CAFTA-DR, El Salvador entities cannot apply domestic preferences. The anticorruption provisions in the Agreement require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties.

El Salvador is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

El Salvador provides a 6 percent tax rebate on exports shipped outside Central America if the goods have undergone a transformation process that adds at least 30 percent to the original value. Firms operating in free trade zones enjoy a 10 year exemption from income tax as well as duty-free privileges.

Under the CAFTA-DR, El Salvador may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, under the CAFTA-DR, El Salvador may maintain such measures through 2009, provided that it maintains the measures in accordance with its obligations under the WTO Agreement on Subsidies and Countervailing Measures.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In December 2005, El Salvador amended the Intellectual Property Promotion and Protection Law, Law of Trademarks and Other Distinctive Signs, and Penal Code to implement its CAFTA-DR obligations on IPR. The CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of IPR, which are consistent with U.S. and international standards, as well as with emerging international standards, of protection and enforcement of IPR. Such improvements include state-of-the-art protections for patents, trademarks, undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, and digital copyrighted products such as software, music, text, and videos; and further deterrence of piracy and counterfeiting.

Despite these efforts, the piracy of optical media, both music and video, in El Salvador remains a concern. Optical media imported from the United States by pirates in El Salvador are being used as duplication masters. Concern has also been expressed about inadequate enforcement of cable broadcast rights and the competitive disadvantage it places on legitimate providers of this service. During 2008, the police seized 939,678 optical media, including CDs, DVDs, software, and burners, and made 184 arrests related to optical media piracy.

SERVICES BARRIERS

Under the CAFTA-DR, El Salvador granted U.S. services suppliers substantial access to its services market, including financial services. El Salvador maintains few barriers to services trade. Foreign investors are limited to 49 percent of equity ownership in free reception television and AM/FM radio broadcasting. There are no such restrictions on cable television ownership. Notaries must be Salvadoran citizens.

In October 2007, El Salvador adopted an International Services Law. The law regulates the establishment and operation of services parks and centers with incentives similar to those received by the free zones, including tax exemptions for developers, administrators, and service companies. The law covers international distribution, international logistics operations, call centers, information technology, development and research, marine vessels and airships repair and maintenance, entrepreneurial processes, hospital medical services, and international financial services. Services firms operating under the International Services Law are exempted from income and municipal taxes as well as from tariffs on imports of capital and intermediate goods.

In July 2008, El Salvador began imposing a $0.04 per minute tax on international telephone calls that terminate in El Salvador. Some telephone traffic from other Central American countries is exempt under an existing regional telecommunications agreement. The tax must be paid within the first 10 business days of the beginning of the month subsequent to the month in which the calls were terminated. U.S. telecommunications operators have raised concerns that the increased cost of terminating calls into El Salvador will result in an increase in long distance rates, which will negatively impact U.S. consumers.

INVESTMENT BARRIERS

The CAFTA-DR establishes a more secure and predictable legal framework for U.S. investors operating in El Salvador. Under the CAFTA-DR, all forms of investment are protected including enterprises, debt, concessions, contracts, and intellectual property. U.S. investors enjoy, in almost all circumstances, the right to establish, acquire, and operate investments in El Salvador on an equal footing with local investors. Among the rights afforded to U.S. investors are due process protection and the right to receive fair market value for property in the event of an expropriation. Investor rights are protected under the CAFTA-DR through an impartial procedure for dispute settlement that is fully transparent and open to the public. Submissions to dispute panels and dispute panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.

There are few formal investment barriers in El Salvador, except as noted in the services section above. However, some U.S. investors complain that judicial and regulatory weaknesses limit or inhibit their investment in El Salvador. In addition, the United States has expressed concerns regarding the impact of duplicative regulations and the regulator's seemingly arbitrary decision-making processes and how these impact U.S. electric energy investments in El Salvador.

In December 2008, a North American mining company with U.S. ownership interests submitted to the government of El Salvador a notice of its intent to submit a claim to arbitration under the investor-state dispute settlement procedures in the investment chapter of the CAFTA-DR. The company alleges that El Salvador indirectly expropriated the company's assets by failing to act on the company's requests for mining permits within the time required by Salvadoran law.

ELECTRONIC COMMERCE

The CAFTA-DR includes provisions on electronic commerce that reflect its importance to global trade. Under the CAFTA-DR, El Salvador has committed to provide nondiscriminatory treatment to digital products, and not to impose customs duties on digital products transmitted electronically.

ETHIOPIA

TRADE SUMMARY

The U.S. goods trade surplus with Ethiopia was $149 million in 2008, an increase of $70 million from $79 million in 2007. U.S. goods exports in 2008 were $302 million, up 80.1 percent from the previous year. Corresponding U.S. imports from Ethiopia were $152 million, up 72.5 percent. Ethiopia is currently the 111th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ethiopia was $2 million in 2007 (latest data available), the same as in 2006.

IMPORT POLICIES

Ethiopia is not a Member of the World Trade Organization (WTO) but has begun the process of acceding to the WTO. It submitted the Memorandum of Foreign Trade Regime to the WTO in December 2006, sent replies to the first round of WTO member questions in January 2008, and held its first Working Party Meeting in May 2008. Ethiopia has made modest progress in drafting new legislation and implementing capacity building measures relevant to accession, with the help of technical assistance from a number of donors, including the U.S. Government. Ethiopia is a member of the Common Market for Eastern and Southern Africa (COMESA). Economic relations between the U.S. and Ethiopia are governed by the 1953 Treaty of Amity and Economic Relations.

Tariffs

Revenue generation, not protection of local industry, appears to be the primary purpose of Ethiopia's tariffs. However, high tariffs are applied on certain items, such as textiles products and leather goods, to protect local industries. Goods imported from COMESA members are granted a 10 percent tariff preference. *Ad valorem* duties range from 0 percent to 35 percent, with a simple average of 16.8 percent. In February 2007, the government levied a 10 percent surtax on selected imported goods, with the proceeds designated for distribution of subsidized wheat in urban areas. In July 2008, the government of Ethiopia introduced an export tariff on raw and semi-processed hides and skins in an effort to shift domestic production to focus more on finished hides and skins, which reap higher world prices.

Foreign Exchange Controls

Importers are facing increasing difficulty in obtaining foreign exchange, particularly those importing goods or inputs destined for domestic sales. Ethiopia's central bank administers a strict foreign currency control regime and has a monopoly on all foreign currency transactions. The local currency (Birr) is not freely convertible. While larger firms, state enterprises, and enterprises owned by the ruling party do not typically face major problems obtaining foreign exchange, less well connected importers, particularly smaller, new-to-market firms, increasingly face burdensome delays in arranging trade related payments. Supplier credit is rarely allowed. An importer must apply for an import permit and obtain a letter of credit for 100 percent of the value of imports before an order can be placed. Even then, import permits are not always granted. Ethiopia currently maintains four restrictions on the payments and transfers for current international transactions, which relate to a) the tax certifications requirement for repatriation of dividend and other investment income; b) restrictions on repayment of legal external loans and supplies and foreign partner credits; c) rules for issuance of import permits by commercial banks; and d) the requirement to provide a clearance certificate from the National Bank of Ethiopia to obtain import permits.

The stock of Ethiopia's foreign exchange reserves has fallen below six weeks of import coverage. The limited supply of foreign exchange in Ethiopia's banks has begun to take a toll on U.S. commercial interests as private and public entities have increasingly become unable to import essential consumer inputs and industrial capital goods from abroad. As a result, some prominent U.S. and other foreign business interests in Ethiopia may be forced to suspend business operations in Ethiopia. The government's recent tightening of the banking regulations to manage its limited foreign exchange reserves has dampened real supply for certain desired consumer and industrial imports and has precipitated a foreign exchange crunch. An acute shortage in Ethiopia's foreign exchange market has stalled business in both the private and public sectors. Whereas firms seeking bank letters of credit for imports requiring hard currency previously could acquire those upon demand and with an initial 30 percent deposit, such requests now routinely face waits in excess of 3 months and require 100 percent of the payments up front.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Quality and Standards Authority of Ethiopia regulates all exports and imports that have Ethiopian standards. There are no general requirements for product certification. Certification is required for foodstuffs, construction materials, chemicals, textiles, and pharmaceuticals. Standards appear to be consistent with international norms. Pharmaceuticals that have been extensively tested and licensed in other countries are allowed to enter the Ethiopian market with no further testing. Industry sources have reported instances in which burdensome regulatory or licensing requirements have prevented the import and/or local sale of products from the United States and other countries, particularly personal hygiene and health care products.

GOVERNMENT PROCUREMENT

A high proportion of Ethiopian import transactions are conducted through government tenders, reflecting the heavy involvement of the government in the overall economy. The tender announcements are usually made public to all interested potential bidders, regardless of the nationality of the supplier or the origin of the products or services. Bureaucratic procedures and delays in the decision-making process sometimes impede foreign participation in tenders. U.S. firms have complained about the abrupt cancellation of some tenders, a perception of favoritism toward Chinese vendors, and a general lack of transparency in the procurement system. Business associations have complained that state-owned and ruling party-owned enterprises have enjoyed *de facto* advantages over private firms in the government procurement process. Several U.S. firms have complained of pressure to offer vendor financing or other low-cost financing in conjunction with bids. Several very large contracts have been signed in recent years between government corporations and Asian companies without a tender process. Ethiopia is not a Member of the WTO and, therefore, is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Ethiopia is a party to the World Intellectual Property Organization Convention. The Ethiopian Intellectual Property Office (EIPO) is responsible for the administration of patents, trademarks, copyrights, and other intellectual property policy and legal issues. In the past few years, Ethiopia has enacted a series of new laws pertaining to copyright and related rights, plant varieties, and trademarks. In July 2008, EIPO confiscated and destroyed close to half a million pirated copies of locally produced songs and films in Addis Ababa.

Ethiopia has yet to sign onto a number of major international IPR treaties, such as: the Paris Convention for the Protection of Industrial Property, the WIPO Copyright Treaty, the Berne Convention for the Protection of Literary and Artistic Works, and the Patent Cooperation Treaty. As EIPO has been tasked only to protect Ethiopian copyrighted materials and pirated software, EIPO has taken no action to confiscate or impede the rampant sale of pirated foreign works in-country, arguing that it has no obligation to protect such works which it considers to be outside of its purview.

Several Ethiopian firms, particularly in the tourism and service industries, operate under the names, or use the symbols, of major international brands. While Ethiopia's Competition Commission hears claims of IPR violations, the lack of government registration requirements and enforcement capacity leave the government in a position of only responding to formal IPR challenges brought to the Competition Commission.

SERVICES BARRIERS

Telecommunications

The state-run Ethiopian Telecommunications Corporation (ETC) maintains a monopoly on telecommunications and Internet service and is closed to private investment. The sector remains underdeveloped, and Ethiopia has the lowest telecommunications and internet penetration rates on the continent with just 2.01 telephone and 0.3 Internet subscribers per 100 people.

Telecommunications service in Ethiopia is patchy and unreliable at best. While most of Addis Ababa receives mobile phone coverage, attempted calls often fail for broken signals, false errors of recipients being out of the service area, or a lack of network capacity to carry the call. Both coverage and service in most other major towns is unpredictable. Having reached capacity for internet service in August 2008, ETC stopped accepting new clients in eight major towns around the country.

To date, the Ethiopian government has not made any special accommodations for the business community to acquire improved telecommunications services to compete in the global market. The government has taken a populist approach in improving the telecommunications sectors by focusing the bulk of its efforts toward broad access for rural areas before it plans more robust and high tech upgrades to help businesses. Chinese companies have received the vast majority of orders from ETC for upgrading its infrastructure.

An August 2005 directive allows private companies to provide Internet service through the government's infrastructure, but implementing regulations have yet to be promulgated and the state-owned Ethiopian Telecommunications Corporation maintains a *de facto* monopoly on Internet services. There are no regulations on international data flows or data processing use.

Franchising

Difficulties in product quality control, banking regulations, and continuing foreign exchange convertibility issues make franchising difficult. Currently, there are no U.S. franchise operations in the country; though two U.S.-flagged hotels operate under United States-linked management contracts.

INVESTMENT BARRIERS

Official and unofficial barriers to foreign investment persist. Sectors that are closed to private investment include electricity generation and transmission through the national grid and non-courier postal service. Investment in telecommunications services and defense industries is permitted only in partnership with the Ethiopian government. The banking, insurance, and micro-credit industries are restricted to domestic investors. Other areas of investment reserved exclusively for Ethiopian nationals include broadcasting, air transport services using aircraft with a seating capacity up to 20 passengers or a cargo capacity of up to 2,700kg, and forwarding/shipping agency services. Foreign investors are also barred from investing in a wide range of small retail and wholesale enterprises (*e.g.*, printing, restaurants, and beauty shops).

The government is privatizing a large number of state-owned enterprises. Most, but not all, of the tenders issued by the Privatization and Public Enterprises Supervising Agency are open to foreign participation. Some investors bidding on these properties have complained about a lack of transparency in the process. Others who have leased land or invested in formerly state-owned businesses subject to privatization have sometimes experienced political impediments to assuming full control of acquired firms (*e.g.*, transferring title, delay in evaluating tenders, and tax arrears).

All land in Ethiopia belongs to the state; there is no private land ownership. Land may be leased from local and regional authorities for up to 99 years. In practice, land has been made readily available by the authorities to foreign investors in manufacturing and agriculture business, but less so for real estate developers. An on-going border dispute with Sudan has resulted in investors, including foreign investors, who had been granted land usage rights in the area to have their land and all assets thereon forcibly taken by Sudanese authorities without recourse or response from the Ethiopian government.

OTHER BARRIERS

Parastatal and Party-affiliated Companies

Ethiopian and foreign investors alike complain about patronage networks and *de facto* preferences shown to businesses owned by the government or associates of the governing party in the form of preferential access to items such as bank credit, foreign exchange, land, procurement contracts, and import duties.

Judiciary

Ethiopia's judicial system remains inadequately staffed and inexperienced, particularly with respect to commercial disputes. While property and contractual rights are recognized, and commercial and bankruptcy laws exist, judges often lack understanding of commercial matters and scheduling of cases often suffers from extended delays. Contractual enforcement remains weak. There is no guarantee that the award of an international arbitral tribunal will be fully accepted and implemented by Ethiopian authorities. Ethiopia has signed, but never ratified, the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States. The Ministry of Justice and the Federal Ethics and Anti-Corruption Commission (FEACC) are the government entities with primary responsibility to combat corruption. FEACC has arrested many officials, including managers of the Privatization Agency, Customs, and the state-owned Commercial Bank of Ethiopia, and charged them with corruption.

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.

GHANA

TRADE SUMMARY

The U.S. goods trade surplus with Ghana was $386 million in 2008, an increase of $169 million from 218 million in 2007. U.S. goods exports in 2008 were $609 million, up 46.2 percent from the previous year. Corresponding U.S. imports from Ghana were $222 million, up 11.8 percent. Ghana is currently the 89th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ghana was $306 million in 2006 (latest data available).

IMPORT POLICIES

Tariffs

Ghana is a Member of the WTO and the Economic Community of West African States (ECOWAS). According to the WTO, Ghana has bound only 1 percent of tariffs on industrial goods. Along with other ECOWAS countries, Ghana adopted a common external tariff (CET) in 2008 that requires members to simplify and harmonize *ad valorem* tariff rates into five bands: zero duty on social goods (*e.g.*, medicine, publications); 5 percent on imported raw materials; 10 percent on intermediate goods; 20 percent on finished goods; and 35 percent on goods in certain sectors. The fifth band – proposed by Nigeria – is still under negotiation among member countries. Ghana currently maintains 190 exceptions to the CET, and the highest tariff charged is 20 percent. The tariff rates for the items covered under these exceptions will require some changes to align with the CET.

Nontariff Measures

Importers are confronted by a variety of fees and charges in addition to tariffs. Ghana levies a 12.5 percent value added tax (VAT) plus a 2.5 percent National Health Insurance levy on the duty-inclusive value of all imports and locally produced goods, with a few selected exemptions. In addition, Ghana imposes a 0.5 percent ECOWAS surcharge on all goods originating from non-ECOWAS countries and charges 0.4 percent on the free on board value of goods (including VAT) for the use of the automated clearing system, the Ghana Community Network (GCN). Further, under the Export Development and Investment Fund Act, Ghana imposes a 0.5 percent duty on all non-petroleum products imported in commercial quantities. Ghana also applies a 1 percent processing fee on all duty free imports.

All imports are subject to destination inspection and an inspection fee of 1 percent of cost, insurance and freight (CIF). Importers have indicated that they would prefer a flat fee on each transaction based on the cost of the services rendered. The destination inspection companies (DIC) licensed by the Ghanaian government account for the longest delay in import clearance. A 2008 study on port fees revealed that, out of the total transaction time of 69 hours for import clearance, destination inspection accounts for 45 hours. Following lobbying from importers, Ghana Customs has established a Customs Management System (CMS) to take over the valuation and classification of imported goods from the DICs. The new system is expected to reduce the time for import clearance because key steps associated with customs entry processing, payments, and clearance will be automated whereas under the current system hard copies of documents are physically submitted to the offices of the DICs.

In July 2007, an *ad valorem* excise tax on locally produced and imported malt drinks, water, beer, and tobacco products was replaced with specific rates for each product. These changes were based on a study done for the Ghanaian government. The previous *ad valorem* excise tax on these products was between 5 percent and 140 percent. Specific rates are now charged on a per liter basis depending on the level of alcohol content. Carbonated soft drinks are taxed at GHC 0.04 (about $0.04) per liter, while malt drinks are taxed at GHC 0.05 per liter.

An examination fee of 1 percent is applied to imported vehicles. Imported used vehicles that are more than 10 years old incur an additional tax ranging from 2.5 percent to 50 percent of the CIF value. Ghana Customs maintains a price list that is used to determine the value of imported used vehicles for tax purposes. There are complaints that this system is not transparent because the price list used for valuation is not publicly available.

Each year, between May and October, there is a temporary ban on the importation of fish, except canned fish, to protect local fishermen during their peak season.

Ghana has lifted its previous restriction on imports of U.S. bone–in beef, which was based on concerns regarding Bovine Spongiform Encephalopathy (BSE).

Certificates are required for agricultural, food, cosmetics, and pharmaceutical imports. The import procedures for these products are cumbersome. Permits are required for poultry and poultry product imports. The permit process is time consuming, and at the time the permit is issued, a non-standardized quantity limit is imposed. Ghana prohibits the importation of meat with a fat content by weight greater than 25 percent for beef, 42 percent for pork, 15 percent for poultry, and 35 percent for mutton. Imported turkeys must have their oil glands removed. Ghana restricts the importation of condensed or evaporated milk with less than 8 percent milk fat by weight, and dried milk or milk powder containing less than 26 percent by weight of milk fat, with the exception of imported skim milk in containers. In November 2007, the Ghanaian government imposed a temporary ban on the import of tomato paste and concentrates, citing "unfair trade practices." Temporary permits were, however, granted to some importers to import the tomato concentrate for canning.

All communications equipment imports require a clearance letter from the National Communications Authority. Securing a clearance letter prior to importation can help avoid delays at the port of entry.

EXPORT SUBSIDIES

The government uses preferential credits and tax incentives to promote exports. The Export Development Investment Fund administers financing on preferential terms using an 18 percent interest rate, which is below market rates. Agricultural export subsidies were eliminated in the mid-1980s. The Export Processing Zone (EPZ) Law, enacted in 1995, leaves corporate profits untaxed for the first 10 years of business operation in an EPZ, after which the rate climbs to 8 percent (the same rate for non-EPZ companies). Seventy percent of production in the EPZ zones must be exported. The current corporate tax rate for nonexporting companies is 25 percent.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Ghana has issued its own standards for most products under the auspices of its testing authority, the Ghana Standards Board (GSB). The GSB has promulgated more than 343 Ghanaian standards and adopted more than 1,362 international standards for certification purposes. The Food and Drugs Board is responsible for enforcing standards for food, drugs, cosmetics, and health items.

Under Ghana's Conformity Assessment Program (CAP), some imports are classified as "high risk goods" (HRG) that must be inspected by GSB officials at the port to ensure they meet Ghanaian standards. The GSB has classified the HRG into 20 broad groups, including food products, electrical appliances and used goods. The classification of HRG is vague and confusing, and its scope has raised numerous questions. For example, the category of "alcoholic and nonalcoholic products" could presumably include beverages, pharmaceuticals, and industrial products under the same classification. The CAP process requires prior registration with GSB as an importer of HRG and GSB approval to import any listed HRG. The importer must submit to GSB a sample of the HRG, accompanied by a certificate of analysis (COA) or a certificate of conformance (COC) from accredited laboratories in the country of export. Most often, the GSB officials conduct a physical examination and check labeling and marking requirements and ensure that goods are released within 48 hours. Currently, the fee for registering the first three HRG is GHC 50 (about $45) and GHC 20 for each additional product. Any HRG entering Ghana without a COC or COA from an accredited laboratory is detained and subjected to testing by the GSB. The importer is required to pay the testing fee based on the number and kinds of parameters tested. The GSB publishes most of its fees on its website. U.S. companies have expressed concern that the standards that the Ghana CAP utilizes are difficult to determine and that independent third party certifications and marks may not be recognized, resulting in costly and redundant testing.

Ghana passed provisional biosafety legislation in March 2008 to govern agricultural biotechnology pending the passage of a larger biosafety regime. The legislation established regulations governing biotechnology products in three broad areas: field trials and contained work on biotechnology products; the release of these products into the environment; and the importation, exportation, and transit of agricultural biotechnology products. The law allows the National Biosafety Committee, through consultation with appropriate authorities, to issue guidelines on labeling. The Cabinet is currently reviewing draft biosafety legislation that will establish the National Biosafety Authority, which will be the administrative body responsible for all issues related to biotechnology in Ghana.

Sanitary and Phytosanitary Measures

The GSB requires that all food products carry expiration or shelf life dates and requires that the expiration date at the time it reaches Ghana should be at least two-thirds the shelf life. Goods that do not have two-thirds of their shelf life remaining are seized at the port of entry and destroyed. Questions have been raised regarding the consistency of this requirement with the Codex Alimentarius Commission General Standard for Labeling of Pre-packaged Foods.

GOVERNMENT PROCUREMENT

In 2003, Parliament enacted a public procurement law that codified guidelines to enhance transparency and efficiency in the procurement process and assigned responsibility for administration of procurement to a central body. In 2004, the government inaugurated the Public Procurement Board. Individual government entities have formed tender committees and tender review boards to conduct their own procurement. Large public procurements are made by open tender and foreign firms are allowed to participate. A draft guideline being applied to current tenders gives a margin of preference of 7.5 percent to 20 percent to domestic suppliers of goods and services in international competitive bidding. Notwithstanding the procurement law, companies cannot expect complete transparency in locally funded contracts. Allegations of corruption in government procurement are fairly common. Ghana is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Ghana is a party to the World Intellectual Property Organization (WIPO) Convention, the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, the WIPO Copyright Treaty and the African Regional Industrial Property Organization protocols. Ghana has signed the WIPO Performances and Phonograms Treaty and the Patent Law Treaty. Since December 2003, Parliament has passed six bills designed to bring Ghana into compliance with the WTO TRIPS Agreement. The new laws address copyright, trademarks, patents, layout-designs (topographies) of integrated circuits, geographical indications, and industrial designs. Regulations to define the procedures for comprehensive IPR protection and enforcement have not been promulgated. However, copyright regulations were passed in July 2008.

There are incidents of piracy of copyrighted works, although there is no reliable information on the scale of this activity. Holders of intellectual property rights have access to local courts for redress of grievances, although very few trademark, patent, and copyright infringement cases have been filed in Ghana in recent years. Government initiated enforcement remains relatively rare but the Copyright Office, which is under the Attorney General's Office, has initiated raids on markets for pirated works. The Customs Service has collaborated with concerned companies to inspect import shipments for specific counterfeit products.

SERVICES BARRIERS

Ghana's investment code precludes foreign investors from participating in four economic sectors: petty trading, the operation of taxi and car rental services with fleets of fewer than 10 vehicles, lotteries (excluding soccer pools), and the operation of beauty salons and barber shops.

Ghana allows foreign telecommunications firms to provide basic services, but requires that these services be provided through joint ventures with Ghanaian nationals. The National Communications Authority has yet to become effective in resolving complaints alleging that Ghana Telecom, the state-owned national telecommunications operator, is engaging in anticompetitive practices.

In the insurance sector, Ghana limits foreign ownership to 60 percent, except for auxiliary insurance services, where 100 percent foreign ownership is permitted. Although foreign investors may participate in Ghana's market for banking and other non-insurance financial services, discriminatory treatment applies to companies owned by non-resident investors. Specifically, under the central bank's new minimum capital requirement for banks, existing banks with Ghanaian majority share ownership (local banks) have until 2012 to fully increase their capital base to GHC 60 million (about $54 million) from GHC 7 million. By contrast, banks with majority foreign ownership need to meet the target by 2009.

INVESTMENT BARRIERS

Foreign investment projects must be registered with the Ghana Investment Promotion Center (GIPC), a process that is supposed to take no more than five business days but that often takes longer. In an attempt to improve its service, in 2007 the GIPC introduced an online registration system.

The following minimum capital contribution requirements apply for non-Ghanaians who wish to invest in Ghana: $10,000 for joint ventures with a Ghanaian entity; $50,000 for investment in enterprises wholly owned by a non-Ghanaian; and $300,000 for investment in trading companies (firms that buy/sell finished goods) either wholly or partly owned by non-Ghanaians. The GIPC has proposed increasing the minimum capital contribution for investment in trading companies to $1 million. Trading companies must also employ at least 10 Ghanaians.

ELECTRONIC COMMERCE

Barriers to electronic commerce are mainly related to inadequate telecommunications and financial infrastructure. A proposed legal framework for electronic transactions is before Parliament. The payment system in Ghana is largely cash based. In June 2008, the government established a smart card payment system that links banks and financial institutions throughout Ghana and allows the use of point of sale and other electronic payments tools, but enrollment has been low.

OTHER BARRIERS

There are frequent problems related to Ghana’s complex land tenure system. For example, establishing clear title on real estate can be difficult. Non-Ghanaians can have access to land only on a leasehold basis.

Frequent backlogs of cargo at the port hurt the business climate. The Customs Service phased in an automated customs declaration system that was established in the last quarter of 2002 to facilitate customs clearance. Although the new system has reduced the number of days for clearing goods through the ports, the desired impact has yet to be realized because complementary services from government agencies, banks, destination inspection companies, and security services have not been established.

The residual effects of a highly regulated economy and lack of transparency in certain government operations create an added element of risk for potential investors. Entrenched local interests sometimes have the ability to derail or delay new entrants, and securing government approvals may depend upon an applicant’s local contacts. The political leanings of the Ghanaian partners of foreign investors are often subject to government scrutiny, and ensuring compliance with the U.S. Foreign Corrupt Practices Act remains a challenge.

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GUATEMALA

TRADE SUMMARY

The U.S. goods trade surplus with Guatemala was $1.3 billion in 2008, an increase of $232 million from $1.0 billion in 2007. U.S. goods exports in 2008 were $4.7 billion, up 16.1 percent from the previous year. Corresponding U.S. imports from Guatemala were $3.5 billion, up 14.0 percent from the previous year. Guatemala is currently the 42nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Guatemala was $530 million in 2007 (latest data available), up from $437 million in 2006.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic (the Parties). Under the Agreement, the Parties are significantly liberalizing trade in goods and services. The CAFTA-DR also includes important disciplines relating to customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environmental protection.

The Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006. The CAFTA-DR entered into force for the Dominican Republic on March 1, 2007, and for Costa Rica on January 1, 2009.

In 2008, the Parties implemented amendments to several textile-related provisions of the CAFTA-DR, including, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The Parties also implemented a reciprocal textile inputs sourcing rule with Mexico. Under this rule, Mexico provides duty-free treatment on certain apparel goods produced in a Central American country or the Dominican Republic with U.S. inputs, and the United States provides reciprocal duty-free treatment under the CAFTA-DR on certain apparel goods produced in a Central American country or the Dominican Republic with Mexican inputs. These changes will further strengthen and integrate regional textile and apparel manufacturing and create new economic opportunities in the United States and the region.

Tariffs

As a member of the Central American Common Market, Guatemala agreed in 1995 to reduce its common external tariff to a maximum of 15 percent.

Under the CAFTA-DR, about 80 percent of U.S. industrial and consumer goods now enter Guatemala duty-free, with the remaining tariffs phased out by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter Guatemala duty-free and quota-free, promoting new opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter Guatemala duty-free. Guatemala will eliminate its remaining tariffs on nearly all agricultural products by 2020 (2023 for rice and chicken leg quarters and 2025 for dairy products). For certain products, tariff-rate quotas (TRQs) permit some immediate duty-free access for specified quantities during the tariff phase-out period, with the duty-free amount expanding during that period. Guatemala will liberalize trade in white corn through expansion of a TRQ, rather than by tariff reductions. The Foreign Trade Administration Office at the Ministry of Economy administers the CAFTA-DR TRQs, including compliance with timing, volumes, and procedures. Such information is publicly available on the Ministry's website (http://www.mineco.gob.gt).

Nontariff Measures

Under the CAFTA-DR, Guatemala committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. Guatemala also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and all the CAFTA-DR countries must share information to combat illegal transshipment of goods.

U.S. companies have raised concerns that the Guatemalan Customs office has not provided adequate advance notice regarding administrative changes in documentation requirements for imported shipments, such as information submitted on certificates of origin.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Guatemala and the other four Central American Parties to the CAFTA-DR are in the process of developing common standards for the importation of several products, including distilled spirits, which may facilitate trade.

Sanitary and Phytosanitary Measures

During the CAFTA-DR negotiations, the governments created an intergovernmental working group to discuss sanitary and phytosanitary barriers to agricultural trade. Through the work of this group, Guatemala has committed to resolving specific measures that may affect U.S. exports to Guatemala. For example, Guatemala now recognizes the equivalence of the U.S. food safety and inspection systems for beef, pork, and poultry, thereby eliminating the need for plant-by-plant inspections of U.S. producers.

Guatemala closed its market to U.S. cattle and beef and beef products following the 2003 discovery of a Bovine Spongiform Encephalopathy positive animal in the United States. However, in April 2006, Guatemala re-opened its market to U.S. live animals less than 30 months of age and in October 2008 Guatemala fully opened its market to all U.S. beef and beef products from animals of any age consistent with the guidelines of the International Organization for Animal Health. Guatemala continues to restrict imports of U.S. live cattle over 30 months of age.

Guatemala and the other four Central American Parties to the CAFTA-DR notified to the WTO a set of microbiological criteria for all raw and processed food products imported into any of these countries. The United States has some concerns with these criteria and in May 2008 submitted comments to the five countries. The Central American countries are currently evaluating possible amendments to the proposed criteria.

GOVERNMENT PROCUREMENT

Guatemala's Government Procurement Law requires most government purchases over 900,000 quetzals (approximately $110,974 as of March 2009) to be submitted for public competitive bidding. Foreign suppliers must submit their bids through locally registered representatives, a process that can place foreign bidders at a competitive disadvantage.

Since 2004, Guatemalan government entities have been required to use Guatecompras, an Internet based electronic procurement system; this has improved transparency in the government procurement process. However, some government institutions continue to use parallel systems of public procurement, such as spending through international organizations or NGOs, to avoid some government procurement regulations and public auditing.

Under the CAFTA-DR, procuring entities must use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on most Guatemalan government procurement, including purchases by government ministries and state owned enterprises, on the same basis as Guatemalan suppliers. The anticorruption provisions of the Agreement require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense, or is subject to comparable penalties.

Guatemala is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Guatemala maintains tax exemptions provided to investors in free trade zones and duty drawback programs. Under the CAFTA-DR, Guatemala may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, under the CAFTA-DR, Guatemala is permitted to maintain such measures through 2009, provided that it maintains the measures in accordance with its obligations under the WTO Agreement on Subsidies and Countervailing Measures.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of IPR, which are consistent with U.S. and international standards, as well as with emerging international standards of protection and enforcement of IPR. Such improvements include: state-of-the-art protections for patents, trademarks, undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, and digital copyrighted products such as software, music, text, and videos; and further deterrence of piracy and counterfeiting. However, enforcement of these provisions has yet to become fully effective, and U.S. copyrights continue to be infringed, such as with respect to business software.

In 2008, the Guatemalan Congress considered requiring a registration process for generic molecules of agricultural chemical products, which includes provisions concerning the protection of undisclosed test data for such products. The U.S. Government will continue to monitor developments regarding these registration processes

SERVICES BARRIERS

Under the CAFTA-DR, Guatemala granted U.S. services suppliers substantial access to its services market, including financial services.

Some professional services may only be supplied in Guatemala by professionals with locally recognized academic credentials. Public notaries must be Guatemalan nationals. Foreign enterprises may provide licensed professional services in Guatemala through a contract or other relationship with an enterprise established in Guatemala. Under the CAFTA-DR, U.S. insurance companies may establish wholly owned subsidiaries and joint ventures, and will be allowed to establish branches by December 31, 2009. The Guatemalan Congress is considering an insurance law that would strengthen supervision of the insurance sector and allow foreign insurance companies to open branches in Guatemala. This law would also require foreign insurance companies to fully capitalize in Guatemala. U.S. insurance suppliers may provide cross-border insurance in areas such as marine, aviation and transportation, goods in international transit and the brokerage for these products, and reinsurance. Services auxiliary to insurance such as claims settlement, actuarial, risk assessment, and consulting also may be provided on a cross-border basis.

Guatemala has agreed to ensure reasonable and nondiscriminatory access to essential telecommunications facilities and to ensure that major suppliers provide interconnection at cost-oriented rates. U.S. companies have raised allegations of anticompetitive behavior, including unilateral changes of interconnection rates and suspension of service by the country's major fixed line telephone service provider, Telgua, a subsidiary of a Mexican firm. One case involving a U.S.-owned company was resolved through direct negotiation between the parties; however, concerns remain over the ability of the Guatemalan telecommunications regulator – the Superintendence of Telecommunications – to ensure that major suppliers provide interconnection at cost-oriented rates as required in the CAFTA-DR. The United States continues to work with the Guatemalan government to ensure compliance with its obligations under the CAFTA-DR.

INVESTMENT BARRIERS

The CAFTA-DR establishes a more secure and predictable legal framework for U.S. investors operating in Guatemala. Under the CAFTA-DR, all forms of investment are protected, including enterprises, debt, concessions, contracts, and intellectual property. U.S. investors enjoy, in almost all circumstances, the right to establish, acquire, and operate investments in Guatemala on an equal footing with local investors. Among the rights afforded to U.S. investors are due process protections and the right to receive a fair market value for property in the event of an expropriation. Investor rights are protected under the CAFTA-DR by an impartial procedure for dispute settlement that is fully transparent and open to the public. Submissions to dispute panels and dispute panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.

Some U.S. companies complain that complex and unclear laws and regulations continue to constitute practical barriers to investment. Resolution of business and investment disputes through Guatemala's judicial system is extremely time-consuming, and civil cases can take many years to resolve. Corruption, intimidation and the ineffectiveness of the judiciary have led to confusing and contradictory decisions and frequent delays. U.S. companies, however, face the same conditions as local companies and are not subject to any pattern of discrimination in the legal system.

In June 2007, a U.S. company operating in Guatemala filed a claim under the investment chapter of the CAFTA-DR against the government of Guatemala with the International Centre for Settlement of Investment Disputes (ICSID). The claimant alleges the government of Guatemala has indirectly expropriated the company's assets by negating a contract and has requested $65 million in compensation and damages from the Guatemalan government. The claim is pending before the ICSID.

In January 2009, a U.S. company operating in Guatemala submitted a Notice of Intent to the government of Guatemala to file for international arbitration under the investment chapter of the CAFTA-DR. The company is seeking to resolve a dispute with the government of Guatemala regarding the regulation of electricity rates.

ELECTRONIC COMMERCE

The CAFTA-DR includes provisions on electronic commerce that reflect its importance to global trade. Under the CAFTA-DR, Guatemala has committed to provide nondiscriminatory treatment to U.S. digital products and not to impose customs duties on digital products transmitted electronically. In August 2008, the Guatemalan Congress approved an electronic commerce law that provides legal recognition to communications and contracts that are executed electronically; permits electronic communications to be accepted as evidence in all administrative, legal, and private actions; and allows for the use of electronic signatures.

HONDURAS

TRADE SUMMARY

The U.S. goods surplus with Honduras was $807 million in 2008, an increase of $258 million from $549 million in 2007. U.S. goods exports in 2008 were $4.8 billion, up 8.6 percent from the previous year. Corresponding U.S. imports from Honduras were $4.0 billion, up 3.2 percent. Honduras is currently the 41st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Honduras was $968 million in 2007 (latest data available), down from $1.0 billion in 2006. U.S. FDI in Honduras is concentrated largely in the manufacturing and wholesale trade sectors.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic (the Parties). Under the Agreement, the Parties are significantly liberalizing trade in goods and services. The CAFTA-DR also includes important disciplines relating to customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environmental protection.

The Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006. The CAFTA-DR entered into force for the Dominican Republic on March 1, 2007, and for Costa Rica on January 1, 2009.

In 2008, the Parties implemented amendments to several textile-related provisions of the CAFTA-DR, including, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The Parties also implemented a reciprocal textile inputs sourcing rule with Mexico. Under this rule, Mexico provides duty-free treatment on certain apparel goods produced in a Central American country or the Dominican Republic with U.S. inputs, and the United States provides reciprocal duty-free treatment under the CAFTA-DR on certain apparel goods produced in a Central American country or the Dominican Republic with Mexican inputs. These changes will further strengthen and integrate regional textile and apparel manufacturing and create new economic opportunities in the United States and the region.

Tariffs

As a member of the Central American Common Market, Honduras agreed in 1995 to reduce its common external tariff to a maximum of 15 percent.

Under the CAFTA-DR, about 80 percent of U.S. industrial and consumer goods now enter Honduras duty-free, with the remaining tariffs phased out by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter Honduras duty-free and quota-free, promoting new opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter Honduras duty-free. Honduras will eliminate its remaining tariffs on nearly all agricultural products by 2020 (2023 for rice and chicken leg quarters and 2025 for dairy products). For certain products, tariff-rate quotas (TRQs) will permit some immediate duty-free access for specified quantities during the tariff phase out period, with the duty-free amount expanding during that period. Honduras will liberalize trade in white corn through expansion of a TRQ, rather than by tariff reductions. In 2008, Honduras delayed for approximately eight months the issuance of implementing regulations to establish a TRQ for chicken leg quarters of 534 metric tons.

Nontariff Measures

Under the CAFTA-DR, Honduras committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. Honduras also committed to ensure greater procedural certainty and fairness in the administration of these procedures, and all the CAFTA-DR countries agreed to share with each other information to combat illegal transshipment of goods.

The Directorio Ejecutivo de Ingresos (DEI), the Honduran customs and tax authority, has taken over verification of origin certifications from the Ministry of Industry and Trade. The DEI verifies that the origin certifications from producers, exporters, or importers comply with the minimum requirements according to the CAFTA-DR and other treaties. The U.S. Department of Treasury Office of Technical Assistance (OTA) provides ongoing technical assistance to the customs authority aimed at increasing efficiency and capacity of customs officials while reducing fraud. OTA conducted training for five judges in customs procedures in October 2008.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

All imported foodstuffs must be registered with the Sanitary Regulations Directorate (previously the Division of Food Control), after which a sanitary registration number is issued. All products (except samples used to obtain the registration number) must have this identification prior to entering the country. In addition, products cannot be imported with only an English language label. Stick-on labels in Spanish are allowed for product information, but not for manufacturing information or expiration date. Labels must be affixed prior to customs clearance and at the time of product registration.

Honduras and the other four Central American Parties to the CAFTA-DR are in the process of developing common standards for the importation of several products, including distilled spirits, which may facilitate trade.

Sanitary and Phytosanitary Measures

The Ministry of Health has expedited the surveillance process by focusing most closely on products considered to be a high risk for sanitary concerns, such as raw meat, and simplifying the procedures for low risk products. Regulations appear to be evenly enforced for both U.S. and Honduran producers. However, some companies still experience problems. Despite a scientific analysis by the National Committee of Biosafety, one U.S. company has been unable to sell several thousand bags of GMO seed, which is resistant to a type of worm that attacks corn. Losses so far are estimated at $35,000, plus additional damage to the company’s brand. The action appears inconsistent with Honduran procedure and prior approvals and creates a monopoly for another multinational firm. U.S. officials have spoken to the Minister of Agriculture regarding this issue.

During the CAFTA-DR negotiations, the governments created an intergovernmental working group to discuss sanitary and phytosanitary barriers to agricultural trade. Through the work of this group, Honduras committed to resolving specific measures affecting U.S. exports to Honduras. For example, Honduras now recognizes the equivalence of the U.S. food safety and inspection systems for beef, pork, and poultry, thereby eliminating the need for plant-by-plant inspections of U.S. producers.

In 2008, Honduras and the other four Central American Parties to the CAFTA-DR notified to the WTO a set of microbiological criteria for all raw and processed food products imported into any of these countries. The United States has some concerns with these criteria and in May 2008 submitted comments to the five countries. The Central American countries are currently evaluating possible amendments to the proposed criteria.

GOVERNMENT PROCUREMENT

Under the 2001 Government Contracting Law, all public works contracts over 1 million lempiras (approximately $53,000) must be offered through public competitive bidding. Public contracts between 500,000 and 1 million lempiras ($26,500 and $53,000) can be offered through a private bid, and contracts less than 500,000 lempiras ($26,500) are exempt from the bidding process.

Under the CAFTA-DR, U.S. suppliers may bid on procurements of most Honduran government entities, including most key ministries and other government entities, on the same basis as Honduran suppliers. Under the CAFTA-DR, procuring entities must use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurements covered by the Agreement. However, over the past two years, a number of government agencies have attempted to justify the use of non-competitive procurement procedures for public procurements, including large infrastructure projects such as airports and hospitals, by declaring "emergencies."

The anticorruption provisions of the CAFTA-DR require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including government procurement, is treated as a criminal offense, or is subject to comparable penalties. However, Honduras does not always investigate and prosecute these types of crimes.

Honduras is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Honduras maintains tax exemptions given to firms in free trade zones. Under the CAFTA-DR, Honduras may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, Honduras may maintain such duty waiver measures for such time as it is an Annex VII country for the purposes of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). Thereafter, Honduras must maintain any such measures in accordance with Article 27.4 of the SCM Agreement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The CAFTA-DR provides improved standards for the protection and enforcement of a broad range of IPR, which are consistent with U.S. and international standards, as well as with emerging international standards, of protection and enforcement of IPR. Such improvements include: state-of-the-art protections for patents, trademarks, undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, and digital copyrighted products such as U.S. software, music, text, and videos; and further deterrence of piracy and counterfeiting.

Honduran authorities lack dedicated personnel and resources necessary to wage a truly effective campaign against IPR infringement. The prosecutor's office currently contains just two staff members. Although these prosecutors have the authority to seize pirated and counterfeit goods when found, they do not have the ability to prosecute the case without a formal written complaint from an injured party. This complicates and prolongs an already lengthy judicial process. That process also lacks sufficient transparency. Numerous trademark cases are pending in Honduran courts, including one involving the unauthorized use of a U.S. restaurant company's trademark that has been pending in the Honduran judicial system for several years. The U.S. Government continues to raise concerns that Honduran cable television operators are using copyrighted U.S. programming without permission.

Overall, lawyers and judges sometimes lack training in IPR matters, particularly with regard to evidence gathering and keeping statistics on prosecution of IPR crimes. Criminal prosecution efforts are difficult to evaluate since the victims of these crimes almost always settle at the administrative court level. In February 2008, the U.S. Department of Justice trained 25 judges in IPR. We expect that Honduras will also develop a "Best Practices" manual to be used country-wide. Three of these judges received additional training in Puerto Rico in 2008.

SERVICES BARRIERS

Under the CAFTA-DR, Honduras granted U.S. services suppliers substantial access to its services market, including financial services.

Until December 2005, the government owned telephone company, Hondutel, maintained monopoly rights over all fixed line telephony services. In 2003, the government began to allow foreign investors to participate in fixed line telephony services as "sub-operators" in partnership with Hondutel. Approximately 40 foreign and domestic firms since then have entered into "sub-operator" contracts with Hondutel. Despite the purported elimination of its monopoly, the lack of a legal framework for granting concessions has left investors unsure of whether they may legally establish as fully independent service providers. Hondutel currently charges the highest international termination rates in the region.

Both foreign and domestic firms invest in cellular telephony services. In 2006, Hondutel awarded itself the third of three cellular licenses on a noncompetitive basis. In January 2008, an international company won a competitive bid for a fourth cellular license over three other international firms.

The Honduran Congress has been debating new telecommunications legislation for over two years that would require congressional approval for each new license to operate mobile or long-distance services. The United States has expressed concerns over this proposal and over indications that Honduras intends to open sectors only "gradually."

INVESTMENT BARRIERS

The CAFTA-DR establishes a more secure and predictable legal framework for U.S. investors operating in Honduras. Under the CAFTA-DR, all forms of investment are protected, including enterprises, debt, concessions, contracts, and intellectual property. U.S. investors enjoy, in almost all circumstances, the right to establish, acquire, and operate investments in Honduras on an equal footing with local investors. Among the rights afforded to U.S. investors are due process protections and the right to receive fair market value for property in the event of an expropriation. Investor rights are protected under the

CAFTA-DR by an impartial procedure for dispute settlement that is fully transparent and open to the public. Submissions to dispute panels and dispute panel hearings will be open to the public, and interested parties will have the opportunity to submit their views. Under the CAFTA-DR, the existing United States-Honduras Bilateral Investment Treaty will be suspended after a period of 10 years. Investors will continue to maintain important investment rights and protections under the investment provisions of the CAFTA-DR.

Foreign ownership of land within 40 kilometers of the coastlines and national boundaries is constitutionally prohibited, although tourism investment laws allow for certain exceptions. Inadequate land title procedures, including overlapping claims and a weak judiciary, have led to numerous investment disputes involving U.S. nationals who are landowners. In addition, the lack of implementing regulations in certain regions can lead to long delays in the awarding of titles. A law passed in April 2008 authorized the government to award certain agricultural lands that have been under dispute for more than two years to squatters with only nominal compensation to legal titleholders. A number of properties of U.S. citizens are potentially subject to confiscation under this law.

ELECTRONIC COMMERCE

The CAFTA-DR includes provisions on electronic commerce that reflect its importance to global trade. Under the CAFTA-DR, Honduras has committed to provide nondiscriminatory treatment to digital products, and not to impose customs duties on digital products transmitted electronically.

Honduras currently has no domestic legislation concerning electronic commerce, as the sector is still not developed in the Honduran market. The Electronic Commerce System Directorate, a joint project of the Chamber of Commerce and Industry of Tegucigalpa, the Chamber of Commerce and Industry of Cortes, and the National Industry Association, is the institution in charge of establishing the policies and norms pertaining to electronic commerce in Honduras. The Directorate is currently in the process of developing legislation. In addition, three Honduran officials attended the Department of Justice/Organization of American States-sponsored training on combating cybercrime in September 2008.

Although the infrastructure in Honduras is improving, the country still lacks adequate basic telecommunications infrastructure and Internet bandwidth capacity to effectively support significant electronic commerce. Except for web page promotional material, companies are not utilizing computer-based sales as a substantial distribution channel in Honduras.

OTHER BARRIERS

U.S. firms and citizens have found corruption to be a serious problem in Honduras. In 2008, Transparency International ranked Honduras 126 out of 180 countries on corruption indicators. Honduras is now implementing a corruption remediation plan, which includes elements such as civil service reform, external audits of public utilities (especially electricity and telecommunications), strengthening police capabilities, and implementation of the transparency law. Quarterly progress reports are public documents that are shared with members of the international donor community.

Corruption appears to be most prevalent in the areas of government procurement, the buying and selling of real estate (particularly land title transfers), performance requirements, and the regulatory system. Telecommunications and energy are the areas that have proved most worrisome. Honduras's judicial system is allegedly subject to outside influence, and the resolution of investment and business disputes involving foreigners is largely nontransparent. This has affected Honduras's ability to attract foreign investment; the country fell to 133 out of 181 countries in the 2009 World Bank Doing Business Index.

Anticompetitive Practices

U.S. industry has expressed concern that investors who set up business in Honduras have at times found themselves subject to practices that might be considered anticompetitive. In 2006, the Honduran government enacted a Competition law, establishing an anti-trust enforcement commission to combat such conduct. The government has now named the commissioners to the new commission and the commission was operational in 2007.

HONG KONG, SAR

TRADE SUMMARY

The U.S. goods trade surplus with Hong Kong was $15.1 billion in 2008, an increase of $2.1 billion from $13.1 billion in 2007. U.S. goods exports in 2008 were $21.6 billion, up 7.5 percent from the previous year. Corresponding U.S. imports from Hong Kong were $6.5 billion, down 7.7 percent. Hong Kong is currently the 16th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Hong Kong were $5.8 billion in 2007 (latest data available), and U.S. imports were $6.9 billion. Sales of services in Hong Kong by majority U.S.-owned affiliates were $17.6 billion in 2006 (latest data available), while sales of services in the United States by majority Hong Kong-owned firms were $2.9 billion.

The stock of U.S. foreign direct investment (FDI) in Hong Kong was $47.4 billion in 2007 (latest data available), up from $41.0 billion in 2006. U.S. FDI in Hong Kong is concentrated largely in the nonbank holding companies, finance/insurance, and wholesale trade sectors.

IMPORT POLICIES

Hong Kong, China is a special administrative region (SAR) of the People's Republic of China. However, for trade and immigration purposes Hong Kong is a distinct entity with its own tariffs, trade laws, regulations, and its own seat at the WTO. The Hong Kong government pursues a market-oriented approach to commerce. Hong Kong is a duty free port with few barriers to trade in goods and services and few restrictions on foreign capital flows and investment. Hong Kong had traditionally maintained excise duties on certain goods, particularly alcoholic beverages, which were among the highest in the world. However, on February 27, 2008, the Hong Kong Financial Secretary announced that the 40 percent excise tax on wine and the 20 percent excise tax on beer and liquor containing less than 30 percent alcohol would be eliminated immediately. The 100 percent tax on spirits (more than 30 percent alcohol content), however, was left unchanged. The U.S. Government is pleased with this largely positive development and is actively working with like-minded governments to encourage Hong Kong to eliminate the remaining excise duties on spirits.

Hong Kong banned imports of U.S. beef in December 2003 following a reported case of Bovine Spongiform Encephalopathy (BSE). After 2 years of intensive efforts on the part of the U.S. Government, the Hong Kong government announced the partial reopening of its market to deboned beef derived from animals less than 30 months of age, with numerous restrictions, in December 2005. These excessive restrictions, however, have discouraged most qualified U.S. beef exporters from shipping to Hong Kong. World Organization for Animal Health (OIE) guidelines provide for scientifically based conditions under which all beef and beef products from animals of any age can be safely traded from all countries regardless of BSE status as long as the appropriate Specified Risk Materials (SRMs) are removed. In May 2007, the OIE classified the United States as "controlled risk" for BSE. The United States continues to press Hong Kong to open fully its market for all U.S. beef and beef products on the basis of science, the OIE guidelines, and the U.S. "controlled risk" classification. It is estimated that the two year full ban (2004-2005) cost U.S. exporters approximately over $200 million.

COMPETITION POLICY

In late 2006, the Hong Kong government established an independent Competition Policy Review Committee to discuss the need, scope, and application of a comprehensive and cross-sector law on competition. Small and medium sized enterprises in Hong Kong have expressed strong opposition to the creation of such a law. In May 2008, the Hong Kong government presented the elements of its proposed competition legislation for public discussion and scrutiny. Following closure of the public comment period in August 2008, the Hong Kong government reiterated its intention to introduce the bill in the 2009-2010 legislative session. The U.S. Government will continue to follow these developments.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The Hong Kong government continues to maintain a robust IPR protection regime. Hong Kong has strong laws in place, a dedicated and effective enforcement capacity, and a judicial system that supports enforcement efforts with deterrent fines and prison sentences. Hong Kong remains vulnerable, however, to some forms of IPR infringement. The U.S. Government continues to monitor the situation to ensure that Hong Kong sustains its IPR protection and enforcement efforts and addresses remaining problem areas.

Hong Kong Customs enforcement efforts, including raids on underground production facilities, have closed most large scale pirate manufacturing operations, prompting many producers of pirated optical media to switch to computers or compact disc burners to produce illicit copies and forcing retailers to rely increasingly on smuggled goods. Since 2004, Hong Kong Customs has used the Organized and Serious Crimes Ordinance (OSCO) to prosecute piracy syndicates and to freeze their assets. Seven IPR cases have resulted in the freezing of $13.7 million in assets. The volume of openly marketed pirated optical media found in retail shopping arcades has decreased significantly as a result of OSCO, but infringing products still remain available in Hong Kong. U.S. Government officials have encouraged the Hong Kong government to sustain the pace of its ongoing enforcement activities aimed at local producers and vendors of infringing products.

Hong Kong's IPR enforcement efforts have helped reduce losses by some U.S. companies, but the rapid growth of unauthorized file sharing over peer-to-peer networks on the Internet, end-user software piracy, and the illicit importation and transshipment of pirated and counterfeit goods—including optical media and name brand apparel from mainland China, raise concerns. To tackle these problems, Hong Kong officials have established a joint task force with copyright industry representatives to track down online pirates that are using peer-to-peer networks for unauthorized file sharing.

In 2007, the Hong Kong government also passed the Copyright (Amendment) Ordinance after extensive consultations with content-providing industries and other stakeholders. In particular, the Ordinance provides for criminal penalties for unauthorized copying and distribution of infringing copies of printed works in the course of profit generating activities. It also provides civil liability for the act of circumventing technological protection measures and criminal penalties for persons convicted of dealing in circumvention devices or providing a circumvention device for commercial purposes. In April 2008, the government proposed several additional amendments to the Copyright Ordinance designed to address the protection of IP in the digital environment. Industry representatives provided written comments in 2008 on the government's proposals, and are collaborating with Internet Service Providers (ISPs) and content user representatives in a government-led Tripartite Forum that seeks to establish a voluntary compliance framework governing IPR protection in the digital realm. It is unclear whether the Tripartite Forum will reach agreement on such a voluntary framework. The Hong Kong government has postponed

Legislative Council consideration of digital IPR protection amendments to the Copyright Ordinance, pending the outcome of the Tripartite Forum efforts.

Hong Kong Customs routinely seizes IPR infringing products arriving from mainland China and elsewhere. However, stakeholders report that large quantities of counterfeit pharmaceuticals, luxury goods, and other infringing products continue to enter Hong Kong destined for both the local market and transshipment to third countries. The lack of expertise within Hong Kong's enforcement agencies in identifying high quality counterfeit drugs and overlapping lines of responsibility for regulating pharmaceutical products make combating counterfeit pharmaceuticals difficult. Customs officials have partnered with four local ISPs to prevent the sale of counterfeit and infringing products on Internet auction sites.

The lack of a copyright register in Hong Kong continues to make it difficult for law enforcement officials and prosecutors to identify original copyright owners in infringement cases, effectively increasing the burden of proof that rights holders need to present to prove infringement. Although Hong Kong judges, law enforcement officials, and IP industry stakeholders have complained repeatedly about the lack of a copyright register, the government has declined to establish one, citing concerns about cost effectiveness and divergent views among different copyright owners' associations about the scope of registrations. The U.S. Government continues to promote the development of a copyright register in Hong Kong to protect rights owners and end users.

SERVICES BARRIERS

In November 2005, all banks in Hong Kong were permitted modest increases in the scope of Chinese renminbi (RMB) business they can offer to clients, including providing services related to deposit taking, exchange, remittances, and credit cards. Making loans in Hong Kong in RMB, however, is still not permitted for any bank.

The October 2002 United States-Hong Kong Civil Aviation Agreement significantly expanded opportunities for U.S. carriers. The Agreement allows cooperative marketing arrangements between U.S., Hong Kong, and third-country carriers (code sharing) and also increases the ability of U.S. carriers to operate cargo and passenger services between Hong Kong and third countries. However, restrictions on frequencies and routes for these services remain. In 2005, the United States and Hong Kong convened a round of negotiations to expand the Air Services Agreement. The talks were inconclusive and no further negotiations have been scheduled.

Foreign law firms are barred from practicing Hong Kong law and from employing or forming a partnership with Hong Kong solicitors, but they can practice foreign law. Foreign law firms that wish to provide services in both foreign and Hong Kong law may do so only by establishing an office in Hong Kong in which all partners are Hong Kong-qualified solicitors and the number of registered foreign lawyers employed does not exceed the number of Hong Kong solicitors. Such firms may be associated with, or even be branches of, overseas law firms if they meet certain criteria (*e.g.*, at least one partner of the Hong Kong firm must also be a partner in the overseas firm).

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Food Labeling

Although Hong Kong has a population of only seven million residents, it is the seventh largest market for exports of U.S. consumer-oriented agricultural products (for example, foods, beverages, and processed products). In 2008, U.S. exports of this category grew by 67 percent to $1.3 billion making it the third fastest growing market in the world for U.S. consumer-oriented food and beverage products. Approximately 30 percent of U.S. consumer-oriented food and beverage exports to Hong Kong are officially transshipped to China and Southeast Asia. The United States also exported more than $1.8 billion of agricultural, fishery, and forestry products to Hong Kong in 2008. While the Hong Kong market has developed due to liberal market access, the Hong Kong government is in various stages of implementing several labeling schemes that could raise significant barriers to consumer-ready U.S.-origin processed food exports.

On July 9, 2007, an amendment to Hong Kong's Labeling Regulation went into effect that requires manufacturers to declare allergenic substances and list the food additive functional class, and name or identification number (under the International Numbering System), on food labels. Hong Kong's requirements vary only slightly from U.S. regulations. The differences, however, are important, and the United States is concerned that the lack of flexibility in the regulations does not contribute to improved consumer awareness or information. A number of U.S. food products, especially name-brand processed foods, experienced difficulties complying with the labeling changes in the period allotted and this has resulted in some U.S. companies supplying the Hong Kong market from non-U.S. facilities. The United States expressed its objections to this regulation.

On May 28, 2008, Hong Kong's Legislative Council enacted another amendment to Hong Kong's Labeling Regulation that included new labeling requirements for products making nutritional claims. This may raise prices and restrict choice of packaged foods and beverages for Hong Kong consumers when it takes effect on July 1, 2010. Hong Kong's labeling regulations do not follow the labeling practices of major suppliers, and given Hong Kong's small market size for most individual products, repackaging products to comply with the new Hong Kong labeling standard may not be economically feasible. The new regulation has already resulted in a number of products leaving the market. The United States is requesting that the regulations allow flexibility in granting imports for U.S. products that comply with U.S. labeling laws.

Also, on October 28, 2008, Hong Kong notified the WTO of its proposal to change the existing voluntary food recall system and make it mandatory. The United States will continue to monitor developments in this area in 2009.

Energy Efficiency Labeling and Regulations

The Hong Kong government enacted the Energy Efficiency Labeling Ordinance in May 2008 for consumer electrical appliances. The Ordinance is intended to assist consumers in choosing energy efficient products. Under the Ordinance, the manufacturer or importer's product must be registered with the Hong Kong Electro-Mechanical Services Department and carry an energy label that complies with specified technical requirements. The Ordinance's first phase of implementation mandates standardized energy efficiency labeling for three types of products: air conditioners, refrigerators, and compact fluorescent lamps. The second phase will cover 15 other types of common consumer appliances such as water heaters, computers, and televisions. The implementation timetable for the second phase has not yet been determined. The Hong Kong-specific labeling system could become a trade barrier to the extent that the local system differs materially from internationally agreed labels, such as the "Energy Star" label used in the United States and Japan.

The Hong Kong government is also working toward adoption of energy efficiency regulations and standards for all new government, commercial, and industrial buildings. The regulations would also be applied to existing buildings, whenever they undergo significant renovations or modifications. A proposal to establish mandatory energy efficiency standards for buildings was made public in December 2007. The public consultation period ended in March 2008. According to industry experts, several of the proposed energy efficiency standards would be unique to Hong Kong. Although legislation to implement this proposal has not yet been submitted to the Legislative Council, failure to recognize existing international standards could pose a significant trade barrier.

Pharmaceuticals

U.S. industry has expressed concerns about lengthy approval procedures for new pharmaceuticals, which shorten the effective patent life of new products by six months. In addition, U.S. industry is concerned about the lack of transparency in the Hong Kong Hospital Authority's approval process for new drugs. These cumbersome procedures also inhibit the patent owners' ability to market their products on a timely basis.

U.S. pharmaceutical companies are concerned that the Hong Kong Department of Health continues to issue marketing authorizations for patent infringing pharmaceutical products. In addition, the industry has concerns about sales of counterfeit pharmaceuticals—which threaten consumer safety and brand reputation—and it seeks more vigorous enforcement and tougher penalties to deter this kind of illicit trade. According to industry representatives, counterfeit pharmaceuticals from other countries (particularly within the Asia-Pacific region) are being imported in increasing quantities into Hong Kong. Counterfeit pharmaceuticals are then repackaged to appear similar to legitimate pharmaceuticals registered in Hong Kong. The United States Government continues to urge the Hong Kong government to address both the marketing approval/patent protection linkage issue and the counterfeiting issue as they pertain to pharmaceutical products.

INDIA

TRADE SUMMARY

The U.S. goods trade deficit with India was $7.1 billion in 2008, an increase of $611 million from $6.5 billion in 2007. U.S. goods exports in 2008 were $18.7 billion, up 6.1 percent from the previous year. Corresponding U.S. imports from India were $25.8 billion, up 7.0 percent. India is currently the 17th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to India were $9.4 billion in 2007 (latest data available), and U.S. imports were $9.6 billion. Sales of services in India by majority U.S.-owned affiliates were $4.2 billion in 2006 (latest data available), while sales of services in the United States by majority India-owned firms were $3.1 billion.

The stock of U.S. foreign direct investment (FDI) in India was $13.6 billion in 2007 (latest data available), up from $9.2 billion in 2006. U.S. FDI in India is concentrated largely in the information, manufacturing, and banking sectors.

IMPORT POLICIES

U.S. exporters continue to encounter tariff and nontariff barriers that impede imports of U.S. products, despite the government of India's ongoing economic reform efforts. While U.S. exports to India registered sizable growth in 2007-2008, further reduction of the bilateral trade deficit will depend on significant additional Indian liberalization of its trade regime.

The United States has actively sought market-opening opportunities in India, both bilaterally and multilaterally. The USTR and India's Minister of Commerce chair the United States-India Trade Policy Forum (TPF). A part of the United States-India Economic Dialogue, the TPF meets regularly, including through its five Focus Groups – Agriculture, Innovation and Creativity (*i.e.*, intellectual property rights), Investment, Services, and Tariff and Nontariff Barriers – to discuss the full range of bilateral trade and investment issues. In February 2008, the TPF and the Private Sector Advisory Group (formed under the TPF) met in Chicago to review the progress of discussions conducted by the Focus Groups.

Tariffs and other Charges on Imports

India's import regime is characterized by pronounced disparities in bound versus applied rates. According to the WTO, India's average bound rate tariff is 48.6 percent, while its applied tariff for FY2007 (latest data available) was 14.5 percent across all goods. Over the past several years, the government has steadily reduced MFN tariffs applied to nonagricultural goods, including a reduction in the applied duty on most industrial products from 15 percent in FY2005-06, to 12.5 percent in FY2006-07, and to 10 percent in FY2007-08. However, the government of India's (GOI) 2008-2009 budget maintained the applied duty at 10 percent. In order to boost the local manufacturing sector, the general rate of central excise duty for domestic products (CENVAT) and "additional duty" for imported goods was reduced to 14 percent from 16 percent for most items. In December 2008, the GOI further reduced excise duties on most products to 10 percent from 14 percent. In February 2009 as part of an economic stimulus package, the GOI again cut the excise duty on most products to 8 percent. As the countervailing duty on imports is equivalent to the excise tax, the total duty assessment for imported products will also be reduced. Despite these cuts, India's average applied tariff on industrial goods remains high, mainly due to significantly high tariff peaks on automobiles, motorcycles, and natural rubber. In November

2008, India increased tariffs on certain steel products to 5 percent. Also, the U.S. textile industry continues to have concerns about nontransparent application of tariffs and taxes.

Notwithstanding lower applied tariffs in nonagricultural goods, India has bound only 71.6 percent of its nonagricultural tariff lines. Also, India's WTO bound tariffs on agricultural products are among the highest in the world, ranging from 100 percent to 300 percent, with an average bound tariff of 114.2 percent in 2007. While many Indian applied tariff rates are lower, they still represent a significant barrier to trade in agricultural goods and processed foods (*e.g.*, potatoes, apples, grapes, pistachios, and citrus). Further, given the fact that there are large disparities between bound and applied rates, U.S. exporters face greater uncertainty because India has the ability to raise its applied rates to bound levels in an effort to manage prices and supply. For example, in April 2008, the GOI, in an effort to curb inflation, reduced applied duties on crude edible oils and corn to zero, refined oils to 7.5 percent, and butter to 30 percent from 40 percent. However, in November 2008, the GOI raised crude soy oil duties back to 20 percent. Tariffs on processed foods (*e.g.,* chocolate and confectionery, frozen french fries, cookies, and savory snacks) remain high.

With the exception of wine, spirits, and other alcoholic beverages, the government applies an "additional duty" at a rate equal to the central excise tax (CENVAT) rate applicable to like domestic products. In July 2007, the government issued a customs notification exempting alcoholic beverages from the rates of additional duty set forth in a prior customs notification. Under the prior customs notification, imports of alcoholic beverages were subject to rates of additional duty ranging from 20 percent to 150 percent *ad valorem* (and in some cases higher specific duties). On the same date, the government raised the applied tariff on wine from 100 percent to 150 percent. The applied tariff on distilled spirits remained at 150 percent. When India exempted alcoholic beverages from the additional duty, it announced it was doing so in lieu of state-level excise duties on wine and spirits. There is concern that these state-level taxes may result in imported wine and spirits being taxed at a higher rate as compared to like domestic products.

Imports also are subject to state-level value added or sales taxes and the Central Sales Tax as well as various local taxes and charges. In March 2006, the government established a 4 percent *ad valorem* "extra additional duty". The extra additional duty (also referred to as the "special additional duty") applies to all imports, including alcoholic beverages, except those exempted from the duty pursuant to a customs notification. The extra additional duty is calculated on top of the basic customs duty (*i.e.*, a tariff) and additional duty. In September 2007, the government issued a customs notification allowing importers to apply for a refund of the extra additional duty paid on imports subsequently sold within India and for which the importer has paid state-level value added taxes. Importers report that the refund procedures are cumbersome and time consuming. The GOI has announced its intention to implement a national goods and services tax that would replace various charges on imports.

In June 2007, a WTO dispute settlement panel was established to consider U.S. claims that the additional duty and extra additional duty result in customs duties that exceed India's WTO-bound rates and as such are inconsistent with India's WTO obligations. The U.S. claims against the additional duty were limited to alcoholic beverages, whereas its claims against the extra additional duty concerned a number of industrial and agricultural products, including alcoholic beverages. India argued that the duties offset internal taxes on like domestic products. The panel, in February 2008, ruled in favor of India. The United States appealed the panel's decision in August 2008. On October 30, 2008, the WTO Appellate Body reversed the panel and ruled in favor of the United States. The Appellate Body agreed with the United States that any import charges aimed at offsetting internal taxes cannot result in a higher amount being charged to imports than to like domestic products and considered that to the extent either duty result in charges on imports in excess of charges on like domestic products it would be inconsistent with India's WTO tariff commitments.

The government publishes applied tariff and other customs duty rates applicable to imports, but there is no official, centralized publication or searchable database setting forth applied tariff and other customs duty rates. To determine the applied tariff or other customs duty rate applicable to a particular product, importers must consult separate customs and excise tax schedules and cross reference these schedules with any applicable customs or excise notification that may subject the product to higher or lower rates than set forth in the schedules (assuming the importer is able to determine that any such notification exists). Such a system lacks transparency and imposes significant burdens on importers.

Import Licensing

India maintains a negative import list of products subject to various forms of nontariff regulation. The negative list is currently divided into three categories: banned or prohibited items (*e.g.*, tallow, fat, and oils of animal origin); restricted items that require an import license (*e.g.*, livestock products, certain chemicals); and "canalized" items (*e.g.*, petroleum products, some pharmaceuticals, and bulk grains) importable only by government trading monopolies subject to cabinet approval regarding timing and quantity. India, however fails to observe customary transparency requirements, such as publication of information in the Official Gazette or notification to WTO Committees and in practice, these requirements act as a barrier to trade.

The government allows imports of second-hand capital goods by the end users without requiring an import license, provided the goods have a residual life of five years. Refurbished computer spare parts can only be imported if an Indian chartered engineer certifies that the equipment retains at least 80 percent of its residual life, while refurbished computer parts from domestic sources are not subject to this requirement. The government has required import licenses for all imports of remanufactured goods since 2006. As with such requirements on other products, U.S. industry representatives report that the licensing requirement is onerous as implemented: the license application requires excessive details, quantity limitations are set on specific part numbers, the delay between application and grant of the license is long and creates uncertainty, and in some cases industry representatives report that they have been unable to obtain a license. The U.S. Government has raised concerns about these issues in the U.S.-India Trade Policy Forum.

In October 2007, India's Director General of Foreign Trade (DGFT) eliminated the registration requirement for foreign exporters of unshredded scrap metal. However, a preshipment inspection (PSI) regime remains in place.

Since 2004, India has subjected imported boric acid to stringent requirements. Traders (*i.e.*, wholesalers) of boric acid for non-insecticidal use remain unable to import boric acid for resale because they are not end users of the product and cannot obtain no-objection certificates (NOCs) from ministries. NOCs are required before applying for import permits from the Ministry of Agriculture's Central Insecticides Board & Registration Committee (CIB&RC). Instead, traders fall under the stringent regulations applicable to insecticidal boric acid. Meanwhile, local refiners continue to be able to produce and sell non-insecticidal boric acid, with a requirement only to maintain records showing they are not selling to insecticidal end users. The CIB & RC has not enforced this requirement on domestic producers beginning at least since the 2006-07 Indian fiscal year. The United States continues to engage the government to not treat industrial boric acid imported by traders as an insecticide and to withdraw the import permit system for this product.

Customs Procedures

Issues have emerged regarding the application of customs valuation criteria to import transactions. Valuation procedures allow India's customs officials to reject the declared transaction value of an import when a sale is deemed to involve a reduction from the ordinary competitive price. U.S. exporters have reported that India's customs valuation methodologies do not reflect actual transaction values and effectively increase tariff rates. The United States is working through the WTO Committee on Customs Valuation to address this issue.

U.S. industry reports that, since September 2007, India has improperly included certain royalties in the customs valuation of imported digital video disc (DVD) analog master tapes and digital linear tapes and has assessed customs duties, retroactively for five years for some importers, using the revised valuation methodology. In addition, U.S. industry has noted that these issues have resulted in the detention of these products at the border by India's customs officials. The United States is working through the WTO Committee on Customs Valuation and the Trade Policy Forum to address this issue.

India's customs officials generally require extensive documentation, which inhibits the free flow of trade and leads to frequent processing delays. In large part this red tape is a consequence of India's complex tariff structure and multiple exemptions, which may vary according to product, user, or intended use. While these difficulties persist, India has shown improvement in this area. According to the World Bank, over the past three years the number of days needed to complete an import transaction in India has been halved to 20 days, and there have been some reductions in the number of required documents.

Issues have also arisen regarding customs policies with respect to imports of edible oils, such as crude soybean oil. The applied rate of customs duty has varied within the WTO bound rate of 45 percent, and U.S. producers have reported concerns that the valuation methodology used for these imports to India has resulted in higher duty assessments. The customs policies, including the customs valuation system, are nontransparent and unpredictable. Exports of U.S. crude soybean oil to India are negligible after reaching a peak of $25 million in 2002.

Motor vehicles may be imported through only three specific ports and only from the country of manufacture.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

In early 2009, the GOI revised its mandatory certification compliance list, which now includes 85 specific commodities. The revised list includes such products as milk powder, infant formula, bottled drinking water, certain types of cement, household and similar electrical appliances, gas cylinders, certain steel products and multi-purpose dry cell batteries. Products on the mandatory certification list must be certified for safety by the Bureau of Indian Standards (BIS) before the products are allowed to enter the country. All manufacturers, foreign and domestic, must register with the BIS in order to comply with this requirement. Standards are delineated in India's Scheme of Testing & Inspection (STI), which are on BIS's website or can be obtained from the BIS upon request. Foreign companies can receive automatic certification for imported products, provided the BIS has first inspected and licensed the production facility. However, a general complaint among U.S. industries is that inspection and licensing costs imposed on foreign manufacturers are so high that they may restrict trade in these items.

In bilateral and multilateral fora, the United States has raised concerns about several technical regulations, standards, and conformity assessment procedures promulgated by the GOI. For example, the United States has raised concerns in the WTO Technical Barriers to Trade (TBT) Committee regarding the proposed BIS conformity assessment system for tires, in particular U.S. industry's concern that the testing methodology employed by BIS would lead to higher conformity assessment fees being levied on imported tires than on tires produced in India. The United States has asked India to explain why it uses different fee calculation methodologies for imported and domestic tires and to defend its contention that the resulting fees would be the same for imported and domestic tires. The United States has also raised concerns in the WTO TBT Committee with respect to the potential negative impact on trade of India's proposed "Drugs and Cosmetics (Amendment) Rules, 2007." The United States is concerned that the registration system created by the proposal appears to apply only to imported cosmetics, and it has raised several additional questions to which India has not yet replied. U.S. industry has expressed its view that the proposed registration system would be overly burdensome and unreasonably costly, and would cause unnecessary delays to market for their member companies' products.

In 2006, the GOI amended an existing law governing the regulation of pharmaceuticals to include certain medical devices. The government currently is developing legislation for medical devices. A draft Medical Devices Regulatory (MDR) Bill has been formulated to cover medical devices not covered by the Drugs and Cosmetics Act; however, the legislation has yet to be tabled before India's Parliament. Separately, India has introduced a bill that would create a Central Drug Authority that would eliminate the need for a Medical Devices Regulatory Authority that would be created under the MDR Bill. The U.S. Government and U.S. industry continue through the United States-India High Technology Cooperation Group to encourage India to develop its medical device regulations by taking into account and participating in international harmonization efforts on medical device regulation.

Sanitary and Phytosanitary (SPS) Measures

The United States has raised concerns with India on several occasions regarding India's failure to notify SPS measures to the WTO. For example, the United States has urged the GOI to notify to the WTO of the new import requirements for shipments of hides and skins and to provide the international community with an opportunity to comment on proposed measures, pursuant to India's WTO obligations. The United States also has concerns about India's process when it does notify the WTO. In several instances the dates of implementation of India's measures have not allowed time for a comment period or for a consideration of comments provided by trading partners. Regarding the length of the comment period for notifications, both the SPS and TBT Committees recommend that WTO Members provide a minimum of 60 days for comments to be submitted on notified measures when possible.

In 2008, the United States repeatedly raised at the WTO SPS Committee India's import ban of U.S. poultry, swine, and their products as a result of the detection of low pathogenic avian influenza (AI). Despite repeated requests from the United States, Canada and the European Commission, India has not yet provided a scientific justification for the ban which does not appear to comply with guidelines established by the International Organization for Epizootics (OIE).

India also continues to maintain other regulations, which do not appear to be related to any international standard or scientific analysis, that block imports of U.S. poultry, poultry products, live horses, pet food, pork, swine, and many dairy products. Although dry processed pet food is exempt from India's AI ban, Indian officials continue to require AI certification statements that do not follow OIE guidelines, as well as other requirements, which has effectively stopped imports of dry processed U.S. pet food. Beyond SPS import requirements, India has recently imposed quality restrictions for imports of bovine genetics as well as hides and skins, effectively limiting the volume of products which can be imported. India also maintains more stringent maximum residue levels on imported dairy products than it does for domestic products and requires certification that products are free of recombinant bovine somatotropin (rBST) and animal-derived rennet. The United States has proposed several health certificates attesting that U.S. milk and milk products are fit for human consumption, but the problem remains unresolved. In a continued effort to reopen the market to U.S. products, the United States continues to develop alternative certification options for India's consideration.

The U.S. agricultural industry also faces challenges with India's import permit requirements. For example, in order to import livestock products, an import permit for each individual lot must be obtained from India's Ministry of Agriculture. The import license is valid only for six months, and imports must also be inspected by the health authorities before clearance. In combination, these requirements can raise difficult procedural hurdles for the U.S. exporter.

Additionally, the GOI, in certain cases, only accepts zero risk for plant quarantine pests of concern. For example, sales of U.S. wheat and barley to India are blocked by strict tolerances for weed seeds and unnecessary fumigation requirements. In addition, overly restrictive requirements for freedom from nematodes threaten continuation of U.S. exports of pulses. Bilateral technical level discussions to resolve the aforementioned issues are ongoing, but little progress has been made after, in some instances, several years of discussions.

In August 2006, in an attempt to consolidate its existing multitude of laws and regulations governing the food and food processing sectors, the GOI enacted an integrated food law titled, "Food Safety and Standards Act, 2006." The law also created a Food Safety and Standards Authority (FSSA), responsible for establishing food safety standards for packaged and processed foods and for regulating India's manufacturing storage, distribution, sale, and import sectors. The FSSA is now operational with a Chairman and Chief Executive Officer, but has yet to initiate the rulemaking process.

Agricultural Biotechnology

The GOI's trade policy stipulates that imports of all biotechnology food/agricultural products or products derived from biotechnology plants/organisms should receive prior approval from the regulatory body, the Genetic Engineering Approval Committee (GEAC). *Bacillus thuringiensis* (Bt) cotton, which produces a toxin that can kill certain pests, was introduced for commercial use in 2002/03. However, the only biotechnology food approved for commercial import thus far is soybean oil derived from Round-up Ready soybeans for consumption after refining. As a result, U.S. exports of products derived from genetically engineered commodities are effectively banned, except for soybean oil. In 2007, the U.S. soybean oil exports to India totaled more than $11 million.

India's biotechnology regulatory system is onerous and time consuming, but is evolving towards harmonization with international standards. Despite recent efforts by regulatory bodies to streamline the process, the biotechnology community feels there is a need for further reforms to facilitate faster growth in the sector. In February 2008, the Ministry of Environment and Forest issued a notification that the GEAC will continue to regulate imports of processed biotechnology food products until the new FSSA, under the Ministry of Health and Family Welfare, takes over the responsibility. Imports of biotechnology food products that are live modified organisms (LMO) will continue to be under the authority of GEAC.

GOVERNMENT PROCUREMENT

In India, different procurement practices apply at the Central level and at the state level, and to the public sector agencies and enterprises. At the Central (federal) level, procurement is regulated through executive directives and administered by the government agencies. The General Financial Rules (GFR), issued by the Ministry of Finance, lay down the general rules and procedures for financial management, the procurement of goods and services, and contract management. Sector-specific procurement policies exist in some areas, such as defense procurement. India does not have an authority responsible for establishing procurement policies and overseeing compliance with the procurement procedures. However, a central purchasing agency, the Directorate General of Supplies and Disposal (DGS&D), and state-level central state purchasing organizations enter contracts with registered suppliers for goods and standard items in conformity with the GFR.

The GOI revised the GFR in 2005 to provide greater flexibility. It has also issued a Manual on Policies and Procedures for Purchase of Goods. A number of instructions, issued by the Central Vigilance Commission (the Indian Government's oversight body for government employees), supplement these regulations. The individual government agencies also sometimes issue more detailed instructions and their own handbooks, model forms, and model contracts. Currently, government procurement in India is decentralized, and all state and public sector agencies have their own procurement organizations. India's government procurement practices and procedures are not transparent. Foreign firms rarely win Indian government contracts due to the preference afforded to Indian state-owned enterprises in the award of government contracts and the prevalence of such enterprises. Under the Purchase Preference Policy (PPP), government enterprises and government departments give a preference to any state-owned enterprise that submits an offer that is within 10 percent of the lowest bid. The PPP lapsed on March 31, 2008 and has not been renewed.

India is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

The tax exemption for profits from export earnings has been completely phased out, but tax holidays continue for export oriented units and exporters in Special Economic Zones (SEZ). In addition to these programs, India continues to maintain several duty drawback programs that appear to allow for drawback in excess of duties levied on imported inputs. India also provides preshipment and postshipment export financing to exporters at a preferential rate. India's textile industry enjoys subsidies through modernization schemes, such as the Technology Upgradation Fund Scheme and the Scheme for Integrated Textile Parks. India has not submitted a notification to the WTO Committee on Subsidies and Countervailing Measures since 2001.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Large-scale copyright piracy, especially in the software, optical media, and publishing industries, continues to be a major problem. The United States retained India on the "Priority Watch List" as part of the 2008 Special 301 review. IPR protection and enforcement has been the subject of ongoing discussion in the TPF's Innovation and Creativity Focus Group.

Patents

India amended its patent law effective January 1, 2005. The amended patent law extends product patent protection to pharmaceuticals and agricultural chemicals. While a positive step, these changes did not address several important weaknesses in India's patent protection regime. For example, the new law does not clarify some ambiguities regarding the scope of patentable inventions. Additionally, there are growing concerns by the research based pharmaceutical industry that the application of the new pre-grant opposition rules may impede the timely processing of patent applications for new compounds.

Indian law does not provide for effective protection against unfair commercial use of test or other data that companies submit in order to obtain government marketing approval for their pharmaceutical or agricultural chemical products that contain a new chemical entity that has not been previously approved. In June 2007, an inter-ministerial committee of the government of India released a report on India's implementation of the data protection provisions of the TRIPS Agreement. The report's recommendations fell short of international standards (*e.g.*, proposing an undefined transitional period prior to providing data protection for pharmaceuticals). Further, the report recommended limiting the scope of protection with a number of "safeguards." The recommendations of the report are being discussed within the government, and some of the recommendations may require legislative changes to be implemented. The United States continues to monitor this situation.

Copyrights

The GOI has proposed amendments that are intended to update the copyright laws to address issues related to the Internet and digital works. However, the proposed amendments have some deficiencies, including with respect to India's implementation of the World Intellectual Property Organization Internet treaties. The United States continues to encourage India to address these issues and fully implement the treaties.

Enforcement

The establishment of specialized IP courts, the training of judges on issues specific to IP litigation, and the increased efforts by Indian Customs Officials to stop infringing goods from entering the country are all welcome steps. India's criminal IPR enforcement regime, including border protection against counterfeit and pirated goods, however, remains weak.

India is considering enacting optical disc legislation and amending its copyright laws. Piracy of copyrighted materials (primarily software, films, popular fiction works, and certain textbooks) remains a problem for both U.S. and Indian producers. Costs to the U.S. industry are estimated to be more than $1 billion in 2008. The sale of semiconductors that violate copyright and integrated circuit mask laws also continues to be a concern.

Cable television piracy continues to be a significant problem. Copyrighted U.S. content is transmitted without authorization by licensed cable operators often using pirated videocassettes, video compact discs, or DVDs as source materials. This has had a detrimental effect on all motion picture market segments in India, including theatrical, home video, and television markets.

There have been few reported convictions for criminal copyright infringement resulting from raids, including raids against repeat offenders. Backlogs in the court system and documentary and other procedural requirements have created impediments to the prosecution of those engaged in criminal counterfeiting and piracy. Obstruction of raids, leaks of confidential information, delays in criminal case preparation, and the lack of adequately trained officials have further hindered the criminal enforcement process. The United States is monitoring this situation.

SERVICES BARRIERS

Indian government entities have a strong ownership presence in some major services industries such as banking and insurance, while private firms play a preponderant or exclusive role in a number of rapidly growing parts of the services sector, including the information technology sector, advertising, car rental, and a wide range of business consulting services. While India has submitted initial and revised offers for improved services commitments in the WTO Doha Round, these offers do not remove existing limitations or promise new liberalization in such key sectors as distribution, express delivery, telecommunications, financial services, and the professions.

Insurance

Foreign participation in the Indian insurance sector has been allowed since 1999, but foreign equity is limited to 26 percent of paid-up capital. The GOI introduced legislation in late 2008 that would allow foreign equity participation to 49 percent, but the legislation was not passed before Parliament adjourned prior to elections due in the first half of 2009.

Banking

Although India has opened up to privately-held banks, most Indian banks are government-owned, and entry of foreign banks remains highly constrained. State-owned banks hold roughly 70 percent of the assets of the banking system, although private banks are growing rapidly. Foreign banks may operate in India in one of three forms: a direct branch, a wholly-owned subsidiary, or through a stake in a private Indian bank. As of June 2008, there were 30 foreign banks with 279 branch offices operating in India under Reserve Bank of India (RBI) approval, including 4 U.S. banks with a total of 52 branches. Under India's branch authorization policy, foreign banks are required to submit their internal branch expansion plans on an annual basis, but their ability to expand is severely limited by nontransparent quotas on branch office expansion. In 2007, India granted 19 new foreign branch office licenses (latest data available).

Foreign banks have not opened any wholly-owned subsidiaries because of an RBI requirement that they divest to 74 percent by 2009, making this option largely unattractive. Foreign banks may not own more than 5 percent of an Indian private bank without approval of the RBI. Total foreign ownership of a private Indian bank cannot exceed 74 percent.

Audiovisual and Communications Services

Although the GOI has removed most barriers to the import of motion pictures, U.S. companies have continued to experience difficulty in importing film/video publicity materials and are unable to license movie-related merchandise due to royalty remittance restrictions.

U.S. companies continue to face difficulties with a "Downlink Policy" issued by GOI in 2005. The Downlink Policy applies to international content providers that down-link programming from a satellite into India and requires that they establish a registered office in India or designate a local agent. The government reportedly implemented this rule to ensure greater oversight over programming content. However, U.S. companies note that most other countries (including the United States) do not require a license for the down-linking of programming and that the GOI can control content through its licensed entities (such as cable companies or Direct to Home providers). Companies claim that this policy is overly burdensome, results in a taxable presence in India and should be amended to avoid the taxable presence. The United States continues to raise this issue with India's Ministry of Information and Broadcasting, including most recently at the State Department-led United-States-India Information and Communication Technology (ICT) Working Group meeting in New Delhi in December 2008.

Accounting

Only graduates of an Indian university can qualify as professional accountants in India. Foreign accounting firms can practice in India if their home country provides reciprocity to Indian firms. Only firms established as a partnership may provide financial auditing services, and foreign-licensed accountants may not be equity partners in an Indian accounting firm. The GOI is working on opening up the sector to foreign chartered accountants and professional consultants through the Limited Liability Partnership Bill, which still awaits approval in the Parliament.

Construction, Architecture, and Engineering

Many construction projects are offered only on a nonconvertible rupee payment basis. Only government projects financed by international development agencies allow payment in foreign currency. Foreign construction firms are not awarded government contracts unless local firms are unable to perform the work. Generally, foreign firms may participate in government contracts through joint ventures with Indian firms.

Legal Services

Foreign law firms are not authorized to open offices in India. Foreign legal service providers may be engaged as employees or consultants in local law firms, but they cannot sign legal documents, represent clients, or be appointed as partners. India has not made any offers for liberalizing foreign access to the legal services sector at the WTO. The United States-India Legal Services Working Group, an initiative created at the TPF meeting in December 2006, has faced difficulty in starting a substantive dialogue due to opposition within certain quarters of the Indian legal profession. But, with U.S. Government assistance, U.S. and Indian panel members met informally during a legal conference in India in early 2009.

Telecommunications

Despite the GOI's positive steps towards liberalizing and introducing private investment and competition in its telecommunications services market, concerns remain regarding India's weak multilateral commitments in basic and value added telecommunications services. In addition, many pro-competitive recommendations of the independent telecommunications regulatory agency (Telecommunications Regulatory Authority of India – TRAI) have been delayed or rejected by the Ministry of Communications and Information and Technology, Department of Telecommunications (DoT) without adequate explanation.

India's national telecommunications policy allows up to 74 percent foreign participation for fixed national and international long distance services, and several U.S. companies have obtained licenses to provide these services. However, other U.S. companies complain that India's licensing fee for these services (approximately $500,000 per service) serves as a barrier to market entry for smaller market players.

The GOI maintain limits on foreign direct and foreign indirect investment (FDI and FII) in several areas; namely, cable networks (49 percent), satellite uplinking (49 percent), "direct-to-home" (DTH) broadcasting (49 percent with FDI limited to 20 percent), and the uplinking of news and current affairs television channels (26 percent). These limits negatively impact the ability of U.S. companies to invest in this sector.

Throughout the past year, the GOI has struggled to formalize its policies for the allocation of wireless spectrum to serve India's rapidly expanding and lucrative wireless telecommunications industry. The auction of spectrum for providing 3G services has been postponed several times, with the latest speculation that it could be held in March 2009 or wait until after India's elections due to be held in April/May 2009. This auction will be open to existing operators, license holders, and foreign companies, allaying concerns for the time being voiced by U.S. industry that they would be precluded from participating in the auction.

DoT's recently released 3G bid document permits foreign companies to participate in the auctions without first obtaining a telecommunications license or securing a joint venture partner. Only those operators that are successful in the upcoming auctions will have to obtain a license and find an Indian partner for establishing the joint venture (existing regulations restrict foreign holdings to 74 percent and mandate that an Indian entity hold the remaining 26 percent).

The GOI continues to hold equity in three telecommunications firms: a 26 percent interest in the international carrier, VSNL; a 56 percent stake in MTNL, which primarily serves Delhi and Mumbai; and the 100 percent ownership of BSNL, which provides domestic services throughout the rest of India. These ownership stakes have caused private competitive carriers to express concern about the fairness of the GOI's general telecommunications policies. By way of example, valuable wireless spectrum will be set aside for MTNL and BSNL and not subject to competitive bidding. The industry is concerned that the restricted availability of blocks in areas such as Delhi will lead to very high bidding prices, effectively making the 3G service expensive for the end consumer, and as a result, deterring potential investment in these areas by U.S. services suppliers.

India does not allow companies to provide Internet telephony over networks connected to the public switched telecommunications network, unless it obtains a telecommunications license. U.S. industry views India's requirement as overly burdensome for companies interested only in providing Internet telephony. Following a public consultation process initiated in May 2008, TRAI forwarded recommendations to the DoT in August 2008, suggesting that the barriers to the provision of Internet telephony be eliminated entirely. To date, the DoT has not ruled on these recommendations.

U.S. satellite operators have long complained about the closed and protected satellite services market in India. In practice, even though current Indian regulations do not preclude the use of foreign satellites, foreign satellite capacity must be provided through the Indian Space Research Organization (ISRO). That is, the foreign operator must sell its capacity to ISRO, a direct competitor, who then resells it to the customer. This middleman scenario raises a number of concerns: first, it creates additional costs for the consumer (a markup added by ISRO); second, it allows ISRO to negotiate contract terms with the goal (explicitly stated at times) of moving the service to one of ISRO's satellites once capacity is available; and third, the market grows at a rate determined by ISRO.

In the past, TRAI has recommended that India adopt an "open skies" policy and allow competition in the satellite services market, noting that India had already instituted a partial open skies policy with respect to international, very small aperture terminal connections to the U.S. Internet backbone for Indian Internet service providers. However, to date, the GOI has not adopted TRAI's recommendations for further liberalization.

Distribution Services

The retail sector in India is largely closed to foreign investment. In January 2006, the government began allowing FDI in single-brand retail stores, subject to a foreign equity cap of 51 percent and government approval and 100 percent in cash and carry (wholesale). FDI in multi-brand retail outlets is not permitted. With regard to direct selling, apparently arbitrary legal actions (including raids and seizures of property) have been initiated against a U.S. company operating in India with Foreign Investment Promotion Board (FIPB) approval. The case remains unresolved pending a clarification from the RBI that resolves a conflict between the FIPB and certain Indian state authorities about the interpretation of India's laws governing direct selling.

Postal and Express Delivery

In 2006, India's Department of Post made public a draft of the India Post Office (Amendment) Bill. The draft bill updates the 1898 Post Office Act but also includes provisions with potentially negative effects for the operations of private express delivery companies. The key issues of concern to U.S. industry are: a provision requiring private delivery services suppliers to contribute to financing the postal operator's universal service obligation; expansion of the postal monopoly to cover all "letters" up to 300 grams; and new limitations on foreign investment in all private delivery services, including express delivery, which might force foreign-owned express delivery companies to divest from their current levels of investment in India. The proposed legislation was officially withdrawn in January 2009 due to opposition from many stakeholders, including courier services companies. The Indian postal ministry has indicated that the legislation might be rewritten with professional help. The U.S. Government continues to urge India's government not to include these problematic provisions before finalizing any postal reform legislation.

Internet Services

U.S. companies have expressed concern that proposed amendments to India's Information Technology Act, which would impose liability on Internet based companies whose users commit illegal acts, could have a chilling effect on Internet access and commerce in India.

INVESTMENT BARRIERS

Equity Restrictions

Most sectors of the Indian economy are now at least partially open to foreign investment, with certain important exceptions. The government continues to prohibit or severely restrict FDI in certain politically sensitive sectors, such as agriculture, retail trading, railways, and real estate. At the same time, the government has liberalized other aspects of foreign investment and eliminated various government approvals. Automatic FDI approval in many industries, including bulk manufacturing activities, is now allowed, while investment in some sectors still requires government approval. The Ministry of Commerce, noting it wished to liberalize FDI within pre-existing caps, issued new guidelines (Press Notes) in February 2009, which asserted that if a company, with foreign investment, was still majority owned or controlled by resident Indians, then it could conduct "downstream" investment within sectoral caps, which previously had been constrained by the initial investment in the joint venture. However, much confusion was created by the language of the new guidelines, which an additional press note did nothing to dispel. The full extent to which foreign investment is allowed in downstream investments is not yet clear and probably will not be made so until after a new government is formed in June 2009.

The Indian government's stringent and nontransparent regulations and procedures governing local shareholding inhibit inward investment and increase risk to new entrants. Attempts by non-Indians to acquire 100 percent ownership of a locally traded company, permissible in principle, face regulatory hurdles that render 100 percent ownership unobtainable under current practice. Price control regulations have undermined incentives for foreign investors to increase their equity holdings in India. Some companies have reported forced renegotiation of contracts in the power sector as a result of government changes at the state and central levels.

Press Note 1, issued by the Department of Industrial Policy and Promotion in 2005, liberalized the rules for new foreign investments in India by foreign joint-venture partners in the same field as their existing joint ventures or technology transfer, or trademark agreements, but only for joint ventures and agreements entered into after January 12, 2005. GOI approval is still required for most such follow-on investments involving joint ventures and agreements entered into on or before January 12, 2005.

In 2008, India and the United States agreed to launch formal Bilateral Investment Treaty negotiations.

Investment Disputes

India's poor track record to date in honoring and enforcing agreements with U.S. investors in the energy sector has discouraged further U.S. investment in this important sector. In November 2008, the GOI finally issued a settlement payment to a U.S. company for work performed for an Indian parastatal in the 1980s, following a 2006 Supreme Court of India decision in favor of the U.S. firm. The settlement payment was significantly less than the amount awarded under the Court's order.

There has been significant progress since 2007 toward resolving several payment disputes that American power sector investors have with the State of Tamil Nadu. The central government, which has limited jurisdiction over commercial disputes involving matters under state jurisdiction, has been helpful in convincing Tamil Nadu to settle these commercial disputes. The United States continues to urge the GOI that in order to create an attractive and reliable investment climate, India and its political subdivisions need to provide a secure legal and regulatory framework for the private sector, as well as institutionalized dispute resolution mechanisms to expedite resolution of commercial issues. The Government Law Ministry signed an agreement in 2007 with The Permanent Court of Arbitration (PCA), The Hague, to open a regional center in India.

ANTICOMPETITIVE PRACTICES

Historically, Indian firms faced few if any disincentives to engage in anticompetitive business practices. However, in 2002, the Indian Government enacted the Competition Act, which created the Competition Commission of India (CCI). As of March 2009 the Competition Commission has yet to function owing to delays caused by litigation and legislative amendments. In September 2007, the government introduced new merger control amendments to the Competition Act, which included new merger and acquisition provisions. The amendments ostensibly require companies to seek approvals for mergers and acquisitions that have little or no nexus to India, and impose a 210 day waiting period before transactions could take place. Recognizing these problems, the CCI has proposed draft regulations that if enacted would largely blunt the adverse effect of the Act on transactions that have little effect on business within India. The United States continues to work with the GOI to assist CCI in its efforts to implement the Act, including its merger control provisions, in a manner consistent with international best practices.

OTHER BARRIERS

The U.S. Government is increasingly concerned over India's failure to publish in an official gazette and notify certain proposed import policies, technical regulations and conformity assessment procedures to the WTO. Examples include the Bureau of Indian Standards' protocol for tires and the Drugs and Cosmetics (Amendment) Rules, 2007, which India has not notified to the TBT Committee.

India has an unwritten policy that favors countertrade (a form of trade in which imports and exports are linked in individual transactions). The Indian Minerals and Metals Trading Corporation is the major countertrade body, although the State Trading Corporation also handles a small amount of countertrade.

Private companies also are encouraged to use countertrade. Global tenders usually include a clause stating that, all other factors being equal, preference will be given to companies willing to agree to countertrade.

India has continued to apply actively its antidumping law. During 2007, the last year for which WTO statistics are available, India initiated 47 antidumping investigations (highest among all WTO Members) and imposed 25 new antidumping measures. India's new investigations focused largely on chemicals, with two of these initiations involving U.S. exports. In October 2008, the United States participated in the third technical exchange with Indian antidumping administrators to obtain a better understanding of India's trade remedy laws and their compliance with India's WTO obligations. The U.S. and Indian Governments have agreed within the context of the United States-India Commercial Dialogue to continue these discussions on trade remedy issues.

In June 2008, India enacted export tariffs of 15 percent on all grades of iron ore, pig iron, and ferrous scrap. India revised its exports tariffs again in October and November 2008: the export tariff on pig iron has been revoked, but tariffs on iron ore and ferrous scrap remain in place. In addition, India maintains restrictions on the exports of certain high-grade iron ore. These restrictions create supply issues for international markets for steel making raw materials and it appears the Indian government is using these measures to improve the availability of inputs used by India's rapidly growing steel industry. Meanwhile, the GOI also announced plans for increased duties on imports of certain steel products in late 2008.

INDONESIA

TRADE SUMMARY

The U.S. goods trade deficit with Indonesia was $9.9 billion in 2008, a decrease of $181 million from $10.1 billion in 2007. U.S. goods exports in 2008 were $5.9 billion, up 39.6 percent from the previous year. Corresponding U.S. imports from Indonesia were $15.8 billion, up 10.5 percent. Indonesia is currently the 37th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Indonesia were $1.6 billion in 2007 (latest data available), and U.S. imports were $444 million. Sales of services in Indonesia by majority U.S.-owned affiliates were $1.4 billion in 2006 (latest data available), while sales of services in the United States by majority Indonesia-owned firms were $73 million.

The stock of U.S. foreign direct investment (FDI) in Indonesia was $10.0 billion in 2007 (latest data available), up from $9.9 billion in 2006. U.S. FDI in Indonesia is concentrated largely in the mining sector.

IMPORT POLICIES

Tariffs

Indonesia's simple average bound tariff remained at 37 percent in 2008, while its simple average applied tariffs are around 7 percent to 8 percent. Most tariffs are bound at 40 percent, although tariff bindings exceed 40 percent or remain unbound on automobiles, iron, steel, and some chemical products. U.S. motorcycle exports are severely restricted by the combined effect of a 60 percent tariff, a luxury tax of 75 percent, a 10 percent value added tax, and the prohibition on motorcycle traffic on Indonesian highways.

In the agricultural sector, tariffs on more than 1,300 products have bindings at or above 40 percent. Tariffs on fresh potatoes, for instance, are bound at 50 percent, although applied rates are 25 percent. Local agriculture interests continue to lobby the government to increase tariff rates above bound WTO levels on sensitive agricultural products, such as sugar, soybeans, and corn.

Import Licensing

In late 2008, the Indonesian government announced that sweeping new non-automatic import licensing procedures on a broad range of products – including electronics, household appliances, textiles, footwear, toys, and food and beverage products – would enter into force in 2009. The measure, known as Decree 56, includes a requirement for preshipment verification by designated surveyors at importers' expense and a restriction on imports to five designated ports and airports. The Indonesian government is considering extending these licensing provisions to additional products. The United States and other foreign countries have expressed concern about the decree and sought its withdrawal.

In May 2008, Indonesia introduced new import restrictions for plantation white sugar. The United States has raised concerns with Indonesia that the new regulation will further limit sugar imports, which already are highly restricted as a result of existing regulations.

Indonesia maintains non-automatic licensing requirements on textiles, although it is unclear if these will be replaced or altered by Decree 56, which also covers many textile and footwear products. These textile licensing requirements date back to 2002 and limit market access for a wide range of imported fabric. Only approved local garment or textile producers are authorized to import fabrics covered by the regulation, and these fabrics are permitted to be used only as inputs in domestic production, not for resale or transfer. Approval must be obtained for both the quantity and timing of imports. The United States will continue to raise concerns about these requirements.

Pharmaceutical Market Access

The United States has serious concerns about new barriers to Indonesia's pharmaceuticals market. Following a 2008 Health Ministry decree requiring foreign pharmaceutical companies operating in Indonesia to manufacture locally in order to get drug approvals, the Indonesian food and drug agency has been rejecting or delaying the approval of new applications for drug registrations by some companies, including wholesalers and distributors that do not have manufacturing operations in Indonesia. If these rules are not modified, some foreign firms may be forced to leave the market as their drug approvals, generally valid for two years, gradually expire. The United States and other countries have expressed their serious concern about this regulation and will continue to urge Indonesia to resolve the issue so that the affected firms can continue to operate in Indonesia. Indonesia has indicated some willingness to consult with the U.S. Government and pharmaceutical companies about these restrictions.

Quantitative Restrictions

The Indonesian government requires an import permit from the Directorate General of Livestock Services for imports of animal-based food products. In approving requests for such permits, the Indonesian government arbitrarily may alter the quantity it allows to enter. U.S. industry estimates the annual trade impact of this restriction to be between $10 million and $25 million.

Indonesia bans salt imports during the harvest season. It requires salt importers to be registered and to source products locally.

Indonesia applies quantitative import limits to imported wines and distilled spirits. Only one registered importer, a state-owned enterprise, is authorized to import alcoholic beverages, with an annual quota set by the Ministries of Trade and Industry.

As a result of new mining legislation, mining firms operating in Indonesia will face new restrictions in exporting unprocessed ore. The legislation will require them to process the ore in Indonesia before shipping it abroad. The United States will closely monitor implementation of the law to ensure that it does not constitute an export ban on raw materials.

Customs Barriers

U.S. firms continue to report that Indonesia's Customs Service uses a schedule of "check prices" rather than actual transaction prices to assess duties on food product imports as it committed to do under the WTO Customs Valuation Agreement. Customs makes an assessment based on the perceived risk status of the importer and the average price of the same or similar product imported during the previous 90 days. In addition, the U.S. Government has received complaints from importers about costly delays in customs processing and requests for unofficial payments to customs officers. The United States will continue to raise its concerns on these issues with the Indonesian government.

Luxury Taxes

The luxury sales tax on 4,000 cc sedans and 4x4 Jeeps or vans is 75 percent, compared with the luxury tax on automobiles with smaller engine capacities of 1500 cc or less, which ranges from 10 percent to 30 percent. Passenger cars with engine displacement less than 1500 cc comprise 40 percent of the market, including a large group of vehicles predominantly produced in Indonesia that are taxed at a rate of 10 percent.

In addition to a 10 percent VAT and an import duty of 150 percent, Indonesia charges luxury taxes on imported distilled spirits of 40 percent to 75 percent. The combined effect of these measures, which produces an effective rate of protection of more than 200 percent, is to place imports at a significant disadvantage in Indonesia's market.

Value Added Tax Exemptions

The Indonesian government is considering new value added tax exemptions for selected industries and products, including locally produced raw materials. The U.S. Government will monitor this issue to ensure that any new policies do not discriminate against imports.

State Trading

In April 2008, the Indonesian government announced that the National Logistics Agency (BULOG) would have exclusive authority to import rice for purposes of food security and price management. Imports are not permitted before, during, and immediately after the main harvest period, effectively the first quarter of the year. Private firms can import rice for special purposes only, such as for seed and specialty rice, but they must obtain a special importer identification number issued by the Ministry of Agriculture.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

In early 2008, the Indonesian government agreed to allow full market access for imports of all U.S. beef and beef products from animals of all ages, but it requires each plant's *halal* processes to be approved prior to their exporting to Indonesia. Indonesia's requirements to obtain these approvals are not transparent and the approval process has not been conducted in a timely manner. The Indonesian government issues import permits to only one importer of U.S. beef. The United States continues to work with Indonesia to address these concerns.

Indonesia continues to enforce a ban on imports of chicken parts, which has been in place since 2000. The U.S. Government has repeatedly raised concerns about this issue, but Indonesia continues to insist that the ban is needed to assure consumers that imports are *halal*. U.S. industry estimates the value of foregone exports at $10 million or more per year.

The Indonesian government requires that Indonesia's food and drug agency (BPOM) approve every shipment of processed food, food raw materials, and other food-related ingredients. These requirements are burdensome and costly to U.S. exporters. In addition, traders have expressed concern that the regulations covering import packaged food products require testing and disclosure of information on product ingredients and processing that effectively forces them to reveal proprietary business information. Some companies have discontinued or reduced sales to Indonesia as a result of BPOM's enforcement of this requirement.

In 2007, Indonesia notified its Draft Decree Concerning Food Safety Control for the Import and Export of Fresh Food of Plant Origin to the WTO. To date, the United States has provided four sets of comments expressing concerns with these measures, which require prior notification as well as inspection at point of entry and food safety certificates for imports of fresh food of plant origin. While Indonesia has made changes to some of the provisions in the decree, the United States has outstanding concerns regarding the burdensome nature of the requirements and will continue to work with Indonesia to ensure that implementation of this decree does not hinder U.S. exports.

In 2006, Indonesia issued Decree 37 covering fresh fruit and vegetable imports. The decree inaccurately reflects the presence of pests in the United States and requires imports of fruit fly host commodities to originate from fruit fly free areas or to be treated as a condition of entry. The decree covered 11 U.S. fruit exports, including apples and grapes. In December 2006, following a Ministry of Agriculture inspection visit, Indonesia declared California as a pest-free area for the Mediterranean fruit fly for grapes, opening the way to renewed grape exports.

However, Indonesia still maintains requirements for U.S. apples that do not take into account pest-free production areas in the Pacific Northwest. The United States has raised the issue bilaterally and in WTO meetings, noting that Indonesia still requires treatment for pests that do not exist in the exporting regions or which cannot become established in Indonesian territory. While continuing to argue against the decree, the U.S. Government obtained an interim solution permitting in-transit cold treatment as a pest mitigant and which has led to a resumption of trade. The United States continues to press the Indonesians to agree to a long-term solution. Indonesia is the seventh largest market for U.S. apples, worth over $24 million in 2007.

Biotechnology

Indonesia has established policies on biotechnology, but it does not appear to have a unified science-based framework to implement its regulations and there is little progress on biotechnology policy development. While some field testing is underway, there are no transgenic seed crops approved for release and Indonesia does not produce any biotechnology crops. The Biosafety and Food Safety Committees are responsible for implementing regulations for biotechnology and initiating assessments for product approvals and it has completed biosafety assessments for biotechnology corn and cotton, and herbicide tolerant corn and soybeans. These products cannot be released into the market until a food safety assessment is completed, but final approval may be given soon, since BPOM issued the Guidelines of Food Safety Assessment on Genetically Modified Product in July 2008.

Indonesia issued a regulation in 1999 requiring a label and a special logo on packaging of food containing transgenic ingredients, but so far it has not enforced it. To date, Indonesia has not issued implementation guidelines due to limited testing capabilities and ongoing discussions about practicalities of implementation. U.S. companies exported about $800 million in biotechnology products to Indonesia in 2007. With the exception of certain soybean products (soy flour), no trade constraints based on biotechnology content have been introduced or enforced. The United States will continue to highlight the value of biotechnology to Indonesia officials.

GOVERNMENT PROCUREMENT

Indonesia grants special preferences to encourage domestic sourcing and to maximize the use of local content in government projects. Foreign companies are eligible to bid on government procurement projects as part of a joint partnership or as a subcontractor to a domestic firm, but participation is limited to $5 million. State-owned enterprises that publicly offer shares through the stock exchange are exempt from government procurement regulations. Foreign firms bidding on high-value government-sponsored projects report that they have been asked to purchase and export the equivalent value of selected Indonesian products. Government departments, institutes, and corporations are expected to utilize domestic goods and services to the maximum extent feasible, with the exception of foreign aid-financed procurement of goods and services. Over time, the ongoing decentralization of procurement decisions to local and provincial governments may create additional barriers as these authorities adopt their own procurement rules and manage their own procurements. Indonesia is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR)

Indonesia has been on the Special 301 Watch List since 2006, when it was moved from the Priority Watch List. The United States continues to have serious concerns about IPR protection and enforcement in Indonesia, as widespread optical disc piracy and counterfeiting of consumer goods, including pharmaceuticals, cause significant economic losses and pose serious health and safety concerns for Indonesians. According to some industry estimates, as much as 25 percent of the drugs available for sale in Indonesia are counterfeit. Other problems, including cable piracy and the illegal downloading of copyright works using mobile devices, remain pervasive. The United States continues to raise these concerns with Indonesia and to work with it to strengthen its IPR regime.

Intellectual Property Laws

Indonesia is a member of the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty. However, the Copyright Law of Indonesia includes only minimal provisions dealing with digital copyright issues and it would likely be difficult for rights holders to enforce their rights under these provisions in an Indonesian court.

Despite some improvements to its patent regime, Indonesia continues to need to address issues related to obtaining patent protection, in particular requirements that impose special burdens on foreign rights holders. Chief among these issues is the requirement that an inventor must physically produce a product or utilize a process in Indonesia in order to obtain a patent for that product or process invention.

The U.S. pharmaceutical industry continues to express concerns that Indonesia does not provide protection against unfair commercial use for undisclosed test and other data.

Indonesian law also provides for the protection of well known marks, but lacks effective administrative procedures or legal grounds under which legitimate owners of well known marks can cancel preexisting registrations. The only avenue for challenging existing trademark registrations in Indonesia is through the courts, an often burdensome undertaking that must be initiated within five years from the date of the disputed registration.

Enforcement

An Optical Disc (OD) Regulation became effective in 2005. The Ministry of Industry leads an interagency OD factory monitoring team that has registered more than thirty factories and, in the last quarter of 2008, launched unannounced inspections of factories.

In recent years, police have been increasing enforcement activities against pirate OD vendors, distributors, and factories. The Jakarta and Surabaya police have been particularly active, seizing and destroying millions of illegal ODs, arresting hundreds of suspects, seizing related equipment, and closing production lines. However, the police and prosecutors rarely rely on the copyright law in their enforcement efforts, choosing instead to rely on the film and censor laws or OD regulations, which provide for less stringent sanctions and do not provide for seizure and destruction of related equipment. Despite more than twenty raids on factories between 2003 and 2008, none of the cases successfully prosecuted have resulted in the seizure of related equipment.

In 2007, the Attorney General's Office raised the profile and priority of IPR issues by authorizing the Terrorism and Transnational Crime Task Force to handle IPR cases. These activities have yet to produce a significant increase in prosecutions, deterrent fines and prison sentences, or the permanent impounding or destruction of large scale production equipment used to manufacture pirated products. While the success of recent police enforcement activities has resulted in some decrease in the quantity, quality and availability of pirated ODs, the rate of piracy in Indonesia remains high.

Indonesia's 2001 trademark law raised the maximum fine for criminal trademark violations to 1 billion Rp ($120,000), but slightly reduced the maximum possible prison term. The Indonesian government continues to justify this change by claiming that financial penalties are a greater deterrent to IPR violators than imprisonment. Foreign rights holders, however, are seeking minimum sentencing guidelines, arguing that IPR cases never result in the maximum possible sentence.

SERVICES BARRIERS

Indonesia maintains significant and far-reaching trade and investment barriers in many key services sectors.

Legal Services

Only Indonesian citizens may practice as lawyers. Foreign lawyers can only work in Indonesia as "legal consultants" and must first obtain the approval of the Ministry of Justice and Human Rights. A foreign law firm seeking to enter the market must establish a relationship with a local firm.

Health Services

Hospital services are mostly closed to foreign investment according to Indonesia's Negative List for Foreign Investment, though Indonesia does allow for a maximum of 65 percent foreign ownership in hospital services in the cities of Medan and Surabaya. Indonesia also restricts foreign health care professionals from practicing in Indonesia. Foreign-trained physicians only are allowed to supervise and perform procedures in the course of educating Indonesian physicians.

Distribution

Some U.S. direct selling companies have complained that Indonesia's market is generally closed to investment in the direct selling industry. Although Indonesia allows up to 100 percent foreign equity in the distribution and retail sectors, investors must enter into a "partnership agreement" with a small-scale Indonesian enterprise.

Financial Services

Indonesia now allows 99 percent foreign ownership in the banking sector, but Indonesia has not revised its WTO services commitments; financial services remain bound at 52 percent in its GATS schedule.

Financial service providers may not establish as a branch. In the insurance sector, the 2007 investment law introduced a new foreign equity cap of 80 percent for new investors.

Audit and Accounting Services

Foreign firms cannot practice under international firms' names, although terms such as "in association with" are permissible. Foreign accounting firms must operate through technical assistance arrangements with local firms. Foreign agents and auditors may act only as consultants and cannot sign audit reports. Foreign directors, managers, and technical experts/advisors, unless mentioned otherwise, are allowed a maximum stay of two years, with a possible one year extension. Licensed accountants must be Indonesian citizens. A Ministry of Finance decree requires a five year limit on general audits by a single accounting firm. While many countries require the rotation of an audit partner, many U.S. companies consider the mandatory audit firm rotation overly burdensome. Auditors practicing in the capital markets are prohibited from delivering specified non-audit services such as consulting, bookkeeping, and information system design.

Audiovisual

In late 2008, the Minister of Culture and Tourism issued a regulation requiring all local and imported movies – both theatrical prints and home video copies – to be duplicated locally with penalties on exhibitors for failing to do so. Foreign investment is prohibited in broadcast and media sectors, including film and video production and distribution, and cinema construction and operation. Foreign investment in the provision of radio and television broadcasting services, radio and television broadcasting subscription services and media print information services also is prohibited.

Construction, Architecture and Engineering

Foreign construction firms only are permitted to be subcontractors or advisors to local firms in areas where the government believes that a local firm is unable to do the work. In addition, for government-financed projects, foreign companies must form joint ventures with local firms.

Telecommunications Services

Indonesia permits up to 65 percent foreign ownership in value added and mobile telecommunications services and up to 49 percent for fixed networks. While this foreign ownership level goes beyond Indonesia's current commitments in its WTO GATS schedule, the new limits on fixed services represent a step backward from recent practice where up to 95 percent ownership was permitted.

A Ministry of Communications and Informatics decree issued in early 2008 restricts the construction, management, and ownership of cell towers to domestic companies and would force existing investors to exit the market within two years. The United States has registered its serious concerns to Indonesia about the decree and is seeking its withdrawal.

INVESTMENT BARRIERS

Indonesia maintains significant and far-reaching foreign investment restrictions despite some improvements in recent years. Its investment climate continues to be characterized by legal uncertainty and economic nationalism, and influential domestic interests continue to tightly control many profitable sectors and business opportunities. In recent years, an ongoing process of decentralization, intended to reduce burdensome bureaucratic procedures by moving decisions from the central government to provincial and district-level governments, has produced uneven results. Some local governments have capitalized on decentralization to attract foreign business and improve social services, while others have imposed new restrictive practices and taken actions that conflict with national laws.

In an attempt to improve its foreign investment climate, Indonesia introduced a new investment law in 2007 that provided much-needed improvements in transparency, as well as a range of investor protections, including nondiscriminatory treatment, protection against expropriation, and recourse to international arbitration in disputes against the government. At the same time, however, the new law significantly increased the number of sectors in which foreign investment is restricted, and increased foreign equity limitations in sectors of interest to U.S. investors, including in telecommunications, pharmaceutical manufacturing, and construction.

The 2007 investment law and "negative list" of restricted sectors remain under review. Although Indonesian officials have provided assurances that the investment law would only apply to new investments, Indonesia appears to be allowing for retroactive effect in practice. Moreover, despite the fact that one of the intended purposes of the new law was to enhance transparency regarding Indonesia's investment regime, it is unclear whether the negative list represents the full range of sectors where investment restrictions apply. Several ministries, including the Ministries of Communications and Informatics, Health, and Culture and Tourism, have issued decrees in recent months that introduce new investment restrictions in their respective sectors. The United States continues to urge Indonesia to enhance the transparency and openness of its investment regime, and to address specific problems and concerns of U.S. investors.

Pharmaceuticals

The United States has serious concerns about the deteriorating business climate in Indonesia's pharmaceutical sector. Although the new investment law states that companies doing business in Indonesia prior to the introduction of the negative list should be covered by grandfathering provisions, there is concern that Indonesian authorities may take the position that any changes in the shareholding capital or ownership structure of an existing company will trigger new foreign equity restrictions, meaning foreign equity in the firm must be reduced to 75 percent and a domestic partner identified to acquire the remaining 25 percent.

Energy and Mining

Several regulatory changes have been introduced to increase government control of the sector and generate greater royalties to the government.

Indonesia enacted a new mining law in December 2008, replacing the current "Contract of Work" system with a system of mining licensing. The legislation creates new risks and burdens for investors. The new law makes investment subject to all future changes in tax and royalties and allows central and local governments to cancel licenses. Mining companies must give preference to hiring local subcontractors and service companies, and are required to process and smelt ore domestically. The new law also reintroduces divestment requirements on foreign investment, a practice which has led to investment disputes in the past. Although the new legislation does not require the conversion of existing contracts to licenses, it does mandate unspecified changes to existing contracts to comply with the new law.

Also in 2008, some foreign coal purchasers saw their long-term contracts nullified when the Energy and Mineral Resources Department ordered private Indonesian coal mining firms to renegotiate sales contracts with foreign buyers if the contracts involved long-term fixed price arrangements and the sale prices were below a government-determined benchmark price. Indonesian coal mining firms have stopped shipments in cases where foreign buyers have been unwilling or unable to renegotiate their contracts. In addition, throughout the mining sector, companies report problems importing exploration and production equipment free of duties or VAT, as per the terms of their contracts.

OTHER BARRIERS

The Indonesian government and in particular the Corruption Eradication Commission, which coordinates anticorruption efforts and has the authority to investigate and prosecute high-level corruption cases, continues to address the widespread corruption problem in the country. Still, foreign companies continue to report corruption-related difficulties in Indonesia, including demands for unwarranted fees to obtain required permits or licenses, expedite processes, or to influence government awards of contracts and concessions. The integrity of the legal system remains a concern, particularly for investors and companies drawn into disputes with local partners. The foreign investors and companies complain that the courts can be inefficient and corrupt.

U.S. industry reports that illegal logging activity in Indonesia results in lost trade opportunities for U.S. producers in Indonesia and third-country markets. In addition, the illegal activity results in lost revenue to the Indonesian government as well as significant environmental damage. Indonesia recognizes the seriousness of the issue and is taking steps to address it, including by working with the United States under the auspices of a 2006 Memorandum of Understanding on Combating Illegal Logging and Associated Trade. Under this agreement, the two governments held three meetings last year and are developing a multi-year action plan to address the trade aspects of the illegal logging problem.

ISRAEL

TRADE SUMMARY

The U.S. goods trade deficit with Israel was $7.8 billion in 2008, an increase of $72 million from 2007. U.S. goods exports in 2008 were $14.5 billion, up 11.3 percent from the previous year. Corresponding U.S. imports from Israel were $22.3 billion, up 7.4 percent. Israel is currently the 20th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Israel were $3.4 billion in 2007 (latest data available), and U.S. imports were $3.1 billion. Sales of services in Israel by majority U.S.-owned affiliates were $1.1 billion in 2005 (latest data available), while sales of services in the United States by majority Israel-owned firms were $1.5 billion.

The stock of U.S. foreign direct investment (FDI) in Israel was $10.1 billion in 2007 (latest data available), up from $9.4 billion in 2005. U.S. FDI in Israel is concentrated largely in the manufacturing and information sectors.

The United States-Israel Free Trade Area Agreement

Under the United States-Israel Free Trade Area Agreement (FTA), signed in 1985, the United States and Israel agreed to implement phased tariff reductions culminating in the complete elimination of duties on all products by January 1, 1995. Most tariffs between the United States and Israel have been eliminated as agreed, although tariff and nontariff barriers continue to affect a certain portion of U.S. agricultural exports.

To address temporarily the differing views between the two countries over how the United States-Israel FTA applies to trade in agricultural products, in 1996 the United States and Israel signed an Agreement on Trade in Agricultural Products (ATAP), establishing a program of gradual and steady market access liberalization for food and agricultural products effective through December 31, 2001. Negotiation and implementation of a successor ATAP was successfully completed in 2004. This agreement was effective through December 31, 2008, and grants improved access for select U.S. agricultural products. This agreement was extended through December 31, 2009. The agreement provides U.S. food and agricultural products access to the Israeli market under one of three different categories: unlimited duty free access, duty free tariff-rate quotas (TRQs), or preferential tariffs, which are set at least 10 percent below Israel's Most Favored Nation (MFN) rates. The agreement also provided for annual increases in the in-quota quantity under the TRQs.

IMPORT POLICIES

Agriculture

Market Access: Approximately 90 percent of U.S. agricultural exports (by value) enter Israel duty and quota free as a result of Israel’s implementation of commitments under the WTO, the FTA, and the current ATAP. However, remaining U.S. agricultural exports, which consist of consumer-oriented goods, face restrictions such as a complicated TRQ system and high tariffs. In addition, the ability of U.S. exporters to utilize available TRQ in-quota quantities can be hampered by problems with the administration and transparency of Israel’s TRQs. TRQ-related problems include a lack of data on quota fill-rates and license allocation issues, such as small non-commercially viable quota quantities, and administrative difficulties in obtaining licenses for in-quota imports. Under the current ATAP, Israel committed to taking steps to improve the administration of TRQs, including engaging in regular bilateral consultations. However, the mid-year reallocation of unused quotas by the Israeli Quota Administration failed to solve the problems. The negotiations for a successor ATAP seek to address these issues.

Restrictions remain on other U.S. agricultural exports, including high-value goods that are sensitive for the Israeli agricultural sector, such as dairy products, fresh fruits, fresh vegetables, almonds, wine, and some processed foods. According to industry estimates, elimination of levies on processed foods, including a broad range of dairy products, could result in increased sales by U.S. companies in the range of $25 million to $50 million. Removal of quotas and levies on dried fruits could result in increases in sales by U.S. exporters of up to $10 million. U.S. growers of apples, pears, cherries, and stone fruits estimate that elimination of Israeli trade barriers would lead to an increase of $5 million to $25 million in export sales of these products. Free trade in agriculture could result in U.S. almond exports growing by as much as $10 million. Removing these levies on food products inputs used in U.S.-based restaurant chains operating in Israel could save these chains $20 million annually and allow for their expansion, creating new job opportunities locally.

The Israeli New Food Committee of the Ministry of Health published regulations for new food registrations in February 2006. The registration of foods containing bioengineered ingredients began in early 2007. The new procedure was supposed to facilitate registration requirements. However, U.S. companies have found that obtaining needed information and securing product approvals for food, food supplements and dietetic products in a timely manner, is difficult. The system usually requires 6 to 12 months to review product dossiers and the committee has, in several cases, invalidated previous approvals without regulatory justification. The Committee has imposed stringent new standards that are of concern to the United States.

Meat Imports and Kosher Certification: Israel prohibits the importation of any meat or meat products that are not certified as *Kosher* by Israel’s chief rabbinate, a policy that presents significant challenges for U.S. meat exporters. There is strong demand in Israel for quality *Kosher* beef. However, the process for obtaining *Kosher* certificates is expensive and complex. Industry estimates that U.S. *Kosher* certification for meat could result in an annual increase in U.S. meat exports of $15 million in the medium-term and more than $25 million in the long-term. In addition, work on an agreement on veterinary certificates of health for live animal imports was suspended after the announcement of the discovery of a case of Bovine Spongiform Encephalopathy (BSE) in the United States involving an imported animal. The Israeli government has engaged in regular consultations with the U.S. Department of Agriculture to alleviate remaining concerns. In fall 2007, the Israeli Ministry of Agriculture agreed to allow imports from the United States of cattle aged less than 12 months. The age limit was increased to 24 months in 2008, but the ban remains in effect for all other beef imports. The United States has requested that Israel rely on guidelines on BSE developed by the World Organization for Animal Health (OIE). OIE guidelines currently provide that no age limits should apply for a controlled-risk country like the United States, provided that specific risk material is removed from the animal at slaughter.

Israel permits the domestic production and marketing of non-*Kosher* meat, but bans its importation. U.S. firms estimate that elimination of the prohibition on non-*Kosher* imports could result in increased sales of up to $10 million.

Wine and Spirits Imports: Under the current ATAP, for the first time Israel granted U.S. wine exporters an annual TRQ of 200,000 liters of duty-free imports of wine. In addition, U.S. exports in excess of the quota limit are charged a tariff lower than Israel's MFN rate. However, the current method of quota allocation for wine creates a significant challenge for wine imports. Equal quotas are allocated to each applicant for an import license, qualified or otherwise. Further compounding the problem, the reallocation of quotas at the end of a period often occurs too late to make it commercially viable for another importer to utilize the remaining quota. Wine importers note that the Israeli government does not require Israeli wine producers to follow the detailed labeling requirements of the official Israel Standard for Wine, while these rules are strictly enforced on imported wines.

Rabbinical regulations for *Kosher* certification also pose challenges for U.S. wine exporters. For example, rabbinical regulations do not permit use of the same company name on *Kosher* and non-*Kosher* wines. To keep their *Kosher* certification, importers of *Kosher* wines are not permitted to import non-*Kosher* wines. *Kosher* wines cannot be stored in the same warehouse as non-*Kosher* wines.

Sales of U.S. wines to Israel are about $700,000 per year. Industry estimates that the elimination of trade barriers could result in increased exports worth up to $10 million per year.

Agricultural Labeling Requirements: Imported food products face rigid labeling requirements. For many products, Israeli labeling requirements are far more cumbersome than U.S. requirements. The cost of additional labeling has been a deterrent for many U.S. companies that have considered marketing their products in Israel. The loss of sales of U.S. products is difficult to estimate due to the variety of products affected by these regulations.

The Israeli government has adopted licensing requirements for "sensitive" and "non-sensitive" products, classifications ostensibly based on a product's potential impact on public health. Importers have experienced difficulty and incurred significant costs in obtaining these licenses. The list of sensitive foods includes: milk products and milk product substitutes, meat and poultry products and their substitutes, fish products and their substitutes; food supplements: vitamins, minerals and herbs; baby food, egg products, canned food (under pH 4.5), food that contains food coloring, gelatin products, including products that contain gelatin; honey products, other food products stored at low temperature, mineral water, mushroom products, and food that was exported, but then returned to Israel.

Customs Procedures

Some U.S. exporters have reported difficulty in claiming preferences under the FTA. Israel has cited concerns about the U.S. method for issuing certificates of origin as the basis for sometimes delaying entry of, or delaying preferential tariff treatment for, U.S. goods entering Israel.

In summer 2008, a number of food shipments imported from the U.S. were held up at the ports due to a slowdown by Israeli workers over a government labor issue. Israeli health workers were processing shipments very slowly, and batch-testing every product. The United States Government has requested that the Israeli government issue updated transparent guidance for food imports and rescind any measures that are outside of normal testing procedures.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

U.S. industry has alleged that certain technical standards have posed nontariff barriers to U.S. exports to Israel. In response, the United States has intensified its engagement and cooperation with Israel on technical barriers to trade and standards issues. In May 2007, senior officials of the U.S. National Institute of Standards and Technology (NIST) met with their Standards Institution of Israel (SII) counterparts and agreed to fund formal training on U.S. standards for Israeli officials. Furthermore, the NIST established that it would serve as the point-of-contact for U.S. private sector standards bodies with SII. Since the summer of 2007, U.S. and Israeli officials have held several face-to-face meetings and videoconferences to exchange information on the Israeli and U.S. standards and regulatory systems, discuss technical barriers to trade/standards issues of common concern, and try to resolve bilateral trade irritants. The next such meeting will likely take place in spring 2009.

Industry has said that the requirements set out in technical standards are often non-transparent and/or not uniformly or consistently enforced which, in some instances, has appeared to provide domestic products with an advantage over imports. A primary example is Israel's treatment of imported infant formula. Israel's government has not yet published its measures, nor have these measures been provided to the WTO. U.S. industry continues to have concerns that these requirements, discriminate against imports and are unduly costly, burdensome, and unpredictable. The United States will attempt to resolve the infant formula issue in 2009.

In addition, U.S. companies that have been doing business in Israel for many years are increasingly confronted with new standards, often based on EU standards, that have been integrated into Israeli regulations in such areas as electrical products and automobiles.

SII recently became a member in 2007 of two European standards development organizations, specifically the European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (CENELEC). The Israelis have not participated actively in these organizations. The United States has expressed concern that additional reliance on EU regional standards in Israeli regulations may further disadvantage U.S. exporters, particularly small and medium-sized companies.

GOVERNMENT PROCUREMENT

Israel is a signatory to the WTO Agreement on Government Procurement (GPA), which covers most Israeli government entities and government-owned corporations. Most of the country's international public tenders are published in the local press.

U.S. firms encounter difficulties in accessing the Israeli government procurement market. Government-owned corporations make extensive use of selective tendering procedures. In addition, the lack of transparency in the public procurement process discourages U.S. companies from participating in major projects and disadvantages those that choose to compete. A proposed regulation not yet passed in the Knesset could impede transparency further by allowing an internal committee within each Israeli government ministry to exempt up to four million shekels of procurement from public tenders. Enforcement of public procurement laws and regulations in Israel is not consistent.

Israel also has offset requirements that it implements through international cooperation (IC) agreements. Under IC agreements, foreign companies are required to offset government contracts by agreeing to invest in local industry, co-develop or co-produce with local companies, subcontract to local companies, or purchase from Israeli industry. As of January 1, 2006, the IC offset percentage for procurements covered by Israel's GPA obligations is 28 percent of the value of the contract; for procurements excluded from GPA coverage, including most military procurements, the offset is 35 percent. Israel reduced the offset level on procurement covered by the GPA to 20 percent on January 1, 2009.

U.S. suppliers have found the size and nature of their IC proposals to be a decisive factor in close tender competitions, despite an Israeli court decision that prohibits the use of offset proposals in determining the award of a contract. Because small and medium-sized U.S. exporters are often reluctant to commit to make purchases in Israel in order to comply with the IC requirements, they refrain from participation in Israeli tenders.

In addition, the inclusion of unlimited liability clauses in many government tenders discourages U.S. firms from competing. When faced with the possibility of millions of dollars in legal costs for unforeseeable problems resulting from a government contract, most U.S. firms are forced to insure against the risk, which raises their overall bid price and reduces their competitiveness.

The United States-Israel Reciprocal Defense Procurement Memorandum of Understanding (MOU), extended in 1997, is intended to facilitate defense cooperation in part by allowing companies from both countries to compete on defense procurements in both countries on as equal a basis as possible, consistent with national laws and regulations. This MOU applies to procurements of conventional defense supplies and services by either government, including procurements by the Ministry of Defense (MOD) using Israeli government funding in Israeli currency. U.S. suppliers have expressed concern about the lack of transparency and apparent lack of justification for excluding U.S. suppliers from various MOD tendering opportunities. The MOU, which has benefited Israeli defense industries by opening up the U.S. procurement market to their products, has not resulted in significantly opening the market for U.S. suppliers interested in competing for MOD procurements funded by Israel.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

While Israel has made some improvements to its IPR regime by strengthening copyright protection and clarifying that its health authorities do not allow reliance on undisclosed test or other data for pharmaceuticals manufactured for export, areas of concern remain.

The United States continued in 2008 to encourage Israel to take steps to improve data protection for pharmaceuticals and patent term extension. Specifically, the United States is urging Israel to provide at least five years of protection against unfair commercial use for undisclosed test and other data submitted to Israel's authorities for marketing approval of pharmaceutical products. Additionally, the United States remains concerned that Israel's patent term extension system provides inadequate pharmaceutical patent term adjustments granted to compensate for delays in obtaining regulatory approval of a drug. Concerns include numerous bureaucratic obstacles that exist for patent holders who wish to apply for a patent term extension. The United States therefore is urging Israel to improve its patent term extension system.

The United States and Israel have been working closely through the 2008 Special 301 Out-of-Cycle Review to address these issues, particularly in light of Israel's aspirations to join the OECD.

With respect to the 2007 copyright legislation enacted by Israel, the United States will continue to monitor its implementation to ensure that Israel fulfills its commitment to accord national treatment to U.S. music rights holders consistent with a 1953 United States-Israel bilateral treaty and Israel's repeated assurances. The United States also continues to encourage Israel to accede to the World International Property Organization (WIPO) Copyright Treaty and the WIPO Performance and Phonograms Treaty (commonly known as the WIPO Internet Treaties), particularly in view of the importance of Israel's high-technology software and telecommunication industries.

SERVICES BARRIERS

Audiovisual and Communications Services

Only selected private Israeli broadcast television channels are allowed to advertise. These channels received broadcast licenses and the advertising privilege in exchange for certain local investment commitments. Israeli law largely prohibits other broadcast channels, both public and private, from advertising. Foreign channels that air through the country's cable and satellite networks are permitted a limited amount of advertising aimed at a domestic Israeli audience. Currently, the regulations allow foreign channels to use up to 25 percent of their total advertising time to target the Israeli market.

INVESTMENT BARRIERS

The Israeli government actively solicits foreign private investment, including joint ventures, especially in industries involving exports, tourism, telecommunications, and high technology. Registration requirements are not barriers. Investments in regulated sectors, including electronic commerce, banking, insurance, and defense industries, require prior government approval in Israel.

ELECTRONIC COMMERCE

Israel still lacks a clear regulatory body and tax laws that cover electronic commerce transactions. The Electronic Signature Bill regulates signatures on electronic media. Loopholes in the law allow the consumer to decline to pay for any merchandise for which he or she did not physically sign, which serves as a disincentive to the establishment of online businesses. The Ministry of Justice maintains a register of entities authorized to issue electronic certificates attesting to the signature of the sender of an electronic message. The Ministry also has the Registrar of Databases within its jurisdiction, which by law must issue licenses to any firm or individual holding a client database.

JAPAN

TRADE SUMMARY

The U.S. goods trade deficit with Japan was $72.7 billion in 2008, a decrease of $10.1 billion from $82.8 billion in 2007. U.S. goods exports in 2008 were $66.6 billion, up 6.2 percent from the previous year. Corresponding U.S. imports from Japan were $139.2 billion, down 4.3 percent. Japan is currently the fourth largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Japan were $40.2 billion in 2007 (latest data available), and U.S. imports were $24.5 billion. Sales of services in Japan by majority U.S.-owned affiliates were $54.3 billion in 2006 (latest data available), while sales of services in the United States by majority Japan-owned firms were $83.5 billion.

The stock of U.S. foreign direct investment (FDI) in Japan was $101.6 billion in 2007 (latest data available), up from $92.4 billion in 2006. U.S. FDI in Japan is concentrated largely in the finance/insurance, manufacturing, and nonbank holding companies sectors.

REGULATORY REFORM OVERVIEW

The United States-Japan Regulatory Reform and Competition Policy Initiative

Through the United States-Japan Regulatory Reform and Competition Policy Initiative (Regulatory Reform Initiative), the U.S. Government has continued to urge Japan to address a number of regulatory and other business environment issues that have served to unnecessarily limit competition, stymie the introduction of innovative products and services, or otherwise hinder access for U.S. products and services in Japan’s market. The U.S. Government put forward a comprehensive list of reform recommendations to Japan in October 2008 to begin engagement with Japan under the Initiative’s eighth annual cycle of work. This list included comprehensive recommendations relating to specific industry sectors as well as those addressing cross-cutting business environment issues.

A summary of some of the key sectoral and structural regulatory reform recommendations made to Japan is presented in the following two sections.

SECTORAL REGULATORY REFORM

Telecommunications

In its 2008 Regulatory Reform Initiative recommendations, the U.S. Government continued to urge that Japan ensure fair market opportunities for emerging technologies and business models, develop a regulatory framework for converged and Internet-enabled services, and strengthen competitive safeguards on dominant carriers. The U.S. Government also continues to request that Japan improve transparency in rulemaking and ensure the impartiality of its regulatory decision making, including by abolishing the legal requirement that the government own one-third of the dominant carrier, Nippon Telegraph and Telephone (NTT).

Interconnection: Japanese laws and regulations do not prevent NTT's regional carriers from imposing high rates and onerous conditions on their competitors for interconnection. Japan's Ministry of Internal Affairs and Communications (MIC) made further revisions to its Rules for Interconnection Charges, resulting in modest reductions in interconnection rates, which fell another 3.4 percent in April 2008, although these rates are still high by international standards. The U.S. Government has encouraged MIC to ensure that reasonable interconnection terms and conditions and competitive rates are established for such facilities, particularly as NTT continues deployment of its Internet Protocol (IP) based Next Generation Network replacing the analog network.

Dominant Carrier Regulation: NTT continues to dominate Japan's fixed line market through its control over almost all "last-mile" connections. As Japan's broadband users turn from digital subscriber line (DSL) (where competition, based on regulation, was vibrant) to optical fiber, NTT's competitors fear NTT will expand its dominant position through control of the fiber-to-the-home (FTTH) market and by bundling NTT fixed services with those of NTT DoCoMo, the dominant wireless operator. In October 2007, MIC issued a revised "New Competition Promotion Program 2010" in an effort to address competition concerns as suppliers increasingly offer telecommunications services over IP based networks. The U.S. Government has urged Japan to speed the plan's implementation and will continue to monitor MIC's implementation of the program.

Universal Service Program: Japan approved a system, beginning in January 2007, for NTT East and NTT West and their competitors to collect a universal service fee from voice services subscribers. MIC has undertaken periodic reviews to determine whether this amount should be adjusted to more accurately reflect costs, and has endorsed a proposal to increase significantly the universal service fees. NTT regional carriers (the only carriers able to benefit from the fund) then receive these fees through the universal service fund to offset the costs of providing services in rural areas. The U.S. Government has urged Japan to broaden the base of this fund's potential beneficiaries and ensure it is implemented in a competitively neutral manner. Current cross-subsidization of NTT West by NTT East using interconnection revenue (ostensibly to address NTT West's higher network costs resulting from the higher number of rural subscribers) appears redundant given the existence of the fund, and the U.S. Government has urged the abolition of this cross-subsidy.

Mobile Termination: Like most countries, Japan uses the "Calling Party Pays" system, imposing the entire cost of termination on the calling party (enabling mobile subscribers to benefit from free incoming calls). NTT DoCoMo, the dominant incumbent mobile carrier, announced March 2, 2009, that it would lower its termination rates by over 10 percent, continuing incremental rate reductions implemented over the past 10 years. Mobile interconnection rates, however, still remain high by international standards and also compared to fixed line rates in Japan. Despite recognizing DoCoMo as a dominant carrier in 2002, MIC does not require DoCoMo to publish its costs or explain how its rates are calculated. With new entrants now in the mobile sector, the U.S. Government will closely monitor actions both by DoCoMo and MIC to ensure the possibility of effective competition.

New Mobile Wireless Licenses: Starting in 2005, MIC began opening the market to new mobile providers beyond the three main incumbents by auctioning blocks of spectrum to a limited number of new wireless entrants. In December 2007, MIC awarded two additional licenses for wireless broadband services. However, the complexity of factors MIC chose in determining how to evaluate applications raises questions about whether it achieved its stated goal of awarding these licenses based on objective criteria. Given the scarcity of spectrum and high demand for new technologies, the U.S. Government has urged MIC to consider alternative means, including auctions, to assign commercial spectrum in a timely, transparent, objective, and nondiscriminatory manner that adheres to principles of technology neutrality. The U.S. Government has also stressed to Japan the importance of ensuring reasonable "roaming" rates for competitors and Mobile Virtual Network Operators (MVNOs), an issue where MIC is making noticeable progress through policies and dispute mediation, as evidenced by an increase in service offerings launched by new entrants in 2007.

Information Technologies (IT)

Health IT: Government policies that fail to encourage interoperability, technology neutrality, and international harmonization, in addition to insufficient reimbursement incentives, are inhibiting the expansion of Japan's health IT services sector, an important market for U.S. companies. The U.S. Government has been urging Japan to foster interoperability and technology neutrality, facilitate vendor participation in government-sponsored projects that develop health IT systems, and implement reimbursement systems that reward use of innovative IT.

IT-Related Financial Reform: It is unclear whether Japanese regulations permit non-bank payment services for online transactions. The lack of clear regulations in this area impedes the ability of U.S. non-bank payment services providers to offer their services in Japan. The U.S. Government urges Japan to modify or enact regulations to make clear that non-bank payment services are permitted to further the goal of creating a robust financial services sector in Japan.

Privacy: Separate and inconsistent privacy guidelines among Japanese ministries have created an unnecessarily burdensome regulatory environment for U.S. business with regard to the storage and general treatment of personally identifiable information in Japan. The U.S. Government continues to urge Japan to develop clear and consistent implementing guidelines for the privacy law across ministries, modified only when necessary to conform to the unique characteristics of individual business sectors.

IPR Protection: The U.S. Government continued to urge Japan to adopt a number of new measures to improve and strengthen IPR protection. These include: improving copyright protection and enforcement; improving the efficacy of the patent application process; and actively working with the United States to develop ways to promote greater protection of IPR worldwide, especially in Asia. (*See also "Intellectual Property Rights Protection" in this chapter.*)

Government IT Procurement: The lack of transparency, excessive reliance on sole-source contracting, and restrictions on intellectual property ownership among other factors hinder the participation of U.S. companies in Japan's government IT procurement. The U.S. Government therefore has urged Japan to: expand disclosure of procurement information; broaden participation in evaluation committees; make it easier for companies to own intellectual property they develop through government contracts; apply competitive bidding rules to independent administrative entities and government-sponsored firms; and ensure contracts are swiftly concluded after bidders are chosen and are not backdated.

IT and Electronic Commerce Policymaking: Insufficient transparency in Japan's policymaking process for IT and electronic commerce has constrained U.S. company access. The U.S. Government has urged Japan to improve its policymaking process by seeking and considering industry input at all stages of policymaking. This will foster development of standards that promote technology neutrality, facilitate private sector participation in government-appointed advisory groups, and provide companies with adequate time to offer public comments and adjust to rule changes.

Medical Devices and Pharmaceuticals

Japan is the largest foreign market for U.S. medical devices and pharmaceuticals. The U.S. Government continues to urge Japan to ensure that its policies foster the private sector's development of innovative products and improve patients' access to such products.

Japan's Ministry of Health, Labor and Welfare (MHLW), in its 2007-2008 "Vision" policy papers, called for eliminating delays in drug and device approvals and improving the overall environment for these industries in Japan. The U.S. Government supports these goals and, through the Regulatory Reform Initiative, has continued to urge Japan to make further changes to help achieve them. Such changes include: (1) ensuring that planned increases in reviewers lead to significant improvements in product approval times; (2) improving incentives for research and development of advanced medical products; (3) fostering simultaneous global drug development; (4) reforming product review and clinical trial consultation systems; (5) improving vaccine reviews; and (6) streamlining *in vitro* diagnostic product (IVD) approvals.

In its April 1, 2008, biennial price revision, the Japanese government adopted new reimbursement policies. Those policies include broadening the repricing rule based on market expansion to cover a wider range of drugs, regardless of whether the drugs experienced increased market share. Japan also adopted policies that imposed a stricter application of the "Foreign Average Price" (FAP) rule for medical devices. The U.S. Government continues to urge Japan to refrain from implementing reimbursement policies that hinder the development and introduction of innovative medical devices and pharmaceuticals. Such policies not only discourage companies from efficiently introducing advanced medical products to the Japanese market, a particular concern due to Japan's aging population, but also serve as a disincentive to investment in research and development.

Transparency of drug and medical device reimbursement decision making processes, including on potential further systemic changes, also remains critical. The U.S. Government has been urging Japan to build further on recent improvements in this area to foster a more open, predictable market.

Blood Products: Japan's 2002 Blood Law established a principle of "self-sufficiency" and includes a Supply and Demand Plan for the government to manage the blood market. The U.S. Government has been urging Japan to not restrict imports of plasma protein products so as to increase patient access to life-saving blood plasma therapies, eliminate labeling that implies U.S. products are not as safe as Japanese products, and increase the efficiency of product reviews. The U.S. Government also urges Japan to develop a reimbursement system for blood products that accounts for the unique nature of plasma protein therapy characteristics.

Nutritional Supplements: Japan has taken steps to streamline import procedures and to open its $10 billion nutritional supplements market, although many significant market access barriers remain. Unusually burdensome restrictions on health and nutrition claims are a major concern. Only those products approved as Foods for Specific Health Uses (FOSHU) or Foods with Nutrient Function Claims (FNFC) are allowed to have health or structure/function claims. Producers of most nutritional supplements, however, are unable to obtain FOSHU or FNFC approval due to FOSHU's costly and time consuming approval process and to the limited range of vitamins and minerals that qualify for FNFC. Other concerns include: long lead times for food additive applications; high levels of import duties for nutritional supplements compared to duties on pharmaceuticals containing the same ingredient(s); stopping of shipments at quarantine stations due to naturally occurring traces of substances such as benzoic acid and sorbic acid, which Japan classifies as food additives; and a lack of transparency in the development of health food safety regulations.

Cosmetics and Quasi-Drugs: Japan is the world's second largest market for cosmetics and "quasi-drugs" after the United States, yet regulatory barriers continue to limit consumer access to safe and innovative products. Unlike the U.S. over-the-counter drug monograph system, Japan requires premarket approval for certain products classified as quasi-drugs under the Pharmaceutical Affairs Law. The approval process includes requirements that are burdensome, lack transparency, and do not appear to enhance product safety, quality, or efficacy. In addition, many types of advertising claims for cosmetics and quasi-drugs are prohibited in addition to burdensome paperwork for importing products. The U.S. Government is urging Japan to address these and other issues under the Regulatory Reform Initiative.

Financial Services

The Japanese Government has stated repeatedly its goal of improving the international competitiveness of Japan's financial sector. In December 2007, the Financial Services Agency (FSA) unveiled its "Plan for Strengthening the Competitiveness of Japan's Financial and Capital Markets," and – following the Japanese Diet’s 2006 approval of broad legislation under the Financial Instruments and Exchange Law (FIEL) – submitted amendments to the FIEL in March 2008. The 2006 FIEL amended 89 financial laws and consolidated the remainder of related laws with the goal of establishing one cohesive set of rules. Specifically, the FIEL sought to enhance investor protection and promote the movement of financial assets into securities markets through cross-sectoral rules for investment product sales, management, and disclosure. However, given the hundreds of pages of statutes comprising the FIEL and relatively recent implementation of the law which began September 30, 2007, the FIEL's overall effect is still not discernable. Market participants are looking to see whether FIEL implementing regulations, interpretation, and enforcement are consistent and predictable.

Japan has improved the transparency and predictability of the financial regulatory system, but further progress is needed. In particular, the FSA could expand the body of written interpretations of Japan's financial laws. While the FSA has enhanced supervision and disclosure, it must continue to move forward to establish transparency and consistency in regulation and supervision of financial institutions to bring them in line with international standards and best practices and to help realize the government's goal of improving Japan's global competitiveness as a financial services center.

No-Action Letters and Written Interpretations: The FSA has made some efforts to enhance the effectiveness of Japan's no-action letter system, including by soliciting input from U.S. and other foreign firms on how best to improve the system. Use of the system, however, has not materially increased. The U.S. Government continues to recommend that the FSA explore ways to expand use of the no-action letter system. The U.S. Government also has encouraged the FSA to expand the written interpretations it provides, including through greater use of its "interpretive letter" system and increasing the number of "reference cases" published on the FSA Internet site.

Agriculture

Japan maintains many tariff and nontariff barriers against trade in the agricultural sector. The U.S. Government's October 2008 submission to Japan under the Regulatory Reform Initiative includes several recommendations to enhance the efficiency of the trading environment for agricultural products and the transparency of trade-related rules and regulations. These include: implementing a Maximum Residue Limit (MRL) regime that ensures that any enforcement actions taken when a violation occurs are no more trade restrictive than necessary; ensuring that Japan’s pesticide residue policies to enhance organic trade are in compliance with international standards; completing the review of widely used food additives that are recognized as safe by the Food and Agriculture Organization (FAO) and World Health Organization (WHO) Joint FAO/WHO Evaluation Committee on Food Additives; and following international standards for the treatment of post-harvest fungicides. (See also *Standards, Testing, Labeling, and Certification* in this chapter.)

Plant Quarantine Issues: Japan’s plant quarantine system includes measures that are not always based on internationally recognized science or standards. Japan frequently turns to nationwide bans on imported products in response to narrowly focused quarantines imposed by exporting countries in their home markets. For example, when a disease or pest outbreak is reported in a contained area of the United States, Japan tends to ban imports of all associated U.S. plant products regardless of their region of origin. Such steps are unnecessarily trade restrictive as they are not risk based. Through the Regulatory Reform

Initiative, the U.S. Government continues to encourage Japan to use pest risk analysis that is based on international standards, and to provide a scientific basis for its responses, as well as articulate how adopted quarantine measures accurately reflect the level of phytosanitary protection Japan has determined to be appropriate.

Japan's Ministry of Agriculture, Forestry, and Fisheries (MAFF) prohibits the entry of various fresh plant products due to the presence of pests, even though some of these pests are also present in Japan. Japan has a pest forecast system that monitors certain domestic pests and alerts producers to potential increased pest damage. The Japanese government has contended this system constitutes official control under the International Plant Protection Convention (IPPC), the international standard setting body for plant protection. According to the Japanese government, it must impose a similar system for imported commodities. Japan has made progress to harmonize legislation and standards with international standards, but recognizes that more work is needed to harmonize practices on other pests that may adversely impact U.S. exporters.

STRUCTURAL REGULATORY REFORM

Antimonopoly Law and Competition Policy

Although Japan has taken significant positive steps in recent years to bolster its competition regime, cartel activity and bid rigging persist. Additional measures to combat anticompetitive behavior would improve the business environment and further attention is needed to ensuring enforcement procedures are fair and transparent.

Improving Antimonopoly Compliance and Deterrence: Japan‘s Antimonopoly Act (AMA) provides for both administrative and criminal sanctions against cartel violators. Administrative penalty ("surcharge") levels remain too low, however, and criminal prosecutions, which should have the strongest deterrent effect against anticompetitive behavior, have been few and penalties against convicted company officials have been weak. The U.S. Government continues to urge Japan to take steps to maximize the effectiveness of enforcement against hard-core violations of the AMA, including by augmenting administrative and criminal penalties, extending the statute of limitations, and strengthening the effectiveness of the Japan Fair Trade Commission’s (JFTC) leniency program (which eliminates or reduces penalties for whistle blowing companies). The JFTC's ability to enforce the AMA effectively is also hindered by a lack of employees with post-graduate economics training, a factor that undermines JFTC ability to engage in the careful economic analysis necessary to properly evaluate non-cartel behavior. The U.S. Government continues to urge the JFTC to improve its economic analysis capabilities.

Improving Fairness and Transparency of JFTC Procedures: Japan introduced a system in January 2006 that empowered the JFTC to make determinations of AMA violations without a formal administrative hearing, with respondents being afforded the right to seek administrative review of the decision only after the decision was put into place. Although the JFTC allows companies subject to a proposed cease-and-desist or surcharge payment order to review the evidence relied upon by JFTC staff and to submit evidence and make arguments in their defense prior to an order being issued, questions have been raised as to whether this system provides sufficient due process protections. To ensure further credibility and transparency of JFTC hearing procedures, the U.S. Government has asked Japan to review the *ex post* hearing system and take necessary measures to ensure that respondents are afforded procedural fairness in the JFTC decision making and appeals process, as well as to ensure that JFTC investigatory processes are conducted in accordance with generally accepted notions of fundamental procedural fairness.

Broadening Measures to Combat Bid Rigging: Japanese officials have implemented a series of measures to address the problem of frequent and persistent bid rigging. Apart from several cases in which the JFTC invoked the 2003 law against bureaucrat-led bid rigging (so-called *kansei dango*), the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) has strengthened administrative sanctions against companies found by JFTC to have engaged in unlawful bid rigging. MLIT and nine other central government entities have also introduced an administrative leniency program to complement the JFTC leniency program (designed to help encourage individuals and companies to report anticompetitive acts), and Japan has put in place a series of measures aimed at ensuring a competitive bidding process for project contracts tendered at the central and local government levels. In June 2007, the Japanese Diet passed legislation aimed at controlling post-retirement employment by Japanese government officials in companies they previously helped regulate or were otherwise involved with while in government service, the so-called "descent from Heaven" (*amakudari*), which has been a factor in many bid rigging conspiracies. The U.S. Government has recommended that Japan strengthen measures to: prevent conflicts of interest in government procurement; improve efforts to eliminate involvement in bid rigging by government officials; expand administrative leniency programs; and further improve procurement practices to ensure open and competitive bidding.

Transparency

Transparency issues remain a top concern of U.S. companies operating in Japan's market. Through the Regulatory Reform Initiative, the U.S. Government has strongly urged Japan to adopt new measures to achieve a higher degree of transparency in governmental regulatory and policy making processes.

Advisory Groups: Although advisory councils and other government-commissioned study groups are accorded a significant role in the development of regulations and policies in Japan, the process of forming these groups can be opaque and nonmembers are too often not uniformly offered meaningful opportunities to provide input into these groups' deliberations. The U.S. Government continues to urge Japan to ensure transparency of advisory councils and other groups convened by the government by adopting new requirements to ensure ample and meaningful opportunities are provided for all interested parties, as appropriate, to participate in and directly provide input to these councils and groups.

Public Comment Procedures (*PCP*): Many U.S. companies remain concerned by inadequate implementation of the PCP by Japanese ministries and agencies. Examples include cases where comment periods appear unnecessarily short, as well as cases suggesting comments are not adequately considered given the brief time between the end of the comment period and the issuance of a final rule or policy. The U.S. Government has stressed the need for Japan to ensure its existing PCP is being fully implemented and to make additional revisions to further improve the system.

Transparency in Regulation and Regulatory Enforcement: To ensure the private sector has sufficient information about regulations and official interpretations of those regulations that are necessary to comply, the U.S. Government is urging Japan to specifically require its ministries and agencies to make public their regulations and any statements of policy of generally applicable interpretation of those regulations.

Privatization

The Japanese government's program to privatize the Japan Post Group, which has multi-billion dollar banking and insurance businesses in addition to its mail and parcel delivery operations, has passed several important milestones in the first year of the privatization process. The U.S. Government recognizes that reform in this area, if implemented in a fully market-oriented manner, can have an important positive effect on the Japanese economy by stimulating competition and leading to a more productive use of resources.

The U.S. Government continues to carefully monitor the implementation of the Japanese government's postal reform efforts and to call on the Japanese government to ensure that all necessary measures are taken to achieve a level playing field between the Japan Post companies and private sector participants in Japan's banking, insurance, and express delivery markets.

In the area of express carrier services, the U.S. Government remains concerned by unequal conditions of competition between Japan Post Service and U.S. international express delivery providers. The U.S. Government urges Japan to enhance fair competition, including by ensuring Japan Post Service is subject to similar customs clearance procedures and costs for competitive services such as international express delivery services, and that subsidization of Japan Post Service's international express service by revenue from noncompetitive postal services is also prevented.

The U.S. Government also continues to emphasize the importance of transparency and disclosure for the successful implementation of the postal reform process. The U.S. Government has continued to urge the Japanese government to ensure that the process by which postal reforms proceed is made fully transparent, including by full and meaningful use of public comment procedures and through opportunities for interested parties to express views to related officials and advisory bodies before decisions are made. Timely and accurate disclosure of financial statements and related notes serves a key function in the privatization process, as does the continued public release of meeting agendas, meeting minutes, and other documents relevant to the process. The U.S. Government also looks to Japan to ensure that its triennial review of postal privatization is transparent and fully addresses the issue of equivalence of competition in the banking, insurance, and express delivery sectors. (*For discussion of Japan Post privatization and the postal insurance corporation, see "Insurance" under the Services Barriers section.*)

Commercial Law

Japan undertook a major reform of its commercial law by enacting a new Corporate Code, which entered into force May 1, 2006. Among other provisions, the code now permits the use of certain modern merger techniques, including domestic and cross-border triangular mergers. These new provisions, however, have not yet been as effective as had been hoped in facilitating foreign investment into Japan. This may reflect the limited range of tax-advantaged merger tools and corporate governance systems that do not adequately reflect the interests of shareholders.

Through the Regulatory Reform Initiative, the U.S. Government continues to urge Japan to improve further its commercial law and corporate governance systems to promote efficient business practices and management accountability to shareholders in accordance with international best practices. Specifically, the U.S. Government is urging Japan to identify and eliminate impediments to cross-border mergers and acquisition, including the availability of reasonable qualifying rules for tax-deferred treatment for many such transactions, and to take measures to ensure that shareholder interests are adequately protected when Japanese companies adopt anti-takeover measures or engage in cross-shareholding arrangements.

The U.S. Government also continues to encourage Japan to identify legislation and other measures necessary to strengthen corporate governance mechanisms, including by: facilitating and encouraging active proxy voting by institutional investors such as pension and mutual funds; tightening the definition of outside directors; allowing the boards of directors of Japanese corporations to delegate certain decision making functions to committees composed solely of independent directors; and encouraging the stock exchanges to adopt listing rules and guidelines that will improve the corporate governance of listed companies and ensure that the interests of minority shareholders are protected when the board of directors decides to issues new shares, conduct a reverse stock split or allocate shares to third parties. The U.S. Government also continues to request that Japan amend Article 821 of the Company Law to prevent adverse effects on U.S. companies seeking to legitimately conduct their primary business in Japan through Japanese branch offices.

Legal System Reform

Japan imposes restrictions on the ability of foreign lawyers to provide international legal services in Japan in an efficient manner. The U.S. Government continues to urge Japan to further liberalize the legal services market by allowing foreign lawyers to form professional corporations and establish multiple branch offices in Japan whether or not they have established a professional corporation, counting all of the time foreign lawyers spend practicing law in Japan toward the three year experience requirement for licensure as a foreign legal consultant, and speeding up the registration process for new foreign legal consultants. The U.S. Government has also requested that Japan take measures to ensure that no legal or Bar Association impediments exist to Japanese lawyers becoming members of international legal partnerships with lawyers outside Japan without restriction, and to ensure that foreign legal consultants can legally provide alternative dispute resolution (ADR) services and represent parties in any international ADR proceedings taking place in Japan.

In order to encourage victims of trade secret theft to cooperate with prosecutors in bringing criminal charges against the wrongdoers, the U.S. Government is urging Japan to adopt necessary procedures that will ensure that the content of a trade secret will not be disclosed to the public in the criminal trial.

Distribution and Customs Clearance

The U.S. Government welcomes Japan's work to formulate an Authorized Economic Operator (AEO) system, which allows exporters with good compliance records to process goods more expeditiously through Customs. Japan Customs, however, currently does not allow post-export declarations, and requires brokers to declare express items at specific Customs offices, which limits flexibility and potentially increases processing costs. To further facilitate trade, the U.S. Government is urging Japan under the Regulatory Reform Initiative to allow customs brokers to make post-export declarations for items valued at less than 250,000 yen (about $2,500), and allow those brokers using the Japan Customs' Nippon Automated Cargo Clearance System (NACCS) automated database to declare express items at any Customs office. To facilitate more efficient cargo flows, the U.S. Government is recommending that Japan exempt AEO exporters from paying the 5 percent consumption tax for cleared cargo. Currently, Japan Customs refunds this tax, but an exemption would reduce the administrative burden of filing for a refund. The U.S. Government also is recommending that Japan raise the Customs Law *de minimis* ceiling from 10,000 yen (about $100) to at least 20,000 yen or higher, in line with international best practice to reduce workloads and maximize efficiency.

IMPORT POLICIES

Rice Import System: Japan's highly regulated and non-transparent importation and distribution system for imported rice limits meaningful access to Japanese consumers. In 1999, Japan established a tariff-rate quota (TRQ) of approximately 682,000 metric tons (milled basis) for imported rice. The Staple Food Department (SFD) of MAFF manages imports of rice within the TRQ through periodic ordinary minimum access (OMA) tenders and through the simultaneous buy-sell (SBS) tenders. Imports of U.S. rice under the OMA tenders are destined almost exclusively for government stocks. MAFF releases these stocks exclusively for non-table rice users in the industrial food processing or feed sector and for re-export as food aid. In calendar year 2007, U.S. rice exports to Japan were valued at $206 million, representing approximately 322,000 metric tons. Only a small fraction of this rice reaches Japanese consumers identified as U.S. rice, despite industry research showing Japanese consumers would buy U.S. high-quality rice if it were more readily available.

Until 2008, Japan generally met its WTO import volume commitments. However, Japan failed to import the full in-quota TRQ quantity for rice in Japan fiscal year 2007, which started on April 1, 2007, and ended on March 31, 2008. The unusual conditions in 2007/2008 that resulted in global rice prices that were higher than normal, although still below Japan's domestic prices, exposed several weaknesses in Japan's administration of its TRQ system for rice. The U.S. Government's expectation is that Japan will completely fill its in-quota TRQ quantity for Japan fiscal year 2008, and we continue to closely monitor Japan's rice import tendering process.

The Japanese government's Maximum Residue Limits policy has resulted in excessive testing requirements for rice imports which also hamper trade in U.S. rice with Japan. Rice and wheat, however, are the only commodities for which Japan requires multiple tests, including a separate test by the rice industry. This testing has resulted in a disproportionate increase in the cost of bringing U.S. rice to market, particularly for rice purchased under their SBS system because of smaller import lot sizes.

Wheat Import System: Japan requires wheat to be imported through MAFF's Food Department, which then resells the wheat to Japanese flour millers at prices substantially above import prices. These high prices discourage wheat consumption by increasing the cost of wheat-based foods in Japan. In 2007, MAFF revised the wheat import regime to allow more frequent adjustment to the resale price and therefore more closely reflect international price movements. Coupled with higher global wheat prices, the resale price to flour millers has increased 55 percent. The U.S. Government remains concerned by Japan's operation of a state trading entity for wheat and its potential to distort trade.

Pork Import Regime: Japan is the largest export market for U.S. pork on both a volume and a value basis (importing 425,000 metric tons in 2008, worth $1.5 billion). The import tariff for pork is established by a gate price system that applies a 4.3 percent *ad valorem* tariff when the import value is equal to or higher than the administratively established reference price. Imports that fall below the reference price pay an additional duty equal to the difference between the import value and the reference price.

Beef Safeguard: Japan negotiated a beef safeguard during the Uruguay Round to protect domestic producers in the event of an import surge. The safeguard is triggered when the import volume increases by more than 17 percent from the level of the previous Japanese fiscal year on a cumulative quarterly basis. Once triggered, the safeguard remains in place for the rest of the fiscal year. If triggered, beef tariffs will rise to 50 percent from 38.5 percent.

Fish Products: Japan was the most important export market for U.S. fish and seafood products for over 30 years, although the European Union (EU) surpassed Japan in 2007 when 20 percent of U.S. seafood exports went to Japan and 24 percent went to the EU. That trend continued in 2008, when U.S. exports to Japan again accounted for 20 percent of U.S. seafood exports. An overall decrease in Japanese seafood consumption and therefore imports, as well as the growing seafood demand in the United States, the EU, and other countries, appear to be important reasons for this shift.

Japan's tariffs on seafood imports are generally low, although tariffs on certain products remain an impediment to U.S. exports, making the products too expensive for Japanese importers in an increasingly competitive global marketplace. Market access is also not seamless for some products. For example, Japan maintains several species and product-specific import quotas on pollock, Pacific cod, Pacific whiting, mackerel, sardines, and squid. Import quotas also exist for specific products such as pollock and cod roe, and surimi. Administration of the system has improved considerably over the years and it is expected that obstacles to Japanese importers and processors will continue to be reduced as the need for protection provided by the quotas continues to decline. While Japan cut tariffs as a result of the Uruguay Round, it did not change its import quotas. As part of ongoing WTO Doha negotiations, Members including the United States and Japan have committed to clarify and improve rules on fisheries subsidies.

High Tariffs on Beef, Citrus, Dairy, and Processed Food Products: Japan maintains high tariffs on a number of food products that are important exports for the United States, including red meat, citrus, wine, and a variety of processed foods. Examples of double digit import tariffs include 38.5 percent on beef, 32 percent on oranges, 40 percent on processed cheese, 29.8 percent on natural cheese, 17 percent on apples, 20.4 percent on cookies, up to 17 percent on table grapes depending on the season of the year, and 15 percent to 29.8 percent on wine depending on the Harmonized Tariff System (HTS) classification. These high tariffs generally apply to food products where Japan has domestic production. Tariff reductions are a high priority for the U.S. Government in the Doha Development Agenda agriculture negotiations.

Wood Products and Building Materials: Japan continues to restrict imports of certain manufactured wood products through tariff escalation (*i.e.*, progressively higher tariffs based on the level of processing of the wood product). The elimination of tariffs on wood products remains a long standing U.S. Government objective.

Leather/Footwear: Japan continues to apply a TRQ on leather footwear that substantially limits imports into Japan's market, and establishes these quotas in a nontransparent manner. The U.S. Government continues to seek elimination of these quotas.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Japan's enforcement of national standards hinders trade in certain farm, forest, and industrial products. U.S. industry has raised concerns that Japan's stringent testing methods and low tolerances for regulated substances such as pesticides and food additives make it difficult to satisfy import requirements for many products. The U.S. Government is urging Japan to use science-based standards and implement risk-based enforcement policies as the least trade restrictive measures that also satisfy consumer safety concerns.

Sanitary and Phytosanitary Measures

Beef: On July 27, 2006, Japan partially reopened its market to U.S. beef and beef products. Except for approximately one month from December 2005 to January 2006, Japan's market had been effectively closed to U.S. beef since the December 2003 detection of a cow with Bovine Spongiform Encephalopathy (BSE) in Washington State.

Japan allows imports of U.S. beef and beef products from animals aged 20 months or younger. However, the protocol which implemented this limited reopening has prevented the United States from regaining all but a small portion of its historic level of exports to the Japanese market. Before the ban, Japan was the largest export market for U.S. beef and beef products, totaling roughly $1.4 billion annually.

The U.S. Government has repeatedly urged Japan to bring its BSE measures in line with international guidelines set by the World Organization for Animal Health (OIE) by allowing imports of all U.S. beef and beef products derived from animals of all ages deemed safe under OIE guidelines. In May 2007, the OIE determined that the United States is a "controlled risk" country for BSE, a determination based on internationally accepted science. The U.S. Government remains highly concerned by Japan's unwillingness to adopt science-based, international guidelines for BSE under which beef and beef products can be safely traded. The U.S. Government will continue to work vigorously to normalize trade to this important market.

Enforcement of Maximum Residue Limits (MRLs): With Japan's adoption of an MRL positive list system in May 2006, it became apparent that Japan's Ministry of Health, Labor and Welfare's (MHLW) MRL enforcement policy increases the risk to suppliers of being penalized for MRL violations incurred by other exporters. After a single MRL violation, MHLW increases testing to 30 percent of that agricultural commodity originating from that country. In the event that a second violation occurs within a 12 month period of the first violation for the same commodity and country, MHLW imposes a 100 percent test-and-hold policy against the agricultural commodity from the entire exporting country.

As a result of ongoing consultations and MHLW's positive assessment of the effectiveness of the U.S. system, MHLW implemented a new MRL enforcement program in August 2007 that exclusively penalizes the exporter in violation of Japan's tolerance, but only in cases where the U.S. tolerance for the particular commodity and pesticide is equal to or more restrictive than Japan's tolerance. However, when the exporting country's MRL is less restrictive than Japan's, this policy provides no assurances that U.S. agricultural exports will not be subject to country-wide sanctions. The U.S. Government continues to press Japan to adopt MRL enforcement measures that conform to international standards.

Food Additive Classification for Post-Harvest Fungicides: Japan's classification of post-harvest fungicides as food additives contradicts international standards. Countries assessing the risk associated with a particular pesticide generally perform one risk assessment for pre- and post-harvest application. Under the Japanese system, a risk assessment for pre-harvest application and an additional pest risk assessment for the same fungicide for post- harvest treatment are required. This is due to Japan's unusual policy of classifying post-harvest fungicides as food additives. The costly and lengthy review process associated with Japan's policy deters companies from seeking MRLs for its products and precludes U.S. producers from using safer and more effective pesticides on products destined for Japan. The U.S. Government continues to raise this issue in high-level trade policy fora to encourage Japan to conform to international practices by eliminating its policy of classifying post-harvest fungicides as food additives and subjecting fungicides to food additive risk assessments.

Microbial Content Standards: Japan's standards under the Food Sanitation Law for microbial content on frozen foods are, in certain instances, impractical and overly restrictive, particularly for foods that require cooking before consumption.

Fumigation Standards: Japan requires a separate fumigation trial and evaluation for each new horticultural variety before its entry into Japan's market. Separate fumigation trails for new varieties are not based on science, and therefore these practices should be eliminated.

Poultry: Since 2002, Japan has imposed several national and statewide bans on the import of U.S. poultry, poultry meat, and eggs due to the detection of exposure to avian influenza (AI) in U.S. domestic birds, both high pathogenic avian influenza (HPAI) and low pathogenic avian influenza (LPAI). The OIE guidelines as well as the WTO Sanitary and Phytosanitary agreement provide for importing countries to impose bans on imports of only certain commodities from affected regions (zones) of the exporting country. Japan bans almost all poultry commodities from the entire country in the event of HPAI, and the entire state in the event of LPAI. Japan's actions have not been consistent with international standards and have disrupted trade in poultry and related products.

Standards

Restrictive Food Additive List: Japan's regulation of food additives has a restrictive effect on imports of several U.S. food products, especially processed foods. Many additives that are in wide use in the United States and throughout the world are not allowed in Japan, including many newer additives that are considered safer than older alternatives. In addition, many of Japan’s approved additives have conditions further limiting the use of these specific food additives on a product-by-product basis.

U.S. manufacturers have complained about the prolonged approval process for indirect food additives (*i.e.*, additives that do not remain on food, such as solvents). In 2002, Japan created a list of 46 food additives for expedited review; a number of additives still have not been reviewed and approved, notwithstanding the availability of extensive safety data. The U.S. Government has urged Japan through the United States-Japan Regulatory Reform Initiative to complete review of the 46 food additives and expedite the review process for food additives in general.

Organics: U.S. organic exports to Japan continue to be limited by Japan's ban on alkali extracted humic acid, a production substance that is allowed for use on U.S. organic crops. In addition, Japan's zero tolerance policy for pesticide residues on organic products is not consistent with international standards, and in practice appears to be more thoroughly enforced for imported organic products.

Marine Craft: Japan continues to maintain an inspection regime for new boats and marine engines that is unique in the world in its complexity. Japan’s regulations, written and administered by the Ministry of Land, Infrastructure and Transport and the Japan Craft Inspection Organization, can be complicated and vague. The U.S. Government has been engaged with the Japanese government to urge improvements and raise awareness. Japan’s adoption of 40 ISO standards as its relevant regulations has been a positive step. The U.S. Government encourages Japan to continue this trend as well as to use or accept third-party documentation and certification of U.S boats to these Japanese ISO-based standards and non-ISO-based standards.

Building Size, Designs, and Wood Products

Japan has adopted and implemented regulations with respect to indoor air quality and chemical emissions, and may be considering additional steps. The U.S. Government will continue to monitor regulatory developments in this area and urge that Japan ensures transparency in any resulting rule making process. In addition, Japan's fire testing standards for wood frame assemblies is ambiguous and open to interpretation by testing facilities, lack of a uniform understanding of requirements makes it more difficult for wood products to meet Japan's fire testing requirements.

Biotechnology

Japan is the world's largest importer of bioengineered grains and annually imports about 15 million metric tons of U.S. corn and 3.3 million metric tons of U.S. soybeans, mostly for use as feed or for processing. In 2007, U.S. exports to Japan of these commodities alone were worth $3.7 billion. To both secure bilateral trade in grains and increase global food security, the United States and Japan share a common interest in promoting effective biotechnology approval and regulatory policies.

Japan's Food Safety Commission conducts risk assessments in support of product evaluations by the Ministry of Health, Labor and Welfare and the Ministry of Agriculture, Forestry and Fisheries. Japan's regulatory system is complex and compliance is costly, which makes it difficult for products developed by Japanese researchers to be commercialized, and there is a concern that the continued growth in the number and complexity of new biotechnology applications in coming years could strain the regulatory system. There is also the real possibility of trade disruptions from an unapproved bioengineered variety showing up in trace amounts in imported grain or processed foods. To avoid disrupting trade, the U.S. Government is actively engaging with Japan's regulatory agencies to encourage a risk based, case-by-case approach when dealing with unapproved varieties.

Although Japan is the largest *per capita* importer of bioengineered crops, no consumer-ready foods with recognizable bioengineered ingredients are sold in Japan. One factor that keeps bioengineered foods out of the supermarket is Japan's labeling requirement. As of yet, no Japanese food manufacturer or retailer has been willing to test the market for a consumer-ready food that is labeled with ingredients derived from modern biotechnology.

There is no commercial production of biotechnology crops in Japan, generally due to concerns from surrounding farmers about cross pollination and concerns from agricultural cooperatives opposing biotechnology crops. In addition to Japan's national regulatory system, 12 prefectural and local governments maintain rules, generally not based on science, which further limit cultivation of bioengineered crops. These rules, combined with local regulations and public pressure on research institutions, have made it increasingly difficult for technology companies to secure sites for field trials, mandated under the central government's approval process.

The U.S. Government will continue to encourage Japan to address these issues and continue to participate in discussions on biotechnology policy advancement and regulation in international fora (*i.e.*, the WTO, the Codex Alimentarius Commission, the OECD, and the APEC forum) and through international agreements dealing with international movement of bioengineered crops.

Labeling

Proprietary Ingredient Information Disclosure Requirement for Import: As part of its product classification process for new-to-market food and dietary supplement products, Japan mandates that all ingredients and food additives be listed by name, along with content percentages, and include a description of the manufacturing process. In addition to being overly burdensome, this process runs the risk that proprietary information may be obtained by competitors.

Labeling of Beef: In 2007, the Ministry of Agriculture, Forestry, and Fisheries adopted voluntary labeling guidelines that bar the use of the term "wagyu" on cattle not born and raised in Japan. The U.S. Government is concerned by this step and is monitoring the implementation of this measure.

GOVERNMENT PROCUREMENT

Japan is a Signatory to the WTO Agreement on Government Procurement (GPA). For procurement of construction services by sub-central and government enterprises covered under the GPA, Japan applies a threshold of approximately $22 million, which is three times the threshold applied by the United States.

Construction, Architecture, and Engineering

U.S. companies annually obtain far less than 1 percent of projects awarded in Japan’s massive public works market, valued at $163 billion in 2008. Two bilateral public works agreements are in effect: the 1988 United States-Japan Major Projects Arrangements (MPA) (updated in 1991); and the 1994 United States-Japan Public Works Agreement, which includes the Action Plan on Reform of the Bidding and Contracting Procedures for Public Works (Action Plan). The MPA included a list of 42 projects in which international participation is encouraged. Under the Action Plan, Japan must use open and competitive procedures for procurements valued at or above the thresholds established in the GPA. The United States raises public works issues in the annual Expert-Level Meetings on Public Works under the United States-Japan Trade Forum.

Problematic practices continue to limit the participation of U.S. design/consulting and construction firms in Japan's public works sector, including bid rigging (*dango*), under which companies consult and prearrange a bid winner. The U.S. Government continues to stress the need for Japan to take more effective action to address this pervasive problem. The U.S. Government also asked Japan to take measures to address excessive low-bidding and recognizes that Japan is attempting to do so through the increased use of Overall Greatest Value Method procurements and other measures.

The U.S. Government has raised its concerns with Japan's use of excessively narrow Japan-specific qualification and evaluation criteria that preclude U.S. firms from competing for projects. The U.S. Government has also asked Japan to: (1) develop procedures to simplify the qualification process for foreign firms that have relevant experience outside of Japan, as well as to ensure that all project-related qualification requirements are made public, as required by the GPA and the bilateral agreements; (2) address problems related to the treatment of joint venture members, extremely low design fees, lack of clarity in design fee structures, and excessive and costly documentation requirements for design bids; and (3) rectify the excessive use of the GPA operational safety exemption for railroad procurements.

The U.S. Government is paying special attention to several major projects covered by the public works agreements that are of particular interest to U.S. companies; these projects should provide important opportunities for U.S. firms. These projects include: the Haneda Airport development and expansion; the second phase of Kansai International Airport; the Central Japan International Airport; the Kyushu University Relocation Project; major expressway projects, including the Gaikan Expressway Project and Metropolitan Expressway Shinagawa Route Project; Japan Post Projects; major public buildings, railroad procurements, urban development and redevelopment projects; major Private Finance Initiative (PFI) projects; and the MPA projects still to be undertaken or completed.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The U.S. Government continues to pursue its IPR protection agenda with Japan through bilateral consultations and cooperation, as well as in multilateral and regional fora. For its part, Japan continues to make progress in improving the protection of IPR. The U.S. Government, however, has identified several areas in Japan's IPR protection regime where further action by Japan is needed.

Patents

The U.S. Government continues to urge Japan to adopt a 12-month patent application filing grace period, similar to that provided under U.S. law, to harmonize the two systems and enhance U.S. innovators' protection against a possible loss of patent rights in Japan. The U.S. Government also continues to urge Japan to implement procedures to avoid a piecemeal approach to patent examinations that results in unnecessarily lengthy delays in granting patents.

Copyrights

Adequate protection of intellectual property is critical for the continued development and competitiveness of content-related industries, and is a vital component to advancing electronic commerce and a well-functioning digital economy. The U.S. Government encourages Japan to consider ways of improving its

Internet service provider liability law to ensure it provides adequate protection for the works of rights holders on the Internet or the appropriate and necessary balance of interests among telecommunications carriers, service providers, rights holders, and website owners. The U.S. Government continues to monitor Japan's efforts to promote digital content distribution and urges that Japan work to preserve and support the international framework governing the exclusive rights of authorship and the incentives to create in order to keep pace with distribution-related technologies.

The U.S. Government is urging Japan to continue efforts to reduce piracy rates, including methods to protect against piracy on the Internet and other digital environments. Police and prosecutors should be given *ex officio* authority to enable them to prosecute IPR crimes on their own initiative, without the requirement of rights holder consent. To develop Japan's digital communication networks, Japan's Copyright Law should better protect the technological adjuncts to copyright protection such as strengthening the remedies for trafficking in the tools used to circumvent copy and access controls.

The U.S. Government is also encouraging Japan to consider clarifying the scope of the personal use exception, both as it applies to the Internet and to book piracy in the educational context.

The U.S. Government also continues to strongly urge Japan to extend the term of protection for all the subject matter of copyright and related rights to life plus 70 years, or where the term of protection of a work (including a photographic work), performance, or phonogram is calculated on a basis other than the life of a natural person, to 95 years.

The Japanese government is coordinating an ongoing discussion among stakeholders of these and other related issues and may revise Japanese laws in the near term. The U.S. Government welcomes this process and encourages Japan to ensure it is open, inclusive, and transparent, and offers all stakeholders fair opportunities to express views.

Border Enforcement

Border enforcement is a critical component of effective IPR protection. The U.S. Government notes steps taken by Japan to strengthen its own border enforcement as well as to provide assistance to improve the border enforcement of key trading partners. The U.S. Government also welcomes revisions to the Customs Tariff Law, which went into force in 2007, including an expanded list of prohibited goods for export to include items that infringe copyrights and related rights, and strengthened penalty clauses for customs offences. It is important for the Japanese government to continue its aggressive interdiction of infringing articles and to vigorously apply new provisions of the Customs Tariff Law. Japan has positively contributed to the enhancement of IPR enforcement in fora such as the G-8, APEC, and the WTO TRIPS Council, and through border enforcement capacity building work in the Asia-Pacific region.

SERVICES BARRIERS

Insurance

Japan's private insurance market is the second-largest in the world, after that of the United States, with direct net premiums of an estimated 35.8 trillion yen (over $300 billion) in Japan fiscal year (FY) 2007. In addition to the offerings of Japanese and foreign private insurers, substantial amounts of insurance are also provided to Japanese consumers by a web of insurance cooperatives (*kyosai*), and the Japan Post Insurance Co., Ltd. (a wholly government-owned entity of the Japan Post Group). Given the size and importance of Japan's private insurance market as well as the scope of the obstacles that remain, the U.S.

Government continues to place a high priority on ensuring that the Japanese government's regulatory framework fosters an open and competitive insurance market.

Postal Insurance: Japan’s postal life insurance system remains a dominant force in Japan’s insurance market. At the end of Japan FY2007, there were approximately 62 million postal life and postal annuity insurance policies in force, with approximately 651,000 having been issued by the new Japan Post Insurance Co., Ltd., after it began operations on October 1, 2007, and the remainder held as assets of the Public Successor Corporation. In comparison, 127 million life and annuity policies were in force with all other life insurance companies combined. The U.S. Government has long-standing concerns about the postal insurance company’s impact on competition in Japan's insurance market and is continuing to closely monitor the implementation of reforms. This includes the expectation that the principle of establishing equivalent conditions of competition between the Japan Post companies and the private sector, as outlined in Japan’s basic postal reform law, will be fully achieved. A level playing field between the postal insurance company and private sector insurers is critical to cultivate competition, enhance consumer choices, encourage more efficient resource allocation, and stimulate economic growth.

The U.S. Government continues to urge Japan to take a number of steps to ensure equivalent treatment, including but not limited to: (1) ensuring equal supervisory treatment between Japan Post’s financial institutions, including Japan Post Insurance, and private sector companies; (2) implementing adequate measures to prevent cross-subsidization among the newly created Japan Post businesses and related entities, including by ensuring the Japan Post companies' strict compliance with the Insurance Business Law's arm’s length rule and requiring adequate financial disclosures to demonstrate that cross-subsidization is in fact not occurring; and (3) ensuring the company established to manage Japan's post office network will transparently and without discrimination select financial products, including insurance products, of private providers for distribution throughout the network.

The U.S. Government continues to call on Japan to ensure a level playing field between the postal insurance company and private insurers before the introduction of new or altered insurance products by the postal insurance company. Approval of new products by the new postal insurance company has shifted to a process whereby decisions are made by the Prime Minister (with the Commissioner of the Financial Services Agency acting as proxy) and Minister of Internal Affairs and Communications, after hearing the opinion of an appointed government advisory body. This process should be transparent and open to all parties. It is also critical that the process include careful analysis of, and full consideration given to, actual competitive conditions in the market and that private sector views are actively solicited and considered before decisions are made.

As modifications to the postal financial institutions and network subsidiary could have serious ramifications to competition in Japan's financial market, adequate transparency in implementation of the reforms passed by the Diet is essential. The U.S. Government has urged Japan to continue to take a variety of steps to ensure transparency, including providing meaningful opportunities for interested parties to exchange views with related government officials as well as members of government-commissioned advisory committees and groups before decisions, including those on new products, are made; and fully utilizing public comment procedures with respect to drafting and implementing regulations, guidelines, Cabinet Orders, and other measures. Timely and accurate disclosure provides important information as well as independent means to track and validate the privatization process.

Kyosai: Insurance businesses run by cooperatives, or *kyosai*, hold a substantial market share of insurance business in Japan. Some *kyosai* are regulated by their respective agencies of jurisdiction (the Ministry of Agriculture, Forestry and Fisheries, or the Ministry of Health, Labor and Welfare, for example) instead of by the Financial Services Agency (FSA), which regulates all other private sector insurance companies.

These separate regulatory schemes undermine the ability of the Japanese government to provide companies and policyholders a sound, transparent regulatory environment, and afford *kyosai* critical business, regulatory, and tax advantages over their private sector competitors. The U.S. Government believes *kyosai* must be subject to the same regulatory standards and oversight as their private sector counterparts to ensure a level playing field and to protect consumers.

The Japanese government has taken some important steps since 2006 to bring more oversight to unregulated *kyosai*. Under these regulatory reforms, previously unregulated *kyosai* were required to apply to the FSA for new legal status by April 2008. Some of the cooperatives, which elected to become full-fledged insurance companies, have been held to the same regulatory standards as private sector insurers. Others opted to become "Small Amount Short Term Insurance Providers," which limits their product range and size and holds the firms to different requirements than those applied to private sector insurance companies. The remaining unregulated *kyosai* are required to close their businesses in 2009. With respect to *kyosai* regulated by ministries and agencies other than the FSA, the U.S. Government remains concerned by their continued expansion in Japan's insurance market and continues to call on Japan to bring these *kyosai* under FSA supervision.

Policyholder Protection Corporations: The Life and Non-life Policyholder Protection Corporations (PPCs) are mandatory policyholder protection systems created to provide capital and management support to insolvent insurers. Legislation was introduced in Japan's Diet in late 2008 to renew the life insurance PPC system prior to its scheduled expiration in April 2009. The new legislation, which passed the Diet in December 2008, will renew the protection system for three additional years. It was passed without full deliberations on the effectiveness of the current system, which continues to rely on pre-funding of the PPC by its members and a government "fiscal commitment" in case industry funding is insufficient, instead of adopting a system where an insolvency would result in members contributing funds to the PPC as needed (post-funding). The U.S. Government continues to urge Japan to consider more fundamental changes in the PPC systems, including through full and meaningful deliberations with interested parties before renewal legislation is required.

Bank Sales: In December 2007, the Japanese government fully liberalized the range of insurance products eligible for sale through banks. As a follow-up, the U.S. Government promptly asked Japan to review market conduct rules, including the limits on sales of first and third sector products and treatment of customer data (including Insurance Business Law Enforcement Rules, Article 212), to ensure they do not limit the effectiveness of bank sales of insurance or impede consumer convenience and choice.

Professional Services

Medical Services: Restrictive regulation limits foreign access to the medical services market. The U.S. Government has continued to urge Japan to open new opportunities for commercial entities to provide full-service, for-profit hospitals, including through Japan's special economic zones, in order to open this sector to foreign affiliated providers.

Educational Services: Excessive regulation related to both administrative requirements and restrictions on pedagogical choices has discouraged foreign universities from operating branch campuses in Japan. Under the United States-Japan Investment Initiative, the Japanese government established a new category of "Foreign University -- Japan Campus" for foreign accredited institutions of higher education. While this designation provides these campuses with benefits similar to those accorded Japanese educational institutions (*e.g.*, student eligibility for student rail passes and student visas), it does not confer the tax benefits enjoyed by Japanese institutions and their students. The U.S. Government continues to urge Japan's Ministry of Education, Culture, Sports, Science and Technology to work with these foreign universities to find a nationwide solution that grants tax benefits comparable to Japanese schools and allows them to continue to provide their unique contributions to Japan's educational environment.

INVESTMENT BARRIERS

Despite being the world's second-largest economy, Japan continues to have the lowest inward foreign direct investment (FDI) as a proportion of total output of any major OECD country. Inward foreign mergers and acquisitions (M&A) activity, which accounts for up to 80 percent of FDI in other OECD countries, also lags in Japan, even though it has been on an upward trend.

The Japanese government has recognized the importance of FDI to revitalizing the country's economy. In September 2006, the Japanese government set a goal of doubling the stock of FDI in Japan by 2010 to the equivalent of 5 percent of Gross Domestic Product (GDP). Japan has also taken several recent steps to improve the FDI environment, including revision of the Corporate Code to permit the use of triangular stock swaps for international M&A deals. With only one cross-border stock transaction occurring under the new rules, however, the adequacy of measures taken to date to promote cross-border M&A rules remains unclear. Cross-border M&A is more difficult in Japan than in other countries, partly because of attitudes toward outside investors, inadequate corporate governance mechanisms that protect entrenched management over the interest of shareholders, and a relative lack of financial transparency and disclosure.

The United States-Japan Investment Initiative, initiated in 2001 and co-chaired by the U.S. Department of State and Japan's Ministry of Economy, Trade and Industry, has worked to promote policy changes that improve the overall environment for foreign (and domestic) investment and to focus on specific barriers in certain sectors, including educational and medical services.

OTHER BARRIERS

Automobiles and Automotive Parts

A variety of nontariff barriers have traditionally impeded access to Japan’s automobile and automotive parts market, and overall sales of North American made vehicles and parts in Japan remain low. The Japan Automobile Importers Association (JAIA) reports that sales of U.S. produced motor vehicles in Japan were 15,341 units in 2007. During the past year, U.S. automakers also have significantly divested their holdings in Japanese automobile manufacturers.

Through the Regulatory Reform Initiative, the U.S. Government has continued to address crosscutting structural and regulatory reform issues with Japan that affect the automotive sector, including urging Japan to take steps that strengthen competition policy and increase transparency in rule making. It is also important for Japan to take into full consideration global harmonization efforts as it develops and implements regulations.

Aerospace

Japan is among the largest foreign markets for U.S. civil aerospace products. The civil aerospace market in Japan is generally open to foreign firms and some Japanese firms have entered into long-term relationships with American aerospace firms. The U.S. Government continues to monitor Japan's development of indigenous civil aircraft.

Military procurement by the Ministry of Defense (MOD) accounts for over half of the domestic production of aircraft and aircraft parts and continues to offer the largest source of demand in the aircraft industry. Although U.S. firms have frequently won contracts to supply defense equipment to Japan (over 90 percent of the annual foreign defense procurement is from the United States), the MOD has a general preference for domestic production or the licensing of U.S. technology for production in Japan to support the domestic defense industry.

Although Japan has considered its main space launch vehicle programs as indigenous for many years, U.S. firms continue to participate actively in those space systems, including Japan's primary space launch vehicle, the HII-A. The U.S. Government has welcomed Japan's plans to develop a supplementary GPS navigation satellite constellation known as the "quasi-zenith" system. The U.S. Government is working closely at the technical level with Japanese counterparts to ensure the Japanese and U.S. systems remain compatible and anticipates U.S. companies will have the opportunity to supply major components.

Business Aviation

Japan's regulatory framework coupled with infrastructure shortages impedes the development of business aviation in Japan. Because of the lack of guidelines specific to business aviation, regulations for commercial airline safety, maintenance, and repair issues administered by the Japan Civil Aviation Bureau (JCAB) of the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) also apply to business aircraft. This situation in turn raises the costs of qualification, operation, and maintenance of business aircraft to uneconomical levels and leads to most business aircraft operating in Japan being registered in the United States. In addition to the regulatory environment, landing rights for business aircraft in Japan are difficult to obtain because of rules that hamper flexible scheduling, especially in the Tokyo area. These factors greatly limit business opportunities in this sector for sales of U.S. aircraft in Japan.

Certain Chubu and Kansai region airports have begun to attract business aircraft, although with modest results thus far. Regional airports are attempting to provide many of the same services business aircraft operators receive in the United States and Europe. Severely restricted hours for landings and take-offs at Haneda Airport in Tokyo, a preferred business destination, and the lack of services for private business aircraft at both Narita and Haneda continue to significantly limit travel to and within Japan.

The U.S. Government has continued to urge JCAB to reexamine the application of airline-specific commercial civil aviation regulations to business aviation and develop appropriate regulations specific to the business aviation industry that are consistent with the treatment of business aviation in North America, Europe, and other developed economies. Immediate improvements in the overall regulatory framework for business aviation are needed in advance of an additional runway opening at Haneda planned for 2010.

During 2008, the JCAB took some initial and positive steps, including engaging in greater dialogue with the U.S. Government and other stakeholders. A May 2008 JCAB report highlighted the importance of business jets in Japan's aviation future and noted that Japan lags noticeably behind other countries in business aviation development. The JCAB also laid out a road map for a new business aviation policy, calling for improvements in facilitation, regulatory framework, facilities, and air fields. In July 2008, in its first actual deregulation involving business aviation, JCAB extended its ETOPS (Extended-range Twin-engine Operational Performance Standard) requirement from 60 minutes to 180 minutes, which permits JA (Japan) registered aircraft with two engines to fly routes far longer than they could previously.

Civil Aviation

Consistent with its longstanding policy to promote competition and market access in civil aviation, the U.S. Government continues to press Japan for further liberalization. Market access for U.S. air carriers in Japan improved significantly with a 1998 bilateral agreement and additionally with a new bilateral agreement in September 2007 (being applied pursuant to comity and reciprocity pending formal conclusion). U.S. carriers, however, remain constrained by restrictions on traffic rights, operational flexibility, change-of-gauge, and pricing. Other key concerns include the continuing disparity between the rights of "incumbent" and "non-incumbent" airlines, and some of the world's highest airport costs.

The September 2007 agreement provides non-incumbent cargo carriers the ability to serve additional points in Japan and beyond. It also removes many restrictions and limitations on same-country code-sharing arrangements, but such opportunities remain more limited than the open code-sharing framework in U.S. agreements with most other countries. The delegations also stated their intention to relax the pricing regime from "double approval" to "country of origin." This is short, however, of the standard "double disapproval" regime for pricing liberalization. U.S. industry has expressed concern that Japan requires cumbersome and time-consuming filings for fare changes.

Tokyo's Narita International Airport operates below its potential capacity. The U.S. Government continues to encourage Japan to take steps to increase capacity and reduce congestion at one of the world's most important airports. An extension of Narita's second runway that will facilitate more long-haul flights is currently underway, although concerns remain about the project's financing and specifically that already high user fees might be increased. Recently lowered landing fees at Narita were offset in part by the imposition of other new or increased fees. The U.S. Government continues to raise the issue of high landing fees at Narita, Kansai, and Central Japan International Airport (Centrair) airports in the Regulatory Reform Initiative and other bilateral discussions.

Both Narita and Haneda Airports are undergoing ambitious expansion projects set to be completed in 2010. However, the planning process for both these projects has not been fully transparent. U.S. carriers have expressed serious concerns about how new slots at Narita Airport will be allocated and with the unfair advantage that Japanese carriers would enjoy if slots at Haneda were allocated for service to the United States in the restricted night hours that MLIT's most recent plans envision. These issues are properly addressed in bilateral air transport negotiations. Separately, the U.S. Government notes that connections between airports in the Tokyo metropolitan area remain difficult and time-consuming, and that the weak connectivity undermines the efficiency of the airports and carriers serving Tokyo. The U.S. Government is encouraged by improvements that are now under consideration within MLIT to improve transit access between Haneda and Narita airports.

Transport/Ports

The U.S. Government continues to raise longstanding concerns about barriers to entry to, and the competitiveness of, Japanese ports. Foreign shipping companies servicing Japan are locked into long-term relationships with specific Japanese stevedoring companies, which reportedly collude within the industry association to keep newcomers out and costs high. Foreign companies are concerned that a lack of transparency in Japanese laws and regulations related to ports creates a barrier to entry. Stevedoring businesses owned and run by foreigners do not exist at major Japanese ports. As part of the Regulatory Reform Initiative, the U.S. Government has made recommendations on transparency that are applicable to the rulemaking process. Japanese laws and regulations could be reviewed to facilitate new entrants and greater competition in the stevedoring business.

Japan amended its Port Transportation Business Law (effective November 2000) to eliminate the need for new entrants to prove the existence of surplus demand. Charges for harbor services in nine large ports are subject to a prior notification requirement, and there is an approval requirement for other ports by MLIT.

Since 1999, the U.S. Government has continued to express concern that reforms have not lessened the Japan Harbor Transportation Association (JHTA)'s ability to inhibit new entry and restructuring in the ports sector. The Port Transportation Business Law introduced requirements that run counter to the need for efficient port operations and discriminate against new entrants wishing to offer port services. In addition, MLIT has not addressed concerns about the prior consultation process conducted by the JHTA nor about the apparent threat of illegal strikes against foreign carriers who obtain permission to operate their own container terminals. The U.S. Government has raised with the Japanese government its failure to implement important aspects of the wide-ranging port deregulation promised in 1997. The U.S. Government is continuing to encourage Japan to share further information about changes in Japanese law made in 2006 that may be relevant to the FMC's ongoing review of conditions at Japanese ports.

JORDAN

TRADE SUMMARY

The U.S. goods trade deficit with Jordan was $198 million in 2008, a decrease of $275 million from $473 million in 2007. U.S. goods exports in 2008 were $940 million, up 9.9 percent from the previous year. Corresponding U.S. imports from Jordan were $1.1 billion, down 14.3 percent. Jordan is currently the 78th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Jordan was $119 million in 2007 (latest data available), up from $39 million in 2006.

The United States-Jordan Free Trade Area Agreement

Under the terms of the United States-Jordan Free Trade Area Agreement (FTA) which entered into force on December 17, 2001, the United States and Jordan agreed to phased tariff reductions culminating in the complete elimination of duties on nearly all products by 2010.

IMPORT POLICIES

Tariffs and Other Charges

Jordan is a member of the WTO and is in the process of reducing its tariffs in compliance with its WTO accession commitments. While tariffs between the United States and Jordan are being eliminated under the terms of the FTA, nontariff barriers continue to affect a certain portion of U.S. agricultural exports.

The Jordan General Sales Tax law allows the government to impose a "Special Tax" at the time of importation or local production.

Agriculture

U.S. agricultural exports to Jordan were $129.6 million in 2007. Top U.S. agricultural exports consist of grains (including corn, rice, and wheat), soybean cake, processed and canned food, condiments, vegetable oil, almonds and poultry (both live and carcasses). Under the terms of the FTA, import duties and other trade barriers between Jordan and the United States must be phased out by 2010. Tariffs that were less than 5 percent have already been eliminated.

In 2006, Jordan banned the importation of beef and live bovine animals from all U.S. states after the announcement of the discovery of a single case of Bovine Spongiform Encephalopathy (BSE) in Alabama. The Jordanian government has not lifted the ban completely. Although progress has been achieved, Jordan still selectively imposes sanitary and phytosanitary measures on meat and poultry, effectively creating nontariff barriers on imports of these products. Import licenses, or advance approvals to import goods, are required for specific food and agricultural goods. The authorities granting such licenses and approvals are the Ministry of Agriculture and the Ministry of Health.

Import License and Pre-Shipment Inspection

In addition to the special requirements for certain agricultural products, Jordan requires that importers of commercial goods be registered traders or commercial entities. The Ministry of Industry and Trade occasionally issues directives requiring import licenses for certain goods or categories of goods.

In September 2007, Jordan ended a pre-shipment inspection program (the Daman Program) administered through the Jordan Institute of Standards and Metrology (JISM). It has not been replaced.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

JISM plans to shift all of its compliance inspection activities regarding imported and locally produced goods from the port of entry to a market surveillance system in late 2009. JISM's current product standards generally reflect existing U.S. standards. JISM has worked with EU agencies to review its standards and to consider incorporating new sets of standards. JISM's director has assured the United States that any changes to product standards or introduction of new standards resulting from this review would not bias against U.S. standards.

JISM has already licensed several local labs to test for compliance with applicable standards.

GOVERNMENT PROCUREMENT

In 2002, Jordan commenced its accession to the WTO Government Procurement Agreement (GPA), with the submission of its initial entity offer. Subsequently, Jordan submitted several revised entity offers, most recently in 2008. The WTO Committee on Government Procurement anticipates the completion of Jordan's accession to the GPA in 2009.

EXPORT SUBSIDIES

All exporters are granted the following incentives:

- Net profits generated from most export revenues are fully exempt from income tax. The mining sector is excluded, as are exports governed by specific trade protocols and foreign debt repayment schemes. Under the WTO, the tax exemption was initially permitted to continue until January 1, 2008, but upon the request of Jordan, the WTO granted an extension through December 2015, subject to an annual review by the WTO.

- Foreign inputs used in the production of exports are exempt from customs duties; all additional import fees are assessed on a reimbursable basis.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In 2007, Jordan amended its Trademark and Patent Laws to enable accession to the Madrid Protocol Concerning the Registration of Marks and the Patent Cooperation Treaty. Jordan has acceded to the World Intellectual Property Organization (WIPO) treaties on copyrights (WCT) and performances and phonographs (WPPT), and is currently revising its Copyright Law to implement these treaties. Jordan is also updating its Customs Law to provide additional tools to its customs officials to improve IPR enforcement.

Jordan's record on IPR enforcement has improved steadily. In 2007 and 2008, Jordanian courts issued some significant jail sentences for convicted IPR offenders. Jordan's Customs Department and the Public Security Department have created specialized IPR units, and the National Library has stepped up its IPR enforcement efforts. Pending amendments to JISM's authorizing law aim to enhance the agency's role in seizing counterfeit products that have entered the Jordanian market.

Further improvements are still needed to strengthen Jordan's IPR enforcement regime. Jordanian agencies responsible for IPR enforcement lack resources and capacity, and enforcement mechanisms and prosecution efforts still need to be strengthened, particularly with respect to *ex officio* authority to bring criminal cases. A sizeable portion of videos and software sold in the marketplace are pirated. The Jordanian government continues to examine means to provide more comprehensive protection of IPR, including through more stringent enforcement of existing laws, introduction of new regulations based on existing laws, and the creation of an independent IP body.

INVESTMENT BARRIERS

The government continues to revamp its investment promotion system. It is re-examining investment incentives with the consolidation of all investment promotion activities under a renewed Jordan Investment Board (JIB). These developments will likely lead to expanded investment opportunities in Jordan for U.S. investors.

Jordan's investment laws treat foreign and local investors equally, with the following exceptions (as per regulation No. 54 of 2000, entitled "Non Jordanian Investments Promotion Regulation"):

- Under the terms of the United States-Jordan FTA, ownership of periodical publications is restricted to Jordanian natural persons or Jordanian juridical entities wholly owned by Jordanians;

- Under the same agreement, foreign investors are limited to 60 percent ownership in printing/publishing and in aircraft or vessel maintenance and repair services; and

- Also under the FTA, foreign investors are limited to 50 percent ownership in a specified list of businesses and services.

In general, foreign investors may not have whole or partial ownership of investigation and security services, sports clubs (except for health clubs), stone quarrying for construction purposes, customs clearance services, and land transportation of passengers and cargo using trucks, buses and taxis.

While Jordanian laws set limitations on foreign ownership in certain sectors, the laws also allow for the government to grant exceptions to these limitations where it deems appropriate. This exceptions policy is viewed as being too selective by some potential U.S. investors.

The FTA Annex 3.1 has a complete listing of limitations on investments and may be found at the following Internet address: http://www.ustr.gov/Trade_Agreements/Bilateral/Jordan/Section_Index.html.

KAZAKHSTAN

TRADE SUMMARY

The U.S. goods trade deficit with Kazakhstan was $618 million in 2008, an increase of $119 million from $499 million in 2007. U.S. goods exports in 2008 were $986 million, up 30.9 percent from the previous year. Corresponding U.S. imports from Kazakhstan were $1.6 billion, up 28.1 percent. Kazakhstan is currently the 76th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Kazakhstan was $4.9 billion in 2007 (latest data available), up from $4.6 billion in 2006.

IMPORT POLICIES

Kazakhstan is a member of the Eurasian Economic Community (EAEC), along with Russia, Kyrgyzstan, Belarus, Tajikistan, and Uzbekistan. Armenia, Moldova, and Ukraine currently have observer status. Five of the EAEC members (all but Uzbekistan) have formed a free trade area. In 2006, Kazakhstan, Russia, and Belarus announced the formation of a trilateral customs union. The customs union remains under development and aims to bring about coordinated customs procedures and a high degree of uniformity in its members' external tariffs. Significant progress was made in 2008 on formulating the underlying legal basis for the customs union. The progress includes the Russian Duma's ratification of a free trade agreement, and agreements on the establishment of both regulatory and dispute resolution agencies in October 2008. That same month, the Kazakhstani Parliament ratified agreements on common measures for nontariff regulation regarding third countries, and on common customs and tariff regulation. While work to establish the customs union continues independently of its WTO accession negotiations, Kazakhstani officials stated previously that the customs union would only come into force after Kazakhstan becomes a member of the WTO.

The Law on Investments, enacted in January 2003, provides customs duty exemptions for imported equipment and spare parts, but only if Kazakhstan-produced stocks are unavailable or not up to international standards.

U.S. exporters to Kazakhstan have consistently identified the requirement to obtain a "transaction passport" (providing information on, *inter alia*, the importer, contract details, local bank of importer/exporter, and a foreign partner) to clear goods through customs as a significant barrier to trade. The transaction passports are designed to stem capital outflows and money laundering by requiring importers to show documents that verify the pricing of import/export transactions. In July 2006, the National Bank of Kazakhstan (NBK) enacted new regulations that simplified – but retained – the transaction passport requirement. Principal changes included eliminating the trade distorting maximum financing term of 180 days for imported goods and transferring the authority to issue transaction passports from customs to the NBK and commercial banks. According to Kazakhstani regulations, the transaction passports contain concise information on trade partners and include a unique transaction code; specific payment information such as currency, means, and deadlines for payment; and complete contact information for contracting parties. The NBK is currently preparing amendments to the Law on Currency Control that would raise the ceiling on transactions requiring passports from $10,000 to $50, 000.

Kazakhstan's 2007 average MFN applied agricultural tariff rate was 12.5 percent and the average MFN applied industrial tariff rate was 7.1 percent.

In April 2007, the government of Kazakhstan significantly increased the import tariff rates for beef, pork, lamb and mutton, horsemeat, bovine tongues and livers, poultry meat, eggs, and rice. These tariff increases are contrary to the spirit of WTO accession (trade liberalization) and will be subject to negotiation under the United States' bilateral market access agreement with Kazakhstan. In August 2008 the Ministry of Agriculture banned the import of poultry from Arkansas as a result of the detection of low-pathogenic (H7N3) avian influenza. The ban was lifted in early October, 2008. In September 2008, the Ministry of Agriculture banned the import of poultry from Idaho due to the detection of low-pathogenic (H7N3) avian influenza. Partly because of rising global food costs, Kazakhstan introduced a quota on refined sugar imports in March 2008, which has been extended until July 1, 2009. Since 2007, Kazakhstan has had no import tariffs on cooking oil.

Although Kazakhstani officials are diligently addressing the problematic structure of Kazakhstan's customs control agencies, while customs administration and procedural implementation remain a principal barrier to trade. Since August 2008, the Kazakhstani Customs Control Committee has been participating in a parliamentary working group, convened at the direct request of the Prime Minister, to develop a new Customs Code. This new draft of the Custom Code is due to be submitted to the Prime Minister by June 2009.

Kazakhstan is also working on amendments to the existing Customs Code, which are currently being considered by the Parliament. This work aims to bring Kazakhstan's legislation into compliance with WTO standards, and remove several identified barriers to trade. First among these is an amendment currently being considered by Parliament to consolidate and streamline the functions of five separate entities that currently participate in border and customs control activities (*i.e.,* Ministries of Transport and Communication, Health, and Agriculture; Customs; and Border Guard Service of the KNB.) An important objective is the consolidation of paperwork, thereby shortening the period of time for some imported goods to receive required licenses from 60 days to 10 days, and the creation of a single Operational Management Center designed to monitor internal cargo shipments. The second amendment currently being considered by multiple governmental agencies is designed specifically to meet standards required for WTO accession and includes declaration rights for foreign citizens (bypassing the current legal requirement for the participation of domestic brokers), *ex officio* rights for customs agents, and standardized guidelines for the valuation of goods. The development of a new Customs Code has slowed work on amending the existing Customs Code.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

In 2007, Kazakhstan adopted a number of laws in furtherance of its efforts to develop a national system of standardization and certification, such as laws on Safety of Chemical Products, Safety of Food Products, Safety of Toys, and Safety of Equipment and Machinery, as well as a series of amendments to the Law on Technical Regulation.

In 2008, this package of laws was augmented by the Law on Accreditation, which regulates the accreditation of entities that conduct conformity assessment.

The Kazakhstani Law on Technical Regulation distinguishes the state's responsibilities from those of the private sector. The government is responsible for setting product safety standards, but delegates quality control responsibilities to authorized private institutions. A wide range of goods are subject to mandatory certification requirements, which apply to both domestically produced and imported goods. A related regulation lists the specific categories of products subject to certification, including machines, cars, agricultural and telecommunications equipment, construction materials, fuel, clothes, toys, food, and drugs.

The Law on Technical Regulation requires that contracts for the delivery of imported goods include a special clause which confirms the goods comply with Kazakhstani standards.

Delivery contracts must also be accompanied by documents that describe the products and lists the country of origin, the producer, the expiration date, any storage requirements, and instructions for the use of the product in both the Kazakh and Russian languages. In addition, the law states that foreign certificates, testing protocols and compliance indicators must be in accordance with international treaties.

The National Accreditation Center of Kazakhstan intends to become a full member of the International Laboratory Accreditation Cooperation in 2010 and the International Accreditation Forum in 2012. It is currently developing legislation for accomplishing this goal. This step would automatically make the Kazakhstani National Accreditation Center a signatory to a number of international treaties on metrology and standards.

GOVERNMENT PROCUREMENT

Some potential U.S. suppliers have raised concerns about the transparency and efficiency of Kazakhstan's government tender process.

In July 2007, Kazakhstan enacted the Law on Government Procurement, which was designed to increase the transparency of the procurement process and provide relevant state agencies with greater operational flexibility. Concurrent amendments to the Administrative Code stipulated administrative penalties for violations of the Law on Government Procurement. In November 2008, Parliament approved amendments to the Law on Government Procurement, which became effective in December 2008. The amendments are primarily designed to further reduce corruption and introduce an e-procurement system. As mandated by President Nazarbayev, the changes to the Law on Government Procurement should also enhance the participation of domestic suppliers in government procurement, and whenever possible, give preference to them. However, Kazakhstan's largest national companies, governed under the umbrella of the Samruk-Kazyna national holding company, including Kazakhstan TemirZholy (national railway), KazMunayGas (national oil and gas company), KEGOC (electricity transmission company), and several other companies with their subsidiaries, will not be subject to the Law on Government Procurement.

The Rules on Oil and Gas Procurement give significant preferences to local suppliers and establish what many foreign and domestic firms consider unwarranted state interference in even small tenders.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The Kazakhstan government's effort to diversify the economy away from the energy sector and spur the growth of a domestic high technology industry, combined with the WTO accession process, has led to a strong emphasis on IPR protection. Kazakhstan is currently considering a number of changes to its IPR legislation that will strengthen IPR protection and provide tools for improved IPR enforcement.

Although domestically produced pirated films and music are available in Almaty and Astana, thanks largely to decreasing costs of making copies, the vast majority of pirated goods in these regions appear to be imported, predominantly from Russia and China. Armed with statutes enacted in November 2005 that authorize stiffer penalties for infringers, the authorities have conducted numerous raids against distributors of pirated products. The government's efforts have greatly helped to expand the Kazakhstani market for licensed, non-infringing products. Still, much remains to be done, particularly in ensuring that customs controls are applied more effectively against imported infringing goods. Legislation to strengthen intellectual property protection and enforcement is under development, including a proposal to grant customs officials *ex officio* power to seize infringing goods at the border.

Further progress is also needed in the realm of civil enforcement, which is serving as an increasingly prevalent method of IPR enforcement. Although civil courts have been used effectively to stem IPR infringement, judges often lack expertise in the area of IPR, which is a significant obstacle to further improvement in Kazakhstan's IPR climate.

SERVICES BARRIERS

Foreign ownership of individual mass media companies, including news agencies, is limited to 20 percent. Foreign banks and insurance companies are limited to operating in Kazakhstan through joint ventures with Kazakhstani companies. For certain professional services, including auditing, architectural, urban planning, engineering, integrated engineering, and veterinary services, commercial presence is allowed only in the form of a juridical person. For telecommunications services, foreign ownership may not exceed 49 percent.

INVESTMENT BARRIERS

Kazakhstan's 2003 Law on Investments provides the legal basis for foreign investment in Kazakhstan. In general, U.S. investors have concerns about the Law's narrow definition of investment disputes, its lack of clear provisions for access to international arbitration, and certain aspects of investment contract stability guarantees.

The vast majority of foreign investment in Kazakhstan is directed to the oil and gas sector. The government remains eager to do business with international companies, but increasingly has emphasized the importance of "local content" in purchases of goods and services for petroleum operations. For example, a new draft Law on Subsoil and Subsoil Use, expected to be adopted in 2009, contains explicit requirements regarding the local purchase of goods and services and the hiring of Kazakhstani nationals for all investments in offshore oil and gas exploration and production. The draft Law also requires that KazMunayGas, the national oil company, have a minimum 51 percent share in all new exploration and production contracts and it establishes a procedure by which the national oil company may obtain field rights outside of a tender process. Taken together, these clauses appear to establish KazMunayGas as a necessary partner for international oil companies investing in Kazakhstan.

The proposed legislation would also require separate contracts for exploration and production operations, put shorter time limits on exploration contracts, enhance the government's authority to terminate contracts not in compliance with the law, and require tax stability clauses in individual contracts to be approved by Parliament. In addition, under the terms of the legislation, no future contracts would be structured as production sharing agreements (PSAs), which allow companies to recoup capital expenditures before making royalty payments to the government.

Although exploration and production contracts would be separated, a company awarded exploration rights would nevertheless be given priority rights to negotiate a production contract with the government following an oil or gas discovery. However, if the terms of the production contract were not agreed to within a set time period, production rights would be opened to other bidders through a public tender.

The draft Law also includes a preemption clause that guarantees the State the right of first refusal when a party seeks to sell any part of its stake in a mineral resource extraction project. The State claims this preeminent right even in cases where the controlling agreement assigns preemptive rights elsewhere (*e.g.*, to other investors in a consortium). The proposed draft also fully incorporates an October 2007 amendment to the current subsoil law which allows the government to force amendments to existing subsoil contracts of "strategic significance" –- or even terminate such contracts –- where the economic interests of Kazakhstan are so threatened as to create a "national security risk." In addition, the proposed draft provides the government with enhanced authority to terminate any subsoil contracts for non-compliance with any law.

Kazakhstan's law allows citizens of Kazakhstan and foreigners to own land under commercial and noncommercial buildings, including dwellings and associated land. Such land may also be leased for up to 49 years. The land code, enacted in June 2003, for the first time allows private ownership by Kazakhstan's citizens of agricultural land, in addition to industrial, commercial, and residential land. An amendment enacted in July 2007 extends the right to own agricultural land to Kazakhstani owned businesses as well. Foreigners may still only lease agricultural land for up to 10 years.

Foreign investors continue to have difficulty obtaining work permits for employees who are not Kazakhstani nationals. Many companies report that permits for key managers and technicians are routinely rejected or granted for unreasonably short periods or are conditioned upon demands for additional local hires. Companies also report that hiring regulations are confusing and interpreted inconsistently by local officials and the Ministry of Labor and Social Protection.

In December 2007, Kazakhstan adopted new regulations on foreign labor. While the Ministry of Labor and Social Protection claims the new regulations simplify the issuance of work permits to foreigners, they impose additional requirements to support the domestic labor market that many investors find onerous.

In light of these difficulties for investors, the government has been increasing slightly the number of work permits available. In 2006, the number of permits was limited to 0.55 percent of the economically active population (estimated at about 8 million people). The percentage figure was increased to 0.8 percent in 2007 (approximately 640,000 permits). For 2008, it was increased to 1.6 percent; and for managers and professionals it increased from 0.3 to 0.6 percent. For skilled workers, the quota rose from 0.37 percent to 0.93 percent.

OTHER BARRIERS

There are other structural barriers to investment in Kazakhstan, including a weak system of business law, a lack of an effective judicial system for breach of contract resolution and an unwieldy government bureaucracy. Many companies serving the Kazakhstani market report significant logistical difficulties.

In addition, there is a burdensome tax monitoring system for all companies operating in Kazakhstan. Many companies report the need to maintain excessively large staffs in Kazakhstan to deal with the cumbersome tax system and frequent inspections. The actions of tax and various regulatory authorities, as well as actions to enforce environmental regulations, can be unpredictable. The government has, on occasion, initiated criminal cases against local employees of foreign firms. Kazakhstani authorities often require, as part of a foreign firm's contract with the government, that the firm contribute to social programs for local communities.

Widespread corruption at all levels of government is also seen as a barrier to trade and investment in Kazakhstan. It reportedly affects nearly all aspects of doing business in Kazakhstan, including customs clearance, registration, employment of locals and foreigners, payment of taxes, and the judicial system.

KENYA

TRADE SUMMARY

The U.S. goods trade surplus with Kenya was $131 million in 2008, a decrease of $122 million from $252 million in 2007. U.S. goods exports in 2008 were $474 million, down 17.9 percent from the previous year. Corresponding U.S. imports from Kenya were $344 million, up 5.6 percent. Kenya is currently the 96th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Kenya was $193 million in 2007 (latest data available), up from $166 million in 2006.

IMPORT POLICIES

Tariffs

Kenya is a Member of the World Trade Organization (WTO), the Free Trade Area of the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), and the EAC Customs Union. High import duties and Kenya's value added tax (VAT) pose trade barriers, especially in the agricultural sector. Kenya's import regulations on agricultural products are sometimes altered to reflect fluctuations in domestic supply and demand as well as political factors. Kenya has bound only 14.6 percent of its tariff lines under WTO rules.

Kenya applies the EAC Customs Union Common External Tariff, which includes three tariff bands: zero duty for raw materials and inputs; 10 percent for processed or manufactured inputs; and 25 percent for finished products. A selected list of sensitive items, comprising 58 tariff lines, has rates above 25 percent, including milk and milk products, corn, popcorn, rice, sugar, wheat, and wheat flour. For a few products, the tariff varies in different EAC countries. In response to public demands that the government reduce the price of bread following two months of ethnically-charged political violence in January-February 2008, which resulted in a shortfall of 300,000 metric tons of corn, the newly formed coalition government reduced the duty on imported wheat from 35 percent to 10 percent and to 0 percent on 297,000 metric tons of imported corn in mid-June 2008. Corn imported from outside COMESA is normally assessed a 50 percent import duty. The government also waived the 60 percent import duty on 52,149 tons of imported wheat flour, and the Minister of Agriculture set the value added tax on bread, wheat flour, milk, rice, yeast, and corn flour to 0 percent. In October 2008, the government placed a ban on the export of maize to prevent a further shortfall in supply of cornmeal.

While the U.S. Government welcomed the simplification of the tariff system that resulted from the establishment of the EAC Customs Union in 2005, it has raised concerns with Kenya and other EAC members about tariff increases introduced on several U.S. exports, including used clothing, almonds and wheat flour. The duty on used clothing, a major U.S. export to the EAC region, was increased to 45 percent or $0.30 per kilogram, whichever is higher. The tariff on unshelled almonds increased from 0 percent to 10 percent, while the tariff on shelled almonds and other nuts increased from 15 percent to 25 percent. Finally, the regular import tariff for wheat flour was increased from 35 percent to 60 percent, notwithstanding the limited waivers of the duty adopted in mid-2008.

Nontariff Measures

In August 2008, the Ministry of Industrialization and the Kenya Bureau of Standards (KEBS) attempted to arbitrarily require importers to attach an import standardization mark (ISM), costing $300 per product, on a wide band of imported goods by October 1, 2008. The government also sought to impose a standardization mark for locally manufactured and assembled products as well. Kenyan officials argued that the ISM is an import requirement established by the EAC, which should have been adopted by July 1, 2007. After representations by the United States and business association representatives, the government agreed in late August 2008 to limit the products requiring the KEBS ISM to food products, electronics, and medicines and to extend the compliance deadline to March 1, 2009.

Kenya justifies those import controls still in existence as necessary to address health, environmental, and security concerns. All Kenyan importers pay an import declaration fee set at 2.25 percent of the customs value of imports and are required to have the following documents: a clean report of findings from the Pre-shipment Verification of Conformity (PVoC) agent for regulated products (see Standards section) and valid *pro forma* invoices from the exporting firm.

Kenyan law limits the importation of refined petroleum products by stipulating that any consignment of oil that a company imports for the domestic market be no less than 70 percent crude, thus requiring that it be refined by the monopoly Kenya Petroleum Refineries.

In late October 2008, the Energy Minister announced plans to institute fuel price controls as provided under the Energy Act. He told Parliament that the government would mandate a 7 percent profit margin on the cost of refining one liter of crude oil. He and other government officials charged that gasoline producers had colluded to keep the price of petrol artificially high following a dramatic drop in the price of a barrel of crude oil.

The government continues to carefully control imports of seed corn by subjecting hybrid varieties to a certification process that effectively restricts trade.

Customs Procedures

Kenya's customs procedures, including its PVoC program, are detailed and rigidly implemented, often leading to delays in clearance of both imports and exports.

Allegations of corruption and ongoing delays in cargo handling at the Port of Mombasa, the region's major trade hub, continue to add unnecessary costs for exporters. In October 2006, the government pledged to begin seven-days-a-week, round-the-clock customs service at the Mombasa port, in response to demands from Kenyan exporters; 24 hours a day/7 days a week service finally began in August 2008. The government also ordered that Kenya's border entry points and Kenya Revenue Authority (KRA) customs stations with Uganda and Tanzania operate around the clock. President Mwai Kibaki instructed that the KRA, Kenya Bureau of Standards, and Kenya Ports Authority harmonize their regulations and adopt a common accreditation system to expedite cargo inspection and clearance.

EXPORT SUBSIDIES

Kenya maintains a Manufacturing Under Bond (MUB) program that is designed to encourage manufacturing for export by exempting enterprises operating under the program from import duties and VAT on imported raw materials and other imported inputs and providing a 100 percent investment allowance on plant, machinery, equipment, and buildings. It is expected that goods produced under the

MUB system will be exported. If not, they are subject to a surcharge of 2.5 percent and imported inputs used in their production are subject to all other duties. The program is open to both local and foreign investors.

Firms operating in Kenya’s Export Processing Zones, which offer a variety of fiscal, tax, and in-kind incentives, are allowed to sell up to 20 percent of their output on the domestic market. However, they are liable for all taxes on products sold domestically plus a 2.5 percent penalty.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Under the PVoC system, all goods entering the country require a Certificate of Conformity from the country of origin, demonstrating conformity with Kenyan standards. For consignments shipped without inspections, importers may apply for a destination inspection subject to acceptance by the Kenya Bureau of Standards (KEBS), a regulatory body under the Ministry of Trade and Industry. In such cases, KEBS, which has oversight of the PVoC program (which is administered by two private sector firms), requires importers to pay a 15 percent penalty charge and post a 15 percent bond on the cost, insurance, and freight value in addition to paying the costs of the test itself. Areas within the PVoC program that the private sector has identified as troublesome include the product list coverage, procedures and documentation, the cost of PVoC services, and the limited capacities of the accredited laboratories.

In November 2007, in response to representations by U.S. officials, KEBS agreed to waive the Certificate of Conformity requirement and associated fee for bulk agricultural commodities inspected and certified by U.S. Government inspection agencies, thereby significantly reducing the cost of exporting such commodities to Kenya.

In September 2008, during the first All Africa Congress on Biotechnology, held in Nairobi, senior government officials unveiled their "National Biotechnology Awareness Strategy 2008-2012" and vowed Kenya would adopt biotechnology as a means to improve food security. Two months later, Kenya's Parliament voted overwhelmingly to establish, via the Biosafety Bill, the framework within which the government may now devise regulations that will permit agriculture biotechnology use by Kenyan farmers, trade, and consumers.

In February 2009, President Kibaki signed the Biosafety Bill, which provides the legal framework to govern activities related to agricultural biotechnology and establish a regulatory body, the National Bio-Safety Authority, to regulate and oversee all activities pertaining to biotechnology. Prior to the enactment of this bill, commercial and research applications of agricultural biotechnology in Kenya were regulated through guidelines that were neither formal regulations nor enacted law. Initially published in 1998 and reviewed yearly, the guidelines described a committee-based approach for review and approval of agricultural biotechnology imports, including a specific review of end uses, *e.g.*, planting seeds for trials. With the passage of the Bill into law, Kenyan scientists can begin planting biotech seeds for multiplication; farmers can begin using the seeds to increase production and productivity; and Kenya can begin importing biotech food products (*e.g.* maize) to address its food security.

All plant consignments arriving in Kenya must have a copy of the plant import permit provided by the Kenya Plant Health Inspectorate Service and an additional phytosanitary (plant health) certificate, either the international model or its equivalent. In addition, all food and plant imports containing biotechnology components must either be accompanied by a declaration noting this fact, with the details stated on the phytosanitary certificate, or by a certificate of analysis from a credible laboratory.

In September 2007, the government established a National Codex Council to spearhead the development of food and safety standards through research and the adoption of established international standards under the Codex Alimentarius Commission.

GOVERNMENT PROCUREMENT

In 2005, Kenya enacted the Public Procurement and Disposal Act, which provides for a Public Procurement Oversight Authority. The Authority was established on January 1, 2006. Its nine member Oversight Advisory Board is appointed by the Minister of Finance and approved by Parliament.

The Public Procurement and Disposal Act is designed to make procurement more transparent and accountable. It is a response to a number of national security-related procurements, which turned into high-profile corruption cases. The Act provides that procurement agencies may annually update prequalified firms. The Act establishes penalties for violations of its provisions. It allows for exclusive preferences to Kenyan citizens where the funding is 100 percent from the government of Kenya or a Kenyan state-related entity and the procurement is below 50 million Kenyan shillings for goods or services and 200 million Kenyan shillings for public works. The procurement law also sets margins of preference that are applied in the evaluation of bids: 15 percent for goods manufactured, mined, extracted, or grown in Kenya; 6 percent in cases where locals have below 20 percent of shareholdings; and 8 percent in cases where locals have shareholdings between 20 to 50 percent. The Law allows for restricted tendering under certain conditions, such as where the complexity or specialized nature of the goods or services requires the pre-qualification of suppliers. Restrictions can also be imposed if the time and costs required to examine and evaluate a large number of tenders would be disproportionate to the value of the tender.

The Supplies Management and Practitioners Bill of 2006 became law in October 2007. It addresses loopholes left by the Public Procurement and Disposal Act by specifying that only a procurement professional may be entrusted with the responsibility in any public entity.

In March 2007, the U.S. Millennium Challenge Corporation signed a two-year, $12.7 million Threshold Program with Kenya focused on fighting corruption through the implementation of procurement reforms with an emphasis on health sector procurement and supply chain management.

Kenya is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Kenya is a party to most major international and regional intellectual property conventions. However, government enforcement of IPR continues to be a serious challenge. Pirated and counterfeit products in Kenya, mostly imported from South Asia and East Asia, present a major impediment to U.S. business interests in the country. Imported drugs, shoes, textile products, office supplies, tubes and tires, batteries, shoe polish, soaps, and detergents are the most commonly counterfeited items.

According to a survey released by the Kenya Association of Manufacturers (KAM) in late October 2008, piracy and counterfeiting of business software, music, consumer goods, and pharmaceuticals in Kenya cost firms about $715 million in lost sales annually. KAM estimates that the government incurs loses over $270 million in potential taxes each year. A July 2006 report by Kenya's Ministry of Trade and Industry also suggests significant annual losses to Kenyan manufacturers and to the government due to counterfeit products.

The Kenya Copyright Board (KCB) is charged with coordinating all licensing and treaty activity and has the authority to inspect, seize, and detain suspect articles and to prosecute offenses. The KCB established an IPR enforcement unit in October 2006. The KCB has minimal staff and is impeded in its ability to carry out its mandate.

Kenyan media reports estimate that 8 of 10 computers in Kenya use pirated operating software. The government has made some advances in combating this problem. In November 2007, the KCB, working jointly with Microsoft, conducted raids on several cyber cafes in Nairobi that were found to be using counterfeit Microsoft operating software. In September 2008, Nairobi police and agents with Kenya's Bureau of Weights and Measures raided two warehouses suspected of holding counterfeit Hewlett-Packard (HP) products, confiscated more than 3,000 counterfeit HP products, and arrested the warehouse owner.

Kenyan artists have formed organizations to raise the awareness of intellectual property rights and to lobby the government for better enforcement, but merchants still freely peddle pirated versions of Kenyan and international works without fear of arrest or prosecution. Pirated materials and counterfeit goods produced in other countries are readily available in all major towns. These materials include prerecorded audiocassette tapes, digital video discs, compact discs, and consumer products.

Historically, penalties and enforcement for copyright infringement have been low. According to the KCB, as of October 2007, there were about 20 pending piracy cases in the Kenyan courts, with bails ranging from $750 to $4,500. To date, the KCB has conducted anti-counterfeit related training for 150 police officers, 40 magistrates, and 30 prosecutors.

In October 2007, one of the largest manufacturing firms in the region stated that it is losing more than $5 million annually in potential sales due to counterfeit products. In 2007, another company threatened to cease commercial operations in Kenya if the government did not respond more forcefully in combating the importation of counterfeit shoe polishes. KEBS authorities cooperated with Procter and Gamble and GlaxoSmithKline in discovering and confiscating fake consignments in mid-September 2008. In addition, the Anti-Counterfeit Bill of 2008, designed to raise penalties significantly, was signed by the President on December 24, 2008. Long sought by the business community, the bill was designed to strengthen the ability of law enforcement agencies to investigate and prosecute manufacturers and distributors of counterfeit and pirated goods.

SERVICES BARRIERS

Telecommunications

In late December 2007, the government sold a 51 percent stake in landline parastatal Telkom Kenya to France Telecom for $390 million. The government retained a 49 percent share. Since its privatization, the company has been restructured and re-branded as "Telkom Orange." In 2008 Telkom Orange began a $73 million infrastructure campaign to deliver Global System for Mobile (GSM) and Broadband internet services countrywide. With the entry of Telkom Orange and the November 2008 network rollout of Econet Wireless Kenya, Kenya now has four GSM players including recently publicly-listed Safaricom, Kenya's first mobile operator with a market share of over 70 percent, and Zain (formerly Celtel Kenya, a joint venture of Celtel International and Sameer Investments).

Following the Telkom Kenya privatization, its 60 percent stake in Safaricom (originally a joint venture of Telkom Kenya and Vodafone) was transferred to the Ministry of Finance, the custodian of public shares in corporations, thus "unbundling" the two corporate entities. The government then sold 25 percent of

Safaricom through an initial public offer on the Nairobi Stock Exchange in March 2008, effectively privatizing the company. However, foreign ownership of telecommunications firms remains controlled and Kenyan nationals must own at least 20 percent equity.

In mid-August 2008, the Ministry of Information and Communication unveiled a unified licensing regime by amending existing information and communication technology policy. Under the "Unified Licensing Framework" (ULF), operators and service providers will now be licensed under a market structure consisting of a Network Facilities Provider (NFP), an Applications Service Provider (ASP), and a Content Services Provider (CSP). NFPs can own and operate any form of communications infrastructure whether based on satellite, terrestrial, mobile, or fixed. ASPs will provide all forms of services using network services of a facilities provider. CSPs shall on the other hand provide content services material, other information services, and data processing services.

With the implementation of a new licensing regime, current licensees can choose to operate on existing licenses or transition to the ULF without diminishing their rights under their existing licenses. With this new licensing framework, the national telecommunications regulator, the Communications Commission of Kenya (CCK), reconsidered its previous plan of re-bidding the license for a Second National Operator in 2008. With the ongoing aggressive marketing and price wars taking place in the GSM industry, it remains to be seen whether interest from existing players or new entrants in developing fixed line telephony will become viable in the future.

INVESTMENT BARRIERS

Although Kenya's judicial system has strived to improve its efficiency and timeliness, it is still burdened by a huge and growing backlog of cases, including some that are investment-related. Perceived corruption and inefficiency further reduce the credibility of the judicial system in Kenya. Companies cite these deficiencies as an obstacle to investment, especially since these problems make financial institutions reluctant to make loans and increase the risk premium.

A law passed in 2007 reduced the limit on foreign ownership (personal or corporate) of firms listed on the Nairobi Stock Exchange (NSE) from 75 percent to 60 percent. As a result of the new law, several leading Kenyan firms are now closed to any new foreign investor participation. If foreign ownership in a company is 60 percent at the time of listing on the NSE, the foreign owner is allowed to maintain (or reduce) but not to increase its share. Foreign investors are allowed to increase their investment with prior written approval from the Capital Market Authority if the shares reserved for local investors are not fully subscribed. Foreign brokerage companies and fund management firms must be locally registered companies, with Kenyan ownership of at least 30 percent and 51 percent, respectively. Foreign ownership of equity in insurance and telecommunications companies is restricted to 66.7 percent and 70 percent, respectively. Foreign equity in companies engaged in fishing activities is restricted to 49 percent of the voting shares.

Foreigners are not permitted to hold a freehold land title anywhere in the country, but can be granted leasehold titles, normally 99 years for land in towns and coastal beachfronts and 999 years elsewhere. The cumbersome and opaque process required to purchase land and concerns about security of title because of past abuses relating to the distribution of public land constitute serious impediments to new investment.

Kenya has been slow to open public infrastructure to competition because the state-owned companies that control infrastructure are considered "strategic" enterprises. The reform and partial privatization of the telecommunications, power, and rail sectors have fallen behind schedule but are proceeding. In early

December 2008, the government announced it would privatize 16 parastatals, including the National Bank of Kenya, the Kenya Electricity Generating Company, the Kenya Pipeline Company, the Kenya Ports Authority, and several sugar, cement, dairy, wine, and meat processing firms.

Kenya applies fees and security bonds in an attempt to discourage the employment of foreign labor. New foreign investors with expatriate staff are required to submit plans for the gradual phasing out of non-Kenyan employees. Some investors continue to complain that it is difficult and expensive to obtain work permits for expatriate staff. On a positive note, in FY07/08, the government eliminated 315 licenses and simplified another 379 out of the 1325 cited by the World Bank as impediments to growth. In its FY08/09 budget address, the government vowed to reduce further the number of licenses issued by key regulatory agencies from 390 to 46. In 2008, Kenya's Treasury established an electronic registry for monitoring all licensing procedures to ensure transparency and efficiency.

OTHER BARRIERS

Corruption

According to the International Finance Corporation's Investment Climate Assessment for Kenya, corruption was rated as a severe or major obstacle by three-quarters of firms surveyed, with two-thirds of respondents stating they were expected to pay bribes for government contracts.

The Kenya Anti-Corruption Commission launched several investigations in 2006 and 2007 against senior government officials, including two government ministers. However, none of these cases has been successfully prosecuted, in large part due to bottlenecks in the Attorney General's Office and loopholes in the judiciary. Former Finance Minister Amos Kimunya resigned in early July 2008 in connection with the non-tendered sale of a government-owned property, the Grand Regency Hotel, to a Libyan group. Parliament subsequently held open hearings on the sale and cleared Kimunya of any wrongdoing.

KOREA

TRADE SUMMARY

The U.S. goods trade deficit with Korea was $13.3 billion in 2008, an increase of $351 million from $12.9 billion in 2007. U.S. goods exports in 2008 were $ 34.8 billion, up 0.5 percent from the previous year. Corresponding U.S. imports from Korea were $48.1 billion, up 1.1 percent. Korea is currently the eighth largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Korea were $12.7 billion in 2007 (latest data available), and U.S. imports were $6.6 billion. Sales of services in Korea by majority U.S.-owned affiliates were $7.3 billion in 2006 (latest data available), while sales of services in the United States by majority Korea-owned firms were $3.2 billion.

The stock of U.S. foreign direct investment (FDI) in Korea was $27.2 billion in 2007 (latest data available), up from $24.6 billion in 2006. U.S. FDI in Korea is concentrated largely in the manufacturing, banking, and finance/insurance sectors.

FREE TRADE AGREEMENT (FTA) NEGOTIATIONS

The United States and the Republic of Korea signed the United States-Korea Free Trade Agreement (KORUS FTA) on June 30, 2007. If approved, the Agreement would be the United States' most commercially significant free trade agreement in over 16 years. The U.S. International Trade Commission estimates that the reduction of Korean tariffs and tariff-rate quotas on goods alone would add $10 billion to $12 billion to annual U.S. Gross Domestic Product and around $10 billion to annual merchandise exports to Korea. The Administration has indicated that it will promptly, but effectively, address the issues surrounding the KORUS FTA, including concerns that have been expressed regarding automotive trade.

Under the FTA, nearly 95 percent of bilateral trade in consumer and industrial products would become duty free within three years of the date the FTA enters into force, and most remaining tariffs would be eliminated within 10 years. For agricultural products, the FTA would immediately eliminate or phase out tariffs and quotas on a broad range of products, with almost two-thirds (by value) of Korea's agriculture imports from the United States becoming duty free upon entry into force. For services, the FTA would provide meaningful market access commitments that extend across virtually all major service sectors, including greater and more secure access for international delivery services and the opening up of the Korean market for foreign legal consulting services. In the area of financial services, the FTA would increase access to the Korean market and ensure greater transparency and fair treatment for U.S. suppliers of financial services.

The FTA would address nontariff barriers in a wide range of sectors and includes strong provisions on competition policy, labor and environment, and transparency and regulatory due process. The KORUS FTA would also provide U.S. suppliers with greater access to the Korean government procurement market.

In addition to strengthening our economic partnership, the KORUS FTA would help to solidify the two countries' long-standing geostrategic alliance. As the first U.S. FTA with a North Asian partner, the KORUS FTA could be a model for trade agreements for the rest of the region, and underscore the U.S. commitment to, and engagement in, the Asia-Pacific region.

IMPORT POLICIES

Tariffs and Taxes

According to data obtained through the WTO, Korea's average MFN applied tariff rate in 2008 was 12.6 percent for all products (53.5 percent for agricultural products and 6.5 percent for non-agricultural products) and Korea has bound 94.5 percent of its tariff lines.

Korea maintains particularly high tariffs on a number of high value agricultural and fishery products. Korea imposes tariff rates of 30 percent or higher on most fruits and nuts, many fresh vegetables, starches, peanuts, peanut butter, various vegetable oils, juices, jams, beer, and some dairy products. Many products of interest to U.S. suppliers, including apples, beef, certain cheeses, certain fish, grape juice and grape juice concentrate, herbal teas, pears, table grapes, and a variety of citrus fruits, are subject to tariff rates of 35 percent or higher. Other products of interest to U.S. industry on which Korea imposes high tariffs, in many instances despite the absence of domestic production, include cherries, certain distilled spirits, frozen corn, frozen french fries, pepperoni, and prepared or mashed potatoes.

Korea has established tariff-rate quotas (TRQs) intended to provide minimum access to previously closed markets or to maintain pre-Uruguay Round access. In-quota tariff rates may be very low or zero, but the over-quota tariff rates are often prohibitive. For example, natural and artificial honey are subject to an over-quota tariff rate of 243 percent; skim and whole milk powder, 176 percent; barley, 324 percent; malting barley, 513 percent; potatoes and potato preparations, more than 304 percent; and popcorn, 630 percent. In addition, for some agricultural products, such as corn grits, popcorn, and soy flakes, Korea aggregates raw and value added products under the same quota. Korean domestic industry groups, which administer the quotas, frequently allocate the more favorable in-quota tariff rate to their larger members that import raw ingredients.

Korea uses "adjustment tariffs" and compounded taxes on some agricultural, fishery, and plywood products, which increase the applied tariff rates. Most of the adjustment tariffs are imposed on agricultural and seafood products, including frozen croaker, which are products of interest to U.S. exporters. In 2008, Korea renewed adjustment tariffs on 15 items, and reduced the tariff rates for 7 of these 15 items.

As a result of its Uruguay Round commitments, Korea has eliminated tariffs on most or all products in the following sectors: paper, toys, steel, furniture, agricultural equipment, construction equipment, and information technology products (as defined by the WTO Information Technology Agreement). Korea has harmonized its chemical tariffs to final rates of zero percent, 5.5 percent, or 6.5 percent, depending on the product. However, Korea does not apply these tariff rates to soda ash, which is dutiable at 8 percent. Bound tariffs on textile and apparel products remain relatively high: 30 percent on several man-made fibers and yarns; 30 percent on many fabrics and most made-up and miscellaneous goods (*e.g.*, pillow cases and floor coverings); and 35 percent on most apparel items.

Rice

In the Uruguay Round, Korea negotiated a 10 year exception to "tariffication" of rice imports in return for establishing a Minimum Market Access (MMA) quota that was set to expire at the end of 2004. Korea subsequently negotiated a ten-year extension of the MMA arrangement that was approved by its trading partners in April 2005. The extension called for Korea to double its total rice imports over the next 10 years, increasing the MMA quota from 225,575 metric tons in 2005 to 408,698 metric tons in 2014. Along with the country-specific quota commitments to purchase minimum amounts of imports from

China, Thailand, and Australia, Korea also agreed to purchase at least 50,076 metric tons annually from the United States until 2014. In addition, the quality of access has improved as rice marketed to consumers as table rice was for the first time included as a portion of the MMA quota. The table rice portion increases from 10 percent of the quota in 2005 to 30 percent in 2010.

Access to the Korean rice market has improved significantly under this agreement. Under the 2008 MMA, the U.S. rice industry obtained 24 percent of Korea's total MMA imports by winning tenders for 69,610 metric tons (milled), valued at a record $82 million. This amount is 39 percent over the United States' baseline of 50,076 metric tons for the country-specific quota. In addition, more than 18,989 metric tons will be auctioned in Korea as table rice in 2009.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Standards and Conformity Assessment Procedures (Sampling, Inspection, Testing, and Certification)

Korea maintains certain standards, technical regulations, and conformity assessment procedures that are burdensome and appear to have a disproportionate effect on imports. For example, the Korean Food and Drug Administration (KFDA) defines product categories for specific food additives narrowly, making it more burdensome to obtain approval for these products. Additionally, KFDA's determination that a product is new if formula ratios are changed or if substitute ingredients are used sets its procedures apart from other OECD member countries.

Korean laws and regulations require that safety testing and certification be conducted by designated certification bodies, which must be "domestic nonprofit organizations equipped with suitable testing equipment and qualified testing personnel…" U.S. industry has argued that the inability of U.S. testing and certification bodies to perform these functions disadvantages U.S. manufacturers that must have their products retested in the Korean market, which can be inconvenient, time consuming, and costly.

The U.S. cosmetics industry has noted that Korea's approval requirements related to cosmetics are burdensome and do not appear to enhance product safety, quality, or efficiency. For example, Korea requires that all imported functional cosmetics go through an "import review" process conducted by the Korean Pharmaceutical Trade Association (KPTA) despite having already obtained marketing approval from KFDA. In response to U.S. and other countries' concern that this process may result in disclosure of commercially sensitive information, in 2008, the KFDA announced that cosmetics importers are no longer required to specify the actual quantities for each ingredient when submitting ingredient lists for functional cosmetics to KPTA as part of the import review. Korea also permits companies to self-certify their products as meeting Korean requirements if the company agrees to submit to an audit of its manufacturing facilities by KFDA inspectors. While the ability to self-certify represents progress, some firms argue that the audit process is costly and burdensome. In October 2008, Korea notified the WTO Technical Barriers to Trade Committee of its intent to ease the screening process for certain types of functional cosmetics that contain ingredients previously established as being safe.

In 2007, a U.S. manufacturer raised concerns regarding the administration of energy efficiency regulations (EER) for refrigerators in Korea, in particular that the "initiate defrost" test method detailed in Korea's existing EER resulted in inaccurate reporting of energy consumption of Korean manufactured refrigerators. In order to address this concern, Korea accelerated to November 2007 the adoption date of an internationally-recognized test procedure, ISO15502, which does not utilize the rated energy performance results provided by the "initiate defrost" test method in Korea's previous EER. Korea implemented the new test standard on April 30, 2008. As part of the implementation, Korea agreed to require that manufacturers attach energy efficiency rating labels based on the new standard, regardless of whether the product is an existing or new model. Korea also agreed to consult closely with stakeholders and the United States during the implementation process. The United States continues to closely monitor developments related to the adoption of the new standard to ensure that it will level the playing field for U.S. refrigerator manufacturers in Korea.

Sanitary and Phytosanitary Measures

On April 18, 2008, the United States and Korea agreed to a protocol that defines conditions for importation of U.S. beef to Korea and provides for a full reopening of the market. The protocol is fully consistent with the World Organisation for Animal Health (OIE) guidelines and will permit imports of all U.S. beef and beef products from cattle of all ages as long as the appropriate Specified Risk Materials (SRMs) are removed.

On June 20, 2008, Korean beef importers and U.S. exporters reached a commercial understanding that, as a transitional measure to improve Korean consumer confidence in U.S. beef, only U.S. beef and beef products from cattle less than 30 months of age will be shipped to Korea. At the request of U.S. exporters, the U.S. Department of Agriculture (USDA) set up a voluntary Quality System Assessment (QSA) Program to verify that beef from participating plants is from cattle less than 30 months of age. As a result of the April 18 agreement and the June 20 commercial understanding, U.S. exports began arriving as of June 26, 2008, and from June to the end of 2008 more than $290 million worth of U.S. beef and beef products have been exported to Korea. For all of 2008, Korea was the fourth largest export market in terms of value for U.S. beef and beef products, after Mexico, Canada, and Japan. The U.S. Government will continue to work with Korea to normalize trade in beef.

In recent years, the United States has urged Korea to accept the "regionalization" concept to ensure that imports of U.S. poultry and poultry products are not banned in Korea should there be a detection of highly pathogenic avian influenza (HPAI) in U.S. domestic commercial poultry flocks in a specific U.S. location or locations. In 2008, Korea finalized its import risk assessment procedures for animal and animal products, which incorporate the concept of regionalizing to the appropriate county or region, a longstanding goal of the United States. These new procedures will now allow Korea to move forward with its HPAI risk assessment of the United States.

Korea ratified the Cartagena Protocol on Biosafety (CPB) to the Convention on Biological Diversity on October 2, 2007 and implemented the Living Modified Organisms (LMO) Act (Korea's legislation to implement the CPB) on January 1, 2008. Upon implementation of the LMO Act, environmental risk assessments became mandatory for biotechnology crops imported for all intended uses. The U.S. Government has engaged Korea to request greater transparency and clarity with respect to related documentation requirements. We have also urged Korea to ensure that requirements related to risk assessments for all biotechnology products are science based, transparent, and avoid unnecessary or duplicative data submission or review.

Functional Foods

KFDA frequently changes labeling requirements for health functional foods, raising U.S. industry concerns about the difficulty and costs of compliance. KFDA requires labels containing information about the content of the products, such as per serving information, to be set out on permanent labels and does not allow the use of nonpermanent labels such as stickers. As a result, whenever there is any change in the labeling requirements, manufacturers must replace the entire product label.

Organic Foods

KFDA only accepts copies of USDA National Organic Program (NOP) certificates issued to producers, manufacturers, or processors even though in the United States, certificates issued to handlers meet the U.S. NOP requirements. The United States has consistently requested Korea to give full recognition to the U.S. NOP and to accept handler certificates. U.S. exporters, who are often handlers or traders, have managed to work with the existing requirement, but would prefer to have handler certificates recognized.

KFDA maintains a policy of zero tolerance for the presence of biotechnology ingredients in processed food that is labeled as organic. The Codex Alimentarius and the International Federation of Organic Agriculture Movements guidelines, however, stress that organic production is a verifiable, regulated process as opposed to an end product. The United States has urged KFDA to recognize this process-based approach and to reconsider its zero tolerance policy for the presence of biotechnology ingredients in foods that are labeled as organic.

Starting in December 2009, the Ministry of Food, Agriculture, Forestry, and Fisheries (MIFAFF) will require processed organic foods to be certified by a Korean certification body unless the Ministry deems the USDA NOP equivalent to Korean standards. The new regulations are unclear in many respects and processed organic product imports could face trade disruptions as a result. The United States is closely monitoring all Korean amendments and new regulations and has urged MIFAFF to notify the implementing regulations to the WTO to clarify the process.

Telecommunications Standards

The Korean government has been an active participant in the development of its telecommunications equipment market, both directly, through licensing conditions that mandate particular technology standards or require the use of particular technologies, and indirectly, through industry associations and quasi-governmental organizations such as government-affiliated research institutes. The U.S. Government has urged the Korean government to adhere to a policy of technology neutrality and to refrain from imposing mandatory standards or requiring the use of particular technologies that restrict trade or discriminate against U.S. suppliers of telecommunications or broadcast technologies or services. (See also the Telecommunications discussion in the "Services Barriers" section).

In July 2008, the newly-formed Korea Communications Commission (KCC) initiated a regulatory review of the 2005 requirement to install the Korea-specific Wireless Internet Platform for Interoperability (WIPI) on all mobile phone handsets sold in Korea. On December 10, 2008, the KCC voted to allow Korean wireless carriers to choose, effective April 1, 2009, whether or not to install WIPI on their handsets. This decision marks a significant liberalization of Korea's telecommunications regulatory environment and opens the Korean market to a wide range of foreign handsets, including, but not limited to, smart phones that can access the Internet directly without the need for an add-on interface.

Labeling Requirements

U.S. exporters cite Korea's nontransparent and onerous labeling requirements as barriers to entry for a variety of goods. For example, the U.S. distilled spirits industry has raised concerns about the cost of complying with existing labeling requirements which change frequently. These requirements also mandate that labels provide myriad data such as the importer's address and instructions for storage.

In October 2008, KFDA proposed a revision to the Labeling Standards for Foods to require an inner package label. Products that are individually packaged inside a bag or box (*e.g.*, miniature, individually wrapped candy bars) will now require their own label in addition to the outer label. U.S. industry has commented on this proposed revision, calling it both costly and impractical.

After expanding mandatory biotechnology labeling requirements in 2007 for products that contain biotechnology enhanced corn, soybeans, cotton, canola, and sugar beets, KFDA again proposed another expansion of mandatory biotechnology labeling for food products made of enhanced ingredients in October 2008. Under the proposal, any food products made of biotechnology ingredients, including food additives or enzymes enhanced through biotechnology, will be required to be labeled "GMO" regardless of the presence of detectable DNA or a foreign protein in the final product. The United States has expressed concerns to Korea that these labeling requirements are, in principle, unnecessary and not relevant to health and safety.

Hazardous Substances and Resource Recycling Requirements

The Act Concerning the Resource Recycling of Electrical/Electronic Products and Automobiles was implemented on July 1, 2008. The Act restricts the use of hazardous materials in, and establishes requirements regarding recycling of, certain electrical and electronic products and automobiles. The final regulations provided a three-year grace period for all covered existing electrical and electronic products and automobiles.

GOVERNMENT PROCUREMENT

Korea is a signatory to the WTO Agreement on Government Procurement (GPA). For procurement of construction services by sub-central and government enterprises covered under the GPA, Korea has a threshold of approximately $22 million, which is three times the threshold applied by the United States.

Encryption Technology for Public Procurement of VOIP Equipment

In December 2008, the Korean government announced long-term plans to switch its government wire line telephone systems from a standard circuit-switched system to an Internet protocol based system (Voice over Internet Protocol, or VoIP). To ensure that this transition does not result in diminished security, Korea also issued guidelines recommending that agencies procure and use encryption-capable systems. The Korean government's plans in this regard would place them internationally out in front in terms of large-scale government adoption of VoIP systems. However, the Korean government is considering mandating that government agencies purchase equipment that contains encryption technology based on a Korean (*i.e.*, non-international) encryption standard called "ARIA".

Korea has failed to provide a justification for using a national standard when international standards for encryption are available and widely used. As U.S. suppliers' equipment and software are built to international standards, it would take them considerable time and expense to develop ARIA-capable equipment (assuming they determine it is in their commercial interest to undertake a significant investment for a product that could only be marketed in Korea, since no other country uses ARIA for such systems). Therefore, there are strong concerns that U.S. suppliers could be effectively excluded from competing for government tenders for VoIP if Korea were to implement such a mandate.

The U.S. Government has raised these concerns with the Korean government, and the Korean government has informed us it will postpone implementation of its procurement plans while it works to address U.S. concerns.

INDUSTRIAL SUBSIDY POLICY

The U.S. Government has been concerned with Korean government assistance to targeted industries through its industrial policies and will continue to consult closely with U.S. industry to determine if these policies raise competitiveness concerns. Korea's past promotion and support for its semiconductor industry, which eventually resulted in the imposition of countervailing duties by the United States (as well as by the EU and Japan), is emblematic of concerns in this area.

More specifically, the U.S. Government has expressed concerns about the role played by the government-owned Korea Development Bank (KDB) in supporting certain Korean industries. Historically, the KDB, which as a government-owned entity is not necessarily bound by the same constraints as commercial institutions, has been one of the government's main sources of policy-directed lending to favored industries. U.S. industries have reported that lending and equity investments by the KDB have contributed to overcapacity in certain Korean industries and have allowed Korean companies to compete unfairly with U.S. companies. The Lee Myung-bak Administration plans to privatize a wide range of state-owned enterprises, including the KDB. The Lee government submitted a bill to the National Assembly which would put the KDB into private hands in two stages, and also create a new institution – the Korea Policy Banking Corporation, with a planned capital base of $10 billion – to support the small and medium sized-businesses sector. If adopted, the plan is expected to take several years to fully implement. The U.S. Government will continue to monitor the lending policies of the KDB and other government-owned or affiliated financial institutions.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The importance of IPR protection has increased in recent years as the digitization of Korea's economy has significantly enhanced the ability to produce and spread unauthorized reproductions of copyrighted material. With Korea's products and trademarks enjoying global success, Korean creators of intellectual property would benefit from improvements in the domestic intellectual property regime. The United States continues to urge Korea to strengthen its legal regime to protect intellectual property with respect to issues such as technological protection measures, Internet service providers' (ISP) liability, and copyright term extension. In addition, concerns remain with respect to book piracy in universities, street vendor sales of illegally copied digital video discs (DVDs), counterfeiting of consumer products, protection of undisclosed test and other data for pharmaceutical marketing approval, and a lack of coordination between Korean health and IPR authorities to prevent the issuance of marketing approvals for patent infringing products.

Copyright

In a major government reorganization in early 2008, the renamed and expanded Ministry of Culture, Sports and Tourism (MCST) not only retained its responsibilities under the Copyright Act (CA) but also inherited responsibility for the Computer Program Protection Act (CPPA) from MIC, which was dissolved. All copyright responsibilities, including computer program rights and enforcement, now fall to a single Director General at MCST, thereby bringing all copyright issues under one roof.

The CA was revised on December 28, 2006, effective June 30, 2007, to strengthen efforts to prevent Internet piracy and increase enforcement mechanisms. For example, the revised CA introduced an obligation requiring peer-to-peer network operators to apply measures against the distribution of infringing copies on their networks when requested by the rights holder. However, the revised Copyright Act does not appear to include provisions on technological protection measures (TPMs) that control who can access a work; it only prohibits the creation or distribution of circumvention tools. While certain provisions of the CA that define ISP liability were harmonized with the Computer Program Protection Act (CPPA) in 2003, further clarification is required. In addition, amendments to the CA in 2006 still leave unclear the scope of the underlying liability of service providers and the limitations on, and exceptions from, liability. U.S. industry has lingering concerns that the documentation requirements for the rights holders to request a "takedown" are too burdensome. The U.S. Government has urged the Korean government to reexamine other aspects of the CA in light of the growth of digital technologies and the potential harm that exists in the Internet environment.

IPR Enforcement

Korean President Lee Myung-Bak stated that IPR enforcement is one of the core policy goals of his administration and declared "war against illegal piracy." In August 2008, MCST created the Copyright Protection Team (CPT) and provided the CPT with judicial enforcement authority over CA and CPPA related enforcement, empowering MCST for the first time to act on its own initiative to enforce IPR laws. In June 2008, the "Act on the Persons to Conduct Duties of Judicial Policy Authority" was amended to give judicial authority to MCST officials and local agencies to take enforcement actions against copyright infringement.

As the amended Copyright Act requires installation of filtering devices for certain online service providers, CPT is also expected to continue to work with other relevant agencies within the Korean government to monitor and enforce this requirement. The amended Copyright Act also gives officials discretion to pursue prosecution over the objections of the rights holder when infringements are committed with a commercial purpose.

In 2008, prosecutors strengthened enforcement actions and prosecution against heavy uploaders of infringing content, infringing "webhard" storage site operators, and producers of pirated films. There were several high profile crackdowns, including against ISPs, which drew wide media attention. The U.S. Government has been urging Korean authorities to pay special attention to "topsite" operators that hold enormous quantities of pre-release movies and music and are the original source of much of the infringing material that is distributed on the Internet. Korean prosecutors have welcomed U.S. Government views on these issues and expressed a strong desire to work closely with foreign and domestic industry to address Internet piracy.

In addition to on-line piracy, pirated DVDs sold on the street by unlicensed vendors continue to be a challenge for enforcement officials. To address this challenge, MCST has announced plans to crack down more aggressively against vendors selling pirated goods.

The Publication and Printing Business Promotion Act allows private sector involvement in enforcement measures against book piracy. Since MCST was given judicial authority in September 2008, book piracy enforcement actions are being conducted jointly by MCST and the Copyright Protection Center, an industry supported monitoring group, which is expected to result in closer coordination and increased enforcement.

Data Protection

KFDA decided on March 31, 2005, that slightly altered versions (such as using a different salt) of original drugs undergoing post-marketing surveillance (PMS) in Korea are subject to Korea's data protection regulations. This interpretation of the law, however, is not clearly delineated in Korea's laws and U.S. industry continues to express concern about KFDA adopting a different interpretation in the future.

Patent and Trademark Acts, and Trade Secrets

The Korean Intellectual Property Office (KIPO) has amended relevant laws regarding restrictions on patent term extension for certain pharmaceutical, agrochemical, and animal health products that are subject to lengthy clinical trials and domestic testing requirements. An issue of continuing concern, however, has been the lack of coordination between the KFDA and KIPO and related issues that have resulted in the granting of marketing approval for unauthorized copies of pharmaceutical products.

Korea's Trademark Act has been amended to strengthen provisions that prohibit the registration of trademarks without the authorization of foreign trademark holders by allowing examiners to reject any registrations made in "bad faith." Despite this change, the complex legal procedures that U.S. companies must follow to seek cancellation have discouraged U.S. companies from pursuing legal remedies. In particular, problems still arise with respect to "sleeper" trademark registrations filed and registered in Korea without authorization in the late 1980s and early 1990s, when KIPO was still developing a more effective and accurate trademark examination and screening process.

Korean laws on unfair competition and trade secrets provide a basic level of trade secret protection in Korea, but are insufficient in some instances. For example, some U.S. firms, particularly certain manufacturers of chemicals, pet food, cosmetics, and food products, face continuing problems with government regulations requiring submission of very detailed product information, such as formula or blueprints, as part of registration or certification procedures. U.S. firms report that, although the release of business confidential information is forbidden under Korean law, in some instances, government officials do not sufficiently protect this proprietary information, and trade secrets appear to have been made available to Korean competitors or to their trade associations.

SERVICES BARRIERS

Screen and Broadcast Quotas

Korea maintains a screen quota for films requiring that any movie screen show domestic films at least 73 days per year – a 50 percent cut from the quota of 146 days that existed until July 2006. Korea also maintains a variety of foreign content quotas for terrestrial, cable and satellite television, radio broadcasting, and Internet Protocol television. Overall, foreign programs may not exceed 20 percent of terrestrial television or radio broadcast time or 50 percent of cable or satellite broadcast time on a quarterly basis. Within those overall quotas, annual broadcast time quotas further limit foreign films to 75 percent of all films for terrestrial, cable, and satellite broadcasters; foreign animation to 55 percent for terrestrial and 65 percent for cable and satellite broadcasters; and foreign popular music to 40 percent. Another quota, on a quarterly basis, limits content from any one country to 60 percent of the quota available to foreign films, animation, or popular music.

Restrictions on Voice-overs and Local Advertisements

The Korean Broadcasting Commission's guidelines for implementation of the Broadcasting Act contain restrictions on voiceovers (dubbing) and local advertising for foreign retransmission channels. These prohibitions continue to be of concern to U.S. industry, as they limit the profitability of such channels in the Korean market.

Legal Services

At present, only Korean-licensed lawyers may provide any form of legal advice in Korea, including advice on foreign law. Foreign-licensed lawyers therefore may not establish an office or provide advice on the law of the jurisdiction in which they are licensed, nor may they associate with, partner with, or hire Korean-licensed lawyers.

The Korean government plans to open its legal services market in stages. The first step would create a legal status for foreign legal consultants and allow foreign law firms to open offices in Korea. Subsequent liberalization stages would address the ability of foreign-licensed lawyers and firms to associate with, partner with, and hire Korean-licensed lawyers.

Insurance and Banking

Korea is the second largest insurance market in Asia and the seventh largest in the world. Korea's laws and regulations permit foreign financial service providers to establish subsidiaries or branches in Korea. Financial services providers see Korea's restrictions on cross-border financial services and unwillingness to liberalize this sector as hindering Korea's progress toward becoming a regional financial hub.

Insurance suppliers remain concerned that Korea Post (a government agency), the National Agricultural Cooperative Federation, and the National Federation of Fisheries Cooperative continue to operate at an advantage in the Korean insurance market because they are not regulated by the Korean Financial Supervisory Commission or the Financial Supervisory Service as are private insurers. In industry's view, this provides these entities with a competitive advantage over private insurers.

U.S. financial services providers seek a mechanism to raise their concerns regarding regulatory and market access issues. Although an office specifically set up within Korea's financial regulatory structure exists, foreign companies have not found it adequate to address their concerns. Other regulatory entities, including Korea's insurance consumer complaint mechanism, reportedly hinder foreign insurance providers' position in the market. U.S. service providers assert that reports generated under this system bias consumers toward purchasing insurance from large domestic firms.

Lack of transparency in the financial regulatory system is a widespread problem and continues to affect financial services providers. Improvement in notice and comment periods is necessary for foreign providers to have input into the regulations that will be imposed upon them. Financial services providers also remain concerned about vague administrative guidance. While some changes in issuing administrative guidance were made in 2007, financial services providers seek additional transparency in the process. The National Assembly adopted the Capital Market and Investment Services Act in June 2007, and most provisions of the Act entered into force on February 4, 2009. The Korean government responded to U.S. concerns and delayed implementation of some portions of the Act while launching a process intended to address potential barriers to cross-border financial transactions. The Act allows financial services companies to introduce new products unless explicitly prohibited by law and establishes a clear legal basis for newcomers to apply for commercial licenses.

Korea's strict data privacy rules require financial services providers to locate their servers physically in Korea, thus hampering foreign providers' ability to take advantage of economies of scale in the region to perform data processing in their daily business activity.

Telecommunications

Korea currently prohibits foreign satellite service providers from selling services (*e.g.*, transmission capacity) directly to end users without going through a company established in Korea. Given investment restrictions in place (see below), and the fact that establishing a local presence may not make economic sense, this prohibition significantly restricts the ability of foreign satellite service providers to compete in the Korean market. In addition, Korea affords non-facilities-based telecommunications carriers limited rights regarding access to, and use of, the telecommunications network (*e.g.*, with respect to interconnection), as compared to facilities-based competitors.

The National Assembly passed legislation in December 2007 to regulate the convergence technology Internet Protocol television (IPTV). In 2008, the newly-formed Korea Communications Commission (KCC) began issuing implementing regulations. The U.S. Government is closely monitoring this process with regard to transparency and due process. U.S. companies view some of the licensing requirements under discussion as market restricting, (*e.g.,* applying content quotas to real-time IPTV).

INVESTMENT BARRIERS

During his fall 2007 presidential election campaign, one of the key planks of President Lee Myung-bak's economic platform was to take steps to attract more foreign investment to Korea. Since President Lee assumed office in February 2008, foreign investors have noted a greater interest in addressing issues of concern and in removing barriers or disincentives to investment in Korea. The Korean government has maintained this policy despite the increasing global financial and economic turmoil in the second half of 2008.

Capital market reforms have eliminated or raised ceilings on aggregate foreign equity ownership, individual foreign ownership, and foreign investment in the government, corporate, and special bond markets. These reforms have also liberalized foreign purchases of short-term financial instruments issued by corporate and financial institutions. Some U.S. investors have raised concerns about a lack of transparency in investment-related regulatory decisions, including by tax authorities, raising concerns about possible discrimination.

Korea maintains a 49 percent limit on foreign shareholdings of facilities-based telecommunications operators. Foreign investment is not permitted in terrestrial broadcast television operations, and the Korean government also restricts foreign ownership of cable television-related system operators, network operators, and program providers to 49 percent. For satellite broadcasts, foreign participation is limited to 33 percent. In addition, foreign satellite retransmission channels are limited to 20 percent of the total number of operating channels.

In addition to the numerous investment restrictions in key services sectors described above, as well as in the telecommunications sector, Korea maintains other important restrictions on foreign investment. Specifically, Korea prohibits foreign investment in rice and barley farming and imposes a 50 percent foreign equity limitation on meat wholesaling. Moreover, Korea limits foreign investment in electric power generation, distribution, and sales to 50 percent. It also restricts foreign investment in the areas of news agency services and publishing and printing, where it has foreign equity limitations of 30 percent for enterprises publishing newspapers and 50 percent for enterprises publishing other types of periodicals.

The Lee Myung-bak Administration announced plans during 2008 to privatize several state-run companies, including the Korea Development Bank (KDB). The government submitted a bill in

December 2008 for the privatization of KDB to the National Assembly for approval, although the global financial crisis could affect the bill's prospects for passage. The government also sold a 6 percent stake in Woori Financial Holdings (reducing the Korean government's share to 73 percent) earlier in 2008.

The Korean government also has opened Free Economic Zones (FEZs) and has provided a range of investment incentives including tax breaks, tariff-free importation, relaxed labor rules, and improved living conditions for expatriates in areas such as housing, education, and medical services. The Korean government has promoted these zones as an important step in making Korea's business environment more open, liberal, and responsive to economic needs.

ANTICOMPETITIVE PRACTICES

The Korea Fair Trade Commission (KFTC) has been playing an increasingly active role in enforcing Korea's competition law, and in advocating for regulatory reform and corporate restructuring. In addition to its authority to conduct investigations and to impose penalties, including broad authority over corporate and financial restructuring, the KFTC can levy heavy administrative fines for violations or for failure to cooperate with investigations.

A number of U.S. companies have expressed concerns that respondents in KFTC investigations have not been afforded a sufficient opportunity to review and respond to the evidence against them, including an opportunity to cross-examine those who testify in KFTC investigatory hearings. Concerns have also been raised that procedural rules for KFTC hearings have not been sufficiently transparent, and that the KFTC lacks authority to enter into settlement agreements with respondents by mutual agreement.

OTHER BARRIERS

Regulatory Reform and Transparency

Korea has made some improvements to its rulemaking and regulatory system over the past few years. However there remains a lack of transparency that cuts across various issues affecting U.S. firms in many different sectors. This continues to be one of the principal problems cited by U.S. businesses seeking to compete in the Korean market.

Korea's Administrative Procedures Act (APA) stipulates that the public comment period for draft regulations subject to the APA shall be no less than 20 days. However, in many cases, the 20-day minimum is insufficient. In addition, in many instances the final versions of regulations do not reflect the comments provided and often offer no explanation for why they were rejected.

Motor Vehicles

Increased access to Korea's automotive market for U.S. suppliers remains a key priority for the U.S. Government. Korea maintains an 8 percent tariff and a range of nontariff barriers, such as discriminatory taxes based on engine size, standards, inadequate regulatory transparency, and inadequate ability of stakeholders to provide input at an early stage into the development of regulations and standards.

On July 30, 2008, the Korean government implemented amendments to its system for certifying compliance with automotive emissions requirement. The amended regulation allows foreign automakers to certify that they meet Korean emissions requirements via submission of manufacturers' own test data, eliminating the requirement for in-country testing or overseas tests witnessed by Korean regulators. The new certification process also applies to imports of off-road equipment.

Motorcycles

Although progress has been made over the past several years to resolve U.S. concerns over Korea's noise standard on motorcycles, several market access issues remain, including a highway ban, tariff and tax levels, and the inability of motorcycle owners to obtain ownership titles and obtain financing for a motorcycle purchase that uses the motorcycle as collateral. The Korean National Police have commissioned a study on the safety of motorcycles on highways. The U.S. Government will continue to urge Korea to complete the study expeditiously and objectively.

Pharmaceuticals

Imported innovative pharmaceuticals continue to be subject to multiple price-cutting mechanisms under the Drug Expenditure Rationalization Plan's (DERP) cost containment measures, which were enacted in December 2006. This affects not only drugs that have entered the market since DERP was adopted, but increasingly also impacts products that were approved for reimbursement prior to DERP's adoption.

Over the past year, the Korean government increased efforts to discuss pending pharmaceutical pricing and reimbursement changes with stakeholders by convening stakeholder fora, extending comment periods, and occasionally providing limited explanations of the methodology it had applied in reaching regulatory decisions. The United States continues to have concerns regarding the regulatory due process and transparency for Korea's pricing and reimbursement of drugs. The U.S. Government continues to urge Korea to improve the transparency of its decision making process related to pharmaceutical reimbursement and to refrain from policies that hinder the development and introduction of innovative pharmaceuticals.

Business Practices in the Healthcare System

U.S. companies continue to express concern over unethical business practices in the Korean healthcare system. In an effort to address these concerns, the KFTC launched an investigation of such practices by both domestic and foreign companies in September 2006. The KFTC announced the results for the first group of pharmaceutical companies in November 2007. Four domestic companies and one multinational company were cited. In January 2009, the KFTC announced the results for the second group. Two domestic companies and five multinational companies were cited. The U.S. Government will continue to work with the Korean government to ensure that Korea's evaluation of the issues and problems in this area is conducted in a fair, transparent, and nondiscriminatory manner, in order to ensure the elimination of improper practices by wholesalers and distributors, and to provide predictability for U.S. companies in pharmaceutical pricing, reimbursement guideline setting, and regulatory affairs in the Korean market.

Medical Devices

Lack of transparency in the pricing and reimbursement decision making and regulatory processes involving medical devices has been a major impediment to medical device companies' achievement of fair access to the Korean market. In addition, Korea's requirements for local product testing, and country of manufacture registration requirements continue to impact market access for medical technology products.

Korea currently caps reimbursement for a new medical technology product at 90 percent of the present market price of the most similar product already in the domestic market. According to U.S. industry reports, the Ministry of Health, Welfare and Family (MHWF) plans to implement a "single price" system in 2009 that will reimburse all products in each "functional category" at a single price. The U.S.

Government has urged that MHWF implement the new system transparently, after full consultation with affected stakeholders, with adequate time for analysis and adjustment based on stakeholder comments.

Korea's requirement that a local Korean laboratory test each product is contrary to the internationally accepted process-based quality management systems approach and imposes unnecessary costs and delays. In addition, the requirement to work with local laboratories to develop a testing standard based on manufacturers' internal test specifications has raised concerns about the confidentiality of sensitive proprietary information.

The KFDA's re-registration requirement for all products transferred to a manufacturing site outside their country of origin is equivalent to the registration requirement for new products and also is contrary to the internationally accepted practice of only requiring notification of a change in origin. The U.S. Government supports expanding existing registration to cover multiple sites and permit notification of the change without the need for re-registration.

In July 2008 Korea adopted a healthcare technology assessment system for determining reimbursement eligibility for new medical devices. U.S. industry has raised concerns regarding inadequate transparency regarding the criteria and methodology of the system and limited opportunities for stakeholder participation in developing and refining the system.

Distilled Spirits

On July 1, 2008, Korea's Liquor Tax Law was revised to provide a 50 percent tax reduction for certain "traditional liquors" including some forms of distilled and diluted spirits. This amendment has raised concerns with U.S. industry because of its potential impact on trade by disadvantaging imported competing liquors that do not fall under the narrow category of "traditional liquors." In 1997, the United States had initiated WTO dispute settlement proceedings regarding discriminatory alcoholic beverage taxes in Korea. Following findings by a WTO panel and later the Appellate Body in favor of the United States, Korea subsequently amended its discriminatory tax regime. Given this past history, the United States expressed concerns regarding adoption of any regulations that appear to reinstitute reduced tax rates for domestic producers of specific categories of spirits. The Korean government had provided assurances that the tax reductions apply only to small-volume producers of designated traditional liquors, that the total of potentially qualifying liquors amounts to less than 2 percent of Korea's beverage alcohol market, and that there are no intentions or plans to expand the categories of beverage alcohol that would qualify for such tax reductions. The U.S. Government will continue to monitor Korean actions in this area.

KUWAIT

TRADE SUMMARY

The U.S. goods trade deficit with Kuwait was $4.4 billion in 2008, an increase of $2.7 billion from $1.6 billion in 2007. U.S. goods exports in 2008 were $2.7 billion, up 9.5 percent from the previous year. Corresponding U.S. imports from Kuwait were $7.1 billion, up 72.2 percent. Kuwait is currently the 52nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Kuwait was $637 million in 2006 (latest data available).

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), Kuwait applies the GCC common external tariff of 5 percent for most products, with a limited number of GCC approved country-specific exceptions. Kuwait’s exceptions include 417 food and agriculture items, which remain duty free, as well as tobacco products, which are subject to a 100 percent tariff.

Import Prohibitions and Licensing

Kuwait prohibits the importation of alcohol and pork products, and requires a special import license for firearms. Used medical equipment and automobiles over five years old cannot be imported. Also prohibited are any books, periodicals, or movies that insult religion and public morals, and all materials that promote political ideology.

Kuwait continues to prohibit imports of live cattle from the State of Alabama and beef from the State of Oklahoma. The U.S. government has engaged local officials in an effort to encourage them to recognize U.S. control measures and World Animal Health Organization guidelines regarding Bovine Spongiform Encephalopathy.

Documentation Requirements

In Kuwait, the import clearing process has historically been time consuming, requiring large quantities of paperwork, and numerous redundancies. However, the Customs Department is currently undergoing a major privatization effort, contracting with a private company to provide customs support services. The implementation of a state-of-the-art computer system has made the import process less complicated and more efficient. In October 2005, Customs began implementation of the Micro-Clear system at the Kuwait airport and completed implementation at all ports of entry in early 2006.

Customs Valuation

Kuwait began implementation of the WTO Customs Valuation Agreement in September 2003.

Textiles and Apparel

Textiles and apparel products (dutiable at 5 percent) accounted for approximately 6 percent of Kuwait's imports in 2006.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Standards

As part of the GCC Customs Union, the six Member States are working toward unifying their standards and conformity assessment systems. However, each Member State currently continues to apply either its own standard or a GCC standard, resulting in a complicated situation for some U.S. businesses. GCC Member States do not consistently send notification of new measures to WTO Members and the WTO Committees on Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT) or allow WTO Members an opportunity to provide comments.

In May 2008, the GCC Standards Committee approved two new standards for the labeling and expiration periods of food products. The new GCC standards eliminate the long standing requirement that at least one-half of a product's shelf life be valid when a product reaches a port of entry in GCC Member States. Officials from the Gulf Standards Organization (GSO) have stated that GCC Member States will accept use of the terms "best by" and "best before" as meeting the date labeling requirement for shelf-stable products. The United States has requested written confirmation of this situation.

Sanitary and Phytosanitary Measures

In May and October 2007, respectively, Bahrain and Oman notified WTO Members of proposed procedures meant to harmonize food safety import requirements for all GCC Member States. The United States and other WTO Members provided comments outlining significant concerns with the procedures, which, as currently drafted, do not appear to have a clear scientific basis and would substantially disrupt food exports to GCC Member States from their trading partners. The GCC Member States indicate that they are developing a response to these comments, and the United States has established a dialogue between U.S. and GCC technical experts to discuss the procedures and potential amendments to address the concerns raised.

Conformity Assessment

In March 2003, Kuwait implemented its International Conformity Certification Program (ICCP), a pre-shipment certification program requiring that covered products be tested and certified by a single private company before being imported into Kuwait. The program applied to imports of: (1) household appliances and electronics; (2) new and used cars and other vehicles; (3) chemicals, including motor oil and paint; (4) building materials, including cement, gypsum, and bricks; and (5) paper and plastic items.

In July 2004, the Public Authority for Industry (PAI) – the regulatory authority responsible for the ICCP – held a one-year review of the program. At that time, the PAI stated that over 30,000 individual products had been issued ICCP certificates, and that PAI was considering expanding the types of products requiring certification. Importers and representatives of foreign businesses voiced serious concerns with the program. The United States and other WTO Members raised concerns about the ICCP directly with Kuwait and during meetings of the WTO TBT Committee.

In November 2004, the PAI indicated that it would introduce changes to the ICCP and transition to a new Kuwait Conformity Assessment Scheme (KUCAS). The KUCAS raises the same concerns as the ICCP raised.

The GCC Standards Committee is currently developing a conformity assessment scheme to be adopted ultimately by each of the six Member States and has set 2010 as a deadline for full implementation by each Member State. The United States is working to establish a dialogue between U.S. and GCC technical experts to discuss this proposed scheme with the goal of helping to ensure that it is developed, adopted, and applied in accordance with WTO rules.

GOVERNMENT PROCUREMENT

Kuwait's government procurement policies require the purchase of local products, where available, and prescribe a 10 percent price advantage for local firms in government tenders. In 2004, the Council of Ministers agreed to increase this price advantage to 15 percent. However, the increase has not yet been implemented as it requires amendment of the GCC countries' unified agreement, which has not yet occurred.

Procurement by the Kuwaiti Government and its agencies is regulated by Law No. 37 of 1964 (modified by Laws No. 13 and 31 of 1970 and 1977, respectively) concerning Public Tenders (the "Public Tenders Law"), in which any procurement made by the Kuwait Government with a value in excess of KD 5,000 (approximately $18,500) must be conducted through the Central Tenders Committee.

In 2002, the Kuwaiti government transformed its offset program into a mechanism for promoting foreign investment in Kuwait. In 2006, Kuwait established the National Offset Company to manage, enforce, and review all offset proposals. The company is designed to be a one-stop shop for all matters related to offsets. In October 2007, the National Offset Company launched the Offset Fund with variable capital up to KD 1 billion ($3.7 billion).

Offset obligations apply to military contracts with a value equal to or above KD3 million (about $11 million), civil government contracts with a value equal to or above KD10 million (about $37 million), and oil and gas contracts (with the exception of oil and gas exploration and production contracts). Offset obligations amount to 35 percent of contract value with offset multipliers being established to target investment into specified sectors of the Kuwaiti economy. Foreign contractors are subject to an unconditional financial guarantee equal to 6 percent of the contract value.

Kuwait is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Kuwait is still in the process of drafting amendments to its intellectual property law to implement the WTO TRIPS Agreement.

Although Kuwaiti officials, particularly Kuwait Customs, continue to make progress on copyright enforcement and pursue cases through the judicial process, U.S. industry reports a lack of deterrent criminal penalties. U.S. industry also reports that sales of pirated and counterfeit goods remain high in Kuwait, and the use of unauthorized computer software continues in private enterprises.

As part of the GCC Customs Union, the six Member States are working toward unifying their IP regimes. In this respect, the GCC is preparing a draft common trademark law. All six Member States are expected to adopt this law as national legislation in order to implement it. The United States has outlined specific concerns with the trademark law and has established a dialogue between U.S. and GCC technical experts to ensure that the law complies with the Member States' international and bilateral obligations.

SERVICES BARRIERS

Banking

Foreign-owned banks are restricted to opening only one branch, can only offer investment banking services, and are prohibited from competing in the retail banking sector. Furthermore, foreign banks are subject to a maximum credit concentration equivalent to less than half the limit of the largest local bank and are expressly prohibited from directing clients to borrow from external branches of the bank or taking any other measures or arrangements to facilitate such borrowing.

In August 2004, BNP Paribas was the first foreign bank granted a license to operate in Kuwait, followed by approvals in 2005 for HSBC and Citibank; HSBC opened its branch in October 2005, and Citibank and National Bank of Abu Dhabi in 2006, Qatar National Bank in 2007, and Doha Bank in 2008. UAE's Al-Mashreq Bank, Al-Rajhi Bank of Saudi Arabia, and Oman's Bank of Muscat have obtained licenses from the Central Bank, but have not opened their branches as of February 2009.

Agent and Distributor Rules

Only Kuwaiti nationals and corporations may act as agents and distributors for foreign companies and exporters, according to Kuwait's Commercial Agencies Law of 1964.

INVESTMENT BARRIERS

Kuwait currently maintains a variety of restrictions on foreign direct investment and applies discriminatory taxation policies. In May 2000, Kuwait's National Assembly approved legislation that allows foreign nationals to own up to 100 percent of all companies listed on Kuwait's stock exchange, except banks. In January 2004, the National Assembly gave final approval to a bill permitting 100 percent foreign ownership of banks.

The foreign direct investment law that took effect in February 2003 authorizes majority foreign ownership in new investment projects and 100 percent foreign ownership in the following sectors: infrastructure projects such as water, power, waste water treatment or communications; investment and exchange companies; insurance companies; information technology and software development; hospitals and pharmaceuticals; air, land and sea freight; tourism, hotels and entertainment; and housing projects and urban development. The law also authorizes tax holidays of up to 10 years for new investors. Despite the new law, foreign companies still report numerous delays in getting approval to operate in Kuwait and the law left in place several important investment restrictions. For example, foreign firms still may not invest in the upstream petroleum sector, although they are permitted to invest in petrochemical joint ventures. Legislation introduced in Parliament in January 2004 would have allowed for limited, controlled investment in the petroleum sector, but the draft legislation has been shelved. The legislation specifically authorizes investment in, and development of, Kuwait's northern oilfields, but, if enacted, it may cover other investment in the petroleum sector in the future.

OTHER BARRIERS

Corporate Tax Policies

In 2005, a number of corporations received income tax bills from Kuwaiti tax authorities although the companies had no commercial presence in Kuwait. Bills were typically sent to the companies' Kuwaiti distributors and often included years of back taxes. Some companies have challenged the tax in court, and others are working with the U.S. and Kuwaiti governments to seek a legislative or regulatory solution. Kuwaiti law and judicial decisions are ambiguous in defining what does or does not constitute taxable presence.

On December 26, 2007, the Kuwaiti National Assembly passed legislation reducing the tax rate on foreign companies from 55 percent to 15 percent.

LAOS

TRADE SUMMARY

The U.S. goods trade deficit with Laos was $24 million in 2008, an increase of $10 million from $15 million in 2007. U.S. goods exports in 2008 were $18 million, up 235.7 percent from the previous year. Corresponding U.S. imports from Laos were $42 million, up 112.3 percent. Laos is currently the 188th largest export market for U.S. goods.

IMPORT POLICIES

Tariffs

Under the terms of the Agreement between the United States and the Lao People's Democratic Republic on Trade Relations (or United States-Lao Bilateral Trade Agreement (BTA)), which entered into force on February 4, 2005, the United States granted NTR treatment to products of Laos, and Laos committed to open its market to certain U.S. products. Laos' implementation of these commitments is proceeding slowly, but will help Laos in its WTO access negotiations, which still are in the early stages.

Nontariff Barriers

Import Restrictions and Licensing Requirements: All imports are subject to licensing requirements, most of which are non-automatic. Among the wide range of products subject to these requirements are food and animal feeds, fuels and lubricants, steel bars for construction, print and audiovisual material, cement, and motor vehicles. Only firms licensed as import companies are permitted to import goods into Laos.

Customs: Nearly every container that enters Laos at a formal border checkpoint is inspected, and foreign businesses regularly complain of irregularities and corruption in the clearance process. A large proportion of goods entering Laos do so informally as border control is weak. Customs procedures in Laos have improved since the introduction of the ASEAN Harmonized Tariff System, but a large number of approvals and informal payments are often still required to get through the process.

Taxes: All goods and services are subject to a turnover tax of either 5 percent or 10 percent. Laos appears to apply turnover tax rates to many domestic products that are lower than those applied to imported products, or to apply turnover tax exemptions to domestic products that it does not apply to imported products. The United States continues to work with Laos to ensure its tax regime complies with its BTA obligations and conforms with Laos' obligations with respect to national treatment in the application of all internal taxes. In addition to the turnover tax, certain goods are subjected to an additional excise tax.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Laos has undertaken work to create a more modern IPR regime but currently provides varying levels of IPR protection. While it accepted international assistance in the drafting of an IPR law, implementing regulations have yet to be issued and the law itself will likely need further amendments in order fully implement Lao BTA obligations and eventually the WTO Trade Related Aspects of Intellectual Property Rights Agreement. Laos became a member of the World Intellectual Property Organization (WIPO) in 1995 and a member of the WIPO Paris Convention for the Protection of Industrial Property in 1998. It has also signed the WIPO Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, but has not yet acceded to that Convention. As a member of ASEAN, Laos has acceded to all of ASEAN's framework agreements, including the ASEAN Framework Agreement on Intellectual Property Cooperation.

Laos issued a trademark decree in 1995, which places the recently reorganized Science and Technology Agency (STA), a ministry-level agency within the office of the Prime Minister, in charge of the issuance of trademarks. There are currently about 15,854 trademarks registered in Laos. A decree protecting patents, petty patents, and industrial designs was approved in January 2002. Laos developed a draft copyright law in 2005, but it has not yet been enacted so copyrights and related rights are unprotected in Laos.

STA is also responsible for IPR administration and enforcement in Laos. While STA personnel are well trained, they have little authority, and IPR enforcement remains weak. In particular, STA lacks the power to arrest and does not effectively coordinate with the police. Effective IPR enforcement at the border is lacking due to Laos' porous borders controls.

SERVICES BARRIERS

Education

Foreign entities are prohibited from providing education services in Laos. The Ministry of Education closely monitors the ideological content of curricula.

INVESTMENT BARRIERS

Laos has a challenging investment climate due to a weak rule of law, opaque regulations, and inefficient infrastructure and services, particularly financial services. Required documentation for foreign businesses remains burdensome and effectively separates business activity into foreign and domestic categories. Laos still requires a feasibility study for investment by foreign businesses.

The required annual renewal of a Lao business license is contingent on certification that all taxes have been paid. Foreign investors have complained that taxes are often assessed in an inconsistent and nontransparent manner. U.S. companies have been denied necessary local business licenses despite possessing valid national long term investment permits. The United States continues to urge the Lao government to resolve this issue.

Both giving and accepting bribes are criminal acts in Laos, punishable by fine and/or imprisonment. Nevertheless, corruption remains a significant and growing concern for investors in Laos. Informal payments to low level officials to expedite time sensitive applications, such as business licenses or importation of perishable items, are not uncommon and some observers say the problem is growing due to increased investment in extractive industries. While the National Assembly passed an anticorruption law in 2005, to date no implementing regulations have been enacted.

The underdeveloped legal system also creates barriers for foreign investors. Judgments in commercial cases against foreigners lack transparency and predictability. Many areas of business and finance are not covered by well defined statutes. Several international organizations are helping the Lao government to develop the legal sector, and new draft laws are gradually emerging.

MALAYSIA

TRADE SUMMARY

The U.S. goods trade deficit with Malaysia was $17.8 billion in 2008, a decrease of $3.2 billion from $20.9 billion in 2007. U.S. goods exports in 2008 were $13.0 billion, up 11.0 percent from the previous year. Corresponding U.S. imports from Malaysia were $30.7 billion, down 5.8 percent. Malaysia is currently the 21st largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Malaysia were $1.9 billion in 2007 (latest data available), and U.S. imports were $1.0 billion. Sales of services in Malaysia by majority U.S.-owned affiliates were $2.2 billion in 2006 (latest data available), while sales of services in the United States by majority Malaysia-owned firms were not available in 2006 ($292 million in 1998).

The stock of U.S. foreign direct investment (FDI) in Malaysia was $15.7 billion in 2007 (latest data available), up from $12.6 billion in 2006. U.S. FDI in Malaysia is concentrated largely in the manufacturing sector.

FREE TRADE AGREEMENT NEGOTIATIONS

The United States and Malaysia initiated negotiations on a Free Trade Agreement (FTA) in June 2006. The last round of negotiations was in Washington, D.C. in July 2008. While solid progress has been achieved, significant work remains to conclude the agreement. The issues identified in this report have also been included in the FTA negotiating process.

IMPORT POLICIES

Tariffs and Import Licensing Requirements

Malaysia's simple average applied tariff rate is 8.4 percent, but duties for tariff lines where there is significant local production are often higher. The level of tariff protection is generally lower on raw materials than for value added goods. Beverages, alcohol, and wine are subject to an effective tariff of up to 500 percent when import duties and excise taxes are combined. In addition, adjustments to excise taxes made each year as part of the budget process can raise costs sharply and make it difficult for U.S. companies to negotiate long term supply contracts in the beverage, alcohol and wine sector.

Several Malaysian tariff lines (principally in the construction equipment, agricultural, mineral, and motor vehicle sectors) are subject to non-automatic import licensing designed to protect import sensitive or strategic industries. Malaysia also maintains performance requirements that are needed to receive a customs waiver for operations in Foreign Trade Zones.

Tariff-Rate Quotas on Selected Agricultural Products

In April 2008, the Malaysian government implemented tariff-rate quota (TRQ) systems for 17 tariff lines, which include products such as live poultry, poultry meat, milk and cream, pork, and round cabbage. These products now incur in-quota duties between 10 percent and 25 percent and out-of-quota duties as high as between 40 percent and 50 percent. Before TRQ implementation, the applied tariff rate was zero for these products.

Import Restrictions on Motor Vehicles

Malaysia has long protected its automobile manufacturing industry from foreign competition using high tariffs and nontariff trade barriers. Even for cars produced in Malaysia, Malaysian government policies distinguish between "national" cars, (*e.g.,* domestic producers Proton and Perodua) and "non-national" cars, which include most vehicles manufactured in Malaysia by non-Malaysian owned firms. A major U.S. automaker exited the Malaysian market in early 2008 because of the discriminatory treatment it faced and its inability to own a controlling share in its Malaysian subsidiary. Malaysia has traffic restrictions and noise standards that affect the usage of large motorcycles.

The Malaysian government has started to slowly dismantle some of its protections in order to meet its commitments under the WTO and the ASEAN Free Trade Agreement (AFTA). It cut Malaysia's auto import duty from 40 percent to 5 percent by 2006 to meet its AFTA commitments, but then imposed steep excise taxes to compensate for the lost revenue. In January 2007, the ceiling on excise taxes for most vehicle categories was reduced from 125 percent to 105 percent and on motorcycles from 50 percent to 30 percent. In March 2006, the Malaysian government issued a new National Auto Policy (NAP) that paves the way for further sectoral liberalization. In November 2008, the Malaysian Deputy Prime Minister stated that Malaysia would review the NAP to potentially further liberalize the sector.

Malaysia maintains a system of approved permits (APs) that allows the holder to import cars and motorcycles and distribute them locally. The AP system was designed to provide *bumiputera* (ethnic Malay) companies easy entry into the automobile and motorcycle distribution and service sector. The AP system acts as a quota by restricting the total number of vehicles that can be imported in a given year, which is currently capped at 10 percent of the market. Moreover, many AP holders sell their permits, with the associated costs passed on to consumers, increasing the price of imported vehicles.

In addition, Malaysia uses an industrial adjustment fund to provide for locally assembled vehicles. Components sourced from locally registered components manufacturing companies are eligible for tax reductions, raising concerns that this fund revives the local content program that had been abolished in 2004. Because of the small-scale operations of many foreign carmakers in Malaysia, they cannot source components locally, thus preventing them from benefiting from this fund.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Halal Certification

The Malaysian government reopened its market for U.S. beef and beef products in June 2007 and for offals in May 2008. However, approval of each exporting slaughter plant's *halal* practices (meat produced in accordance with Islamic practices) is required on a plant-by-plant basis prior to export, severely limiting imports to Malaysia. In addition, in 2008 the Malaysian government has said that it is considering a revised protocol that would require slaughter plants to be dedicated to *halal* production; maintain separate lines, coolers, and warehousing for *halal* and non-*halal* product; and other measures that could block exports of U.S. beef and beef products to Malaysia. Currently, commercial slaughter plants in the United States that export to Malaysia and other *halal* markets schedule specific production periods for *halal* slaughter. This is consistent with Codex guidelines, which allow for *halal* food to be prepared, processed, transported, or stored using facilities which have been previously used for non-*halal* foods, provided that proper cleaning procedures according to Islamic requirements have been observed.

Meat Import Licenses

Pork imports must be licensed, and Malaysia restricts the types of cuts that can be imported.

Biotechnology

Malaysia's Parliament passed the Biosafety Bill in 2007, that included potentially trade restrictive language for biotechnology-derived commodities and processed products, including mandatory labeling and a strict liability and redress enforcement regime. The implementing regulations for this law are currently being drafted.

Malaysia currently places no restrictions on the import of biotechnology food or feed. To date, the only biotechnology product officially approved for import into Malaysia is a biotechnology soybean. The value of U.S. exports to Malaysia of biotechnology soy, soybean meal, and oil is about $100 million. Malaysia also has yet to produce a biotechnology crop commercially, although several biotechnology crops have been produced at the experimental stage.

EXPORT TAXES

Malaysia taxes exports of palm oil, rubber, and timber products in order to protect domestic processing production. Malaysia is the second largest producer and largest exporter of palm oil and products made from palm oil, accounting for approximately 15 percent of world production and 30 percent of world trade in vegetable oils. Malaysia uses export taxes of 10 percent to 30 percent *ad valorem* to discourage the export of crude palm oil and to encourage development of the local refinery sector. Refined palm oil and products are not subject to export taxes. The Malaysian government waives export taxes on exports of crude palm oil to Malaysia-invested foreign vegetable oil refineries that include investment by Malaysian persons, giving Malaysia-invested plants a competitive advantage in foreign markets, including the United States.

GOVERNMENT PROCUREMENT

Malaysia's official policy calls for procurement to be used to support national public policy objectives. These objectives include encouraging greater participation of *bumiputera* in the economy, transferring technology to local industries, reducing the outflow of foreign exchange, creating opportunities for local companies in the services sector, and enhancing Malaysia's export capabilities. International tenders generally are invited only where domestic goods and services are not available. In domestic tenders, preferences are provided for *bumiputera* suppliers and other domestic suppliers. In most procurement, foreign companies are required to take on a local partner before their tenders will be considered. Moreover, Malaysia's government procurement system lacks transparency and competitive bidding. The U.S. Government will continue to raise concerns about the nontransparent nature of the procurement process in Malaysia. Malaysia is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Malaysia offers several export allowances. Under the Central Bank's export credit refinancing scheme, commercial banks and other lenders provide financing to all exporters at a preferential rate for both pre-shipment and post-shipment. Malaysia also provides a series of tax and investment incentives to exporters, including those through the Pioneer States and Investment Tax Allowance programs. Malaysia has notified these subsidies to the WTO Committee on Subsidies and Countervailing Measures since

1995. The United States has submitted questions to Malaysia, pursuant to Article 25.8 of the WTO Agreement on Subsidies and Countervailing Measures, requesting that Malaysia provide further information regarding these programs.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The United States and Malaysia have held detailed discussions on the full range of IPR issues in the context of the FTA negotiations. While the negotiations have not yet been concluded, Malaysia has taken, or is considering, a number of steps to strengthen its IPR regime and enhance its business environment.

Optical Media Piracy

The piracy of copyrighted materials is a serious concern in Malaysia. For 2007, U.S. industry estimates losses in Malaysia due to copyright piracy at $181 million. Malaysia has remained on the Special 301 Watch List since October 2001, due in part to its failure to substantially reduce pirated optical disc production and exports. Malaysia's production capacity for compact discs and digital video discs significantly exceeds local demand plus legitimate exports, with the surplus apparently being exported globally. While the Malaysian government has revoked optical disc factory licenses in the past two years, this overcapacity persists.

The Optical Disc Act of 2000 established a licensing and regulatory framework to control the manufacture of optical discs and to fight piracy, including placement of source identification (SID) codes on each disc and to allow regular inspections of their operations. However, limitations in the Act have lessened its effectiveness. U.S. industry is seeking changes in the law that would ensure that inspection authority covers any time, day or night, for all locations where optical media production may occur and also include as offenses acts such as "gouging" or tampering with the SID codes and "burning" of recordable discs.

Enforcement

The Malaysian government has stepped up its enforcement efforts of the past few years. In 2007, Prime Minister Abdullah Badawi announced a new national IPR policy that includes some RM 5 billion ($1.5 billion) earmarked for spending over several years. The Malaysian government also has been prosecuting significantly more cases over the past couple of years with the establishment of the IPR court in mid-2007. Penalties imposed also have been strengthened with Malaysia's courts handing down sentences of imprisonment and/or fines for convicted offenders. Despite the positive trends, the U.S. IPR industry reports declining enforcement, and current IPR piracy levels indicate that it remains a serious problem. According to industry statistics, the number of anti-piracy raids launched dropped from 2,333 in 2007 to 668 in 2008.

Pharmaceuticals and Medical Devices

The Malaysian government recognizes that the sale of counterfeit pharmaceutical products are a continuing concern and has sought to improve its enforcement efforts, including better information sharing between ministries and collaboration with industry. It also is looking to the special IPR court to improve prosecution of crimes involving counterfeit pharmaceutical products.

Malaysia is considering legislation that would provide protection for test and other data submitted for the marketing approval of pharmaceuticals, for five years for new chemical entities and three years for new indications. The Malaysian government lacks an effective patent linkage mechanism to prevent the regulatory approval of versions of pharmaceutical products that are still covered by a patent; U.S. industry has reported several cases involving the registration of generic versions of pharmaceuticals that are still subject to patent protection.

SERVICES BARRIERS

Malaysia's services sector constitutes about 59 percent of the national economy and remains highly protected.

Telecommunications

Under the GATS, Malaysia made limited commitments on most basic telecommunications services and partially adopted the WTO reference paper on regulatory commitments. Based on Malaysia's GATS commitments, foreign companies are entitled to acquire only up to a 30 percent equity stake in existing licensed public telecommunications operators, and foreign participation is limited to facilities-based suppliers. These limitations are not reflected in Malaysian law, however, but in ministerial policy. In certain instances Malaysia has allowed greater than 30 percent equity participation in the telecommunications market.

Distribution Services, including Direct Selling

Guidelines governing distribution services include local content requirements. Among other provisions, department stores, supermarkets, and hypermarkets must reserve at least 30 percent of shelf space in their premises for goods and products manufactured by *bumiputera*-owned small and medium size industries. The guidelines also require that at least 30 percent of a store's sales consist of *bumiputera* products. The Malaysian government continues to consider changes to these guidelines in response to concerns raised from both domestic and foreign businesses.

Locally incorporated direct selling companies must allow for 30 percent *bumiputera* equity. The Malaysian government also "recommends" local content targets, which effectively translates into a requirement. Local companies that seek direct selling licenses require paid-in capital of RM1.5 million (approximately $397,000), while companies with foreign shareholders must have paid-in capital of RM5 million (approximately $1.3 million).

Legal Services

Foreign lawyers may not practice Malaysian law, nor may they affiliate with local firms or use the name of an international firm. Foreign law firms may not operate in Malaysia, except as minority partners with local law firms, and their stake in any partnership is limited to 30 percent. The Attorney General has authority to grant limited exceptions, on a case-by-case basis, to the law restricting the practice of Malaysian law to Malaysian citizens or permanent residents who have apprenticed with a Malaysian lawyer, are competent in *Bahasa* Malaysia (the official language), and have a local law degree or are accredited British Barristers at Law, provided the applicant has seven years of legal experience. Malaysian law does not allow for foreign legal consultancy except on a limited basis in the Labuan International Offshore Financial Center (see section on "Banking" below).

Architectural Services

A foreign architectural firm may operate in Malaysia only as a joint venture participant in a specific project with the approval of the Board of Architects. Malaysian architectural firms may not have foreign architectural firms as registered partners. Foreign architects may not be licensed in Malaysia, but are allowed to be managers, shareholders, or employees of Malaysian firms.

Engineering Services

Foreign engineers may be licensed by the Board of Engineers only for specific projects and must be sponsored by the Malaysian company carrying out the project. In general, a foreign engineer must be registered as a professional engineer in his or her home country, have a minimum of 10 years experience, and have a physical presence in Malaysia of at least 180 days in one calendar year. To obtain a temporary licensing for a foreign engineer, a Malaysian company often must demonstrate to the Board that they cannot find a Malaysian engineer for the job. Foreign engineers are not allowed to operate independently of Malaysian partners or serve as directors or shareholders of an engineering consulting company. A foreign engineering firm may establish a nontemporary commercial presence if all directors and shareholders are Malaysian. Foreign engineering companies may collaborate with a Malaysian firm, but only the Malaysian company may submit the plans for domestic approval.

Accounting and Taxation Services

All accountants seeking to provide auditing and taxation services in Malaysia must register with the Malaysian Institute of Accountants (MIA) before they may apply for a license from the Ministry of Finance. Citizenship or permanent residency is required for registration with MIA. Foreign accountants and auditors are only allowed to practice with registered Malaysian accountants, with aggregate foreign shareholding not to exceed 40 percent. Malaysian citizens or permanent residents who received degrees from local universities or are members of at least one of the 11 overseas professional bodies recognized by Commonwealth countries may apply for registration. The American Institute of Certified Public Accountants is not recognized by Commonwealth countries.

Banking

The Malaysian government seeks to limit foreign participation in financial services in order to encourage the development of domestic financial services providers. The ten-year Financial Sector Master plan, unveiled in 2001, set out a three-phase strategy for developing and gradually liberalizing the Malaysian banking sector. Phase I focused on developing a core set of domestic banking institutions through mergers of commercial banks with merchant banks, discount houses, and stock brokerage firms. Within the first four years of the Plan, the number of domestic financial institutions declined from 63 to 9. Phase II of the Plan was to include the removal of many restrictions on incumbent foreign financial institutions. Malaysia has only partially implemented these reforms. During Phase III, the Malaysian government is to consider introducing new foreign competition, but the plan contains no time frame and few specifics on the reforms to be considered.

Foreign institutions are limited to an equity stake in investment banks of 49 percent. Currently, foreign participation in commercial banks is still restricted to an aggregate maximum stake of 30 percent. In 1994 Bank Negara (the Central Bank) revoked the authorization of foreign banks to operate in Malaysia unless they incorporated locally. Foreign banks currently operate in Malaysia under a grandfathering provision, but must have an entirely Malaysian Board of Directors. Bank Negara generally requires all banks, including U.S. banks, to maintain their back office and computer operations in Malaysia.

Insurance

The 2001 Financial Sector Master plan recommended phased liberalization of the insurance industry, including increasing caps on foreign equity, fully opening the reinsurance industry to foreign competition, and lifting existing restrictions on employment of foreign specialists. Malaysia maintains a 51 percent equity cap on existing insurance companies. Foreign shareholding exceeding 51 percent is permitted only with Malaysian government approval. New entry by foreign insurance companies is limited to equity participation in locally incorporated insurance companies, and aggregate foreign shareholding in such companies may not exceed 30 percent.

Securities

Malaysia limits foreign ownership in stock brokerage firms to 49 percent and to 30 percent in unit trusts. Fund management companies may be 100 percent foreign owned if they provide services only to foreigners, but they are limited to 70 percent foreign ownership if they provide services to both foreign and local investors. Futures brokerage firms may now be 100 percent foreign owned.

Advertising

Foreign content in commercials in Malaysia is limited to 20 percent. The Malaysian government relaxed enforcement of regulations governing the appearance of foreign actors in commercials shown in Malaysia in 2007.

Audiovisual and Broadcasting

The Malaysian government maintains broadcast content quotas on both radio and television programming. Eighty percent of television programming is required to originate from local production companies owned by ethnic Malays, and 60 percent of radio programming must be of local origin. Foreign investment in terrestrial broadcast networks is prohibited and is limited to a 20 percent equity share in cable and satellite operations. As a condition for obtaining a license to operate, video rental establishments are required to have 30 percent local content in their inventories.

INVESTMENT BARRIERS

Malaysia encourages foreign direct investment (FDI) in export-oriented manufacturing and high-technology industries but retains considerable discretionary authority over individual investments and restricts foreign investment in other sectors. Malaysia seeks to attract and retain FDI in key sectors in order to "move up the value chain." It has renewed tax abatements primarily for manufacturers of higher-technology products and other targeted industries but not for manufacturers of more labor-intensive products, some of which have moved to China or elsewhere. The Malaysian government also uses its authority to restrict foreign equity (normally up to 30 percent) and to require foreign firms to enter into joint ventures with local partners, especially in investments in production of goods or services for the local market.

In an effort to enhance Malaysia's attractiveness to investors, the Malaysian government established in 2007 "Pemudah," a task force of experts from the private sector and government, to promote faster reform in the delivery of government services, targeted at facilitating business and overhauling unnecessary licensing and bureaucratic procedures. During its first year of operation, the task force introduced many reforms, including reducing processing time for land transfers by 60 percent and tax refunds from one year to between 14 days and 30 days.

OTHER BARRIERS

Transparency

The lack of transparency in government decision-making and procedures in Malaysia has served to impede U.S. firms' access to the Malaysian market. The Malaysian government has taken steps to fight corruption, including through the Anti-Corruption Agency (ACA) which is part of the Office of the Prime Minister. The ACA is authorized to conduct investigations and prosecute cases with the approval of the Attorney General. Few senior officials or politicians have been prosecuted for corruption, however, despite the fact that Malaysia has slipped in its ranking on Transparency International's corruption perceptions index from 33 in 2002 to 47 in 2008. Malaysia has signed but not yet ratified the UN Convention against Corruption.

MEXICO

TRADE SUMMARY

The U.S. goods trade deficit with Mexico was $64.4 billion in 2008, a decrease of $10.2 billion from $74.6 billion in 2007. U.S. goods exports in 2008 were $151.5 billion, up 11.4 percent from the previous year. Corresponding U.S. imports from Mexico were $215.9 billion, up 2.5 percent. Mexico is currently the second largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Mexico were $23.8 billion in 2007 (latest data available), and U.S. imports were $15.6 billion. Sales of services in Mexico by majority U.S.-owned affiliates were $20.5 billion in 2006 (latest data available), while sales of services in the United States by majority Mexico-owned firms were $3.4 billion.

The stock of U.S. foreign direct investment (FDI) in Mexico was $91.7 billion in 2007 (latest data available), up from $83.2 billion in 2006. U.S. FDI in Mexico is concentrated largely in the manufacturing, nonbank holding companies, and finance/insurance sectors.

North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA), signed by the United States, Canada, and Mexico, entered into force on January 1, 1994. Under this free trade agreement, NAFTA countries progressively eliminated tariffs and nontariff barriers to trade in goods, provided improved access for services, applied strong rules on investment, and strengthened protection of intellectual property rights. The United States, Canada and Mexico agreed to the NAFTA with side agreements on labor and environment. Under these side agreements the parties are, among other things, obligated to effectively enforce their environmental and labor laws. The agreements also provide frameworks for cooperation among the parties on a wide variety of labor and environmental issues.

IMPORT POLICIES

Tariffs and Market Access

Pursuant to the terms of the NAFTA, on January 1, 2003, Mexico eliminated tariffs on all remaining industrial and most agricultural products imported from the United States. On January 1, 2008, Mexico eliminated remaining tariffs and tariff-rate quotas on all U.S. agricultural exports. (See the section on agriculture below for additional details on specific farm products.)

A number of U.S. exports, both agricultural and nonagricultural, are subject to antidumping duties that limit access to the Mexican market. Products subject to these duties currently include beef, hydrogen peroxide, epoxidized soy oil, apples, liquid caustic soda, ammonium sulfate, polyvinyl chloride, bond paper, industrial fatty acids, stearic acid, ethylene glycol monobutyl ether, and carbon steel pipe and tube.

Agricultural Products

The United States exported $16 billion in agricultural products to Mexico in 2008, compared to $12.7 billion in 2007. Since 2004, Mexico has been the United States' second largest agricultural market. On January 1, 2008, Mexico lifted the final tariffs and tariff-rate quotas on corn, dry beans, nonfat dry milk and sweeteners.

During the past year, Mexico's Secretariat of Economy (SECON) did not open any new dumping investigations with respect to U.S. agricultural products; however, a number of cases remain pending. Mexico is the largest export market for U.S. apples and U.S. apple exporters have expressed concerns regarding the complex process by which Mexico has applied antidumping duties on apples. SECON continues to assess antidumping duties on U.S. exports of red and golden delicious apples from members of the Northwest Fruit Exporters (NFE). After numerous previous rulings, on July 3, 2007, SECON published a ruling that nullified the original antidumping resolution initially published in 2002, while confirming the validity of an August 2003 ruling. Thus, final duties ranging from 6.4 percent to 47.05 percent on red and golden delicious apples are applied to shipments from NFE members. Exporters who are not NFE members are not subject to any duties. In earlier years, non-NFE members were subject to paying a duty of 46.58 percent.

Antidumping duties continue to hamper U.S. meat exports, with Mexican policies in this area having reduced the number of U.S. suppliers and altered product trading patterns. Industry representatives assert that significant revenue is lost each year due to antidumping duties in the beef sector. On April 24, 2006, SECON announced that it would continue to apply the antidumping duties imposed on imports of U.S. beef and beef by-products from certain U.S. exporters and producers for another five years following an expiry review investigation.

Biotechnology

Mexico has no significant barriers to the importation of crops or food derived from biotechnology. Mexico recently released implementing regulations for its Biosafety Law passed in February 2005. These regulations establish the respective responsibilities and jurisdiction of the Mexican ministries and agencies that monitor and/or enforce biotechnology related experiments, production, and commercialization. These regulations will pave the way for increased research, investment, and commercialization of agricultural products derived from biotechnology.

Administrative Procedures and Customs Practices

U.S. exporters continue to be concerned about Mexican customs' administrative procedures, including: insufficient prior notification of procedural changes; inconsistent interpretation of regulatory requirements at different border posts; and uneven enforcement of Mexican standards and labeling rules. There have been relatively few specific complaints, however, and Mexican customs has been putting procedures in place to address issues of nonuniform application of requirements at border ports of entry. Agricultural exporters note that Mexican inspection and clearance procedures for some agricultural goods are long, burdensome, nontransparent, and unreliable. Customs procedures for express packages continue to be burdensome, although Mexico has raised the *de minimis* level from $1 to $50. Mexican regulations still hold the courier 100 percent liable for the contents of shipments. U.S. exporters have highlighted the benefits of harmonizing the hours of customs operation on the U.S. and Mexican sides of the border, but they cite the delays stemming from the lack of pre-clearance procedures, which the Mexican government claims are not permitted under current law.

To be eligible to import well over 400 different items, including agricultural products, textiles, chemicals, electronics and automotive parts, Mexican importers must apply to the Secretariat of Finance and Public Credit and be listed on a special industry sector registry. U.S. exporters complain that registering is bureaucratically difficult, and this requirement sometimes causes costly customs clearance delays when new products are added to the list of subject items with immediate effect, thereby denying importers sufficient notice to apply. They also report that certain importers have been summarily dropped from the registry without prior notice or subsequent explanation, effectively preventing some U.S. exporters from shipping goods to Mexico. On March 31, 2008, the Mexican government issued a decree simplifying or eliminating several burdensome customs regulations. Beginning April 14, 2008, the decree exempts importers from registry in the Importers Sectorial Register, except when the merchandise poses a national security risk or a public health risk. Mexico has not yet specified which goods fall under these two categories.

Beginning in October 2000, the Mexican government imposed a burdensome guarantee system for goods subject to estimated prices. Importers could not post bonds to guarantee the difference in duties and taxes if the declared value of an entering good was less than the official estimated price. Instead they were required to deposit the difference in cash at a designated Mexican financial institution or arrange one of two alternative sureties (a trust or line of credit). The decree of March 31, 2008 noted above also eliminated the system of reference pricing for all products, with the exception of used cars. As of April 14, 2008, no guarantee, bond, or any other form of payment has been required of importers. The United States will monitor the implementation of the decree.

In May 2008, without prior notification of procedural changes, the Mexican government implemented a new requirement to test all chemical samples and shipments being sent to Mexico in gas, liquid, or powder form. Some chemical exporters are reporting fees of $500 charged by the customs broker. Previously, samples could be sent by express delivery service companies. Now, however, this is prohibited, necessitating the additional incurred cost of using a broker. In addition, there is only one laboratory in Mexico certified to test these products, thus causing a huge delay in customs clearance. This new barrier is having a deleterious effect on the competitiveness of U.S. exports of these products. The United States is working with the Chemical Industry Association of Mexico to offer alternatives to this burdensome and expensive process.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Under the NAFTA, Mexico is required to recognize conformity assessment bodies (*i.e.*, certification bodies or testing laboratories) in the United States and Canada on terms no less favorable than those applied to conformity assessment bodies in Mexico.

Applications by two U.S. certification bodies for accreditation by the *Entidad Mexicana de Acreditacion* (EMA), the body responsible for accrediting conformity assessment bodies for Mexican Official Standards, were held up for years due to resistance from the existing Mexican conformity assessment bodies. However, the Mexican government announced it would create a "trust fund" into which accredited bodies would contribute 10 percent of the revenue from conformity certificates issued for the development of standards in Mexico. The two U.S. bodies in question signed an accord agreeing to contribute to the trust fund. In December 2007, one U.S. body was accredited to perform conformity assessments related to one Mexican regulation. The potential increase in U.S. exports of electrical and electronics goods could be significant.

In the telecommunications sector, Mexico has yet to implement either Phase I of the Inter-American Telecommunications Commission’s (CITEL) Mutual Recognition Agreement (MRA), which it was scheduled to do by June 2006 under commitments made under the Security and Prosperity Partnership of North America, or Phase II, which was due to be completed by March 2008. Phase I of the CITEL MRA provides for the mutual acceptance of test results, while Phase II provides for the mutual acceptance of certifications concerning conformity of equipment with technical regulations. Mexico’s implementation of Phase I would allow recognized U.S. testing laboratories to test equipment for compliance with Mexican technical requirements, whereas implementation of Phase II would allow recognized U.S.

certification bodies to certify equipment as meeting Mexican technical requirements. Mexico, however, did not meet the June 2006 goal or its amended target of the second quarter of 2007. Mexican implementation of Phase I and II of the CITEL MRA remains a key issue for U.S. testing and certification bodies, as well as for U.S. exports to Mexico, and the United States will continue to press the Mexican government on this issue.

Mexico has over 700 technical regulations called *Normas Oficiales Mexicanas* (NOMs), which are issued by a number of different agencies. Often, conformity assessment procedures are either included in the NOM or the agency publishes its own general procedures. Some agencies, notably the Ministry of Health, have not published their procedures.

Mexico has long had a requirement that in order to sell pharmaceuticals and some dietary supplements locally, the importer of record must have a factory, laboratory, or some other facility in Mexico. To help foster competition and bring down the price of drugs, the Mexican government issued a decree in August 2008 to lift this requirement in a phased manner. HIV drugs will be the immediate beneficiaries of this new policy, and others will follow in a period not exceeding two years. The application to certain dietary supplements remains unclear, as they were not mentioned in the decree.

Sanitary and Phytosanitary Issues

In recent years, Mexican sanitary and phytosanitary measures have created barriers to exports of certain U.S. agricultural goods, including grains, seed products, apples, stone fruit, pork, beef, poultry, citrus, wood and wood products, dry beans, avocados, potatoes, and eggs. In addition, procedural requirements regarding sanitary and phytosanitary inspections at individual ports of entry do not always reflect agreements reached between the U.S. Department of Agriculture (USDA) and the Mexican Secretariat of Agriculture, resulting in unnecessary delays at border points of entry, seaports, and airports. In 2008, significant quantities of U.S. agricultural goods continued to be subject to rejection or delays at the Mexican border.

In addition to issues surrounding inconsistent border procedures and inadequate inspection facilities, Mexico continues to apply excessive restrictions on U.S. beef and beef products. Mexico initially banned imports of U.S. beef in December 2003, following the discovery of a Bovine Spongiform Encephalopathy (BSE) positive animal in the United States. In March 2004, Mexico announced that it would accept U.S. deboned beef from cattle less than 30 months of age, and it subsequently lifted restrictions on a number of offals and processed deboned beef products. In early 2006, Mexico lifted its ban on U.S. bone-in beef from animals less than 30 months of age, and in October 2008, the United States and Mexico reached an agreement allowing the import of U.S. breeding cattle into Mexico born after 1999. Mexico continues to ban or restrict U.S. exports of live cattle (non-breeding animals), all beef and beef products from animals 30 months of age and older, ground beef, and certain offals. However, current World Organization for Animal Health (OIE) guidelines for BSE provide for conditions under which all beef and beef products from countries of any risk classification for BSE can be safely traded when the appropriate specified risk materials are removed. The United States was officially categorized by the OIE as "controlled risk" for BSE in May of 2007. The United States continues to press Mexico to base its import policies on science and the OIE guidelines, and put in place import requirements for BSE which allow for the full range of beef and beef products from animals of any age, and take into account the "controlled risk" status of the United States.

GOVERNMENT PROCUREMENT

Mexico's efforts to make its government procurement regime more transparent through policy reform and the application of technology have resulted in increased competition as well as savings for the government. The Mexican government has established several "electronic government" Internet sites to increase transparency of government processes and to provide guidelines for the conduct of government officials. "Compranet" provides on-line government procurement and contracting. While implementation of Compranet has been successful, there is still a need for further regulatory and technological improvements throughout the Mexican government.

The NAFTA limits the total value of contracts that Mexico's parastatal petroleum and electricity monopolies, PEMEX and the Federal Electricity Commission, respectively, may exclude from coverage under the NAFTA. Mexico provides an annual notice of the set-aside calculation, along with the methodology used in the calculation, to the United States and Canada. The 2007 value of the set-aside for these entities was $380 million.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Despite a fairly comprehensive set of IPR laws and a clear commitment to stronger enforcement on the part of the Mexican government, IPR violations in Mexico remain extensive. The number of raids, arrests, and convictions of pirates and counterfeiters rose from 2007 to 2008. Criminal indictments dropped slightly from 166 to 163 in that period. Twelve persons were convicted in penal courts in 2008, up from five in 2007 and two in 2006. Customs enforcement efforts almost doubled, growing from 66 seizures the previous year to 115 in 2008. Industry estimates that trade losses due to copyright piracy (not including losses sustained by the movie, publishing or entertainment software industries) in Mexico totaled $917 million in 2008.

The United States remains concerned about the continuing high levels of piracy and counterfeiting in Mexico and closely monitors how the Mexican government is addressing these problems. Mexico was taken off the Special 301 "Watch List" in 2000 but returned to the list in 2003, where it has remained to date due to inadequate IPR protection and enforcement. Despite efforts by the local authorities in Mexico City to move street vendors into the formal economy and a similar strategy of "market reconversion" being carried out by the Office of the Attorney General (PGR), well-known markets selling pirated and counterfeit goods, such as Tepito in Mexico City, San Juan de Dios in Guadalajara, and others in Monterrey and San Luis Potosi, continue to operate openly. In 2008, Mexico City authorities removed unlicensed vendors from certain parts of the historic center of the city and seized two properties that were being used for illicit commerce in Tepito, but these actions were narrowly targeted.

In June 2006, several Mexican federal agencies, one state government, civil society groups, and concerned industries signed a National Agreement in which all committed to cooperation in combating intellectual property infringement. The Calderón administration is expected to adopt the National Agreement's principles and put in place a Policy of State to combat intellectual property crimes. Several municipalities of the State of Mexico signed the cooperation agreement, and the authorities are currently negotiating with other Mexican states, such as Morelos. The Mexico City government has not signed the agreement.

On the legislative front, an initiative to give the PGR the power to prosecute intellectual property crimes, without first receiving a complaint from intellectual property holders or legal representatives, passed the lower house of the Mexican Congress in April 2008, but this bill has not yet been taken up by the Senate. In September 2008, a bill was introduced in the Mexican Congress that would grant Mexican customs officials the authority to detain suspected counterfeit goods for up to five days. It also called for the establishment of a customs trademark registry. A pilot registry program was launched in late 2008 and includes some 20 well-known trademarks, with formal implementation planned for the first half of 2009. An amendment to the Penal Code that would establish unauthorized in-theater camcording as a felony offense punishable by a prison term of between 3 years and 10 years plus a fine, was proposed in 2006, but no further congressional action has been taken.

In September 2003, the Secretariats of Health and Economy implemented a Presidential decree regarding cooperation between the two agencies to ensure that marketing approval is not granted for unauthorized copies of pharmaceuticals. Since the beginning of 2007, there have been no new reports of registrations of unauthorized copies of pharmaceuticals, though several cases of earlier registrations granted to unauthorized copies of pharmaceuticals remain to be resolved.

Mexico lacks adequate regulations for the protection of undisclosed test and other data submitted for the marketing approval of pharmaceutical products. The Federal Commission for the Protection Against Health Risks (COFEPRIS) is currently drafting a set of internal regulations, which it claims will include data protection procedures. These internal regulations were expected to be concluded by November 2008, but the organization is still conducting an analysis of comparable international data protection provisions.

U.S. companies holding trademarks in Mexico have cited problems with trademark enforcement and administration. Although Mexican federal administrative actions are supposed to be completed within four months, actions related to trademark enforcement often take as long as 18 months. In the beginning of 2008, the Mexican government established a specialized IPR court with a view towards accelerating these administrative actions.

SERVICES BARRIERS

Telecommunications

The OECD's October 2007 Economic Survey of Mexico stated that Mexico remains one of the OECD countries with the highest telecommunications charges, especially for business. The report recommended improving mandatory access to the local loop, regulating fixed-to-mobile termination charges, and introducing mandatory roaming to enable smaller mobile companies to use Telcel's (Mexico's largest mobile phone company) network at a regulated price. The report also suggested that industry regulator Cofetel (Federal Telecommunications Commission) needs greater independence from leading companies in the sector and a more effective mandate for the design and implementation of access pricing rules designed to promote competition.

The Calderón Administration has stated that increasing competition in Mexico's telecommunications sector is a priority, but implementing policies to this end continues to be a challenge. The Mexican company Telmex dominates the Mexican telecommunications market and is perceived to exercise some influence over the legislative process, the courts, governmental policy departments, and Cofetel.

High interconnection rates in both fixed and mobile service remain a problem. While Cofetel has made numerous recent attempts to set lower long distance and mobile termination rates, the companies involved have filed injunctions that delay implementation of Cofetel's actions. Often frustrated in court on its regulatory efforts, the Secretariat of Communications and Transport (SCT) has resorted to other means to achieve its goals. For example, Telmex recently partnered with a company to provide video via satellite in the 2.5 GHz band, but the SCT appears to be holding firm to additional interconnection requirements before officially changing Telmex's concession.

The Federal Competition Commission (Cofeco) has been strengthened and announced that it will conduct a formal investigation to determine if monopolistic activities are taking place in the fixed and mobile telephone sectors.

Although there have been several recent legislative attempts to open the Mexican fixed line telecommunications sector to increased foreign investment, which could significantly increase opportunities for competitive providers, currently the Foreign Investment Law limits foreign ownership in the segment to 49 percent, a restriction that helps shield Telmex from additional competition.

Television and Radio

As in telecommunications, there are concerns that the two dominant television companies, Televisa and TV Azteca, who share duopoly status in the sector, continue to exercise influence over Mexican legislative, policy, and regulatory bodies to prevent competition. The Radio and Television Law passed in April 2006 (mentioned above with regard to telecommunications) has been criticized as catering to the interests of dominant industry players by imposing permanent disadvantages on new entrants as compared to the current dominant duopoly.

INVESTMENT BARRIERS

Ownership Reservations

Mexico's oil and gas sector remains closed to foreign investment, with the exceptions of the liquefied natural gas sector and in the marketing of petroleum products. Only Mexican nationals may own gas stations.

The Mexican constitution mandates state ownership of hydrocarbons and provides that no concessions or other types of production sharing agreements or risk contracts shall be granted in regard to hydrocarbon exploitation. Mexico was able to meet its energy needs for decades under this restriction, but declining production in recent years led the government of Mexico to promote reforms of the sector in 2008. The energy reform legislation approved by the Mexican Congress in October 2008 increases the independence and transparency of the national oil company Pemex and allows for some limited performance incentives in service contracts. Implementing regulations have not been finalized, but it appears the reform will do little to allow additional foreign investment in the oil and gas sector.

Other laws limit participation in certain sectors or activities (*e.g.*, forestry exploitation) to Mexican nationals. Investment restrictions prohibit foreign ownership of residential real estate within 50 kilometers of the nation's coasts and 100 kilometers of its land borders. However, foreigners may acquire the effective use of residential property in the restricted zones through trusts administered by Mexican banks. A national foreign investment commission reviews foreign investment in Mexico's restricted sectors, as well as investments in nonrestricted sectors that exceed a 49 percent share of an investment with a value greater than $165 million (as adjusted each year for growth in Mexico's nominal GDP).

ANTICOMPETITIVE BARRIERS

Mexico passed a new competition law in June 2006 that gave Cofeco additional authority to regulate market concentration and anticompetitive behavior in both the private and public sectors. Cofeco has administrative enforcement powers but no criminal enforcement powers. The head of Cofeco and key members of the Calderón administration have called for opening up sectors of the Mexican economy currently dominated by monopolies or duopolies, and some progress has occurred (see section on services barriers). It remains to be seen whether the new law and the new administration will be able to make these sectors truly competitive.

MOROCCO

TRADE SUMMARY

The U.S. goods trade surplus with Morocco was $640 million in 2008, a decrease of $93 million from $733 million in 2007. U.S. goods exports in 2008 were $1.5 billion, up 13.1 percent from the previous year. Corresponding U.S. imports from Morocco were $879 million, up 44.1 percent. Morocco is currently the 67th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Morocco was $238 million in 2007 (latest data available), up from $130 million in 2006.

FREE TRADE AGREEMENT

The United States-Morocco Free Trade Agreement (FTA) entered into force on January 1, 2006, eliminating duties on more than 95 percent of all goods and services. In addition to key U.S. export sectors gaining immediate duty-free access to the Moroccan market, the Agreement includes commitments by Morocco for increased regulatory transparency and the protection of intellectual property rights. Through foreign assistance programs, the United States continues to provide Morocco with targeted technical assistance supporting FTA compliance and regulatory reform. Issues relating to the definition of direct shipment and Morocco's application of tariff-rate quotas for wheat imports from the United States have arisen since the FTA's implementation. U.S. concerns with respect to these issues were raised at the first meeting of the bilateral Joint Committee (the FTA's governing body) in March 2008, and at a number of other meetings, as well as in written exchanges before and after the Joint Committee meeting, including with respect to wheat, at the June 2008 meeting of the Subcommittee on Agricultural Trade.

IMPORT POLICIES

In addition to the United States-Morocco FTA, Morocco has entered into an Association Agreement with the EU which provides preferential tariffs for most industrial goods, an FTA with Turkey, a Pan-Arab Agreement with 17 Arab countries, and a regional trade agreement with Tunisa, Egypt and Jordan (the Agadir Agreement). In October 2008, Morocco was granted "advanced status" by the EU, which could ultimately lead to conclusion of a broader free trade agreement encompassing agriculture and services, and a status like that of countries in the European Free Trade Area (EFTA). While in general, the United States-Morocco FTA provides for equal or preferential treatment for most U.S. goods and services, Morocco recently agreed with the EU to accelerate reduction of certain textile tariffs that provides a more preferential schedule than what was negotiated in the United States-Morocco FTA.

Due to the United States-Morocco FTA, key exports from U.S. sectors, such as information technology, machinery, construction equipment, chemicals, and textiles, enjoy either duty free or preferential duty treatment. Certain other originating products are subject to tariff-rate quotas (TRQs), with the in-quota amount increasing over time. U.S. originating textile and apparel goods receive preferential duty treatment according to a 10 year tariff reduction schedule. Specified originating apparel products that do not conform to the FTA rules of origin may qualify under a Tariff Preference Level quota established for non-originating articles.

Direct Shipment Issues

Morocco's narrow interpretation of permissible transshipment under the FTA's rules of origin has resulted in the denial of preferential treatment for some U.S. originating goods. Moroccan customs officials continue to insist that shipments of U.S. originating goods must be preceded by an order (as reflected in an invoice or bill of lading) from a Moroccan customer before departing the United States. This interpretation effectively prevents U.S. companies from pre-staging U.S. originating goods in Europe, prior to receiving an order from a Moroccan customer. The United States is seeking to address this situation through the Joint Committee process.

Agriculture

Under the FTA, Morocco provides U.S. exporters preferential access through tariff reductions and elimination, with tariff phase-outs ranging from immediate (upon entry into force) to 25 years. On products that are particularly import sensitive for Morocco, the FTA provides access to Morocco's market for U.S. agricultural exporters through TRQs, including on beef, poultry, wheat, almonds, and apples.

In 2007, Moroccan tariffs on corn and most feeds were temporarily reduced to zero because of dry conditions and an acute need for animal feed.

Wheat TRQs

The United States-Morocco FTA provides for preferential access to Morocco for U.S. durum and common wheat exports through two TRQs. In 2006, these TRQs were not filled due to the way in which they were administered. In 2007, as a result of the country's short domestic supply and high world prices of wheat and corn, the government of Morocco eliminated tariffs on all imported wheat through May 31, 2008, effectively rendering the preferential TRQs under the FTA non-operational. Non-application of tariffs on these goods has since been extended into 2009.

Through both consultations and written exchanges, U.S. officials have repeatedly raised U.S. Government concerns with the Moroccan government about its procedures for administering the FTA wheat TRQs, as Moroccan government action has impeded realization of the preferential access provided for under the FTA and raises questions regarding consistency with the provisions in the FTA. Efforts to resolve issues surrounding access for U.S. wheat continue under the Joint Committee process.

Biotechnology

Morocco has officially banned agricultural biotechnology. Over 60 percent of Moroccan agricultural exports are destined for the EU, and the official ban on agricultural biotechnology reflects EU/Morocco trade sensitivities. Imports of bioengineered seeds are prohibited, and a "genetically modified organism (GMO)-free" certificate is required for customs clearance of products used directly for human consumption. Morocco has formed a National Biosecurity Committee, but implementing an agricultural biotechnology regulatory framework may take several years to develop and receive approval through appropriate government channels.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Moroccan Industry Normalization Service (SNIMA) and the Laboratory for Public Tests and Studies (LPEE) are the two government organizations responsible for developing standards and conducting testing. SNIMA provides all product norms and standards certification, while LPEE performs product testing in accordance with ISO/IEC Guide 65. The FTA includes a reaffirmation of the WTO Agreement on Technical Barriers to Trade.

As a result of commitments made in the FTA, Morocco has improved transparency in its government rule making. Prior to the FTA, Morocco generally provided inadequate notice of new proposals or changes to standards, technical regulations, and conformity assessment procedures, which effectively denied U.S. parties the opportunity for comment. The FTA builds on WTO obligations, which Morocco has applied to improve the transparency of its government rule making process. In particular, Morocco now invites foreign participation and comment in the development of standards, technical regulations, and conformity assessment procedures. In addition, Morocco includes explanations of how comments from outside the government have been treated in the final drafting.

Morocco and the United States are working to reach agreement on sanitary certificates to accompany U.S. exports of meat and poultry products to Morocco, consistent with international standards.

GOVERNMENT PROCUREMENT

Morocco is not a signatory to the WTO Agreement on Government Procurement.

The United States-Morocco FTA requires the use of fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures for procurement covered by the Agreement. Under the FTA, U.S. suppliers are permitted to bid on procurements for most Moroccan central government entities, as well as the vast majority of Moroccan regional and municipal governments, on the same basis as Moroccan suppliers. The anticorruption provisions in the FTA require each government entity to ensure that bribery in government procurement is treated as a criminal offense or is subject to comparable penalties. Over the last year, Morocco has moved to reinvigorate its anticorruption enforcement efforts, setting up a central entity to lead the effort.

SERVICE BARRIERS

The United States-Morocco FTA provides U.S. firms with substantial access to Morocco's services market, subject to very few exceptions. Key service sectors covered by the Agreement include audiovisual, express delivery, financial, telecommunications, distribution, computer, mining, construction, and engineering.

Under the Agreement, Morocco is required to permit U.S. financial services firms to establish subsidiaries and joint ventures in Morocco. In addition, banks and insurance companies are permitted to establish branches, subject to a four year phase-in for most insurance services.

Although U.S. companies enjoy the same treatment in the insurance market as their Moroccan counterparts, the policies and practices of Morocco's insurance regulatory body have effectively prevented U.S. insurance companies from introducing competing products. In practice, only applications that bring new products or "added-value" to the sector are likely to be approved, as they must first be reviewed by a Consultative Committee composed principally of other companies active in the sector. While this committee’s recommendation is not binding, in practice the Ministry of Finance has followed its advice. We are addressing this situation through the Joint Committee process.

INVESTMENT BARRIERS

The United States and Morocco have a Bilateral Investment Treaty (BIT) that entered into force in 1991. The dispute settlement provisions of the BIT have been largely superseded by the FTA, which also contains investment provisions. All forms of investment – such as enterprises, debt, concessions, contracts, and intellectual property – are protected under the FTA. The FTA requires Morocco to remove certain restrictions and prohibits the imposition of other restrictions, such as requirements to buy Moroccan rather than non-Moroccan inputs for goods manufactured in Morocco. Although foreigners are not permitted to own agricultural land in Morocco, foreigners can lease land and were recently invited to bid on long-term leases for Sogeta and Sodega land (government-owned land nationalized from French citizens in the early 1970s).

OTHER OBSTACLES

The greatest obstacles to trade in Morocco are irregularities in government procedures, lack of transparent governmental and judicial bureaucracies, inefficient transport systems, and low-level corruption. Morocco ranks 128th out of 181 countries surveyed in the World Bank's annual ranking of the Ease of Doing Business. Morocco lags particularly in areas relating to its cumbersome tax and employment regimes, property registration and investor protections. Although the government is diligently working to liberalize the business environment and improve its business efficiency, foreign corporations still complain about these market access issues.

NEW ZEALAND

TRADE SUMMARY

The U.S. goods trade deficit with New Zealand was $595 million in 2008, an increase of $296 million from $299 million in 2007. U.S. goods exports in 2008 were $2.6 billion, down 8.7 percent from the previous year. Corresponding U.S. imports from New Zealand were $3.2 billion, up 1.7 percent. New Zealand is currently the 58th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to New Zealand were $1.5 billion in 2007 (latest data available), and U.S. imports were $1.7 billion. Sales of services in New Zealand by majority U.S.-owned affiliates were $3.0 billion in 2006 (latest data available), while sales of services in the United States by majority New Zealand-owned firms were $592 million.

The stock of U.S. foreign direct investment (FDI) in New Zealand was $5.4 billion in 2007 (latest data available), down from $6.0 billion in 2006. U.S. FDI in New Zealand is concentrated largely in the manufacturing and finance/insurance sectors.

FREE TRADE AGREEMENT (FTA)

In September 2008, the United States announced its intention to begin negotiations to join the Trans-Pacific Strategic Economic Partnership agreement, a high-standard FTA between New Zealand, Singapore, Chile, and Brunei Darussalam, intended to serve as a vehicle for Trans-Pacific economic integration. Shortly after the U.S. decision to join the negotiations, Australia, Peru, and Vietnam indicated their interest in participating as well.

IMPORT POLICIES

Tariff rates in New Zealand are generally low as a result of several rounds of unilateral tariff cuts that began in the mid-1980s. The New Zealand government announced in September 2003, that it would resume unilateral tariff reductions starting July 1, 2006. Under this unilateral tariff reduction program, New Zealand has reduced its highest tariff rates to 12.5 percent and will reduce these tariffs to 10 percent by July 1, 2009. These top rates apply mostly to clothing, footwear, and carpeting. *Ad valorem* tariffs on all other dutiable goods were reduced to 5 percent starting on July 1, 2008.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Regulations on Agricultural Biotechnology

New Zealand's Environmental Risk Management Authority (ERMA) is responsible for assessing and approving applications to introduce new organisms, including those produced through agricultural biotechnology. Since 1998, ERMA has granted approximately 15 approvals for contained field trials of biotechnology crops. Of these, approximately five have been completed, six are still ongoing, and the remaining approvals are either no longer in effect or are unused for various reasons. However, to date, there have been no applications for either a conditional or a full release of products derived by the use of agricultural biotechnology in New Zealand, which many attribute to the onerous, costly, and unproven nature of the regulatory framework. The United States has raised concerns about New Zealand’s regulatory policies regarding biotechnology crops in meetings under the United States-New Zealand

Trade and Investment Framework Agreement (TIFA) and other fora and will continue to discuss these issues with New Zealand.

Foods with biotechnology content can be offered for sale and consumption in New Zealand after being assessed and approved by Food Standards Australia New Zealand (FSANZ). FSANZ is responsible for setting food standards that govern the content and labeling of foods sold in both New Zealand and Australia, such as food composition, labeling and contaminants, including microbiological limits. A technical regulation for foods produced using agriculture biotechnology came into effect in mid-1999. The standard prohibits the sale of food produced using genetic engineering unless such food has been assessed by FSANZ and listed in the food code standard. As of July 2008, FSANZ has received a total of 43 applications for the assessment of biotechnology modified foods. Of these, 35 applications had been approved and six are under review. Two requests were withdrawn.

Labeling of Biotechnology Foods

Mandatory labeling requirements for biotechnology foods took effect in December 2001. With few exceptions, a food in its final form that contains detectable DNA or protein derived from genetic engineering must be so labeled. Many companies, including manufacturers, packers, importers, and retailers, find these regulations to be burdensome. New Zealand food legislation requires businesses to exercise due diligence in complying with food standards, which generally requires that they maintain a paper or audit trail similar to a quality assurance system.

Sanitary and Phytosanitary Measures (SPS)

New Zealand maintains a strict regime of SPS controls for virtually all imported animal and plant products. The United States and New Zealand continue to discuss specific SPS issues that impact trade in both directions as part of the annual TIFA dialogue and in other fora.

In July 2006, Biosecurity New Zealand adopted a new system for the funding and management of import health standards. While the new system is more transparent, it is resource intensive and Biosecurity New Zealand is still only able to complete about 10 percent of the requests for new import health standards. Biosecurity New Zealand announced in 2007 that it would only take applications for the development of import health standards from the competent authorities of exporting nations and not from domestic constituents. It is currently conducting a review of current procedures with a view toward streamlining them in the future.

At present, Biosecurity New Zealand is working on several import health standards for U.S. products including stone fruit (plums, peaches, nectarines, and apricots) from the Pacific Northwest, pork, cherries, and lemons.

On March 3, 2006, the United States requested market access for stone fruit from the Pacific Northwest. (Stone fruit from California is currently allowed entry into New Zealand.) Biosecurity New Zealand put the U.S. request on its work program in 2007 and expects to announce a draft import health standard in early 2009.

New Zealand currently maintains restrictions on U.S. pork meat and meat products due to concerns related to the Porcine Reproductive and Respiratory Syndrome (PRRS) virus. Having concluded a draft import health standard, New Zealand is proposing an import standard that will allow unrestricted importation of uncooked, consumer-ready, high-value cuts of pork meat from the United States. However, New Zealand is maintaining restrictions on other types of pork meat and meat products, as it asserts that the PRRS virus risks associated with these products is non-negligible. The import health standard is expected to be finalized in 2009.

New Zealand continues to suspend imports of U.S. poultry meat (except canned product) due to its restrictions on countries that have infectious bursal disease – a disease primarily affecting young chickens that is foreign to New Zealand and present in most poultry exporting countries of the world.

NZFSA requires case-by-case assessment of U.S. bovine products before importation due to concerns over Bovine Spongiform Encephalopathy (BSE). In February 2007 NZFSA announced a move to modernize its food safety importing requirements for beef and beef products in light of the new science that surrounds BSE. Among other things, the new measures enable New Zealand to categorize the BSE risk status of countries exporting to New Zealand. Once these measures are finalized, the current requirement to assess U.S. products on a case-by-case basis is expected to be eliminated.

GOVERNMENT PROCUREMENT

New Zealand is not a signatory to the WTO Government Procurement Agreement (GPA), but it became an observer to the WTO Committee on Government Procurement in December 2008. New Zealand is keeping the issue of commencement of accession to the GPA under review.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

New Zealand is an active participant in efforts to strengthen international IPR enforcement by participating in the negotiations on a multilateral Anti-Counterfeiting Agreement.

Copyrights

In April 2008, New Zealand passed the Copyright (New Technologies) Amendment Act, which advances copyright protection in New Zealand. The copyright industry continues to express concern over the standards of New Zealand's technology protection measures.

Patent Protection

New Zealand has introduced a new bill into Parliament that will replace an older law regarding patents. This bill will be referred to a Select Committee, which will likely seek public submissions as part of its consideration of the Bill in early 2009.

The Patent term will remain at twenty years from filing with no provision for extension. The Bill will remove the 1953 Act provision for pre-grant opposition and will introduce a "re-examination" provision which can be invoked at any time after acceptance of an application, a provision potentially of concern, as it differs from international practice. Re-examination will be limited to issues of novelty and inventive step based on documentary prior art. The 1953 Act post-grant opposition provisions will be expanded, and it will be possible to invoke post-grant opposition at any time during the patent term. The Bill also provides for the establishment of a Maori Advisory Committee to advise the Commissioner of Patents where patent applications involve traditional knowledge and indigenous plants and animals.

SERVICES BARRIERS

Media

Radio and television broadcasters have adopted voluntary local content targets after the New Zealand government made it clear that it would otherwise pursue mandatory quotas. New Zealand government officials have said they are sensitive to the implications of quotas under the GATS, but nonetheless they reserve the right to impose them.

Telecommunications

The Economic Development Minister announced in April 2007, that he would accept voluntary but enforceable commitments from Vodafone and Telecom to reduce mobile termination rates, once among the highest of all OECD countries, to more reasonable levels. The companies also committed to pass through reductions to their customers when benefitting from each other's reductions. Based on such commitments and over a five-year period, Telecom has offered to reduce its mobile termination rate to 7 U.S. cents per minute (cpm), and Vodafone has offered to reduce its mobile termination rate to 8 cpm by April 2011. This outcome contrasts with the 2005 Commerce Commission recommendation that rates be reduced immediately to 9 cpm by 2006, which was not implemented due to legal challenges brought by mobile operators.

INVESTMENT BARRIERS

Investment Screening

New Zealand maintains investment screening requirements, but has not blocked any foreign investment approvals for business investment since 1984. New Zealand's Overseas Investment Office (OIO) screens foreign investments that exceed NZ$100 million ($52 million) and represent 25 percent or more of the equity in a New Zealand enterprise, foreign investments in land defined as sensitive within the Overseas Investment Act 2005, and foreign investment in fishing. In August 2005, the New Zealand government enacted The Overseas Investment Act that liberalized the investment screening regime by refocusing screening on assets of critical interest. However, investors still are required to satisfy an "investor test," including that they are of good character, are not excluded from entering New Zealand under the Immigration Act, and can display both financial commitment and business acumen. The United States will continue to raise concerns about the continued use of this screening mechanism.

OTHER BARRIERS

Pharmaceuticals

The New Zealand Medicines and Medical Devices Safety Authority (Medsafe), a business unit of the Ministry of Health, regulates therapeutic products in New Zealand. Medicines must be approved by Medsafe before they can be marketed in New Zealand, or considered for subsidy by New Zealand's Pharmaceutical Management Agency (PHARMAC), a stand alone Crown entity that administers the Pharmaceutical Schedule that lists medicines that benefit from pricing subsidies from the New Zealand government. Completed applications for marketing approval for prescription medicines received by Medsafe since August 2006 have taken an average of 198 days to process.

PHARMAC managed expenditures account for 80 percent of total New Zealand spending on prescription drugs. New Zealand does not restrict the sale of pharmaceuticals that do not receive a pricing subsidy, but most private medical insurance companies will not cover the cost of these medicines and doctors are often reluctant to prescribe them. As a result, pharmaceutical companies may choose not to market a medicine in New Zealand if it does not receive a government price subsidy. U.S. industry continues to have concerns about the transparency, predictability, and accountability of PHARMAC's processes.

NICARAGUA

TRADE SUMMARY

The U.S. goods trade deficit with Nicaragua was $611 million in 2008, a decrease of $103 million from $714 million in 2007. U.S. goods exports in 2008 were $1.1 billion, up 22.8 percent from the previous year. Corresponding U.S. imports from Nicaragua were $1.7 billion, up 6.3 percent. Nicaragua is currently the 73rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Nicaragua was $203 million in 2007 (latest data available), up from $145 million in 2006.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic (the Parties). Under the Agreement, the Parties are significantly liberalizing trade in goods and services. The CAFTA-DR also includes important disciplines relating to: customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environmental protection.

The Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006. The CAFTA-DR entered into force for the Dominican Republic on March 1, 2007, and for Costa Rica on January 1, 2009.

In 2008, the Parties implemented amendments to several textile-related provisions of the CAFTA-DR, including, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The Parties also implemented a reciprocal textile inputs sourcing rule with Mexico. Under this rule, Mexico provides duty-free treatment on certain apparel goods produced in a Central American country or the Dominican Republic with U.S. inputs, and the United States provides reciprocal duty-free treatment under the CAFTA-DR on certain apparel goods produced in a Central American country or the Dominican Republic with Mexican inputs. These changes will further strengthen and integrate regional textile and apparel manufacturing and create new economic opportunities in the United States and the region.

Tariffs

As a member of the Central American Common Market, Nicaragua agreed in 1995 to reduce its common tariff to a maximum of 15 percent. In response to rising prices, Nicaragua issued a series of decrees in 2007 and 2008 to unilaterally eliminate, or reduce to 5 percent, tariffs on many basic foodstuffs and consumer goods through the first six months of 2009.

Under the CAFTA-DR, approximately 80 percent of U.S. industrial and consumer goods now enter Nicaragua duty-free, with remaining tariffs phased out by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter Nicaragua duty-free and quota-free, promoting new opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter Nicaragua duty-free. Nicaragua will eliminate its remaining tariffs on nearly all agricultural goods by 2025, including those on pork, rice, and yellow corn. Nicaragua will eliminate its tariffs on chicken leg quarters and rice by 2023 and on dairy products by 2025. For certain products, tariff-rate quotas (TRQs) will permit duty-free access for specified quantities during the tariff phase-out period, with the duty-free amount expanding during that period. Nicaragua will liberalize trade in white corn through expansion of a TRQ, rather than by tariff reductions.

Nontariff Measures

Under the CAFTA-DR, Nicaragua committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. Nicaragua also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and all the CAFTA-DR countries agreed to share information to combat illegal transshipment of goods.

The government levies a "selective consumption tax" on some luxury items that is 15 percent or less, with a few exceptions. The tax is not applied exclusively to imports; however, domestic goods are taxed on the manufacturer's price, while imports are taxed on the cost, insurance, and freight value. Alcoholic beverages and tobacco products are taxed on the price billed to the retailer.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Nicaragua and the other four Central American Parties to the CAFTA-DR are in the process of developing common standards for the importation of several products, including distilled spirits, which may facilitate trade.

Under the CAFTA-DR, Nicaragua reaffirmed its commitment to abide by the terms of the WTO Import Licensing Agreement. The Ministry of Health must provide a permit, renewable every five years, for the importation of any alcoholic beverage. U.S. industry has expressed concern about Nicaragua's proposed standards for alcoholic beverages distilled from sugarcane.

Sanitary and Phytosanitary Measures

During the CAFTA-DR negotiations, the governments created an intergovernmental working group to discuss sanitary and phytosanitary (SPS) barriers to agricultural trade. Through the work of this group, Nicaragua committed to resolving specific measures affecting U.S. exports to Nicaragua. For example, Nicaragua now recognizes the equivalence of the U.S. food safety and inspection systems for beef, pork, and poultry, thereby eliminating the need for plant-by-plant inspections of U.S. producers.

In February 2009, Nicaragua fully opened its market to all U.S. beef and beef products in line with the World Organization for Animal Health (OIE) guidelines for "controlled risk" countries for Bovine Spongiform Encephalopathy (BSE). The OIE categorized the United States as "controlled risk" for BSE in May 2007. Prior to February 2009, Nicaragua prohibited imports of U.S. deboned beef from cattle 30 months of age and older and bone-in beef from cattle of any age. Nicaragua based its import prohibition on the 2003 discovery of a BSE positive animal in the United States.

In 2008, Nicaragua and the four other Central American Parties to the CAFTA-DR notified to the WTO a set of microbiological criteria for all raw and processed food products imported into any of these countries. The United States has some concerns with these criteria and in May 2008 submitted comments to the five countries. The Central American countries are currently evaluating possible amendments to the proposed criteria.

Law 291 regulates the importation of products of agricultural biotechnology. The law was modified in 2003 to establish the Commission on Risk Analysis for Genetically Modified Organisms (CONARGEN), a panel composed of representatives from government and the academic community. According to the law, the Minister of Agriculture and Forestry, taking into consideration risk analysis conducted by CONAGREN, makes a final decision on biotechnology imports. Through this process, Nicaragua has allowed the entry of yellow corn for animal feed. Law 291 also addresses the field testing of biotechnology crops.

Nicaragua is a signatory of the Cartagena Protocol on Biosafety. As mandated by the protocol, Nicaragua requires that agricultural goods containing living modified organisms (LMOs), unless they include 95 percent or greater non-LMO content, be labeled to indicate that they "may contain" LMOs.

GOVERNMENT PROCUREMENT

Under the CAFTA-DR, procuring entities must use fair and transparent government procurement procedures, including advance notice of purchases and timely and effective bid review procedures for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers may bid on procurements of most Nicaraguan government entities, including key ministries and state-owned enterprises, on the same basis as Nicaraguan suppliers. To make its bidding process more transparent and efficient, Nicaragua launched a computer-based procurement system in 2006. The anticorruption provisions of the CAFTA-DR require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including government procurement, is treated as a criminal offense, or is subject to comparable penalties. Procurement by government entities not covered by the CAFTA-DR, such as the National Electricity Company, remains subject to nontransparent and irregular practices.

Nicaragua is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Nicaragua does not provide export financing. However, all exporters receive tax benefit certificates equivalent to 1.5 percent of the free-on-board value of the exported goods. Under the CAFTA-DR, Nicaragua may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.,* the export of a given level or percentage of goods). However, Nicaragua may maintain such duty waiver measures for such time as it is an Annex VII country for the purposes of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). Thereafter, Nicaragua must maintain any such measures in accordance with Article 27.4 of the SCM Agreement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The CAFTA-DR provides improved standards for the protection and enforcement of a broad range of IPR, which are consistent with U.S. and international standards, as well as with emerging international standards of protection and enforcement of IPR. Such improvements include state-of-the-art protections for patents, trademarks, undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, and digital copyrighted products such as software, music, text, and videos as well as further deterrence of piracy and counterfeiting.

In 2008, Nicaragua's National Police implemented a strategy to improve IPR enforcement that included a public awareness program, training on the detection of pirated goods and the application of IPR law, as well as the coordination of raids and seizures of pirated goods and equipment for their production. During the first eight months of 2008, the Nicaraguan police reported having seized 350,000 pirated and 80,000 blank DVDs and CDs and audiovisual equipment worth approximately $803,000. Despite these improvements, Nicaraguan efforts to enforce IP law remain limited. For example, the Nicaraguan government did not make any IPR-related arrests or convictions in 2008.

SERVICES BARRIERS

Financial Services

The CAFTA-DR ensures that U.S. financial services companies have full rights to establish subsidiaries, joint ventures, or bank branches, and U.S. insurance suppliers enjoy full rights to establish subsidiaries and joint ventures, with a phase-in provision for branches of financial services companies. Nicaragua allows U.S. based firms to supply insurance on a cross-border basis, including reinsurance; reinsurance brokerage; marine, aviation, and transport insurance; in addition to other insurance services.

Other Services Issues

Under the CAFTA-DR, Nicaragua granted U.S. services suppliers substantial access to its services market, including financial services, subject to very few exceptions. The Law on Promotion of National Artistic Expression and on Protection of Nicaraguan Artists (Law 215, 1996) requires that foreign production companies contribute 5 percent of total production costs to a national cultural fund. In addition, the law requires that 10 percent of the technical, creative, and/or artistic staff be locally hired. Under the CAFTA-DR, Nicaragua does not require U.S. film productions to contribute to the cultural fund or hire locally.

Under the CAFTA-DR, Nicaragua opened its telecommunications sector to U.S. investors, service providers, and suppliers. The telecommunications sector is fully privatized and open to competition, although some have expressed concern that political factors may affect renewal of broadcast licenses. Enitel, the former state telephone company, is now 99 percent owned by a Mexican telecommunications company. The mobile telephone industry in Nicaragua is served by two nationwide operators. Enitel controls switching for all cellular service and, therefore, interconnection. The telecommunications regulator, TELCOR, has generally encouraged competition in its licensing and regulatory practices. However, a protracted legal dispute between the executive and legislative branches over the country's public regulatory framework has resulted in a regulatory stalemate at TELCOR.

INVESTMENT BARRIERS

The CAFTA-DR establishes a more secure and predictable legal framework for U.S. investors operating in Nicaragua. Under the Agreement, all forms of investment are protected, including enterprises, debt, concessions, contracts, and intellectual property. U.S. investors enjoy, in almost all circumstances, the right to establish, acquire, and operate investments in Nicaragua on an equal footing with local investors. Among the rights afforded to U.S. investors are due process protections and the right to receive fair market value for property in the event of an expropriation. Investor rights are protected under the CAFTA-DR by an impartial procedure for dispute settlement that is fully transparent and open to the public. Submissions to dispute panels and dispute panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.

During the 1980s, the Sandinista government confiscated some 28,000 real properties. Since 1990, thousands of individuals have filed claims for the properties' return or for compensation. Compensation is most commonly granted via low-interest bonds issued by the government. As of October 2008, the Nicaraguan government had settled more than 4,500 U.S. citizen claims. A total of 617 Embassy registered U.S. claims remain outstanding. The United States continues to press the Nicaraguan government to resolve outstanding claims.

In August 2007, the Nicaraguan government seized, via judicial order, several petroleum storage tanks owned by a U.S. company, claiming that the company had not paid value added taxes associated with the importation of crude oil, even though crude oil is not subject to this tax. In a negotiated settlement, the government subsequently purchased the storage tanks from the company and paid for the use of the tanks during the seizure. In a separate instance, the courts declared four oil exploration concessions to two U.S. companies invalid because autonomous regional governments had not been properly consulted, forcing these companies to renegotiate some of the terms of concession agreements that had been tendered in an otherwise transparent manner by the previous administration.

ELECTRONIC COMMERCE

The CAFTA-DR includes provisions on electronic commerce that reflect its importance to global trade. Under the CAFTA-DR, Nicaragua has committed to provide nondiscriminatory treatment to U.S. digital products, and not to impose customs duties on digital products transmitted electronically.

OTHER BARRIERS

U.S. companies have raised concerns that Nicaragua's legal system is weak, cumbersome, and subject to political influence and that many members of the judiciary, including those at high levels, are believed to be corrupt. Enforcement of court orders can be erratic and subject to non-judicial considerations. Courts have granted orders (called an "*amparo*") to protect criminal suspects of white collar crime by enjoining official investigatory and enforcement actions indefinitely. Foreign investors are not specifically targeted but often find themselves at a disadvantage in any dispute with Nicaraguan nationals.

Law 364

U.S. companies and the U.S. Chamber of Commerce have concerns that Nicaraguan Law 364, enacted in 2000 and implemented in 2001, retroactively imposes liability on foreign companies that manufactured or used the chemical pesticide DBCP in Nicaragua. DBCP was banned in the United States after the Environmental Protection Agency cancelled its certificate for use (with exceptions) in 1979. U.S. companies have expressed concern that the law and its application under Nicaragua's judicial system lack due process, transparency, and fundamental fairness. In particular, the law allows for retroactive application of no-fault liability related to a specific product, waiver of the statute of limitations, irrefutable presumption of causality, truncated judicial proceedings, the imposition of a \$100,000 nonrefundable bond per defendant as a condition for firms to mount a defense in court, and escrow requirements of approximately \$20 million earmarked for payment of awards and minimum liabilities as liquidated damages (ranging from \$25,000 to \$100,000). Some plaintiffs seek to lay claim to U.S. company assets in other countries. The U.S. Government has been working with the affected companies and the Nicaraguan government to facilitate resolution of this issue.

NIGERIA

TRADE SUMMARY

The U.S. goods trade deficit with Nigeria was $34 billion in 2008, an increase of $4 billion from $30 billion in 2007. U.S. goods exports in 2008 were $4.1 billion, up 47.7 percent from the previous year. Corresponding U.S. imports from Nigeria were $38.1 billion, up 16.2 percent. Nigeria is currently the 44th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Nigeria was $190 million in 2006 (latest data available).

IMPORT POLICIES

Tariffs

In September 2008, the Nigerian government issued the 2008-2012 Common External Tariff (CET) Book that harmonizes its tariffs with its West African neighbors' under the Economic Community of West African States (ECOWAS) Common External Tariff (CET). Nigeria has been partially implementing the CET since 2005. The new tariff regime has five tariff bands and import duties have been reduced on a number of items, such as rice, cigars, and manufactured tobacco. The five CET tariff bands are: zero duty on capital goods, machinery, and essential drugs not produced locally; 5 percent on imported raw materials; 10 percent on intermediate goods; 20 percent on finished goods; and 35 percent on goods in certain sectors. The fifth band is still under negotiation among member countries. Adoption of the CET is part of ongoing economic reforms aimed at improving Nigeria's trade and investment environment and harmonization of economic policies in the subregion. There remains resistance within the Nigerian government and the private sector to deepen trade reforms.

Companies state that high tariffs, nontransparent valuation procedures, frequent policy changes and unclear interpretations by the Nigerian Customs Service (NCS) continue to make importing difficult and expensive, and often create bottlenecks for commercial activities. Some importers complain that tariffs are excessively high and that the Nigerian government sometimes uses arbitrary reference prices for valuation purposes. This problem is aggravated by Nigeria's dependence on imported raw materials and finished goods and affects both foreign and domestic manufacturers. Reportedly, many importers resort to undervaluing and smuggling to avoid paying full tariffs. Transparent and proper implementation of the CET would be an important step toward resolving most of these problems.

Nontariff Measures

Though the government continues to ban certain imports, citing the need to protect local industries, the new tariff book reduces the number of items on the import prohibition list from 44 to 26. Items removed from the list include corn, sorghum, millet, wheat flour, crude vegetable oil, biscuits, sugar confectioneries (including white chocolate), fresh and dried fruit, flowers (both fresh and plastic), toothpaste, envelopes, diaries, greeting cards, exercise books, bentonites, barites, calendars, cutlasses, axes, pick axes, spades, shovels, fully built mudguards, wheel barrows, and electric generating sound proof casings.

Items remaining on the import prohibition list include: bird's eggs, cocoa butter, powder and cakes, pork, beef, live birds, frozen poultry, refined vegetable oil and fats, cassava, bottled water, spaghetti, noodles, fruit juice in retail packs, nonalcoholic beverages (excluding energy drinks), certain textile products, and bagged cement. Companies were awarded concessions to import bagged cement for a limited time to bridge supply gaps. The cement concessions terminated at the end of December 2008, but the companies have applied for an extension.

Customs Administration

Nigeria practices a destination inspection policy for imports. Under this policy, all imports are inspected upon arrival into Nigeria, rather than at the ports of origin. Nigeria port practices continue to present major obstacles to trade. The country's long list of items prohibited for import, coupled with incorrect declaration of goods by importers, result in 95 percent of containers being physically examined. This delays the clearing process and increases costs. Nigeria's uneven application of import and labeling regulations make importing high-value perishable products difficult. Disputes between Nigerian agencies over the interpretation of regulations often cause delays, and frequent changes in customs guidelines slow the movement of goods through Nigerian ports. Importers report erratic application of customs regulations, lengthy clearance procedures, high berthing and unloading costs, and corruption. These factors can contribute to product deterioration and may result in significant losses for importers of perishable goods.

Realizing that delays at the ports significantly increase the cost of doing business in Nigeria, the Nigerian government plans to implement a 48 hour cargo clearance policy at the ports. Roads coming in and out of the ports are decaying, and overuse results in around-the-clock traffic congestion. There is no rail system transporting freight in and out of ports. As such, despite the 48 hour custom clearance policy, congestion leads to ships queuing up to berth at cargo terminals and containers waiting to be transported out of the ports. The bottlenecks resulting from the lack of infrastructure at and around the ports affect the level of efficiency at which goods can be processed for import. Currently over 15 agencies are represented at the ports. In a bid to achieve the 48 hour cargo clearance target at the ports, the Nigerian government plans to withdraw all agencies, except customs, from the ports and improve the technical capacity of customs to handle special cargos through continuous training of personnel. There are also plans to automate all customs payments.

EXPORT SUBSIDIES AND OTHER EXPORT PROMOTION PROGRAMS

Nigeria's government administers various export incentive programs such as tax concessions, export development funds, capital asset depreciation allowances, and foreign currency retention programs in addition to operating Free Trade Zones and Export Processing Zones. According to the 2008-2012 CET Book, most concessions, waivers or exemptions have been stopped; however, the Nigerian Export Promotion Council will continue to implement the Export Expansion Grant scheme to improve non-oil export performance.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Rules concerning sanitary and phytosanitary standards, testing, and labeling are well defined, but bureaucratic hurdles slow the import approval process. Regardless of origin, Nigeria requires that all food, drug, cosmetic, and pesticide imports be accompanied by certificates of analysis from manufacturers and appropriate national authorities; and specified animal products, plants, seeds, and soils must be accompanied by proper inspection certificates. By law, items entering Nigeria must be labeled exclusively in the metric system. U.S. producers and exporters note that relabeling goods to meet this requirement is expensive and limits U.S. exports to Nigeria. The NCS is charged with preventing the entry of products with dual or multiple markings, but such items are often found in Nigerian markets.

The National Agency for Food and Drug Administration and Control (NAFDAC) is charged with protecting Nigerian consumers from fraudulent or unhealthy products. The agency continues to focus special attention on eliminating the illicit importation of counterfeit and expired pharmaceuticals, particularly from East and South Asia. NAFDAC's limited capacity for carrying out inspections and testing contributes to what critics have characterized as an occasionally heavy-handed or arbitrary approach to regulatory enforcement which sometimes leads to delays in clearance of legitimate food imports.

Although Nigeria has no laws governing agricultural biotechnology or biosafety, the government is generally supportive of biotechnology. The Federal Ministry of Environment has presented draft biosafety legislation to the National Council on Environment, the highest decision-making body on environmental issues. If approved, the legislation will be sent to the National Executive Council of Ministers for ratification and then to the National Assembly for its consideration. The draft bill generally portrays products of biotechnology as safe for animal and human consumption; however, it includes a mandatory labeling requirement.

GOVERNMENT PROCUREMENT

The government has made modest progress on its pledge to conduct an open and competitive bidding process for government procurement. The Public Procurement Act, which was signed into law in June 2007, established the Bureau of Public Procurement (BPP) in place of the Budget Monitoring and Price Intelligence Unit. The public procurement reforms are aimed at ensuring that the procurement process for public projects adheres to international standards for competitive bidding. The BPP acts as a clearinghouse for government contracts and monitors the implementation of projects to ensure compliance with contract terms and budgetary restrictions. Procurement above 50 million naira ($419,000) is subject to review by the BPP. The 36 state governments have also agreed to enact the Public Procurement Act in their respective states.

Foreign companies incorporated in Nigeria receive national treatment in government procurement; government tenders are published in local newspapers; and a "tenders" journal is sold at local newspaper outlets. U.S. companies have won government contracts in several sectors. Unfortunately, many companies that have won contracts have subsequently had difficulty getting paid, often as a result of delays in the national budget process.

The National Petroleum Investment and Management Services agency's approval is required for all procurement in the energy sector with a value above $500,000. Approval processes are slow and can significantly increase the time and resources required for a given project. Nigeria is not a signatory to the WTO Agreement on General Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Nigeria is a party to the World Intellectual Property Organization (WIPO) Convention, the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, and the Patent Law Treaty. Nigeria has also signed the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Legislation intended to establish a legal framework for an IPR system consistent with WTO obligations has been pending in the National Assembly for several years.

The government's lack of institutional capacity to address IPR issues is a major constraint to enforcement. Relevant Nigerian institutions suffer from low morale, poor training, and limited resources. Despite

Nigeria's active participation in the conventions cited above and growing interest among Nigerians in seeing their intellectual property protected, piracy remains a problem. Counterfeit automotive parts, pharmaceuticals, business and entertainment software, music and video recordings, and other consumer goods are sold openly, and piracy of books and optical disc products is also a problem. Industry reports contend that intellectual property infringers from other countries appear increasingly active in using Nigeria as a base for the production of pirated goods.

Patent and trademark enforcement remains weak, and judicial procedures are slow and reportedly subject to corruption. However, the Nigerian government is taking steps to improve enforcement. Efforts to combat the sale of counterfeit pharmaceuticals, for example, have yielded some results. The Nigerian government also included pirated materials in the list of prohibited imports in the 2008-2012 CET Book, which provides NCS the authority to seize pirated works if imported into the country. In addition, the Nigerian government has requested training to improve its enforcement efforts. In 2008, the United States responded by providing training assistance on IPR enforcement to Nigerian government officials in several sectors, with a focus on copyright piracy. The U.S. intends to continue IPR training assistance to Nigeria in 2009, focusing on customs enforcement and combating counterfeiting that endangers public health and safety.

Nigeria's broadcast regulations do not permit rebroadcast or excerpting of foreign programs unless the station has an affiliate relationship with a foreign broadcaster. This regulation is generally complied with, but some cable providers illegally transmit foreign programs. The National Broadcasting Commission monitors the industry and is responsible for punishing infractions.

Widespread pirating of foreign and domestic videotapes discourages the entry of licensed distributors. In 2004, the Nigerian Copyright Commission (NCC) launched an anti-piracy initiative named "Strategy against Piracy." The Nigerian police force, working closely with the NCC, has raided enterprises producing and selling various pirated works such as software, books, and videos. About 29 cases are currently being prosecuted against IPR violators in various courts in the country. The Nigerian Economic and Financial Crimes Commission has also been active in IPR enforcement.

SERVICES BARRIERS

Foreign energy services suppliers are confronted with a number of barriers in Nigeria, particularly with respect to movement of personnel. Nigeria imposes quotas on foreign personnel based on the issued capital of firms. Such quotas are especially strict in the oil and gas sector and may apply to both production and services companies. Oil and gas companies must hire Nigerian workers unless they can demonstrate that particular positions require expertise not found in the local workforce. Positions in finance and human resources are almost exclusively reserved for Nigerians. Certain geosciences and management positions may be filled by foreign workers with the approval of the National Petroleum Investment and Management Services (NAPIMS) agency. Each oil company must negotiate its foreign worker allotment with NAPIMS. Significant delays in this process and in the approval of visas for foreign personnel present serious challenges to the energy industry in acquiring the necessary personnel for their operations.

INVESTMENT BARRIERS

Investment in the petroleum sector is limited to existing joint ventures or production-sharing agreements. Foreign investors may buy shares of any Nigerian firm except those firms on an exemption list, which includes, for example, companies that manufacture firearms, ammunition, and military and paramilitary apparel. Foreign investors must register with the Nigerian Investment Promotion Commission after incorporation.

Potential investors must contend with complex tax administration procedures, confusing land ownership laws, arbitrary application of regulations, corruption, and crime. The sanctity of contracts is often violated and Nigeria's court system for settling commercial disputes is weak and can be biased.

Foreign oil companies are under significant pressure to increase procurement from domestic firms. The Nigerian government, through the Nigerian Content Division (NCD) of the Nigerian National Petroleum Corporation (NNPC), has set a target of 45 percent local content for oil-related projects by 2006 and 70 percent by 2010. The Nigerian government did not meet its target for 2008 due to infrastructure challenges such as electric power, and insecurity in the oil producing Niger Delta. In many cases, sufficiently trained personnel and physical infrastructure do not currently exist to meet the government's local content targets. Although some domestic firms possess adequate technical expertise, managerial and financial capabilities are often lacking. New legislation to codify mandatory levels of Nigerian content in specific petroleum activities is pending in the National Assembly. If enacted, the legislation would have a strong negative impact on the operations of foreign energy services companies already operating in Nigeria and could lead to a reduction in oil production.

The vast majority of natural gas flaring in Nigeria is done in older, onshore, and near offshore oilfields. International oil companies typically operate those fields in a joint venture arrangement with the state oil company as the majority partner. Funding for joint venture operations, maintenance, and equipment upgrades comes from joint venture partners in proportion to their equity ownership. Over the past several years, the Nigerian government has failed to fully fund its share of the joint venture costs, reducing the ability of the operating partners to install new anti-flare technology in these older oilfields.

OTHER BARRIERS

The Nigerian government has made efforts to eliminate financial crimes such as money laundering and advance fee fraud (also known as "419 fraud," after the relevant section of the Nigerian Criminal Code). In June 2006, the Financial Action Task Force removed Nigeria's name from the list of noncooperating countries and territories in the fight against money laundering and other financial crimes. In May 2007, Nigeria was admitted into the Egmont Group of Financial Intelligence Units.

International monitoring groups routinely rank Nigeria among the most corrupt countries in the world, with the latest Transparency International rating being 121, an improvement from 147 in 2007, out of 180 countries. Despite this trend, Nigeria's corruption levels remain high and its main anticorruption institution, the Economic and Financial Crimes Commission has faltered recently in its reputation and commitments on the issue. Some U.S. suppliers believe they lose sales when they refuse to engage in illicit or corrupt behavior. Other U.S. exporters say Nigerian businessmen and officials understand that U.S. firms must adhere to the U.S. Foreign Corrupt Practices Act, and they believe that the law's restrictions help minimize their exposure to corruption.

NORWAY

TRADE SUMMARY

The U.S. goods trade deficit with Norway was $3.9 billion in 2008, a decrease of $346 million from $4.3 billion in 2007. U.S. goods exports in 2008 were $3.4 billion, up 11.1 percent from the previous year. Corresponding U.S. imports from Norway were $7.3 billion, down 0.1 percent. Norway is currently the 47th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Norway were $3.0 billion in 2007 (latest data available), and U.S. imports were $2.1 billion. Sales of services in Norway by majority U.S.-owned affiliates were $4.9 billion in 2006 (latest data available), while sales of services in the United States by majority Norway-owned firms were $1.3 billion.

The stock of U.S. foreign direct investment (FDI) in Norway was $11.7 billion in 2007 (latest data available), up from $10.3 billion in 2006. U.S. FDI in Norway is concentrated largely in the mining and manufacturing sectors.

IMPORT POLICIES

Industrial Goods

Norway, along with Switzerland, Iceland and Liechtenstein, is a member of the European Free Trade Association (EFTA). EFTA members, with the exception of Switzerland, participate in the European Union (EU) single market through the European Economic Area (EEA) accord. Norway grants preferential tariff rates to EEA members. As an EEA signatory, Norway assumes most of the rights and obligations of EU member states. The exceptions are in the agricultural and fishery sectors, in addition to finance and foreign policy, none of which are covered by the EEA accord. As a non-EU member, Norway's ability to influence EU decisions is limited.

Although Norway maintains a liberal trade and investment regime with respect to industrial products, its agricultural sector remains highly protected. Some of Norway's agriculture trade restrictions are more severe than those of the EU, such as nontariff barriers related to approval for agricultural products derived from biotechnology. As a general matter, Norway has implemented or is in the process of implementing most EU trade policies and regulations. Therefore, U.S. exports to Norway face many of the same trade and investment barriers that limit U.S. access to the EU, such as the ban on hormone-treated meat products.

Norway's market, except for agricultural products and processed foods, is generally transparent and open. Norway has continued on a unilateral basis to dismantle import tariffs on industrial products. The average Most Favored Nation (MFN) tariff on nonagricultural products has fallen from 2.3 percent in 2000 to less than 1 percent today. More than 90 percent of industrial tariff lines are currently duty free.

Agricultural Products

Although agriculture accounts only for about 1 percent of Gross Domestic Product (GDP), Norway maintains strict protections that shelter the sector from global competition. As justification for this policy, Norway emphasizes the importance of "non-trade concerns," which include food security, environmental protection, rural employment, and the maintenance of human settlement in sparsely populated areas. One of Norway's leading concerns in the WTO Doha Development Round has been the preservation of its highly subsidized and protected agricultural sector. Norway remains committed to advocating tariff-sensitive product and special product protections for its agricultural sector.

Agricultural Tariffs

Norway bound its tariffs for agricultural commodities in 1995 as part of its WTO commitments. Tariffication of agricultural nontariff barriers as a result of the Uruguay Round led to the replacement of quotas with high *ad valorem* product tariffs. Although Norway is only 50 percent self-sufficient in agricultural production, it maintains a protective system that assures that domestic producers – farmers as well as the food processing industry – have little competition until all domestic production has been consumed. Tariff rates on agricultural products currently average about 38 percent – in comparison to less than 1 percent for nonagricultural products – and can range as high as several hundred percent.

Domestic agricultural shortages and price surges have been offset by temporary tariff reductions. Lack of predictability in tariff adjustments and insufficient advance notification of these adjustments – generally only two days to five days before implementation – favor nearby European suppliers and make imports from the United States, especially of fruits, vegetables and other perishable horticultural products, very difficult. For a number of processed food products, tariffs are applied based on their formulas, requiring the Norwegian importer to provide a detailed disclosure of product contents. Many exporters to the Norwegian market refuse to give all requested details and their products are, as a result, subjected to maximum tariffs.

Agricultural Tariff-Rate Quotas

Norwegian tariff-rate quotas (TRQs) are divided into two categories – minimum access quotas and Generalized System of Preferences quotas. TRQs exist for grains and a number of horticultural products. In 2001, Norway also implemented auction quotas for grain and other carbohydrate feed. All quotas are traded at auctions held by the Norwegian Agricultural Authority, a Ministry of Agriculture agency that controls all agricultural imports. Interest in the quotas among Norwegian importers is limited, except for grain, despite the substantial reductions in duties for some products. Compared with domestic consumption and production, the quotas are very small. Most of the interest in Norway's quota auction comes from smaller importers who use their quotas for niche products.

Auction participation is inexpensive, and those who secure a quota are not required to actually import. Although about 98 percent of the quotas each year are sold on these auctions, only 40 percent to 60 percent of the quotas auctioned are usually filled. There is no system to reallocate unused import quotas, also hindering foreign exporters seeking access to the Norwegian market for these products.

Raw Material Price Compensation

Though Norway uses high import tariffs to protect domestic commodities from foreign competition, the situation is more complex for certain processed goods. Although the EEA does not generally apply to agricultural products, it includes provisions on raw material price compensation that are meant to increase trade in processed food. Norway has a special agreement with the EU within the EEA framework that imposes a preferential duty on some EU processed food products. In 2003, this agreement extended coverage to bread and baked goods, breakfast cereals, chocolate and sweets, ice cream, pasta, pizza, soups, and sauces. This scheme disadvantages U.S. exporters to the Norwegian market for the covered processed foods.

Norway also maintains a price reduction scheme that includes subsidies for using certain domestically-produced raw materials in processed foods. Products for which such subsidies are paid include chocolate, sweets and ice cream (for milk and glucose), and pizza (for cheese and meat). The purpose of the system is to help compensate the domestic food processing industry for high domestic raw material costs.

EU Based Agricultural Regulations

In addition to its own requirements related to the import of food products, Norway has generally implemented EU regulations since 1999. The majority of Norwegian sanitary and phytosanitary measures related to trade in plants, animals and foodstuffs are harmonized with EU legislation through the EEA Agreement. An exception is plant health legislation and the approval and use of pesticides. Some EU regulations that Norway has adopted inhibit trade, such as EU regulations on veterinary control of animals and animal products requiring that meat products entering the country come from an EU-approved plant and be accompanied by the necessary health certificates. The importer in Norway must be registered and notify authorities in advance of the arrival of any shipment (24 hours in advance for plants and 30 days in advance for animals). Except for fish products, shipments must enter through either Oslo harbor or Oslo airport. Twenty entrance locations exist for fish products.

Norway also implements EU regulations that ban imports of meat from animals treated with growth hormones. However, the market for U.S. beef for consumption on cruise ships based in, or calling on, Norwegian ports is burgeoning, as beef consumed on board is not subject to such import restrictions.

Biotechnology

Norway’s strict limitations on imports of agricultural biotechnology products have had an adverse impact on U.S. producers. Before the limitations took effect in 1996, U.S. exporters usually supplied 60 percent to 80 percent of the Norwegian soybean market. As a result of the limitations, the entire market has been lost.

Although not a member of the EU, as an EEA member Norway is required to implement EU legislation with regard to food, feed and seed produced from genetic engineering. However, the Norwegian Gene Technology Act of 1993 is more restrictive than EU legislation, as it requires proof that agricultural biotechnology products were developed with an ethical justification, provide a societal benefit, and accord with sustainable development goals. This difference in the assessment of products of bioengineering for licensing has led to Norway’s rejection of several biotechnology products approved in the EU. Only four biotechnology products have actually received approval for marketing in Norway – one line of tobacco and three lines of carnations. In 2004, the EU implemented Regulation 1829/2003 on Genetically Modified Food and Feed, as well as Regulation 1830/2003 on Traceability and Labeling of Genetically Modified Organisms and the Traceability of Food and Feed Products produced from Genetically Modified Organisms. These polices were integrated into Norwegian regulations in September 2005.

All food and feed produced from genetic engineering, including products that no longer contain detectable traces of agricultural products derived from biotechnology, must be labeled. The allowable adventitious presence level is set at 0.9 percent for EU-approved products and 0.5 percent for products that have not yet been approved but have successfully completed an EU or Norwegian risk assessment. All products testing above these levels must be labeled. The regulation does not require labeling of products that are not food ingredients, such as processing aids. Meat, milk or eggs obtained from animals fed with products derived from biotechnology or treated with medicinal products derived from biotechnology do not require additional labeling.

Norway actively works to promote its views on biotechnology through international organizations like the Cartagena Protocol on Biosafety and the Codex Committee on Food Labeling.

Wines and Spirits

The wine and spirits retail market in Norway is controlled by the government monopoly Vinmonopolet, with a stated social mission of contributing toward curbing alcohol consumption, regulating spirit access, and adhering to a system of social control. There were 234 Vinmonopolet stores throughout Norway in 2008, with over 10,000 products sold. The market share of U.S. wine offered through the Vinmonopolet in 2007 is less than 2 percent. Wine and spirits sales through ordinary retail stores are not allowed. An approved importer/agent and distributor are required in order to enter the market. Gaining approvals to include wines and other alcoholic beverages on Vinmonopolet's retail list is cumbersome, contributing to the limited variety of U.S. wines available to Norwegian consumers. Vinmonopolet's tender system sets specifications and conditions for quality, price and delivery, for the purchase of most new products. Products chosen for sale through Vinmonopolet must meet annual minimum sales quotas or they are dropped from the basic list inventory. Advertising of alcoholic beverages is strictly prohibited. In 2008, U.S. and Norwegian authorities held constructive discussions on ways to raise awareness of U.S. wines and increase the number of quality U.S. wines in Norway. These discussions strongly contributed to Vinmonopolet's decision to promote more American wines throughout their stores in 2009.

GOVERNMENT PROCUREMENT

Norway is a signatory to the WTO Agreement on Government Procurement. Norway's government procurement procedures are nondiscriminatory and based on open, competitive bidding for procurement above certain threshold values. A similar set of national rules applies to public contract tenders below these thresholds. Exceptions for defense procurement leave a "gray area" for dual use items that can also be used in military operations. National law regulates defense procurement. Although disputes may be settled by the European Surveillance Authority (ESA) or by the courts, the process can be unduly lengthy.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Enforcement of IPR in Norway is inconsistent. U.S. industry reports that Norwegian police and judicial authorities are apparently committed in principle to taking action against piracy, counterfeiting and other forms of IPR infringement, and have successfully prosecuted a number of high profile cases. However, further improvements in IPR enforcement are needed.

Industry representatives report that Internet piracy exists in Norway, due to prevalent broadband Internet penetration and to the ease of peer-to-peer downloads of music and video. In 2008, Norway experienced its first "camcording incidents" involving motion pictures illegally recorded in cinemas.

According to U.S. industry, Norway does not expressly ban imports of counterfeit or pirated goods. Although counterfeit and pirated goods are not commonly available domestically, counterfeiters and pirates reportedly have used Norway for transshipment to EU nations.

Industry representatives report concerns with Norway's implementation of the EU's 2001 Copyright Directive that addresses Internet piracy, as well as broad private use exceptions under Norway's copyright laws. The United States will also monitor legal developments in Norway relating to interoperability of digital rights management (DRM) technologies.

U.S. and Norwegian authorities held constructive discussions in 2008 concerning the need to educate and promote public awareness of illegal internet use, the role of ISPs in prohibiting piracy, and dedicating necessary public resources to combat piracy and prosecute offenders.

Pharmaceuticals

U.S. pharmaceutical companies continue to be concerned with the lack of product patent protection for certain pharmaceutical products in Norway. The United States will continue to encourage Norway to resolve this issue.

SERVICES BARRIERS

Financial Services

Current regulations require that the Norwegian Financial Supervisory Authority grant permission for ownership levels in local financial institutions that exceed certain thresholds. The Authority assesses the acquisitions to ensure that prospective buyers are financially stable and that the acquisition does not unduly limit competition. The Authority applies national treatment to nonbank foreign financial groups and institutions, but maintains nationality requirements for certain types of financial institutions where at least half the members of the board and half the members of the corporate assembly must be nationals and permanent residents of Norway or another EEA nation. On January 1, 2005, Norway removed the ceiling on foreign equity in a Norwegian financial institution, provided the Authority has granted a concession.

Telecommunications

Telenor, a company in which the government holds a 54 percent stake, is the dominant operator in the Norwegian telecommunications market. In 2005, the Norwegian Post and Telecommunications Authority (NPTA), in line with the EU's telecommunications regulatory framework, declared that Telenor had significant market power in a number of segments in the telecommunications sector including: leased lines; call origination; transit services; wholesale unbundled access to metallic loops and sub-loops for the purpose of providing broadband and voice services; wholesale broadband access; and wholesale transmission services for national radio, local television, and national television on analog terrestrial networks. The NPTA imposed regulatory requirements on Telenor in order to facilitate competitors' entry into, and further access to these markets.

INVESTMENT BARRIERS

Norway welcomes foreign investment as a matter of policy and grants national treatment to foreign investors, except in mining, hydropower and property acquisition. Foreign companies are required to obtain concessions for the right to own or use various kinds of real property, including forests, mines, tilled land and waterfalls. However, foreign companies do not need concessions to rent real estate, provided that the rental contract is made for a period of fewer than 10 years.

Norway's petroleum concession process still operates on a discretionary basis, with the government awarding licenses based on subjective factors rather than competitive bidding. The Norwegian government does not allow foreign investment in the direct ownership of hydropower resources.

Energy Sector Competition

Norway's two major petroleum producers and the largest Norwegian Continental Shelf (NCS) operators, the government-controlled Statoil and Norsk Hydro, merged on October 1, 2007. The new entity, StatoilHydro, controls approximately 80 percent of NCS operatorships. The Norwegian government has a 63.9 percent share in the merged firm, and stated that it will increase its ownership to a 67 percent share. Given the two Norwegian petroleum firms' previous dominant and competitive NCS operatorship roles, the merger may have ramifications for foreign competitors seeking to operate and/or develop the NCS. The Norwegian government has contended that the merger will not reduce NCS value creation, even though the government recognizes that the merger requires governmental monitoring to ensure a balance in future NCS development.

On June 22, 2007, the Norwegian government also bought a 30 percent share in the Norwegian company Aker Holding AS, which in turn is a 40 percent owner of AkerSolutions, the largest Norwegian-owned services company in the country's oil and gas industry, as well as the largest equipment supplier to Norway's oil and gas industry. The approximately $800 million investment was prompted by the government's call to ensure national ownership in key businesses. The long-term impact on market access for U.S. companies resulting from both the StatoilHydro merger and AkerSolutions buy-in is unclear.

OTHER SECTORAL POLICIES

Automotive Sector

The general vehicle taxation system that Norway implemented in 1996, under which taxes are calculated progressively on the basis of vehicle weight, engine horsepower, and engine displacement, has had a strong negative impact on sales of U.S. vehicles in Norway. These parameters tend to be unfavorable to vehicles manufactured in the United States, which are generally heavier and equipped with engines with more horsepower and higher displacement than vehicles manufactured in other nations. In the year before this tax regime went into effect, approximately 9,500 American vehicles were sold in Norway, nearly 8 percent of the market. Since that time, sales of U.S. vehicles in Norway have steadily declined, to less than 1,500 in 2005 (about 1 percent of the market), most of which were light trucks. However, in its 2006 budget, the Norwegian government imposed new taxes on light trucks that, in effect, eliminated the last significant remaining market for U.S. vehicles in Norway. More than 1,000 U.S. light trucks were sold in Norway before the tax went into effect. Post-tax sales plummeted to several dozen vehicles.

Effective January 1, 2007, Norway substituted a new carbon dioxide (CO_2) emissions factor for the engine displacement parameter in its vehicle taxation regime. All non-EU tested cars are subject to an engine displacement factor when taxes are formulated. Certain American cars exported to Norway, which are neither tested in Europe, nor use EU test cycles, must now use the displacement factor (which increased by 23 percent from 2006 levels), resulting in higher taxes. The new system encourages sales of diesel powered passenger vehicles, which generally are not manufactured in the United States. Moreover, Norway will not accept any foreign emission standards, including those of the U.S. Environmental Protection Agency, in the new tax regime, adhering only to EU standards for measuring CO_2 emissions. Norway announced that it would lift the light truck tax in 2007 for trucks with cargo space above certain limits, but the space limitations deny most U.S. light trucks the benefit of the restored exemption. Estimates indicate a 50 percent reduction in the number of exported American cars, specifically caused by the new tax, since the newly-factored tax rate was instituted.

In 2008, U.S. and Norwegian authorities held discussions on the initial consequences of the new tax regime, including industry requests to allow data from EU test cycles when calculating sales taxes. The new tax system has led to significantly higher taxes, with one American hybrid automobile currently subject to a tax increase exceeding $70,000. The Finance Ministry is currently reviewing data demonstrating the higher tax rates now affecting many U.S. automobiles.

OMAN

TRADE SUMMARY

The U.S. goods trade surplus with Oman was $563 million in 2008, an increase of $545 million from $18 million in 2007. U.S goods exports in 2008 were $1.4 billion, up 33.6 percent from the previous year. Corresponding U.S. imports from Oman were $852 billion, down 18.2 percent. Oman is currently the 70th largest export market for U.S. goods.

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), Oman applies the GCC common external tariff of 5 percent for most products, with a limited number of GCC-approved country-specific exceptions. Oman's exceptions include tariff rates of 100 percent on pork, alcohol products and cigarettes, and 25 percent on edible oils sold in retail packaging, as well as protective duties on a limited number of agricultural products such as dried lemons, bananas, dates and ghee.

Upon entry into force of the United States-Oman Free Trade Agreement (FTA) on January 1, 2009, Oman provided immediate duty-free access on virtually all industrial and consumer products in its tariff schedule, and will phase out tariffs on the remaining handful of products within 10 years. On agricultural products, Oman provided immediate duty-free access for U.S. agricultural products in 87 percent of agricultural tariff lines. Oman will phase out tariffs on the remaining products within 10 years.

Import Licensing

Companies that import goods into Oman must be registered with the Ministry of Commerce and Industry. Importation of certain classes of goods, such as alcohol, livestock, poultry, and their respective products, as well as firearms, narcotics and explosives, requires a special license. Media imports are subject to censorship.

Documentation Requirements

Except for food products, Oman does not require legal documents to be authenticated if the importing company has an existing agency agreement with a U.S. exporter. Only Omani nationals and companies of WTO Members that are registered as importers are permitted to submit documents to clear shipments through customs.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Standards

Oman, as part of the GCC Customs Union, is working with the five other Member States toward unifying their standards and conformity assessment systems. However, each Member State currently continues to apply either its own standard or a GCC standard, resulting in a complicated situation for some U.S. businesses. GCC Member States do not consistently send notification of new measures to WTO Members and the WTO Committee on Technical Barriers to Trade or allow WTO Members an opportunity to provide comments.

In May 2008, the GCC Standards Committee approved two new standards for the labeling and expiration periods of food products. The new GCC standards eliminate the long standing requirement that at least one-half of a product's shelf life be valid when a product reaches a port of entry in GCC Member States. Officials from the Gulf Standards Organization have stated that GCC Member States will accept use of the terms "best by" and "best before" as meeting the date labeling requirement for shelf-stable products. The United States has requested written confirmation of this situation.

Conformity Assessment

The GCC Standards Committee is currently developing a conformity assessment scheme to be adopted ultimately by each of the six Member States and has set 2010 as a deadline for full implementation by each Member State. The United States is working to establish a dialogue between U.S. and GCC technical experts to discuss this proposed scheme with the goal of helping to ensure that it is developed, adopted, and applied in accordance with WTO rules.

SPS Measures

In October 2007, Oman notified WTO Members of proposed procedures meant to harmonize food safety import requirements for all GCC Member States. The United States and other WTO Members provided comments outlining significant concerns with the procedures, which, as currently drafted, do not appear to have a clear scientific basis and would substantially disrupt food exports to GCC Member States from their trading partners. The GCC Member States indicate that they are developing a response to these comments, and the United States has established a dialogue between U.S. and GCC technical experts to discuss the procedures and potential amendments to address the concerns raised.

GOVERNMENT PROCUREMENT

Oman provides a 10 percent price preference to tenders that contain a high content of local goods or services, including direct employment of Omani nationals. The government considers the quality of a product or service, as well as cost, in evaluating bids. For most major tenders, Oman typically invites bids from firms either already registered in Oman or pre-selected by project consultants. Oman advertises tenders in the local press, international periodicals, and on the Oman Tender Board's website. Bidders are requested to be present at the opening of bids, and interested persons may view the process on the Tender Board's website. U.S. industry has reported that bidders' costs can sometimes increase dramatically when award decisions are delayed, sometimes for years, or the bidding is reopened with modified specifications and, typically, short deadlines. Oman's Ministry of Defense may require that companies involved in defense-related transactions participate in its offset program, entitled "Partnership for Development."

Upon entry into force of the United States-Oman FTA in January 2009, procuring entities in Oman are required to conduct procurement covered by the FTA in a fair, transparent, and nondiscriminatory manner. Oman will also no longer apply its price preferences to procurement covered by the FTA.

In accordance with its commitment in WTO accession, Oman began the process of acceding to the WTO Agreement on Government Procurement in 2001, but the negotiations have been inactive since 2003.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In the United States-Oman FTA, Oman committed to provide strong IPR protection and enforcement for copyrights, trademarks, geographical indications and patents. Oman revised its IPR laws and regulations to implement these FTA commitments, and acceded to several international IPR treaties.

As part of the GCC Customs Union, the six Member States are working toward unifying their IP regimes. In this respect, the GCC is preparing a draft common trademark law. All six Member States are expected to adopt this law as national legislation in order to implement it. The United States has outlined specific concerns with the trademark law and has established a dialogue between U.S. and GCC technical experts to ensure that the law complies with the Member States' international and bilateral obligations.

SERVICES BARRIERS

Banking

Oman does not permit representative offices or offshore banking.

INVESTMENT BARRIERS

The investment chapter of the United States-Oman FTA sets out a secure, predictable legal framework for U.S. investors operating in Oman. Among other things, under the FTA, Oman committed to provide U.S. investors in Oman MFN treatment and national treatment, and the right to make financial transfers freely and without delay. In addition, Oman committed to apply international law standards for expropriation and compensation and provide access to international arbitration. Many forms of investment are protected under the FTA, including enterprises, debt, concessions, contracts, and intellectual property rights. As a result, U.S. investors in almost all circumstances are entitled to establish, acquire, and operate investments in Oman on an equal footing with Omani investors and with investors of other countries. The FTA also prohibits the imposition of certain restrictions on U.S. investors, such as requirements to buy Omani rather than U.S. inputs for goods manufactured in Oman.

Although U.S. investors are permitted to purchase freehold property in designated residential developments in accordance with regulations promulgated by the government in 2007, businesses must adhere to more restrictive guidelines when acquiring real estate for offices. With the exception of certain tourism-related property agreements, only companies or enterprises with at least a 51 percent Omani shareholding are permitted to own real estate for the purpose of establishing an administrative office, staff accommodation, warehouse or show room or other building with a similar purpose. In addition, these companies must hold onto the land for at least two years. Other enterprises, including foreign majority-owned businesses, may instead seek "usufruct" rights that enable them to exploit, develop, and use land granted by a third party. A usufruct agreement is similar to a lease agreement and must be registered with the Ministry of Housing.

PAKISTAN

TRADE SUMMARY

The U.S. goods trade deficit with Pakistan was $1.6 billion in 2008, an increase of $55 million from $1.5 billion in 2008. U.S. goods exports in 2008 were $2.0 billion, down 2.1 percent from the previous year. Corresponding U.S. imports from Pakistan were $3.6 billion, up 0.4 percent. Pakistan is currently the 63rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Pakistan was $674 million in 2007 (latest data available), down from $1.2 billion in 2006.

IMPORT POLICIES

Although for 2007-08, Pakistan's average applied tariff was 14.5 percent, with 14 different *ad valorem* duties ranging from 0 percent to 90 percent, and specific rates of duty on 44 products, in its 2008-09 budget, the government of Pakistan increased duties on 300 non-essential and luxury items from the 15 percent to 25 percent range to between 30 percent and 35 percent. These items include cosmetics, many domestic appliances, luxury food items and cigarettes. The custom duties on cars with 1800cc engine capacity and larger have been raised from 90 percent to 100 percent. A 5 percent duty has been imposed on imported vehicles with engines smaller than 850cc engine capacity. A $3.70 duty is being assessed on imported cell phone handsets. Pakistan's simple average applied tariff was 13.1 percent in FY 2008.

Pakistan has a 55 percent duty on imported automotive parts that are also manufactured domestically and a 35 percent duty on those automotive parts that it does not manufacture domestically. Pakistan reduced duties on instant print film and instant print cameras to 5 percent from the prior 30 percent to 200 percent range in order to eliminate incentives for smuggling.

The government of Pakistan reserves the right to grant sector-specific duty exemptions, concessions, and protections under Statutory Regulatory Orders (SROs). The government in 2006 exempted all domestically-produced and imported pharmaceutical-related inputs from its General Sales Tax. An SRO issued in August 2002 exempted pharmaceutical products from the General Sales Tax. In recent years, the use of SROs has decreased. SROs and other trade policy and regulatory documents are published on the Central Board of Revenues website: http://www.cbr.gov.pk.

U.S. soft drink manufacturers have reported that Pakistan imposes a 12 percent Central Excise Duty (CED) on carbonated soft drinks and a 50 percent CED on soft drink concentrate. Competing beverages, including sweetened fruit-flavored drinks, juice and bottled water, are not subject to the taxes.

In January 2000, the Pakistani government began implementing a transactional valuation system, under which 99 percent of import valuation is based on invoice value, in accordance with the WTO's Customs Valuation Agreement. Currently, about 90 percent to 95 percent of imports are assessed duties pursuant to the transactional valuation system, including Pakistan's major imports such as industrial and power equipment, petroleum and petroleum products, and chemicals. A number of traders in food and nonfood consumer products, however, report that the system is not uniformly applied. A few major U.S. companies in the machinery and materials sector have reported specific concerns with application of customs valuation methods by Pakistan Customs. Pakistan is not enforcing a 2005 regulation requiring that the commercial invoice and the packing list be included inside a container. The inclusion of invoice and packing lists is difficult in situations when shipments originate in a different location from where the invoice and packing list are created, or when invoices are created after the shipment departs, or when several companies are involved.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Pakistan Standards and Quality Control Authority (PSQCA) is the national standards body. The functions of PSQCA include the establishment and enforcement of national standards, registration of inspection agencies, and assessment of industrial raw materials and finished products for compliance with international standards. As of June 30, 2008 (the end of Pakistan's 2008 fiscal year), PSQCA had adopted over 27,165 standards (including 15,000 International Organization for Standardization (ISO) standards and 6,000 IEC standards) for agriculture, processed food, chemicals, civil and mechanical engineering, electronics, weights and measures, and textile products. Current estimates indicate that there are 15 certification bodies operating in Pakistan, and close to 2,700 enterprises have been issued ISO 9000, ISO 14000 and Occupational Health and Safety Advisory Services (OHSAS) 18000 certificates. (Initially there were 5,000 but many of the enterprises dropped out of the program). All of the certification bodies operating in Pakistan are foreign-based. U.S. industry contends that inconsistent application of PSQCA requirements occasionally results in discrimination against U.S. agricultural products.

Generally, U.S exporters have not reported significant problems due to the application of standards and technical regulations. Pakistan allows the import of U.S. products that meet U.S. standards in cases where there are no Pakistani standards or where the Pakistani standards (some of which are based on U.S. standards) do not conflict with the U.S standards. As a result, Pakistan allows the import of most U.S. products that meet U.S. standards without meeting further requirements.

The government of Pakistan approved biosafety guidelines and rules in April 2005 and also approved an action plan to implement these guidelines. As part of the action plan, the government has established a National Biosafety Committee within the Environment Ministry. The Committee has the mandate to approve applications, sell biotechnology based products in Pakistan, and register biotechnology products. To date, the Committee has received 23 applications related to genetically modified organisms, 12 of which have been approved for laboratory tests while 2 have been approved for field testing in order to qualify for commercial use. Currently there are no restrictions on importing genetically modified products from the United States as long as they meet U.S. standards.

GOVERNMENT PROCUREMENT

Pakistan is not a signatory to the WTO Agreement on Government Procurement. The government uses an open procurement process, though bidders have to register with the government in order to be awarded contracts. Registration is required to ensure that legitimate businesses are bidding for contracts. The Public Procurement Regulatory Authority (the Authority), which was established in 2002, is an autonomous body responsible for prescribing regulations and procedures for procurement by public sector entities and for monitoring procurement by such entities. In 2004, the Authority enacted a regulatory framework for public procurement which is aimed at establishing transparent public procurement practices. Pursuant to the 2004 regulatory framework, international tender notices are publicly advertised and sole source contracting using company-specific qualifications has been eliminated. There are no official "buy national" policies.

Political influence on procurement decisions, charges of official corruption, non-transparency, and long delays in bureaucratic decision making are common. Suppliers have reported instances where the government used the lowest bid as a basis for further negotiations, rather than accepting the lowest bid under its tender rules.

EXPORT SUBSIDIES

Pakistan actively promotes the export of Pakistani goods with measures such as tariff concessions on imported inputs and income and sales tax concessions. Subsidies in Pakistan's 2008 fiscal year were confined mostly to wheat and totaled roughly $7.6 million, according to government sources. There was no freight subsidy in FY 2008. The government provided $239 million as a Research and Development subsidy to the textile sector in FY 2008.

Pakistan established its first Export Processing Zone (EPZ) in Karachi in 1989, with special fiscal and institutional incentives available to encourage the establishment of exclusively export-oriented industries. The government subsequently established additional EPZs in Risalpur, Gujranwala, and Sialkot in Punjab Province, and Saindak and Duddar in Balochistan Province. Principal government incentives for EPZ investors include an exemption from all federal, provincial, and municipal taxes for production dedicated to exports; exemption from all taxes and duties on equipment, machinery, and materials (including components, spare parts and packing material); indefinite loss carry-forward; and access to Export Processing Zone Authority One Window services, including facilitated issuance of import permits and export authorizations.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Pakistan was downgraded from the "Watch List" to the "Priority Watch List" after the 2008 Special 301 process because of concerns about weak protection and enforcement of intellectual property rights.

IPR Protection

The government of Pakistan has identified intellectual property protection as a key area for its second generation economic reforms. Since 2000, Pakistan has enacted five major new laws relating to patents, copyrights, trademarks, industrial designs, and layout designs for integrated circuits, but their impact has been limited by weaknesses in the legislation and/or enforcement.

However, there are concerns that Pakistani authorities still have not implemented adequate protection against unfair commercial use of pharmaceutical test data submitted in conjunction with applications for regulatory approval in Pakistan. In addition, Pakistan has not yet formalized its process of delaying the issuance of marketing approval of unauthorized copies of patent infringing pharmaceutical products. Further, a draft plant breeder's rights law has not yet been approved by Parliament. Draft legislation on this issue has been awaiting approval from the National Assembly for over a year and was returned to the Provincial Assemblies for their concurrence. In addition, a patent ordinance that removed an 18-month processing requirement appears to have slowed the processing of pending patent applications. Pakistan's inaction in these areas is a major impediment to international investment in pharmaceutical and other innovative industries.

IPR Enforcement

The government of Pakistan took steps in 2006 and 2007 to improve copyright enforcement, especially with respect to optical disc piracy. Nevertheless, there was little progress in 2008, and weak IPR enforcement in Pakistan remains a serious barrier to trade and investment.

According to the International Federation of Phonographic Industry, after a crackdown by the government of Pakistan in 2005, there has been a significant decline in the quantity of infringing products being manufactured and smuggled out of Pakistan. Of the seven known optical disc manufacturers, five remain shut. The remaining two produce fully licensed products for the local and international market. However, Pakistan is now reportedly being used as a conduit for infringing products coming from Russia, Malaysia, Singapore, China, Bangladesh, and Sri Lanka for onward distribution.

Pakistan's Intellectual Property Rights Organization (IPO), an autonomous body under Pakistan's Cabinet Division, has consolidated authority over trademarks, patents, and copyrights – areas that were previously handled by three separate ministries. The IPO is beginning to monitor the enforcement and protection of intellectual property rights through cooperation with law enforcement agencies, in addition to dealing with other IPR related issues. The Federal Investigation Agency (FIA) has the primary responsibility for IPR enforcement and conducts anti-piracy raids. Between January 2007 and August 2008, the FIA reportedly conducted 14 raids, seizing infringing goods and materials, resulting in the filing of 25 cases involving optical disc piracy, book piracy, and counterfeit products. The raids were carried out in a number of Pakistan's cities, including Rawalpindi, Lahore, Karachi, Multan, and Faisalabad. Book piracy also continues to present barriers to trade and investment.

SERVICES BARRIERS

Pakistan generally permits foreign investment in services, subject to certain provisions, including a minimum initial capital investment of $150,000 for most sectors, except banking for which there are special rules described below. Foreign investors may hold up to a 100 percent equity stake and are allowed 100 percent repatriation of profits in most sectors. The requirement that foreign investors accumulate 40 percent local equity within 5 years of an initial investment has been eliminated and the cap on repatriation of profits at a maximum of 60 percent of total equity or profits has been abolished. Foreign investors in services and other non-manufacturing sectors (including international food franchises) are allowed to remit royalties and technical fees, subject to certain conditions. Though there are no restrictions on payment of royalties and technical fees for the manufacturing sector, there are some limitations on the non-manufacturing sector, including limiting initial royalty payments to $100,000 and capping subsequent royalty payments at 5 percent of net sales for five years. In information technology services, including software development, foreign investors are not subject to requirements for minimum initial investment.

Telecommunications

In 2003, the Pakistani government deregulated the telecommunications sector in an effort to comply with its WTO commitments and encourage growth in the sector. Pakistan Telecommunication Company Limited (PTCL) lost its monopoly on basic telephone services, and the government issued 14 licenses to long distance telephone companies (13 are in use), 72 licenses to local loop regional telephone companies (10 are in operation) and 92 licenses to wireless local loop companies (4 are in operation). The ability of telecommunications companies to operate in Pakistan will continue to depend on access to PTCL infrastructure, however. In 2005-2006, the government combined 15 value added services including Internet service provision, vehicle tracking system, and data network operations into one license, the Class Value Added (CVA) license. The government gave those who applied prior to announcement of this policy the option either to continue their old licenses or convert to CVA licenses. To date the government has issued 124 new CVA licenses and converted 93 old licenses to CVAs. At present, the government does not issue licenses specifically for Voice-over-Internet Protocol (VoIP), but long distance telephone license holders may also provide VoIP services.

Banking and Insurance

Under its WTO GATS commitments, Pakistan grants foreign firms the right to establish new banks as well as grandfathering acquired rights of established foreign banks and foreign securities firms. Foreign banks are permitted to open banking companies via the establishment of branches as well as wholly owned, locally incorporated subsidiaries subject to the condition that they have a global tier-1 (*e.g.,* equity and retained earnings) paid up capital of $5 billion or more or they belong to countries which are part of regional groups and associations of which Pakistan is a member, *e.g.*, the Economic Cooperation Organization (ECO) or the South Asian Association for Regional Cooperation (SAARC). Foreign banks not meeting these conditions are capped at a 49 percent equity stake.

The State Bank of Pakistan (SBP), Pakistan's central bank, has changed its branch licensing policy and has eliminated restrictions on the number of branches foreign banks may have. Currently, all banks have to submit an annual branch expansion plan to the SBP for approval. The SBP approves new branch openings based on the bank's net worth, adequacy of its capital structure, future earning prospects, credit disciplines, and the needs of the local population. However, all banks (including foreign banks) are now required to open 20 percent of their new branches in small cities, towns and villages. The SBP has raised the minimum paid up capital (usually shareholder equity) requirements for all locally incorporated banks to $292 million (net of losses). Currently banks are required to have $63 million as paid up capital; this will increase to $76 million in FY 2009 as part of the transition process. Branches of foreign banks operating in Pakistan (FBs) are also required to increase their assigned capital to $292 million (net of losses). However, with prior approval of the State Bank, foreign banks, whose headquarters hold paid up capital (free of losses) of at least to $300 million and have a capital adequacy ratio of at least 8 percent will be allowed to maintain the following minimum capital requirements: Foreign banks operating up to 5 branches are required to raise their assigned capital to $38 million by December 31, 2010 and foreign banks operating 6 to 20 branches will be required to raise their assigned capital to $76 million by December 31, 2010. All new banks, including branches of foreign banks, are required to meet the paid up/assigned capital requirement of $292 million before commencement of operations. The SBP has also raised the required minimum capital adequacy ratio for banks and development finance institutions to 10 percent.

The government permits only the parastatal National Insurance Company to underwrite and insure public sector firms. Private sector firms must meet their reinsurance needs within the country. Firms may seek foreign reinsurance facilities only if domestic insurance companies cannot meet these needs. Market domination in the life insurance sector may pose a significant barrier to entry, as the state-owned State Life Insurance Company holds over 76 percent of this market, although that number has been declining over the past several years. Five domestically-owned companies account for 78 percent of the general insurance (property, casualty, and health) market.

INVESTMENT BARRIERS

Foreign investors are generally free to establish and own business enterprises in Pakistan, with the exception of five restricted areas: arms and munitions, high explosives, currency/mint operations, radioactive substances, and new non-industrial alcohol plants. There are no ownership limits in other sectors of the economy, except for Pakistan's foreign equity limits in banking (described above). There is no minimum investment requirement for manufacturing. There is a $150,000 minimum foreign investment requirement in non-financial services (except information technology services), and a minimum investment requirement of $300,000 in agriculture, infrastructure projects, and social services (such as education and health).

The government's investment policy allows for full repatriation of capital, capital gains, dividends, and profits with the approval of the SBP. No requirements exist for technology transfer. The law provides for expropriation only upon adequate compensation and it prohibits changes in benefits and incentives. Incentives, including tax breaks and first year depreciation allowance, will not be changed in a way to disadvantage foreign investors versus domestic investors.

Pakistan has eliminated all local content requirements including those in the automobile sector. Until 2006, the automobile sector was subject to the so-called deletion program mandating the use of domestic inputs. The deletion program for the automotive sector was replaced with the "Tariff-Based System" (TBS) in 2006. The TBS provides for the imposition of higher tariffs on imported automotive parts that are also manufactured domestically; likewise, it provides for lower tariffs on imported automotive parts that are not also manufactured in Pakistan.

In late 2004, the United States and Pakistan launched negotiations on a Bilateral Investment Treaty (BIT). Talks stalled in 2006 but in 2008 both sides agreed to resume negotiations.

ANTICOMPETITIVE PRACTICES

The government of Pakistan launched a program to develop a new competition policy as a key "second generation reform" initiative. Towards this end, the Ministry of Finance and the Monopoly Control Authority worked with the World Bank and the UK Department for International Development, and, as a result, the 2007 Competition Ordinance replaced the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance (MRTPO) and established the Competition Commission. The newly formed Competition Commission is in the process of building its institutional capacity. The new competition law applies to all commercial activity in Pakistan, including for the first time all public sector organizations.

The sale of major state assets during the last few years has reduced the government's role in the power and telecommunications sectors. The state, however, continues to hold important equity stakes in the oil and gas, civil aviation, electric power, and steel sectors. The business community has expressed interest in the government of Pakistan's expanding competition in international trucking services.

The government of Pakistan has licensed two private airlines to compete with state owned Pakistan International Airlines. In retail food sales, the government has used below market prices in its chain of several hundred Utility Stores to create price competition in essential foodstuffs such as flour, rice, and lentils.

OTHER BARRIERS

The government's privatization program stalled following a series of Supreme Court decisions against the privatization of Pakistan Steel Mill. The amount earned through privatizations in FY 2008 was only $284 million, compared to $1.71 billion, in the previous year. From July to December 2007, 3.26 percent of United Bank Limited's shares have been sold through Global Depository Receipts for $65 million, and 7.5 percent shares of Habib Bank Limited have been sold through an Initial Public Offering for $154 million. The lack of a sound privatization plan and investor interest (attributable to investment climate and security concerns) has led to a halt in privatizations of state-owned enterprises.

Businesses operating in Pakistan have repeatedly called for strengthening national security against extremists. Corruption and a weak judicial system remain recurrent and substantial disincentives to investment. Pakistani laws targeting corruption include the 1947 Prevention of Corruption Act, the 1973 Efficiency and Discipline Rules, and most recently the 1999 National Accountability Bureau (NAB)

Ordinance. Previously, the NAB, the Federal Investigation Agency (FIA), and provincial anticorruption departments shared official responsibility for combating corruption. In October 2002, Pakistan's cabinet approved a National Anti-Corruption Strategy (NACS) that identified areas of pervasive corruption and recommended time-bound measures and reforms to combat corruption. The NACS also named the NAB as the sole anticorruption agency at the federal level. The present government has formed a committee to review the NAB ordinance; however, the review process is still incomplete. The government has changed the reporting authority of NAB from the Cabinet Division to the Ministry of Law and Justice.

Contract enforcement can be difficult for U.S. and other foreign investors in Pakistan. For example, a long standing investment dispute between a major U.S. multinational company and a local partner has raised concerns about the enforceability of international arbitration awards regarding contracts between private parties. In June 2005, the Lahore Civil Court ruled in favor of the U.S. multinational company, upholding the original arbitration settlement. However, the local partner has exercised its right to file an appeal in the Lahore High Court and the case is still pending.

In 2004, Pakistan's Cabinet approved the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Pakistan's Cabinet ratified the New York Convention on July 14, 2005, and conveyed the instrument of ratification to the United Nations Secretary General, who is the depository of such instruments. The New York Convention was implemented through an Ordinance which was renewed during the emergency imposed in November 2007. All ordinances enacted during emergency have become permanent laws under Pakistani law, including New York Convention.

PANAMA

TRADE SUMMARY

The U.S. goods trade surplus with Panama was $4.5 billion in 2008, an increase of $1.2 billion from $3.4 billion in 2007. U.S. goods exports in 2008 were $4.9 billion, up 31.4 percent from the previous year. Corresponding U.S. goods imports from Panama were $377 million up 3.2 percent. Panama is currently the 40th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Panama was $6.2 billion in 2007 (latest data available), up from $4.7 billion in 2006.

TRADE PROMOTION AGREEMENT

On June 28, 2007, the United States and Panama signed a trade promotion agreement (TPA). Panama approved the TPA on July 11, 2007. The United States has not yet approved the TPA.

The TPA is a comprehensive free trade agreement. When the TPA enters into force, it will result in significant liberalization of trade in goods and services, including financial services. The TPA also includes important disciplines relating to: customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, and labor and environmental protection. Under the TPA, U.S. firms will have better access to Panama's services sector than it provides to other WTO Members under the GATS. All services sectors are covered under the TPA except where Panama has made specific exceptions. Moreover, Panama agreed to become a full participant in the WTO Information Technology Agreement. Panama has also entered into a bilateral agreement with the United States that resolved a number of regulatory barriers to trade in agricultural goods ranging from meat and poultry to processed products, including dairy and rice.

IMPORT POLICIES

Tariffs

Panama's average tariff on U.S. industrial and consumer goods is 7 percent, but tariffs on some of these products are as high as 81 percent. Panama's average tariff on U.S. agricultural goods is 15 percent, but some U.S. agricultural exports face tariffs as high as 260 percent.

When the TPA enters into force, 88 percent of U.S. exports of consumer and industrial goods will enter Panama duty free, with remaining tariffs phased out over 5 years or 10 years. The TPA includes "zero-for-zero" immediate duty free access for key U.S. sectors and products, including agricultural and construction equipment, information technology products, and medical and scientific equipment. Other key U.S. export sectors, such as motor vehicles and parts, paper and wood products, and chemicals also will obtain significantly improved access to Panama's market as duties are phased out.

The TPA provides for immediate duty free treatment for over 60 percent by value of U.S. agricultural exports to Panama, including high quality beef, certain pork and poultry products, cotton, wheat, soybeans and soybean meal, most fresh fruits and tree nuts, distilled spirits and wine, and a wide assortment of processed products. Duties on other agricultural goods will be phased out within 5 years to 12 years and for the most sensitive products within 15 years to 20 years. The TPA also provides for expanded market access opportunities through tariff-rate quotas (TRQs) for agricultural products such as pork, chicken leg quarters, dairy products, corn, rice, refined corn oil, dried beans, frozen French fries, and tomato products. These TRQs will permit immediate duty free access for specified quantities that will increase as over-quota duties are phased out over the course of the implementation period.

Apparel products made in Panama will be duty free under the TPA if they use U.S. or Panamanian fabric and yarn. Strong customs cooperation commitments between the United States and Panama under the TPA will allow for verification of claims of origin or preferential treatment, and denial of preferential treatment or entry if claims cannot be verified.

Nontariff Measures

In addition to tariffs, all imports into Panama are subject to a 5 percent transfer tax levied both on the cost, insurance, and freight value as well as on import duties and other handling charges. Pharmaceuticals, foods, school supplies, goods that will be re-exported and all products related to transactions occurring in any free zone are exempt from the transfer tax. Importing entities are required to hold a commercial or industrial license to operate in Panama in order to import manufactured goods into the country without an import license. The commercial or industrial license may be obtained through Panama's online business registration service (http://www.panamaemprende.gob.pa). Importing entities holding a license are not required to have a separate import license, with the exception of imports of certain controlled products such as weapons, medicine, pharmaceutical products, and certain chemicals.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Under a far-reaching bilateral agreement on sanitary and phytosanitary (SPS) measures and technical standards signed with the United States in December 2006, Panama recognizes the equivalence of the U.S. meat and poultry inspection systems and the U.S. regulatory system for processed food products, thereby eliminating plant-by-plant and shipment-by-shipment inspection requirements. In addition, Panama provides access for all U.S. beef and beef products (including pet food), and all U.S. poultry and poultry products, consistent with international standards. Panama lifted all import certification and licensing requirements, except those agreed with the United States (specifically, sanitary certificate requirements), and formalized its recognition of the U.S. beef grading system and cuts nomenclature. Additionally, Panamanian authorities must notify U.S. authorities within 24 hours of any detention of a U.S. shipment due to suspected SPS concerns. Finally, Panama now uses an automatic, free, and quick registration process for the small group of agricultural products not exempted from this process.

Labeling and testing requirements are primarily limited to food products. Products that comply with U.S. labeling and marketing requirements are generally accepted for sale in Panama.

GOVERNMENT PROCUREMENT

Panama has a streamlined and modernized government procurement contracting system, which includes, among other things, an Internet-based procurement system (http://www.panamacompra.gob.pa), required publication of all proposed government purchases on the Internet, the evaluation of proposals and monitoring of the procurement process, and advance public notice of intended procurement. Panama has an administrative court to handle all public contracting disputes. The rulings of this administrative court are subject to review by Panama's Supreme Court. The Panamanian government has generally handled bids in a transparent manner, although occasionally U.S. companies have complained that certain required procedures have not been followed.

When it enters into force, the TPA will require Panama's procuring entities to use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the TPA. U.S. suppliers will be permitted to bid on procurement above certain thresholds of most Panamanian government entities, including key ministries and state-owned enterprises, on the same basis as Panamanian suppliers. In particular, U.S. suppliers will be permitted to bid on procurement by the Panama Canal Authority, including for the $5.25 billion Panama Canal expansion project. The anticorruption provisions in the TPA require Panama to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties.

EXPORT SUBSIDIES

Any company may import raw materials or semi-processed goods into Panama at a duty of 3 percent for domestic consumption or processing (pending certification that there is no national production) or duty free for export production, except for sensitive agricultural products, such as rice, dairy, pork, corn, and tomato products. Companies are allowed a tax deduction of up to 100 percent of their profits from export operations through 2010.

In the context of its WTO accession, Panama revised its export subsidy policies in 1997-98. The government originally had stated its intention to phase out its Tax Credit Certificates (CAT) program, which provides tax credits to firms producing certain nontraditional agricultural exports, by the end of 2001. However, during the WTO Doha Ministerial Conference in November 2001, the government of Panama asked for and received an extension of the waiver permitting the use of CATs. The WTO subsequently extended this waiver through 2009. Under the program, exporters receive CATs equal to 10 percent of the goods' national value added for exports made in 2008 and 5 percent of the good's national value added for exports made in 2009. The certificates are transferable and may be used to pay tax obligations to the government, or they can be sold in secondary markets at a discount. The government has, however, become stricter in defining national value added, in an attempt to reduce the amount of credit claimed by exporters.

In addition, a number of export industries, such as shrimp farming and tourism, are exempt from paying certain types of taxes and import duties. The government of Panama established this policy to attract foreign investment, especially in economically depressed regions, such as the city of Colon. Companies that benefit from these exemptions are not eligible to receive CATs for their exports.

Other Export-Related Items

Companies operating in any of Panama's 15 export processing zones (EPZs) may import inputs duty free, if products assembled in the zones are to be exported. The government also provides other tax incentives to EPZ companies. Under the TPA, Panama may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods or the use of domestic content in the production of goods). Under the TPA, Panama is permitted to maintain existing measures that are inconsistent with this obligation through 2009, provided that it maintains the measures in accordance with its obligations under the WTO Agreement on Subsidies and Countervailing Measures.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

An interagency committee that consists of representatives from six government agencies and operates under the leadership of the Ministry of Commerce and Industry is responsible for Panama's intellectual property law and policy. The Committee coordinates enforcement actions and develops strategies to improve compliance with the law. The creation of a specialized prosecutor for intellectual property-related cases has strengthened the protection and enforcement of IPR in Panama. However, given Panama's role as a transshipment point, U.S. industry remains concerned that Panama will become susceptible to trading in pirated and counterfeit goods.

The TPA provides for improved standards for the protection and enforcement of a broad range of IPR, which are consistent with U.S. and international standards, as well as with emerging international standards, of protection and enforcement of IPR. Such improvements include state-of-the-art protections for patents, trademarks, test data, and digital copyrighted products such as software, music, text, and videos; and further deterrence of piracy and counterfeiting.

Copyrights

Although Panama has modernized its copyright protection and has a special Copyright Office with anti-piracy enforcement powers, piracy remains a significant problem. Panama has taken police and legal actions that have significantly reduced the rate of DVD piracy. Internet piracy, however, is quickly emerging in Panama. Films in theatrical release are often downloaded to DVDs and videos, reproduced on optical discs, and then distributed by street vendors, all without the permission of right holders.

Under TPA, Panama must: (i) provide copyright protection for the life of the author plus 70 years (where the term of protection is measured by a person's life) or 70 years (where the term of protection is not measured by a person's life, *i.e.*, for corporate works); (ii) require government agencies to use only legitimate computer software; and (iii) protect encrypted program-carrying satellite signals.

Patents

Panama's Industrial Property Law provides a term of 20 years of patent protection from the date of filing. The Industrial Property Law provides specific protection for trade secrets.

Under the TPA, Panama must adjust the patent term for products (other than pharmaceutical products) to compensate for unreasonable delays that occur while granting a patent. For pharmaceutical products, Panama may, but is not required to, adjust the patent term if there is an unreasonable delay in granting a patent or providing marketing approval for a product.

Trademarks

Panama provides trademark protection, which includes a simplified process of trademark registration, and the ability to renew a trademark for 10-year periods. It appears that Panama's trademark law provides *ex-officio* authority to government agencies to conduct investigations and to seize materials suspected of being counterfeited. The Trademark Registration Office has undertaken significant modernization, including creating a searchable computerized database of registered trademarks that is open to the public, and providing for online registration.

Under the TPA, Panama must protect trademarks and geographical indications, including by refusing protection or recognition of a geographical indication that is likely to be confusingly similar to a preexisting trademark. Panama must also have a system of registration that provides efficient and transparent procedures governing applications to protect trademarks and geographical indications.

SERVICES BARRIERS

Services represent approximately 80 percent of Panama's gross domestic product. In general, Panama maintains an open regulatory environment for services.

Under the TPA, Panama will accord U.S. services suppliers substantial access to its services market, including financial services. Panama agreed to provide improved access in sectors like express delivery and to grant new access in certain professional services that previously had been reserved exclusively to Panamanian nationals. Panama also agreed that portfolio managers in the United States would be able to provide portfolio management services to both mutual funds and pension funds in Panama. Under the TPA, U.S. insurance suppliers will be permitted to operate as a branch or a subsidiary.

INVESTMENT BARRIERS

Panama maintains an open investment regime and is generally receptive to foreign investment.

Under the current administration, the Panamanian government has generally been more responsive to concerns raised by U.S. investors on matters such as changes to the terms of concession contracts. Nevertheless, the government is not uniformly responsive to investor concerns.

Less than one-third of real property in Panama is titled and most of the titled property is in Panama City. If property does not have title, a person may have a legal "right of possession" that is certified by a local official. A right of possession allows a person to occupy and eventually obtain title to the property through a judicial process. Due to the obstacles in securing clear title of property and the often local and non-uniform nature of the adjudication of rights of possession, Panamanian and foreign investors are vulnerable to claims against and loss of their purchased right of possession and title to property.

The United States - Panama Bilateral Investment Treaty (BIT) entered into force in 1991 (with additional amendments in 2001). The BIT ensures that, with some exceptions, U.S. investors receive fair, equitable, and nondiscriminatory treatment and that both Parties abide by international law standards, such as for expropriation and compensation and free transfers. Under the TPA, the BIT would be suspended after a period of 10 years. Investors will continue to have important investment rights and protections under the investment provisions of the TPA.

Under TPA, U.S. investors operating in Panama will have a more secure and predictable legal framework.. Under the TPA, all forms of investment will be protected, including enterprises, debt, concessions, contracts, and intellectual property. U.S. investors will enjoy, in almost all circumstances, the right to establish, acquire, and operate investments in Panama on an equal footing with local investors. Among the rights that will be afforded to U.S. investors are due process protections and the right to receive fair market value for property in the event of an expropriation. Investor rights will be protected under the TPA by an impartial procedure for dispute settlement that is fully transparent and open to the public. In particular, Panama agreed to eliminate certain measures that restrict investment in retail trade to Panamanian nationals (specifically allowing U.S. companies to engage in the retail sale of goods and services; full access to investments in the retail sector will be permitted after 2010 if the investment is at least $3 million).

ELECTRONIC COMMERCE

Under the TPA, Panama will be obligated to provide nondiscriminatory treatment of digital products transmitted electronically and not to impose customs duties, fees or other charges on digital products transmitted electronically. Additionally, the TPA requires procedures for resolving disputes about trademarks used in Internet domain names.

OTHER BARRIERS

Corruption

The judicial system can pose a problem for investors due to poorly trained personnel, huge case backlogs, and a lack of independence from political influence. Amid persistent allegations of corruption in the former government, particularly in the judiciary, the Torrijos administration campaigned in 2004 on a promise to "eradicate corruption." Although the government continues to assert its commitment to combating corruption as part of its overall agenda of institutional reform, it has been slow to deliver concrete results. The anticorruption provisions in the TPA will require Panama to ensure that bribery in matters affecting trade or investment is treated as a criminal offense or is subject to comparable penalties under its law.

PARAGUAY

TRADE SUMMARY

The U.S. goods trade surplus with Paraguay was $1.5 billion in 2008, an increase of $363 million from $1.2 billion in 2007. U.S. goods exports in 2008 were $1.6 billion, up 30.2 percent from the previous year. Corresponding U.S. imports from Paraguay were $78 million, up 15.4 percent. Paraguay is currently the 66th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Paraguay was $91 million in 2006 (latest data available).

IMPORT POLICIES

Tariffs

Paraguay's import tariffs range from 0 percent to 20 percent, with an average applied tariff rate of 8.7 percent in 2008. Paraguay is a member of the MERCOSUR common market, formed in 1991 and comprised of Argentina, Brazil, Paraguay, and Uruguay. MERCOSUR's Common External Tariff (CET) averages 11.7 percent and ranges from 0 to 35 percent *ad valorem*, with a limited number of country-specific exceptions. Currently, Paraguay maintains over 2,600 exceptions to the CET including for capital goods (for which the CET is 14 percent but for which Paraguay allows entry duty free or at 6 percent), information technology and telecommunications equipment, autos, chemicals, and an additional diversified group of 100 products. Tariffs may be imposed by each MERCOSUR member on products imported from outside the region which transit at least one MERCOSUR member before reaching their final destination. Full CET product coverage, which would result in duty free movement within MERCOSUR, was originally scheduled for implementation in 2006, but has been deferred until December 31, 2009. In addition, both Paraguay and Uruguay are permitted to maintain national lists of 100 country-specific exceptions until December 31, 2015.

Customs Procedures

Paraguay requires specific documentation, such as the commercial receipt, certificate of origin, and cargo manifest, for exports to be certified by the Paraguayan consulate in the country of origin. The United States is urging Paraguay to eliminate these requirements.

Paraguay frequently makes changes in its customs procedures. This makes it difficult for exporters to ensure they are following the most current procedures, which can delay shipments and lead to unexpected costs. The burden of compliance is most often borne by importers. The newly elected Lugo government took office in August 2008 and has announced its intention to simplify import requirements, which also had been a stated goal of the previous administration.

For virtually all imports of textile and apparel products and footwear, Paraguay requires that the name of the manufacturer and the name and fiscal number of the importer be included on the label. U.S. industry reports that such information is difficult, if not impossible, to know during the construction process when permanent labels are attached. Re-labeling products upon entry to meet these requirements results in additional costs and delays. Since 2000, Paraguay has prohibited the importation of used clothing. The U.S. Government continues to raise this issue with Paraguay government.

The potential increase of U.S. exports to Paraguay if tariffs were eliminated and customs procedures simplified is $25 million to $50 million.

GOVERNMENT PROCUREMENT

Paraguay is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Paraguay's efforts to improve its IPR protection and enforcement are guided in part by a Memorandum of Understanding (MOU) with the United States, concluded following Paraguay's 1998 designation as a Priority Foreign Country under Special 301. This MOU has been extended and revised twice since it entered into effect. The current version of the MOU was signed on April 30, 2008, and is effect through the end of 2009.

Implementation of the MOU is subject to ongoing monitoring pursuant to U.S. trade law. The MOU details Paraguayan commitments to implement institutional and legal reforms and to strengthen intellectual property rights protection and enforcement. In addition, Paraguay agreed to ensure that its government ministries use only authorized software.

While the Paraguayan government has made important efforts to implement the current MOU and has met regularly with U.S. Government officials to review and discuss the progress achieved in addressing IPR-related concerns, additional efforts are needed to address significant challenges in the area of enforcement, particularly with respect to border enforcement against the transshipment of pirated and counterfeit goods. The International Intellectual Property Association estimated that industry losses in Paraguay's domestic market due to the piracy of copyrighted material such as movies, music, books, and entertainment and business software totaled $135 million in 2007. Complete figures for 2008 are not yet available.

Under the terms of the current MOU, the United States will continue to work closely with Paraguay to address IPR concerns. Areas of collaboration outlined in the MOU include: strengthening border control measures, increasing enforcement activity in marketplaces known for the prevalence of trafficking in pirated and counterfeit goods, and prosecuting IPR offenders. Although a new penal code which will be effective in early 2009 increases penalties for IPR violations, prosecution of IPR offenders remains weak, and there are few convictions. The United States is also concerned about the protection against unfair commercial use of undisclosed pharmaceutical test data submitted in conjunction with the application for marketing approval.

INVESTMENT BARRIERS

Paraguayan law governs requires that foreign companies prove just cause in a Paraguayan court to terminate, modify, or decide not to renew contracts with Paraguayan distributors. Severe penalties and high fines may result if the court determines that the foreign company ended the relationship with its distributor without just cause, which often leads to expensive out-of-court settlements. In a few cases, the courts have upheld the rights of foreign companies to terminate representation agreements after just cause was established, mainly on the basis of lack of sales performance by local representatives. This law may discourage U.S. investment due to concerns about potential lawsuits and interference with contractual relations. The impact of the law in U.S. exports is less than $10 million. The United States will work with the Paraguayan administration to seek modification of this law.

PERU

TRADE SUMMARY

The U.S. goods trade balance with Peru went from a deficit of $1.2 billion in 2007 to a trade surplus of $328 million in 2008. U.S. goods exports in 2008 were $6.2 billion, up 50.1 percent from the previous year. Corresponding U.S. imports from Peru were $5.9 billion, up 11.1 percent. Peru is currently the 35th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Peru was $6.8 billion in 2007 (latest data available), up from $4.8 billion in 2006. U.S. FDI in Peru is concentrated largely in the mining sector.

TRADE PROMOTION AGREEMENT

The United States and Peru signed the United States-Peru Trade Promotion Agreement (PTPA) on April 12, 2006. Peru's Congress ratified the Agreement in June 2006 and a protocol of amendment in June 2007. On December 14, 2007, President Bush signed into law the PTPA Implementation Act which approved the PTPA. The PTPA entered into force on February 1, 2009.

The PTPA is a comprehensive free trade agreement. The PTPA will result in significant liberalization of trade in goods and services between the United States and Peru. Under the PTPA, Peru immediately eliminated most of its tariffs on U.S. exports, with all remaining tariffs phased out over defined time periods. The PTPA also includes important disciplines relating to: customs administration and trade facilitation, technical barriers to trade, government procurement, services, investment, telecommunications, electronic commerce, intellectual property rights, and labor and environmental protection.

IMPORT POLICIES

Tariffs

Under the terms of the PTPA, 80 percent of U.S. exports of consumer and industrial products to Peru became duty free immediately, with remaining tariffs phased out over 10 years. More than 90 percent of current U.S. farm exports gained immediate duty-free access to Peru. Tariffs on most of the remainder of U.S. farm products will be phased out within 15 years, with all tariffs eliminated in 17 years. Peru has also agreed to eliminate its price band system on trade with the United States.

Nontariff Measures

The government of Peru has eliminated many nontariff barriers, and under the PTPA subjects remaining measures, including subsidies and import licensing requirements, to additional disciplines. Peru currently restricts imports of certain used goods, including used clothing and shoes (except as charitable donations, which are subject to the 19 percent value added tax), used tires, cars over five years old, and heavy trucks (weighing three tons or more) over 8 years old. Used cars and trucks that are granted import permits must pay a 45 percent excise tax (compared to 20 percent for a new car) unless they are refurbished in an industrial center in the south of the country after importation, in which case they are exempted entirely from the excise tax. Under the PTPA, Peru affirmed that it would not adopt or maintain prohibitions or restrictions on trade in remanufactured goods, and that certain existing prohibitions on trade in used goods would not apply to remanufactured goods. This commitment opens new and significant export opportunities for firms involved in remanufactured products such as engines, automotive parts, mining and construction equipment, transportation machinery, medical equipment, and computers.

In 2008, Peru issued a new technical regulation on footwear labeling. The new regulation requires that footwear have a label that includes the fiscal identification number (*Registro Único de Contribuyente* - R.U.C.) of the manufacturer or importer of the finished product, as well as for the manufacturer of the materials that comprise the four major components of the footwear. U.S. industry reports that complying with this new requirement is both onerous and unnecessary.

Sanitary and Phytosanitary Measures

Peru has addressed a number of significant sanitary and phytosanitary (SPS) and technical regulation issues that had impeded or stopped U.S. exports of beef, pork, poultry, and rice. However, Peru continues to ban the importation of U.S. live cattle based on Bovine Spongiform Encephalopathy (BSE) concerns. Peru participated in an August 2008 visit to the United States organized by the U.S. Department of Agriculture's (USDA's) Foreign Agricultural Service and USDA's Animal and Plant Health Inspection Service with Ecuador, Bolivia, and an Andean Community representative to evaluate the U.S. live cattle system with a view to gaining access for U.S. live cattle to these countries. U.S. officials continue to engage Peruvian authorities in pursuit of science-based import requirements with respect to such trade.

GOVERNMENT PROCUREMENT

Since 2002, Peru has applied a 20 percent price preference to bids by Peruvian firms in government procurement. The price preference may no longer be applied against U.S. companies in procurement covered by the PTPA. The PTPA requires the use of fair, nondiscriminatory, and transparent procurement procedures for procurement covered by the PTPA. Also, under the PTPA, U.S. suppliers are permitted to bid on the procurement of most Peruvian central government entities, including state-owned enterprises such as Peru's oil company and Peru's public health insurance agency. The anticorruption provisions in the PTPA require Peru to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties.

Peru is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Peru has put in place laws and regulations to implement its obligations under the PTPA, bringing about a number of important improvements in IPR protection and enforcement. Some of these improvements include: protecting trademarks used in Internet domain names, strengthening measures to prevent the circumvention of technological devices for preventing Internet-based copyright piracy, removing burdens for patent registration, protecting against unfair commercial use of test data and other undisclosed information submitted in connection with regulatory approval for pharmaceutical and agricultural chemical products, and providing deterrent-level penalties for piracy and counterfeiting.

Trademarks, Patents, and Data Protection

Peru amended its law on industrial property as well as related laws and regulations to put in place state-of-the-art protections for trademarks and patents. Peru has developed an online system for registering and maintaining trademarks. Peru also ensures that the first person to acquire a right to a trademark or a geographical indication (GI) is the only person who has the right to use it.

In the area of patents, Peru removed unnecessarily burdensome requirements in its patent application process and put in place procedures and remedies to prevent the marketing of unauthorized copies of pharmaceutical products. Consistent with its PTPA obligation, Peru established a data protection regime that protects test and other data submitted in connection with marketing approval for medicines and agrochemical products. The regime seeks to balance the promotion of pharmaceutical innovation with access to medicines.

Copyrights

As part of its PTPA obligations, Peru amended its Copyright Law to reflect the realities of copyright in the digital age. For instance, Peru has established strong anti-circumvention provisions to prohibit tampering with technologies designed to prevent piracy and unauthorized distribution of songs, movies, or other works over the Internet. Other improvements include extending the term of protection for copyright protected works, ensuring that Peru's government will use only legitimate computer software, and setting out legal obligations to prevent piracy of satellite signals.

Enforcement

Peru has amended its laws and regulations to provide procedures and remedies for improved enforcement of IPR. As part of this effort, Peru reorganized the Intellectual Property Office of Peru (INDECOPI) to help expedite the hearing and granting of precautionary measures (injunctive relief), revised its customs law and regulations to strengthen the procedures for suspending IPR infringing goods and ensuring that those infringing goods are seized and destroyed absent the allowable exceptions, and put in place deterrent-level penalties for copyright and trademark infringement both in civil and criminal violations.

SERVICES BARRIERS

Under the PTPA, Peru assumed commitments to provide nondiscriminatory treatment and market access in a substantial number of services sectors. These commitments significantly improved upon Peru's WTO commitments in terms of sectors covered and elimination of restrictions in sectors such as advertising, construction and engineering, energy, information, express delivery, and entertainment, including audiovisual services and broadcasting. Peru also committed to increased regulatory transparency and to free transfers associated with the supply of a service.

Financial Services

The PTPA provides for market opening and nondiscriminatory treatment across most financial services sectors, including banking, insurance, and securities. Under the PTPA, U.S. companies will have increased ability to provide portfolio advice and certain kinds of insurance on a cross-border basis.

Telecommunications

In recent years, U.S. companies have complained that Peru's telecommunications regulator (OSIPTEL) has not done enough to lower the average mobile termination rates in the country, which has resulted in significant barriers to competition in the wireless sector. The current maximum rate scale, which U.S. companies claim to be well above cost, is scheduled to expire at the end of 2009. OSIPTEL recently began the process through which it will establish new rates, and it is expected that a public comment proceeding on this matter will be conducted later in 2009 that will culminate in the establishment of new mobile termination rates for the coming years. Continued oversight and review of these rates by OSIPTEL will be important to achieving progress in addressing concerns raised by suppliers.

INVESTMENT BARRIERS

Under the PTPA, Peru assumed obligations relating to national treatment and most favored nation treatment, ensured the right of U.S. investors to make financial transfers freely and without delay, applied international legal standards for expropriation and compensation, and provided access to binding international arbitration.

Peruvian law restricts majority ownership of broadcast media to Peruvian citizens. Foreigners are also restricted from owning land or investing in natural resources within 50 kilometers of a border, but they may operate within those areas with special authorization. Under current law, foreign employees may not comprise more than 20 percent of the total number of employees of a local company (whether owned by foreign or Peruvian persons) or more than 30 percent of the total company payroll. Under the PTPA, Peru agreed not to apply most of its nationality-based hiring requirements to U.S. professionals and specialty personnel.

U.S. firms remain concerned that executive branch ministries, regulatory agencies, the tax agency, and the judiciary often lack the resources, expertise, or impartiality necessary to carry out their respective mandates. U.S. investors have also complained about the reinterpretation of rules and the imposition of disproportionate fines by the tax agency.

The Peruvian government has tried to address institutional weaknesses in the executive branch and has also offered plans for judicial reform. In July 2005, the Supreme Court issued an edict stating that final binding arbitration awards cannot be disputed in the domestic judicial system. The U.S. Government has worked with the government of Peru both before, and in parallel with, the PTPA negotiations to ensure the fair resolution of U.S. investor disputes, consistent with Peruvian law.

PHILIPPINES

TRADE SUMMARY

The U.S. goods trade deficit with the Philippines was $403 million in 2008, a decrease of $1.3 billion from $1.7 billion in 2007. U.S. goods exports in 2008 were $8.3 billion, up 7.8 percent from the previous year. Corresponding U.S. imports from the Philippines were $8.7 billion, down 7.4 percent. The Philippines is currently the 31st largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to the Philippines were $2.0 billion in 2007 (latest data available), and U.S. imports were $2.2 billion. Sales of services in the Philippines by majority U.S.-owned affiliates were $2.2 billion in 2006 (latest data available), while sales of services in the United States by majority Philippines-owned firms were $42 million.

The stock of U.S. foreign direct investment (FDI) in the Philippines was $6.7 billion in 2007 (latest data available), down from $7.1 billion in 2006. U.S. FDI in the Philippines is concentrated largely in the manufacturing sector.

IMPORT POLICIES

Tariffs

The Philippines simple average bound tariff was 25.8 percent in 2008, while its simple average applied tariff was 7 percent, according to the Philippine Tariff Commission. The Philippine government has bound all of its agricultural tariffs, but it has bound less than two-thirds of its non-agricultural tariff lines. Among the products that are unbound are autos, chemicals, plastics, textiles, clothing, fish, and paper products. High tariffs are charged on chemical waste, automobiles and motorcycles, and some auto parts. High agricultural tariffs are on citrus, grains, poultry and meat products, and frozen french fries.

Automobile Sector Tariffs

The Philippines government set up a Motor Vehicle Development Program to rationalize the industry and transform it into a regional hub for automotive production. To promote local assembly under the program, tariffs on vehicle components were reduced while tariffs on finished autos and motorcycles subjected to the highest duty rates applied to nonagricultural products. There is a general import prohibition on used cars, although exceptions are granted, including for vehicles imported through Special Economic Zones.

The Philippines imposes a 30 percent tariff on passenger cars, while vehicles for transport of goods, depending on gross vehicle weight, are charged 20 percent to 30 percent; and vehicles for transport of persons, depending on vehicle weight, are charged 15 percent to 20 percent. A 1-percent duty is applied on all completely knocked down kit (CKD) importations by Motor Vehicle Development Program-registered participants, except for CKD intended for the assembly of alternative fuel vehicles, which are duty free. The Board of Investments maintains an Automotive Export Program, under which qualifying imported finished automobiles enter the country at a reduced tariff rate of 10 percent. In addition, the Philippines charges value added-taxes of 12 percent on vehicle imports and excise taxes based on the price of vehicles, with more expensive vehicles taxed at much higher rates.

Safeguards

In response to concerns raised by the United States and other governments in 2007, the Philippines has drafted amendments to the Safeguards Measures Act extending the period to file answers by interested parties from 5 days to 30 days, but these changes have not yet been enacted.

Excise Tax on Distilled Spirits

The Philippines maintains an excise tax regime for distilled spirits that imposes significantly lower excise taxes on locally produced spirits made from indigenous raw materials than it does on imports. The U.S. Government will continue to urge the Philippines to address this issue.

Quantitative Restrictions

The Philippine government imposes a tariff-rate quota (TRQ) on 15 agricultural products, including corn, pork, and poultry. Since 2002, the Philippines has consistently maintained a special safeguard on out-of-quota chicken imports, which effectively doubles the out-of-quota tariff.

The U.S. Government continues to monitor the administration of the TRQ system known as the Minimum Access Volume (MAV) system, which regulates the distribution of import licenses for certain agricultural products, including pork and poultry. The Department of Agriculture announced a review of the MAV system in October 2007, which had been a source of considerable concern to U.S. exporters. In February 2009, the Philippine Department of Agriculture announced the indefinite postponement of any changes to the system.

Customs Barriers

The Philippine government has made progress in improving its customs regime, including implementation of the WTO Agreement on Customs Valuation and taking steps to accede to the World Customs Organization's Revised Kyoto Convention, efforts supported by U.S. technical assistance programs. Reports of corruption and other irregularities persist, however, including undue and costly processing delays, continued private sector involvement in the valuation process, the use of reference prices rather than declared transaction values, and of customs officials seeking payment of unrecorded facilitation fees. The U.S. Government will continue to raise its concerns over these issues to the Philippines.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Sanitary and Phytosanitary Measures

The United States is monitoring the Philippine government's application of its Veterinary Quarantine Clearance (VQC) certificate system for meat and poultry imports, as well as its import permit system for fresh vegetables. A VQC certificate must be obtained from the Department of Agriculture's Bureau of Animal Industry before a product leaves the country of origin and is valid for 60 days from the date of issuance, within which time the meat or meat products must be shipped from the country of origin. The Philippine Department of Agriculture Bureau of Plant Industry requires a similar phytosanitary clearance certificate for all imports of fresh fruits and vegetables. Import permits for fruits and vegetables also need to be secured prior to export. The Philippine Fisheries Code permits importation of fresh, chilled, or frozen fish and fish products only when certified as necessary by the Secretary of Agriculture and upon issuance of an import permit by the Department of Agriculture.

The Philippine Department of Agriculture allows the import of U.S. apples, grapes, oranges, potatoes, onions, and garlic, provided these products, when necessary, undergo a specified cold treatment to control targeted pests. Florida grapefruit and U.S. cherries are permitted, but the United States and the Philippines are still negotiating the import protocols for broccoli, cauliflower, lettuce, carrots, cabbage, and celery. Until the pest risk analysis for these vegetables is completed, the Philippines will allow these products to enter the country only if they are destined for "high-end markets."

In 2006, the Agriculture Department issued new regulations on the accreditation of foreign meat establishments from which meat and meat products are sourced for export to the Philippines. The new guidelines require all exporting countries or individual establishments to obtain either systems or individual accreditation to be eligible as legitimate suppliers. At present, all U.S. meat establishments that are regulated and inspected by the USDA Food Safety and Inspection Service are eligible to export meat and poultry to the Philippines, but the results of the recent audit by Philippine authorities of U.S. meat establishments conducted in July 2008 are still awaited.

GOVERNMENT PROCUREMENT

The Philippines is not a signatory to the WTO Agreement on Government Procurement. The Government Procurement Reform Act of 2003 consolidated procurement laws throughout the government and purported to simplify prequalification procedures, introduce more objective and nondiscretionary criteria in the selection process, and establish an electronic single portal for government procurement activities. However, implementation remains inconsistent. Government procurement laws continue to favor Philippine and Philippine-controlled companies in government procurement.

Since 1993, the Philippine government has maintained a countertrade requirement for procurement by government agencies and government-owned or controlled corporations that set the level of countertrade obligations at a minimum of 50 percent of the price of imports and established penalties for nonperformance of countertrade obligations.

EXPORT SUBSIDIES

Enterprises engaged in activities under the government's Investment Priorities Plan (IPP) may register with the Board of Investments (BOI) for fiscal incentives, including income tax holidays, tax deductions equivalent to 50 percent of the wages of direct-hire workers, and tax and duty exemptions for the importation of breeding stock and genetic materials. BOI-registered firms that locate in less-developed areas may be eligible to claim a tax deduction of up to 100 percent of outlays for infrastructure projects and 100 percent of incremental labor expenses. To qualify for the incentives, enterprises must be at least 60-percent Philippine-owned and export at least 50 percent of their production. Enterprises with less than 60 percent Philippine equity may qualify if they engage in projects listed as "pioneer" under the IPP or they export at least 70 percent of production. Firms in export processing zones, free trade zones, and other special industrial estates registered with the Philippine Economic Zone Authority enjoy similar incentives, in addition to simplified trade transaction procedures as well as tax and duty free imports of capital equipment and raw materials.

With the intention of promoting local auto assembly and exports, the Philippine government maintains an Automotive Export Program. This program offers registered automobile manufacturers preferential tariff rates on imports of finished automobiles based on their level of net foreign exchange earnings from their finished vehicle exports.

INTELLECTUAL PROPERTY RIGHTS (IPR)

The Philippines remained on the Special 301 Watch List in 2008, having moved from the Priority Watch List in 2006. Since 2006, the Philippine government has worked to enhance coordination between the various agencies responsible for IPR and to try to step up enforcement efforts. It is beginning to put into place the elements of legislative, regulatory, and judicial reforms needed to build a stronger IPR regime, but the results on the ground are limited so far.

Last year, the Philippine government established an Intellectual Property Research and Training Institute to serve as a center of education, training, and research on intellectual property. An executive order also provided for permanent units to promote, protect, and enforce IPR in various law enforcement agencies and departments of the government, including the Optical Media Board and the intellectual property unit of Customs, although it has not yet been fully implemented because of budgetary issues.

Despite these efforts, the United States continues to have serious concerns about IPR in the Philippines and will continue to raise these concerns with the Philippine government. Key among these concerns are the lack of progress in successfully prosecuting and convicting IPR violators in Philippine courts, the spread of illegal activity to new areas such as camcording and the downloading of copyright material onto mobile devices in retail outlets, and the effect of new pharmaceuticals legislation. U.S. distributors continue to report high levels of piracy of optical discs of films and musical works, computer games, and business software, as well as widespread unauthorized transmissions of motion pictures and other programming on cable television systems. Trademark infringement is also widespread, with counterfeit merchandise openly available.

Intellectual Property Laws

The 1997 Intellectual Property Code provides the basic legal framework for IPR protection in the Philippines. The 2000 Electronic Commerce Act extends this framework to the Internet, although its provisions relating to the rights of copyright owners over broadcast, rebroadcast, cable retransmission, or satellite retransmission of their works are vague. It also contains burdensome restrictions affecting contracts to license software and other technology.

The Philippines is a member of the World Intellectual Property Organization (WIPO) and has acceded to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (known collectively as the WIPO Internet Treaties), which took effect in the Philippines in 2002. However, the Philippine government has not yet enacted necessary amendments to its Intellectual Property Code that would fully implement the requirements of these treaties into domestic law.

In 2008, the Philippine Congress implemented legislation amending the Intellectual Property Code with respect to patent registration for pharmaceuticals, increasing uncertainty in the market for U.S. pharmaceutical companies. The United States will closely monitor implementation of the new legislation.

Enforcement

The United States and U.S. rights holders continue to have serious concerns about the lack of consistent and effective IPR enforcement in the Philippines. While raids and seizures appear to have increased over the past three years, there have been few successful prosecutions in Philippine courts, and cases can remain unresolved for as long as two decades. In 2008, there were only three convictions for IPR crimes in the Philippine court system, according to Intellectual Property Office (IPO) statistics. Of the 20 or so convictions since 2001, most involve relatively small players. No large-scale manufacturer or distributor of pirated optical disks has been convicted. Moreover, some search warrants have been quashed under challenge, with courts frequently releasing suspects and dropping cases on technical grounds.

Given persisting problems with the legal system, IPO's Bureau of Legal Affairs is continuing to develop an administrative process for resolving cases involving intellectual property violations.

SERVICES BARRIERS

Basic Telecommunications

The Philippine Constitution of 1987 limits the operation of certain utilities to firms with at least 60 percent ownership by Philippine citizens. The Philippine government has interpreted telecommunications services as falling within the definition of a public utility, thereby limiting foreign ownership to 40 percent. Foreign firms typically are reluctant to invest in more capital-intensive applications, such as broadband, without majority control, so market entry has been limited. In addition, foreigners are restricted from serving as executives or managers of telecommunications companies, and the proportion of foreign directors in telecommunications companies may not exceed that of the foreign component of a company's capital stock. The United States has urged the Philippines to legally define telecommunications services as outside the definition of utility, as it has done for such services as electricity generation. Foreign equity in private radio communications networks is constitutionally limited to 20 percent. Operation of cable television and other forms of broadcasting and media are also reserved for Philippine nationals.

Financial Services

The Philippines has not yet ratified the Fifth Protocol to GATS, which embodies its obligations under the WTO Financial Services Agreement.

Insurance

Although current regulations permit up to 100 percent foreign ownership in the insurance sector, the Philippines committed in the GATS to a maximum of 51 percent equity participation and grandfathered existing insurers with more than 51 percent foreign equity. Generally, only the state-owned Government Service Insurance System (GSIS) may provide coverage for government-funded projects. A 1994 order requires sponsors of build-operate-transfer projects and privatized government corporations to secure their insurance and bonding from the GSIS at least to the extent of the government's interests. Private insurance firms, both domestic and foreign, regard this as a significant trade barrier. Current regulations require all reinsurance companies operating in the Philippines to cede to the industry-controlled National Reinsurance Corporation of the Philippines at least 10 percent of outward reinsurance placements.

Banking

There are numerous limitations on foreign participation in the banking sector. The central bank put a moratorium on the issuance of new bank licenses, effective in 1999, to encourage consolidation in the banking system, which in practice has limited foreign investment to existing banks. Majority Philippine-owned domestic banks must at all times, control at least 70 percent of total banking system assets. Foreign banks cannot open more than six branches, and are prohibited from providing full service at those branches they do open. If a bank creates a subsidiary, it may not own more than 60 percent of the equity in that subsidiary. Four foreign-owned banks operating in the Philippines prior to 1948 are partially exempt, and may each operate up to six additional branches.

Existing laws require financial institutions to set aside loans for certain preferred sectors. The Agri-Agra Law requires banks to earmark at least 25 percent of their loan portfolios for agricultural credit in general, with at least 10 percent dedicated to agrarian reform program beneficiaries. The Magna Carta for Micro, Small and Medium Enterprises (MSMEs) requires banks to set aside at least 10 percent of their loan portfolios for MSME borrowers. The mandatory lending provisions are more burdensome on foreign banks for a number of reasons, including their lack of knowledge and experience with these sectors, their constrained branch networks, and constitutionally-mandated foreign land ownership restrictions which impede their ability to enforce security rights over land accepted as collateral.

Securities and Other Financial Services

Foreign equity in securities underwriting companies is limited to 60 percent. Securities underwriting companies not established under Philippine law may underwrite Philippine issues for foreign markets, but not for the domestic market. Although there are no foreign ownership restrictions governing acquisition of shares of mutual funds, current law restricts membership on a board of directors to Philippine citizens. A 60 percent foreign ownership ceiling applies to financing companies. The Lending Company Regulation Act–signed into law in May 2007, which established a regulatory framework for credit enterprises that do not clearly fall under the scope of existing laws–requires majority Philippine ownership.

Advertising

The Philippine Constitution limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers of advertising agencies must be Philippine citizens.

Public Utilities

The Philippine Constitution limits investment in certain sectors deemed to be utilities (including water and sewage treatment, electricity transmission and distribution, telecommunications, and transport) to firms with at least 60 percent ownership by Philippine citizens. All executive and managing officers of such enterprises must be Philippine citizens.

Practice of Professions

The Philippine Constitution generally reserves the practice of licensed professions (*e.g.*, law, medicine, nursing, accountancy, and engineering, architecture, and customs brokerage services) to Philippine citizens.

Express Delivery Services

Foreign air express couriers and airfreight forwarding firms must either contract with a fully Philippine-owned business to provide local delivery services or establish a domestic company with a minimum of 60 percent Philippine equity.

Retail Trade

The Retail Trade Liberalization Act of 2000 limits retail ventures with paid-up capital less than $2.5 million to Philippine nationals. Foreign investment in retail enterprises is permitted if paid-up capital is $2.5 million or more, provided that investment in each retail store established is not less than $830,000. In addition, at least 30 percent of inventory, by value, must be sourced from the Philippines until 2010.

The parent of a foreign company investing in as retail store must have a net worth of over $200 million. Foreign retailers intending to establish retail outlets in the Philippines must own at least five retail stores elsewhere or at least one outlet with capitalization of $25 million or more.

If foreign retail enterprises specialize in high-end or luxury products, the investment required in each retail store is $250,000, and at least 10 percent of their inventory, by value, must be sourced from the Philippines to 2010. The foreign retailer's parent company must also have a net worth of at least $50 million.

Foreign retailers are prohibited from engaging in trade outside their accredited stores. Retail enterprises with foreign ownership exceeding 80 percent of equity are required to offer a minimum of 30 percent of their shares to local investors within 8 years of the start of operations. Prospective foreign investors in the retail sector also face a reciprocity requirement – only nationals from or entities formed or incorporated in countries that allow the entry of Philippine retailers are allowed to engage in retail trade in the Philippines.

INVESTMENT BARRIERS

Significant restrictions apply to foreign investment in the Philippines economy. The 1991 Foreign Investment Act contains two "negative lists" (List A and List B), collectively called the "Foreign Investment Negative List," enumerating the areas in which foreign investment is restricted. The Act requires the government to update the negative list every two years. A new list is scheduled to be released in the first quarter of 2009.

List A reflects foreign investment restrictions mandated by the Constitution or specific laws. The list includes sectors in which investment is reserved for Philippine nationals (*e.g.*, mass media, small-scale mining) and sectors in which foreign equity participation is limited to a certain maximum share (*e.g.*, natural resource extraction, where foreign equity is limited to 40 percent). List B contains limitations on foreign ownership imposed by the executive for reasons of national security, defense, public health, safety, and morals. Sectors covered include explosives, firearms, military hardware, and gaming activities, with foreign ownership generally limited to 40 percent. List B also restricts foreign ownership in certain small- and medium-sized enterprises (firms capitalized at less than $200,000) to 40 percent.

The 1987 Philippine Constitution bans foreigners from owning land in the Philippines. The 1994 Investors' Lease Act allows foreign companies investing in the Philippines to lease land for 50 years, renewable once for another 25 years. Deeds are often difficult to establish and records are poor. The deeds and property infrastructure is full of ambiguities, which makes it difficult to establish clear ownership and to lease land, a situation that is further exacerbated by the fact that the court system does not settle cases in a timely manner. U.S. and other foreign industry consider unresolved disputes regarding land claims constitute a significant barrier to investment in the mineral exploration and processing sector.

Trade Related Investment Measures

In 1999, the Philippine Department of Justice determined that a 1987 executive order mandating the use of locally-produced raw materials by the soap and detergent industry conflicts with the Philippines' obligations under the WTO Agreement on Trade-Related Investment Measures. Nonetheless, it has not repealed this executive order. In addition, regulations governing the provision of Board of Investment-administered incentives impose a higher export performance requirement for foreign-owned enterprises (70 percent of production) than for Philippine-owned companies (50 percent). The Philippines also appears to maintain unwritten "trade balancing" requirements for firms applying for approval of ventures under the ASEAN Industrial Cooperation scheme.

OTHER BARRIERS

Corruption is recognized as a pervasive and longstanding problem in the Philippines. The Philippine government has worked in recent years to reinvigorate its anticorruption drive, but reports of corruption remain common. Both foreign and domestic investors express concern over the propensity of Philippine courts and regulators to stray beyond matters of legal interpretation into policymaking and about the lack of transparency in these processes. There are reports of courts being influenced by bribery and improperly issuing temporary restraining orders that impede legitimate commerce. Investors also raise concerns that regulators rarely have any background in economics or business, which enables entrenched interests to manipulate the legal and regulatory process to their advantage.

QATAR

TRADE SUMMARY

The U.S. goods trade surplus with Qatar was $ 2.6 billion in 2008, an increase of $313 million from $2.3 billion in 2007. U.S. goods exports in 2008 were $3.1 billion, up 11.6 percent from the previous year. Corresponding U.S. imports from Qatar were $484 million, up 1.5 percent. Qatar is currently the 48th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Qatar was $7.1 billion in 2007 (latest data available), up from $5.4 billion in 2006.

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), Qatar applies the GCC common external tariff of 5 percent for most products, with a limited number of GCC approved country-specific exceptions. Qatar's exceptions include basic food products such as wheat, flour, rice, feed grains, and powdered milk. The tariff on alcoholic beverages and tobacco products is 100 percent. Qatar has exempted some construction materials from tariffs until the end of 2009 including iron, building materials, and cement.

Projects funded by the Qatar Industrial Development Bank (QIDB) can be granted a customs duty waiver for the import of machinery, raw materials and other industrial inputs. Qatar is not a signatory to the WTO Information Technology Agreement.

Import Licensing

Qatar requires importers to have a license for most products, and only issues import licenses to Qatari nationals. Only authorized local agents are allowed to import goods produced by the foreign firms they represent in the local market. However, this requirement may be waived if the local agent fails to provide the necessary spare parts and backup services for the product. Pork and pork derivatives may not be imported.

The government has on occasion established special import procedures via government-owned companies to help ease demand pressures. For example, in 2006, the government established the Qatar Raw Materials Company, which imports construction materials and sells them to companies in Qatar at a marginal markup (to cover its operating expenses).

Documentation Requirements

In Qatar, a letter of credit is the most common instrument for controlling exports and imports. When a letter of credit is opened, the supplier is required to provide a certificate of origin for the product. To clear goods from customs zones at ports or land borders in Qatar, importers must submit a variety of documents, including a bill of lading, certificate of origin, *pro forma* invoice and an import license. All imported beef and poultry products require a health certificate from the United States and a *Halal* slaughter certificate issued by an approved Islamic center in the United States. The Qatari embassy, consulate, or chamber of commerce in the United States must authenticate all shipping documents, including the certificate of origin.

In 2008, the Ministry of Business and Trade established a "one-stop shop" to handle all services and required documentation for foreign investors and importers present in Qatar. This office assigns a case manager to each businessperson to review, sign, and process required materials for health and labor regulations, residency permits, and other documents.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Standards

As part of the GCC Customs Union, the six Member States are working toward unifying their standards and conformity assessment systems. However, each Member State currently continues to apply either its own standard or a GCC standard, resulting in a complicated situation for some U.S. businesses. GCC Member States do not consistently send notification of new measures to WTO Members and the WTO Committees on Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT) or allow WTO Members an opportunity to provide comments.

In May 2008, the GCC Standards Committee approved two new standards for the labeling and expiration periods of food products. The new GCC standards eliminate the long standing requirement that at least one-half of a product's shelf life be valid when a product reaches a port of entry in GCC Member States. Officials from the Gulf Standards Organization (GSO) have stated that GCC Member States will accept use of the terms "best by" and "best before" as meeting the date labeling requirement for shelf-stable products. The United States has requested written confirmation of this situation.

SPS MEASURES

In May and October 2007, respectively, Bahrain and Oman notified WTO Members of proposed procedures meant to harmonize food safety import requirements for all GCC Member States. The United States and other WTO Members provided comments outlining significant concerns with the procedures, which, as currently drafted, do not appear to have a clear scientific basis and would substantially disrupt food exports to GCC Member States from their trading partners. The GCC Member States indicate that they are developing a response to these comments, and the United States has established a dialogue between U.S. and GCC technical experts to discuss the procedures and potential amendments to address the concerns raised.

In mid-2008, Qatar adopted World Animal Health Organization (OIE) guidelines for the importation of U.S. beef, effectively lifting import restrictions which had been in place since 2003. Additionally, in mid-2008, Qatar rejected several shipments of U.S. poultry due to concerns over packaging procedures. U.S. officials are working with Qatari food inspection officials to clarify import procedures.

Conformity Assessment

The GCC Standards Committee is currently developing a conformity assessment scheme to be adopted ultimately by each of the six Member States and has set 2010 as a deadline for full implementation by each Member State. The United States is working to establish a dialogue between U.S. and GCC technical experts to discuss this proposed scheme with the goal of helping to ensure that it is developed, adopted, and applied in accordance with WTO rules.

GOVERNMENT PROCUREMENT

Qatar gives preferential treatment to suppliers that include high local content in bids for government procurement. Qatar also gives a 10 percent price preference to local firms and a 5 percent price preference to GCC firms in all government procurement. While, as a rule, Qatar requires that suppliers be 51 percent Qatari-owned or that foreign firms have a local agent in order to submit tenders, in practice certain exceptions exist. Qatar is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Qatar has established a joint committee between the Ministry of Business and Trade and the National Health Authority to coordinate their efforts and ensure that only patented products or authorized copies of pharmaceutical products are registered for sale.

As part of the GCC Customs Union, the six Member States are working toward unifying their IP regimes. In this respect, the GCC is preparing a draft common trademark law. All six Member States are expected to adopt this law as national legislation in order to implement it. The United States has outlined specific concerns with the trademark law and has established a dialogue between U.S. and GCC technical experts to ensure that the law complies with the Member States' international and bilateral obligations.

SERVICES BARRIERS

Agent and Distributor Rules

Qatari laws state that only Qatari nationals can act as local agents, distributors or sponsors. However, there are exceptions granted for 100 percent foreign-owned firms in the agriculture, industry, tourism, education and health sectors. One notable exception is the Qatar Science and Technology Park, which allows for the establishment of local companies or branches of foreign companies with 100 percent foreign ownership.

In practice, some Qatari ministries waive the local agent requirement for foreign companies that have contracts directly with the government of Qatar. The Qatar Distribution Company has the exclusive right to import and distribute alcohol.

Banking

In 2003, the Qatar Central Bank allowed foreign banks to establish representational offices and allowed existing foreign banks in Qatar to open new branches through a case-by-case waiver by Amiri Decree. In 2004, Law No. 31/2004 amended the Organization of Foreign Capital Investment Law to allow foreign investment in the banking sector with approval by decree from the Cabinet of Ministers. Qatari regulations for local and foreign bank practices are the same, with new licenses available through the Qatar Central Bank application process. In 2005, Qatar authorized foreign banks to open branches in the Qatar Financial Center (QFC). Foreign banks are authorized to conduct all types of business out of the QFC, including provision of Islamic banking services, but are informally "advised" to not to offer services related to retail banking business. Laws and regulations applied to foreign banks registered in the QFC are different from, and more closely resemble international standards, the ones adopted by the Qatar Central Bank. The QFC tribunal is completely independent of the existing Qatari legal system and has jurisdiction for any dispute involving a registered QFC business.

INVESTMENT BARRIERS

The Organization of Foreign Capital Investment Law (Law No. 13/2000) allows foreign investors, upon receiving government approval, to own up to 100 percent of projects in the agriculture, tourism, education, industry, health, and energy sectors. Foreign equity is limited to 49 percent in other sectors. Qatar amended the law in 2004 to allow foreign investment in the banking and insurance sectors upon approval by a decree from the Cabinet of Ministers. Moreover, foreign financial services firms are allowed 100 percent ownership at the QFC.

The law permits foreign investors to lease land for up to 50 years, renewable upon government approval. A law enacted in 2004 allows foreigners to own residential property in select projects, including the Pearl (the largest real estate development project in Qatar), the West Bay Lagoon, and the Al-Khor resort project. A 2006 law allows foreigners to be issued residency permits without a local sponsor if they own residential or business property in Cabinet-designated "investment areas."

OTHER BARRIERS

Corporate Tax Policies

Qatar levies corporate income taxes on foreign firms at rates from 5 percent to 35 percent of net profits, including profits from foreign majority-owned Qatari joint ventures exceeding 100,000 Qatari riyals ($27,000). All Qatari owned firms and joint ventures are exempt from corporate income taxes. Under Law No. 13/2002, the Ministry of Finance may grant a tax holiday of up to 10 years for new foreign investments in key sectors. Companies established in the QFC have enjoyed a tax exemption since the start of operations in 2005, though a 10 percent rate may be imposed in the future. Other foreign companies may be granted tax exemptions on a case-by-case basis by Amiri Decree.

RUSSIA

TRADE SUMMARY

The U.S. goods trade deficit with Russia was $17.4 billion in 2008, an increase of $5.5 billion from $11.9 billion in 2007. U.S. goods exports in 2008 were $9.3 billion, up 26.8 percent from the previous year. Corresponding U.S. imports from Russia were $26.8 billion, up 38.6 percent. Russia is currently the 28th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Russia was $13.0 billion in 2007 (latest data available), up from $10.7 billion in 2006. U.S. FDI in Russia is concentrated largely in the mining sector.

Russia's efforts to negotiate the terms for its accession to the World Trade Organization (WTO), begun in 1993, are well advanced. Russia has completed its bilateral market access negotiations with most interested WTO Members, including the United States. Currently, the only outstanding bilateral negotiation is with Georgia, but Russia may be approached by other WTO Members to engage in bilateral negotiations prior to completion of the process. Russia is now focused on multilateral negotiations regarding other terms for accession. Discussions continue on a number of issues including sanitary and phytosanitary measures, agriculture (including domestic support levels), intellectual property rights protection, import licensing of products with encryption technology, certain export duties, and the operation of state-owned enterprises on a commercial basis. In addition, Russia has much work to do to integrate WTO provisions into its domestic law and to comply with bilateral agreements already in force.

The global economic crisis and dramatic drop of commodity prices impacted the Russian economy severely in the last quarter of 2008. Although the government put anti-crisis measures in place beginning in mid-September to support the stock market, banking sector, and specific industries, fourth quarter economic output contracted sharply despite overall growth for the year as a whole. In November, the Prime Minister announced a package of 55 measures to stimulate internal demand, some which were being discussed prior to the crisis, and many of which, if implemented, could impact adversely U.S. trade. The measures range from the specific (reduce tariff-rate quotas (TRQs) on imports of poultry and pork in 2009) to the general (review import duties on a range of goods), and encompass a range of sectors, such as financial services, housing, agriculture, and manufacturing. The U.S. Government is monitoring these and other actions of the Russian government to shore up its economy.

IMPORT POLICIES

Russia continues to maintain a number of import restrictions; charges and fees that exceed the cost of the service; and licensing, registration, and certification regimes that are burdensome. Discussions continue on eliminating these and other measures or modifying them so that they are consistent with WTO requirements and internationally accepted practices.

In line with Russia's "Main Directions of Customs Policy for 2008-2010," approved in early 2007, the Russian government has been gradually reducing tariffs on a number of imports of capital equipment for which there is no analogous domestic production. The reduction, and even elimination in some cases, of tariffs on such products as offshore drilling rigs, equipment for nuclear reactors, sound and television recording equipment, medical and metalworking equipment, some spare parts for civilian aircraft, flight simulators for civil aviation, child safety seats, digital cameras, and rechargeable batteries for cell phones continued in 2008, albeit at a slower pace than in 2007. Overall, this effort has helped domestic industries modernize their technical equipment base. Most recently, however, in response to the global economic crisis, the Russian government announced increased tariffs on an array of goods, including automobiles, trucks, combine harvesters, soy meal, and selected dairy products, and has indicated that it will continue to review its tariff policy in light of overall economic conditions.

Tariff-Rate Quotas

Russia has committed that its agricultural policies will be consistent with its bilateral and multilateral commitments, including the United States-Russia WTO Bilateral Market Access Agreement. Consistent with the 2005 United States-Russia Meat Agreement, the Russian Government established country-specific TRQ volumes (including for the United States) and reduced in-quota tariff rates for beef, pork, and poultry meat imports from 2006 to 2009. However, in October 2008, Russia proposed renegotiating the terms of access for poultry and pork for 2009. In December 2008, U.S. and Russian negotiators agreed to decrease the 2009 in-quota volume for U.S. poultry, increase the 2009 in-quota volume for pork, and increase the over-quota tariff rates for both poultry and pork. Because the 2005 Meat Agreement expires at the end of 2009, the United States expects to begin negotiations this year on these products.

Import and Activity Licenses

Import licenses and activity licenses for wholesaling and manufacturing activities are necessary to import a number of products, including alcoholic beverages, pharmaceuticals, products with encryption technology, explosive substances, narcotics, nuclear substances, hazardous wastes, and some food products (*e.g.*, unprocessed products of animal origin). While some of these requirements address legitimate health and safety concerns, others appear to be unnecessary additional requirements for imported goods and to burden unfairly importation of these products.

For example, all importers of alcoholic products must have an activity license to produce or distribute and store such products, placing a burden on importers that should be applied only to distributors. Importers of vodka, tequila, grappa, and pure ethyl alcohol must also obtain an additional "white spirits" license, which can take up to two weeks to be issued. Imports of white spirits were disrupted for a two-month period from June to August 2008 because the Ministry of Economic Development (MED) suspended the issuance of new licenses while that ministry prepared to transfer this function to the Ministry of Industry and Trade (MIT). Application for the license requires submission of documents that can take an additional two months to obtain, in some cases from Russian government offices. This costly and time-consuming endeavor is not required of domestic distributors and specifically targets vodka imports. (Additional burdens imposed on importers of alcohol-containing products are described below in the section on Nontariff Barriers.)

In a November 2006 bilateral agreement with the United States, the Russian government agreed to set up a streamlined system for the importation of goods containing encryption technology through the implementation of transparent, nondiscriminatory procedures. The Russian government agreed also to allow the importation of most commercially-traded goods containing encryption technology after a one-time notification, or in some cases, with no licensing or notification requirements at all. Although Russia agreed to implement the new regime by February 2007, the old regime remains in place. The United States continues to work actively with the Russian government on addressing its licensing barriers to trade in goods containing encryption technology and ensuring the full implementation of the terms of the bilateral agreement.

Customs Issues, Taxes, and Tariffs

In 2007, Russia's average "most favored nation" applied tariff rate was 11 percent. More specifically, U.S. agricultural exporters faced an average applied tariff of 14.6 percent, while industrial exports faced an average applied rate of 10.5 percent.

In addition to tariffs, there are two types of taxes applied to goods at the time of importation: the Value Added Tax (VAT) and selective excise taxes, both of which are also applied to similar domestic goods. Pharmaceutical importers have complained that new pharmaceuticals imported in the clinical trial stage (prior to registration) were improperly assessed the VAT because they could not produce a certificate of registration. The U.S. Government has raised this issue with the Ministry of Economic Development and the Ministry of Finance.

Excise taxes apply to a number of luxury goods, such as liquor and cigarettes. Excise taxes on spirits of more than 9 percent ethyl alcohol are assessed at 191 rubles per liter of ethyl alcohol content, whereas spirits of 9 percent and less are assessed at 121 rubles per liter. Table wine is assessed at 2.6 rubles per liter, sparkling wines at 10.5 rubles per liter, and beer at 3 rubles per liter.

Import tariffs on automobiles, aircraft, and aircraft parts have presented particular obstacles to U.S. exports to Russia. The effect of the tariff, VAT, and customs handling fees on aircraft was equivalent to a 40 percent tax, making it virtually impossible for Russian airlines to afford to purchase foreign planes. When Russia joins the WTO, tariffs on aircraft and aircraft parts will be substantially reduced. Tariffs on civil aircraft parts, including engines, will be reduced to an average of 5 percent. As a result of our bilateral agreement on leased aircraft, which entered into force on November 19, 2006, in January 2007, the Russian government approved the decision to cut import duties on foreign leased aircraft from 20 percent to 8 percent for aircraft with 50 seats and fewer and from 20 percent to 10 percent for aircraft between 115 seats and 160 seats. The measure would apply to planes leased for no more than three years and would remain in force until January 1, 2011. However, the necessary decree implementing this tariff reduction has not yet been issued.

Instead, the Russian government eliminated the import tariff on small aircraft with up to 19 seats for a period of 9 months as of July 16, 2008. According to the Ministry of Transportation, the measure will be extended after nine months. In September 2008, the government announced that the import tariff for aircraft with up to 50 seats would be cancelled as of January 1, 2009, and that import tariffs for aircraft with 115-160 seating capacity, not more than 10 years old and imported into Russia prior to 2011 under leasing contracts for no longer than 5 years, would also be temporarily eliminated. Neither of the decrees finalizing these proposals has yet been issued.

The import tariff on foreign aircraft with over 300 seats was eliminated for a period of 9 months beginning in February 2008. In September 2008, the Russian government recommended permanent cancellation of import duties on aircraft seating more than 300 passengers, but no date has been set for this permanent tariff reduction measure to come into effect.

On January 11, 2009, the import duty on most new passenger vehicles was increased temporarily to 30 percent, from the previous rate of 25 percent, for a period of 9 months. When combined with the excise tax based on engine displacement and the VAT, the price after clearing customs of larger U.S. passenger cars and sport utility vehicles is increased by as much as 70 percent. Attempting to justify the duty increase, Russian government officials have cited the need to provide Russian-owned domestic manufacturers some protection from import competition in the wake of the global financial crisis. The increased duty, coupled with the strengthening trend in the dollar-to-ruble exchange rate, will likely have a negative impact on U.S. automobile manufacturers' sales of imported vehicles in Russia. On the same day, the Russian government also made it more difficult to import used vehicles into Russia by imposing a prohibitive duty on cars older than five years (whereas the previous law imposed a prohibitive duty on cars older than seven years). Similarly, for motorcycles, Russia imposes a 20 percent special duty on large motorcycles, plus an additional 18 percent VAT, increasing prices significantly on imported large motorcycles.

In a bilateral agreement signed in November 2006, Russia committed to revert to and maintain the previously applied 5 percent duties on imports of combine harvesters and threshers and to bind the rates upon accession to the WTO. However, in February 2008, the Russian government announced a safeguards investigation in response to increased imports of agricultural combine harvesters. The Ministry of Industry and Trade concluded its safeguard investigation on February 15, 2009, finding that imports had caused serious injury to Russia's combine industry. Before that final determination was issued, however, the Interagency Commission on Safeguards and Customs Policy of the Russian Federation proposed an increase in duties for most types of grain harvesters. On January 14, 2009, following a visit by Prime Minister Putin to the largest Russian producer of combine harvesters, the Russian government published an increase in duties for combine harvesters (to 15 percent but no less than €120 per 1 kilowatt of engine capacity), to be in place for 9 months. At the same time, the government also announced a moratorium on further financing of foreign agricultural equipment. Because the tariff increase was already in place, the Ministry of Industry and Trade decided to impose no additional safeguard measures for the period of time the higher import duties are in place. The duty increase, combined with a moratorium on financing of purchases of all imported agricultural machinery, will reduce significantly U.S. and other foreign manufacturers' participation in the combine harvester market. Pursuant to the 1992 Bilateral Trade Agreement between the United States and Russia, the U.S. Government has entered into consultations with the Russian government concerning the safeguard investigation.

Customs authorities in Russia continue to assess duties on the royalty value of imported audiovisual materials, such as television master tapes and DVDs, *etc.*, rather than solely on the physical value of the carrier medium. U.S. industry has indicated that this practice represents a form of double taxation, since royalties are also subject to withholding, income, value added, and remittance taxes. U.S. consumer goods companies have also reported that Russian Customs are calculating customs duties based on a value that includes royalty payments made by the companies' Russian subsidiaries to their overseas parent companies for use of parent company-owned product trademarks. U.S. companies are disputing these assessments.

U.S. industry also complains of high tariffs on agricultural products such as fruit, processed food, sugar, and forest products. Once Russia is a WTO Member, it must bind its tariffs on all agricultural products, thereby providing more predictability in its tariff rates.

A new Customs Code, intended to bring Russia's customs regime into compliance with WTO requirements, has been in force since 2004. The Customs Code simplified customs processes and established specific procedures for the application and payment of tariffs. Russia also amended its Customs Tariff Law to update its customs valuation practices to implement provisions of the WTO. However, significant problems remain. Reportedly, the Russian government continues to issue unpublished recommendations on import valuations to customs posts to help combat undervaluation of imports. However, these recommendations can also be applied as reference prices for customs valuation or substituted for the invoice value of the imports. U.S. industry also reports that Russia does not publish all regulations, judicial decisions, and administrative rulings of general application to customs matters. In addition, U.S. exporters report that customs enforcement varies by region and port of entry, and that frequent changes in regulations are unpredictable, adding to costs and delays at the border. Russia recognizes that it will need to revise elements of its customs fee structure. In addition, the United States is working with Russia in the multilateral WTO Working Party process to make substantial improvements on these customs issues and ensure full implementation of the WTO Customs Valuation Agreement into Russia's laws.

U.S. exporters have also reported to the U.S. Embassy that Russian customs officials often ask them to provide their Shippers Export Declaration (SED) to substantiate shipment values. The SED is a U.S. Census Bureau form that is intended to track exports for statistical purposes. The form explicitly states that it cannot be provided to any authorities outside the United States. As such, the SED is not one of the typical shipping documents, such as invoices, provided to customs officials. The Russian practice of asking for the form puts U.S. firms in a difficult and illegitimate position, and adds to the other costs and delays at the Russian border noted above.

Nontariff Barriers

U.S. companies continue to face a number of nontariff trade barriers when exporting to Russia. Nontariff barriers are a topic of detailed discussions in Russia's WTO accession negotiations and in bilateral United States–Russia discussions.

Pharmaceuticals

Russia's pharmaceutical market has seen some of the fastest growth in the world over the last three years. Foreign firms account for 75 percent to 80 percent of total sales (based on value) in the Russian market. Market analysts have estimated that government purchases comprised about 26 percent of the entire pharmaceutical market in 2008. U.S. industry reports that imports, which are often safer and of a higher quality than locally produced pharmaceuticals, and are higher priced, are often absent from reimbursement lists and state purchases likely due to government concerns over price without regard to the quality and safety of the products. Senior Russian government officials have repeatedly stated that foreign producers' dominant share of the Russian pharmaceuticals market is a long-term national security risk. The government's long-term development plan through 2020 for the domestic pharmaceuticals industry calls for Russian drug manufacturers to capture at least 50 percent of total sales (based on value) by 2020.

Experts estimate that sales of counterfeit drugs in Russia total at least $200 million per year, with the bulk of fake drugs being produced domestically, as well as in India and in China.

Alcohol

Alcohol trade in Russia is governed by a burdensome array of over 100 laws, decrees, and regulations. A partial list of Russian laws and regulations governing alcohol can be found in Russian at: http://alcogol-info.ru/?page=normativ. The regulation of alcohol has long been a politically sensitive issue in Russia. Senior government officials have suggested that the Russian government should reestablish a monopoly over the production of ethyl alcohol (such a monopoly existed during the Soviet era) and/or strictly regulate the minimum consumer price for vodka, in an effort to prevent the production and sale of moonshine and other forms of illegal alcohol, and to increase tax revenue from legal alcohol production and sales. Other recent proposals from senior government officials have included the creation of a new government body to consolidate alcohol regulation, the introduction of criminal penalties for the sale of alcohol products that are not legally tracked through a national automated control system, introduction of a uniform excise tax for alcoholic beverages, and the introduction of a new unified electronic database for the reporting of retail alcohol sales. All of these proposals are currently the subject of policy-level interagency discussions within the Russian government, and none have advanced to the stage of draft legislation and submission to the State Duma of the Russian Federation ("Duma").

Importers of alcohol face a variety of discriminatory measures. Pursuant to the Russian Customs Code and Law on Production and Turnover of Alcohol, as amended in December 2008, all customs duties, excise taxes, and VAT on alcohol must be paid in advance using a bank guarantee and deposit. Because the actual amount of the duties and fees may not be known when the guarantees are procured, the Government of Russia has established fixed guarantee amounts, but these amounts often exceed the final actual amounts due, especially for lower value products. In addition, industry has reported that refunds of these guarantees are sometimes held up for as long as seven months. The advance payment requirement for duties and taxes, and the length of time the bank guarantee refund is held, may limit trade volumes due to the amount of money that must be tied up in guarantees. An earlier requirement for a "transit" guarantee has been eliminated, and Russian customs stopped collecting these additional funds in 2008. Furthermore, the customs registration fee, 7,000 rubles, exceeds user fee levels for such services in other countries.

Importers face additional burdensome and discriminatory procedures under the current regulatory regime. The United Federal Automated Information System (UFAIS) requires importers and domestic manufacturers to print Universal Product Code (UPC) data on a small paper excise stamp attached to each bottle. This system, comprising both hardware and software, is expensive to purchase, difficult to use, and has failed thus far to fulfill its purpose, which is to track alcohol from manufacture or import to the retail sales point. The deadline for the full implementation of UFAIS from production lines has been delayed several times since 2006, and the Russian government is expected to set the new deadline for no earlier than January 2010. While the federal authorities have not yet set an exact implementation date, the Moscow city government has already announced a new deadline of January 1, 2010 for implementation of UFAIS for products within its jurisdiction. Under the current UFAIS system, the importer is responsible for marking the imported alcohol products with excise stamps before the products enter the Russian Federation. To do this, the importer must provide for registration of the imported alcohol product in the UFAIS system, as well as print data about the alcohol product on the excise stamps, procure such stamps, and attach them to the consumer packaging. The importer bears responsibility for the authenticity of the data as well as for the correctness of their placement on the excise stamps.

Not only is the process burdensome and expensive, but as implemented, it discriminates against imported spirits. Most notably, importers of alcohol beverage products are required to report individual sequentially-numbered strip stamps while domestic producers may use and report stamps by batches of products. When the bottle enters the warehouse, importers are required to record by hand the strip stamp sequential number of each bottle, in blue ink, in a special notebook, every page of which has been hand stamped by tax authorities. When bottles leave the warehouse, the strip stamp sequential number must again be recorded by hand, in blue ink, in the book. Moreover, importers must report the strip stamp sequential numbers contained on every packaging size (from the bottle to the case, pallet, batch, consignment, *etc.*). Finally, whereas domestic manufacturers and distributors are required to report only to the Tax Authorities (and only by batches of products, not by individual sequentially-numbered strip stamp), importers must report their more detailed data also to Russian Customs, and in a different format, increasing the reporting cost as well as the possibility for error. The Russian government has stated that it will eliminate the discriminatory treatment of importers by applying the more burdensome bottle-by-bottle reporting requirements to domestic producers, but such action has not yet been taken.

Although the strip stamp system is currently operational, logistical challenges continue. Current problems with the UFAIS system include the difficulty in stamping miniature and food service-sized bottles; the frailty of the stamps which tear easily; the discriminatory reporting requirements imposed on importers; and software glitches causing importers' data to be corrupted, costing time and money.

Because of the numerous problems that have arisen in the implementation of the UFAIS system, the Russian government has attempted to ease some of the system's more burdensome requirements. Although production, distribution, and retail trade in alcoholic drinks were originally included in the UFAIS system, in November 2007 the UFAIS law was amended to exclude both wholesale and retail sales from the UFAIS tracking system. The production of ethyl alcohol and of alcoholic beverages is still covered by the UFAIS system.

Also in response to complaints about the UFAIS system, the Russian government is introducing new UFAIS software and hardware. Although the reporting requirements will be generally the same, the conversion is likely to disrupt business when the bottle enters the warehouse, in particular for importers. Of greatest concern is the incompatibility of the two software systems; that is, the new UFAIS software can not read the strip stamps created under the old UFAIS system. Because of the significant lag time between the bar-coding of the imports and their release onto the market, importers may be left with significant inventory that cannot be sold due to "invalid" stamps. By contrast, domestic producers bar-code their strip stamps only a few days before sale and hence will not face the same problem of unusable inventory.

Notwithstanding the initial and ongoing problems with the strip stamps, the Russian government has considered adding a second stamp across the top of the bottle to combat the problem of empty bottles being refilled and resold (a practice that raises both tax avoidance and health and safety concerns). However, the proposal is more than a year old and has yet to advance to a first reading in the Duma; in addition, one of the two Duma committees with responsibility for reviewing the bill issued a negative comment on the bill in February 2008.

The requirements on spirits alcohol, including information reporting requirements, usage of the UFAIS system, payment of the excise tax, application of the excise stamp, and import and licensing requirements, were also imposed on products such as perfumes, cosmetics, household cleaners, and solvents containing more than 1.5 percent alcohol, severely disrupting trade. In 2007, the Russian government amended the Law on Production and Turnover of Alcohol to exempt cosmetics, perfumes, and personal care products in packages of up to 500 ml. The Russian government may amend the law further to expand the list of exempt products. The United States is encouraging further amendment of the law to exempt all nonfood goods containing alcohol from the alcohol-related requirements above.

Development of Nuclear Power Generation

A number of factors impede the involvement of U.S. firms in the continued development and expansion of Russia's nuclear power industry, including inadequate nuclear liability protection for U.S. nuclear equipment suppliers in Russia, requirements for review of equity investments introduced by the Strategic Sectors Law, and laws establishing Rosatom as a State Corporation. An additional factor affecting the potential involvement of U.S. firms in Russia's nuclear industry is the absence of a ratified agreement between the United States and Russia on the peaceful uses of atomic energy (*i.e.*, a "123 Agreement" under the U.S. Atomic Energy Act).

EXPORT POLICIES

The price of natural gas for industrial consumers in Russia is held artificially low by price controls. Domestic gas consumers, both industrial and residential, pay a fraction of the export price that is charged to European consumers. Domestic prices range from approximately $75/mcm (thousand cubic meters) to $95/mcm, compared with European prices approaching $500/mcm in late 2008. The Russian government is implementing a plan to raise domestic prices for industrial users to "market" levels by 2011, which should reduce distortions and provide incentives for greater gas production by oil companies and independent producers. However, it appears likely that the shift to market prices will be slower than originally envisioned, and the 2011 target is likely to slip. State-controlled firm Gazprom owns Russia's gas pipeline network and is by law Russia's monopoly natural gas exporter. No such restriction exists on oil exports, although Russia's oil pipeline system is owned by state-owned firm Transneft. Oil and gas export revenues are a significant driver of the Russian economy and the Russian government budget.

Although Russia has eliminated export duties on a few products, it maintains export duties on nearly 450 types of products for both revenue and policy purposes. Russia has indicated that it intends to eliminate gradually most of these duties, except for products deemed as strategic, such as hydrocarbons and scrap metals. For example, Russia had agreed to reduce its 15 percent duty on ferrous steel scrap to one-third of current levels within 5 years after it becomes a WTO Member; yet in July 2008, the Ministry of Industry and Trade proposed raising the specific component of export duty on ferrous steel scrap from €15 ($18.90) per ton to €120-130 ($151 to $164) per ton while leaving the *ad valorem* rate of 15 percent unchanged. It is not yet clear if and when the proposed tariff increase will be approved and go into effect. Russia also currently maintains a 10 percent export duty on copper cathode, but no export duty is charged on copper wire rod. As part of the bilateral WTO market access agreement, Russia has agreed to eliminate its export duty on copper cathode within four years after it becomes a WTO Member. Export duties on crude oil, reaching 65 percent on the margin, are deliberately designed to redirect crude to domestic refineries. In late 2008, the government reduced, temporarily, some of the export tax burden on crude oil in an effort to blunt the effects of the global financial crisis on the Russian economy.

A variety of agricultural products are subject to export licensing and/or tariffs, such as certain fish products, oilseeds, fertilizers, and wood products. Russia has not been permitted to export sturgeon caviar since 2002, and there is currently no approved commercial export quota for any type of Russian caviar. However, the country is allowed a limited sturgeon catch quota under the Convention on the International Trade in Endangered Species for purposes of breeding and scientific research.

Over the last two years, the Russia government has been pursuing a policy of raising export tariffs on coniferous logs and round wood in order to stimulate the development of a domestic wood processing industry and to encourage the export of sawn lumber and value added wood products. The government has eliminated the export tax for processed wood products such as particle board, several types of cellulose from coniferous wood, certain types of paper, carton and cardboard, and railway and tramway sleepers. In May 2007, the government eliminated the import tariffs for equipment used to produce medium-density fiberboard, granulated and brick wood.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

U.S. companies cite technical regulations and related product testing and certification requirements as major obstacles to U.S. exports of industrial and agricultural goods to Russia. Russian authorities require product testing and certification as a key element of the product approval process. Opportunities for testing and certification performed by competent bodies outside Russia that are recognized by Russian authorities are limited, and some view the procedures associated with Russia's approach to the "supplier's declaration of conformity" as unnecessarily burdensome. Manufacturers of telecommunications equipment, oil and gas equipment, and construction materials and equipment, in particular, have reported serious difficulties in obtaining product approvals within Russia.

The current classification and approval system for food supplement and dietetic products is costly and lengthy. Food and dietetic products that are sold legally in the United States and the European Union are subject to an expensive and lengthy certification process in Russia that takes three months to five months. Products are also subject to redundant technical reviews conducted by both the Nutrition Institute and the Ministry of Health, which take between 6 months to 12 months.

In an attempt to move to a system of self-certification of pharmaceutical products, the Russian government has, since January 1, 2007, required imported pharmaceutical products to be accompanied by a complex declaration of conformity rather than a certification. Under the applicable regulations, the declaration of conformity has to be prepared by a Russian legal entity, acting on the basis of an agreement with the foreign manufacturer. The Russian legal entity has to obtain a license for the manufacture of medicines, register in its own name all of the medicines supplied, and obtain the right to use the intellectual property (patents and trademarks) with respect to the medicines that it will be releasing onto the Russian market. In addition, the system discriminates against importers by requiring them to provide a Declaration of Conformity for each batch of medicines, while Russian manufacturers are permitted to provide a declaration for a full series. Industry has alleged that these requirements are not an improvement over the previous complicated certification practice and have increased costs. The Russian government has argued that the new regulations are a useful anti-counterfeiting measure.

The United States continues to work with the Russian government to bring its product regulations and certification requirements into conformity with international standards and practices. The Russian government is attempting to put in place the necessary legal and administrative framework to establish transparent procedures for developing and applying standards, technical regulations, and conformity assessment procedures to accomplish this goal. The December 2002 Law on Technical Regulation provides a framework for the development of specific requirements for industrial goods, as well as sanitary and phytosanitary requirements for agricultural commodities, processed foods, and plants. The Law was amended in May 2007, resulting in the expansion of the methods by which technical regulations can be adopted. In addition to the current legal process requiring Duma approval, regulations can now be adopted by government decree without Duma approval. In 2008, for example, while four technical regulations were adopted by the Duma, one was adopted by government decree.

Sanitary and Phytosanitary Measures

Russia’s application of its sanitary and phytosanitary (SPS) measures has had a major negative effect on U.S. trade. Russia often blocks the import of products deemed "sensitive," seemingly without a scientific basis for such action. In 2006, the Russian government issued resolutions directing that international standards, guidelines, and recommendations of the International Organization for Epizootics (OIE) and the International Plant Protection Convention be followed, although in practice they are not always followed. There is currently no corresponding government resolution that states Russia will follow Codex Alimentarius recommendations and guidelines. In November 2006, the United States and Russia signed bilateral agreements to address SPS issues related to the trade in frozen pork; the certification of pork and poultry facilities for exporting products to Russia; trade in beef and beef by-products; and trade in products of modern biotechnology. Notwithstanding progress on the implementation of these bilateral agreements, U.S. exporters of poultry and pork continue to have shipments rejected at the points of entry because of the presence of trace amounts of food-borne pathogens and other violations of Russian sanitary requirements that do not appear to be based on science. Russia’s SPS standards are extremely prescriptive with detailed requirements on facilities and how product is produced rather than focusing on the wholesomeness of the product. In some cases, Russia’s minimum residue levels differ from international standards, but Russia has not provided risk assessments or a scientific basis for these differences.

The Russian veterinary service (VPSS) recently questioned the reliability of the current certification system for U.S. poultry, pork, and beef imports. Under the terms of the November 2006 United States-Russia bilateral agreement on the inspection of U.S. meat and poultry facilities, the United States Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS) has the right to inspect and certify that poultry, pork, and beef facilities meet the necessary sanitary requirements and thus are eligible to export products to Russia.

VPSS also considers that minor typographical errors on the export certificates that accompany agricultural imports constitute a violation of Russian law and regulations. VPSS has been rejecting U.S.-origin meat and poultry shipments that arrive at the border if the accompanying documentation contains minor typographical errors. USDA has emphasized that minor typographical errors on documents have nothing to do with the safety and quality of the product in question. USDA requested that VPSS accept "official correction letters" when minor typos caused by human error occur in an attempt to resolve this issue. To date, VPSS has refused this request. Since August 2008, Russia has sought to implement policies that seem to be aimed solely at reducing the volume of U.S. meat and poultry imports. As an example, following the 2008 joint audits of U.S. pork and poultry facilities, VPSS delisted facilities and refused to acknowledge FSIS's authority to inspect and relist plants that completed corrective actions, an authority granted under the 2006 plant inspection agreement.

VPSS has expanded its review of import procedures to those covering dairy products, feed (including pet food), and feed additives by requesting a list of facilities approved to export to Russia and seeking to audit these facilities to Russian standards. The immediate result has been a disruption in trade of feed and feed additives; dairy producers have also expressed concerns.

The United States continues to engage with Russia's government officials on these issues.

Pork

As part of the revised export certificate that was signed between VPSS and USDA in 2006, Russia agreed to accept freezing as appropriate mitigation for trichinae for U.S. pork imports intended for retail sale and for further processing. As a result, imports from certified plants are permitted when accompanied by the mutually agreed-upon export certificate. Unrelated to trichinae, VPSS has recently requested that the U.S. modify the existing export certificate to clarify that product meets Russian standards. The current certificate does not explicitly state that product must meet Russian standards.

Poultry

In June 2008, the Russian government issued a regulation that would have implemented a sanitary and phytosanitary norm ("SanPin") banning the importation and sale of chlorine-treated chicken as of January 1, 2009. This SanPin would have had a substantial negative impact on U.S. poultry imports to Russia, as the vast majority of U.S. poultry producers use chlorinated anti-microbial washes to kill foodborne pathogens during poultry processing. The same SanPin also places an upper limit on the amount of water content in chilled and frozen chicken. Some importers and distributors have had product removed from supermarket shelves or refused entry at the border because the water content level of frozen poultry exceeded the level permitted by this SanPin. The Russian government has also issued a resolution, scheduled to take effect January 1, 2010, requiring implementation of a SanPin banning the importation and sale of frozen poultry intended for further processing with respect to food intended for use in baby food and special diets; in 2011, the ban on further processing of frozen poultry will apply generally. Russia has not provided any scientific justification for these SanPins. U.S. trade and agricultural officials have discussed these issues extensively with their Russian counterparts, urging them not to implement these SanPins and to adopt as soon as possible SPS measures that are consistent with international requirements such as those of the WTO SPS Agreement and the norms in the OIE and Codex Alimentarius. During United States-Russia consultations in November and December 2008, the Russian government agreed to delay the implementation of the SanPin on chlorine-treated poultry until January 1, 2010. Further discussions among technical experts will take place in 2009.

Inspection of Facilities Producing Pork and Poultry

Under the November 2006 United States-Russia bilateral agreement on the inspection of U.S. meat and poultry facilities, FSIS was granted the authority to certify new facilities and/or facilities that had remedied a deficiency based on agreed inspection criteria. In accordance with the agreement, the Russian government also agreed to specific time deadlines to respond to requests to list facilities that FSIS had inspected and determined to be in compliance with requirements to export to the Russian Federation. The Russian government also agreed to a new process for selecting facilities that would be subject to joint audit. As noted above, VPSS recently questioned the reliability of the current inspection and certification system for U.S. meat and poultry facilities that are eligible to export to Russia. The U.S. Government is continuing to discuss this issue with Russia's veterinary service.

Beef and Beef By-Products

The Russian market for U.S. beef was reopened following the negotiation of a bilateral agreement and a new export certificate in November 2006. Under the certificate, deboned beef, bone-in beef, and beef by-products from cattle under 30 months of age can be exported from plants that have been inspected and certified to export to the Russian Federation. As of October 2008, 75 U.S. beef processing and cold storage facilities are authorized to export to Russia. The November 2006 bilateral agreement calls for negotiation of a new export certificate for beef and beef by-products to reflect the May 2008 OIE designation of the United States as a controlled-risk country. Negotiations on this new certificate are still ongoing. Under this new certificate, export of beef and beef by-products from cattle of all ages (excluding specified risk materials that the OIE requires to be removed) would be permitted.

Seafood

VPSS also exercises control over fish and seafood entering Russia. They are insisting that these products be shipped to Russia only from facilities that meet Russian standards and that VPSS has approved for export. Discussions between VPSS and the Seafood Inspection Program of the National Oceanic and Atmospheric Administration on U.S. fish and seafood imports to Russia are under way. VPSS intended to cut off trade in fish and fishery products unless a date was proposed for an audit of the U.S. system. The audit has tentatively been agreed upon for early April 2009.

Products of Modern Biotechnology

In accordance with a bilateral agreement between the United States and Russia signed in November 2006, Russia will establish a permanent biosafety regulatory system for products of modern biotechnology consistent with the WTO SPS Agreement. As a result of the bilateral agreement, in 2007 Russia restarted the approval of biotechnology varieties for animal feed use. However, Russia still does not have a system for approving biotechnology for cultivation. The Federal Service for the Protection of Consumer Rights and Human Well-Being registers biotechnology food products, while the Federal Service for Veterinary and Phytosanitary Surveillance registers biotechnology feed products. In either case, the registration process for biotechnology products takes about 12 months to complete and costs about $150,000 to $160,000. Russian law mandates that food products be labeled as containing genetically engineered organisms if the biotechnology components in the food product are equal to or greater than 0.9 percent of the product's weight (the same standard adopted by the EU). The United States continues to press the Russian government on significant concerns that U.S. food exporters have raised regarding Russia's food labeling policies.

Rice

In February 2008, Russia lifted a ban on imports of U.S. rice that was put in place after the September 2006 discovery of biotechnology rice seeds that were not approved for export to Russia. Currently, all shipments of U.S. rice to Russia must be accompanied by a phytosanitary certificate, a copy of a signed letter from the USDA Grain Inspection, Packers and Stockyards Administration, and a report from one of six approved U.S. laboratories indicating that the rice is free of LL Rice (a variety of long grain genetically modified rice), or indicating that the presence of LL Rice is below an agreed tolerance level.

Systemic Issues

In addition to these specific issues, exporters of agricultural goods to Russia face systemic issues related to the certification of agricultural products. Russian authorities require phytosanitary and/or sanitary (veterinary) certificates for nearly all agricultural and processed food products. Producers are required to seek certificates from their domestic regulatory authorities for certain products for which Russia has not provided scientific evidence of an alleged risk. For example, Russia requires phytosanitary permits for imports of U.S. corn samples for laboratory tests. Russia also requires phytosanitary certificates for shipments of processed products like soybean proteins, corn gluten and distiller's grain, which due to the nature of the processing process, do not present a pest risk and consequently do not receive a phytosanitary certification from the U.S. Government. Russian authorities also require a sanitary-epidemiological certificate or certificate of state registration for the importation of nonfood items such as styrofoam cups, bulk shipments of cardboard boxes, and furniture.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Russia has made some progress in IPR protection and legislation, but concerns remain particularly with respect to Russia's implementation of the November 2006 Bilateral IPR Agreement between the United States and Russia. The IPR agreement sets forth actions that Russia will take to improve protection and enforcement of intellectual property rights. As part of the agreement, the Russian government has committed to fight optical disc and Internet piracy, protect pharmaceutical test data, deter piracy and counterfeiting through criminal penalties, strengthen border enforcement, and bring Russian laws into compliance with WTO and other international IPR norms. Russia has been slow to implement some of these commitments, such as the adoption of required IPR legislation. Moreover, while Russia has made some progress on enforcement, affected industries believe more work is needed. The U.S. and Russian governments have an ongoing dialogue to ensure the full implementation of this binding agreement.

In 2008, Russia's optical disc production capacity continued to be far in excess of domestic demand, raising concerns regarding optical disc piracy, including with respect to exports. U.S. copyright industries estimate that approximately 65 percent of sound recordings on the Russian market are pirated, which reportedly resulted in losses of nearly $1.5 billion to the industry in 2007. However, legitimate DVD sales are on the rise, in part due to increased law enforcement action against pirates and a growing preference by the middle class for high quality products.

Internet piracy continues to be a serious concern. Criminal investigations are ongoing against operators of some of the notorious Russia-based websites. Western and Russian recording companies have initiated, and won, several civil suits against Internet pirates, although damages resulting from these victories have been minimal by U.S. standards. Overall, gaps remain in Russian law and enforcement efforts for adequately addressing Internet piracy.

U.S. and multinational companies continue to report counterfeiting of trademarked goods as a problem, especially for consumer goods, distilled spirits, agricultural chemicals and biotechnology, and pharmaceuticals. Several U.S. firms have experienced problems with trademark "squatting", with Russian enterprises attempting to appropriate well-known foreign trademarks not currently registered or active in Russia. However, rights holders have been moderately successful in countering these schemes through the Russian court system or the Russian Federal Service for Intellectual Property, Patents, and Trademarks (Rospatent).

In May 2008, the Business Software Alliance (BSA) reported in its fifth annual study of 108 countries that the estimated software piracy rate in Russia dropped the most of any country, declining from 80 percent in 2006 to 73 percent in 2007. The BSA attributed the decrease to software legalization programs, government engagement, user education and enforcement.

The United States is working to ensure that Russia takes appropriate actions to protect intellectual property rights and address piracy and counterfeiting. In addition, the United States is reviewing Russia's status as a beneficiary country under the U.S. Generalized System of Preferences (GSP) program. Russia was also on the 2008 Special 301 Priority Watch List and was subject to an Out-Of-Cycle Review.

The most significant legislative development over the last two years was the Duma's consideration and adoption of Part IV of the Civil Code, which replaced most of Russia's civil IPR legislation with a single code as of January 1, 2008. Part IV improves some aspects of IPR protection (*e.g.*, eliminating the reciprocity requirement for protection of geographical indications and instituting stronger rules on collecting societies), but still contains some provisions that raise concerns under the WTO and other international agreements. The Russian government pledged to ensure that Part IV and other IPR measures will be fully consistent with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), and the United States continues to work with the Russian government toward this goal.

In October 2008, the Duma passed in the first reading amendments to the Russian Customs Code to provide customs officials with the *ex-officio* authority to seize suspected counterfeit goods and hold them for up to seven days to investigate their authenticity. In January 2009, the Duma passed the amendments to Part IV of the Civil Code to make Russian law consistent with the TRIPS Agreement. The second and third readings of the amendments to Customs Code, and the third and final reading of the amendments to Civil Code to Russian law have not yet been scheduled, but Russian trade officials have stated that those readings should occur early in 2009.

Under Article 39.3 of the TRIPS Agreement, Russia must, once it becomes a WTO Member, protect against disclosure and unfair commercial use of undisclosed test and other data submitted to government authorities to obtain marketing approval of pharmaceutical and agricultural chemical products. Russia currently does not provide such protection for pharmaceutical products. Legislative changes to address these concerns are being considered by the Russian government.

Enforcement

Poor enforcement of IPR in the Russian Federation has been a pervasive problem. In the November 2006 bilateral IPR agreement, Russia agreed to improve IPR enforcement and to enhance its supervision of both licensed and unlicensed optical disc factories, and the United States agreed to offer training programs for Russian customs and law enforcement officials. The U.S. Patent and Trademark Office has conducted training programs with the Russian Federal Customs Service to help Russian customs officials strengthen their enforcement efforts, and additional training programs are planned for 2009. In 2008, Russian law enforcement agencies carried out raids on optical disc production facilities suspected of engaging in pirate activities, including a major raid in St. Petersburg in September 2008 that involved close cooperation between the St. Petersburg police, prosecutors, and rights holders. That raid resulted in the largest-ever Russian seizure of pirated discs from an optical disc warehouse and production facility. Rights holders report that the level of cooperation with police in optical disc raids is increasing, but that the quality of raids, and the level of police expertise, is uneven nationwide. Even when raids take place, they are often not successful in stopping optical disc piracy. A number of factors limit the effectiveness of raids, including the high monetary damages threshold required to establish criminal liability, and the general reluctance of prosecutors to initiate criminal cases in the field of IPR.

Judicial System

While the Russian government has intensified the investigation and criminal prosecution of IPR infringers, cases often fail at the prosecution stage and few convictions for IPR violations ever result in prison sentences. Seized production lines and equipment used for IPR infringing activities sometimes end up back in operation, allowing pirates to continue their illegal activities either in another location or under a different corporate entity.

In 2008, the Russian government closed down 101 illegal websites offering software, multimedia and audio/visual works for download. In 2007, the well-known Russian piracy website http://www.allofmp3.com was shut down, but the owners of the website, MediaServices, Inc., continue their operations under a different domain name (MP3Sparks.com). Both the U.S. Government and U.S. industry representatives have passed to the Russian government a list of alleged illegal piracy websites for further follow-up.

U.S. investors generally consider the Russian legal system ill-prepared to handle sophisticated patent cases. However, a specialized higher patent chamber at Rospatent has brought greater expertise and efficiency to the adjudication of patent and trademark disputes.

During 2007, amendments to the Criminal Code strengthening penalties for IPR violations took effect. Specifically, Article 146, which criminalizes copyright infringement, was shifted from the category of "crimes of medium seriousness" (which carry a penalty of 2 years to 5 years incarceration) to the category of "serious crimes" that would carry a penalty of 6 years to 10 years incarceration. The shift also allows the use of additional investigative tools in the investigation of IPR crimes. Russian law enforcement officials assert that these changes made it easier to investigate and prosecute IPR offenses and are beginning to have some deterrent effect. Nevertheless, statistics provided by the Ministry of Internal Affairs on criminal prosecutions under Article 146 show a decrease in prosecutions in 2008 compared to the equivalent period in 2007. Complete enforcement statistics for all of calendar year 2008 are not yet available, so it is not yet clear whether the full year numbers for 2008 will show an increase or decrease in the volume of prosecutions in 2008 compared to 2007. Likewise, some investigations under the new version of Article 146 may not have advanced yet to the prosecution stage, and therefore may not be reflected in statistics from the Ministry of Internal Affairs.

Russian administrative and judicial review bodies are beginning to become active in protecting IPR, and the number of judges with relevant expertise, though still small, is expanding. In April 2007, the Supreme Court issued a resolution providing the appropriate needed guidance to lower courts on imposition of penalties for IPR infringements and other IPR issues. Among other things, the resolution clarifies the rules on the calculation of damages and the burden of proving ownership and infringement. Rights holders and law enforcement officials report that this resolution has also facilitated IPR enforcement by removing a number of technical and legal barriers in both civil and criminal cases. It is not yet clear to what extent judges throughout the country have assimilated this guidance. Judicial education and training will be necessary in order to ensure that the benefits of the 2007 resolution are realized in the form of more effective protection of rights.

SERVICES BARRIERS

Russia's services market is relatively open to U.S. services suppliers, including in areas such as financial, education, legal services, and distribution, although specific problems remain in particular areas. The ability to provide services to public utilities and certain energy-related services (see discussion on energy in the section on Investment Barriers) remains limited. The process for an individual or a company to obtain a license to provide a service remains difficult, and limitations on the form of commercial establishment affect some sectors. As of October 2008, U.S. companies were monitoring Russian proposals to develop new, draft legislation on retail trade which, if passed, could have potentially significant negative regulatory and legal implications for a wide range of retail trade and distribution activities.

As part of the bilateral WTO market access agreement with the United States, Russia has accepted commitments across a broad range of services sectors. Once Russia is a WTO Member and the United States grants permanent normal trade relations status to Russia, U.S. firms will have improved access to services sectors including banking and securities, insurance, telecommunications, audiovisual services, distribution, express delivery, energy services, environmental services, and professional services.

Financial Services and Insurance

The 1996 federal law "On Banks and Banking Activity" permits foreign banks to establish subsidiaries in Russia. However, Russia does not allow foreign banks to establish branches in Russia.

The Russian government retains the prerogative to limit the foreign sourced element of charter capital in the banking sector to 50 percent of the sector's total charter capital, but it has never elected to activate this limitation.

In the insurance sector, foreign insurance firms are subject to a 49 percent equity restriction. Foreign firms that were active in Russia when this requirement came into effect, however, were grandfathered and are not subject to the foreign equity limit. Once Russia becomes a WTO Member and the United States grants permanent normal trade relations status, U.S. insurance companies will be allowed to operate through subsidiaries, including 100 percent foreign-owned non-life insurance companies, and will be able to open direct branches at the end of a 9 year transition period. However, as in the banking sector, Russia maintains the discretion to limit foreign sourced charter capital in the insurance sector and if the ratio of foreign sourced to total charter capital in the insurance sector ever exceeds the 50 percent cap, Russia's regulators will have the discretion to take certain actions specified in Russia's WTO commitments.

Telecommunications

Amendments to the 2003 Federal Law on Communications entered into force on January 1, 2007, tightening regulation over non-incumbent telecommunications operators. Many in the industry have been disappointed that the amended federal law has not improved transparency in the licensing process, and have criticized the 5-10 year license validity period, which they argue does not allow them sufficient time to recoup their investment. The Federal Anti-Monopoly Service has challenged in court the manner in which the Ministry of Communications and Mass Media issues licenses to Russian mobile phone operators. As a result, the Ministry has been ordered to issue licenses on a nondiscriminatory basis for all operators, which may benefit companies with a foreign investment component.

The scarcity of civilian frequencies has led to fierce competition among Russian mobile operators and impeded the development of new wireless networks in Russia, such as 3G and WiMAX. (Only about 5 percent of Russia's communication frequencies are used for civilian purposes, while 95 percent are reserved for military use. In the European Union, the situation is reversed, with civilian use accounting for 95 percent of frequency resources.) Despite lobbying efforts from mobile operators, there is no indication that the Ministry of Communications and Mass Media will free up more frequencies for civilian use. Some senior Russian leaders, including President Medvedev, have supported the idea of requiring all users, including government entities, to pay fees for the use of a radio-frequency spectrum. In theory, this could force some government entities to give up their right to use certain frequencies and make more frequencies available for civilian use.

Certification of new products in the telecommunications industry still suffers from a lack of transparency, as does satellite regulation. The satellite industry reports that the certification process is overly burdensome and that the legal requirements and administrative responsibilities associated with the provision of these services appear to be discriminatory, with the Russian government demonstrating a preference for Russian satellite communications systems.

INVESTMENT BARRIERS

Russia’s foreign investment regulations and notification requirements can be confusing and contradictory, which has an adverse effect on foreign investment. In addition, U.S. investors and others cite corruption in commercial and bureaucratic transactions as a barrier to investment. In 2008, reports by the World Bank, Transparency International, the Foreign Investment Advisory Council, Russia’s Higher School of Economics, and Columbia University found that corruption had worsened and had become a greater concern for Russia’s businessmen. Reasons cited for these trends were slowing reforms and government complacency fostered by oil revenues.

Telecommunications and media services companies also report investment restrictions. Russian entities with more than 50 percent foreign ownership are prohibited from sponsoring television and video programs or from establishing television organizations capable of being received in more than 50 percent of Russia’s territory or by more than 50 percent of the population.

Further obstacles to increased U.S. investment in Russia include inadequate dispute resolution mechanisms, weak protection of minority stockholder rights, the absence of requirements for all companies and banks to adhere to international accounting standards, and the failure of some companies to adopt and adhere to business codes of conduct. Initiatives to address these shortcomings, either through regulation, administrative reform, or government-sponsored voluntary codes of conduct, have made little headway, and contribute to endemic corruption. Inadequate transparency in the implementation of customs, taxation, licensing, and other administrative regulations also discourages investment.

In 2008, the United States and Russia began exploratory discussions on the potential negotiation of a bilateral investment treaty.

National Treatment

The 1999 Investment Law codifies principles of national treatment for foreign investors, including the right to purchase securities, transfer property rights, pursue rights in Russian courts, repatriate funds abroad after payment of duties and taxes, and receive compensation for nationalizations or illegal acts of Russian government bodies. However, the law goes on to state that federal law may provide for a number of exceptions, including, where necessary, "the protection of the constitution, public morals and health, and the rights and lawful interest of other persons and the defense of the state." Thus, a large number of broadly-defined exceptions give the Russian government considerable discretion in prohibiting or inhibiting foreign investment. The law includes a "grandfather clause" that stipulates that existing (as of 1999) "priority" foreign investment projects with foreign participation of over 25 percent be protected from unforeseeable changes in the tax regime or new limitations on foreign investment. The law defines "priority" projects as those with a foreign charter capital of more than $4.1 million and with a total investment of more than $41 million. However, the lack of corresponding tax and customs regulations means that any protection afforded investors by this clause is only theoretical.

The government enacted the Strategic Sectors Law (SSL) in May 2008. The SSL introduces a list of 42 "strategic" sectors in which purchases of "controlling interests" by foreign investors must be pre-approved by the Russian government. The list of restricted sectors includes: enterprises in the nuclear industry or involved in handling radioactive materials; enterprises involved in work on infectious diseases; arms, munitions, and military equipment production, maintenance, or repair; the aviation and space industries; certain data-transmission (radio, television, telecommunications) infrastructure; production and distribution of encryption technologies and equipment; production and sales of goods and providing services under conditions of a "natural monopoly" (*e.g.*, activities such as operating certain gas networks); newspapers with a circulation of more than one million; and natural resource extraction. Many observers, while welcoming more clarity on the rules of the game, have criticized the SSL for being overly broad in the number of sectors it covers, and raised concerns that the approval process will prove to be non-transparent and burdensome.

The SSL approval process involves two steps. Initially, the foreign investment must be vetted by the Federal Anti-Monopoly Service (FAS). The FAS must determine whether the proposed investment is subject to the SSL and then recommend to the Government Commission on Control of Foreign Investment in the Russian Federation ("Commission") whether the investment should be approved. The head of the FAS is appointed by the Prime Minister. The Commission is headed by the Prime Minister and is comprised of Cabinet Ministers with jurisdiction over most of the restricted sectors, as well as the Director of the Federal Security Service.

To date, only two foreign companies have received approval under the SSL: DeBeers (diamond mining) and Alenia Aeronautica (development of Sukhoi Superjet 100). These approvals provide little guidance regarding implementation of the SSL. Both investments were pre-approved by Prime Minister Putin when he was still president, and no information about the process was publicized by government authorities. It is not clear how many projects, if any, have been denied approval under the Strategic Sectors Law’s procedures.

Taxes

In response to investor concerns over the arbitrary and heavy-handed application of the tax code, the Russian government initiated a package of tax reforms in 2005 that was designed to limit aggressive tax collection practices while lowering the overall tax burden. The Duma continues to work on a series of measures that are expected to introduce tax benefits for the high technology sector, protect the rights of investors with licenses to work in the energy sector, and raise the transparency of the tax audit process. The corporate profit tax was 24 percent from 2002 - 2008, 11 percentage points higher than Russia's flat 13 percent tax on personal income. However, in late 2008, as an economic stimulus measure, Russia cut the corporate profits tax rate from 24 down to 20 percent, effective January 1, 2009.

Companies report that VAT refunds to a Russia-based exporter, which should be provided within three months after a claim is submitted, often do not occur on time, with customs and tax authorities applying a number of burdensome additional requirements. In addition, leasing companies find that input VAT is often not refunded at all, for a number of reasons. In some cases, local tax inspectorates have initiated audits and attempted to seize bank accounts of the leasing companies, thus forcing exporters to seek very expensive and time consuming court enforcement. VAT refunds on exports are also the source of significant fraud, making it even more difficult for legitimate exporters to obtain refunds. Legislation to simplify VAT reimbursements took effect on January 1, 2007. Under the new law, VAT refund processing time was expected to fall from three months to two weeks, but anecdotal reports from Russian and U.S. companies indicate that the new law has not helped reduce refund processing time, and that in many cases, companies have to resort to court action to receive their VAT reimbursements. In addition, during the course of their audits, Federal Tax Service officials now have the authority to confiscate improperly disbursed VAT refunds, with penalties.

Foreign companies have also raised concerns about the Russian tax authorities' scrutiny of payments that cross Russia's border but remain within the structure of the same legal entity. This tax issue has arisen chiefly in two contexts: (1) when a multinational company transfers an employee temporarily to the company's Russian office from another office outside Russia; and (2) in intra-company payments for the use of intellectual property. Under internationally accepted accounting standards, these normal business practices are handled as an intra-firm payment from one office to the other, or to the headquarters in the case of royalty payments. However, tax inspectors have often disputed such expenses as "economically unjustified" and, consequently, not permissible under the Russian Tax Code. While foreign firms with Russian operations have been careful to ensure that their accounting methods are consistent with the Russian Tax Code, several foreign firms have been subjected to audits and claims for back taxes in these situations.

Energy Sector

In conjunction with the SSL, amendments to the sub-soil legislation were also passed requiring governmental approval for foreign investment in excess of 10 percent in companies operating a "strategic" deposit, which includes major oil, gas, and other mineral deposits. Foreign oil and gas companies are concerned about the potential application of these provisions, including how and when the government may declare a given field strategic and what compensation a field licensee may be given under such declarations.

The Russian government continues its policy of not entering into any further Production Sharing Agreements (PSAs), designed for energy projects that require high capital expenditures and a long period before profits or significant tax revenues are generated. In 2006, the operator of Sakhalin II, Sakhalin Energy, was criticized by the government for alleged environmental violations that occurred during pipeline construction and came under pressure from the government for cost over-runs. In the wake of this pressure, members of the Sakhalin Energy consortium (led by Shell) agreed to reduce their stakes by selling a controlling share to Gazprom. The two remaining major PSAs are ExxonMobil-led Sakhalin I and Total-led Kharyaga, both of which have come under pressure from various state bodies.

In 2008, the Russian government finally approved expansion of the Caspian Pipeline Consortium (CPC) pipeline, operational as of 2001. The agreement on expansion was signed by all parties in December 2008. CPC expansion is critical for export of rapidly growing Central Asian oil production.

For the first time since 2000, oil production declined in Russia for the year. Production declined 0.9 percent in the first eight months of 2008 compared to the same period in 2007. Production stagnation and decline is widely blamed on an onerous tax burden that does not provide adequate incentives for investments in new fields. To boost oil production, the Russian government in 2008 approved certain tax breaks, to take effect in 2009, that are estimated to provide $4 billion of relief to the sector. However, most analysts believe this limited tax relief, particularly when combined with lower oil prices and a difficult international investment climate, will not be enough to reverse declining production trends.

In July 2008, RAO UES, the electricity holding company that controlled all of Russia's power assets, with the exception of those connected to nuclear energy, completed its corporate reorganization and ceased to exist. It has been succeeded by 24 companies: 6 wholesale private generation companies (OGKs) and 14 "territorial" generation companies (TGKs); the hydroelectric giant RusHydro; a Federal Grid; and a number of distribution operators. Although the unbundling and privatization of RAO UES was initially hailed as a huge success, concerns are growing.

As a condition to the generating companies' spinoffs, investors in the OGKs and TGKs agreed to implement plans to modernize and expand their respective electricity infrastructure. These plans were premised on the assumptions of robust economic growth and demand and access to affordable credit. In light of slowing Russian economic growth and tight financial conditions due to the global financial crisis, these investment obligations have become very expensive. Consequently, a number of investors are backing out of acquisition deals or seeking to renegotiate the terms of their acquisitions with the Russian government. It seems unlikely that modernization and expansion of the sector's infrastructure – a major purpose of the reorganization – will occur in the near future. Because the restructuring was only completed in July 2008, it is still unclear to what degree the electricity generation market will ultimately be deregulated, and whether it will operate in a transparent and non-discriminatory manner.

Aviation

Russia's commercial passenger and cargo airlines have been working to modernize their aging fleets, in light of the operational inefficiencies of domestically produced aircraft. Russian aircraft are 10 percent to 40 percent less efficient than comparable Airbus and Boeing aircraft in terms of fuel efficiency, weight, level of after sale service, and noise reduction capacity. These problems with inefficiency have been further exacerbated by increases in the price of jet fuel in Russia over the past 12 months. With rising fuel costs, several leading Russian carriers have announced plans to withdraw all of their domestic aircraft from their fleets and to replace them with Western manufactured alternatives. Several Russian carriers have also recently experienced cash flow and other financial problems, because of rising fuel prices and a lack of available credit stemming from the global financial crisis. Some Russian airlines have agreed to merge into larger regional carriers to resolve their financial difficulties. In October 2008, Russian government officials announced a series of anti-crisis measures for Russian airlines, including granting the Ministry of Transportation the power to regulate the financial stability of airlines, up to 30 billion rubles financing for Russian airlines through the end of 2008, and a 6 month delay in the payment of customs duties on imported aircraft and components.

Russia's passenger aircraft manufacturers are not yet competitive with Western manufacturers due to insufficient production levels (Russia produced only 15 aircraft from January to October 2008) and the lack of competitive aircraft products, especially in the long-haul aircraft segment. In the medium and short-haul segments, Russia is planning to complete the certification process for the SuperJet-100 by the end of 2009 and begin offering it for sale to commercial air carriers. The SuperJet-100 is a family of regional aircraft developed by the Sukhoi Design Bureau in cooperation with major U.S. and European aviation corporations, including Boeing, Snecma, Thales, Messier Dowty, Liebherr Aerospace, and Honeywell.

While there has not been any new production of the Antonov-124 cargo aircraft since 1993, some observers believe there would be demand for this large cargo plane by global delivery and logistics companies. Russian cargo carrier Volga-Dnieper has stated it would be willing to order up to 40 Anotonov-124 planes over the next 10 years to15 years, if the aircraft were produced again. However, Russian aircraft manufacturer UAK has stated it would like to have firm commitments from buyers for 50-60 planes over the next 10 years to 15 years in order to restart production. Further production of the plane may depend on a joint venture investment from a foreign aerospace company. If production of the Antonov 124 were restarted, the plane would compete with other large cargo aircraft produced by American and other manufacturers, such as the 747 Freighter.

As noted above under the section on Customs Issues, Taxes and Tariffs, Russia has recently lowered or eliminated the duties on many types of imported aircraft. In addition, current Russian law provides preferential treatment (tax holidays, guarantees on investment, *etc.*) for Russian and foreign investors in aviation-related research and manufacturing ventures. However, it limits the share of foreign capital in aviation enterprises to less than 25 percent and requires that board members and senior management staff be Russian citizens. There is speculation that the 25 percent limit could be raised or eliminated to make way for further investment, although even then foreign firms will not be allowed to acquire more than 49 percent of any Russian aviation-related enterprise. The government is also looking to reorganize and revitalize Russia's aircraft industry in the context of a larger restructuring plan for Russia's defense industry.

ELECTRONIC COMMERCE

Electronic commerce remains an embryonic, but developing, market in Russia. Russia's law does not currently provide identical legal status to both electronic and paper documents. Because of this discrepancy, electronic settlement of outstanding charges is problematic, and currency control provisions may apply when paying in a currency other than rubles. The tax aspects of electronic commerce are virtually unexplored, and this area of the law is still developing. A draft law on electronic trade has been stalled in the Duma for several years. While closely following an International Chamber of Commerce model bill, the draft before the Duma has significant problems, including limiting electronic transactions to the sale and purchase of moveable goods, services agreements, and shipments.

A law on electronic digital signatures went into effect on January 14, 2002. This law does not follow the Model Law on Electronic Signatures of the U.N. Commission on International Trade Law, but rather defines electronic signatures narrowly, making public-key technology the sole acceptable digital signature technology. It also requires that hardware and software used in digital signature authentication programs be certified in Russia. This requirement gives the Russian government the right to insist on the decompilation of electronic signature programs. These requirements, in addition to the licensing requirements related to goods with encryption technology, present serious obstacles to trade in goods that Russia requires for further development of electronic commerce.

The tax and customs duty implications of electronic commerce in Russia are still unclear. Russian law states that the movement of goods over the "electronic border" is subject to customs regulation, and thus there is a possibility that the import of products electronically could be subject to import duties in Russia, which would be against the current international customs duty moratorium. However, it is unclear how Russian customs officials could exercise control over this method of importation.

Despite a general reluctance to use credit cards for online purchases because of the risk of fraud, the sales volume of Russian Internet stores doubled in 2007, and some experts predict that Internet sales in Russia will reach $10.3 billion in 2008.

The relationship between trademarks and domain names is addressed in Part IV of the Civil Code which went into effect on January 1, 2008. Trademark owners have experienced cyber-squatting where IPR infringers register domain names that are identical or similar to established trademarks in hopes of illicit financial gain. The courts have taken divergent approaches to litigation arising from such disputes. In November 2008, the Russian Supreme Arbitration Court established an important precedent to settle Internet disputes under WIPO rules, which involved a domain name owned by a Japanese company.

In 2007, the Russian government announced plans to adopt an electronic government policy, which could potentially streamline paper-intensive processes involving the government, such as tenders, licenses, and permits, but the plan will not take effect until 2010. The development of the Russian government's "E-Russia" program is also intended to stimulate the growth of electronic commerce throughout the country by using federal and local E-Government initiatives as a catalyst.

OTHER BARRIERS

The U.S. logging industry reports that illegal logging accounts for as much as 20 percent to 30 percent of Russia's timber harvest. This percentage continues to increase, particularly in the Russian Far East, due to its proximity to China, where many illegally harvested Russian logs are smuggled for further processing. Supplies of illegally harvested timber in China's market adversely affect U.S. exports to that market. The Russian government is taking steps to combat illegal logging, having adopted a National Plan initiative in 2006 with the objective of reducing timber poaching by 20 percent to 30 percent. However, poor socio-economic conditions in remote forest areas, lack of transparent regulations, and weak law enforcement make effective control difficult. A government program approved in 2008 ("Forestry Development Plan 2020") outlines several ways to combat illegal logging, including: establishing better interagency cooperation, mandatory forestry certification, improving monitoring, and tightening enforcement for illegal logging.

SAUDI ARABIA

TRADE SUMMARY

The U.S. goods trade deficit with Saudi Arabia was $42.3 billion in 2008, an increase of $17.1 billion from $25.2 billion in 2007. U.S. goods exports in 2008 were $12.5 billion, up 20.0 percent from the previous year. Corresponding U.S. imports from Saudi Arabia were $54.8 billion, up 53.8 percent. Saudi Arabia is currently the 23rd largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Saudi Arabia were $3.3 billion in 2007 (latest data available), and U.S. imports were $509 million. Sales of services in Saudi Arabia by majority U.S.-owned affiliates were $537 million in 2004 (latest data available), while sales of services in the United States by majority Saudi Arabia-owned firms were $2.8 billion in 2006.

The stock of U.S. foreign direct investment (FDI) in Saudi Arabia in 2007 was $5.3 billion (latest data available), up from $4.7 billion in 2006. U.S. FDI in Saudi Arabia is concentrated largely in the nonbank holding companies sector.

IMPORT POLICIES

Tariffs

As a member of the Gulf Cooperation Council (GCC), Saudi Arabia applies the GCC common external tariff of 5 percent for most products, with a limited number of GCC-approved country-specific exceptions. Saudi Arabia's exceptions include 666 products that may be imported duty-free, including aircraft and most livestock. Saudi Arabia also applies a 12 percent tariff on 294 products, in some cases to protect local industries. Certain textile imports are among the products to which the 12 percent rate applies.

The vast majority of food products are subject to a 5 percent import duty. However, selected processed food products are assessed higher import duties. In order to protect local food processors and production from competitively priced imports, Saudi Arabia ties import duties to the level of local production of similar products. As a general rule, a maximum import tariff rate of 40 percent is applied when local production of a food or agricultural product exceeds a self-sufficiency level. Currently, a 40 percent import duty rate applies to fresh, dried, and processed dates. Imports of rice, baby milk, and animal feed (soybean meal, feed corn, barley, rice, sorghum, palm kernel meal, wheat bran, alfalfa hay, sugarcane molasses, rice bran, sunflower meal, oats, canola meal, fish meal, alfalfa pellets, soy bean hulls, sunflower hulls, and rice bran) are subsidized while coffee, tea, and fresh red meat enter the country duty free. Saudi Arabia has no tariff-rate quota (TRQ) requirement.

On March 31, 2008, Saudi Arabia exempted wheat, wheat flour, and other grains from import duties and reduced duties levied on 75 other foodstuffs to 5 percent. The decree aims at alleviating the impact of the rising cost of living in Saudi Arabia. Major foodstuffs that benefited from the reduced 5 percent import tariff included chilled and frozen poultry and their products, eggs (fresh, dried, and powdered), cheese, cheese cream, vegetable oils, pasta, canned meat, fruit and vegetable juices, mineral and ordinary water, long life milk, corn flakes, peas, beans, peanut butter, yeast, and baking powder. The government will review the list in April 2011.

Confectionary products with cocoa and other bulk cocoa products are subject to a 15 percent tariff. Nine types of fresh or chilled vegetables (tomatoes, onions, carrots, cucumbers, marrow, okra, watermelons, melons, and potatoes) are subject to a 25 percent tariff on a seasonal basis. Saudi Arabia also imposes a 100 percent tariff on cigarette and other tobacco imports.

Import Prohibitions and Licensing

In Saudi Arabia, the importation of certain articles is either prohibited or requires special approval from competent authorities. Specifically, the importation of alcohol, firearms, pork products, and used clothing is prohibited. Imports of certain products, including agriculture seeds, live animals, books, periodicals, audio or visual media, religious materials that do not adhere to the state-sanctioned version of Islam or that relate to a religion other than Islam, chemicals and harmful materials, pharmaceutical products, wireless equipment, horses, radio-controlled model airplanes, products containing alcohol, natural asphalt, and archaeological artifacts, require special approval. Importation of some media products is subject to censorship.

Documentation Requirements

Pursuant to Saudi Arabia's WTO Accession Protocol, Saudi Arabia eliminated the requirement to authenticate import documentation as of December 31, 2007.

Some products, most notably agricultural biotechnology products, need a certificate from the country of origin attesting to the product's fitness for human consumption and its wide sales in the country of origin. Saudi Arabia requires that this certificate be authenticated by the local chamber of commerce in the country of origin. All nonfood consumer products must have a certificate of conformity issued under the guidelines of Saudi Arabia's Conformity Certificate Program (COCP) before entering the country.

Single Entry Point

In January 2008, the GCC adopted legislation to apply the principle of Single Entry Point, by which any products admitted into the GCC through a GCC customs point may legally traverse borders within the GCC without further examination or inspection. However, the land crossing between Saudi Arabia and the United Arab Emirates still has periodic inspections that have resulted in the confiscation of pirated pharmaceuticals and beauty products.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Standards

As part of the GCC Customs Union, the six Member States are working toward unifying their standards and conformity assessment systems. However, each Member State currently continues to apply either its own standard or a GCC standard, resulting in a complicated situation for some U.S. businesses. GCC Member States do not consistently send notification of new measures to WTO Members and the WTO Committees on Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT) or allow WTO Members an opportunity to provide comments.

In May 2008, the GCC Standards Committee approved two new standards for the labeling and expiration periods of food products. The new GCC standards eliminate the long standing requirement that at least one-half of a product's shelf life be valid when a product reaches a port of entry in GCC Member States. Officials from the Gulf Standards Organization (GSO) have stated that GCC Member States will accept use of the terms "best by" and "best before" as meeting the date labeling requirement for shelf-stable products. The United States has requested written confirmation of this situation.

In December 2001 and January 2004, respectively, the Saudi Arabian Ministries of Commerce and Industry (MOCI) and Agriculture (MOA) implemented biotechnology labeling decrees on animal feed and processed foodstuffs. The decrees require a positive biotechnology label if a product contains more than 1 percent of biotechnology vegetable (plant) ingredients. In addition, for U.S. grains, the MOA has accepted a one-time biotechnology grains certification statement submitted by the U.S. Grain Inspection, Packers, and Stockyards Administration (GIPSA) in 2003. The statement certifies that exported biotechnology grains are the same as those consumed in the United States. The GIPSA certification statement eliminates the need for a shipment-by-shipment positive biotechnology certification for U.S. corn and soybean meal exported to Saudi Arabia. In 2004, the MOA banned imports of all types of biotechnology seeds.

SPS MEASURES

In May and October 2007, respectively, Bahrain and Oman notified WTO Members of proposed procedures meant to harmonize food safety import requirements for all GCC Member States. The United States and other WTO Members provided comments outlining significant concerns with the procedures, which, as currently drafted, do not appear to have a clear scientific basis and would substantially disrupt food exports to GCC Member States from their trading partners. The GCC Member States indicate that they are developing a response to these comments, and the United States has established a dialogue between U.S. and GCC technical experts to discuss the procedures and potential amendments to address the concerns raised.

Saudi Arabia requires an animal protein-free certificate for imports of poultry, beef, and lamb and their by-products. For beef and poultry meat imported from the United States, Saudi Arabia recognizes a two-certificate approach: (1) an official U.S. Food Safety Inspection Service (FSIS) export certificate issued for beef and poultry meat; and (2) a producer or manufacturer self-certification to cover any additional requirements not related to food safety or animal health issues, such as an animal protein-free feed declaration. In addition, Saudi Arabia bans the import of therapeutic medicines used in animal feed.

Conformity Assessment

In accordance with Ministers Decision No. 213, as of August 28, 2004, Saudi Arabia abolished the International Conformity Certification Program (ICCP), a pre-shipment certification program initiated in 1995 to monitor and control the importation of certain products. In place of the ICCP, in 2006 the Ministry of Commerce implemented the Conformity Certificate Program (COCP). This program requires every shipment of products sold in Saudi Arabia to be accompanied by a document certifying that the product conforms to the relevant Saudi Arabian technical regulation or standard ("conformity certificate"). The requirement applies to all products, including domestic products, except those subject to Saudi Arabia's sanitary and phytosanitary regulations. The conformity certificate may be submitted by a conformity assessment body, an independent third party, or a manufacturer to declare compliance with the relevant Saudi Arabian technical regulations or standards. U.S. exporters reported continued problems with customs officers at ports of entry failing to apply the new COCP procedures.

The GCC Standards Committee is currently developing a conformity assessment scheme to be adopted ultimately by each of the six Member States and has set 2010 as a deadline for full implementation by each Member State. The United States is working to establish a dialogue between U.S. and GCC technical experts to discuss this proposed scheme with the goal of helping to ensure that it is developed, adopted, and applied in accordance with WTO rules.

GOVERNMENT PROCUREMENT

When Saudi Arabia acceded to the WTO in December 2005, it committed to initiate negotiations for accession to the WTO Agreement on Government Procurement (GPA) and to complete its GPA negotiations within one year of becoming a WTO Member. Saudi Arabia became an observer to the WTO Committee on Government Procurement in December 2007, but it has not begun negotiations for GPA membership. Saudi Arabia published its revised government procurement procedures to bring them in line with GPA requirements in August 2006.

Several royal decrees apply to Saudi Arabia's government procurement. However, most Saudi defense contracts are negotiated outside these regulations on a case-by-case basis. Under a 1983 decree, contractors must subcontract 30 percent of the value of any government contract, including support services, to firms that are majority-owned by Saudi nationals. An exemption is granted where no Saudi-owned company can provide the goods and services necessary to fulfill the procurement requirement.

The tender regulations give a preference to products of Saudi origin that satisfy the requirements of the procurement. In addition, Saudi Arabia gives priority in government purchasing to GCC products. These items receive up to a 10 percent price preference over non-GCC products in all government procurements in which foreign suppliers participate.

Foreign suppliers that participate in government procurement are required to establish a training program for Saudi nationals. In addition, the government may favor joint venture companies with a Saudi partner over foreign firms and will also support companies that use Saudi goods and services. For large military projects, there is frequently an offset requirement, which is determined on a project-by-project basis.

Foreign companies can provide services to the Saudi Arabian government directly without a Saudi service agent and can market their services to other public entities through an office that has been granted temporary registration. Foreign suppliers working only for the government, if not already registered to do business in Saudi Arabia, are required to obtain a temporary registration from the Ministry of Commerce and Industry within 30 days of signing a contract. Foreign investment regulations also allow foreign companies to establish a branch office in Saudi Arabia.

In 2003, the Saudi Council of Ministers required increased transparency in government procurement. The procurement information to be made public includes: parties, date, financial value, brief description, duration, place of execution, and point of contact information.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Saudi Arabia has made progress on IPR enforcement over the past few years, but further improvements are still needed with respect to copyright enforcement. The United States continues to monitor Saudi Arabia's IPR enforcement regime, including its efforts to increase transparency, eliminate procedural hurdles to judicial enforcement, and impose deterrent penalties. Saudi Arabia has also taken steps to combat counterfeiting of trademarked products. The government has begun an awareness campaign on IPR violations, and in October 2008 hosted the first Arab Consumer and Brand Protection Forum in Jeddah. Enforcement has had some effect with regard to the availability of pirated media products as once plentiful pirated DVDs, software, and games are now more difficult to find among local vendors.

To speed the processing of patent applications, Saudi Arabia passed patent legislation and has taken measures to hire and train more examiners, translators, and clerks. However, the U.S. pharmaceutical industry continues to express concern that the new Patent Law does not provide protection for their products subject to pending patent applications that were filed under provisions of the old law. The government is considering providing exclusive marketing rights to companies so they might market their products in Saudi Arabia pending the grant of patents.

As part of the GCC Customs Union, the six Member States are working toward unifying their IP regimes. In this respect, the GCC is preparing a draft common trademark law. All six Member States are expected to adopt this law as national legislation in order to implement it. The United States has outlined specific concerns with the trademark law and has established a dialogue between U.S. and GCC technical experts to ensure that the law complies with the Member States' international and bilateral obligations.

SERVICES BARRIERS

Insurance

In recent years, Saudi Arabia has implemented a series of laws regulating what had been an essentially unregulated sector and requiring certain types of insurance coverage within the country. In October 2003, the government enacted the Control Law for Co-Operative Insurance Companies, which requires all insurance companies operating in Saudi Arabia to be locally incorporated joint-stock companies (foreign equity is limited to 60 percent, and the remaining 40 percent must be floated on the Saudi stock market), and to operate on a cooperative or mutual basis (*i.e.*, requiring that the profits be distributed between policy holders and the insurance company). Cooperative health insurance became mandatory in 2006. Employers are required to pay for insurance coverage of foreign workers and dependent family members. To enforce this law, foreign workers in Saudi Arabia are required to show proof of medical insurance in order to receive or renew national identification cards.

The Saudi Arabian Monetary Agency (SAMA) began accepting applications for insurance operations in November 2003 and on April 13, 2005, Royal Decree No. 3120/MB was promulgated to implement Saudi Arabia's GATS commitment allowing foreign insurance companies to operate in Saudi Arabia through direct branches. For a transitional period of three years, foreign insurance companies operating through an agent were allowed to continue operations in Saudi Arabia uninterrupted pending the issuance of insurance branching regulations. By the end of 2008, 25 insurance companies had been licensed by SAMA.

Banking

Although the Saudi Banking Control Law does not limit foreign participation, for the past 20 years the SAMA has capped foreign ownership in commercial banks at 40 percent of any individual bank operation. In the last few years, Saudi Arabia has taken steps to open up investment banking by granting operating licenses to foreign banks. SAMA granted 10 foreign bank licenses to operate in Saudi Arabia in December 2005. The Saudi Capital Markets Law (2004) provides for the creation of investment banks and brokerages in Saudi Arabia, with foreign participation in these ventures capped at 60 percent. As capital markets regulations are finalized, Saudi Arabian investment banking will likely provide significant growth opportunities.

On August 18, 2008, Saudi Arabia passed a regulation allowing non-residents to invest in swap agreements in the Saudi Stock Exchange, while local brokers and bankers retain legal title to traded shares.

INVESTMENT BARRIERS

In April 2000, the Council of Ministers approved a new foreign direct investment code with the goal of facilitating the establishment of foreign companies, both joint ventures and 100 percent foreign-owned enterprises, in Saudi Arabia. Key provisions allow foreign investors to transfer money freely into and out of the country, allow joint-venture companies to sponsor their foreign investors as well as their foreign employees (all foreigners in Saudi Arabia need a legal sponsor in order to reside in the country), and permit foreign investors to own real property for company activities. The government established the Saudi Arabian General Investment Authority (SAGIA) to function as a one-stop shop, where foreign investors can obtain all of the permits or authorizations necessary to make an investment. In addition to its four existing service centers (in Riyadh, Jeddah, Dammam, and Medina), SAGIA opened a Women's Investment Center in March 2003 to promote the participation of Saudi women in business.

SAGIA must grant or refuse an investment license within 30 days of receiving an application and supporting documentation from the investor. Licenses are required for all foreign investments. Wholly domestic projects funded with Saudi or other GCC Member money do not need licenses through SAGIA's investment services center, as it was specifically designed for foreign investors. However, many of the licenses SAGIA issues concern projects jointly owned with Saudi investors. Bureaucratic impediments arising in other ministries have sometimes delayed the application process. SAGIA continues to take steps to address these impediments and to streamline the process, including concluding 23 separate agreements relating to the processing of license applications with other ministries and government agencies. Some companies still experience bureaucratic delays after receiving licenses from SAGIA, for example, in obtaining a commercial registry or purchasing property.

Following SAGIA's recommendations in 2001, the Supreme Economic Council published a list of 16 manufacturing and service sectors and subsectors in which foreign investment is currently prohibited, including oil exploration, drilling and production, and manufacturing and services related to military activity.

In October 2003, Saudi Arabia passed the Capital Markets Law, which took effect in February 2004. The law allows for the creation of financial intermediaries (stock brokerages and investment banks) and created an independent stock market and an independent stock market regulatory body. The law sets SR50 million ($13.3 million) capitalization requirements for brokerages and provides penalties for insider trading and wrongful dissemination of information. The law also allows for the development of long-term investment instruments and limits the maximum equity share held by foreign partners in joint ventures with Saudi entities to 49 percent. Saudi Arabia agreed to raise the maximum allowable percentage of the foreign partner to 60 percent after WTO accession. The 2003 law does not repeal the prohibition on direct foreign participation in the Saudi stock market. However, foreigners can continue to purchase shares in bank operated investment funds. Foreign participation in these funds is limited to 10 percent of the total value of the fund.

ELECTRONIC COMMERCE

Pursuant to the Council of Ministers' decree concerning the regulation of use of the Internet in Saudi Arabia, all websites that contain content in violation of Islamic tradition or national regulations are blocked. Pornographic websites are identified and blocked through a filtering system, which does occasionally prevent access to sites that appear to fall outside stated prohibited topics. Non-pornographic sites are placed on the blocked list based upon direct requests from the security bodies within the government. Although the government is in the process of drafting an electronic commerce law, it is unclear when the law will be completed.

SINGAPORE

TRADE SUMMARY

The U.S. goods trade surplus with Singapore was $12.9 billion in 2008, an increase of $5.0 billion from $7.9 billion in 2007. U.S. goods exports in 2008 were $28.8 billion, up 9.6 percent from the previous year. Corresponding U.S. imports from Singapore were $15.9 billion, down 13.6 percent. Singapore is currently the 12th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Singapore were $7.2 billion in 2007 (latest data available), and U.S. imports were $3.9 billion. Sales of services in Singapore by majority U.S.-owned affiliates were $19.3 billion in 2006 (latest data available), while sales of services in the United States by majority Singapore-owned firms were $2.5 billion.

The stock of U.S. foreign direct investment (FDI) in Singapore was $82.6 billion in 2007 (latest data available), up from $78.4 billion in 2006. U.S. FDI in Singapore is concentrated largely in the nonbank holding companies and manufacturing sectors.

FREE TRADE AGREEMENT

The United States and Singapore signed a Free Trade Agreement (FTA) on May 6, 2003, which entered into force on January 1, 2004. Since 2004, exports from the United States through 2008 increased 73 percent, with steady growth in exports of medical devices, machinery, and construction equipment. The United States and Singapore meet annually to review the implementation of the FTA and to seek to resolve outstanding trade issues.

In September 2008, the United States announced its intention to begin negotiations to join the Trans-Pacific Strategic Economic Partnership agreement, a high-standard FTA between Singapore, Chile, New Zealand, and Brunei Darussalam, intended to serve as a vehicle for Trans-Pacific economic integration. Shortly after the U.S. decision to join the negotiations, Australia, Peru, and Vietnam indicated their interest in participating as well.

IMPORT POLICIES

Tariffs

For social and/or environmental reasons, Singapore levies high excise taxes, applicable to distilled spirits and wine, tobacco products, motor vehicles (all of which are imported), and gasoline.

Import Licenses

Singapore maintains a tiered motorcycle operator licensing system based on engine displacement, which, along with a road tax based on engine size, places U.S. exports of large motorcycles at a competitive disadvantage. The sale of chewing gum is restricted in Singapore.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Agriculture

Singapore's Agri-Food and Veterinary Authority (AVA) enforces a zero tolerance policy for salmonella enteriditis in eggs and escherichia coli E. 0157 in raw meat products, which is not based on science and has posed some difficulties for U.S. exporters.

Singapore bans imports of U.S. bone-in beef from animals under 30 months of age, and offals and variety meats and all beef and beef products derived from animals 30 months of age or older based on BSE concerns. Current World Organization for Animal Health (OIE) guidelines for BSE provide for conditions under which all beef and beef products from countries of any risk classification for BSE can be safely traded when the appropriate specified risk materials are removed. The United States was officially categorized by the OIE as "controlled risk" for BSE in 2007. The United States continues to press Singapore to make science-based decisions based OIE guidelines, which allow for the full range of beef and beef products from animals of any age.

Medical Devices

In November 2007, Singapore issued implementing regulations for medical devices under the 2007 Health Products Act, which will require that all manufacturers, importers, and wholesalers of medical devices be licensed by October 1, 2009, after which unregistered medical devices will be prohibited from sale in Singapore. The United States is reviewing these measures.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In line with its FTA commitments and obligations under international treaties and conventions, Singapore has developed one of the strongest IPR regimes in Asia. Still, the United States has concerns in certain areas, which it will continue to discuss with Singapore.

Transshipment

Despite changes to its laws to implement FTA commitments, the United States continues to have concerns about transshipment of infringing goods through Singapore. As a major transshipment and transit point for sea and air cargo, Singapore does not mandate reporting of critical shipping information for transshipment and transit trade, which accounts for 80 percent of the cargo coming through the port. The lack of timely information makes enforcement against transshipped or transit trade in infringing products extremely difficult. In addition, goods in transit are not generally subject to seizures, although seizures may be possible if a search warrant is obtained in advance.

Internet Piracy

In accordance with the FTA, Singapore's amended Copyright Act and regulations provides improved protection for digital works, but the copyright industry maintains that the law fails to impose full liability on service providers engaged in infringing activity. In December 2008, Singapore implemented an amendment to the Copyright Act, which if implemented would address FTA obligations requiring remuneration to performers and producers of phonograms for "simulcast" performances over the Internet. U.S. industry also reports that Internet piracy in Singapore is on the rise, and the United States will continue to work with Singapore to address these concerns.

Enforcement

Rights holders have raised several specific IPR-related concerns. U.S. industry has expressed concerns that violations of Singapore's optical disc law are not prosecuted vigorously and deterrent sentences are not imposed. It has also sought greater cooperation from the Singapore government with rights holders to provide access to the evidence necessary to support possible civil actions. The industry also reports that it has sometimes encountered difficulties when attempting to prosecute IPR cases based on tips provided by company insiders because of the lack of "whistleblower" protection. In addition, concerns have been raised about unlawful duplication of textbooks at some commercial copy centers.

SERVICES BARRIERS

Basic Telecommunications

Facilities-based operators continue to be limited in their ability to take advantage of wholesale pricing for local provider SingTel's "last mile" local leased circuits. The Infocomm Development Authority of Singapore (IDA) first mandated this regulatory change in December 2003, but SingTel has repeatedly contested this directive, typically through requests for IDA to stay decisions or through appeals to the Minister for Information, Communications and the Arts (MICA). Although SingTel must now offer wholesale prices for local leased circuits at reduced rates ranging from 55 percent to 82 percent, the competitive benefits of this policy are severely constrained due to certain uneconomical technical interconnection requirements imposed by SingTel.

The United States also remains concerned about the lack of transparency in some aspects of Singapore's telecommunications regulatory and rulemaking process. U.S. companies continue to report concerns about a lack of access to infrastructure facilities controlled by SingTel, such as ducts under roads that could facilitate the laying of land lines for competing networks.

In June 2006, SingTel announced its plans to consolidate its local exchanges, but failed to provide details of specific local exchanges to be closed. An 18 month notice on local exchange closures is now required. This has put U.S. and other carriers' expansion plans on hold. SingTel, backed by IDA has denied requests by U.S. and other companies for interconnection at a more centralized location, a request competitors sought in order to obviate the risk of building out an exchange that SingTel may subsequently decide to close. When completed, Singapore's next generation access network, a national broadband network, may allow fuller access to provide telecommunication services to homes and businesses without requiring access to SingTel-owned circuits.

Audiovisual and Media Services

Singapore restricts the use of satellite dishes and has not authorized direct-to-home satellite television services. MDA must license the installation and operation of broadcast-receiving equipment, including satellite dishes. Satellite broadcasters that want to operate their own uplink facility must get a special license from MDA. Satellite broadcasters lacking their own facility are restricted to using one of four available uplink facilities.

Distribution, importation, or possession of any "offshore" or foreign newspaper must be approved by the government. Singapore has curtailed or banned the circulation of some foreign publications and limited their circulation when it perceives defamation.

Legal Services

U.S. and other foreign law firms with offices in Singapore cannot practice Singapore law, employ Singapore lawyers to practice Singapore law, or litigate in local courts. Since 2004, U.S. and other foreign lawyers have been allowed to represent parties in arbitration in Singapore without the need for a Singapore attorney to be present. To address a perceived shortage of practicing lawyers, Singapore relaxed its criteria for admission of attorneys to the Singapore Bar over the past few years, although restrictions remain in certain areas including criminal law, family law, and domestic litigation.

Banking

Singapore maintains legal distinctions between offshore and domestic banking units and the type of license held (full, wholesale, or offshore). Except in retail banking, Singapore laws do not distinguish operationally between foreign and domestic banks. Wholesale banks can operate in only one location, unless the Monetary Authority of Singapore approves an additional location. Foreign banks and other financial institutions that issue credit cards in Singapore are unable to effectively provide ATM services through local networks for holders of those cards. Foreign banks can only provide ATM services to locally-issued credit card holders through their own network or through a foreign bank's shared ATM network. Foreign Banks do not face the same restrictions for credit cards that they issue outside Singapore.

The Minister of Finance must provide specific types of approval for acquisitions of the voting shares of a local bank. Although it has lifted the formal ceilings on foreign ownership of local banks and finance companies, the Singapore government has indicated that it will not allow a foreign takeover of its three major local financial institutions. While foreign penetration of the Singapore banking system is comparatively high, with foreign banks holding about 40 percent of nonbank deposits, the government has stated publicly that it wants local banks' share of total resident deposits to remain above 50 percent.

Energy

Singapore has attempted to liberalize its energy market, in part by opening access to its gas pipeline infrastructure. However, at least one U.S. company has encountered ongoing difficulties in its bid for market access due to lengthy delays in the review of its application by the Energy Market Authority. In addition, the onshore-restructuring of the transportation network is not expected to improve access to offshore gas pipelines. To date, no non-incumbent operators have been able to secure access to the Singapore section of the existing Sumatra-Singapore pipeline.

OTHER BARRIERS

Competition

Singapore has an extensive network of government-linked corporations that are active in many sectors of the economy. Some sectors, notably telecommunications, power generation/distribution, media, and financial services are subject to sector specific regulatory bodies and competition regulations typically less rigorous than those being implemented under the Competition Act. The U.S. Government will continue to monitor Singapore's implementation of its commitments on competition under the FTA.

SOUTHERN AFRICAN CUSTOMS UNION (SACU)

TRADE SUMMARY

The U.S. goods trade deficit with Southern African Customs Union (SACU) countries was $4.2 billion in 2008, a decrease of $158 million from $4.3 billion in 2007. U.S. goods exports in 2008 were $6.9 billion, up 19.4 percent from the previous year. Corresponding U.S. imports from SACU countries were $11.0 billion, up 9.5 percent.

The stock of U.S. foreign direct investment (FDI) in SACU countries was $4.9 billion in 2007 (latest data available), up from $4.1 billion in 2006.

OVERVIEW

The SACU links the trade regimes of Botswana, Lesotho, Namibia, South Africa, and Swaziland. There are currently no internal tariff barriers among SACU members. All SACU members except Botswana are members of a common monetary area, with currencies pegged to the South African rand. Imports from outside SACU are subject to a common external tariff. SACU members share in a common revenue pool consisting of all customs, excise and additional duties collected in the common customs area. These duties and taxes are paid into South Africa's national Revenue Fund, and subsequently distributed among SACU members according to a revenue-sharing formula.

Under the 2002 SACU Agreement, the SACU Council of Ministers is the supreme decision-making body for SACU. The Council is supported by the Commission of Senior Officials (a group of technical experts) and a SACU Secretariat, located in Windhoek, Namibia. A SACU Tariff Board, expected to be established in 2009, will be responsible for making recommendations to the Council on issues related to customs; anti-dumping; countervailing and safeguard duties on goods imported from outside SACU; and rebates, refunds, or duty drawbacks. It is to be an independent institution consisting of experts drawn from the SACU Member States and will report directly to the Council.

All SACU Member States are also members of the Southern African Development Community (SADC) and participate in the SADC Free Trade Area, which was launched in August 2008.

SACU Member States have been engaged in negotiations with the European Union (EU) on an Economic Partnership Agreement (EPA) which would ultimately cover trade in goods, trade in services, and issues such as investment, competition, government procurement and trade facilitation. In December 2007, all SACU members except South Africa initialed interim bilateral EPAs with the EU covering goods, sanitary and phytosanitary issues, technical barriers to trade, and trade facilitation. The EU and these four SACU countries also agreed to conclude negotiations on services and investment by the end of 2008, although those negotiations were still ongoing in early 2009. South African officials have voiced reservations about elements of the EPAs but, as of late 2008, had not ruled out some type of participation in an EPA with other SACU and SADC members. South Africa's trade with the EU is now governed by a Trade, Development, and Cooperation Agreement signed in 1999.

In July 2008, the United States and the five SACU member countries signed a Trade, Investment, and Development Cooperative Agreement (TIDCA). The TIDCA establishes a forum for consultative discussions, cooperative work, and possible agreements on a wide range of trade issues, with a special focus on customs and trade facilitation, technical barriers to trade, sanitary and phytosanitary measures, and trade and investment promotion. The TIDCA is designed to build on and potentially capture some of the progress made in the free trade agreement (FTA) negotiations between the United States and the SACU countries, which were suspended in 2006, largely due to divergent views on the scope and level of ambition for an FTA.

1. SOUTH AFRICA

IMPORT POLICIES

The International Trade Administration Commission (ITAC) is tasked with administering South African trade laws. Its specific responsibilities include:

- Tariff Administration: ITAC administers tariff-related programs, including the Motor Industry Development Program and the Duty Credit Certificate System. In addition, interested parties may petition ITAC to review tariffs with the purpose of reducing or increasing them.

- Trade Remedies: ITAC administers SACU's antidumping and countervailing duty measures. ITAC also administers SACU's safeguard laws, which have recently been adopted by South Africa. The SACU Tariff Board is to assume responsibility for these matters once it is established, which is expected to occur in 2009.

- Import and Export Control: ITAC issues import and export permits for certain items designated by the Minister of Trade and Industry under the authority of the International Trade Administration Act of 2002.

Tariffs

ITAC continues to receive requests from a number of industries for tariff protection, and U.S. companies have cited protective tariffs as a barrier to trade in South Africa. In a few cases, products that are duty-free from SACU partners compete directly with U.S. goods that are subject to duties. One example is soda ash imported from Botswana at zero duty, while soda ash from the United States faces a 5.5 percent duty. If tariffs on U.S. soda ash were removed, U.S. industry estimates that U.S. exports of soda ash to South Africa could increase from less than $8 million to $25 million, closer to its historical level. The soda ash duty benefits Botswana, the only producer of soda ash within SACU.

Several years ago, the Botswana soda ash producer filed a complaint with the South African Competition Commission alleging that the American Natural Soda Ash Corporation (ANSAC, the U.S. export sales marketing arm of U.S. soda ash producers) engaged in price-fixing with respect to export sales to South Africa. The case was settled in November 2008, with ANSAC agreeing to pay a fine and to cease export sales to South Africa within six months of the effective date of the settlement, though individual ANSAC members will be free to market to South Africa on an independent basis.

In August 2007, the Department of Trade and Industry (DTI) released its National Industrial Policy Framework and Industrial Policy Action Plan. The Framework's objective is to promote value added industries in four key sectors and four priority sectors under the South African government's Accelerated and Shared Growth Initiative for South Africa (ASGI-SA) including: capital and transport equipment; automotive goods and components; chemicals, plastic fabrication, and pharmaceuticals; forestry, pulp, paper and furniture; business process outsourcing; tourism; biofuels; and clothing and textiles. The Framework sets out specific mechanisms to assist these sectors, including a comprehensive review of import duties (now under way) and a potential reduction of selected import duties on downstream products and components.

Nontariff Measures

The Minister of Trade and Industry is authorized to prohibit imports, by notice in the Government Gazette, of goods of a specified class or kind into South Africa, except under the authority of, and in accordance with, the conditions stated in a permit issued by ITAC. The main categories of controlled imports are:

- Used goods. ITAC requires import permits on used goods or substitutes if such goods are manufactured domestically, thus creating a *de facto* ban on most used goods, including used clothing;

- Waste, scrap, ashes, and residues;

- Other harmful substances; and

- Goods subject to quality specifications: This restriction permits the monitoring of manufacturing specifications that enhance vehicle safety (such as in the case of tires) or protect human life.

Other often-cited nontariff barriers to trade include port congestion, customs valuation above invoice prices, theft of goods, import permits, antidumping measures, intellectual property violations, inefficient bureaucracy, and excessive regulation.

Antidumping and Safeguard Measures

Transparency and due process remain issues regarding the actions of ITAC and its administration of South Africa's antidumping laws and regulations.

As of the end of 2008, South Africa maintained antidumping duties on four U.S. products from the United States: chicken meat portions, L-lysine-HCL, suspension polyvinyl chloride (PVC), and acetaminophenol.

In September 2007, South Africa's Supreme Court of Appeal ruled that ITAC had improperly calculated the five-year expiration date of antidumping duties imposed on A4 paper imported from Indonesia and that, as a result, authority to impose duties had expired prior to the initiation of the sunset review for that product. ITAC subsequently announced its intention to terminate antidumping duties on several imported products because the sunset review of those duties had not been initiated before the expiration of the five-year period as calculated under the court's interpretation of South African law. At the same time, ITAC indicated its intention to seek court permission to retain and "regularize" antidumping duties on 16 products, including chicken meat portions and L-lysine-HCL from the United States, because, although the sunset reviews were initiated after the five-year lapse date, ITAC found that dumping and injury were likely to continue or recur. It is not yet known whether the Court will allow ITAC to retain the dumping duties on these products or whether it will rule that ITAC is required to terminate the duties.

In May 2007, ITAC announced the initiation of a safeguarding investigation on L-lysine products imported from all countries. On the same day, it imposed a 160 percent provisional safeguard duty on all L-lysine products. This was the first time that ITAC opted to utilize a global safeguard remedy. The

Pretoria High Court overturned ITAC's provisional safeguard duties on the grounds that ITAC failed to provide proper notice and an opportunity for all interested parties to comment. In December 2007 the South African authorities imposed a final definitive duty of 27 percent, which was reduced to 18 percent on May 11, 2008, in accordance with the court ruling. The duty is to be further reduced to 9 percent on May 11, 2009.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Biotechnology

The South African government generally supports the use of biotechnology products. Transgenic varieties of cotton, corn, and soybeans are approved for commercial planting and account for a significant portion of South Africa's cotton, corn, and soybean production. Agricultural biotechnology holds wide appeal for South African farmers as they recognize the financial benefits of fewer inputs and potentially higher yields. However, proposed legislation that would mandate the labeling of biotechnology foods could disrupt trade in biotechnology foods and have a negative impact on domestic development of biotechnology crops. Furthermore, these regulations are likely to be impracticable for unpackaged food products, including staple crops such as corn and sorghum.

Agricultural biotechnology regulations in South Africa are managed by an Executive Council with representation from seven government departments: the Department of Agriculture, the Department of Science and Technology, the Department of Environment and Tourism, the Department of Trade and Industry, the Department of Health, the Department of Water Affairs and Forestry, and the Department of Arts and Culture. The Executive Council has decision-making authority over agricultural biotechnology approvals and is assisted by an Advisory Committee of independent experts which provide scientific recommendations. Unfortunately, a lack of transparency makes the final stages of the decision-making process unclear.

South Africa requires an additional approval document for any plant that combines two or more approved biotechnology traits (stacked events), such as herbicide tolerance and insect resistance. This requirement means that companies need to start from the beginning of the approval process for these stacked events, even if the individual traits have already been approved. Although a few stacked events have been approved, U.S. exporters have sometimes found the process for obtaining approval for stacked events to be unduly burdensome.

The South African government has granted import permits for several U.S. biotechnology products. However, since some varieties of biotechnology yellow corn produced in the United States have not yet been approved for use in South Africa, no import permits for U.S. yellow corn have been approved to date.

Sanitary and Phytosanitary Measures

The South African government requires an import permit for certain controlled products, including irradiated meat from any source.

U.S. horticultural producers have complained about a range of South African sanitary and phytosanitary (SPS) import requirements that affect South African imports of apples, cherries, and pears from the United States. They estimate that, if these barriers were removed, U.S. exports of these fruits to South Africa could increase by as much as $15 million annually. U.S. producers have also expressed concern about allegedly unnecessary SPS requirements for some grains, pork, poultry, and horticultural products.

In September 2006, the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) sponsored a visit by two South African National Department of Agriculture (NDA) inspection officials to the U.S. Pacific Northwest to visit orchards and packing houses in order to liberalize the NDA's SPS requirements for importing U.S. apples. Since the visit, letters have been exchanged and, in June 2008, NDA proposed mitigation measures that would allow the import of U.S. apples. In November 2008, APHIS thanked NDA for its agreement on mitigation measures for four pests of concern, provided comments on the three remaining pests of concern, and asked NDA for a response to the USDA proposal for mitigation measures related to these pests.

The NDA issues import permits for agricultural products listed in the Table of Import Arrangements. Applicants for such permits must be registered with the South African Revenue Service (SARS) and the Department of Trade and Industry (DTI). 10 percent of such permits are reserved for "new importers" (those who have not imported within the past 3 years), and 10 percent are reserved for small, medium, and micro-enterprises.

In response to the Bovine Spongiform Encephalopathy (BSE) case in Washington State in December 2003, South Africa banned the import of all ruminant animals and products originating in the United States. The ban remains in effect on the majority of ruminants and ruminant products, including beef and beef products. In a September 2008 letter to USDA/APHIS, NDA requested an audit of U.S. facilities that could pave the way for removing the BSE-related restrictions. USDA is preparing its response. The United States continues to urge South Africa to fully reopen its beef market to U.S. beef and beef products consistent with World Organization for Animal Health guidelines on BSE.

Functional Foods

New regulations pertaining to "complementary and alternative medicines" were promulgated in August 2008. U.S. exporters of functional food products falling in this category have expressed concerns that aspects of the regulations related to packaging, product registration, and disclosure of proprietary formulas could unduly restrict their operations in South Africa.

GOVERNMENT PROCUREMENT

Government purchases are made through competitive tenders for goods, services, and construction. South Africa uses government procurement to promote the empowerment of the historically disadvantaged majority population in South Africa through its Black Economic Empowerment (BEE) strategy. See the section on Investment Barriers for more details on BEE.

South Africa's Preferential Procurement Policy Framework Act of 2000 (the Framework Act) and its implementing regulations created the legal framework and a formula for evaluating tenders for government contracts. To augment this, the Department of Trade and Industry (DTI) has been working on regulations to clarify the Framework Act and to incorporate the objectives of the Broad-Based Black Economic Empowerment Act of 2003. These regulations would give preferences to bidders who comply with BEE objectives and would include BEE thresholds in tender evaluations. In procurement valued up to 1 million rand (about $100,000), 80 percent of the tender evaluation would be based on the bid price and 20 percent on the supplier's commitment to BEE objectives. For tenders valued over 1 million rand, companies would earn 90 percent of their points from their bid price and 10 percent from their commitment to BEE objectives. The National Treasury is working with the DTI to align preferential procurement regulations with the BEE Code of Good Practice on Procurement in order to help standardize how firms are evaluated on their compliance with industry BEE scorecards.

South Africa's National Industrial Participation Program, introduced in 1996, subjects all government and parastatal purchases or lease contracts for goods, equipment or services with an imported content equal to or exceeding $10 million (or the rand equivalent thereof) to an industrial participation obligation. This obligation requires the seller/supplier to engage in local commercial or industrial activity valued at 30 percent or more of the value of the imported content of the total goods purchased or leased under a government tender.

South Africa is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

South Africa is a party to the World Intellectual Property Organization (WIPO) Convention, the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, and the International Union for the Protection of New Varieties of Plants (UPOV) Convention. South Africa is also a signatory to the Trademark Law Treaty, the WIPO Copyright Treaty, and the WIPO Performances and Phonograms Treaty.

Legal Regime

Enforcement of intellectual property rights in South Africa presents challenges. The United States has provided training assistance on IPR enforcement to South African government and private sector representatives.

In recent years, the South African government has introduced measures to enhance enforcement of the 1997 Counterfeit Goods Act. The government has appointed more inspectors, designated more warehouses for securing counterfeit goods, destroyed counterfeit goods, and improved the training of customs, border police, and police officials. Although law enforcement authorities often cooperate with the private sector in investigating allegations of trade in pirated or counterfeit goods, some members of the business community have expressed concerns about lax enforcement of IPR laws against imports of infringing goods, as well as slow and cumbersome court proceedings. There have been some concerns that the customs service interpreted a 2004 court ruling as limiting its ability to seize potentially infringing goods that are marked for transshipment through South Africa. This interpretation is still being debated within the South African government.

Under South African law, complainants can take both civil and criminal action against IPR offenders. The number of arrests for trading in pirated or counterfeit goods continued to increase in 2008. According to the South African Federation Against Copyright Theft, there were 449 such arrests in the first three calendar quarters of 2008, more than double the number of arrests in the corresponding period in 2007. In addition, South Africa has taken steps to improve enforcement further, such as the creation of DTI's enforcement unit, which has expanded its number of investigators to 47, and the establishment of Commercial Crime Courts in several cities. The South African government has also formed an interagency counterfeit division including the DTI, the South African Revenue Service (SARS), and the South African Police Service to improve coordination on IPR enforcement. SARS has launched a public awareness campaign about the seriousness and impact of IPR crimes, and DTI is working with universities to incorporate IPR awareness into college curricula.

Despite efforts to improve IPR enforcement, monetary losses from counterfeiting and piracy remain high. U.S. industry is increasingly concerned about illegal commercial photocopying, especially at universities, libraries and other on-campus venues. U.S. industry has also expressed concern about software and Internet piracy, the growing number of burner labs, advertisements of "burn-to-order" services, and the unwillingness of South African Internet service providers to shut down infringing sites or access thereto. In addition, counterfeit medicines are also a growing problem. U.S. industry reports that South Africa is becoming a transshipment point for pirated and counterfeit goods into the rest of Africa, noting that it is unclear whether South African Customs has the authority to interdict such shipments.

There is no direct legal protection for local distributors against parallel imports. However, in 2008 several members of the Motion Picture Association of America, acting individually, successfully obtained a civil injunction against a major DVD rental chain that was parallel importing their product. The Cape High Court awarded costs against the importer, who is appealing the decision.

SERVICES BARRIERS

Telecommunications

State-controlled Telkom, South Africa's main telecommunications provider, continues to dominate the market for value added and basic telecommunications services. Many businesses have complained about high telecommunications prices, which are partly a result of Telkom's control of the underlying network. Telkom enjoyed a protected monopoly status prior to the Electronic Communications Act (ECA) of 2005, which created a more competitive market for telecommunications services.

The telecommunications regulator, the Independent Communications Authority of South Africa (ICASA), has the responsibility for implementing the ECA, which removed monopoly elements from old licenses and ensured that licensees have no special privileges over one another. The ECA also tasked ICASA with issuing new licenses to mobile operators and Internet Service Providers (ISPs), but ICASA missed its original deadline to issue these licenses, mainly due to interference from the Department of Communications (DOC). A 2006 ICASA Amendment Bill provided ICASA greater independence but required DOC approval of the regulator's funding, which opens up potential for further political interference.

Despite legislative efforts to increase competition and ICASA independence, the DOC has attempted to pursue a policy of "managed liberalization." In October 2008, the Pretoria High Court rejected the DOC's efforts to impose an invitation-only application process for Value Added Network Services (VANS) licensees. In response, the DOC announced that it would allow ICASA to complete its licensing process by January 19, 2009, as required under the ECA. ICASA requested all interested VANS licensees to submit applications by December 5, 2008. ICASA has also promised potential licensees that it will complete the spectrum allocation process for these licenses by the end of the first quarter of 2009. If it succeeds, the telecommunications market is expected to become more competitive.

ICASA is currently in the process of determining the number and size of new VANS licenses to award. It has 120 megahertz of spectrum to allocate for this purpose and is deciding between awarding 6 licenses for 20 megahertz each or 4 licenses for 30 megahertz each. Potential licensees have complained that 20 megahertz would not be sufficient to build a national network and have noted that Telkom possesses about 50 megahertz of spectrum that it does not utilize. ICASA also planned on requiring 51 percent Black Economic Empowerment (BEE) equity ownership for new licenses, which could create market-entry challenges for foreign investors.

The government recently supported UK-based Vodafone Group's offer to purchase a 15 percent stake in mobile operator Vodacom, which will end the relationship between Telkom and Vodacom. The transaction will also allow for the unbundling and listing of Telkom's remaining 35 percent shareholding in Vodacom, free both Telkom and Vodacom from their current restrictive shareholders agreement, and allow them to pursue independent growth strategies. This is expected to reduce costs and increase competition in the sector and lead to increased consumer offerings, including wireless solutions in underserved areas.

The United States-led SEACOM undersea fiber-optic cable project will provide the first true broadband connectivity for countries on Africa's eastern seaboard. South Africa is currently 100 percent reliant on expensive satellite and fiber-optic cable solutions provided by Telkom. SEACOM expects to finish the project in June 2009. Privately owned satellite firm Intelsat and a South African investment consortium also plan to build and launch a new $250 million satellite that is expected to enter service in early 2011.

Liberalization policies implemented by the DOC in recent years have addressed some of the problems facing VANS and ISPs. As a result, more mobile operators may now use fixed lines to provide their service, VANS providers may use infrastructure not owned by Telkom, and VANS providers may offer voice services. In addition, private telecommunications network operators may sell spare capacity.

Broadcasting

ICASA maintains local content regulations for satellite, terrestrial, and cable subscription services. Foreign ownership in a broadcaster is presently capped at a maximum of 20 percent.

INVESTMENT BARRIERS

In February 2007, the DTI published Codes of Good Practice in the Government Gazette that included a new generic scorecard to measure a company's level of black economic empowerment (BEE) in areas such as equity ownership, management, employment, procurement from black-owned companies, and development of black-owned enterprises. The Codes permit multinational corporations to earn BEE equity ownership "points" for empowerment actions in non-equity areas, provided the DTI approves and provided the multinational has a global corporate policy of owning 100 percent of the equity in its subsidiaries. Many U.S. companies had pressed for the right to use such "equity-equivalent" mechanisms. Although completion of the Codes of Good Practice has cleared up much of the uncertainty that surrounded BEE, they are complex documents and much about their interpretation and implementation remains unclear.

Several "transformation charters" have also been negotiated by stakeholders in sectors such as financial services, mining, and petroleum. These charters are intended to promote accelerated empowerment within particular sectors, and it is expected that many of these charters will be converted into binding sector codes. There is uncertainty as to whether equity-equivalent plans approved by DTI under the Codes of Good Practice would automatically satisfy equity requirements imposed by transformation charters. For example, in at least one case, a DTI-approved equity-equivalent plan was determined not to satisfy the requirements of the Information and Communications Technology charter.

ELECTRONIC COMMERCE

The Electronic Communications and Transactions Law governs all companies that conduct electronic commerce in South Africa. The law was designed to facilitate electronic commerce, but may instead increase the regulatory burden and introduce an unacceptable level of uncertainty for some businesses. The law requires government accreditation for certain electronic signatures, takes government control of South Africa's ".za" domain name, and requires a long list of disclosures for web sites that sell via the Internet.

In early 2006, the South African Law Reform Commission submitted draft legislation and discussion documents on privacy and data protection for public comment and held a series of workshops on the draft legislation. This legislation, which was brought before the National Assembly in 2008, may negatively impact the ability of South African and foreign companies to receive and send transborder flows of personally identifiable data.

OTHER BARRIERS

Ownership Patterns

Although South Africa's business environment has improved dramatically in the post-apartheid era, the energy, transportation, and telecommunications sectors are still dominated by state-owned or state-controlled monopolies.

Transparency, Corruption and Crime

Laws such as the Promotion of Access to Information Act and the Public Finance Management Act, both enacted in 2000, have helped to increase transparency in government. The 2004 Prevention and Combating of Corrupt Activities Act defines graft, bars the payment of bribes by South African citizens and firms to foreign public officials, and obliges public officials to report corrupt activities. One shortcoming of the Act has been its failure to protect whistleblowers against recrimination or defamation claims.

South Africa has no fewer than 10 agencies engaged in anticorruption activities. Some, like the Public Service Commission, the Office of the Public Protector, and the Office of the Auditor-General, are constitutionally mandated to address corruption as only part of their responsibilities. However, high rates of violent crime are a strain on capacity and make it difficult for South African criminal and judicial entities to dedicate adequate resources to anticorruption efforts. In October 2008, Parliament voted to disband the South African Police Anticorruption Unit and the Directorate for Special Operations (more popularly known as the "Scorpions") and fold its jurisdiction into the National Police.

Immigration Laws

For a number of years, U.S. and other foreign companies have complained about difficulties in obtaining temporary work permits for their skilled foreign employees.

2. BOTSWANA

IMPORT POLICIES

Tariffs

Botswana's tariff policies are generally determined by and integrated with SACU, in accordance with the 2002 SACU Agreement. Accordingly, Botswana uses the Harmonized System of Classification and applies the SACU common external tariff.

Nontariff Measures

Imports are governed by the Control of Goods, Prices and Other Charges Act. Import permits are required for goods entering Botswana directly from countries outside of SACU, with the exception of Malawi, and can be obtained from the Department of Trade and Consumer Affairs in the Ministry of Trade and Industry. Import permits are usually granted upon request and are not transferable.

Importation of certain agricultural products and plants requires approval from the Ministry of Agriculture prior to obtaining an import permit from the Department of Trade and Consumer Affairs. The Ministry of Agriculture issues import permits for certain agricultural products, including plants and live animals. Imports of fresh and frozen pork are banned, but processed pork products may be imported. Imports of beef and beef products are also banned. Although poultry imports are permitted when there is a domestic market deficit, the Botswana poultry sector met all domestic demand in 2008. Imports of some vegetables and dairy products are seasonally banned when domestic supply is determined to be adequate, regardless of price. The government allows for importation of used clothing except for undergarments. The importer of used clothes is required to apply for an import permit, which may be issued for a duration of six months, obtainable from the Department of Trade and Consumer Affairs. Fumigation is required. For petroleum products, import permits are issued by the Department of International Trade after the applicant satisfies licensing requirements maintained by the Department of Energy.

GOVERNMENT PROCUREMENT

The Public Procurement and Asset Disposal Board (PPADB), an independent parastatal, is responsible for the award of all government contracts. The tender process is generally open. The Independent Complaints Review Committee of the PPADB reviews the Board's decisions, which are subject to challenge by stakeholders (*e.g.*, contractors and procuring entities). The PPADB has published its decisions concerning awarded tenders, prequalification lists, and newly registered suppliers. The PPADB Act empowers the government in accordance with its economic and social objectives to introduce, from time to time, reservation and preference schemes for the benefit of citizens and local companies. Preferences are also applied to production inputs sourced locally from qualifying firms. The government reserves certain tenders for 100 percent Botswana-owned companies, including all contracts valued at P300,000 ($50,000) or less. On large tenders, the relevant ministries review the finalists selected by the PPADB and exert some degree of influence in the final award. The PPADB has stated that it considers these schemes to be in conformance with Botswana's obligations under its international and regional trade agreements. Botswana is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Botswana is a party to the World Intellectual Property Organization (WIPO) Convention, the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of

Industrial Property, the Patent Cooperation Treaty, the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, the WIPO Copyright Treaty, and the WIPO Performances and Phonograms Treaty. Botswana's legislation, including the 2006 Copyright Act, is intended to conform to international IPR standards, but there are notable deficiencies with respect to geographic indications and integrated circuits, and enforcement of intellectual property rights has not been a priority.

SERVICES BARRIERS

Although the telecommunications market has been largely liberalized, fixed-line telephony remains as a monopoly of the Botswana Telecommunications Corporation (BTC). Competition in the cellular phone industry is dominated by two international firms, which compete for the bulk of the local market. Voice-Over-Internet Protocol is not allowed, except over private networks. Universal licenses have been granted for all licensed telecommunications corporations, opening the cell phone market to parastatal BTC.

INVESTMENT BARRIERS

All foreign investors wishing to invest in Botswana are required to transfer technology to Botswana in certain circumstances; transfer skills to citizens of Botswana by promoting their involvement and participation in positions in the supervisory, middle, and senior management levels of companies; and ultimately replace expatriate employees with Botswana citizens within an agreed period. There are often exceptions to this rule in practice.

While the government is moving towards privatization of some parastatal businesses, the process appears to be moving slowly. In 2000, the Public Enterprise Evaluation and Privatization Agency (PEEPA) was established to oversee implementation of Botswana's privatization policy. PEEPA will ultimately determine the extent of foreign participation in the privatization process. The Ministry of Finance and Development Planning, to which PEEPA reports, has stated that local investors may in some instances be given preference in the privatization process.

None of the government of Botswana's recent privatization efforts has met with success. For example, the long-awaited privatization of Air Botswana collapsed in 2007, due to the government challenging technical aspects of the successful bid that was certified by the Public Procurement and Assets Disposal Board. The Botswana government has now shifted its attention to privatization of the BTC. Legislation that would formally privatize BTC was progressing through Parliament as of late 2008.

The acquisition of land, work permits, and business licenses remains encumbered by significant bureaucratic and political constraints.

OTHER BARRIERS

Botswana courts will, in general, accept and enforce decisions of a foreign court found to have jurisdiction in a given case. However, a backlog of court challenges has adversely affected international companies that have won government contracts. In some instances even companies that have won these challenges have had to rebid due to the length of time (in one case over four years) for the court to render a decision. There is a growing concern that the backlog could deter American companies interested in competing for contracts in Botswana.

3. LESOTHO

IMPORT POLICIES

Tariffs

Lesotho's tariff policies are generally determined by and integrated with SACU, in accordance with the 2002 SACU Agreement. Accordingly, Lesotho applies the SACU Common External Tariff and other SACU import policies. Additional charges include clearing fees ranging from M1,300 to M1,750 (approximately $130 to $175).

Nontariff Barriers

Lesotho applies a permit system for all imports from non-SACU members. The system is applicable to all consignments imported by individual consumers and investors. Manufacturers are accorded preferential treatment and granted a "blanket import permit" with a validity of 12 months and an additional grace period of 3 months. Lesotho has yet to submit its Import Licensing Questionnaire to the WTO.

In recent years, the government of Lesotho has undertaken agricultural sector structural reforms including the removal of price subsidies and import controls on maize and wheat products in favor of market-determined prices. The 1967 Agricultural Marketing Act, however, continues to control the importation of bread, legumes, sugar, eggs, meat, dairy products, fruits, and vegetables. With the exception of eggs, sugar, and legumes, import restrictions allow a limited exemption for consumer purchases outside the country. The Department of Marketing under the Ministry of Trade and Industry, Cooperatives and Marketing monitors the level of local production of consumer goods and issues import licenses for goods that are in short supply. National production has never met local demand. As a result, import licenses are issued as a matter of course.

Non-automatic licenses apply to imports of used clothing. In practice, licenses for used clothing are not issued, constituting a *de facto* ban. The Ministry issues permits for the import of used vehicles from outside the SACU area.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Lesotho does not have a national standards body, and no national standards have been developed. The Standards and Quality Assurance section of the Ministry of Trade and Industry, Cooperatives and Marketing functions as the focal point for standards and quality assurance. Industries in Lesotho have traditionally relied on the South African Bureau of Standards for voluntary standards and quality assurance schemes. Local exporters have relied on traditional export markets and have developed their standards according to technical and quality requirements of importing countries and firms or based on international standards.

GOVERNMENT PROCUREMENT

In 2007, the government adopted new public procurement regulations. The Central Tender Board under the Ministry of Finance and Development Planning is responsible for the award of all government contracts. Standard government procurement in Lesotho is conducted through open competition. However, some preferences are given to locally owned companies in the government bidding process. Procurement regulations require the government to advertise online in order to conform to SACU standards. Lesotho's Ministry of Trade and Industry encourages foreign companies to bid on public tenders as joint ventures with local firms.

Lesotho is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Lesotho is a party to the World Intellectual Property Organization (WIPO) Convention, the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, and the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks.

Patents have rarely been issued in Lesotho, but trademark protection is widely sought and granted. Although the law protects patents, industrial designs, trademarks, and copyrights, we are not aware of enforcement of intellectual property laws with regard to copyrighted music or films.

SERVICES BARRIERS

The Trading Enterprises Order of 1996 restricts foreigners from participating in small-scale trading activities that are reserved for nationals only. These include butcheries, barbershops, certain cafes, and hair salons. Otherwise, foreign participation is not restricted in the service sector. The banking and telecommunications sectors are largely foreign-owned, primarily by South African institutions**.** The Lesotho Telecommunications Authority (LTA) acts as an independent regulator of the telecommunications industry. The LTA sets the conditions for the entry of new competitive operators, although it maintains Lesotho Telecom's monopoly on fixed-line and international services.

Telecom Lesotho is the sole fixed-line Internet service provider and also holds a monopoly for international Internet access. Telecom Lesotho does not allow the use of wireless connections by local Internet providers.

INVESTMENT BARRIERS

Foreign investors have participated in the country's privatization program without discrimination. However, according to the International Finance Corporation, it takes 73 days to start a new business in Lesotho, a consequence of significant bureaucratic impediments and inefficiencies. In response, the government of Lesotho has embarked on a private sector development initiative, funded in part with resources from the U.S. Millennium Challenge Corporation, to improve the nation's investment climate.

4. NAMIBIA

IMPORT POLICIES

Namibia's tariff policies are generally determined by and integrated with SACU, in accordance with the 2002 SACU Agreement. Accordingly, Namibia applies the SACU common external tariff.

Most imports require a permit issued by the Ministry of Trade and Industry (MTI). Products subject to specific import licensing requirements include medicines and related substances; chemicals; frozen or chilled fish and meat; live animals and genetic materials; controlled agronomic products; controlled petroleum products; firearms and explosives; diamonds, gold, and other minerals; and seemingly all second-hand goods, including clothing and motor vehicles. In practice, however, MTI does not issue licenses for imports of used clothing, resulting in a *de facto* ban on this product. Namibia bans the importation of left-hand-drive vehicles and used vehicles older than five years from non-SACU countries.

The Namibian Agronomic Board issues permits for the import, export, and transit of controlled agronomic crops (*i.e.*, wheat and wheat products and corn and corn products). Imports of agronomic crops and derivatives, as well as all plants and plant products, also require the issuance of a phytosanitary certificate by the Ministry of Agriculture, Water, and Rural Development. Retailers of fruits, vegetables, and other crop products must purchase 27.5 percent of their stock from local farmers. The Namibian Meat Board regulates the import and export of live animals and derivative meat products. Importers of live animals and meat products must demonstrate compliance with the country's animal health standards by obtaining a veterinary import permit from the Directorate of Veterinary Services.

EXPORT SUBSIDIES

Since independence in 1990, the government has pursued policies to diversify its economy and to create employment. To achieve these goals, the government has put in place tax and nontax incentives to attract manufacturers and export oriented businesses. The Offshore Development Company administers the country's Export Processing Zone (EPZ) regime. Companies granted EPZ status can set up operations anywhere in Namibia. There are no restrictions on the industrial sector as long as the exports are destined for markets outside the SACU region. Benefits of the EPZ regime include no corporate tax, no import duties on the importation of capital equipment or raw materials, and no value added tax, stamp or transfer duties. Nonresidents operating in an EPZ may hold foreign currency accounts.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Namibia Standards Institute (NSI), formally launched in September 2007 with the assistance of the South African Bureau of Standards (SABS), currently undertakes standardization functions in Namibia. SABS continues to perform the role of Official Technical Inspection body for fish and fish products while assisting NSI in formulating and developing technical capacity in the areas of standards, quality assurance, and metrology.

Namibia is a party to the Convention on Biological Diversity and a signatory to the subsequent Cartagena Protocol on Biosafety. In an effort to meet its international commitments, the government passed, but has not yet fully implemented, the Biosafety Act of 2006. The Act will regulate the importation, sale and use of products of agricultural biotechnology and will establish new regulatory and administrative structures. It will impose new registration obligations on facilities that use or produce agricultural biotechnology products and will require persons and companies to receive authorization prior to importing such products. It will also require biotechnology products to be clearly labeled and identified for purposes of traceability. Pending implementation of the Biosafety Act, the government has imposed a moratorium on the importation of agricultural biotechnology products.

GOVERNMENT PROCUREMENT

Most government transactions, including the awarding of contracts and the purchase of supplies, are made through the Tender Board of Namibia. The Board is comprised of representatives from various government ministries and appointed by the Minister of Finance. Government tender notices are published in the local media. The Tender Board gives preference to goods manufactured or assembled in Namibia as well as by historically disadvantaged Namibians.

The Tender Board has come under scrutiny in recent years for not always adhering to its own policies, especially in the awarding of contracts to foreign companies. In 2007, two local construction companies challenged the Tender Board in court for awarding a tender to a Chinese company (for construction of a government building) that allegedly failed to comply fully with Namibian labor law and work permit regulations. The High Court rejected the application to stop work on the building, but the case is still being pursued in the courts.

Namibia is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Namibia is a party to the World Intellectual Property Organization (WIPO) Convention, the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, and the Patent Cooperation Treaty. Namibia is a signatory to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty but has not yet ratified or implemented these treaties.

In January 2009, the Ministry of Trade and Industry circulated a draft industrial property bill that would establish an Industrial Property Office to handle administration of patents, marks and designs. The law has not yet been passed.

The Ministry of Information and Broadcasting has drafted amendments to the Copyright and Neighboring Rights Protection Act of 1994 with the aim of bringing it in line with the TRIPS Agreement and the WIPO treaties. However, the new law still needs to be passed and enacted. It aims to improve standards of IPR protection and include new aspects such as satellite, traditional knowledge, and folklore issues. Two copyright organizations, the Namibian Society of Composers and Authors of Music (NASCAM) and the newly established Namibian Reproduction Rights Organization (NAMRRO), are the key driving forces behind the government’s anti-piracy campaigns. NASCAM administers IPR for authors, composers, and publishers of music while NAMRRO protects all other IPR including literary, artistic, broadcasting, satellite, traditional knowledge, and folklore.

Constraints to combating IPR abuses include a shortage of trained IPR lawyers and the lack of IPR courses available at local universities.

SERVICES BARRIERS

Although government-owned Telecom Namibia dominates the telecommunications sector, foreign investors are involved in both of the country’s mobile operators. The government of Namibia retains a share in both companies. The government pledged not to issue further licenses in the mobile phone market for the next five years, but then granted Telecom Namibia a license and allowed it to introduce a mobile service. In response to criticisms of this decision, the government has restricted Telecom’s mobile service from providing its customers "roaming" capabilities. This has limited Telecom’s market penetration, as many customers prefer a service that can work anywhere (and across carriers) in the country. The government of Namibia is in the process of drafting a new bill on telecommunications that aims to pave the way for new technology services and increased competition in the communications sector. The government has placed a moratorium on issuing new telecommunications licenses pending the passage of the new telecommunications act.

Insurance companies are required to cede 20 percent of any policy issued or renewed to the state-owned Namibia National Reinsurance Corporation. In 2006, the government and private insurers reached an agreement in which mandatory cession would not be enforced for five years.

INVESTMENT BARRIERS

There are few restrictions on the establishment of private businesses or the size of an investment.

The Foreign Investment Act generally does not require equity participation by local investors in foreign investments. The government may require local participation before issuing licenses to exploit natural resources. The government also actively encourages partnerships with historically disadvantaged Namibians. In certain industries, such as the fishing sector, investors complain of a concerted campaign to "Namibianize" existing investments.

Land reform is at the forefront of Namibian public debate. The Constitution provides for the government-initiated purchase of private property in the public interest subject to the payment of "just" compensation under a "willing buyer-willing seller" system. Namibian law also allows for expropriation, with just compensation, of land in the public interest. To date, land acquisition and expropriations have been undertaken legally and upon payment of compensation. Domestic groups have urged the government to accelerate the acquisition of commercial farmland and the corresponding resettlement of Namibia's landless population. The government considers foreign-owned and nonproductive farmland primary targets for expropriation. In April 2005, the government introduced a land tax to raise money for further land acquisition.

OTHER BARRIERS

According to recent surveys, there is a growing public perception that official corruption is on the rise. Anticorruption bodies include the Office of Ombudsman and the Office of the Auditor-General. In 2003, an Anticorruption Bill was passed and the government later established an independent Anticorruption Commission, though the Commission has yet to investigate a case of corruption that culminated in successful prosecution. Only a few initial cases of relatively low-level corruption have been brought to trial. In addition, the government has yet to take action on reports and recommendations from several presidential commissions that were established in past years to investigate allegations of kickbacks and irregularities in Namibian parastatals.

A large court backlog continues to cause lengthy delays of all types of trials.

5. SWAZILAND

TARIFFS

Swaziland's tariff policies are generally determined by and integrated with SACU, in accordance with the 2002 SACU Agreement. Accordingly, Swaziland applies the SACU common external tariff. Swaziland applies a 14 percent sales tax for goods coming across its borders, regardless of the country of origin.

In addition to SACU, Swaziland is also a member of the Common Market for Eastern and Southern Africa (COMESA). With special permission from COMESA and Swaziland's fellow SACU Members, goods from Swaziland are given preferential access on a non-reciprocal basis in the COMESA market. Swaziland's simultaneous membership in SACU and COMESA could pose a challenge in the future, especially given COMESA's plans to launch a Customs Union in 2009.

NONTARIFF MEASURES

Permits are required for certain imports, including all agricultural products, mineral fuels, used clothes, mineral oils, motor vehicle parts, used cars, medicinal drugs, and electrical appliances. Licensing permits issued by the Ministry of Finance are generally easy to obtain and are valid for one shipment. Goods imported to Swaziland from outside SACU must be cleared through customs at the first port of importation into SACU.

In October 2008 Swaziland introduced usage of the Automated Systems for Customs Data (ASYCUDA) at all border posts. Although ASYCUDA is a significant improvement from the previous system, it does not communicate with South Africa's Customs system, requiring traders bringing in goods from South Africa to declare their goods twice.

SADC's Single Administrative Document 500 form is used for multiple border crossings and is supposed to standardize the number of forms needed for transporting goods between SADC countries. Many members of the Swazi business community find the form cumbersome and have registered complaints about it with the Federation of Swaziland Employers and Chamber of Commerce.

Among the nontariff barriers to trade commonly cited by traders are levy charges and sales tax on some agricultural products, mineral fuels, and electronic equipment.

GOVERNMENT PROCUREMENT

Although the government may accord local businesses a 15 percent price preference in tendering for government contracts, it appears that this preferential treatment is not always granted. Vendors from South Africa and other southern African countries are selected for a large portion of government contracts. However, for small and medium-sized tenders, suppliers must be registered in Swaziland in order to submit a tender. The government inspects the premises of all suppliers prior to awarding the tender.

The government issues tender notices 7 days to 30 days before tenders are due, depending on the size of the procurement. Potential suppliers must pay a fee to obtain tender documentation and participate in government procurements. Tenders must be submitted to the Central Tender Board and suppliers are invited to the opening of the tenders. In some instances, a Ministry can apply for a waiver of the tender procedure if there are too few companies that are able to supply a particular commodity.

The Ministry of Finance has drafted a new Public Procurement law that would establish a public procurement regulatory authority and other public procurement institutions and provide regulation and control of practices in respect of public procurement of goods, works, and services by procuring entities. As of late 2008, the Ministry was consulting with stakeholders on the draft bill.

Swaziland is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Swaziland is a party to the World Intellectual Property Organization (WIPO) Convention, the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, and the Patent Cooperation Treaty. Swaziland is a signatory to the Patent Law Treaty and the Trademark Law Treaty but has not yet implemented these treaties.

Swaziland needs to substantially revise its laws related to IPR protection. Updated patent legislation has been in draft form for the past four years. When the new legislation is passed and enacted, the African Regional Industrial Property Organization is expected to help Swaziland with technical assistance in granting patents.

The Ministry of Justice and Constitutional Affairs has drafted an updated Copyright Act, based on the World Intellectual Property Rights Organization (WIPO) model. The draft was still being reviewed within the Swazi government at the end of 2008.

SERVICES BARRIERS

Foreign participation in the services sector is generally not restricted. In 2007, the government ended an effective monopoly in the insurance sector, and a number of insurance companies now operate in the country.

MTN Swaziland, a joint partnership of the MTN Group and the state-owned Swaziland Posts and Telecommunications Corporation, is the only mobile telecommunications provider. The government awarded it a 10-year monopoly that ended in 2008. While the market is now open to competition, no other mobile phone company has yet received a license.

The Swaziland Post and Telecommunications Corporation is the monopoly provider of fixed-line telecommunications services.

INVESTMENT BARRIERS

Swaziland does not have an investment code. Calls for the streamlining of procedures to start a business have gone unheeded, and major legislation needed to support an improved investment climate has been slow to proceed. A Securities Bill to protect investors in Swaziland's equity market has been proposed but not yet passed. Related legislation, known as the Financial Services Regulatory Authority Bill that would bring all nonbank financial institutions under one regulatory authority has not yet reached Parliament. A new Companies' law to replace the outdated Companies Act of 1912 was passed by parliament in 2008 but awaits the King's signature.

There are currently no formal policies that discriminate against foreign investors or foreign-owned companies in Swaziland. Foreign investors are free to invest in most sectors of the Swazi economy. However, pineapple canning, cellular and fixed line telecommunications, and water distribution are all state-sanctioned activities or subject to state-owned monopolies. The Trade and Business Facilitation Bill, drafted in 2001 but still awaiting parliamentary action, would require that companies in certain specified sectors maintain a certain degree of Swazi ownership.

The Cabinet has approved a privatization policy that the government is now taking steps to implement. The process will create a Public Enterprise Agency charged with ensuring that public enterprises are managed efficiently and are not a drain on the nation's resources. A key parastatal being targeted for privatization, possibly through a joint venture with foreign investors, is the Swazi Post and Telecommunications Corporation. The government is also required by a 2007 law to divest its shares in the Swaziland Electricity Board.

Land acquisition is a barrier to investment in Swaziland. Large plots of land that are not designated as Swazi Nation Land are difficult to find, making it difficult for companies, especially those in agribusiness, to expand their operations.

SRI LANKA

TRADE SUMMARY

The U.S. goods trade deficit with Sri Lanka was $1.7 billion in 2008, a decrease of $160 million from $1.8 billion in 2007. U.S. goods exports in 2008 were $283 million, up 24.7 percent from the previous year. Corresponding U.S. imports from Sri Lanka were $2 billion, down 5.0 percent. Sri Lanka is currently the 116th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Sri Lanka was $80 million in 2007 (latest data available), up from $69 million in 2006.

IMPORT POLICIES

Despite an economy open to foreign investment, the pace of reform in Sri Lanka has been uneven. President Rajapaksa's broad economic strategy focuses on poverty alleviation and steering investment to disadvantaged areas, developing the small and medium enterprise sector, promotion of agriculture, and expanding the already large civil service.

The Trade, Tariff, and Investment Policy Division of the Ministry of Finance and Planning is charged with the formulation and implementation of policies in these areas. In addition, the Trade and Tariff cluster of the National Council of Economic Development (NCED) also examines trade and tariff issues and sends recommendations to the Ministry of Finance and Planning. The NCED consists of 22 clusters representing both private and public sector officials, which examine various sectors of the economy.

Import Charges

Sri Lanka's main trade policy instrument has been the import tariff. According to the WTO, in 2006, Sri Lanka's average applied tariff for nonagricultural goods was 9.2 percent. Its average bound tariff for these goods was 19.6 percent. However, approximately 70 percent of Sri Lanka's nonagricultural tariffs are unbound under WTO rules and can be increased at any time. Sri Lanka's average applied agricultural tariff in 2006 was 23.8 percent.

Currently in Sri Lanka, there are five tariff bands: 0 percent; 2.5 percent; 6 percent; 15 percent; and 28 percent. Textiles, pharmaceuticals, and medical equipment are duty free. Basic raw materials are generally assessed a 2.5 percent duty. Semi-processed raw material tariffs are 6 percent, while intermediate product tariffs are 15 percent. Most finished product tariffs are 28 percent. There are also a number of deviations from the five band tariff policy. Some items are subject to an *ad valorem* or a specific duty, whichever is higher, and there is intermittent use of exemptions and waivers. In addition, there are specific charges on certain imported items, including footwear, ceramic products, and agricultural products. In 2007 the government raised taxes on imported textiles by imposing an Export Development Board Levy (often referred to as a cess) of 50 Rupees (approximately $0.50) per kilogram on imported textiles not intended for use by the apparel export industry. Currently, apparel imports are subject to a 15 percent import duty, a 30 percent or Rs 75 per unit cess, a 15 percent Value Added Tax (VAT), a 3 percent Ports and Airports Levy, and a 1.5 percent Social Responsibility Levy. Beginning January 1, 2009, the VAT on apparel imports will be reduced to 12 percent and the Ports and Airports Levy will increase to 5 percent. A new Nation Building Levy of 1 percent will also come into force on all imports, including apparel and textiles.

In addition to tariffs, a variety of taxes introduced (see below) in the past several years have effectively increased Sri Lanka's tax rates on a range of imported items to between 60 percent and 100 percent of the cost, insurance, and freight (CIF) value of the product. The government has imposed these charges on imports primarily to raise revenue, to defray the costs of specific government services, or to promote local producers. Most of these charges were revised upwards effective November 2007, and again in November 2008. In addition, the government imposed a new Nation Building Tax of 1 percent on imports that came into effect on January 1, 2009; it will be in effect for two years. The frequent changes (mostly upward) in these rates have added unpredictability to foreign exporters' and local importers' cost calculations. Affected products from the United States include fruits, processed/packaged food, and personal care products.

Other charges on imports include:

- An Export Development Board (EDB) levy, ranging from 10 percent to 35 percent *ad valorem* on a range of imports identified as "nonessential." Most of the items are subject to specific duties as well; for example, shampoo (35 percent or Rs 150 per kg), apparel (30 percent or Rs 75 per unit), biscuits (35 percent or Rs 60 per kg) and oranges (20 percent or Rs 15 per kg). Whichever levy is higher – percentage versus a flat rate – is applied. Also, when calculating the EDB levy, an imputed profit margin of 10 percent is added onto the import price. In some cases, such as on biscuits, chocolates and soap, the tax is charged not on the import price but on 65 percent of the maximum retail price. The EDB levy on most imports was increased by increasing the specific duties (unit rate) in November 2008.

- An import duty surcharge of 15 percent on all dutiable imports (increased from 10 percent as of November 8, 2007).

- A Ports and Airports Development Levy of 3 percent on imports (increased from 2.5 percent in January 2007; this tax will be increased from 3 percent to 5 percent from January 1, 2009).

- A VAT of 0 percent, 5 percent, 15 percent, or 20 percent. When calculating the VAT, an imputed profit margin of 10 percent (increased from 7 percent on January 1, 2007) is added on to the import price. Locally manufactured products are also subject to VAT but not the imputed profit margin. (The VAT rates of 5 percent and 15 percent are to be replaced with a VAT band of 12 percent with effect from January 1, 2009.)

- Excise fees on some products such as aerated water, liquor, beer, motor vehicles, and cigarettes. The list of products subject to these fees was expanded in 2007 to include certain household electrical items. When calculating the excise fee, an imputed profit margin of 15 percent (increased from 10 percent on October 11, 2007 and from 7 percent on January 1, 2007) is added on to the import price. Locally manufactured products are also subject to excise fees.

- A port handling charge, which varies by container size.

- A Social Responsibility Levy, a surcharge of 1.5 percent assessed on the import duty to fund the National Action Plan for Children. This tax was increased from 1 percent as of November 8, 2007.

A regional infrastructure fee of 5 percent, 7.5 percent or 10 percent (based on engine capacity) is imposed on automobiles. This tax, first introduced in January 2007 at a flat rate of 2.5 percent, was increased in 2008 to 5 percent.

In October and November 2008, the Central Bank introduced limits on forward contracts for the sale and purchase of foreign exchange, prevented prepayments on import bills, and imposed a 100 percent deposit requirement on Letters of Credit for the import of non-essential items. The list includes confectionary, chocolates, personal care products, electrical items, tableware, apparel, footwear, lighting products and watches. In the case of motor vehicle imports, the deposit requirement is 200 percent of the import value.

In March 2007, the government lifted a requirement to keep a 50 percent deposit on letters of credit on nonessential imports. The requirement had been introduced in October 2006 to discourage imports in more than 40 categories of consumer items including confectionary, liquor, personal care products, footwear, and tableware.

The U.S. Government engaged in bilateral Trade and Investment Framework Agreement (TIFA) talks with the government of Sri Lanka in May 2008. The United States stressed the importance of reducing Sri Lanka's high tariffs on agricultural products; opening the Sri Lankan market for U.S. agricultural biotechnology products; providing more certainty and transparency in Sri Lanka's government procurement, and integrating U.S. technical assistance into the government of Sri Lanka's overall intellectual property rights enforcement plan.

Import Licensing

Sri Lanka requires import licenses for over 400 items at the 6-digit level of the Harmonized Tariff System code, mostly for health, environment, and national security reasons. Importers must pay a fee equal to 0.1 percent of the import price to receive an import license.

Customs Administration

The government of Sri Lanka implemented the WTO Customs Valuation Agreement in January 2003 and follows the transaction value method to determine the CIF value. The scheme has operated quite successfully and major companies have not faced problems. Customs is also in the process of installing an Electronic Data Interchange system to support an automated cargo clearing facility. When implemented, this system should improve customs administration and facilitate trade.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Standards

At present, 102 items are subject to the Sri Lanka Standards Institution (SLSI) mandatory import inspection scheme. These include food, steel, electrical cables, switches, water heaters, and cement. Importers of these items must obtain a clearance certificate from the SLSI to sell their goods. SLSI accepts letters of conformity from foreign laboratories, but retains the discretion to take samples and perform tests.

Laws Governing Genetically-Engineered (GE) Food

In January 2007, the Ministry of Health established a regulation for the import, sale and mandatory labeling of GE food products. This regulation is moving towards full implementation. Sri Lankan importers have raised several concerns about the regulation, including that conformity with a 1 percent GE content labeling threshold would be costly. Additionally, importers fear bureaucratic procedures and delays in granting approvals may obstruct and limit future imports of GE products. They also fear that mandatory labeling could needlessly raise consumer concerns with biotechnology. As a result, some businesses have stopped importing GE products altogether. During May 2008 discussions under the United States-Sri Lanka TIFA, the United States raised its concerns regarding Sri Lanka's mandatory labeling requirement, noting a lack of scientific justification and that it would act as a nontariff barrier. In November 2008, a United Nations World Food Program shipment of donated U.S. rice was rejected by Sri Lankan authorities citing unsubstantiated risks from consuming GE products.

Sri Lanka also requires regulatory approval of foods with 1 percent or more GE content. No approvals have been issued. Soybean and corn food imports must therefore be certified as non-GE products. The government has not provided any scientific justification for the certification requirement. The U.S. Government has requested that the non-GE labeling regulation be suspended pending full implementation of a science-based risk assessment system to appropriately evaluate the health and safety of products produced using biotechnology. In addition, the non-GE certification requirement is inconsistent with the National Biosafety Framework of Sri Lanka, and the United States has noted this discrepancy.

Sanitary and Phytosanitary (SPS) Measures

Sri Lanka has banned the importation of U.S. chicken meat, which is not mechanically deboned, for other than food safety reasons. Additionally, Sri Lanka had imposed avian influenza bans on all U.S. poultry and poultry products from the following states: Nebraska, Montana, Delaware, West Virginia, Maryland, Illinois, Michigan, New Jersey, Pennsylvania, Virginia and Arkansas. These bans are believed to have been imposed due to detections of low pathogenicity avian influenza (LPAI) in wild or domestic birds in the United States; but Sri Lanka did not provide notification or justification for the bans. The United States provided information regarding the current status of avian influenza in the United States as well as information supporting its assertion that the World Organization for Animal Health (OIE) does not recommend trade bans based on detections of avian influenza in wild birds, or on poultry meat based on detections of LPAI in any birds.

In July 2008, Sri Lanka withdrew its avian influenza ban on imports from several U.S. states (Nebraska, Montana, Delaware, West Virginia, Maryland, Illinois, Michigan, New Jersey, and Pennsylvania). Until recently, avian influenza bans remained on poultry from Virginia and Arkansas. In February 2009, the Sri Lankan Department of Animal Production and Health lifted the avian influenza bans on poultry imports from Virginia and Arkansas. However, the avian influenza ban remains on poultry from Idaho as a result of April 2008 LPAI detection.

In addition to the avian influenza bans, a ban on imports of beef from the United States is maintained, due to the detection of bovine spongiform encephalopathy in the United States in 2003. As noted above, many of the prohibitions imposed by local health authorities differ from the guidelines and recommendations of the OIE's guidelines for meat and poultry.

Sri Lanka lifted a ban on imports of seed potato from the United States in March 2007, initially instituted due to fears that the Colorado Potato Beetle (CPB) could have been introduced into Sri Lanka by these imports. However, Sri Lanka now requires a certificate from a plant entomologist stating that the CPB does not exist in the potato tuber to accompany the seed potato imports. The United States has pressed for the removal of this certificate requirement on the grounds that it was not scientifically justified. In July 2008, Sri Lankan officials visited the U.S. potato industry to further review the issue. It is hoped that as a result of this visit, the issue will be resolved and a visual inspection at the time of shipment will be considered sufficient to address any concerns. Although this issue may be addressed, recent 2008 import permits have included overly restrictive virus tolerances and requirements on generations of seed potatoes. There is concern that the generation requirements are not being applied to seed potatoes imported from other markets such as Europe. The CPB area freedom certificate, virus tolerances, and restrictive generation requirements all need to be addressed before the Sri Lankan market can grow into a strong commercial export market for U.S. seed potatoes.

GOVERNMENT PROCUREMENT

Sri Lanka is not a signatory to the WTO Agreement on Government Procurement. Government procurement of goods and services is primarily undertaken through a public tender process. Some tenders are open only to registered suppliers. Procurement is also undertaken outside the normal competitive tender process. Examples of such procurement include agreements in 2006 with the government of China to build a coal power plant and for two Chinese companies to build a new bulk cargo port in Hambantota, and an agreement with India to build a coal power plant.

The government publicly subscribes to principles of international competitive bidding, but charges of corruption and unfair awards are common. In 2006, Sri Lanka published new guidelines, as well as a new procurement manual, to improve the public procurement process. However, in early 2008 the government disbanded the National Procurement Agency, which it had established in 2004, and shifted its functions to a unit in the Ministry of Finance. This move has raised concerns about the government's commitment to improve the transparency of procurements.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In 2003, Sri Lanka's new intellectual property law – governing copyrights, patents, trademarks, and industrial design – came into force. Under the new law, IPR infringement is a criminal offense and IPR infringement is subject to both criminal and civil jurisdiction. Sri Lanka also passed a new Computer Crimes Act in 2007 strengthening Sri Lanka's IPR regime pertaining to software.

Notwithstanding the new laws, weak IPR enforcement remains a problem. Piracy levels are very high for sound recordings and software. According to a study commissioned in 2006 by the Business Software Alliance, 90 percent of personal computers in Sri Lanka used pirated software. The study estimated retail revenue losses of $86 million in 2006 (latest data available) due to software piracy. Further, government use of unauthorized software continues to be a problem.

Redress through the courts for IPR infringement is often a frustrating and time-consuming process. While police can take action against counterfeiting and piracy without complaints by rights holders, they rarely do so. In 2008, the Business Software Alliance successfully worked with government authorities to increase prosecutions for IPR infringement in the software sector. In the apparel sector, right holders have scored some legal successes in combating trademark counterfeiting.

The Sri Lankan Government's Director of Intellectual Property along with international experts has begun IPR legal and enforcement training for customs, judicial and police officials. The U.S. Embassy, the American Chamber of Commerce of Sri Lanka, and the European Chamber of Commerce are also working with the government of Sri Lanka to improve enforcement, provide enforcement training, and enhance public awareness.

SERVICES

Insurance

Sri Lanka does not allow cross border supply of insurance, with the exception of health and travel insurance. In order to provide all other insurance services to resident Sri Lankans, insurance companies must be incorporated in Sri Lanka. Sri Lanka allows 100 percent foreign ownership for locally incorporated insurance firms, but branching is not allowed. Although Sri Lanka's insurance regulatory body has the authority to establish minimum and maximum premiums for motor, fire and employers liability policies, in practice these premiums are not regulated. In early 2008, the Sri Lankan government implemented a new regulation requiring all insurance companies to reinsure 20 percent of their insurance business with a state-run insurance fund.

Telecommunications

Telecommunications, especially mobile services, is increasingly competitive and may be the most dynamic service industry in Sri Lanka. The government of Sri Lanka maintains a majority share in one of the fixed line carriers, Sri Lanka Telecom (SLT), which was previously a wholly owned government entity. All other operators are privately owned.

Due to SLT's past monopoly status, it continues to own most of the national fixed line telephone infrastructure (including the main switches and the only two international cable landing stations) and continues to dominate the fixed line sector, affecting the competitiveness of other operators in this segment of the market. The government liberalized international telecommunications in 2003 and issued 33 non-facilities based gateway licenses, ending the SLT monopoly over international telephony.

Broadcasting

The government imposes taxes on foreign movies, programs, and commercials to be shown on television, ranging from Rs 25,000 (approximately $250) for an imported English-language movie to Rs 90,000 (approximately $900) per half hour of a foreign-language program dubbed in the local language Sinhala. Foreign television commercials are taxed at Rs 500,000 (approximately $5,000) per year. Rates for non-English foreign programming are higher. Government approval is required for all foreign films and programs shown on television.

Professional Services

There is no formal national policy on liberalization of professional services. In practice, many foreign doctors, nurses, engineers, architects, and accountants work in Sri Lanka. Most of them are employed by foreign companies. Unless the government has recognized a foreign national's professional qualifications, such professional cannot sign documents presented to government institutions or regulatory bodies.

The Immigration Department grants resident visas for foreign professionals whose services are required for projects approved by the government or by companies approved by the Board of Investment (BOI). Non-BOI companies, such as banks, can also employ foreign staff; however, in practice the Immigration Department has limited the number of resident visas to levels below those desired by companies.

Legal Services

Any person, including foreigners, can provide legal consultancy services without being licensed to practice law in Sri Lanka. Only Sri Lankan citizens can register in the Supreme Court and practice law (*i.e.*, appear in courts) in Sri Lanka.

INVESTMENT BARRIERS

While Sri Lanka welcomes foreign investment, there are restrictions in a wide range of sectors. Foreign investment is not permitted in the following areas:

- nonbank money lending;
- pawn brokering;
- retail trade with a capital investment of less than $1 million (with one notable exception: the BOI permits retail and wholesale trading by reputable international brand names and franchises with an initial investment of not less than $150,000);
- coastal fishing;
- education of students under 14 years of age for local examinations; and
- local degree-awarding university education (institutions awarding overseas degrees are permitted).

Investment in the following sectors is restricted and subject to screening and approval on a case-by-case basis when foreign equity exceeds 40 percent:

- shipping and travel agencies;
- freight forwarding;
- higher education;
- mass communications;
- deep sea fishing;
- timber-based industries using local timber;
- mining and primary processing of nonrenewable national resources; and
- growing and primary processing of tea, rubber, coconut, rice, cocoa, sugar, and spices.

Foreign investment equity restrictions and government regulations also apply to air transportation, coastal shipping, lotteries, large-scale mechanized gem mining, and "sensitive" industries such as military hardware, illegal narcotics, and currency.

The BOI offers a range of incentives to both local and foreign investors. To qualify for BOI incentives, investors need to meet minimum investment and minimum export requirements. In general, the treatment given to foreign investors is nondiscriminatory. Even with incentives and BOI facilitation, however, foreign investors can face difficulties operating in Sri Lanka. Problems range from difficulties in clearing equipment and supplies through customs to obtaining land for factories. The BOI encourages investors to locate their factories in BOI-managed industrial processing zones to avoid land allocation problems. Investors locating in industrial zones also get access to relatively better infrastructure facilities such as improved power reliability, telecommunications, and water supply.

SWITZERLAND

TRADE SUMMARY

The U.S. goods trade surplus with Switzerland was $4.2 billion in 2008, an increase of $2.0 billion from $2.3 billion in 2007. U.S. goods exports in 2008 were $22.0 billion, up 29.3 percent from the previous year. Corresponding U.S. imports from Switzerland were $17.8 billion, up 20.5 percent. Switzerland is currently the 15th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.,* excluding military and government) to Switzerland were $15.7 billion in 2007 (latest data available), and U.S. imports were $14.9 billion. Sales of services in Switzerland by majority U.S.-owned affiliates were $43.3 billion in 2007 (latest data available), while sales of services in the United States by majority Switzerland-owned firms were $50.1 billion.

The stock of U.S. foreign direct investment (FDI) in Switzerland was $127.7 billion in 2007 (latest data available), up from $115.2 billion in 2006. U.S. FDI in Switzerland is concentrated largely in the nonbank holding companies and wholesale trade sectors.

IMPORT POLICIES

Agricultural Products

Switzerland is a difficult market to enter, and few U.S. agricultural products are able to compete successfully. This is due to high tariffs on certain agricultural products, preferential tariff rates for other countries, government regulation, and a negative public perception of agricultural products derived from biotechnology. Agriculture retains an important place in Swiss society, and agricultural interests exert strong influence on parliamentarians, about 15 percent of whom claim to be farmers. Agricultural self-sufficiency is also mentioned in the Swiss constitution. However, Switzerland's 64,000 farmers produce less than 1.5 percent of gross domestic product (GDP) today. Preservation of the Swiss agricultural sector is largely due to governmental intervention and support, which the OECD estimates to be valued at 70 percent of gross farm receipts. Switzerland's tariff schedule is comprised only of specific (non-*ad valorem*) duties. While the average *ad valorem* equivalent applied tariff in Switzerland for non-agricultural products is 2.1 percent, the *ad valorem* equivalent average applied tariff on imports of agricultural products was 44 percent.

Imports of nearly all agriculture products, particularly those which compete with Swiss products, are subject to seasonal import duties and quotas. Agricultural products which are not produced in Switzerland, such as tropical fruit and nuts, tend to have lower tariffs. As a result of these challenges, as well as a geographical disadvantage vis-à-vis Switzerland's trading partners in the European Union (EU), the U.S. share of the Swiss agricultural import market was only 2.6 percent in 2007. Tariff reductions are a high priority for the U.S. Government in the Doha Development Agenda agriculture negotiations.

Hormone-treated beef became an issue in 2006 after Switzerland notified the WTO that Switzerland would begin requiring EU animal health certificates for imported livestock products effective April 1, 2007. This action is tied to Switzerland's planned harmonization of animal health rules with the EU, and the future end of veterinary border controls between Switzerland and the EU. Since hormone-treated beef is not allowed in the EU, the proposed Swiss rules would have effectively ended U.S. beef exports to Switzerland, estimated to have been approximately 230 tons in 2006. However, Switzerland has postponed implementation of this measure, while U.S. and Swiss experts discuss the proposed Swiss harmonization with EU animal health regulations in an effort to find a solution that will allow trade in U.S. beef to continue.

As of January 2000, imports of fresh meat and eggs produced in a manner not permitted for Swiss products must be clearly labeled as such. Methods not allowed in Switzerland include the use of growth hormones, antibiotics, and other substances in the raising of beef and pork, as well as the production of eggs from chickens kept in battery cages of a certain size.

Biotechnology

The restrictive regulatory environment, combined with strong anti-biotechnology public sentiment, has dampened interest in the Swiss market for biotechnology products. Few biotechnology products are authorized, and public resistance to biotechnology has reduced demand for authorized products. Biotechnology products imported for feed use must be declared to Swiss authorities and are thereafter tracked statistically. Feed products declared as biotechnology products accounted for only 0.01 percent of imports of feed in 2007, down from 1.4 percent in 2001. Spot-testing is done by Federal authorities to check for biotechnology content and proper labeling of feed. Statistics on imports of food for human consumption derived from biotechnology are not tracked, but spot-checking of products on the market is carried out by cantonal laboratories with guidance from the Federal Office for Public Health.

In addition to imports of a few corn and soybean products approved for feed use in Switzerland, there was an exception through the end of 2007 that allowed the importation of the feed products (not the raw material) made from corn and soybeans that have been approved in the United States or Canada. Such products imported before December 31, 2007 were allowed to be used until December 31, 2008. After those dates, only imports of these feed products made from corn or soy events approved in the EU are allowed. In addition to these products, trace amounts (up to 0.5 percent) of other products authorized in the EU would be allowed as an "adventitious" (*i.e.*, not intentional) presence in Swiss feed. A similar threshold for products approved in the EU is under discussion for food products as well, albeit with additional conditions.

The Swiss biotechnology labeling regime is closely aligned with that of the EU. All food and feed products (including pet food) containing or consisting of biotechnology products and/or produced from biotechnology products, including products that no longer contain detectable traces, must be labeled. If a product contains 0.9 percent or less biotechnology (or biotechnology derived) content and the content is "adventitious," the product does not have to be labeled as containing or being derived from biotechnology. This tolerance applies to approved biotechnology products only; there is no tolerance for unapproved varieties. However, there is an exception (up to 0.5 percent adventitious presence) for feed products that are approved in the EU even if they are not approved in Switzerland. Imports of food and feed (including pet food) are spot-checked to ensure that they are properly labeled if they have biotechnology-related content.

Meat, milk, eggs or other livestock products made from animals that had been fed biotechnology feed need not be labeled according to Swiss law. Products produced using genetically modified microorganisms as processing aids (such as yeasts in the production of wine or beer, or enzymes in the production of cheese) need not be labeled if the biotechnology processing aid is not present in the final product. The main retailers in Switzerland have taken a strong anti-biotechnology stance, stocking only non-biotechnology products and requiring meat to have been produced without biotechnology feed.

Switzerland has a burdensome and slow process for approving agricultural biotechnology products for food and feed use. In addition, starting in November 2005, a five year moratorium on approvals for the planting of biotechnology crops or production of genetically modified animals was put into place. The moratorium was the result of a grass-roots movement put to a vote under the Swiss political system, which allows voters to seek changes to the Constitution by referendum as long as at least 100,000 voters sign a petition requesting it. The Federal government opposed the amendment, stating that it was unnecessary given the stringent approval process in place. The moratorium does not affect approval of imports for food, feed and processing use. In September 2007, the Federal Office of Environment approved crop trials involving genetically modified wheat for three field tests near Zurich and Lausanne. These three field tests are part of the SFr. 12 million program and are intended to help answer questions on crossbreeding and to see if they have any unexpected impact on the environment. The wheat will not be released to the market, but is a test to determine if agricultural biotechnology products can be safely farmed in Switzerland.

GOVERNMENT PROCUREMENT

Switzerland is a signatory to the WTO Agreement on Government Procurement (GPA). Under the current Federal Law on public procurement public, tender procedures apply when the value of the contract exceeds SFr. 248,950 ($219,212), whereas GPA obligations apply to procurement above SFr. 383,000 ($337,249). According to a 2002 revised ordinance on public procurement, all private or state-owned companies such as utilities, transportation, communications, defense, and construction that submit tenders in government procurement must make their bids public if the contract exceeds SFr. 250,000. ($220,136) Total procurement expenses are valued at approximately SFr. 31 billion, and are split between the federal government (19 percent), the cantons (38 percent) and the local communities (43 percent); this is about 25 percent of all public expenses and 8 percent of GDP.

Cantonal and communal governments carry out many of the public projects. Their procurement is two to three times that of the federal government. On the cantonal and local levels, a 1995 law provides for nondiscriminatory access to government procurement. However, since cantons are allowed to implement the GPA independent from federal intervention, disparities in procedures may be found among the cantons. Cantons and communes usually prefer local suppliers because they can recover part of their outlays through income tax. Also, access to public tenders by foreign bidders may be hampered by a lack of transparency in the bidding requirements applied in various cantons.

Notices of Swiss government tenders are published in the Swiss Official Gazette of Commerce (www.shab-online.admin.ch) and on the on-line Swiss public procurement website (www.simap.ch – French, German, and Italian versions only). In general, quality and technical criteria are as important as price in Swiss procurements. Tender documents can be obtained free from the Gazette's website. Thus, while there is no requirement to have a local agent to bid, it may be advantageous when procurement requirements for equipment include training, service or parts. Foreign firms may be required to guarantee technical support and after-sale service if they have no local office or representation.

In contrast to cantonal and communal practice, federal authorities are not required to inform unsuccessful bidders of the selected tender or reasons for the award. In September 2004, the Swiss government initiated a series of informal consultations to amend the 1994 Swiss Federal Law on public procurement. This process, which should simplify the many different cantonal tender procedures, is expected to enter into force in 2010.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Switzerland generally maintains high standards of intellectual property rights protection. However, U.S. industry has expressed some concerns regarding revised copyright legislation that is intended to implement the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty, including concerns over broad exceptions for use of multimedia content. The United States will continue to monitor the development of this legislation.

SERVICES BARRIERS

Telecommunications

Following an investigation by the Competition Commission and the Federal Communications Commission of Swisscom's failure to completely unbundle the local loop and provide leased lines at cost-oriented prices to competitors, the government amended the Telecommunications Act. The amendment, which entered into force on April 1, 2007, gives the regulator explicit authority to force Swisscom to unbundle its local loop, effectively fixing a "flaw" cited in earlier court proceedings. The amendment also requires that wholesale broadband access be offered to Swisscom competitors at cost-oriented prices for four years, to provide competitors time to invest in their own competing facilities, after which all operators are expected to be able to afford the broadband investment themselves.

Audiovisual Services

Switzerland has no limitations on the amount of non-Swiss or non-European origin programming that can be broadcast, but film distributors and cinema companies must maintain, through self-regulatory solutions, an "appropriate diversity" (not currently defined) in the products offered within a region. The government may levy a nominal development tax on movie theater tickets if the Swiss government determines the appropriate geographical diversity is not being met. More generally, the Swiss copyright law allocates copyright receipts (from national and international productions) to five different Swiss collecting societies, under the supervision of the Federal Institute of Intellectual Property and the Copyright Commission. Portions of the funds are used to finance measures that support Swiss culture. Over the years, copyright duties received by the Swiss collecting societies rocketed from SFr. 119 million ($105 million) in 1994 to a current SFr. 209 million ($184 million), much to the dissatisfaction of private industry.

Postal Services

The Postal Act divides the Swiss postal market into two segments: universal services and competitive services. Competitive services, including express delivery, are unrestricted. Universal services are divided into reserved and non-reserved services. Swiss Post is the exclusive provider of reserved services, while it competes with private postal operators for the provision of non-reserved services. The regulatory authority exercises market supervision, ensures the functioning and fair competition in the postal market, and enables the proper implementation of applicable regulations.

The Swiss government reduced Swiss Post's monopoly from all items weighing less than 350 grams to a threshold of 100 grams in 2006, and plans to reduce the threshold further to 50 grams in July 2009. The government will also amend the federal postal law in order to address financing of the universal postal service and transform the Swiss Post into a public limited company. The government generally supports the idea that a further liberalization of letter delivery services will not undermine the existing large mail distribution network. An independent study highlighted that the SFr. 400 million ($352 million) public costs to keep mail delivery a "public service" have largely been exaggerated by Swiss Post in an effort to restrict competition. The report highlighted in particular that Swiss Post was bypassing existing business restrictions on night transport and benefiting from favorable tax treatment, and therefore could afford to keep a large number of post offices and staff across the country to maintain its edge over competitors.

Insurance

Foreign insurers attempting to do business in Switzerland are required to establish a subsidiary or a branch and cannot sell their entire product line cross-border or through a representative office. Foreign insurers operating in Switzerland are limited to those types of insurance for which they are licensed in their home countries. The manager of the foreign-owned branch must be resident in Switzerland, and the majority of the board of directors of the Swiss subsidiary must have citizenship in the EU or the European Free Trade Association (Switzerland, Norway, Iceland, and Liechtenstein). Public monopolies exist for fire and natural damage insurance in 19 cantons and for the insurance of workplace accidents in certain industries. Private insurance firms must establish a fund, amounting to between 20 percent and 50 percent of their minimum capital requirement, that is available on short notice to cover potential losses.

ANTICOMPETITIVE PRACTICES

Electricity

Most local public monopolies that used to dominate the electricity transmission and distribution system within Switzerland have merged into a few private sector utility companies (Romande Energie, FMB, Axpo, Atel, and BKW). Several cantons have attempted to prevent other providers from serving their areas, but those efforts were ruled illegal by the Federal Court under the Cartel Law. As a result, local communities have tried to bypass the court ruling by institutionalizing the dominant position of the recently-merged utility companies through cantonal legislative changes or "gentlemen's agreements" with large customers. On December 15, 2006, the Swiss national grid operator "Swissgrid" started its operations as a national transmission system operator, and took full responsibility for operating the 6,700 kilometers of Swiss high-voltage grid, formerly in the hands of private operators. The new company's five person board of directors includes two representatives of the cantons.

According to the new Federal Law on Energy Supply approved in 2007 by Parliament, the full opening of the electricity market will be done in two phases: one business-only market liberalization starting in 2009, followed by full consumer access to energy competitors in 2014. Under the provisions of the implementing ordinance, energy prices will be capped by the Electricity Commission. In September, the Swiss government expressed concerns that electricity prices could increase by 20 percent and warned the energy providers that further liberalization could be halted. Political parties also expressed concerns and called upon the government to freeze price hikes if necessary.

TAIWAN

TRADE SUMMARY

The U.S. goods trade deficit with Taiwan was $11.0 billion in 2008, a decrease of $921 million from $12.0 billion in 2007. U.S. goods exports in 2008 were $25.3 billion, down 3.9 percent from the previous year. Corresponding U.S. imports from Taiwan were $36.3 billion, down 5.1 percent. Taiwan is currently the 13th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Taiwan were $7.0 billion in 2007 (latest data available), and U.S. imports were $7.2 billion. Sales of services in Taiwan by majority U.S.-owned affiliates were $7.8 billion in 2006 (latest data available), while sales of services in the United States by majority Taiwan-owned firms were $3.3 billion.

The stock of U.S. foreign direct investment (FDI) in Taiwan was $16.4 billion in 2007 (latest data available), the same as 2006. U.S. FDI in Taiwan is concentrated largely in the finance/insurance, manufacturing, and wholesale trade sectors.

IMPORT POLICIES

Tariffs

Taiwan comprehensively revised its tariff schedule in 2006, and continuing unilateral improvement to its tariff structure on finished goods and raw materials, has pushed down the average nominal tariff rate on imported goods to 5.56 percent in 2008 from 5.6 percent in 2006.

In order to stabilize commodity prices in Taiwan, the Executive Yuan implemented temporary tariff cuts on seven bulk imports including wheat, flour, and flour of soybean and corn until February 5, 2009. In addition, Taiwan implemented additional temporary measures to cover all other types of durum wheat, tomatoes preserved other than by vinegar or acetic acid, sesame seeds, milk and cream in powder form, and butter.

Taiwan is working to enact legislation outlining a new version of its tariff schedule to meet the World Customs Organization's Harmonized System requirements. Taiwan estimates it needs to reclassify goods in more than 11 percent of its tariff lines. U.S. industry continues to request that Taiwan lower tariffs on many goods, including large motorcycles, wine, canned soups, cookies (sweet biscuits), savory snack foods, vegetable juices, potato and potato products, table grapes, apples, fresh vegetables, and citrus products.

When Taiwan became a WTO Member in January 2002, Taiwan implemented tariff-rate quotas (TRQs) on small passenger cars, three categories of fish and fish products, and a number of agricultural products. On January 1, 2007, in accordance with its WTO commitments, Taiwan made additional tariff cuts and increased TRQ amounts on these products. For example, the commodity tax on passenger cars with engine displacement of over 2000cc dropped from 35 percent to 30 percent, and this rate will remain in place until 2011. Also by 2011, Taiwan has committed to eliminate TRQs on small passenger cars.

Taiwan maintains Special Safeguards (SSGs) for a number of agricultural products covered by TRQs. SSGs, permitted under Article 5 of the WTO Agreement on Agriculture, allow Taiwan to impose additional duties when import quantities exceed SSG trigger volumes or import prices fall below SSG trigger prices. Because Taiwan did not previously import many of these products, SSG trigger volumes are relatively low. Over the last few years, Taiwan has imposed safeguard provisions on poultry imports several times, and SSGs have also been triggered on several other products, including types of offal. Imports of affected products usually continue despite safeguard tariffs.

Taiwan has eliminated more that 99 percent of its import controls, but 87 product categories still face import restrictions, up from 71 product categories in 2007. Of these categories, 24 require import permits from the Board of Foreign Trade and 63 are prohibited. Most of the permit-required categories are related to public sanitation and national defense concerns and include ammunition and some agricultural products.

Agricultural and Fish Products

Before it became a WTO Member, Taiwan banned or restricted imports of 42 agricultural and fish items. In January 2002, Taiwan liberalized imports of 18 of these agricultural and fish categories and implemented TRQs on the remaining 24 items. On January 1, 2005, Taiwan eliminated TRQs on a number of products of interest to the United States, including chicken meat, poultry offal, and pork bellies and offal.

Rice

Upon accession to the WTO in 2002, Taiwan committed to lifting the ban on rice importation and opened up a quota of 144,720 metric tons on a brown rice basis under the special treatment regime. Taiwan shifted its rice importation regime from a special treatment to a tariff-rate quota regime starting in 2003. After the United States and other WTO members raised objections to its original method of quota allocation, Taiwan subsequently agreed that the government import quota would be allocated based on a country-specific quota regime, with the U.S. quota accounting for 64,634 metric tons. Since 2007, U.S. exporters have raised concerns that Taiwan's ceiling price mechanism has disrupted Taiwan's tendering process for procurement of U.S. rice, because the system has failed to keep pace with market conditions. The ceiling price over the past year has been routinely lower than those bid by U.S. exporters, causing tenders to fail. Taiwan did not fill its 2007 country-specific quota for rice and delayed scheduling of its purchases in 2008. Taiwan has provided numerous arguments for not filling the 2007 quota and for delaying the 2008 tender schedule. These ranged from not wanting to affect world rice prices during a global food crisis, to having insufficient funds to purchase rice, to pointing out unusually high prices of California medium grain rice that exceed domestic wholesale prices. Also, Taiwan's mandatory destination testing of U.S. long grain rice for the biotechnology Liberty Link trait has led to trade uncertainty and resulted in a failed tender on December 30, 2008.

Wood Products

Taiwan recently revised its building codes in line with international practices, and on October 31st, 2008, the Construction and Planning Agency of the Ministry of the Interior announced long-awaited companion fire codes for wood frame construction. U.S. industry believes the new codes will allow builders to obtain insurance for construction and further encourage wood use in construction. Fire codes for heavy timber were not included in this announcement. However, those interested in using heavy timber in construction can apply to the Taiwan authorities for fire resistance testing, though this option is prohibitively costly.

Automobiles and Motorcycles

On November 1, 2007, the Ministry of Transportation and Communications (MOTC) opened most expressways to large motorcycles with engine displacement of 550cc or more, and asked the Directorate General of Highways to further study the feasibility of opening highways to those motorcycles. The deadline of the study will be in November 2009. The tariff on small automobiles is 30 percent, that of motorcycles between 250cc to 500cc-displacement is 18 percent, and that of above-500cc-displacement motorcycles is 20 percent.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Over 70 percent of the standards established by Taiwan's Bureau of Standards, Metrology & Inspection (BSMI) have been harmonized to some extent with international standards, and BSMI is continuing to harmonize existing standards with international standards. Taiwan's Chinese National Standards, which are based on International Electro-Technical Commission (IEC) standards, provide rules and guidelines for products, processes and services.

Automobiles

Before 2004, Taiwan's market was open to vehicles that met either the North American Federal Motor Vehicle Safety Standards or the United Nations Economic Commission for Europe (ECE) vehicle safety standards. In 2004, however, the MOTC decided to continue using only the ECE standards and type approval regime in order to harmonize Taiwan with the majority of its trading partners. Non-passenger vehicles must already meet regulations based on ECE standards to be sold in Taiwan, and ECE standards will be in force for all vehicles by January 2013. For non-ECE vehicles, Taiwan offers an alternative certification method through its Automotive Research and Testing Center (ARTC) or thirty other testing centers worldwide, none of which are in the United States. The ARTC certification process, however, is expensive, and manufacturers complain that ARTC lacks sufficient test facilities and technical capabilities to conduct the needed tests.

Organics

In 2007, Taiwan promulgated new "Imported Organic Agricultural Product and Organic Agricultural Processed Products" regulations, which are planned to be implemented on January 29, 2009. However, according to the Council of Agriculture’s (COA) latest notification on January 22, 2009, products manufactured before January 31, 2009 will be exempt from the new labeling requirements and can continue to be sold in Taiwan until July 31, 2009. According to the new labeling requirements, the product packaging must be labeled with a non-duplicative "serial" number approved by the COA on a batch basis for every organic product shipment to Taiwan. The multi-step applications for the COA’s approval will impede the flow of organic trade and could compromise the quality of products because of extended delays. The United States has notified Taiwan of the trade concerns through the WTO comment process and through official meetings with COA. The COA is currently reviewing the United States Department of Agriculture’s (USDA) National Organic Program proposal which, if approved, would enable U.S. organic products to continue to be sold in Taiwan without further certification.

Industrial and Home Appliance Products

Taiwan accepts testing by National Institute of Standards and Technology-designated laboratories in the United States for information technology equipment as described in the Asia-Pacific Economic Cooperation (APEC) Telecom Mutual Recognition Arrangement implemented by the United States and

Taiwan (with respect to Phase I) on March 16, 1999. Under Taiwan's Commodity Inspection Act, industrial and home-appliance products, such as air-conditioning and refrigeration equipment, must meet safety and Electromagnetic Compatibility (EMC) testing requirements before clearing customs. Taiwan's Bureau of Standards, Metrology, and Inspection (BSMI) requires U.S.-produced electrical home appliances imported into Taiwan to comply with Taiwan's IEC-based safety standards. This requirement forces American National Standard Institute or Underwriters Laboratories-certified products to undergo duplicative and expensive safety testing by IEC-consistent laboratories. In addition, products must be completely re-tested by IEC-consistent laboratories after even minor design changes.

Since 2006, BSMI has regulated levels of lead, mercury, hexavalent chromium, polybrominated biphenyls, and polybrominated biphenyl ether in electro-technical products. Such products must pass BSMI-required product testing or production-site inspection. In addition to existing EMC and safety requirements, television receivers must be able to receive over-the-air digital television broadcast signals.

Sanitary and Phytosanitary (SPS) Measures

Beef and Beef Products

Taiwan allows the import from the United States of deboned beef from animals less than 30 months of age, but requires that tissues listed by the World Health Organization for Animal Health (OIE) as Specified Risk Materials appropriate for removal from animals over 30 months of age are removed from animals less than 30 months of age as well. Ruminant and non-ruminant products intended for use in animal feed and pet food, such as tallow (including protein-free tallow), lard, poultry, and porcine meal, are banned due to Bovine Spongiform Encephalopathy (BSE) related concerns. Limited exceptions for pet food have been approved after a thorough case-by-case review or plant clearance process. Taiwan does not maintain a BSE-related import suspension on U.S.-origin protein-free tallow for human consumption.

The United States has continued to engage Taiwan intensively to request that imports of U.S. beef and beef products (and non-ruminant products subject to the BSE-related suspensions) be resumed consistent with OIE guidelines and the May 2007 OIE classification of the United States as controlled-risk for BSE. Taiwan indicates it has completed its regulatory review after finalizing a report on the risk assessment study and conducting a second on-site visit to U.S. beef slaughter and processing facilities by the Department of Health (DOH) and experts on its BSE Risk Advisory Committee. A similar, independent risk assessment on beef products for animal feeding conducted by COA and its review committee has also been conducted, but the rule-making process has still not been completed. With the scientific review and technical work complete, it appears that the only step that remains is a final decision and the necessary administrative procedures to expand access.

Market Access for U.S. Pork and Pork Products

While Taiwan accepts meat and poultry imports from plants approved by the USDA Food Safety Inspection Service, the United States is concerned about the future of U.S. pork exports to Taiwan. Due to the opposition of Taiwan’s domestic pork industry, Taiwan has delayed implementation of the draft Codex Alimentarius (Codex) Maximum Residue Limit (MRL) for ractopamine (a growth promotant), notwithstanding the fact that Taiwan has notified the WTO (in G/SPS/N/TPKM/114) that it planned to adopt the draft Codex MRL of 10 parts per billion (ppb), and Taiwanese officials have acknowledged that there is no health risk due to trace amounts of chemical in U.S. pork. Pork exports have dropped significantly due to the need to source pork from animals not treated with ractopamine and there is concern that all U.S. pork exports could be banned. The United States raised this priority issue in the

October 2008 WTO SPS Committee meeting and urged Taiwan to adopt of the 10 ppb MRL that Taiwan notified to the WTO in August 2007.

Maximum Residue Limits (MRLs)

Taiwan accepts Codex or U.S. pesticide residue standards on a provisional basis for a limited number of already recognized chemicals used on imported fruits and vegetables. However, Taiwan's unwillingness to recognize international MRLs for new chemical/product combinations, coupled with a slow and cumbersome approval process, has resulted in a backlog of over 1,500 MRL applications. Taiwan's inability to keep pace with requests to establish new MRLs has resulted in the rejection of various U.S. agricultural shipments including wheat, barley, strawberries, and corn, and is creating a significant level of uncertainty in the U.S. agricultural industry as a whole. To avoid this disruption of trade, the United States has petitioned Taiwan on several occasions to continue to enforce a 1999 agreement between the United States and Taiwan that ensures that Taiwan will reference Codex as well as U.S. MRLs, in the absence of Codex tolerances.

In response to trading partner concerns, Taiwan recently established a priority list of 218 MRLs. The Taiwan DOH will review applications for these high-priority MRLs over the next two to three years in an effort to reduce the backlog for establishing pesticide tolerances. While the United States generally supports the DOH's strategy to establish and quickly review two MRL priority lists (top 30 list in July 2007 and the top 218 list in July 2008), progress has been slow. DOH has approved only one MRL since the establishment of the top 30 list. Furthermore, these lists contain only a small portion of the MRLs that are approved for use in the United States as well as by Codex. EPA has provided data packets for all pesticides on the two priority lists.

Finally, the United States continues to be concerned that some Taiwan plant and animal quarantine measures are not necessarily based on science and are more trade restrictive than necessary to ensure health and safety.

Melamine

As a result of China's Fall 2008 melamine-contamination scandal involving adulterated dairy products, the DOH initially set a 2.5 parts per million (ppm) tolerance level for melamine presence in foods. Due to consumer concerns, DOH quickly withdrew the 2.5 ppm tolerance and instituted a "non-detectable" tolerance policy. Taiwan designated three sensitive product categories: milk powder, infant formula and creamers. Taiwan is using the most sensitive testing equipment available, making the 0.05ppm detection limit adopted for these tests the de facto tolerance for melamine. For other foods the de facto tolerance is 2.5 ppm. As a result, in September 2008, Taiwan indefinitely suspended all Chinese-made dairy, protein products, protein derivatives, and other products. U.S. milk powder, infant formula, and creamers were also scrutinized with test report requirements, but U.S. industry has not reported any adverse impact on exports.

Alcoholic Beverage Products

Taiwan has no ingredient-labeling requirements for alcoholic beverages, though beverages must include a warning label stating that excessive drinking is harmful to one's health. Since January 1, 2008, alcohol product manufacturers and importers must comply with the Hygiene Standards for Alcohol Products on antiseptics, colorants, and additives, or face penalties of up to $90,900. Importers of alcoholic beverages can submit home country documentation of sanitary inspection or safety assurances issued by alcohol product inspection officials or professional alcohol associations as an alternative to customs-clearance product inspection.

Agricultural Biotechnology Products

The current Taiwan agricultural biotechnology regulations are only applied to soybeans, corn and products of soybean and corn. No bioengineered soybeans or corn may be produced, processed, prepared, packed, and imported or exported unless they are registered and approved by the DOH Food Safety Bureau. Taiwan has approved 18 of the most widely commercialized bioengineered corn and soybean events.

At present, Taiwan only regulates corn and soybeans and their products derived from recombinant-DNA. According to Taiwan's current biotechnology regulations, prior market approval for biotech soybean and corn imports is required for food, feed, or processing use. In May 2008, Taiwan implemented registration for stacked events. While no disruptions to trade have resulted from Taiwan's biotechnology regulations, newly registered stack events have added to the growing number of products entering the regulatory approval pipeline. This increase in applications, combined with resource constraints in the domestic regulatory infrastructure, may lead to approval delays.

Labeling of Biotechnology Food

Taiwan requires labels on foods containing biotechnology corn or soybeans. All food products containing 5 percent or more bioengineered soybean or corn ingredients by weight must be labeled as "Genetically Modified (GM)" or "Containing Genetically Modified." Highly processed food items (items with no proteins or DNA) do not require GM labels.

Pharmaceuticals and Medical Devices

Taiwan has identified both the medical device and pharmaceutical sectors as priorities for development, resulting in Taiwan agencies sometimes appearing to favor the interests of local companies over foreign firms.

In the pharmaceutical sector, a continuing concern in Taiwan involves pharmaceutical pricing and management. Through the Trade and Investment Framework Agreement (TIFA) process, the United States has been encouraging Taiwan to adopt a system of actual transaction pricing (ATP) in order to address the significant gap between the amount that the Bureau of National Health Insurance (BNHI) reimburses for a pharmaceutical product and the price actually paid to the provider of that product. This gap distorts pharmaceutical trade and prescription patterns in Taiwan. These distortions are worsened by hospital doctors' ability to both prescribe and dispense pharmaceuticals, which may result in prescribing practices based on monetary factors instead of purely medical considerations. Separating these functions would help to resolve the long term pricing problem.

In addition, Taiwan's lengthy pharmaceutical registration process imposes unnecessary costs and slows market entry for new drugs that have already received regulatory approval in advanced economies. For example, the Taiwan DOH Bureau of Pharmaceutical Affairs (BOPA) requires a company that wants to register a drug for sale in Taiwan to provide Certificates of Pharmaceutical Product (CPP) certifying the drug for sale in two separate markets outside Taiwan. BOPA, however, is considering new registration procedures that would reduce the current requirement to one CPP, which would help speed introduction of new pharmaceuticals, especially U.S.-made drugs, into the Taiwan market.

Through the TIFA process, the United States is encouraging Taiwan's DOH to take action to resolve pharmaceutical pricing and reimbursement problems. The DOH has agreed to set up working groups to study options to bring more transparency and fairness to drug pricing, implementing ATP, and separating dispensing and prescription.

In the medical device sector, a growing area of concern has been Taiwan's ban on imports from China of about 30 medical products. Due to global manufacturing operations, many U.S.-designed medical devices are now produced in China, and the foreign medical device industry has suggested that Taiwan lift import bans for these products. In response, the Ministry of Economic Affairs recently announced that it would conditionally allow limited imports of blood glucose meters made in China.

Improvements have occurred in the registration and approval process for the least risky medical devices in recent years. However, registration and approval procedures for higher risk medical device imports are complex and time consuming, and continue to be the subject of longstanding complaints by U.S. firms. The registration process requires extensive documentation and sometimes arbitrary demands for additional information and redundant testing.

DOH officials are therefore continuing to work with industry to improve the medical device registration process, including issues regarding identical products made in different manufacturing sites within the same quality management system, or with outer packaging changes. In order to make product registration more efficient, the DOH recently adopted more flexible product registration procedures for in-vitro diagnostic medical devices that allow importing companies to follow U.S. or EU procedures, rather than demand extensive documentation and redundant testing for products made in Europe by U.S. companies. Regulations are vague on when local clinical trials are required for the review process or whether industry is allowed to provide additional input in response to questions posed by DOH officials reviewing the clinical trial submissions.

The reimbursement price gap noted above for pharmaceuticals is also an issue for medical devices offered in the Taiwan market. In addition, BNHI pricing criteria currently specifies a single purchase price for all medical devices that treat the same indication. This policy effectively subsidizes lower quality, often domestically-made devices while forcing producers of high-priced, high-value devices (which are often accompanied by additional services such as physician training and technical support) to be reimbursed at an insufficient level. Unless the policy is modified, this may lead to significant market distortion in favor of lower quality products over time.

GOVERNMENT PROCUREMENT

Taiwan is not a signatory to the WTO Agreement on Government Procurement (GPA). Taiwan committed to accede to the GPA as soon as possible after it became a WTO Member, but its accession was stalled due to nomenclature issues. In 2008, those issues were resolved and Taiwan submitted a final offer of coverage in its accession to the GPA in November 2008. The WTO Committee on Government Procurement approved the terms of Taiwan's accession to the GPA in December 2008. The GPA will enter into force for Taiwan after it completes its domestic approval process and submits its instrument of accession to the WTO. Taiwan's government procurement market was valued at more than $18 billion in 2006 and $21 billion in 2007.

In 2001, Taiwan and the United States signed a Memorandum of Understanding on Government Procurement (MOU). The MOU called for Taiwan to implement certain procedural commitments immediately, with others to be implemented upon accession to the GPA.

Many Taiwan procurement contract clauses specifically exclude foreign tenders. In addition, Public Construction Commission-determined terms and conditions for model public procurement projects impose large indirect and unforeseeable liabilities on contractors and thereby prevent U.S. firms from bidding on projects.

EXPORT SUBSIDIES

Taiwan provides incentives to industrial firms in export processing zones and to firms in designated "emerging industries." Taiwan has notified the WTO of these programs and, as part of its WTO accession, committed to amend or abolish any subsidy programs inconsistent with WTO rules. When it became a WTO Member, Taiwan amended relevant laws, such as the Statute for Establishment and Management of Economic Processing Zones and the Statute for Establishment of Scientific Industrial Parks. The United States continues to monitor Taiwan's compliance with the commitments it undertook as part of its WTO accession, including those obligations associated with the Agreement on Subsidies and Countervailing Measures.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

IPR protection continues to be an important issue in the United States-Taiwan trade relationship. The United States recognizes Taiwan's continuing efforts to improve enforcement of IPR and on January 16, 2009, the Office of the U.S. Trade Representative announced that Taiwan has been removed from the Special 301 Watch List.

However, the United States continues to be concerned with a number of issues, including the availability of counterfeit pharmaceuticals in Taiwan, infringement of copyrighted material on the Internet, illegal textbook copying on and around university campuses, and inadequate protection for the packaging, configuration, and outward appearance of products (trade dress). The U.S. International Intellectual Property Alliance estimates that losses due to IPR copyright piracy in Taiwan cost U.S. industry $327.8 million in 2007. Transshipment of counterfeit products from China is also a problem. Counterfeit goods from Taiwan seized by U.S. Customs dropped from $26.5 million in 2002 to $3.4 million in 2007 and to $1.3 million in the first half of 2008.

Trademark counterfeiting, particularly of clothing and luxury goods, is still a concern. Much of the counterfeit product is reportedly smuggled from China. Rights holders state that Taiwan is both a transshipment point and a market for this counterfeit material. Taiwan Customs and Intellectual Property (IP) police make regular seizures of counterfeit apparel and handbags, but rights holders complain that investigation and prosecution remain hampered due to inadequate resources and personnel and that light sentences issued for convictions do not deter trademark counterfeiters.

Piracy on the Internet, including through unauthorized file sharing of copyright protected material over peer-to-peer networks remains a serious concern for IP enforcement in Taiwan, and the sale of counterfeit goods over the Internet – resulting in part from increased raids on traditional sales venues – is also a concern. Taiwan has made efforts to combat such Internet-related IPR violations, including strengthening cooperation with foreign enforcement agencies and passing an amendment to the Copyright Law in June 2007 that subjects illegal file sharing to a maximum jail term of two years. Also, the authorities are amending the Taiwan Copyright Law to require Internet service providers (ISP) to undertake specific and effective notice-and-takedown actions against online infringers to avoid ISP liability for the infringing activities of users on their networks. The amendments were submitted to the Legislative Yuan in 2008, but have not yet been enacted. To improve Taiwan's ability to protect IPR on college campuses, Taiwan continued implementing the 2007 Action Plan for Protecting Intellectual Property Rights on School

Campuses to reduce on-line infringement on academic computer networks and combat illegal textbook copying on campuses.

U.S. right holders report that court procedures and delays can constitute impediments to effective IPR enforcement and that penalties for intellectual property infringement are inadequate to deter violators. In addition, Taiwan's judiciary continues to experience difficulties handling technically challenging IPR infringement cases. To improve this situation, Taiwan established a specialized IP court in July 2008, and the United States continues to assist Taiwan to remedy weaknesses in the judicial system by providing training and holding seminars on different criminal enforcement issues.

SERVICES BARRIERS

Banking Services

Foreign banks may set up representative offices, branches, and subsidiaries. To establish a representative office, banks must rank among the world's top 1,000 banks in terms of capital or assets, or have over $300 million in transactions with Taiwan banks and/or enterprises over the past three years. To establish a bank branch, a bank must rank among the world's top 500 banks in terms of capital or assets, or have over $1 billion in transactions with Taiwan banks and/or enterprises over the past three years. The above requirements are waived if the government of the foreign bank's home country has signed a relevant agreement with Taiwan. Taiwan sets a minimum working capital requirement of NT$150 million ($4.6 million) for the first branch and another NT$120 million ($3.7 million) for each additional branch. In addition, a foreign bank's branch in Taiwan is required to maintain net worth above two-thirds of its working capital.

Foreign banking institutions may acquire up to 100 percent of equity in Taiwan banks. Foreign-invested banks in Taiwan are accorded with national treatment, and these banks are subject to a 25 percent ownership limit for each investor, a requirement exactly the same as for Taiwan banks.

Securities Services

Foreign securities firms may set up representative offices, branches, and subsidiaries, and Taiwan securities firms are not subject to any foreign ownership limit. They are subject to minimum capital requirements, including NT$400 million ($12.3 million) for underwriting, NT$400 million ($12.3 million) for trading, and NT$200 million ($6.15 million) for brokerage. The minimum capital requirement increases by NT$30 million ($923,080) for establishing a domestic or offshore branch.

Asset management requires a securities investment trust enterprise (SITE) license and/or securities investment consultant enterprise (SICE) license. SITEs are allowed to organize, sell, and manage mutual funds in Taiwan, and SICEs are permitted to sell and manage overseas mutual funds. Both SITEs and SICEs are not subject to any foreign ownership limit. They are subject to minimum capital requirements, including NT$300 million ($9.23 million) for SITEs and NT$20 million ($615,380) for SICEs, with an ownership limit of 25 percent for each investor (shareholder). A minimum 20 percent of the SITE must be held one or more of the following:

- fund management firms having over three years of experience and currently managing assets above NT$65 billion ($2 billion);

- banks ranking among the world's top 1,000 banks and having three years asset management experience;

- insurance companies with over three years asset management experience, holding assets above NT$8 billion ($246 million);

- securities firms having a minimum paid-in capital of NT$8 billion ($246 million) and engaging in underwriting, trading and brokerage for a minimum of three years; and/or

- financial holding companies whose subsidiaries meet any of the four qualifications.

Insurance Services

Taiwan allows foreign insurance firms to set up representative offices, branches, and subsidiaries. Taiwan also allows foreign insurance firms to merge with or acquire local companies. The minimum capital requirement for an insurance company is NT$2 billion ($615 million), and there is no foreign ownership limit. The minimum working capital for a Taiwan branch of a foreign insurance company is NT$50 million ($1.5 million), and the only entry requirement is a record of sound performance in its home market in the past three years, and no major violations in the past five years. Foreign insurance firms in Taiwan may engage in life, non-life, and re-insurance businesses.

Healthcare Services

Taiwan law permits foreign-invested health care services, such as hospitals and nursing homes, but all types of health care services in Taiwan must be provided by non-profit organizations. The number of foreign persons permitted to serve on the board of directors of a healthcare service provider is limited to no more than one-third of the total members. In addition, one-third of board members must have professional medical qualifications.

Taiwan does not license or recognize chiropractors as legitimate medical practitioners, and allows chiropractors to practice in Taiwan only if they do not advertise their services and make no claims about the results or efficacy of treatments.

Pay Television Services

The Cable Radio and Television Law restricts foreign investment in pay television services to a total equity share of 20 percent for direct investment, or 60 percent for direct plus indirect investment. However, recent, seemingly arbitrary, National Communications Commission (NCC) decisions requesting financial restructuring of local affiliates of foreign-owned cable operators may undermine the ability of foreign cable companies to do business in Taiwan. In addition, continuing caps on monthly cable TV fees are overly restrictive, hamper the Taiwan public's access to more expensive, higher-quality programming, and may reduce the cable industry's incentives to invest in expensive digitalization of Taiwan's largely analog cable system.

Telecommunications Services

To encourage investment and competition, in January 2008, the NCC—established in 2006 to regulate the telecommunications and broadcasting sectors—reduced capital requirements for facilities-based operators from NT$16 billion ($485 million) to NT$6.4 billion ($194 million) for an integrated network operator; from NT$1.2 billion ($36.4 million) to NT$500 million ($15.2 million) for local call service providers in Taipei; and from NT$2 billion ($60.0 million) to NT$800 million ($24.2 million) for both long distance and international call operators. In 2008, the NCC also began accepting and reviewing license applications at any time, rather than on a quarterly basis.

Existing fixed-line operators report that they still face difficulties in negotiating reasonable interconnection arrangements at technically feasible points in the network of the dominant carrier, Chunghwa Telecom (CHT). The Taiwan government maintains a 34 percent ownership share of CHT following partial privatization of the company in 2005 to 2006.

In addition to NT$35 billion ($1.1 billion) of new broadband-network construction ongoing since 2003, the NCC in July 2007 issued six regional licenses to Worldwide Interoperability for Microwave Access (WiMax) operators. Taiwan expects WiMax operators to begin services in 2009, which will help break CHT's monopoly on the telecommunications network.

ELECTRONIC COMMERCE

Over 90 percent of Taiwan's companies have corporate networks and a network infrastructure and 4.7 million households link their computer to the Internet. According to the Taiwan Institute for Information Industry, Internet sales totaled NT$214 billion ($6.5 billion) in 2007. Taiwan has not joined with the United States in APEC to advocate for a permanent moratorium on taxation of Internet transactions, and the Ministry of Finance imposes business taxes on Internet vendors who sell products for profit and have monthly sales over NT$60,000 ($1,820).

INVESTMENT BARRIERS

Taiwan prohibits or restricts foreign investment in a handful of industries, including agricultural production, public utilities, and postal services. In May 2008, Taiwan removed single-axle truck leasing from the list of sectors in which foreign investment is restricted, but added pesticides. Taiwan has allowed private production of cigarettes since 2004 without any foreign ownership limit, although prior official approval is required. Taiwan-flagged merchant ships are subject to a foreign ownership limit of 50 percent.

The foreign ownership limit on wireless and wire line telecommunications firms is 60 percent, including a direct foreign investment limit of 49 percent. Separate rules exist for Chunghwa Telecom, the legacy carrier still partially owned by the Ministry of Transport and Communications, which controls 97 percent of the fixed line telecommunications market. For Chunghwa Telecom, the cap on direct and indirect investment was raised to 55 percent in December 2007, including a direct foreign investment limit of 49 percent. In January 2003, Taiwan raised the total direct and indirect foreign ownership limit on cable television broadcasting services to 60 percent, including a 20 percent limit on foreign direct investment.

A 49 percent foreign ownership limit remains on satellite television broadcasting services, power transmission and distribution, piped distribution of natural gas, high speed railways, airport ground handling firms, air cargo terminals, air catering companies, and air cargo forwarders. In July 2007, the foreign ownership limit on airline companies was raised from 33 percent to 49.99 percent, with each individual foreign investor subject to an ownership limit of 25 percent.

Portfolio Investment

Foreign portfolio investors are required to register rather than seek advance approval, although since December 2003, the registration can be done through the Internet. Up to 30 percent of funds remitted for purposes of portfolio investment may be held in money market or other similar instruments. Funds for futures trading, however, must be remitted to Taiwan specifically for that purpose and are segregated from funds remitted for equity investment. In June 2007, Taiwan set a cap of NT$300 million on the balance of a foreign investor's NT$ omnibus account resulting from profits gained from futures trading in Taiwan. If the balance exceeds the limit, the foreign investor is required to convert the NT$ into U.S. dollars, with the new balance below $10 million. Except for investors from the People's Republic of China (PRC), offshore foreign portfolio investors may trade in Taiwan's stock market regardless of their size.

In mid-August 2008, Taiwan announced that it will allow China-based qualified domestic institutional investors to engage in portfolio investment in Taiwan after relevant regulations are promulgated, likely before the end of 2008. Such investment, however, will be subject to a PRC-set cap of 3 percent net worth until Taiwan and the PRC sign a cross-Strait memorandum of understanding on this issue.

Since October 2003, foreign hedge funds have been permitted to trade in Taiwan's stock market, but are subject to Taiwan authorities' close surveillance. Foreign individual investors, however, are still subject to an investment limit. Onshore foreign individuals and institutional investors are also subject to annual inward/outward limits of $5 million and $50 million, respectively.

THAILAND

TRADE SUMMARY

The U.S. goods trade deficit with Thailand was $14.5 billion in 2008, an increase of $181 million from $14.3 billion in 2007. U.S. goods exports in 2008 were $9.1 billion, up 7.2 percent from the previous year. Corresponding U.S. imports from Thailand were $23.5 billion, up 3.5 percent. Thailand is currently the 29th largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Thailand were $1.8 billion in 2007 (latest data available), and U.S. imports were $1.8 billion. Sales of services in Thailand by majority U.S.-owned affiliates were $3.2 billion in 2006 (latest data available), while sales of services in the United States by majority Thailand-owned firms were $295 million.

The stock of U.S. foreign direct investment (FDI) in Thailand was $15.0 billion in 2007 (latest data available), up from $10.9 billion in 2006. U.S. FDI in Thailand is concentrated largely in the manufacturing, banking, finance/insurance, and wholesale trade sectors.

FREE TRADE AGREEMENT (FTA) NEGOTIATIONS

The United States and Thailand launched FTA negotiations in June 2004, but these negotiations were suspended in September 2006 following a military-led coup against Prime Minister Thaksin's government. The United States will continue to monitor and evaluate developments in Thailand to determine next steps, as appropriate, to further build our bilateral economic relationship.

IMPORT POLICIES

Tariffs

Thailand's high tariffs remain an impediment to market access in many sectors. Its average applied most favored nation (MFN) tariff rate is 11.2 percent with some tariffs as high as 80 percent. The highest tariff rates apply to imports competing with locally produced goods, including agricultural products, automobiles and automotive parts, motorcycles, alcoholic beverages, fabrics, paper and paperboard products, and restaurant equipment. Moreover, the Royal Thai Customs website automatically defaults to a statutory tariff rate rather than the WTO MFN rate for goods from WTO members unless exporters identify the WTO rate as a preference, resulting in confusion on the part of some U.S. exporters as to what the actual duty rates should be for their goods. The United States urged the Thai government to clarify its presentation of preferential rates on this website.

Duties on imported consumer-ready food products typically range between 30 percent and 50 percent, the highest among Association of Southeast Asian Nations (ASEAN) members, with some as high as 90 percent. Tariffs on meats, fresh fruits (including citrus fruit and table grapes) and vegetables, fresh cheese, and pulses (*e.g.*, dry peas, lentils, and chickpeas) are similarly high, even for products for which there is little domestic production. Frozen french fries, for example, are not produced in Thailand, yet face a 30 percent tariff. Tariffs on apples are at 10 percent, while duties on pears and cherries range from 30 percent to 40 percent. U.S. fruit growers believe they could export to Thailand up to $15 million more each year if these tariffs were reduced. U.S. exports of wine face a total tax of nearly 400 percent when import duties, excise taxes, and other surcharges are calculated.

Thailand also applies a 10 percent tariff to all pharmaceuticals (excluding vaccines and therapies for HIV, malaria, and thalassemia). In addition to this tariff, all medicines are subject to a 7 percent valued-added tax.

Thailand's tariff rates for textiles imports are high, ranging from 20 percent to 30 percent for most fabrics and 30 percent for most clothing and other made-up textile products. Thailand also applies specific unit duties on more than one third of all textile tariff lines, which make effective rates even higher. In addition, on the Asia-Pacific Economic Cooperation forum website, Thailand's tariffs for certain clothing are incorrectly listed as 60 percent rather than the correct MFN applied rate which is lower. Thailand has not yet addressed the United States' concern that these higher published tariffs are misleading and discourage potential U.S. exporters.

Nontariff barriers

Quantitative Restrictions and Import Licensing: Import licenses are required for at least 32 categories of items, including many raw materials, petroleum, industrial materials, textiles, pharmaceuticals, certain consumer products, and agricultural items. Imports of used motorcycle parts and gaming machines are prohibited. Import licenses for used automobiles and used motorcycles are only granted for imports intended for re-export or imports intended for individual, non-commercial use. Imports of certain minerals, arms and ammunition, and art objects require special permits from the relevant ministries.

Non-transparent tariff-rate quotas on some products and price controls on others also impede market access. Thailand imposes domestic purchase requirements for several tariff-rate quota products, including non-fat dry milk, soybeans, soybean meal, and fresh potatoes. Although Thailand has been relatively open to imports of feed ingredients, including corn, soybeans, and soybean meal, in recent years, U.S. industry reports that the government has maintained excessively burdensome requirements associated with the issuance of import permits for feed ingredients.

Thailand imposes import license fees for meat products of approximately $142 per ton on beef and pork, $286 per ton for poultry, and $142 per ton on offal. U.S. industry has expressed concerns that these fees appear to be higher than necessary to cover the costs of import administration.

Taxation: U.S. industry has raised concerns about barriers created by the complexity and nontransparent nature of Thailand's tax administration system. Excise taxes are high on some items, such as unleaded gasoline, beer, wine, and distilled spirits. For example, when import duties, excise taxes, and other surcharges are calculated, the cumulative tax burden on most imported spirits is approximately 400 percent.

Excise taxes on automobiles in Thailand are based on various vehicle characteristics, such as engine size, weight, and wheelbase. In July 2004 Thailand revised its excise tax structure, but it remains complex and heavily favors domestically manufactured vehicles. Excise taxes on passenger vehicles range from 30 percent to 50 percent, while pickup trucks are taxed at a rate of 3 percent. As a result, pickups account for more than 50 percent of total vehicle sales in Thailand.

Customs Barriers: The United States continues to have serious concerns about the lack of transparency of the Thai customs regime and the significant discretionary authority exercised by Royal Thai Customs officials. The Royal Thai Customs Director General retains the authority and discretion to arbitrarily increase the customs value of imports. The United States has raised concerns with the Royal Thai government regarding this authority and has urged Thailand to eliminate this practice. The U.S. Government and industry also have expressed concern about the inconsistent application of Thailand's transaction valuation methodology and repeated use of arbitrary values by Royal Thai Customs. In 2008, Royal Thai Customs revised customs valuation procedures for imports of distilled spirits in response to concerns raised by exporters, the United States, and other trading partners. The United States will continue to monitor the implementation of these revised procedures.

The U.S. Government and exporters continue to urge Royal Thai Customs to implement needed reforms, including publishing proposals for changes in customs laws, regulations, and notifications, and allowing sufficient time for comments on these proposals. They also have requested that Royal Thai Customs impose a time limit on the issuance of rulings, respond to appeals within an established time period, provide a full explanation of its decisions regarding appeals, establish a reasonable time period at the beginning of an audit or an investigation for their completion, and provide a written report of the findings of the audit or investigation.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Thailand Industrial Standards Institute (TISI) is the national standards organization under the Ministry of Industry. TISI is empowered to provide product certifications according to established Thai standards and is an accredited body for International Standards Organization and other certifications in Thailand. The Thai government requires the certification of 60 products in 10 sectors, including agriculture, construction materials, consumer goods, electrical appliances and accessories, polyvinyl chloride pipe, medical equipment, liquefied natural gas containers, surface coatings, and vehicles. For medical equipment, Thailand requires product approval in the country of origin before it can be registered.

Thailand's motorcycle emissions regulations remain an amalgamation of standards and tests used elsewhere in the world, resulting in standards that reportedly are among the most stringent in the world. Enforcement of these standards has been nontransparent, and even producers utilizing advanced low-emission technology have had difficulty meeting these standards.

Thailand's Food and Drug Administration (TFDA) imposes standards, testing, and labeling requirements, and requires certification permits for the importation of all food and pharmaceutical products, as well as certain medical devices. Many U.S. companies have raised concerns that the permitting processes are overly burdensome and are concerned about the periodic demands for disclosure of proprietary information. TFDA has streamlined its procedures somewhat, but U.S. companies still report delays of up to a year. All processed foods must be accompanied by a detailed list of ingredients and a manufacturing process description, disclosure of which could potentially jeopardize an applicant's trade secrets.

In October 2006, Thailand announced a proposed snack food labeling requirement that would have required "traffic light" labeling logos on five categories of snack foods: potato chips, corn chips, extruded snack foods, biscuits/crackers, and assorted wafers. The United States and other countries raised concerns about the proposed requirement and, as a result, the Ministry of Public Health withdrew the proposed requirement on August 30, 2007. This proposal was replaced with a requirement that snack foods be labeled with a message stating, "Should consume less, and exercise for a better health." While an improvement over the original proposal, this measure raises many of the same concerns. The United States continues to discuss this requirement and other labeling regulations with Thai authorities with a view toward ensuring that requirements are based on relevant scientific and technical information on diet and nutrition and adopt an approach that encourages better health while facilitating trade.

Sanitary and Phytosanitary (SPS) Measures

Sanitary and phytosanitary standards for certain agricultural products, such as poultry and beef products, also are applied in a nontransparent manner, often without prior notification. These standards are often more restrictive than the internationally recognized guidelines developed by the World Organization for Animal Health. In some cases, changes in standards have not been notified to the WTO SPS Committee, resulting in unnecessary disruptions to trade in animal products, including poultry and hides and skins. U.S. exporters of U.S. pet food formulations containing whey, a common dairy ingredient in pet food, have characterized Thailand's import requirements as overly restrictive. Although Thailand agrees in principle to a system-based audit approach to meat inspection, the Thai government still maintains the requirement of inspecting individual slaughterhouse or farm facilities that export animals and animal products into Thailand.

GOVERNMENT PROCUREMENT

A specific set of rules, commonly referred to as the Prime Minister's Procurement Regulations, governs public sector procurement for ministries and state-owned enterprises. While these regulations require that nondiscriminatory treatment and open competition be accorded to all potential bidders, state enterprises and ministries typically apply additional procurement policies and practices. Preferential treatment is provided to domestic suppliers, which includes subsidiaries of U.S. firms registered as Thai companies, through an automatic 7 percent price advantage over foreign bidders in initial bid round evaluations.

A 2001 "Buy Thai" directive from the Prime Minister's office raised concerns about Thai government procurement policies, which the U.S. Government has raised with Thailand. While Thailand denies that the "Buy Thai" policy discriminates against foreign products, specific language used in government instructions on some procurement tenders explicitly excludes foreign-made, non-Thai products from the bidding process.

Government agencies and state enterprises reserve the right to accept or reject any or all bids at any time and may also modify the technical requirements during the bidding process. The latter provision allows considerable leeway to government agencies and state-owned enterprises in managing procurements, while denying bidders recourse to challenge procedures. Allegations that changes are made in procurements frequently surface. Despite an official commitment to transparency in government procurement, U.S. companies and Thai media have reported allegations of irregularities. In addition, some U.S. companies have expressed concerns regarding a Thai government decision to no longer include arbitration clauses in concessions and government contracts.

Thailand is not a signatory to the WTO Agreement on Government Procurement.

INTELLECTUAL PROPERTY RIGHTS (IPR)

Rights holders continue to face widespread counterfeiting and piracy of their products in Thailand. The lack of sustained and coordinated enforcement, and, in particular, the lack of successful prosecutions, remains a substantial problem. U.S. copyright industries reported an estimated annual trade loss of more than $400 million in 2007 from IPR piracy in Thailand. In a trend of particular concern, an increasing volume of pirated and counterfeit products manufactured in Thailand is being exported. In 2007, Thailand was moved from the Special 301 Watch List, where it had been since 1994, to the Priority Watch List, reflecting an overall deterioration in the protection and enforcement of IPR. Thailand remained on the Special 301 Priority Watch List in 2008. The United States will continue to raise its serious concerns about the lack of effective IPR protection with the Royal Thai government.

Thailand's patent law generally provides adequate protection for most innovations. However, U.S. industry notes that delays in patent issuance are a significant problem. Patent examinations can often take five years or more, indicating that Thailand's patent office lacks sufficient resources to keep up with the volume of applications. Thailand is currently taking steps to join the Patent Cooperation Treaty.

The U.S. pharmaceutical industry has expressed concerns regarding the issuance of compulsory licenses on patented drugs by Thailand’s Ministry of Public Health. The United States has acknowledged Thailand’s ability to issue compulsory licenses consistent with Thailand’s domestic and international legal obligations as a WTO Member; at the same time, the United States stressed to the Thai government the importance of transparency and due process. The United States has encouraged relevant Thai ministries to address judiciously the complexities of the relationship between health and intellectual property policy and to do so in ways that recognize the role of intellectual property in the development of new drugs. The United States continues to monitor the situation.

On January 30, 2007, the Ministry of Public Health issued implementing regulations for the 2002 Trade Secrets Act. The U.S. pharmaceutical industry has expressed concerns with these new regulations; particularly with respect to deficiencies they identify in the level of protection against unfair commercial use for undisclosed test and other data. U.S. industry is also concerned that Thailand does not have an adequate system to address the granting of marketing approval of copies of pharmaceuticals where a valid patent exists. U.S. industry reports that there has been a recent increase in the number of such copies receiving Thai FDA approval while the original product is still under patent protection.

U.S. geographical indication (GI) owners have expressed concern that they do not know how the Thai Geographical Indications Act will be applied to U.S. GIs, because the law requires explicit evidence that the GI is protected under the law of the foreign country in order to receive protection in Thailand. In addition, the law raises concerns because the existence of a similar, previously registered trademark does not constitute grounds for refusal of a GI registration in Thailand.

The Royal Thai government is in the process of amending the Copyright Act. Thailand has enacted optical disc legislation but it lacks many key elements important to effective IPR protection. In ongoing bilateral discussions with Thai authorities, the United States continues to urge Thailand to modernize its copyright legislation to address digital and Internet copyright issues, including joining and implementing the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty.

Thailand has increased raids and seizures, but absent increased prosecutions and imposition of deterrent penalities, these actions do not appear to have reduced piracy in Thailand, which has rates that are consistently among the highest in the world. Trademark counterfeiting also remains a serious problem, particularly in the area of apparel and accessories. U.S. companies with an established presence in Thailand and a record of sustained cooperation with Thai law enforcement officials have had some success in enforcing trademark rights, but the process remains time-consuming and costly. The U.S. pharmaceutical industry has also expressed concern about the growth in availability of counterfeit medicines and the resulting health risk to patients. They note the lack of sufficient penalties and delays in sentencing for counterfeit drug-related offenses.

Particular areas of concern to U.S. copyright industries are optical media piracy, signal theft, book piracy, camcording, and end user software piracy. Implementation of the 2005 Optical Disk Manufacturing Control Act has not restrained the rapid growth of optical media piracy in Thailand, and pirate cable providers continue to expand their presence. The Thai government passed new broadcasting legislation in December 2007 but has not yet established the commission that would grant broadcast licenses and revoke licenses for infringers. Book publishers have raised concerns that the copyright law is being interpreted so as to allow students or those providing them textbooks to copy any work for educational purposes. The Thai government has initiated a public awareness campaign to address book piracy and end user software piracy, but so far it appears the impact has been limited.

The Royal Thai Police, though they are generally cooperative when rights holders bring specific complaints to their attention, have had limited success because the raids are not sustained and continuous. Other factors limit the level of their success. For example, some raids reportedly have been compromised by a tip-off, and in other cases police are sometimes reluctant to get involved in difficult situations as they have limited legal protection as individuals even when acting in the course of duty. Moreover, it is sometimes difficult to get search warrants from the Thai Intellectual Property and International Trade Court. Sometimes judges in that court push rights holders toward pursuing civil rather than criminal legal actions, but high evidentiary requirements and low damage awards limit the incentive companies have to pursue civil cases.

The Thai government established a specialized intellectual property (IP) court in 1997 to improve judicial procedures and expertise. Criminal cases generally are disposed of within 6 months to 12 months from the time of a raid to the rendering of a conviction. However, the court frequently hands down light sentences that do not appear to be a deterrent to repeat offenses. When a defendant pleads guilty, which occurs in the majority of cases, the penalty is typically reduced by half. Sentences of less than three months are generally suspended. Of 6,965 cases brought before the IP court in 2007, only 17 involved the imposition of prison sentences. There are no available statistics to show general sentencing trends at the court.

SERVICES BARRIERS

Telecommunications Services

Thailand has made substantial progress toward reforming its telecommunications regulatory regime, but several controversial issues remain unresolved, and significant obstacles to foreign investment in this sector remain.

The 1997 Constitution delegated frequency allocation to the National Telecommunications Commission (NTC) and a National Broadcast Commission (NBC). The NTC began operations in November 2004, but the NBC was never created. The new constitution (enacted on August 24, 2007) mandates that there will now be one independent regulator, provisionally named the National Telecommunications and Broadcasting Commission (NTBC), to allocate the frequencies for radio, television, and telecommunications. The timeframe to set up the NTBC and how frequencies will be allocated remain unclear, putting at risk any plans for expanding mobile services requiring new spectrum, such as 3G. In January 2009, the government submitted the required implementing legislation to Parliament to create the NTBC and requested that the Parliament fast-track the proposed legislation. In addition to the NTBC regulatory aspects, however, the government's bill, if passed, appears to allow the two state-owned enterprises, TOT and CAT Telecom, to retain their previously allocated frequencies, which could in effect create a monopoly over frequencies, concession revenues, and network equipment.

Other unresolved issues in the telecommunications sector include the phasing out of the "concession" system, the privatization of TOT and CAT Telecom, enforcing interconnection obligations via-a-vis these two operators, and the revision of its General Agreement on Trade in Services schedule to reflect its 1998 commitments, including with respect to improvements in foreign equity participation and regulatory oversight.

Although the NTC has made progress in licensing new operators in some sub-sectors (*e.g.* Internet access and private networks), it has yet to authorize full-fledged competition to the fixed services offered by CAT and TOT, covering domestic and international voice and data services.

Legal Services

U.S. investors may own law firms in Thailand, but U.S. citizens and other foreign nationals (with the exception of "grandfathered" non-citizens) may not provide legal services. In certain circumstances, foreign attorneys may act in a consultative capacity.

Financial Services

Significant restrictions remain on foreign participation in the financial services sector. Under the 1962 Commercial Banking Act, foreigners were only allowed to hold a maximum of 25 percent of the equity in Thai banks, but in practice Thai regulators had waived the foreign shareholding ceiling with respect to most local banks due to their need for funds. The Financial Institutions Business Act, the consolidated financial act that replaced the 1962 Commercial Bank Act, increased the statutory percentage of foreign equity ownership to 49 percent in August 2008. The Financial Sector Master Plan (FSMP I), which took effect in early 2004 and was completed in the first quarter of 2007, called for the consolidation of financial institutions and encouraged mergers under the single presence rule. The Second Financial Sector Master Plan, which will further liberalize the financial industry, is pending approval at the Ministry of Finance.

Foreign banks are disadvantaged in their ability to compete with domestic Thai banks. Most notably, they are limited to one branch and are not permitted to operate off-site ATM machines, which are considered as branches. However, subsidiaries established under the period of FSMP I are entitled to open up to five bank branches, including a headquarters office. Foreign management personnel are limited to six professionals in full branches although exceptions are often granted.

Permission for foreign ownership positions in Thai securities firms greater than 49 percent is granted on a case-by-case basis.

Accounting Services

Foreigners cannot be licensed as Certified Public Accountants unless they pass the required examination in the Thai language, are citizens of a country with a reciprocity agreement, and are legally resident in Thailand. Foreign accountants may serve as business consultants.

Transport Services and Communication Services, including Express Delivery Services

The 2005 Multimodal Transport Act introduced uncertainty with respect to the treatment of foreign shipping companies. Political difficulties since that time have delayed approval of implementing regulations and, therefore, the full impact of the law remains unclear. While the text of the law itself appears to require foreign shipping companies performing multimodal services in Thailand to either incorporate in Thailand or appoint a Thai agent (as opposed to operating out of their branch offices in Thailand as they have done to date), the draft ministerial regulations implementing the law provide that the law shall not apply to foreign shipping companies transporting goods under bills of lading governed by international convention. Given the lack of clarity and the penalties for noncompliance, international shipping firms have sought to mitigate their risk by incorporating in Thailand, appointing an agent, or passing the attendant costs on to customers.

Thailand's Postal Act (1934) gives the government a monopoly on handling letters and postcards, loosely defined to include nearly any kind of document. Private express companies must pay postal "fines" and penalties for delivery of documents in Thailand that amount to an average of 37 baht per item.

Thailand also imposes a 49 percent limit on foreign ownership in land transport (trucking), which discourages investment in the express delivery sector. Express delivery firms prefer to control items throughout the supply of the service, including both air and ground based operations, in order to speed the movement of goods.

Healthcare Services

Thai government policy serves to restrict foreign investment in the healthcare services sector (*e.g.*, hospital, dental, and physician services). U.S. industry has identified the lack of transparency relating to foreign ownership and management of hospitals and treatment facilities as a significant barrier in this sector.

INVESTMENT BARRIERS

The Foreign Business Act (FBA) lays out the overall framework governing foreign investment in Thailand. Although the FBA prohibits majority foreign ownership of investment in most sectors, Thailand makes an exception for U.S. investors pursuant to the Treaty of Amity and Economic Relations (AER Treaty). Under the AER, Thailand may limit U.S. investment only in the following areas: "communications, transportation, fiduciary functions, banking involving depository functions, the exploitation of land or other natural resources, and domestic trade in indigenous agricultural products." Thailand's obligation to accord national treatment to U.S. investors in all other sectors does not extend to "the practice of professions, or callings reserved for [Thai] nationals."

The FBA's prohibitions on foreign investment generally do not affect projects established by Board of Investment promotion privileges or export businesses authorized under the Industrial Estate Authority of Thailand law.

ELECTRONIC COMMERCE

Thailand lacks a complete legal framework to support electronic commerce, but the government is taking steps to create a more supportive environment for the business community. In July 2007, the Act on Computer-related Crime was enacted to criminalize offenses against computer systems and data. Several Royal Decrees have entered into effect since 2007, providing policies for electronic transactions and electronic payment service providers. Two additional measures are pending approval with the Council of State relating to security measures for electronic transactions and regulations for certification authority.

OTHER BARRIERS

The Thai government protects several government firms from foreign competition in Thailand. In the pharmaceutical sector, the Government Pharmaceutical Organization is not subject to requirements faced by the private sector on registration. In addition, it is exempt from complying with the requirements of the safety monitoring period (SMP) when producing and marketing generic formulations of drugs marketed in foreign countries. Other manufacturers are subject to a mandatory two year to four year SMP for all new chemical entities registered and approved for marketing in Thailand. During the SMP, only doctors in hospitals and clinics can prescribe the product, and the product may not be included on the National List of Essential Drugs. This and other Thai government requirements limiting government hospitals' procurement and dispensing of drugs not on the national list of essential drugs significantly constrain the availability of many imported products.

The Thai government retains authority to control prices or set *de facto* price ceilings for 34 goods and 1 service, including staple agricultural products (sugar, cooking oil, condensed milk, wheat flour, and others), liquefied petroleum gas, medicines, sound recordings, and student uniforms. Under the 1999 "Act Relating to Price of Merchandise and Service," a government committee headed by the Minister of Commerce has the authority to "Prescribe the purchase price or distribution price of merchandise or service…", "prescribe maximum profit per unit…" and set the terms and conditions, including maximum permissible volumes, of any goods and service in the Kingdom. The law was amended in 1999 with the advent of a competition law and was meant to be phased out. However, with several critical aspects of competition law still undefined, the old law continues in place with no termination under consideration. Price control review mechanisms are nontransparent. Only sugar currently is subject to a retail price ceiling. In practice, the government also uses its control of major suppliers of products and services under state monopoly, such as the petroleum, aviation, and telecommunications sectors, to influence prices in the local market.

The Thai Constitution of 2007 contains provisions to combat corruption, including enhancement of the status and powers of the Office of the Counter Corruption Commission, which is independent from other branches of government. Persons holding high political office and members of their immediate families are required to disclose their assets and liabilities before assuming and upon leaving office. Moreover, a law regulating the bidding process for government contracts both clarifies actionable anticorruption offenses and increases penalties for violations. Despite these steps, corruption continues to be a serious concern. Counter-corruption mechanisms continue to be employed unevenly. Moreover, the lack of transparency in many government administrative procedures facilitates corruption.

TURKEY

TRADE SUMMARY

The U.S. goods trade surplus with Turkey was $5.8 billion in 2008, an increase of $3.8 billion from $2.0 billion in 2007. U.S. goods exports in 2008 were $10.4 billion, up 58.4 percent from the previous year. Corresponding U.S. imports from Turkey were $4.6 billion, up 0.9 percent. Turkey is currently the 27th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Turkey was $4.9 billion in 2007 (latest data available), up from $2.6 billion in 2006. U.S. FDI in Turkey is concentrated largely in the banking and manufacturing sectors.

IMPORT POLICIES

Tariffs and Quantitative Restrictions

Turkey applies the European Union's common external customs tariff to third-country nonagricultural imports (including from the United States) and imposes no duty on nonagricultural items from EU and European Free Trade Association (EFTA) countries. Turkey's average applied tariff rate in 2007 for nonagricultural product imports was 5 percent; however, only 36 percent of Turkey's nonagricultural tariff lines are bound in Turkey's World Trade Organization (WTO) tariff schedule.

While 100 percent of Turkish agricultural tariff categories are bound as part of Turkey's WTO commitments, the country continues to maintain high tariff rates (an average 28.3 percent Most Favored Nation rate) on many food and agricultural product imports, which U.S. companies estimate cost them over $500 million per year in lost trade. Duties on fresh fruits range from 15.4 percent to 145.8 percent. Tariffs on processed fruit, fruit juice, and vegetables range between 19.5 percent and 130 percent. The Turkish government also levies high duties, excise taxes and other domestic charges on imported alcoholic beverages that increase wholesale prices by more than 200 percent.

U.S. exporters of rice, dried beans, wheat, barley, rye, oats, corn, and hazelnuts have reported concerns with valuation of their products by Turkish customs authorities and have estimated that the lack of certainty and transparency with regard to Turkish requirements in this area has resulted in losses between $10 million and $25 million per year.

Import Licenses and Other Restrictions

Import licenses are required for products that need after-sales service (*e.g.*, photocopiers, advanced data processing equipment, and diesel generators), distilled spirits, and agricultural products. Lack of transparency in Turkey's import licensing system results in costly delays, demurrage charges, and other uncertainties that inhibit trade. U.S. producers have reported difficulties in obtaining licenses during the harvest season for domestically produced food (such as pulses, nuts, and dried fruits). For some crops, like wheat, quotas limit the level of imports. In addition, U.S. companies find Turkish documentation requirements affecting all food imports to be inconsistent, non-transparent, and not in accordance with standard international practices. This often results in shipments being held up at port over onerous certification requirements that have changed or are unclear. The estimated cost of this barrier is between $100 million and $500 million.

In November 2005, the United States brought a dispute against Turkey in the WTO arguing that, *inter alia*, Turkey's tariff-rate quota (TRQ) scheme for rice, which contains an onerous domestic purchase requirement, and its refusal to issue import licenses for rice outside the TRQ, are inconsistent with Turkey's WTO obligations. In September, 2007, the dispute settlement panel agreed with the United States that Turkey's failure to grant licenses to import rice and its operation of a discretionary import licensing system for rice are in breach of Turkey's market access obligations under the WTO Agreement on Agriculture. The panel also agreed with the United States that Turkey's domestic purchase requirement, under which Turkey required importers to purchase large quantities of domestic rice in order to import rice at preferential tariff rates, is in breach of the national treatment provisions of the WTO. The reasonable period of time for Turkey to bring itself into compliance with the WTO's rulings and recommendations expired at the end of April 2008. Turkey and the United States are currently engaged in discussions to explore the possibility of entering into a Memorandum of Understanding that would set out commitments by Turkey on its import practices affecting U.S. rice.

Despite liberalization of the spirits and tobacco markets - including a completed privatization of the state-owned alcoholic beverage company and the state-owned tobacco company, as well as privatization of imports of wine and alcoholic beverages – sales of imports have been inhibited by inordinately high tariffs (85 percent to 100 percent) and special consumption taxes (275 percent), along with the value added tax (VAT).

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Turkish government has a poor track record of notifying WTO Members of proposed or final technical regulations and sanitary and phytosanitary (SPS) requirements. Most changes in regulations become effective immediately upon publication with little or no notification to trading partners. This often results in significant disruptions in trade. Furthermore, U.S. exporters have complained of inconsistent implementation and/or enforcement of laws and regulations among Turkish ports of entry, creating unpredictability and making compliance with regulations difficult for exporters and importers alike. The U.S. Government has raised these issues with the Turkish government on several occasions and in various fora (including bilateral consultations and at WTO Sanitary and Phytosanitary Committee and Trade Policy Review meetings).

U.S. companies have reported that products of U.S. origin bearing the EU certificate of conformity (CE mark), particularly medical devices, have been detained by Turkish customs authorities for inspection related to a variety of Turkish requirements. According to U.S. companies, products of EU origin bearing the CE mark are not subject to inspection and therefore Turkish customs authorities have been unfairly singling out U.S. products. In some cases, U.S. products apparently have been subjected to additional tests, despite their CE marks. For importation of distilled spirits, Turkish customs requires that between two and four bottles per consignment be submitted for unspecified analyses, raising the cost of importing.

Sanitary and Phytosanitary Measures

In 2008, Turkey notified the WTO of an SPS measure related to phytosanitary requirements for seed potatoes – the first Turkish SPS notification since 2004.

Turkey has not allowed meat imports from any country since 1996, closing a market that U.S. companies estimate could be worth $100 to $500 million annually. The government maintains that the ban on meat imports relates to valid health concerns, but has not established any public health requirements for the entry of foreign meat onto the Turkish market. Outbreaks of Bovine Spongiform Encephalopathy (BSE) and foot and mouth disease (FMD) in Europe strengthened Turkey's resolve to prevent imports of poultry and meat products. Turkey continues to require inspection and approval of all foreign poultry processing facilities at the expense of Turkish importers, a condition that has the effect of preventing poultry imports. As a result of ongoing bilateral discussions, a U.S.-Turkish protocol permitting the import of live breeding cattle from the United States was agreed to in July 2007.

Turkey does not have any regulations related to agricultural biotechnology in force and the fourth draft of a National Biosafety Law is being reviewed by the Office of the Prime Ministry. The previous draft would have effectively halted U.S. exports of soybeans, soy- and corn-based products and affected cotton exports to Turkey. The current draft has not been made public. The total value of U.S. transgenic crop exports to Turkey was over $1 billion in 2007, all of which could be endangered depending upon how any future law is written. The United States Government and private industry have been actively working to raise awareness among Turkish regulators as to the benefits and safety of biotechnology crops.

GOVERNMENT PROCUREMENT

Turkey is not a signatory to the WTO Agreement on Government Procurement; however, it is an observer to the WTO Committee on Government Procurement.

Turkey's public tender law established an independent board to oversee public tenders. Foreign companies can participate in state tenders that are above an established threshold. The law provides a price preference of up to 15 percent for domestic bidders, which is not available if they form a joint venture with foreign bidders. Turkey has expanded the definition of domestic bidder to include foreign-owned corporate entities established under Turkish law. Although Turkey's laws require competitive bidding procedures for tenders, U.S. companies have complained that Turkey's procurements can be lengthy and overly complicated.

Turkish military procurement policy generally entails including offset requirements in individual procurement specifications. The offset guidelines were recently modified to encourage foreign direct investment and technology transfer.

EXPORT SUBSIDIES

Turkey employs a number of incentives to promote exports, although programs have been scaled back in recent years to comply with EU directives and WTO commitments. Export subsidies ranging from 10 percent to 20 percent of export values are granted to 16 agricultural or processed agricultural product categories in the form of tax credits and debt forgiveness programs, and are paid for by taxes on exports of primary products such as hazelnuts and leather. The Turkish Grain Board generally sells domestic wheat at world prices (which are well below domestic prices) to Turkish flour and pasta manufacturers in quantities based upon their exports of flour and pasta.

Similarly, the Turkish Sugar Law allows a certain amount of domestic sugar ("C quota") to be sold at world prices for utilization in products that will be exported. The current price for this C quota sugar is $390 per metric ton (MT); while the normal domestic selling price is $1,370/MT. Exporters also do not pay import duties on the amount of sugar imported for use in their exported products. The impact of this subsidy on U.S. exports to Turkey is estimated at about $10 million.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Turkey's intellectual property rights regime has improved in recent years. For example, in 2008 the Ministry of Culture published a new circular, reminding all government agencies of the requirement to use licensed software, which the software industry has welcomed.

As a result of notable progress on copyright enforcement, seizures of pirated goods, and the imposition of deterrent penalties by the courts, Turkey was lowered from the Priority Watch List to the Watch List in the course of the 2008 Special 301 review.

In spite of this progress, the pharmaceutical industry is concerned that certain proposals under consideration by the Parliament regarding patents and protection of test and other data submitted for marketing approval may erode Turkey's standards for protection and enforcement. The United States has encouraged Turkey to approve amendments that are consistent with its international and EU obligations.

Furthermore, trademark rights holders contend that there is widespread and often sophisticated counterfeiting of their marks in Turkey, especially in apparel, film, cosmetics, detergent, and other products. Trademark industry representatives are concerned about recent developments relating to Turkey's trademark laws, particularly a 2008 Constitutional Court ruling that invalidated the portion of trademark law that criminalized trademark infringement. This decision was later reversed through legislation, but the Turkish government's initial inaction in the face of the court decision led to the "downgrading" of approximately 9,000 pending criminal trademark cases to a lesser charge.

SERVICES BARRIERS

Telecommunications Services

The Telecommunications Authority (TK) has been actively taking steps necessary to promote a competitive Turkish telecommunications market, including the decision to start implementing mobile number portability as of November 2008 and the successful November 28, 2008 3G license tender, in which all three major domestic cell phone operators participated. Unfortunately, TK in the past was hampered by its lack of adequate authority to provide effective enforcement of the new rules. In 2008, the Turkish Parliament passed an Electronic Communication Law designed to harmonize Turkey's communications legislation with that of the EU; it included the transfer of additional authority to TK from the Ministry of Transport and Communications. Following a veto by the President, Parliament made the changes to the law he recommended and passed a revised bill in November 2008.

Other Services Barriers

There are restrictions on establishment in financial services, the petroleum sector and broadcasting (see Investment Barriers section). Turkish citizenship is required to practice as an accountant or certified public accountant, or to represent clients in Turkish courts. Legislation awaiting final approval by Parliament would permit foreign doctors to work in Turkey.

INVESTMENT BARRIERS

The United States-Turkey Bilateral Investment Treaty entered into force in May 1990. Almost all areas open to investment by the Turkish private sector are fully open to foreign participation without screening or prior approval, although establishment in the financial services and petroleum sectors requires special permission. Foreign equity ownership is limited to 25 percent in broadcasting, though Parliament is considering draft legislation easing restrictions on foreign ownership in the media sector. Even when investors have committed to the Turkish market, however, they have sometimes found their investments undermined by legislative or court action. Such actions can include the imposition of production limits, an example of which is the sugar law, which sets the price for domestically-produced sugar well above the world market price, limits the domestic production of fructose and sets a duty on imported fructose of 135 percent. These restrictions create a shortage of domestically-produced fructose (not fully offset by imports), which hinders the ability of foreign-owned producers in Turkey to fully utilize production capacity.

Energy Sector

Turkish law calls for a liberalized energy market in which private firms are able to develop projects with a license obtained from the Energy Market Regulatory Authority, an independent regulatory body. The state electricity utility has been unbundled into power generation, transmission, distribution, and trading companies, and after years of delays, the first four electricity distribution regions were privatized in 2008. The Turkish government plans to finalize privatization of distribution facilities and start privatization of generation facilities by the end of 2009. This ambitious schedule may be delayed by limited access to credit caused by the global financial market turmoil.

Liberalization in the natural gas sector also has faced delays. The state pipeline company, BOTAS, will remain dominant in gas importation, but legislation requires a phased transfer of 80 percent of its gas purchase contracts to the private sector by 2009. Except for a small scale contract transfer tender in 2005, BOTAS has failed to reach its targets and still has an 86 percent share in the gas market. The Turkish government now appears to be taking a different tack and reportedly will soon introduce an amendment to the Natural Gas Market Law that will liberalize the importation of gas into Turkey but will drop provisions to downsize BOTAS. Natural gas distribution in cities is dominated by the private sector. The only exceptions to this are the Ankara and Istanbul distribution networks, where the local administrations hold the distribution license. In 2008, a deal was reached to privatize Ankara's pipeline network, Baskent Gaz, but the financing for the deal fell through as a result of the global financial crisis and the future of the project is unclear.

As the result of a 1997 court decision, the Turkish government blocked full repatriation of profits by oil companies under Article 116 of the 1954 Petroleum Law, which protected foreign investors from the impact of lira depreciation. Affected companies have challenged the 1997 decision but the judgments in almost all such lawsuits have been against the claimant companies. A new petroleum law that would provide greater investment incentives and protections has been submitted to the parliament, but prospects for passage currently appear slim.

Turkey's decision to cancel 46 contracted power projects in 2001 led to a number of arbitration cases against the government, with the end result that most companies were compensated. However, this action and the uncertainty it generated, combined with government-controlled prices despite rising fuel costs, delayed private investments in the sector from 2001 to 2008. At the same time, demand for electricity increased substantially over this period as the Turkish economy experienced record growth rates. In order to address the supply gap problem which Turkey is likely to face in 2009, the government passed an energy security law in 2007 and introduced a number of incentives to facilitate investment in the energy sector, focusing on strategies for diversifying sources of supply by fuel type. Turkey also implemented an "automatic pricing mechanism" in 2008, according to which electricity prices are revised three times per year, based on changes in the foreign exchange rate, oil prices, and the consumer price index. Gas prices are adjusted monthly.

Turkey passed its long-awaited Nuclear Power Law in 2008, and conducted a tender in September 2008 to build a nuclear plant. Several international companies, including U.S. firms, expressed interest in the tender. However the government turned down the companies' request for a delay in the bidding deadline, and as a result only one Russian consortium submitted a bid. The government has not yet indicated the final disposition of this bid or the manner in which bids for future projects will be considered. A new law will need to be passed before another nuclear power plant tender can be conducted.

Work Permits

Many foreign (and reportedly many Turkish) employers perceive the difficulty in obtaining Turkish work permits for professional or highly skilled foreign workers as a pervasive problem. Companies complain that the application process is time-consuming and requires extensive documentation, the adjudication process is lengthy (often exceeding the time for which the permit is requested), and the chances of approval are low.

Real Estate Sector

Foreign ownership of real estate in Turkey has long been a contentious issue. In early 2008, the Constitutional Court issued two decisions that suspended portions of the Foreign Direct Investment Law and the Title Deed Law, which had allowed foreign individuals and companies to purchase land. In response, the Turkish government passed new legislation to permit these purchases again, but imposed an upper limit on the amount of land that can be owned by foreign individuals - no foreign individual may own more than 2.5 acres and all foreign individuals together can own no more than 10 percent of the land in any given development zone. As information on the amount of land currently held by foreigners in any development zone is not readily available, this may in the future cause problems and legal challenges for individual investors seeking to purchase land in Turkey. There are no limits on the amount of land that can be owned by foreign companies with a legal presence in Turkey, so long as the land is being used in accordance with their business activities.

OTHER BARRIERS

Corruption

Turkey has ratified the OECD anti-bribery convention and passed implementing legislation that makes bribery of foreign and domestic officials illegal and no longer tax-deductible. Despite this, many foreign firms doing business in Turkey perceive of some government officials and politicians to be a problem. The judicial system is also perceived to be susceptible to external influence and to be somewhat biased against outsiders.

Taxes

Taxation of all cola drinks (raised in 2002 to 47.5 percent under Turkey's "Special Consumption Tax") discourages investment by major U.S. cola producers. Turkey assesses a special consumption tax of 27 percent to 50 percent on all motor vehicles based on engine size, which has a disproportionate effect on automobiles imported from the United States.

Corporate Governance

A recent OECD report stated that Turkey's overall corporate governance outlook is positive because the authorities have already adopted, or are introducing, high quality corporate governance standards (including audit standards) and because transparency has improved significantly. The report cautions, however, that it is important for Turkey to improve further in the areas of control and disclosure of related party transactions and self-dealing, the protection of minority shareholders, and the role of the board in overseeing not only management but also controlling shareholders.

Pharmaceuticals

Aside from their intellectual property concerns detailed above, the pharmaceutical industry's sales have been affected by government price controls and an awkward and burdensome reimbursement system. In 2008, Turkey implemented changes in its discounting scheme that increased the cost borne by pharmaceutical manufacturers. U.S. research-based pharmaceutical firms are also concerned about achieving transparent and equitable treatment in upcoming reforms of the government's health care and pension system.

UKRAINE

TRADE SUMMARY

The U.S. goods trade balance with Ukraine went from a trade surplus of $122 million in 2007 to a deficit of $472 million in 2008. U.S. goods exports in 2008 were $ 1.9 billion, up 39.2 percent from the previous year. Corresponding U.S. imports from Ukraine were $2.3 billion, up 91.8 percent. Ukraine is currently the 65th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ukraine was $1.3 billion in 2007 (latest data available), up from $549 million in 2006.

WTO Accession

Ukraine became the 152nd member of the World Trade Organization (WTO) on May 16, 2008. WTO accession marked the end of 15 years of negotiations and is expected to promote serious liberalization of Ukraine's trade regime.

United States-Ukraine Trade and Investment Cooperation Agreement

The United States and Ukraine signed a new Trade and Investment Cooperation Agreement (TICA) on April 1, 2008. The TICA establishes a forum for discussion of bilateral trade and investment relations and will help deepen those relations. The TICA establishes a joint United States-Ukraine Council on Trade and Investment, which will address a wide range of trade and investment issues including market access, intellectual property, labor, and environmental issues. The Council will also help to increase commercial and investment opportunities by identifying and working to remove impediments to trade and investment flows between the United States and Ukraine. The Council met for the first time on October 2, 2008.

IMPORT POLICIES

Ukraine continues to maintain licensing requirements and fees on certain imports. Ukraine imposes several duties and taxes on imported goods: customs/import tariffs, value added tax (VAT), and excise duties. Additionally, imports into Ukraine are subject to customs processing fees, a unified fee on vehicles crossing Ukraine's borders, and port fees.

Customs/Import Tariffs

Ukraine's tariff schedule provides for three rates of import duty: full rates, MFN rates, and preferential rates. The full rate of import duty can be from 2 times to 10 times higher than the MFN rate. Upon becoming a WTO Member, Ukraine applied new, lower MFN rates to all goods originating from WTO Members. Ukraine now applies the full rate to imports from only a few countries which are not WTO members. Preferential rates are applied to imports from 12 countries with which Ukraine has a Free Trade Agreement (FTA) or other preferential trade agreement, mostly from the CIS. Imports from the United States are subject to the MFN rate.

Import duties are calculated in accordance with the law "On the Customs Tariff of Ukraine." Most customs tariffs are levied at *ad valorem* rates, and only 1.5 percent of tariff line items (down from 5.97

percent prior to WTO accession) are subject to specific or combined rates of duty. These specific and combined rates apply primarily to agricultural goods that are produced in Ukraine, such as grains, poultry products, sugar, and vegetables such as carrots and potatoes. The average applied tariff rate fell to 4.95 percent after WTO accession in May. For agricultural goods, the average applied tariff rate is now 9.11 percent (down from 13.8 percent before WTO accession, at the beginning of 2008). For industrial goods the average applied rate is now 3.71 percent (down from 4.4 percent before WTO accession).

On February 20, 2009, President Yushchenko signed into law a bill that imposes a temporary 13 percent increase in customs duties for a large number of imported goods. The increases went into effect on March 6, 2009 and expire after 6 months, but are subject to renewal. The tariffs affected by the law were increased to well above Ukraine's WTO bound rates. The U.S. government has signaled its concern over this measure, which adversely affects a significant number of U.S. exports.

Excise Duties

Ukraine applies excise duties to a limited set of goods imported into Ukraine, such as alcoholic beverages, non-filter cigarettes, motor vehicles, and petroleum products. High excise duties hinder U.S. exports of wine and grape spirits and automobiles to Ukraine. Although VAT and excise tax exemptions for locally-produced vehicles were eliminated in 2005, excise taxes on automobiles remain high, especially for those with larger engines, ranging from 0.02 euros/cc for automobiles with smaller engines to 3.50 euros/cc for those with larger engines. Although import tariffs on automobiles were significantly reduced as part of the commitments Ukraine made for WTO accession, the government has introduced a new registration fee that is considerably higher for used cars and therefore discourages imports of foreign used cars.

Import Licenses

Import licenses are required for some goods. The list of goods covered by the licensing regime and the license terms are decided annually by the Cabinet of Ministers. In 2008, the list included pesticides, alcohol products, sugar and sugar syrup, prepared food products containing cocoa, optical media production inputs, some industrial chemical products and equipment containing them, official foreign postage stamps, excise marks, officially stamped/headed paper, checks and securities, some goods that contain sensitive encryption technologies, and ozone-depleting substances. In 2008, the following goods were removed from the list requiring import licensing: beef, pork, cattle, pigs, poultry meat, and some meat by-products.

While the licenses themselves are granted automatically to applicants, some products require a prior approval, which may or may not be automatic, from the relevant administrative agency before receiving the necessary import license from the Ministry of Economy. In 2008, the Ministry of Environment significantly tightened procedures for obtaining its approval to import goods that are potentially ozone-depleting. The stricter procedures delayed shipments and significantly increased business costs for importers of a wide range of goods, including aerosols, refrigerators, mascara, lipstick, toothpaste, and coffee makers. During the WTO accession negotiations, Ukraine committed not to impose restrictive import licensing requirements without adequate WTO justification, (*e.g.*, on imports of mass-market, commercially-traded goods containing encryption that are covered by the Information Technology Agreement).

For some goods, product certification is a prerequisite for an import license. Importers can request that a foreign facility be certified as in compliance with Ukraine's technical regulations that apply to imports. The U.S. distilled spirits industry reports that this option usually involves a burdensome and costly inspection visit by Ukrainian government officials. If approved, the supplier receives a certificate of conformity valid for two years to three years and avoids the burden of certifying each shipment and mandatory laboratory testing upon arrival in Ukraine.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

U.S. and other foreign companies have long regarded Ukraine's system of technical regulations as a significant obstacle to trade and investment. Ukraine has passed several new laws and governmental decrees in recent years aimed at bringing Ukrainian practices in this area into line with the WTO Agreement on Technical Barriers to Trade (TBT), but significant problems remain. Based on the old Soviet system, the Ukrainian technical regulations system is characterized by burdensome, *ex ante* control and widespread compulsory standards, and it differs markedly from systems in OECD countries.

Virtually all goods, and many services, are subject to mandatory standards. Mandatory certification is required in Ukraine for over 400 types of goods and services and remains applicable *de facto* for an even larger number of goods and services. Mandatory certification is often required without regard to products' actual level of risk and is often redundant – for example, food products must be certified by both the Ukrainian Sanitary and Veterinary Services. In addition, Ukraine sometimes requires mandatory certification for each batch of products rather than permitting certification by product type or production process.

Most current standards were created under the Soviet Union and according to industry generally appear not to correspond to international standards and to be far more restrictive and prescriptive than necessary. The International Finance Corporation estimates that over 12,000 of Ukraine's standards are not harmonized with international standards.

The State Committee for Technical Regulation and Consumer Policy (DerzhSpozhyvStandard), the standardization and certification body in Ukraine, is responsible simultaneously for development and approval of standards, issuing certificates, conducting inspections of producers, and ensuring market surveillance and protection of consumer rights. Many of these functions overlap in some areas with other government authorities, such as the Sanitary and Epidemiological Service and the State Committee for Veterinary Medicine. This overlap creates confusion and conflicting requirements for businesses. Appropriate resources, such as modern analytical equipment and reactants, are not available in most DerzhSpozhyvStandard laboratories. Depending on the type of product, testing, and applicable certification scheme, the certification process can take from three days to one month.

Ukraine pledged during WTO accession negotiations to continually review the list of products subject to mandatory certification and to reduce the number of products on this list if the legitimate objectives could be met in a less trade-restrictive manner. DerzhSpozhyvStandard issued two decrees in 2007 to reduce the number of products subject to mandatory certification, but has made no additional progress in 2008. An April 2008 amendment to the law "On Standards, Technical Regulations, and Conformity Assessment Procedures" helped to ensure that Ukraine's authorities will accept the results of alternative methods of conformity assessment, including those performed in the United States. Ukraine's National Accreditation Agency is taking steps to become a member of the International Laboratory Accreditation Cooperation (ILAC), anticipated in 2009. Once an ILAC member, Ukraine should significantly increase the acceptance of test results of laboratories accredited with, and notified by, ILAC member bodies. Ukraine has also pledged to clarify which agencies are responsible for technical regulations applied to specific products, to prevent duplicative testing.

Sanitary and Phytosanitary Measures

Ukraine applies a range of SPS measures that restrict imports of a number of U.S. agricultural products, among them, pork, beef, and poultry. Industry has repeatedly complained that Ukraine's certification and approval process is lengthy, duplicative, and expensive. Over the past several years, Ukraine has passed amendments to several laws and regulations, most importantly to the law "On Veterinary Medicine" and the law "Quality and Safety of Food Products and Food Raw Materials," to bring its legislative and regulatory framework into compliance with requirements of the WTO SPS Agreement. Ukraine is working to amend the law "On Safety and Quality of Food Products" to clarify that standards are not mandatory, and to amend the law "On Fish, Other Water Living Resources, and Food Production from Them" to eliminate provisions requiring certificates for imports of fish and other seafood products.

The following potentially trade distorting issues are subjects of our bilateral discussions:

Overlapping State Authorities: Ukraine has maintained a complex and nontransparent oversight system for human and animal health measures that involves overlapping authority by the Veterinary Service, Sanitary Service, and DerzhSpozhyvStandard. Several legislative amendments passed as part of the WTO accession process, this year including an April amendment to the law "On Standards, Technical Regulations and Conformity Assessment Procedures" and a September amendment to the law "On Veterinary Medicine," made progress but did not solve entirely the problem of overlapping authority. As noted above, Ukraine has pledged to make further clarifications.

Beef, Beef Products, and Pork: A bilateral agreement with Ukraine negotiated at the same time as the March 2006 WTO bilateral Market Access Agreement, addresses the terms for U.S. exports of beef, beef products, and pork to Ukraine. Although Ukraine has allowed the entry of certified U.S. beef and pork that meets veterinary certificate requirements, the lack of a functioning protocol on pork or on live swine for breeding continues to limit U.S. exports. Ukrainian veterinary authorities conducted a system audit of the U.S. system in 2007 but call for further audits, and in the meantime insist on individual plant inspections of U.S. producers.

In the past, Ukraine blocked the importation of beef and beef products due to concerns over the use of growth promoting hormones as well as Bovine Spongiform Encephalopathy (BSE). Ukraine has amended laws and regulations bringing requirements closer to World Organization for Animal Health guidelines, but problems remain. In addition, U.S pork exports to Ukraine have been hampered by regulations concerning trichinae. The United States is working with Ukraine to align Ukrainian standards for trichinae with international norms.

Biotechnology: Ukraine has not completed the process of establishing an approval process for agricultural biotechnology products. Although Parliament passed a law establishing the framework for the creation, testing, and use of products of biotechnology in 2007, the necessary implementing regulations to open the market are still under development. The absence of a functioning approval process creates unpredictable sales conditions for corn products, soybeans, and meal. The United States is working with Ukraine to establish procedures governing biotechnology that are supported by science-based risk assessment principles and guidelines, including those of the WTO SPS and TBT Agreements, the Codex Alimentarius, and the International Plant Protection Convention.

GOVERNMENT PROCUREMENT

Ukraine is not yet a signatory to the WTO Agreement on Government Procurement (GPA), but committed to initiate negotiations for GPA membership within two years of its WTO accession. Ukraine is reportedly preparing its initial offer to begin the process of GPA accession.

Until 2008, Ukraine's procurement system operated under a 2000 law "On Procurement of Goods, Works, and Services Using State Funds." Although this procurement law was originally largely in line with international practice, amendments in 2004 to 2006 opened the system to widespread corruption and moved it away from international norms. Authority to carry out central oversight and policy development for the government procurement system was taken from the Ministry of Economy, and its policy and oversight functions were dispersed across several bodies, weakening oversight and policy making, and creating conflicts of interest and overlapping functions. The amendments also granted the Tender Chamber of Ukraine, a nongovernmental organization, the authority to monitor the procurement process and to undertake key operational functions that were inherently governmental. The Tender Chamber became the center of the procurement system's corruption and lack of transparency.

Parliament, responding to widespread complaints of the corruption and dysfunctional nature of the system, repealed the law on government procurement in March 2008. In place of the law, the Cabinet of Ministers issued a decree establishing temporary provisions for government procurement based largely on the 2004 pre-amendment procurement law. The temporary provisions eliminated the Tender Chamber and again made the Ministry of Economy the central oversight and policy body for the procurement system. The Constitutional Court subsequently ruled the temporary provisions unconstitutional on technical grounds, leaving Ukraine without a functioning government procurement system. On October 17, 2008, the Cabinet of Ministers issued a new decree, which closely tracked the previous temporary provisions. The constitutionality of the October 17 decree is not yet clear, although it was intended to address the constitutional issue raised by the Court. A new draft procurement law passed a first reading on May 20, 2008, but has not completed the legislative process.

The Cabinet of Ministers' decree currently in force requires that all government procurement of goods and services valued at more than UAH 100,000 (approximately $16,500) and public works valued at more than UAH 300,000 (approximately $50,000) must be procured through competitive tenders. Open international tenders are used when procurement is financed by any entity outside of Ukraine.

Ukraine's procurement rules generally do not restrict foreign enterprises from participating in government procurement, but in practice foreign companies claim that they are rarely able to compete on an equal footing with domestic companies. Foreign companies generally win only a tiny fraction of the total tenders. Among the problems faced by foreign firms are: (1) the lack of public notice of tender rules and requirements; (2) non-transparent preferences in tender awards; (3) the imposition of conditions that were not part of the original tender requirements; and (4) ineffective grievance and dispute resolution mechanisms, which often allow a losing bidder to block the tender after the contract has been awarded.

EXPORT BARRIERS

Exports of some categories of products are subject to registration by the Ministry of Economy. Products that must be registered prior to export from Ukraine include: precious metals and stones, rolled metal products exported to the United States, scrap metal, printer's ink, and paper with watermarks. The government has eliminated most export duties, with the prominent exceptions of natural gas, livestock, raw hides, some oil seeds, and scrap metal. As part of the commitments Ukraine made for WTO accession, Ukraine agreed to reductions of a number of these duties and elimination of others.

Export Restrictions on Grains and Sunflower Oil/Seeds

Ukraine is the sixth largest wheat exporter in the world. From September 2006 until May 2008, however, Ukraine imposed various export restrictions on grain exports, at some times constituting a near export ban. Ukraine did not convincingly explain how it faced a "critical shortage," as required in order to maintain such a ban under Article XI:2 of the GATT 1994. The World Bank cited Ukraine's export restrictions as a contributing factor to the global food crisis at the end of 2007 and beginning of 2008.

The Cabinet of Ministers issued a decree on May 21, 2008, lifting the grain export restrictions. The lifting of the measures coincided with a banner harvest and falling world food prices, and the government still needs to move toward a more sustainable, market-oriented agricultural policy to avoid the same situation should a poor harvest emerge in the future.

In March 2008, the government imposed export quotas on sunflower oil and seeds in order to combat rising domestic prices of cooking oils. The government subsequently lifted those quotas in June.

Live Cattle, Sheep, Hides, and Skins

Export duties have been in place on live cattle, sheep, hides, and skins since 1996. Ukraine began a staged reduction of these duties at the time of its WTO accession in May 2008. For live calves, the duty fell from 75 percent of the customs value to 50 percent; for live cows it fell from 55 to 50 percent; and for live sheep it remained at 50 percent. Previous specific duties, which usually proved greater than the *ad valorem* rates and sometimes prohibitive, were eliminated. For raw hides of cattle and sheep, the duty remained at 30 percent, and for pigskins the duty rose from 27 to 30 percent, but for these products as well, the specific and often prohibitive duties were eliminated. Export duties on live calves, cows, and sheep will fall to 10 percent, 8 years after WTO accession. Export duties on raw hides will fall to 20 percent, 10 years after accession.

Scrap Metal

Between January 2003and WTO accession in 2008, Ukraine imposed an export duty of 30 euros/metric ton on ferrous steel scrap and had, in effect, a ban on exports of nonferrous metals. The ferrous scrap export duty contributed to a decline in scrap exports from Ukraine, when global demand and prices for steel scrap were rising. Ukrainian metallurgical producers benefited from scrap inputs at prices lower than world levels. As part of its March 2006 bilateral WTO Market Access Agreement with the United States, Ukraine agreed to significantly lower these export duties. Upon WTO accession, duties fell to 25 euros/metric ton for ferrous metals and to 30 percent *ad valorem* (with minimum, specific rates for some products) for nonferrous metals. Laws passed in 2006 and 2007 as part of the accession process provide for staged duty reductions to 10 euros/metric ton over a period of 6 years for ferrous metals and reductions to 15 percent *ad valorem* over a period of 5 years for nonferrous metals.

Sunflower Seeds

Sunflower seeds have been subject to an export duty since June 2001, to the benefit of local sunflower oil producers. The export duty on sunflower seeds was lowered to 16 percent *ad valorem* upon accession to the WTO. Further 1 percent annual reductions are scheduled, reaching a final duty of 10 percent, 6 years after accession.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Ukraine has substantially improved its protection of IPR in recent years, in part to implement the IPR obligations contained in the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) and other international norms. Law enforcement bodies have also stepped up efforts to seize IPR-infringing goods and to prosecute those involved in their trade. Perhaps most importantly, according to U.S. industry, illegal production of pirated and counterfeit goods has been halted almost completely. In 2008, USTR improved Ukraine's designation in its Special 301 Report from Priority Watch List to Watch List. Ukraine still faces IPR enforcement problems, however, including widespread retail piracy, the transshipment of pirated and counterfeit goods, Internet piracy, and government use of illegal software. The Ukrainian government meets regularly with U.S. Government officials and with U.S. and domestic industry representatives to monitor the progress of enforcement efforts through the United States-Ukraine IPR Enforcement Cooperation Group. Ukraine also meets biannually with European Commission officials as part of a European Union-Ukraine IP Dialogue.

Optical Media

Despite the significant reduction of illegal production of optical discs, pirated discs remain widely available, particularly in large open-air markets throughout the country's larger cities; the Petrivka market in Kyiv is the most notorious. Industry representatives estimate piracy levels for music and video at 60 percent, and for computer software at 84 percent. The transshipment of pirated and counterfeit goods, particularly optical discs produced in Russia, remains a serious problem, as does government procurement and use of unlicensed software.

Internet Piracy

Internet piracy is a growing problem in Ukraine. According to U.S. industry, many Ukraine-based websites offer pirated material for download with the full knowledge of their Internet Service Providers (ISPs). Industry groups estimate that out of the roughly 400 ISPs in Ukraine, 150 of them support websites offering pirated material. U.S. industry has also complained that Local Area Networks (LAN), some of which cover entire Ukrainian cities, allow for widespread software piracy. Another common type of Internet piracy is online mail order sites.

Ministry of Internal Affairs officials have pointed to some successes in stopping the mail order piracy, but admit that enforcement against illegal file sharing/downloading is much more difficult. The United States will continue to monitor this issue and urges Ukraine to increase its enforcement efforts to reduce Internet piracy.

Patent and Trademark

Trademarked and copyrighted goods and services must be registered for a fee in the Customs Service's rights holder database in order to be guaranteed protection. Counterfeit goods, including products that contain protected trademarks, remain readily available in Ukraine. Counterfeit apparel products are particularly common. Most counterfeit goods appear to be imported rather than produced in Ukraine, although industry has reported instances of production of counterfeit cigarettes. There has also been growth in the amount of counterfeit pesticides on the market, and Ukraine reportedly does not have the technical capability to destroy some forms of counterfeit pesticides, complicating enforcement efforts.

Data Protection

Ukraine has improved its protection of undisclosed test and other data submitted in support of marketing approval from unfair commercial use. Local representatives of international pharmaceutical companies are generally satisfied with the new law, but continue to complain of a lack of transparency by GOU bodies responsible for granting market approval for generic drugs.

Judicial System

Industry reports that civil IPR lawsuits remain rare because of a general lack of confidence in Ukraine's legal system, and because there are few judges properly trained in IPR law. Many IPR cases result only in small fines for administrative cases. The U.S. Government has worked closely with the Government of Ukraine to provide specialized IPR training to judges.

SERVICES BARRIERS

As part of its WTO accession commitments, Ukraine agreed to expand access significantly for foreign service suppliers in a number of areas, including energy services, banking and insurance branches, professional services, express delivery, and telecommunications. Ukraine's services commitments are virtually free of limitations on foreign equity, economic needs tests, or other common limitations found in GATS schedules. When fully implemented, Ukraine will have one of the most liberal services markets in the region.

Audiovisual Services

A local content requirement exists for radio and television broadcasting, although it has not been stringently enforced in most cases.

Financial Services

The United States continues to monitor Ukraine's actions in particular with regard to electronic payments services. On June 19, 2008, the National Bank of Ukraine (NBU) issued new rules that require any bank that wishes to bid on cash management contracts for state employee salaries to join the National System of Mass Electronic Payment (NSMEP). NSMEP operates as a domestic electronic payments system in Ukraine, competing against foreign service suppliers. The new rules may force banks wishing to bid on these government contracts to base their bids on NSMEP-branded cards, thus shutting out foreign service suppliers.

INVESTMENT BARRIERS

The government is working to streamline regulations and eliminate duplicative and confusing laws regarding investment and business. The State Center for Foreign Investment Promotion (known as InvestUkraine) is charged to help attract foreign investment to the country. The Council of Investors, an advisory body to the Cabinet of Ministers, includes representatives from foreign and domestic companies and advises the government on efforts to improve the business and investment climate.

The United States has a bilateral investment treaty (BIT) with Ukraine, which took effect in 1996. The BIT guarantees U.S. investors the better of national and MFN treatment, the right to make financial transfers freely and without delay, international legal standards for expropriation and compensation, and access to international arbitration. Despite the BIT, there are several longstanding investment disputes faced by several U.S. companies. These disputes mainly date from the early 1990s and the initial opening of the Ukrainian economy to foreign investors. In most cases, however, there has been little progress toward resolution under subsequent Ukrainian governments despite advocacy by the United States.

Of particular concern is the longstanding, unresolved dispute that has prevented the Overseas Private Investment Corporation (OPIC) from operating in Ukraine. The availability of OPIC's financing and political risk insurance could significantly increase the level of U.S. investment in Ukraine. The Ukrainian government has been slow in working out a resolution to this dispute, although there has been real progress recently, spurring hopes that OPIC may soon be able to resume operations in Ukraine.

Taxation

Companies report that Ukraine's taxation system is a major obstacle for U.S. investors doing business in Ukraine, and a World Bank study recently ranked Ukraine 180th out of the 181 countries surveyed in terms of the ease of paying taxes. Ukraine maintains a corporate profit tax (25 percent), a personal income tax (flat rate of 15 percent), a Value Added Tax (20 percent), and a payroll tax (variable, between 36.66 percent and 49.6 percent) that funds pension and social insurance programs. Many analysts single out the payroll tax as being exceptionally high and the main reason why shadow wage payments remain common in Ukraine.

In recent years, arrears in the payment of VAT refunds to exporters have also been a problem. In the spring of 2008, the Ukrainian government significantly increased the pace of VAT refunds, particularly to agricultural exporters, who tend to run up especially large VAT arrears. The government also intends to introduce a comprehensive electronic system to ensure speedy refunds continue in the future. However, Ukraine's inability to refund VAT in a timely manner remains a problem, and delays in reimbursement have become an important cost factor for many foreign companies. Improvements to the system would have an important, positive impact on the investment climate.

Special Economic Zones (SEZs)

Ukraine has in the past maintained two forms of special economic zones (SEZs): Free Economic Zones (FEZs) and Priority Development Territories (PDTs). In April 2005, Ukraine canceled all tax exemptions (*i.e.*, from land tax, corporate income tax, import duty, and VAT on imports) to investors in all SEZs to stop large-scale misuse of these zones for tax evasion and smuggling. While the step reduced corruption and expanded the tax base, the abrupt cancellation of privileges and lack of compensatory provisions caused losses to some legitimate investors.

Privatization

The State Property Fund oversees the privatization process in Ukraine. Privatization rules generally apply to both foreign and domestic investors, and, in theory, a relatively level playing field exists. Observers claim, however, that a common abuse of privatization laws is the adjustment of the terms of a privatization contest to fit the characteristics of a certain, pre-selected bidder. Few major, new privatizations have been conducted since the privatization rush of 2004. In 2005, Ukraine revoked the privatization of the Krivorizhstal steel factory, which had been sold to a group of domestic investors for $800 million, and subsequently sold it in a fair and transparent tender to Mittal Steel for $4.8 billion, in what is generally viewed as Ukraine's most transparent major privatization to date. Since then, Ukraine has taken no further steps to reverse previous privatizations.

No major privatizations have taken place in 2008, largely due to constant political wrangling over the privatization process. The government has identified the Odessa Portside Plant, one of Ukraine's largest chemical producers, Ukrtelekom, the state telecommunications company, the Kryvorizhskyy Ore Mining and Processing Plant, and Turboatom, a producer of turbines for power plants, as priorities for privatization, but none have moved forward. Other attempts at privatization in recent years were often marked by controversy. The government has also announced its intention to privatize approximately 120 of the 140 coal mines still owned by the government. There are concerns that a few Ukrainian and Russian firms are trying to acquire these mines without going through a fair, transparent privatization process.

Ukraine maintains a moratorium on the sale of agricultural farmland. This provision blocks private investors from purchasing some of the 33 million hectares of arable land in Ukraine and constitutes a serious obstacle to the development of the agricultural sector. While there have been some efforts to adopt new legislation necessary to open the land market, as of October 2008, the ban on the sale of agricultural land remains in place.

Corporate Hijacking

Ukraine is experiencing an escalation in corporate hijacking activity. Some researchers claim that thousands of Ukrainian enterprises have suffered hijacking attempts in the last several years. These hijackers frequently purchase a small stake in a company, and then take advantage of deficient legislation, corrupt courts, and a weak regulatory system to gain control of companies to the detriment of rightful shareholders. This development harms investors, including U.S. companies and shareholders, and has damaged the image of Ukraine among foreign investors. The Ukrainian government has recognized the seriousness of this problem and has taken some steps to address it. In September, Parliament passed a new law "On Joint Stock Companies," a major step to improve corporate governance and help stop corporate hijacking.

OTHER BARRIERS

Regulatory Inspections

The frequency of inspections by regulatory agencies is often identified as one of the major hindrances to business development in Ukraine. The annual number of inspections conducted throughout the country exceeds 1.5 million. According to a recent study conducted by the International Finance Corporation, 65 percent of private businesses in Ukraine consider inspections to be overly complex and a hindrance to business development in Ukraine. Ukraine's system of inspections does not appear to fulfill its stated purpose of preventing legal abuses or ensuring consumer safety, but is primarily punitive in nature.

UNITED ARAB EMIRATES

TRADE SUMMARY

The U.S. goods trade surplus with United Arab Emirates was $14.5 billion in 2008, up $4.2 billion from $10.3 billion in 2007. U.S. goods exports in 2008 were $15.7 billion, up 35.7 percent from the previous year. Corresponding U.S. imports from United Arab Emirates were $1.3 billion, down 3.3 percent. United Arab Emirates is currently the 18th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in United Arab Emirates was $3.8 billion in 2007 (latest data available), up from $3.6 billion in 2006. U.S. FDI in United Arab Emirates is concentrated largely in the mining sector.

IMPORT POLICIES

The UAE is a federation of seven emirates (Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al-Qaiwain, Fujairah, and Ras Al-Khaimah). The individual emirates founded the UAE in December 1971. Over the last 38 years, the UAE has developed into the second largest economy in the Arab world. The Ministry of Economy has estimated that the UAE's Gross Domestic Product (GDP) reached $198.7 billion (at current prices) in 2007, after a 5.2 percent growth in real GDP that year.

Despite possessing around 9 percent of the world's proven oil reserves and the fifth largest proven gas reserves in the world, the UAE has pursued free market, trade liberalizing policies to diversify its economy away from a dependence on fossil fuel. Rapid growth in the nonoil economy reduced oil's share of GDP from 60 percent in 1980 to 35.8 percent in nominal terms in 2007.

Tariffs

As a member of the Gulf Cooperation Council (GCC), the UAE applies the GCC common external tariff of 5 percent for most products, with a limited number of GCC-approved country-specific exceptions. Currently, the UAE's exceptions to the 5 percent tariff are a 50 percent tariff on alcohol, a 100 percent tariff on tobacco, and duty exemptions for 53 food and agricultural items.

Import Licensing

Only firms with an appropriate trade license can engage in importation, and only UAE registered companies, which must have at least 51 percent ownership by a UAE national, can obtain such a license. This licensing provision is not applicable to goods imported into free zones. Some goods for personal consumption do not require import licenses.

Documentation Requirements

Since July 1998, the UAE has required that documentation for all imported products be authenticated by the UAE Embassy in the exporting country. There is an established fee schedule for this authentication. For U.S. exports, if validation is not obtained in the United States, customs authorities will apply the fee schedule when the goods arrive in the UAE.

Customs Valuation

The UAE notified the World Trade Organization's (WTO) Customs Valuation Committee in October 2004 of its customs valuation scheme.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Standards

As part of the GCC Customs Union, the six Member States are working toward unifying their standards and conformity assessment systems. However, each Member State currently continues to apply either its own standard or a GCC standard, causing confusion among some U.S. businesses. GCC Member States do not consistently send notification of new measures to WTO Members and the WTO Committees on Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT) or allow WTO Members an opportunity to provide comments.

In May 2008, the GCC Standards Committee approved two new standards for the labeling and expiration periods of food products. The new GCC standards eliminate the longstanding requirement that at least one-half of a product's shelf life be valid when a product reaches a port of entry in GCC Member States. Officials from the Gulf Standards Organization (GSO) have stated that GCC Member States will accept use of the terms "best by" and "best before" as meeting the date labeling requirement for shelf-stable products. The United States has requested written confirmation of this situation.

In May and October 2007, respectively, Bahrain and Oman notified WTO Members of proposed procedures meant to harmonize food safety import requirements for all GCC Member States. The United States and other WTO Members provided comments outlining significant concerns with the procedures, which, as currently drafted, do not appear to have a clear scientific basis and would substantially disrupt food exports to GCC Member states from its trading partners. The GCC Member States indicate that they are developing a response to these comments, and the United States has established a dialogue between U.S. and GCC technical experts to discuss the procedures and potential amendments to address the concerns raised.

In October 2002, the UAE created the Emirates Authority for Standardization and Metrology (ESMA), established under the auspices of the Ministry of Finance and Industry, to manage issues of standardization arising from the GCC. As of early 2006, ESMA had adopted 1,810 standards. 95 percent are based on GCC standards and 5 percent are based on UAE-developed standards.

Sanitary and Phytosanitary Measures

Control of the UAE's food standards resides in the General Secretariat of Municipalities (GSM) and ESMA. These two entities develop food standards through a technical advisory committee, although, on occasion, individual municipalities or Emirate-level authorities still apply food standards independently of broader national authorities. Recently, one emirate briefly required labeling foods with biotechnology enhanced ingredients; the GSM quickly reversed the action. GSM control over the actions of individual municipalities appears to be improving.

In February 2008, ESMA announced that it had approved 3,615 standards for products sold in the UAE since 2002, covering foodstuffs, chemical and petroleum products, textiles, electrical and mechanical products, and construction. In May 2008, ESMA announced that 700 standard specifications had been set for the food sector in the UAE, based largely on Codex Alimentarius standards. In the absence of national standards, suppliers may follow international standards.

In February 2007, the UAE Ministerial Council issued a decree levying fees on foreign slaughter plants and *Halal* certifiers. The decree required that plants must be accredited and pay an initial fee of $2,723 followed by an annual renewal fee of the same amount (later reduced to $1,362 in June of 2007). *Halal* certifiers that approve the slaughter plants must also pay a fee of $1,362 with an annual renewal fee of $817. U.S. *Halal* certifiers paid the fees in 2008, but the UAE is still working to establish procedures to collect the fees from U.S. slaughter plants. The requirement is expected to be difficult to administer in the United States.

The UAE is the chair of the Gulf Standards Organization (GSO) sub-committee charged with developing a set of standards governing trade in foods with ingredients derived from agricultural biotechnology. The GSO, in conjunction with the Abu Dhabi Food Control Authority, held its first meeting in August of 2008.

Conformity Assessment

In 2004, ESMA launched its own conformity assessment program, the Emirates Conformity Assessment Scheme (ECAS), which applies to toys, detergents, paints, lubricants, oils, automobile batteries, food, chemical and petroleum products, textiles, electrical and mechanical products, and construction. ECAS assesses whether domestically manufactured products meet national or GCC standards, or international standards if neither national nor GCC standards exist. The UAE asserts that the ECAS is a voluntary program and is only applicable to domestically produced goods, but the scope and parameters of ECAS lack clarity and transparency.

In September 2007, ESMA announced that it had been accepted as the UAE representative to the Worldwide System for Conformity Testing and Certification of Electro-technical Equipment and Components (IECEE)'s Member Body.

The GCC Standards Committee is currently developing a conformity assessment scheme to be adopted ultimately by each of the six Member States and has set 2010 as a deadline for full implementation. The United States is working to establish a dialogue between U.S. and GCC technical experts to discuss this proposed scheme with the goal of helping to ensure that it is developed, adopted, and applied in accordance with WTO rules.

GOVERNMENT PROCUREMENT

The UAE is not a signatory to the WTO Agreement on Government Procurement.

The UAE grants a 10 percent price preference for local firms in government procurement. The UAE requires companies to register with the government before they can participate in government procurements, but to be eligible for registration a company must have at least 51 percent UAE ownership. This requirement does not apply to major projects or defense contracts where there is no local company able to provide the goods or services required.

The UAE's offset program, which was established in 1990, requires defense contractors that are awarded contracts valued at more than $10 million to establish commercially viable joint ventures with local business partners that yield profits equivalent to 60 percent of the contract value within a specified period (usually 7 years). To date, more than 40 such joint venture projects have been launched, including, *inter* *alia*, a hospital, an imaging and geological information facility, a leasing company, a cooling system manufacturing company, an aquiculture enterprise, a foreign language training center in Abu Dhabi, and a firefighting equipment production facility. Two of the largest offset ventures are an international gas pipeline project (Dolphin) and the Oasis International Leasing Company, a British Aerospace offsets venture. There are also reports, as well as anecdotal evidence, indicating that defense contractors can sometimes satisfy their offset obligations through an up-front, lump-sum payment directly to the UAE Offsets Group.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The UAE has made the protection of intellectual property a priority in recent years. The UAE is considering additional legislation for data protection, privacy, and other IP-related issues and has consolidated its IPR offices under the authority of the Ministry of Economy.

According to 2007 industry estimates, the rate of software piracy in the UAE is the lowest in the Middle East, estimated to be 34 percent. The UAE is recognized as the regional leader in fighting computer software piracy, although industry stakeholders believe the UAE could be doing more. In July 2008, industry estimated that piracy resulted in almost $800 million (AED 3 billion) in losses to the UAE economy in 2007, a 15.3 percent increase over 2006.

The United States has encouraged the UAE to strengthen its efforts to combat IPR piracy and counterfeiting. In that connection, the United States plans to conduct IPR enforcement training for UAE customs officials in 2009.

As part of the GCC Customs Union, the UAE and the other five Member States are working toward unifying their IP regimes. In this respect, the GCC is preparing a draft common trademark law. All six Member States are expected to adopt this law as national legislation in order to implement it. The United States has outlined specific concerns with the trademark law and has established a dialogue between U.S. and GCC technical experts to ensure that the law complies with the Member States' international and bilateral obligations.

SERVICES BARRIERS

Insurance

Foreign insurance companies may operate only as branches in the UAE.

In 1989, the UAE government banned additional foreign insurance companies from opening due to a perception that the market was saturated. In 2004, the Ministry of Economy and Planning announced that it would open its insurance sector to new foreign insurance companies.

In 2006, the President of the UAE issued Federal Law No. 16 of 2006 amending some provisions of Federal Law No. 9 of 1984 on insurance companies and agents. The amendments stipulate that established insurance companies in the UAE, or those which shall be incorporated, must take the form of a public joint stock company. At least 75 percent of the capital in such companies must be owned by UAE nationals and the other 25 percent may be owned by a foreigner.

Banking

The UAE Central Bank does not grant new licenses to foreign banks. However, the Central Bank has granted licenses to some GCC banks. In 2008, the Central Bank allowed several foreign banks already operating in the UAE to set up new branches.

Agent and Distributor Rules

In 2006, the UAE made important changes to the Commercial Agencies Law (Agencies Law), which previously had required that all commercial agents be either UAE nationals or companies wholly owned by UAE nationals and had restricted the number of agents a foreign principal could appoint as well as the terms of the agency relationship. The 2006 amendments also: (1) limited an agency contract to a fixed time period; (2) required mutual consent to renew an agency agreement; (3) allowed either party to file for damages; (4) eliminated the Ministry of Economy's Trade Agencies Committee, which handled agency disputes; and (5) allowed the import of "liberalized goods" without the agent's approval.

Telecommunications

UAE currently has two telecommunications companies which are largely government owned: Emirates Telecommunications Corporation (Etisalat), the former telecommunication monopoly, and Emirates Integrated Technology Company (which operates under the trade name Du). Local press reports indicate that the duopoly will continue until 2015 when the market will be further liberalized.

U.S. companies complain that the UAE's Telecommunications Regulatory Authority (TRA) has banned the use of Voice over Internet Protocol (VoIP) services, on the basis that VoIP services violate Etisalat's monopoly on fixed telephony services. In January 2008, Etisalat announced that it is technically ready to provide VoIP services but is awaiting TRA conditions and terms. While the TRA is reportedly developing a framework to legalize VoIP, it is unclear if and when this will occur; Etisalat reported that the service may be introduced in 2009.

INVESTMENT BARRIERS

Except for companies located in one of the UAE's free trade zones, at least 51 percent of a company established in the UAE must be owned by a UAE national. A company engaged in importing and distributing a product must be either a 100 percent UAE-owned agency/distributorship or a 51 percent UAE-owned/49 percent foreign-owned limited liability company. Subsidies for manufacturing firms are only available to those companies where at least 51 percent of the capital is owned by a UAE national.

In many cases, company by-laws prohibit foreign ownership. The UAE government is considering liberalizing specific sectors where there is a need for foreign expertise or where local investments are insufficient to allow 100 percent local ownership. Some of the sectors which may be liberalized are education, health, professional services, and computer-related services.

In August 2005, the UAE President, acting in his role as the ruler of the Emirate of Abu Dhabi, signed Abu Dhabi law number 19 of 2005, permitting UAE nationals and GCC citizens to own land within designated investment areas. Non-GCC nationals have the right to own buildings, but not the land, in investment areas. However, the Emirates of Dubai and Ras al Khaimah are currently offering so-called freehold real estate ownership to non-GCC nationals within certain areas. Foreign investors may purchase 79 of the 128 issues on the UAE stock markets (Abu Dhabi Securities Market (ADSM), and Dubai Financial Market (DFM)).

Resolution of investment disputes continues to be a problem in the UAE. Foreign investors have expressed concern that pursuing international arbitration may jeopardize their business activities in the UAE. Foreign investors also report a reluctance to take disputes to the domestic court system.

ELECTRONIC COMMERCE

In 2002, the Emirate of Dubai passed a Law of Electronic Transactions and Commerce, which protects certain electronic records and signatures, and some electronic communications. This law also provides penalties for any person who knowingly creates, publishes, or otherwise makes available a false electronic signature or certificate, or provides false statements online for fraudulent or any other unlawful purpose. In 2006, the UAE issued a comprehensive national law on Information Technology Crimes, which criminalizes a broad range of fraudulent activities affecting commerce. The Emirate of Dubai has established the Dubai Technology, Electronic Commerce, and Media Free Zone (TECOM), which houses both Internet City and Media City, two subdivisions which cater, respectively, to the information technology and media sectors.

In January 2008, the UAE's Telecommunication Regulatory Authority (TRA) announced that it has set up an action plan for applying the 2006 Federal Electronic Commerce and Transactions Law in three phases that include 1) setting up the regulatory framework for e-commerce to protect the rights of persons doing business electronically and determine their obligations; 2) applying some rules for providers of internet services such as Electronic Dirham, confidentiality of information and other services; and 3) promoting the growth of e-commerce in the UAE.

VENEZUELA

TRADE SUMMARY

The U.S. goods trade deficit with Venezuela was $38.8 billion in 2008, an increase of $9.1 billion from $29.7 billion in 2007. U.S. goods exports in 2008 were $12.6 billion, up 23.6 percent from the previous year. Corresponding U.S. imports from Venezuela were $51.4 billion, up 28.8 percent. Venezuela is currently the 22nd largest export market for U.S. goods.

U.S. exports of private commercial services (*i.e.*, excluding military and government) to Venezuela were $3.9 billion in 2007 (latest data available), and U.S. imports were $658 million. Sales of services in Venezuela by majority U.S.-owned affiliates were $3.7 billion in 2006 (latest data available), while sales of services in the United States by majority Venezuela-owned firms were $3.9 million.

The stock of U.S. foreign direct investment (FDI) in Venezuela was $10.0 billion in 2007 (latest data available) down from $10.1 billion in 2006. U.S. FDI in Venezuela is concentrated largely in the manufacturing, nonbank holding companies, and mining sectors.

IMPORT POLICIES

Venezuela officially withdrew from the Andean Community (CAN) in April 2006. President Chavez stated publicly that the reason for the withdrawal was the entry of other CAN member countries into free trade agreements with the United States, which, according to the Venezuelan government, changed the essence of the pact.

Under CAN rules, only tariff-related decisions and resolutions remain in force for five years from the date of a member's formal withdrawal. Over the years, CAN norms, which cover a wide range of disciplines, have been incorporated into the Venezuelan legal framework. Although the Venezuelan government has yet to officially clarify the legal impact of leaving the CAN, Venezuela has continued to follow CAN norms. In November 2006, Venezuela's Supreme Court accepted a petition requesting interpretation of the current validity of CAN norms. As of January 2009, the court had not issued a ruling on the matter.

Tariffs

In December 2005, Venezuela signed the framework agreement to join the Southern Cone Common Market (MERCOSUR). MERCOSUR membership is contingent upon approval by the legislatures of all MERCOSUR countries. Venezuela had hoped to become a full member of MERCOSUR by the end of 2008; the legislatures of Brazil and Paraguay have yet to approve Venezuela's accession. Under the terms of its accession, Venezuela has four years from its accession to adopt the MERCOSUR Common External Tariff (CET), and to provide tariff-free treatment to its four MERCOSUR partners on all goods, with sensitive products allowed a two-year extension. Exceptions to the CET exist on a product-specific or sector-specific basis, mainly for goods not produced within the union or those which potentially affect the production capacity of the members. MERCOSUR's average external tariff is approximately 14 percent, except for capital goods which were reduced to zero until December 31, 2010.

While CAN offers higher tariffs on fisheries, textiles, and agriculture, MERCOSUR applies higher protection levels to vehicles, parts, leather, textiles, and shoes. Under the Andean Community's Common Automotive Policy (CAP), assembled passenger vehicles constitute an exception to the 20 percent maximum tariff and are subject to 35 percent import duties. The CAP will remain effective until the end of 2009.

Venezuela's Valued Added Tax is 9 percent. Since December 2006, goods considered "non-priority items" including alcoholic beverages, rugs, carpeting, jewelry, and toilet paper, are assessed a 15 percent "luxury tax." In October 2007, the Venezuelan government doubled the tax on alcoholic beverages and increased the tax on cigarettes from 45 percent to 70 percent.

Nontariff Measures

Difficulty in obtaining foreign exchange is a significant barrier to trade with Venezuela. By re-implementing foreign exchange controls in February 2003, the Venezuelan government prohibited the free circulation of foreign currency. To administer the controls, the Venezuelan government created a Foreign Exchange Commission, Comision de Administracion de Divisas (CADIVI), which functions as the official agency responsible for authorizing the purchase and sale of foreign currency.

Any resident of Venezuela needing foreign currency for either personal or commercial purposes has only two legal options for obtaining it. One option is to request authorization from CADIVI at the official exchange rate of $1/Bolivar 2.15. The second option is to purchase Venezuelan sovereign bonds and shares exchangeable in foreign stock markets. It is illegal to obtain foreign currency in the parallel market, and the "Foreign Exchange Crime Law" of September 2005 clarified some of the penalties for obtaining foreign currency illegally.

The administration of exchange controls has seen various stages since February 2003. CADIVI was an entity that had to be created from scratch in response to new legislation. Initially, CADIVI faced considerable challenges due to lack of staffing, information systems, and organizational procedures, which resulted in delays for exchange approvals. Currently, the process is more efficient, particularly for cases involving settlement for imports of food on CADIVI's Priority List. CADIVI's daily average currency approvals have grown from $63.5 million in 2005 to $187 million as of October 2008.

The Ministry of People's Power for Light Industry and Commerce (MILCO) maintains a list of imports that are eligible to receive foreign currency approval. This list has grown significantly since the introduction of exchange controls, and now includes services and repatriation of capital. Despite exchange controls, imports have grown significantly due to economic growth fueled by high oil prices and Venezuelan government spending. Problems coordinating the timing of access to CADIVI dollars with the approval of import permits and licenses and contracting shipments have led to delays and higher import costs. CADIVI dollar approvals currently take 6 days to 90 days, but can run longer. However, in 2008, CADIVI created two different mechanisms to expedite dollar approvals for imports worth less than $50,000 and for selected agricultural and food products. In both cases, a priority list of products is the basis on which to receive the benefit, avoiding issuance delays.

Another significant obstacle to importation is burdensome documentation requirements. Beginning January 1, 2008, all automobile importers must solicit a license from MILCO for authorization to receive foreign exchange for the importation of assembled vehicles. According to the resolution, approval of these licenses depends on "national need, the capacity of national production, plans to expand local production, model cost, historic sales, and the efficient use of fuel." When soliciting this license, all automotive companies will have to include their "national production plan" and their "vehicle importation plan." The law also prohibits the importation of passenger cars with engines larger than three liters, thus discriminating against companies selling predominantly larger cars. As of December 2008, licenses or import quotas for 2009 have not been notified to the automobile companies, meaning that fully assembled automobiles will not arrive in Venezuela until late spring 2009, at the earliest. Venezuela prohibits the importation of used cars, buses, and trucks, used tires, and used clothing.

The government imposed import quotas on vehicles in January 2008 in a bid to increase the number of automobiles assembled in Venezuela, and carmakers are subject to limited allocations of dollars to import components they need to carry out production in Venezuela. The new automotive regime adds the requirement to produce dual fuel (gasoline and natural gas) vehicles. The original law mandated that all new vehicles sold in Venezuela after December 1, 2008, be dual fuel. The rule was twice postponed and then changed. As of April 1, 2009, 30 percent of vehicles sold are to be dual fuel, and each Venezuelan assembler must produce at least 2 dual fuel models. In addition, the gradually rising requirement for local content in domestically assembled vehicles was changed to a flat 50 percent requirement beginning in 2013. A new requirement for motors to be assembled in Venezuela by 2010 was also added. Assemblers have stated that the two requirements are extremely problematic. Local industry is and will be incapable of producing sufficient components to allow 50 percent local content, and the variety of motors and the necessary large production runs will make local motor assembly prohibitively expensive.

In addition, Venezuela also protects its agricultural producers through the use of licenses and sanitary permits to restrict imports. The Venezuelan government applies fixed farm gate prices for producers of corn, rice, sorghum, sugar, milk, and beef, and these prices have been under review through 2008 for different commodities, with the latest increase in mid-2008. Since 2007, selected basic commodities are granted agricultural subsidies based on acreage or volume.

Venezuela maintains tariff-rate quotas (TRQ) for up to 62 Harmonized System code headings. However, the issuance of import licenses for such TRQs is neither transparent nor automatic and has negatively affected trade in basic agricultural commodities as well as processed products. The issuance of import licenses and sanitary permits is very restrictive. The Venezuelan government has denied import licenses for both in-quota and over-quota quantities, even though importers are often willing to pay the over-quota tariff for additional quantities of some products. Automatic issuance of licenses of over-quota quantities has not occurred. Furthermore, the Venezuelan government has not published regulations establishing the TRQ mechanism for certain eligible products and has refused to activate the TRQ for others, such as pork.

Basic agricultural and processed food products remain on the CADIVI priority import list. Nevertheless, importers interested in importing many basic commodities, agricultural inputs, and some horticultural products must request a "certificate of nonproduction" or a "certificate of insufficient production." Some goods may require a certificate from more than one ministry. These certificates state that a certain product is not domestically produced or domestic production is insufficient, and allow importers to request foreign exchange for imports, import licenses, import permits, and possibly tax exoneration from other government offices. The number of ministries and agencies involved and the constant shift of responsibilities among them has hampered the issuance of import permits, licenses, and the registration of local and imported food products. On January 18, 2008, the government of Venezuela passed a resolution waiving the "certificate of nonproduction" requirement for 51 goods until July 18, 2008, to mitigate current food shortages.

Venezuela also blocks imports through its refusal to issue sanitary and phytosanitary (SPS) permits. Such permits are required by the Ministry of People’s Power for Health (MPPS) and the Ministry of People’s Power for Agriculture and Lands (MAT). The government of Venezuela, as of January 18, 2008, now requires the MAT and MPPS to issue these permits within seven days.

The government has delayed the issuance of import licenses for yellow corn and for oilseeds and oilseed products until the entire local crop has been purchased at the set price when there is a surplus of domestic crops. When there is a deficit, imports are readily authorized. In September 2007, the government of Venezuela began banning exports of rice and corn due to domestic scarcity problems. This was extended to other foods products in 2008.

Since January 2003, the Venezuelan government has implemented an import tax exoneration policy for staple products. Initially, the import tax exoneration was granted for a six month period. Since then, some products were added or removed from the initial list and there were certain periods when this policy expired. On January 18, 2008, the Government of Venezuela created a new list of tax exempt goods that featured some products on the current list and some additions. In addition, on February 18, 2008, a list of tax exempted goods was reviewed, and on October 17, 2008, the exoneration of customs duties for live cattle imports was announced.

The Venezuelan government has created a large food distribution network for the low and middle economic classes. Both the Venezuelan Agricultural Corporation (CVA) and the Corporación de Abastecimiento y Servicios Agrícolas are the leading state trading entities. At the same time, Mercado de Alimentos, C.A. and Productora y Distribuidora Venezolana de Alimentos are the food marketing branches of the network; offering products at prices that are at or below those of controlled products. Venezuela's food program is focused on providing a government subsidized basic basket of products, including dry milk, precooked corn flour, black beans, rice, vegetable oils, sardines, pasta, sugar, bologna, margarine, deviled ham, eggs, mayonnaise, and sauces. Government purchases can be imported or domestically produced food products. The government's food network competes with private industry, although the private sector also supplies products to this chain. The private sector has complained that all government entities have an unfair advantage because they have guaranteed access to dollars, import licenses, and permits and, as government entities, they import products without tariffs and custom duties.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Some Venezuelan importers of U.S. products have alleged that Venezuela applies product standards more strictly to imports than to domestic products. The certification process is expensive. The Venezuelan Commission for Industrial Standards normally requires certification from independent laboratories located in Venezuela, but at times will accept a certificate from independent laboratories elsewhere. In addition, in May 2007, the World Organization for Animal Health (OIE) classified the United States as a "controlled risk" country for Bovine Spongiform Encephalopathy (BSE), thereby clarifying that U.S. live cattle, beef and beef products are safe to trade provided that the appropriate specified risk materials are removed. However, Venezuela continues to ban U.S. live cattle, beef and beef products.

Venezuela's standards regime is undergoing a change, and how these changes will be effectuated remains unclear. Venezuela's equivalent of the American National Standards Institute, a non-governmental agency called FONDONORMA, was told in spring 2007 by Venezuela's government agency in charge of certifying standards, SENCAMER, that it would no longer certify FONDONORMA standards. This has left a vacuum that has yet to be filled.

In August 2008, Venezuela's National Assembly approved a new law that changed labeling requirements and altered requirements for other documents in the import process. Previously, exporters to Venezuela could affix adhesive labels in Spanish to their products to fulfill the Spanish language requirement. The new law requires the Spanish language information to be indelibly printed on labels and proscribes the use of adhesive labels. This is in addition to the previous requirements that the importer's legal name or its taxpayer identification number be printed on the product, as well. At the time of writing, implementing regulations had yet to be issued for the new law, so the exact treatment and consequences for exporters to Venezuela are not yet known, although the need for indelible information and the prohibition of self-adhesive labels will add cost and complexity to the manufacturing process once implemented. For food products, Spanish-language labels are now required on original packaging, and stickers or other temporary information are not allowed.

GOVERNMENT PROCUREMENT

Venezuela's government procurement law covers purchases by government entities, national universities, and autonomous state and municipal institutions. The law requires a contracting agency to prepare a budget estimate for a procurement based on reference prices maintained by MILCO. The law forbids discrimination against tenders based on whether they are national or international. However, the law also provides that the President can mandate temporary changes in the bidding process "under exceptional circumstances," in accordance with "economic development plans" to promote national development, or to offset adverse conditions for national tenders. These measures can include margins of domestic price preference, reservation of contracts for nationals, requirements for domestic content, technology transfer or the use of human resources, and other incentives to purchase from companies domiciled in Venezuela. For example, government decree 1892 establishes a 5 percent preference for bids from companies whose products have over 20 percent local content. In addition, half of that 20 percent of content must be from small to medium-sized domestic enterprises. The Venezuelan government is increasingly awarding contracts directly, thus avoiding competition required by the government procurement law. It is not clear to what degree the public procurement law applies to joint ventures in which a state entity has a controlling interest.

A presidential decree published in March 2008 re-affirmed many parts of the old law, but added some new problems. It established a National Service of Contractors, with which firms must register in order to be able to sell to the government. Bids will not be accepted without prior registration. Some observers believe that the registration requirement allows additional screening for political acceptability of a company.

Venezuela is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Exporters of selected agricultural products – cocoa, some fruits, and certain seafood products – are eligible to receive a tax credit equal to 10 percent of the export's value. The level of direct payments for export subsidies has generally been fairly small and limited to agricultural products. Venezuela has notified its export subsidies to the WTO in the past, with the last notification occurring in June 2001, for the export year 1998. The total value of export subsidies at that time was $5.5 million. The government has not published further information for export subsidies.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The Venezuelan Industrial Property Office's policies on the protection and enforcement of IPRs often draw criticism from IPR advocates and right holders. Pirated software, music, and movies are readily available throughout the country, and piracy levels are increasing. In 2005, Venezuela was elevated to the USTR's Special 301 "Priority Watch List" and has been on this list for the past three years.

In September 2008, the Autonomous Service for Intellectual Property issued a press release in which it resurrected the Industrial Property Law of 1955. The 1955 Law expressly prohibits intellectual property rights for pharmaceuticals, foodstuffs and other products.

No patents for new pharmaceuticals have been issued since 2004, and some previously issued patents have been revoked. Pharmaceutical companies involved in research and development do not receive protection against unfair commercial use of their test data. Since 2002, Venezuela's food and drug regulatory agency has approved new drugs based on a pharmaceutical company's submission of non-proprietary test data.

Enforcement

Lack of personnel, coupled with a very limited budget and minimal storage facilities for seized goods, has forced the Venezuelan copyright and trademark enforcement branch of the police to work with the National Guard and private industry to improve enforcement of copyrighted material. SENIAT, Venezuela's tax and customs authority, passed a regulation in mid-2005 that allows for *ex officio* seizure of contraband goods at customs points and inland, and gives companies three days to verify the product's authenticity and to press charges. In most cases, companies and violators reach a settlement instead of going through a lengthy, and often fruitless, court proceeding. SENIAT continues to be the only agency actively protecting IPR, and has launched public anti-piracy and "zero tax evasion" campaigns that have raised awareness of IPR issues.

SERVICES BARRIERS

Venezuela maintains restrictions on a number of service sectors, including professional services, audiovisual, and telecommunications services. In any enterprise, with more than 10 workers, foreign employees are restricted to 10 percent of the work force, and Venezuelan law limits foreign employee salaries to 20 percent of the payroll.

Professional Services

Only Venezuelan citizens may provide accounting and auditing services to government institutions and related institutions, such as banks and hospitals. In addition, only Venezuelan citizens may act as accountants for companies in which the government has at least a 25 percent ownership interest. A foreign lawyer cannot provide legal advice on foreign or international law without being licensed in the practice of Venezuelan law.

Foreigners are required to establish a commercial presence for the provision of engineering services. Foreign consulting engineers must work through local firms or employ Venezuelan engineers.

Audiovisual Services

Venezuela limits foreign equity participation (except from other Andean Community countries) to 20 percent in enterprises engaged in Spanish language media, including television and radio broadcasting. The government enforces a "one-for-one" policy that requires foreign musical performers giving concerts in Venezuela to share stage time with national entertainers. There is also an annual quota regarding the distribution and exhibition of Venezuelan films, as well as a requirement that a percentage of film copying be done in Venezuelan facilities. At least half of the television programming must be dedicated to national programming, and at least half of FM radio broadcasting must be dedicated to Venezuelan music.

Telecommunications

A trade association has reported that Venezuela's telecommunications law requires Venezuelan satellites to be utilized on a priority basis in the provision of satellite services in the country if they provide technical and economic conditions equivalent to those of foreign satellites.

INVESTMENT BARRIERS

The government continues to control key sectors of the economy, including oil, petrochemicals and much of the mining and aluminum industries. Venezuela began an ambitious program of privatization under the Caldera administration, but under President Chavez further privatization has been halted and the government has re-nationalized certain key sectors of the economy. In 2007, the government nationalized certain electricity and telecommunications providers. In 2008, the government nationalized certain cement companies and proposed the nationalization of a commercial bank.

Foreign investment continues to be restricted in the petroleum sector. The exploration, production, refinement, transportation, storage, and foreign and domestic sale of hydrocarbons are reserved to the state. However, private companies may engage in hydrocarbons-related activities through mixed companies and equity joint ventures with the state-owned oil company Petroleos de Venezuela, S.A. (PDVSA). The Venezuelan constitution reserves ownership of PDVSA to the Venezuelan government. Sales to foreign investors of interests in subsidiaries and affiliates of PDVSA are permitted following approval by the government.

Since 2004, the national government has made significant changes to royalty policies, tax policies and contracts involving hydrocarbons-related activities. This has substantially increased uncertainty in the hydrocarbons sector and raised concerns of companies operating in Venezuela.

In 2006, the government transferred operating service agreements to mixed companies in which PDVSA holds a majority stake. President Chavez issued a decree in late February 2007 requiring four strategic associations (joint venture projects relating to the development of Venezuela's extra heavy crude oil reserves) to convert to PDVSA control joint ventures in which the government would hold at least a 60 percent equity stake. The decree established a deadline of April 30, 2007, for completing the transfer. ConocoPhillips and ExxonMobil refused to transfer their investment stakes in three of the strategic associations. As a result, the Venezuelan government took control of these investments. Both companies viewed the government's actions as expropriations and attempted to negotiate with Venezuelan authorities regarding compensation. Both companies have filed arbitration claims against the Venezuelan government. The United States is monitoring the process closely, has consulted with the affected U.S. companies, and has publicly stated its expectation that U.S. companies will receive fair treatment, including timely, adequate, and effective compensation.

In October 2008, PDVSA announced a new bid round for four blocks of the country's heavy crude reserves in Eastern Venezuela. Three additional blocks were added to the announced tender in early December 2008. National oil companies from politically strategic partner countries seem to be the preferred partners for the development of new projects.

The Gaseous Hydrocarbons Law of 1999 offers more liberal terms than the 2001 Hydrocarbons Law, and the Venezuelan government has sought foreign investment to develop offshore natural gas deposits.

Both the 2001 Hydrocarbons Law and the Gaseous Hydrocarbons Law require that there be a competitive process for the identification of private partners for projects to be developed by PDVSA. However, the government may directly award contracts when the project is to be developed under special circumstances, or is of national interest.

The government passed legislation in 1998, aimed at introducing domestic and foreign competition into the domestic gasoline market. The law allowed foreign and private Venezuelan investors to own and operate service stations, although the government retained the right to set product prices. The government has not raised gasoline prices in several years, and currency devaluations and a high inflation rate eliminated service station profit margins. An Organic Law on the Restructuring of the Internal Liquid Fuels Market came into effect on September 18, 2008. The law mandates government control of domestic transportation and wholesale of liquid fuels and set a 60 day period for negotiations with the affected companies. All establishments that carry out retail activities of liquid fuels will be re-branded as PDVSA. The law does not define the term "liquid fuels," which creates uncertainty as to whether it will apply to products other than gasoline or diesel fuel, such as motor oils or lubricants.

Electric power generation, transmission, and distribution are open to private participation under Venezuelan law. However, President Chavez announced in January 2007 that the Venezuelan government would nationalize strategic areas including telecommunications and electricity. As a result, the U.S. power generating company, AES Corporation, sold its 82.14 percent stake in Electricidad de Caracas, the company that provides power to the Caracas metropolitan area, to the Venezuelan government in March 2007. The government also purchased the assets of several smaller power producers.

Private participation is allowed in the mining sector. In early 2005, President Chavez reorganized the ministries that govern the energy and mining sectors. One result of this restructuring was to increase control over basic industries at the ministerial level and to strengthen the state-owned Corporacion Venezolana de Guayana (CVG), which controls steel and aluminum production, electricity generation, and mining. Under its new board of directors, named in February 2005, CVG announced a review of all existing contracts between CVG companies and third parties. A draft mining law currently in the National Assembly seeks to repeal "inactive" concessions to foreign countries and to structure the mining sector under a joint-venture model.

Supply contracts by CVG companies are currently under review by the Ministry of Basic Industries and Mining (MIBAM). The Venezuelan government is looking to increase the development of downstream industrial sectors and to add value to Venezuelan exports. To this end, MIBAM is taking several steps to help local companies, including making available to them a higher percentage of materials, improving payment terms, and providing discounts of up to 10 percent.

Foreign participation is restricted to a maximum of 19.9 percent in professional firms.

VIETNAM

TRADE SUMMARY

The U.S. goods trade deficit with Vietnam was $10.1 billion in 2008, an increase of $1.4 billion from $8.7 billion in 2007. U.S. goods exports in 2008 were $2.8 billion, up 46.6 percent from the previous year. Corresponding U.S. imports from Vietnam were $12.9 billion, up 21.3 percent. Vietnam is currently the 50th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Vietnam was $281 million in 2007 (latest data available), down from $314 million in 2006.

The United States and Vietnam met four times in 2008 under the Trade and Investment Framework Agreement (TIFA). These meetings provided a forum to help monitor and implement Vietnam's WTO commitments, address bilateral trade issues, and promote increased trade and investment. In June 2008, the two countries launched negotiations for a Bilateral Investment Treaty.

IMPORT POLICIES

Tariffs

The United States negotiated significant reductions in tariff rates for many key U.S. exports in the context of Vietnam's entry into the WTO in January 2007. As a result, the vast majority of U.S. exports now face tariffs of 15 percent or less. High tariffs on selected products remain, however, including on agricultural products, such as fresh apples, cooked and raw frozen poultry, cheese, potato products, prepared meat products, flatbread, tomato concentrate, and ice cream powder. Several beverage products also face high tariffs, including distilled spirits, powdered teas, nutritional supplements, and protein drink mixes. Vietnam also imposes high tariffs on selected equipment for restaurant use and large engine motorcycles. In 2008, Vietnam raised applied tariffs on a number of imports, including meat and poultry, automobiles, and automobile parts, partially reversing substantial tariff reductions made in 2007.

Nontariff barriers (NTBs)

Vietnam has made significant progress in eliminating nontariff barriers (NTBs) under the 2001 United States-Vietnam Bilateral Trade Agreement (BTA) and through Vietnam's accession to the WTO. As a result, Vietnam has eliminated any quantitative restrictions on imports or other nontariff measures, such as quotas, bans, permits, prior authorization requirements, licensing requirements, or other restrictions having the same effect, that would not be consistent with its WTO commitments.

Import prohibitions: Vietnam currently prohibits the commercial importation of a limited number of products, including cultural products deemed "depraved and reactionary," firecrackers, certain children's toys, second-hand consumer goods, right-hand drive motor vehicles, and used spare parts for vehicles.

Quantitative restrictions and import licensing: Salt, tobacco, eggs, and sugar are under a tariff-rate quota regime. In 2008, Vietnam introduced an import licensing regime on a number of products, mostly consumer goods. The United States has expressed concerns regarding the discretionary nature of elements of these regulations and will continue to monitor this issue.

Customs: Vietnam implemented the WTO Customs Valuation Agreement through the 2006 Customs Law and related implementing regulations, significantly improving customs valuation in Vietnam. However, U.S. exporters report that inefficient customs clearance remains a key concern. The United States will continue to work with Vietnam to monitor implementation of the WTO Customs Valuation Agreement and other customs issues as part of the ongoing TIFA dialogue.

Trading rights: Import rights are granted for all products except for a limited number of products reserved for importation through state trading enterprises and those products subject to a phase-in period under Vietnam's WTO accession agreement. Vietnam has reserved the right of importation for state trading entities in the following product categories: cigars and cigarettes, crude oil, newspapers, journals and periodicals; and recorded media for sound or pictures (with certain exclusions).

Taxes: Vietnam applies a value added tax on goods and services in a number of categories listed in the Law on Value Added Tax, and related implementing regulations. Certain goods in Vietnam are also subject to an excise tax, levied in accordance with the Law on Excise Tax. This law was revised in late 2008. Consistent with Vietnam's WTO accession commitments, the new law will harmonize excise taxes effective January 1, 2010 to a single *ad valorem* rate for all beer, regardless of packaging, and for all distilled spirits over 20 percent alcohol by volume.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Sanitary and Phytosanitary Measures (SPS)

Vietnam is working on bringing its SPS regime in line with international standards. The Ministry of Agriculture and Rural Development currently serves as Vietnam's enquiry point and notification authority under the WTO Agreement on SPS. Vietnam established its SPS National Authority in October 2007 and made its first notifications to the WTO in January 2008.

The United States continues to urge Vietnam to adopt SPS measures consistent with international guidelines, recommendations, and standards, specifically for beef and poultry imports. In May 2006, the United States and Vietnam concluded an agreement in which Vietnam agreed to recognize the U.S. food safety and inspection systems for beef, pork, and poultry as equivalent to its own inspection system. At that same time, Vietnam opened its domestic market to imports of U.S. beef and beef products from cattle under 30 months of age. The United States is working with Vietnam to secure full market opening for all U.S. beef and beef products from cattle of all ages in accordance with the World Organization for Animal Health (OIE) guidelines for a "controlled risk" country for bovine spongiform encephalopathy (BSE). Vietnam is currently conducting a risk assessment of the United States' BSE controls for all ages. The United States also has raised concerns with Vietnam regarding the scientific basis for Vietnam's zero tolerance for salmonella on uncooked poultry meat.

Vietnam is developing agricultural biotechnology regulations for establishing field trials, protecting biodiversity, assessing risks to human health, and managing trade in biotechnology-derived products. While some of these regulatory developments are promising for biotechnology adoption, others raise potential concerns. The United States will continue to engage with Vietnam to assure that the flow of trade in biotechnology-derived commodities remains unhindered.

Standards and Technical Barriers to Trade

The 2007 Law on Standards and Technical Regulations designated the Ministry of Science and Technology as the responsible agency for issuing and managing national standards, while line ministries are responsible for national technical regulations. Vietnam's Directorate for Standards and Quality is the enquiry and notification point under the WTO Agreement on Technical Barriers to Trade.

Pharmaceutical companies have raised concerns about possible discriminatory treatment against foreign firms across a range of product registration requirements for imported pharmaceuticals. The United States will continue to work closely with the Ministry of Health and other relevant agencies to seek improvements in the transparency of the pharmaceutical regulatory process.

GOVERNMENT PROCUREMENT

Vietnam's 2006 Law on Procurement provides for greater transparency in procurement procedures, decentralization of procurement decision making to the ministries, agencies, and local authorities, appeal processes, and enforcement provisions. The U.S. software industry has expressed concern about the Vietnamese government's promotion of the use of open source software by government agencies, including specific preferences for open source software in government procurement. It continues to urge the Vietnamese government to use a merit-based approach to software procurement decisions consistent with the APEC Technology Choice Pathfinder Agreement that Vietnam signed in 2006.

Vietnam is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

In 2008, Vietnam abolished the Export Assistance Fund, a support program that, among other things, provided financial support for limited periods of time to exporters facing financial difficulties.

INTELLECTUAL PROPERTY RIGHTS (IPR)

Vietnam has made considerable progress over the past few years in modernizing its legal framework for IPR protection. The 2005 Intellectual Property Law (IP Law) established the legal framework for the civil litigation of IPR cases and authorized the courts to provide injunctive relief. Vietnam also revised its Civil Code in 2005 to increase the scope of protected IPR, including satellite signal carrying encrypted programs, layout-designs of semiconductor integrated circuits, business secrets, trade names, plant varieties, and geographical indications. In August 2008, Vietnam issued a revised ordinance governing the levels of administrative fines in an attempt to ensure that administrative agencies were able to utilize the fine structure provided for in the IP Law. Nonetheless, the United States remains concerned about a range of IPR issues and will continue to work closely with Vietnam to address these concerns and strengthen its IPR regime.

Intellectual Property Laws

Trademark infringement is widespread and victims of trademark infringement have encountered difficulties implementing National Office of Intellectual Property (NOIP) enforcement decisions, despite recent positive developments in enforcement. Obtaining expeditious adjudication of patent and trademark violations remains difficult and enforcement of administrative and court findings of IPR infringement remain problematic. The United States is working closely with both U.S. industry and relevant Vietnamese agencies under the TIFA to improve implementation of Vietnam's laws and regulations with respect to protection of intellectual property.

Vietnam has regulations addressing the protection against unfair commercial use of undisclosed test and other data submitted to regulatory authorities to obtain marketing approval for pharmaceutical and agricultural chemical products. The U.S. pharmaceutical industry has expressed concerns regarding implementation of these regulations. Literary, artistic, architectural, and scientific works receive copyright protection, and performances, sound recordings, visual recordings, broadcasts, and satellite signals carrying encoded programs receive related rights protection. After Vietnam joined the Berne and Geneva Conventions, the Vietnam Office of Literary and Artistic Copyright under the Ministry of Culture, Sports and Tourism, which manages copyrights and related rights protection, made an effort to tighten copyright protection on foreign musical and theatrical works, and sound recordings. All event organizers must now obtain permission in writing from copyright holders before performing their works.

Enforcement

Vietnam has been working to strengthen its enforcement regime. In 2008, it issued an inter-ministerial circular providing for criminal penalties for willful and commercial-scale copyright infringement and trademark counterfeiting. Draft IPR-specific revisions to modernize the Criminal Code to meet international standards are under review and are expected to be submitted to the National Assembly for consideration in 2009.

Administrative remedies remain the most commonly used means of enforcing IPR in Vietnam because they are the most cost effective and the least time consuming. Substantial compensation for IPR violations, however, is only available under the civil remedies section of the IP Law. Vietnam's courts are untested in this regard, and concerns remain as to whether rights holders have adequate access to effective civil remedies under the IP Law. Criminal offences are prosecuted under the Criminal Code, and criminal proceedings are regulated under the Criminal Procedure Code. In practice, criminal prosecutions typically require large-scale IPR violations involving large quantities or high value goods.

Despite the progress in putting in place a legal framework for copyright protection, enforcement remains uneven, particularly for certain categories of physical products, such as software, music and video CDs, VCDs, and DVDs. Industry estimates that piracy rates for software, music, and videos have run in excess of 90 percent over the past several years. Vietnamese police have investigated, and in some cases raided and fined, businesses suspected of using pirated software. Rights holders continue to seek additional enforcement actions against the variety of devices used for signal theft and the illegal distribution of movies by television broadcasters. Vietnam took effective action in 2008 against a state-owned cable broadcast company after the U.S. Government and industry raised concerns. Vietnam also has taken some initial action to address the rising rates of Internet piracy, reportedly fining two internet service providers for offering unlicensed content for download. The U.S. Government will continue to work with Vietnamese authorities to improve their ability to extend copyright protection to the digital and broadcast environments.

SERVICES BARRIERS

In the BTA and in Vietnam’s WTO services schedule, Vietnam committed to a high level of liberalization in a broad array of service sectors, including financial services, telecommunications, express delivery, the professions, and distribution services. As part of these negotiations, Vietnam also retained some market access limitations and exceptions to national treatment.

Advertising and Marketing Research Services

Vietnam restricts advertising of spirits and most wines in print, electronic, and broadcast media.

Audiovisual Services

Foreigners may invest in cinema construction and operation only through joint ventures with local Vietnamese partners, subject to government approval. In addition, the total number of foreign films imported into Vietnam each year may not exceed two thirds of the number of films domestically produced. Imported films are subject to censorship before public viewing, a process which is nontransparent and for which the right of appeal of a censor's decisions is not well established.

Express Delivery Services

Foreign participation in joint ventures with express delivery service providers currently is limited to 51 percent of a firm's equity. By January 2012, 100 percent foreign ownership will be permitted in this sector.

Telecommunications

Foreign participation in joint ventures with service providers is permitted, with varying equity limitations depending on the sub-sector (there are five basic and eight value added sub-sectors). For instance, foreign ownership in private networks is permitted up to 70 percent, while facility-based basic services (*e.g.*, public voice service owning transmission facilities) is generally capped at 49 percent. In January 2010, foreign equity of up to 65 percent will be allowed for non-facilities based service suppliers (*i.e.*, suppliers which do not own transmission capacity but contract for such capacity, including submarine cable capacity from a facilities-based supplier). Vietnam's regulations for the telecommunications sector have not been updated following Vietnam's WTO accession, but it is currently drafting a new, comprehensive telecommunications law. The United States has encouraged Vietnam to ensure that this new law is developed in a transparent and WTO-consistent manner.

While Vietnam has opened up the telecommunications sector to competition, the facilities-based market is generally still restricted to state-owned or state-controlled enterprises, although joint ventures with foreign firms are possible. In 2010, Vietnam will open its telecommunications market and permit majority-owned foreign supply in basic public telecommunications services offered on a non-facilities basis (fixed and mobile services offered by leasing transmission capacity from a Vietnamese company).

Distribution Services

Foreign participation in this sector is allowed without equity limitations. However, certain goods are excluded from Vietnam's distribution sector commitments either during a phase-out period or for indefinite time period, as set out in Vietnam's WTO Schedule of Specific Commitments. The United States continues to urge Vietnam to further reduce or eliminate these product specific restrictions, including in the distribution of videos (tapes, VCDs, and DVDs) and pharmaceuticals.

Banking and Securities Services

Foreign equity in joint venture banks is limited to 49 percent. In 2012, 100 percent foreign ownership of securities firms will be permitted.

INVESTMENT BARRIERS

Vietnam's Investment Law sets criteria designating certain sectors in which foreign investment is prohibited and others in which foreign investment is subject to conditions ("conditional sectors").

Vietnam also has specific laws that apply to investment in conditional sectors such as banking, securities, and insurance. Investments greater than VND300 billion (approximately US$ 17 million), those in conditional sectors, and other projects deemed sensitive are subject to extensive and additional review, sometimes requiring the Prime Minister's approval, which can often delay the approval of investment licenses.

All land in Vietnam is owned and managed by the state and, as such, neither foreigners nor Vietnamese nationals can own land. The Land Law of 2003 permits foreign invested enterprises to lease land for a renewable period of 50 years, obtain land use rights, and mortgage both the structures erected on that land and the value of land use rights.

ELECTRONIC COMMERCE

Electronic commerce remains under developed in Vietnam. Development has been hampered by the low number of Internet subscribers, government fire walls, limited bandwidth and other problems with the Internet infrastructure, limited the financial services sector (including few credit cards users), and regulatory barriers. The 2006 Law on Electronic Transactions gave legal standing to electronic contracts and electronic signatures, and allocated the responsibilities of parties with respect to the transmission and receipt of electronic data.

OTHER BARRIERS

Both foreign and domestic firms have identified corruption in Vietnam in all phases of business operations as an obstacle to their business activities. The lack of transparency, accountability, and media freedom, as well as widespread official corruption and inefficient bureaucracy remain serious problems. Competition among government agencies for control over business and investments has created confusing and overlapping jurisdictions, and overly bureaucratic procedures and approvals, which in turn create opportunities for corruption. Low pay for government officials and inadequate accountability systems contribute to these problems. In 2008, Vietnam scored a 2.7 out of a possible score of 10 points on Transparency International's Corruption Perception Index, ranking 121 out of 180 countries. Top leaders in the Communist Party of Vietnam and Vietnamese government officials have publicly acknowledged that these are urgent problems. With the assistance of the United States and other donors, Vietnam is in the process of implementing a public administration reform program and continuing to enhance transparency. The United States will continue to work with Vietnam to support administrative reform efforts and promote greater transparency.

APPENDIX
US Data for Given Trade Partners in Rank Order of US Goods Exports
(Values in Millions of Dollars)

	Trade Balance		Change	Exports*	Exports*	Change 07/08		Imports**	Imports**	Change 07/08		FDI***	FDI***	% Change	
Country	**2007**	**2008**	**2007-08**	**2007**	**2008**	**Value**	**Percent**	**2007**	**2008**	**Value**	**Percent**	**2006**	**2007**	**2006-07**	**FDI Area**
World	-794,483	-800,006	-5,523	1,162,479.3	1,300,135.6	137,656	11.84	1,956,961.8	2,100,141.2	143,179	7.32	2,454,674	2,791,269	13.71	Nonbank Holding Co, Finance/Ins, Manuf
Canada	-68,169	-74,174	-6,006	248,888.1	261,381.0	12,493	5.02	317,056.8	335,555.3	18,499	5.83	230,045	257,058	11.74	Manuf., Finance/Insurance, Mining
Mexico	-74,622	-64,376	10,246	136,092.1	151,538.6	15,446	11.35	210,714.0	215,914.9	5,201	2.47	83,219	91,663	10.15	Manuf, Nonbank Holding Co, Finance/Ins
China	-256,207	-266,333	-10,126	65,236.1	71,457.1	6,221	9.54	321,442.9	337,789.8	16,347	5.09	23,405	28,298	20.91	Manuf
Japan	-82,760	-72,669	10,091	62,703.5	66,579.2	3,876	6.18	145,463.3	139,248.2	-6,215	-4.27	92,383	101,607	9.98	Finance/Ins, Manuf, Nonbank Holding Co
Germany	-44,513	-42,821	1,693	49,651.0	54,732.3	5,081	10.23	94,164.1	97,552.9	3,389	3.60	96,243	107,351	11.54	Nonbank Holding Co, Manuf, Wholesale trade
United Kingdom	-6,629	-4,844	1,785	50,228.7	53,775.1	3,546	7.06	56,857.5	58,619.2	1,762	3.10	375,348	398,836	6.26	Finance/Ins, Nonbank Holding Co, Manuf
Netherlands	14,560	19,083	4,523	32,963.2	40,223.1	7,260	22.02	18,403.1	21,139.9	2,737	14.87	280,514	370,160	31.96	Nonbank Holding Co, Finance, Manuf
Korea, Republic of	-12,918	-13,269	-351	34,644.8	34,807.4	163	0.47	47,562.3	48,076.0	514	1.08	24,609	27,151	10.33	Manuf., Banking, Finance/Insurance
Brazil	-1,019	2,451	3,470	24,625.6	32,910.1	8,284	33.64	25,644.2	30,459.0	4,815	18.78	33,090	41,552	25.57	Manuf, Finance/Ins, Nonbank Holding Co
France	-14,140	-14,810	-670	27,412.5	29,186.9	1,774	6.47	41,552.7	43,997.1	2,444	5.88	62,003	68,454	10.40	Manuf, Nonbank Holding Co
Belgium	10,009	11,666	1,658	25,289.7	29,026.4	3,737	14.78	15,281.2	17,360.3	2,079	13.61	51,137	54,464	6.51	Finance/Insurance, Manuf.,
Singapore	7,891	12,925	5,035	26,284.2	28,809.7	2,526	9.61	18,393.7	15,884.4	-2,509	-13.64	78,436	82,623	5.34	Nonbank Holding Co, Manuf
Taiwan	-11,968	-11,048	921	26,309.2	25,279.4	-1,030	-3.91	38,277.6	36,327.1	-1,951	-5.10	16,374	16,374	0.00	Finance/Ins, Manuf., Wholesale trade
Australia	10,597	11,870	1,273	19,211.7	22,456.8	3,245	16.89	8,615.0	10,587.0	1,972	22.89	68,484	79,027	15.39	Nonbank Holding Co, Manuf, Mining
Switzerland	2,279	4,237	1,958	17,039.3	22,023.3	4,984	29.25	14,760.2	17,786.5	3,026	20.50	115,216	127,709	10.84	Nonbank Holding Co, Wholesale trade
Hong Kong	13,092	15,149	2,057	20,117.8	21,633.4	1,516	7.53	7,026.0	6,484.6	-541	-7.71	41,019	47,431	15.63	Nonbank Holding Co, Fin/Ins, Wholesale trade
India	-6,485	-7,095	-611	17,588.5	18,666.5	1,078	6.13	24,073.3	25,761.9	1,689	7.01	9,226	13,633	47.77	Information, Manuf, Banking
United Arab Emirates	10,267	14,455	4,188	11,604.8	15,748.8	4,144	35.71	1,337.5	1,293.9	-44	-3.26	3,621	3,846	6.21	Mining
Italy	-20,878	-20,665	213	14,149.6	15,478.6	1,329	9.39	35,027.6	36,143.4	1,116	3.19	26,342	28,408	7.84	Manuf, Information, Finance/Insurance
Israel	-7,775	-7,847	-72	13,019.3	14,486.5	1,467	11.27	20,794.4	22,333.7	1,539	7.40	9,427	10,119	7.34	Manuf, Information
Malaysia	-20,948	-17,777	3,172	11,680.2	12,963.0	1,283	10.98	32,628.5	30,739.7	-1,889	-5.79	12,557	15,699	25.02	Manuf
Venezuela	-29,709	-38,790	-9,081	10,200.5	12,611.1	2,411	23.63	39,909.6	51,401.2	11,492	28.79	10,066	9,974	-0.91	Manuf, Nonbank Holding Co, Mining
Saudi Arabia	-25,230	-42,308	-17,078	10,395.9	12,478.0	2,082	20.03	35,626.0	54,786.2	19,160	53.78	4,737	5,345	12.84	Nonbank Holding Co
Spain	-636	1,195	1,831	9,861.9	12,283.0	2,421	24.55	10,498.1	11,088.1	590	5.62	50,759	55,894	10.12	Nonbank Holding Co, Manuf, Finance/Ins
Chile	-684	3,905	4,589	8,314.8	12,093.5	3,779	45.45	8,998.8	8,189.0	-810	-9.00	11,356	12,632	11.24	Finance/Insurance, Manuf., Mining, Banking
Colombia	-876	-1,654	-778	8,557.7	11,438.8	2,881	33.67	9,433.6	13,093.1	3,660	38.79	4,622	5,603	21.22	Mining, Manuf.,
Turkey	1,989	5,798	3,808	6,589.9	10,439.7	3,850	58.42	4,600.6	4,642.0	41	0.90	2,576	4,905	90.41	Banking, Manuf
Russia	-11,949	-17,440	-5,491	7,365.4	9,335.4	1,970	26.75	19,314.2	26,775.0	7,461	38.63	10,699	12,986	21.38	Mining
Thailand	-14,300	-14,481	-181	8,454.6	9,066.8	612	7.24	22,754.7	23,547.7	793	3.49	10,911	14,983	37.32	Manuf, Banking, Finance/Ins, Wholesale trade
Ireland	-21,436	-22,915	-1,479	9,008.9	8,652.9	-356	-3.95	30,445.0	31,567.8	1,123	3.69	71,065	87,023	22.46	Manuf, Information, Finance/Insurance
Philippines	-1,696	-403	1,293	7,712.3	8,313.6	601	7.80	9,408.2	8,717.0	-691	-7.35	7,149	6,684	-6.50	Manuf
Argentina	1,369	1,716	348	5,855.9	7,537.9	1,682	28.72	4,486.9	5,821.5	1,335	29.74	13,867	14,868	7.22	Nonbank Holding Co, Mining, Manuf
Dominican Republic	1,868	2,624	755	6,084.1	6,599.1	515	8.47	4,215.6	3,975.6	-240	-5.69	907	933	2.87	Manuf, Wholesale trade
Peru	-1,152	328	1,480	4,119.8	6,184.1	2,064	50.11	5,271.6	5,856.2	585	11.09	4,815	6,811	41.45	Mining
Egypt	2,970	3,660	690	5,346.8	6,030.8	684	12.79	2,376.7	2,370.5	-6	-0.26	6,511	7,513	15.39	Mining
Indonesia	-10,066	-9,886	181	4,234.8	5,913.1	1,678	39.63	14,301.3	15,799.0	1,498	10.47	9,864	10,049	1.88	Mining
Costa Rica	639	1,744	1,105	4,580.5	5,681.8	1,101	24.04	3,941.5	3,937.7	-4	-0.10	3,252	3,508	7.87	Manuf, Wholesale trade
Sweden	-8,530	-7,405	1,125	4,494.1	5,084.2	590	13.13	13,023.9	12,488.7	-535	-4.11	33,057	36,372	10.03	Nonbank Holding Co, Manuf
Panama	3,375	4,536	1,162	3,739.8	4,913.3	1,174	31.38	365.2	377.0	12	3.24	4,714	6,243	32.44	
Honduras	549	807	258	4,461.4	4,845.6	384	8.61	3,912.1	4,038.1	126	3.22	1,001	968	-3.30	Manuf, Wholesale trade

* US Total Goods Exports (f.a.s.); ** US General Goods Imports (customs value); *** Stock of US Foreign Direct Investment Abroad

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Country	**2007**	**2008**	**2007-08**	**2007**	**2008**	**Value**	**Percent**	**2007**	**2008**	**Value**	**Percent**	**2006**	**2007**	**2006-07**	**FDI Area**
Guatemala	1,039	1,271	232	4,065.1	4,721.0	656	16.14	3,026.1	3,450.3	424	14.02	437	530	21.28	
Poland	897	1,545	648	3,123.4	4,131.5	1,008	32.27	2,226.0	2,586.5	360	16.19	6,464	8,278	28.06	Manuf, Banking, Finance/Insurance
Nigeria	-29,992	-33,966	-3,974	2,777.9	4,102.0	1,324	47.66	32,770.2	38,068.2	5,298	16.17	190			
Finland	-2,133	-2,145	-12	3,133.4	3,761.6	628	20.05	5,266.2	5,906.2	640	12.15	2,499	2,683	7.36	Manuf, Wholesale trade
Ecuador	-3,199	-5,598	-2,399	2,935.6	3,450.2	515	17.53	6,135.0	9,048.5	2,913	47.49	554	673	21.48	Mining, Manuf., Wholesale trade
Norway	-4,256	-3,910	346	3,061.7	3,400.3	339	11.06	7,317.7	7,310.5	-7	-0.10	10,330	11,650	12.78	Mining, Manuf,
Qatar	2,280	2,593	313	2,756.7	3,076.8	320	11.61	477.1	484.3	7	1.49	5,393	7,139	32.38	
Vietnam	-8,730	-10,111	-1,381	1,903.1	2,789.9	887	46.60	10,632.8	12,900.7	2,268	21.33	314	281	-10.51	
Kuwait	-1,634	-4,374	-2,739	2,484.0	2,719.4	235	9.47	4,118.5	7,093.0	2,975	72.22	637			
Denmark	-3,135	-3,682	-548	2,929.5	2,712.1	-217	-7.42	6,064.4	6,394.6	330	5.45	6,979	7,903	13.24	Manuf, Nonbank Holding Co, Wholesale trade
Austria	-7,497	-5,821	1,675	3,172.1	2,649.3	-523	-16.48	10,668.9	8,470.7	-2,198	-20.60	17,909	20,490	14.41	Nonbank Holding Co, Manuf, Wholesale trade
Portugal	-571	195	766	2,478.5	2,646.0	167	6.76	3,049.3	2,451.0	-598	-19.62	2,864	3,702	29.26	Wholesale trade, Manuf, Finance/Insurance
New Zealand	-299	-595	-296	2,814.4	2,570.1	-244	-8.68	3,113.4	3,164.8	51	1.65	5,974	5,385	-9.86	Manuf, Finance/Insurance
El Salvador	270	236	-34	2,313.1	2,463.7	151	6.51	2,043.5	2,227.9	184	9.02	638	1,381	116.46	
Angola	-11,227	-16,794	-5,566	1,280.1	2,117.0	837	65.37	12,507.6	18,910.7	6,403	51.19	1,408	876	-37.78	
Pakistan	-1,543	-1,598	-55	2,035.0	1,993.1	-42	-2.06	3,577.6	3,590.6	13	0.36	1,198	674	-43.74	
Greece	918	933	15	2,110.2	1,931.8	-178	-8.46	1,191.9	998.9	-193	-16.20	1,985	1,829	-7.86	Wholesale trade, Finance/Insurance
Ukraine	122	-472	-594	1,342.1	1,868.1	526	39.19	1,220.1	2,340.0	1,120	91.79	549	1,272		
Paraguay	1,169	1,532	363	1,236.7	1,610.0	373	30.18	68.0	78.4	10	15.35	91			
Morocco	733	640	-93	1,342.7	1,518.8	176	13.11	609.9	878.7	269	44.07	130	238	83.08	
Oman	18	563	545	1,059.2	1,415.4	356	33.63	1,040.9	851.9	-189	-18.16				
Nicaragua	-714	-611	103	890.0	1,093.0	203	22.82	1,603.5	1,703.7	100	6.25	145	203	40.00	
Luxembourg	475	529	54	1,001.1	1,065.0	64	6.38	526.2	536.3	10	1.91	94,554	113,611	20.15	Nonbank Holding Co, Finance/Insurance
Romania	-378	-58	319	676.6	1,048.5	372	54.97	1,054.4	1,107.0	53	4.99	833	1,215	45.86	
Kazakhstan	-499	-618	-119	752.8	985.5	233	30.92	1,251.5	1,603.4	352	28.12	4,548	4,870	7.08	
Jordan	-473	-198	275	856.2	940.5	84	9.85	1,328.9	1,138.6	-190	-14.32	39	119	205.13	
Bahrain	-33	291	324	591.3	829.5	238	40.28	624.6	538.9	-86	-13.72	138	60	-56.52	
Ghana	218	386	169	416.4	608.7	192	46.18	198.8	222.4	24	11.84	306			
Bulgaria	-120	119	239	306.1	509.4	203	66.41	426.1	390.8	-35	-8.28	143	175	22.38	
Kenya	252	131	-122	577.9	474.4	-103	-17.91	325.4	343.6	18	5.56	166	193	16.27	
Bolivia	-85	-122	-37	277.7	389.1	111	40.13	362.6	510.8	148	40.89	282	262	-7.09	
Ethiopia	79	149	70	167.5	301.6	134	80.07	88.2	152.2	64	72.54	2	2	0.00	
Sri Lanka	-1,838	-1,678	160	227.1	283.3	56	24.70	2,065.1	1,961.3	-104	-5.03	69	80	15.94	
Cote d'Ivoire	-439	-838	-399	161.6	254.1	93	57.24	600.1	1,091.6	491	81.90	257	180	-29.96	
Cambodia	-2,325	-2,257	67	138.8	154.1	15	11.01	2,463.4	2,411.3	-52	-2.11				
Cameroon	-164	-489	-325	132.9	125.0	-8	-5.92	297.3	614.0	317	106.57	114	71	-37.72	
Brunei	-265	-3	262	139.6	111.5	-28	-20.14	404.6	114.3	-290	-71.76	27	28	3.70	
Laos	-15	-24	-10	5.5	18.3	13	235.72	20.0	42.4	22	112.25				
European Union - 27	-107,167	-93,417	13,751	247,241.8	274,509.8	27,268	11.03	354,409.3	367,926.6	13,517	3.81	1,188,254	1,376,926	15.88	Nonbank Holding Co, Finance/Ins, Manuf
SACU	-4,310	-4,152	158	5,739.6	6,850.7	1,111	19.36	10,049.7	11,002.3	953	9.48	4,138	4,861	17.47	

* US Total Goods Exports (f.a.s.); ** US General Goods Imports (customs value); *** Stock of US Foreign Direct Investment Abroad

Appendix 2
U.S. FDI Stock as a Share of Advanced Countries' GDP, 2007[1]

Country	U.S. FDI Stock 2007	Country's GDP 2007	U.S. FDI Stock as a Share of Country's GDP 2007
	Billions of U.S. Dollars		
Luxembourg	113.6	49.5	229.4%
Singapore	82.6	161.3	51.2%
Netherlands	370.2	777.2	47.6%
Ireland	87.0	261.2	33.3%
Switzerland	127.7	427.1	29.9%
Hong Kong	47.4	207.2	22.9%
Canada	257.1	1,436.1	17.9%
United Kingdom	398.8	2,804.4	14.2%
Belgium	54.5	454.3	12.0%
Australia	79.0	909.0	8.7%
Sweden	36.4	454.8	8.0%
Israel	10.1	164.1	6.2%
Austria	20.5	371.2	5.5%
Taiwan	16.4	383.3	4.3%
New Zealand	5.4	128.7	4.2%
Malta	0.3	7.5	4.1%
Spain	55.9	1,440.0	3.9%
Germany	107.4	3,320.9	3.2%
Norway	11.7	389.5	3.0%
Korea	27.2	969.9	2.8%
France	68.5	2,593.8	2.6%
Denmark	7.9	312.0	2.5%
Japan	101.6	4,381.6	2.3%
Portugal	3.7	223.4	1.7%
Italy	28.4	2,104.7	1.3%
Finland	2.7	246.4	1.1%
Cyprus	0.2	21.3	1.1%
Greece	1.8	313.8	0.6%
Slovenia	0.2	46.1	0.3%

[1] Advanced countries as defined by the International Monetary Fund.

Sources: U.S. Department of Commerce and the International Monetary Fund.