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LIST OF FREQUENTLY USED ACRONYMS

Acronym	Meaning
APEC	Asia Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
BIT	Bilateral Investment Treaty
CACM	Central American Common Market
CARICOM	Caribbean Common Market
CFTA	Canada Free Trade Agreement
EU	European Union
EFTA	European Free Trade Association
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GCC	Gulf Cooperation Council
GDP	Gross Domestic Product
GSP	Generalized System of Preferences
IPR	Intellectual Property Rights
ITA	Information Technology Agreement
MAI	Multilateral Agreement on Investment
MERCOSUR	Southern Common Market
MFA	Multifiber Arrangement
MOSS	Market-Oriented-Sector-Selective
MOU	Memorandum of Understanding
MRA	Mutual Recognition Agreement
NAFTA	North American Free Trade Agreement
NIS	Newly Independent States
OECD	Organization for Economic Cooperation and Development
SADC	Southern African Development Community
TRIPs	Trade-Related Aspects of Intellectual Property Rights
USDA	U.S. Department of Agriculture
USITC	U.S. International Trade Commission
USTR	United States Trade Representative
WTO	World Trade Organization

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FOREWORD

The 1998 National Trade Estimate Report on Foreign Trade Barriers (NTE) is the thirteenth in an annual series that surveys significant foreign barriers to U.S. exports.

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

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

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 actions being taken to eliminate any act, policy, or practice identified in the report.

SCOPE AND COVERAGE

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

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

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

! Standards, testing, labeling, and certification (including unnecessarily restrictive application of sanitary and phytosanitary standards and environmental measures, and refusal to accept U.S. manufacturers' self-certification of conformance to foreign product standards);

! Government procurement (e.g., “buy national” policies and closed bidding);

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

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

- Services barriers (e.g., limits on the range of financial services offered by foreign financial institutions,[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); and

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

The NTE report 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 47 nations, the European Union, Taiwan, Hong Kong and two regional bodies. Some countries were excluded from this report due primarily to the relatively small size of their markets or the absence of major trade complaints from representatives of U.S. goods and services sectors. However, the omission of particular countries and barriers does not imply that they are not of concern to the United States.

In prior reports, most non-market economies also were excluded, since the trade barriers in those countries were qualitatively different from those found in other economies. However, as the economies of the republics of the former Soviet Union and most economies of the countries of Central Europe evolve away from central planning toward a market orientation, some of them have changed sufficiently to warrant an examination of their trade regimes. Where such examination has revealed trade barriers, those barriers have been included in this report.

The merchandise trade data contained in the NTE report are based on total U.S. exports, free alongside (f.a.s.)[3] value, and general U.S. imports, customs value (defined in Section 402, Tariff Act of 1930, 19 U.S.C. 1401a), 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 direct investment data are from the September 1997 issue of the Survey of Current Business and unpublished data from the Bureau of Economic Analysis, Department of Commerce.

TRADE IMPACT ESTIMATES AND FOREIGN BARRIERS

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

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

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

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

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

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

it then becomes derivatively difficult to estimate the effect of even the overlapping tariff barriers on U.S. exports.

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

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

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

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

March 31, 1998

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 (most recently in 1994) the National Treatment Study. Prepared in collaboration with the Secretary of State, the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, and the Department of Commerce, the Study analyzes in detail treatment of U.S. commercial banks and securities firms in foreign markets. It is intended as an authoritative reference for assessing financial services regimes abroad.

2. Corruption takes many forms. For example, in many countries, it is seen in government procurement and customs practices. If left unchecked, bribery and corruption can negate market access gained through trade negotiations and could frustrate the reforms being undertaken by many countries and undermine the foundations of the international trading system.
Information on specific problems associated with bribery and corruption is difficult to obtain, particularly since perpetrators go to great lengths to conceal their activities. Nevertheless, a consistent complaint from U.S. firms is that they have experienced situations that suggest corruption has played a role in the award of foreign contracts. This is particularly true in large infrastructure projects.

Since the United States enacted the Foreign Corrupt Practices Act (FCPA) in 1977, U.S. companies have been prohibited from bribing foreign public officials. The result has been that foreign firms in international business transactions have enjoyed a competitive advantage, particularly in the developing world.

The United States Government has been well aware of the discrepancy between U.S. law and that of its competitors, and has taken a leading role in addressing bribery and corruption in international business transactions with its trading partners at the Organization for Economic Cooperation and Development (OECD). With the strong urging of the United States, at the 1996 OECD Ministerial meeting, Ministers committed to take steps to eliminate the tax deductibility in their countries of bribes to foreign public officials, to criminalize bribery, and to examine methods to accomplish those objectives. In May 1997, OECD member countries agreed to criminalize bribery and complete negotiations on an international convention by the end of the year. This goal was achieved in November 1997, when negotiators from thirty-four countries (the twenty-nine OECD member states and five other nations (Argentina, Brazil, Bulgaria, Chile and the Slovak Republic)) adopted a Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The Convention was signed by representatives of thirty-three participating countries on December 17, 1997 in Paris. Secretary of State Albright signed on behalf of the United States. Parties to the Convention are in the process of submitting the Convention and implementing legislation to their legislatures, and have agreed to seek ratification of the Convention and enactment of legislation by the end of 1998.

In March 1996, countries in the Western Hemisphere concluded negotiation of the Inter-American Convention Against Corruption. This Convention, a direct result of the Summit of the Americas Plan of Action, requires that parties criminalize bribery throughout the region, and describes criminalization using language modeled on the FCPA. The Convention entered into force in March 1997 for those countries which have ratified the Convention. The United States is taking steps towards ratification of the Convention. Meanwhile, the Organization of American States is working on a set of model laws that ratifying countries can use to implement the Convention.

To complement efforts in these fora, the United States has pressed the World Trade Organization (WTO) to take up work in related areas. Because corruption in trade transactions often has its genesis in the absence of a rules-based customs environment, the United States has provided leadership at the WTO in several areas to address some of the problems associated with bribery and corruption in the customs area. The Working Party on Preshipment Inspection issued a report that included several immediate actions to be undertaken by Members to strengthen the operation of the Agreement on Preshipment Inspection. In adopting this report, the WTO General Council also extended the life of the Working Party for another year, with a specific mandate that included addressing customs reform. The United States has also led an initiative to ensure full and timely implementation of the WTO Agreement on Customs Valuation. Finally, as part of the follow-up to the 1996 WTO Ministerial decision to undertake exploratory and analytical work on the simplification of trade and customs procedures, the United States has identified the matter of customs integrity as a priority item.

In addition, at the 1996 WTO Ministerial Conference in Singapore, the United States succeeded in securing agreement to initiate work on transparency in government procurement in the WTO. Accordingly, the WTO Working Group on Transparency in Government Procurement was established and held its first meetings in 1997. The Working Group has made significant progress on its mandate, which calls for conducting a study on transparency in government procurement and developing elements for inclusion in a multilateral agreement. The United States views a WTO agreement on transparency in government procurement as an important complement to its efforts to combat corruption relating to government procurement worldwide and believes that the agreement should address fundamental aspects of transparency, including:

- Publication of information regarding the regulatory framework for procurement, including relevant laws, regulations and administrative guidelines;

- Publication of information regarding opportunities for participation in government procurement, including notices of future procurements;

- Utilization of competitive procurement procedures;

- Clear specification in tender documents of evaluation criteria for award of contracts;

- Availability to suppliers of information regarding contracts that have been awarded; and

- Availability of mechanisms to challenge contract awards and other procurement decisions.

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

THE ARAB LEAGUE

(Boycott of Israel)

The Arab League boycott of the state of Israel is an impediment to U.S. trade and investment in the Middle East and North Africa. While the primary aspect of the boycott prohibits the importation of Israeli-origin goods and services into boycotting countries, the secondary and tertiary aspects of the boycott discriminate against U.S. and other foreign firms that do business with both Israel and boycotting countries. (Arab League members include the Palestinian Authority and the following states: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, the United Arab Emirates (U.A.E.), and Yemen.) The secondary and tertiary aspects of the boycott directly affect U.S. exports to the region. The secondary aspect prohibits any entity in Arab League states from engaging in business with U.S. or other foreign firms that contribute to Israel's military or economic development. Such firms are placed on a blacklist maintained by the Damascus-based Central Boycott Office (CBO), a specialized bureau of the Arab League. The tertiary aspect of the boycott prohibits business dealings with U.S. and other firms that do business with blacklisted companies.

The CBO uses a variety of means to determine compliance with the boycott, including analyzing information obtained through questionnaires sent out to third-country individuals and firms. If the CBO suspects that a firm has engaged in proscribed activities, it may recommend that the Israel Boycott Offices of the member states add the firm to the blacklist. Boycott offices of Arab League states are supposed to meet in Damascus twice a year to consider adding foreign firms to (or removing foreign firms from) the blacklist, but there has been no regional boycott meeting since April 1993, and some states have dismantled their boycott offices entirely. The reason given for postponement of meetings has been the inability to assemble a quorum.

The legal structure of the boycott in the Arab League remains unchanged. The de facto status has changed significantly.

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

Egypt has not enforced any aspect of the boycott since 1980, pursuant to its 1979 Treaty of Peace with Israel. Jordan formally terminated its adherence to all aspects of the boycott effective August 16, 1995, when legislation implementing the Treaty of Peace with Israel was enacted. The Palestinian Authority agreed not to enforce the boycott in a 1995 letter to then-U.S. Trade Representative Kantor. In addition, the Gulf Cooperation Council countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the U.A.E.) announced in September 1994 their non-adherence to the secondary and tertiary aspects (a decision which Kuwait had announced previously). Accordingly, requests that foreign firms comply with secondary and tertiary boycott certifications are typically withdrawn when challenged. In 1996, both Oman and Qatar ended boycott enforcement and established reciprocal trade arrangements with Israel. The boycott, however, remains a substantive impediment to doing business in countries which rigidly impose its terms.

Arab League (Boycott of Israel)

Under U.S. antiboycott legislation enacted in 1978, U.S. firms are prohibited from providing any information about business relationships in response to a boycott request and are required to report receipt of any such request to the U.S. Department of Commerce's Office of Antiboycott Compliance. U.S. antiboycott laws also prohibit U.S. persons from taking certain other actions, including refusal to do business with a blacklisted company. Encouragingly, the number of boycott related requests to U.S. firms to take prohibited actions is significantly diminished across the region. In some states, apparent requests now reflect obsolete references in procurement or import documents rather than official policy. The fact that the de jure status of the boycott and U.S. law remain unchanged, however, make the boycott a continuing problem for firms that may have to report boycott-related requests.

Where enforced, the boycott serves as a ban or zero quota on the products of a blacklisted firm. While it is unevenly applied, the boycott results in significant economic harm to U.S. firms in terms of lost sales, foregone opportunities and distortion of investment decisions which are difficult to quantify accurately.

ARGENTINA

In 1997, the U.S. trade surplus with Argentina was $3.6 billion, an increase of $1.6 billion from the surplus in 1996. U.S. merchandise exports to Argentina were $5.8 billion during 1997, an increase of $1.3 billion (28.6 percent) from the level of U.S. exports to Argentina in 1996. Argentina was the United States' twenty-fourth largest export market in 1997. U.S. imports from Argentina were $2.2 billion in 1997, a decrease of $66 million (2.9 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Argentina in 1996 was $8.1 billion, an increase of 7.5 percent from the level of U.S. FDI in 1995. U.S. FDI in Argentina is concentrated largely in the manufacturing, finance, and petroleum sectors.

IMPORT POLICIES

Since 1989, the Menem administration has made significant progress in reducing traditional border measure barriers (such as tariffs and import licenses) and non-border measure barriers (in areas such as investment and government procurement). Still, a number of serious barriers to trade remain.

Tariffs and Duties

Argentina, Brazil, Paraguay, and Uruguay officially established MERCOSUR (the Spanish abbreviation for Southern Common Market) in January 1991. On January 1, 1995, MERCOSUR formed a partial customs union and a common external tariff (CET) covering 85 percent of traded goods. MERCOSUR will gradually phase in coverage of the CET through 2006, when all products should be covered by the customs union. Chile signed a free trade agreement, effective October 1, 1996, with MERCOSUR, but will not participate in the CET. Bolivia entered into a similar arrangement on April 1, 1997.

Prior to November 1997, MERCOSUR's CET ranged from 0 to 20 percent. Under the CET, capital goods and informatics are excepted until 2001, and telecommunications equipment until 2006. In November 1997, Mercosur's members agreed to temporarily raise the CET by three percentage points. Argentina implemented the increase on January 9, 1998. The increase in the CET is effective through December 31, 1999. Argentina's current average tariff (CET plus exceptions) is around 17 percent.

Since 1993, the Government of Argentina has applied specific duties on textiles, apparel, and footwear. In September 1995, the Argentines increased these duties substantially. The duties appear to be inconsistent with Argentina's WTO bound tariff rate of 35 percent ad valorem. Since the time that the duties were promulgated, the United States has asked Argentina to eliminate them and to impose ad valorem duties consistent with Argentina's bound rate. The Argentine Government also imposed, until January 16, 1998, a three percent "statistical tax" on these and other imports, which appears to be equally problematic in light of Argentina's WTO commitments.

The U.S. Government self-initiated a Section 301 investigation regarding the duties and tax in October 1996. After extensive consultations between the United States and Argentina, in which the EU and Hungary

participated, on February 25, 1997, the WTO Dispute Settlement Body established a panel at the request of the United States to review the specific duties and statistical tax. Just before the establishment of the panel, Argentina informed the WTO that it had revoked the specific duties on footwear and replaced them with nearly identical provisional safeguard duties. In September 1997, Argentina extended the application of the safeguard duties on footwear until February 2000.
In November 1997, a WTO dispute settlement panel ruled in favor of the U.S. challenge to the duties and taxes assessed by Argentina. The panel found that Argentina's specific duties on textiles and apparel are excessive and violate Article II of the GATT. The panel also ruled that Argentina's statistical tax on virtually all imports is an impermissible charge in violation of GATT Article VIII. The Argentines have appealed the panel's decision, and in January 1998 they reduced the statistical tax to .5 percent.

The panel determination did not address the specific duties on footwear, given that Argentina had recast those duties as a safeguard measure. The panel decided that it could not provide relief with respect to measures that were no longer in effect. The U.S. has undertaken consultations with Argentina on the safeguard through the WTO Safeguards Committee.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

In October 1995, Argentina suspended imports of fresh fruit from California in response to oriental fruit fly detections in that state. The U.S. Department of Agriculture (USDA) provided Argentina's quarantine agency data and background information on the situation, and Argentina has partially lifted the suspension. USDA continues to press Argentina to completely revoke the suspension.

In addition, certain U.S. fruits, such as Florida citrus, are currently denied access to Argentina, while others face uncertain and non-transparent phytosanitary entry requirements.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Patents

Argentina's lack of adequate and effective patent protection for pharmaceutical products has been a contentious bilateral issue over the last ten years. The patent regime in Argentina does not meet the standards of protection established by TRIPS, nor does it fulfill previous Argentine commitments made to the United States. However, many inconsistencies in the Argentine patent law are not immediately actionable in the WTO, because Argentina has availed itself of the developing country transition period.

In March 1996, Executive Decree 260, which consolidated previous patent laws, authorized the National Intellectual Property Institute to approve pharmaceutical patents only starting in November 2000, specifically permitted parallel imports, and contained ambiguous provisions on compulsory licenses. In December 1996, the Argentine Congress passed unsatisfactory legislation dealing with data exclusivity, and its implementing regulations are currently under consideration by the Government of Argentina. This law permits Argentine competitors to rely on data submitted for product registration in Argentina, the United States, and certain other countries.

U.S. industry estimates that Argentina's lack of pharmaceutical patent protection results in losses of over $500 million a year. In January 1997, during a Special 301 out-of-cycle review (OCR), the U.S. Government announced the suspension of 50 percent of Argentina's GSP benefits effective in May 1997 due to Argentina's lack of patent protection for pharmaceuticals. U.S. officials continue to strongly urge Argentina to improve its patent and data exclusivity regimes.

Copyrights

Argentina's copyright laws are currently under review by the Government of Argentina. Regarding software, the Argentine Government issued a decree in 1994 explicitly extending copyright protection to software and providing criminal sanctions for infringement. However, a local court ruled in late 1995 that the 1994 decree cannot authorize criminal sanctions for software piracy. The Argentine Supreme Court upheld the lower court ruling in December 1997. The Argentine Chamber of Deputies approved a bill making software piracy a crime in November 1997, but the Senate has not yet voted on the measure.

In 1993, the Menem administration issued a decree raising the term of protection for cinematographic works from 30 to 50 years after the death of the author to conform with the Berne Convention standard. Cable television piracy has diminished in recent years. Video piracy, however, is still a severe problem, causing the home video rental market for legitimate tapes to decline significantly. Losses to the U.S. motion picture industry due to audiovisual piracy in Argentina during 1997 are estimated at $30 million. In addition, piracy of products in the sound recording market, virtually all of them imported, has reportedly been on the rise.

The lack of control of the borders, particularly with Paraguay, contributes to the circulation of pirated goods. U.S. industry estimates that losses due to piracy in Argentina total about $255 million annually.

Trademarks

U.S. companies report that they continue to experience problems with enforcement of their trademarks, which is adversely affected by the inability to seek criminal prosecution, monetary damages, and criminal sanctions against counterfeiters.

SERVICES BARRIERS

Although Argentina has undertaken liberalization in the services area as part of its broader economic reform program, some barriers continue to exist. Fifty percent of the participants in the production of any broadcast advertisement must be Argentine, effectively barring use of foreign-based advertisements. In May 1996, the Argentine Government issued a regulation requiring local generation of a majority of cable channels carried by cable/pay television operators in Argentina. The regulation also obliges all operators to register their programming with a government body.

Entry into the insurance sector, previously limited, was liberalized in early 1992, allowing foreign firms established as local companies to compete on an equal footing with those owned by Argentines. However, foreign firms must have a subsidiary in Argentina to sell insurance locally. Since September 1993, foreign companies have been permitted to purchase existing life insurance licenses from Argentine companies,

essentially establishing a new company with these acquired licenses. The Government of Argentina has announced its intent to liberalize the insurance market further in 1998. The privatization of pension funds and workers compensation insurance has attracted a number of U.S. firms.

In October 1994, Law 24.377 modified the existing Argentine film law (Law 17.741). Included in the new legislation is (1) a 10 percent tax on the rental and sale of all home video products; (2) a provision calling for the obligatory exhibition and remuneration of national short subject films; and (3) a provision authorizing the Argentine Film Institute to oversee obligatory local processing, dubbing, and subtitling of foreign films.

In the recently concluded WTO negotiations on basic telecommunications services, Argentina made commitments on most basic telecom services. It also adopted the reference paper on regulatory commitments. However, Argentina is overdue in providing to the WTO an acceptance of the Fourth Protocol to the General Agreement on Trade in Services, which is necessary to bring its commitments on basic telecommunications services into effect. The deadline for submission of acceptance has been extended to July 31, 1998. In addition, Argentina has limited market access and national treatment for cellular services to a duopoly system.

INVESTMENT BARRIERS

Argentina has notified to the WTO measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMS). The measures deal with local content and trade balancing in the automotive industry. Proper notification allows developing-country WTO members to maintain such measures for a five-year transitional period after entry into force of the

WTO. Argentina therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMS to ensure that WTO members meet these obligations.

AUSTRALIA

The U.S. trade surplus with Australia was $7.4 billion in 1997, $698 million lower than in 1996. U.S. merchandise exports to Australia were $12.0 billion, up $49 million (approximately 0.4 percent) from 1996. Australia was the United States fifteenth largest export market in 1997. U.S. imports from Australia totaled $4.6 billion in 1997, a 19.4 percent increase over 1996. The stock of U.S. foreign direct investment in Australia was $28.8 billion in 1996, 15.1 percent higher than in 1995. U.S. direct investment in Australia is largely concentrated in manufacturing and finance.

IMPORT POLICIES

Tariffs

Australia's trade- weighted average tariff, 4.1 percent in 1993-4, is projected to fall to 2.2 percent by 2000-1. With the completion of the Uruguay Round, Australia bound 95 percent of its industrial tariff lines, and the government's genera tariff reduction program has seen most tariffs fall to 5 percent. Australia has committed to further reductions as part of its APEC Individual Action Plan (IAP).

However, in the Uruguay Round, Australia did not join most other OECD countries in agreeing to phase out tariffs on paper and plasterboard products. Nor did it adhere to the "zero for zero" agreement for distilled spirits (Australia is the third largest market for U.S. exports of distilled spirits). The tariff rate on passenger motor vehicles and their original equipment components, currently 20 percent will be reduced in stages to 15 percent by January 1, 2000. In 1997, the Government of Australia announced a freeze on automotive tariff reductions between 2000 and 2005, ignoring the advice of its own industry commission to continue tariff reductions post-2000. Replacement components for passenger vehicles will remain at 15 percent from July 1, 1996 until the year 2000. Under automotive arrangements, automobile manufacturers may import duty free dutiable imported components up to a value equal to 15 percent of their automobile production in a given year. Tariffs on textiles, clothing and footwear are also subject to a phasing schedule that will see tariffs on cotton sheeting and woven fabrics fall to 15 percent by July 1, 2000 (currently up to 19 percent), on apparel and finished textiles to 25 percent (currently up to 31 percent), on carpets to 15 percent (currently 19 percent), and footwear to 15 percent (currently 21 percent). Similar to its automotive decision, the Australian Government announced in 1997 a freeze on reductions in tariffs for textiles, clothing and footwear between 2000 and 2005.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Government of Australia limits livestock and poultry imports through quarantine and health restrictions. For some of these, the Australian Government has not completed a risk assessment that would provide the WTO-required scientific basis for imposing such restrictions. The Federal Government decided to lift the ban on cooked chicken imports from the U.S., Denmark and Thailand. The United States believes the recommended temperature/time requirements applicable to the treatment of processed cooked poultry meat are so extreme as to discourage imports. In general, Australia prohibits poultry imports without having completed the WTO-required risk assessments (with the exception of cooked poultry). While the Australian Government completed a risk assessment on cooked chicken meat in FY 1997 and issued implementing regulations in late

1997, we remain concerned about their scientific basis. A WTO-inconsistent ban presently exists on cooked pork (except canned products). The United States has raised these issues at the highest levels of the Australian Government and will continue to do so at all levels and in all appropriate fora.

Prior to 1994, imported feed grains were restricted from entering Australia, ostensibly due to phytosanitary concerns. During the 1994-95 drought the U.S. obtained approval to export feed grains to Australia to supplement domestic production. Since then, the requirement that all feed grains be steam-treated or processed in an alternative satisfactory manner at the port of entry has made further importation commercially not viable. Australia permits the importation of specified feed grains for processing in metropolitan areas under strict quarantine conditions, although facilities are currently available only at the Port of Brisbane.

Phytosanitary regulations prohibit or severely limit the entry of many fruits from the United States, including Florida citrus, grapes, blueberries, stone fruit, apples and pears. After receiving U.S. cherries from California in 1996, the Australian Government decided to revisit the pest risk analysis because of the level of cherries which had to be treated upon arrival (no pests of quarantine significance were found). The U.S. has received informal word that U.S. cherries have been accepted this year. The United States is waiting for Australia's risk assessments, including on stone fruit.

Australia prohibits the importation of all fresh, chilled, and frozen salmon for alleged health- related concerns. The United States joined Canada in consultations with Australia on this matter under Article XXII of the GATT 1947. In November 1995, the United States requested separate consultations under the WTO. The Australian Government announced in December 1996 that no changes would be made to its salmon importation restrictions. The United States is currently a third party participant in Canada's WTO dispute with Australia.

As the result of an independent review of its animal and plant quarantine policies, Australia has announced a formalized process for conducting import risk assessments. Specific guidelines are still to be released. The new process calls for extensive industry consultations and categorizes assessments into either routine or non-routine pathways. The extensive provision for consultations and appeals could extend the period to conduct a review over several years. The U.S. is concerned that many commodities that have been discussed previously would have to start the review process all over again under the new rules.

GOVERNMENT PROCUREMENT

The United States continues to urge Australia to join and adhere to the WTO agreement on government procurement. Since 1991, foreign information technology (IT) companies with annual sales to the government of Australia of less than $40 million have been "invited" to enter into fixed-term arrangements (FTAs), and those with sales greater than $40 million into partnerships for development (PFDs). Although companies are not required to join, there is strong pressure to join in order to do business. Companies are encouraged to undertake an agreed level of strategic activities in Australia, including research and development, training, technology transfer, capital investment, and the facilitation of export market opportunities for Australian companies. When the PFD program was first implemented, the main incentive for companies to join was to avoid offset obligations.

Following the abolition of offsets in 1992, the Australian Government prohibited its agencies from purchasing IT-related goods and services from companies who dropped out of the program. In February 1995, the Bureau

of Industry Economics published an evaluation of the PFD and FTA programs. It recommended that both the PFD and FTA programs be continued, but that their "unwarranted emphasis on the information technology and telecommunications sector's trade balance outcome" should cease.

In 1995, the Australian Government established the "information technology services common use contract panel" (ITSCUCP), which determines which companies will be used as a source for commonwealth information technology requirements involving systems integration activity (excluding purchases of less than $1 million). Any information technology company may join upon demonstrating "acceptable levels" of Australian product development, investment in capital equipment, skills development and/or services support, and local sourcing. Potential members of the ITSCUCP also will be evaluated on their Australian R&D activities, export orientation, and development of relationships with Australian and New Zealand suppliers and consumers. The ITSCUCP has a much broader membership than its predecessor, which was limited to 15 private companies.

After a recent review of its purchasing practices, the Australian Government announced its commitment to source at least 10 percent of its purchases from Australian small- to medium-size enterprises. The government will continue to require tenderers to include industry development objectives in tender documents, with model guidelines to be developed in consultation with industry during 1998. The two envelope tendering system and the requirement for industry impact statements to accompany all procurements of more than A$10 million was abolished in 1997. The elimination of this requirement is a significant step forward. It is a requirement that has been the subject of U.S.-Australia bilateral discussions.

EXPORT SUBSIDIES

Australia maintains several programs intended to enhance Australian exports. These include the following:

- Export Market Development Grants (EMDG): This scheme aims to encourage Australian exporters to seek out and develop overseas markets for goods, services, tourism, industrial property rights and technology that is substantially of Australian origin. EMDG scheme grants are provided partially to reimburse Australian residents who have incurred eligible expenditures while developing overseas markets for Australian products and services. Grant recipients are reimbursed for 50 percent of their eligible expenditures above A$15,000, with a general annual grant limit of A$200,000. Funding for the EMDG scheme was recently extended to the 2001-02 fiscal year automotive Export Facilitation Scheme (EFS).

- EFS: Under the terms of an EFS, manufacturers of automotive vehicles and components receive subsidies based on the level of exports of specified automotive products. The subsidies are in the form of duty rebate "credits" which recipients can, in turn, use to offset their duty liability on imports of specified automotive products. In general, the level of subsidy is determined based on the sales value of the eligible exports, but the calculation is also done in a way which rewards domestic value-added. The greater the value of any qualifying exported product, the greater the import credit granted. Significantly, however, there is no requirement that the imported products be consumed in the production of exported products, as there normally is in a duty drawback system. Indeed, imports of finished vehicles for consumption on the Australian market are fully eligible for duty rebates under this scheme. The subsidy benefits are freely transferable and may be sold among participants in the program. The EFS is scheduled to remain in force until December 31, 2000.

Although benefits are progressively reduced each year in line with the annual reduction of 2.5 percentage points in the tariff applicable to passenger motor vehicles, the level of duty rebate would still be significant in the year 2000, when Australia's duty on imported vehicles and components will be at least 15 percent.

- Textiles, clothing and footwear (TCF) import credit scheme: Similar to the automotive export facilitation scheme, the TCF import credit scheme grants duty rebate credits to Australian exporters of TCF products. These import credits entitle the participating TCF exporters to a reduction in import duties on eligible TCF imports. The value of import credits granted is calculated as a percentage (currently 25 percent, falling to 15 percent in 1999) of the domestic value-added in TCF exports. Import credits are freely transferable and may be sold among participants in the program. The scheme is scheduled to remain in force until June 30, 2000.

- Leather: The Australian government has committed to provide its leading automobile leather exporter a grant worth up to A$30 million and a $25 million, 15-year, preferential loan with a five-year repayment holiday . The United States has initiated WTO dispute settlement proceedings with regard to this package.

LACK OF INTELLECTUAL PROPERTY PROTECTION

With a few notable exceptions, Australia provides world class intellectual property protection for copyrights, patents, trademarks, designs and integrated circuits copyrights, and plant breeders' rights. Issues of particular concern are:

- Software Decompilation: In mid-1995, the copyright law review committee (CLRC) released its report on computer software protection. The report recommended against changing copyright law to allow the parallel importation of computer software. However, the CLRC's report also contained recommendations which would allow software decompilation for interoperability purposes. As of this writing, the Australian government has not decided whether to allow decompilation. The U.S. Government has advised the Australians of its continuing serious concerns with decompilation.

- Protection of Test Data: In 1997, the Australian government announced a new regime governing the protection of test data for pharmaceuticals (to come into effect on January 1, 1998). However, legislation setting out these changes has not been introduced into Parliament. The Australian Government took the narrow approach to this issue by allowing protection for "new chemical entities" for five years from the date of registration of the originator product. For industry, especially the agricultural chemical industry, this narrow approach offers limited practical protection, as "new uses and formulations" and not "new chemical entities" are the areas that require attention. Furthermore, the new regime's five-year period of protection for test data is insufficient in the case of test data submitted for marketing approval of agricultural chemicals.

- Parallel Importation: At this moment, Australia allows the parallel importation of books under limited circumstances. When foreign publishers do not make available in Australia editions of new works within 30 days of original publication abroad, or when an Australian edition becomes unavailable and

remains so for 90 days, parallel importation is allowed. The Australian government has introduced legislation to allow the parallel importation of sound recordings. This legislation is, at the time of writing, still before the Senate.

SERVICES BARRIERS

Local Content Requirements for Broadcasting and Advertising

The Australian Broadcasting Authority (ABA), the broadcasting regulator for radio and television in Australia, liberalized rules governing local content in television advertising effective January 1, 1992. Under current rules, up to 20 percent of the time used annually for paid advertisement during the hours of 6:00 a.m. and midnight can be filled with messages produced by non-Australians. For broadcasts, 55 percent of a commercial television station's average annual broadcasts between the hours of 6:00 a.m. and midnight must be dedicated to Australian programs. The impact of the content regulation on the amount of U.S.-sourced programming sold to Australian broadcasters is difficult to determine, as the mix of programming is driven by the market's preference for Australian themes. The U.S. Government has reiterated U.S. opposition to quotas in the context of the ABA's 1995 review of the Australian content standard. The regulatory framework for pay television also contains a local content provision which mandates that channels carrying mostly drama programs (not sports or music channels) must allocate 10 percent of their program acquisition expenditures on new Australian dramas. A 1995 amendment to the Broadcasting Services Act 1992 provides for a ministerial review of Australian content on pay TV by July 1, 1997, with this review to include consideration of the feasibility of increasing the Australian drama expenditure requirement to 20 percent. A decision has not yet been made.

Telecommunications

In recent years, the Australian government has significantly liberalized its telecommunications sector the culmination of which occurred on June 30, 1997. On that day, the Australian Government removed the restriction on the number of licensed carriers. However, the Australian Government restricted total foreign investment to 35% in the one third of the state-owned telecommunications carrier Telstra which the government privatized in November 1997. Foreign investment restrictions applicable to Optus Communications (Telstra's sole competitor in fixed services) and Vodafone (Australia's third cellular phone carrier), were relaxed in 1997, and are now subject only to the national interest provisions of the foreign investment approvals process. There are no industry-specific foreign investment limitations on resellers and value-added service providers.

INVESTMENT BARRIERS

All potential foreign investors in Australia are required to submit to a screening process for investment approval. Application of Australia's foreign investment law provides discretion for the government to deny specific foreign investment based on "national interest". Australia's commitments under the GATS Agreement of the WTO are limited as a result of Australia's screening program.

Foreign ownership of commercial television stations is limited. A foreign person may not be in a position to exercise control over a commercial television license or have company interest in such a license exceeding 15

percent. The aggregate foreign ownership that may be held in television stations is limited to 20 percent. Legislation stipulates that no more than 20 percent of the directors of a broadcasting licensee company may be foreign nationals. Foreigners are also restricted to 20 percent ownership interest in any single subscription television license. Aggregate foreign ownership in a subscription television license is limited to 35 percent.

Foreign airlines flying to Australia may acquire up to 25 percent of the equity in an Australian domestic carrier individually, or up to 40 percent in aggregate. All other foreign investors (including those that do not operate an airline service to Australia) may acquire up to 100 percent of a domestic carrier, or establish a new aviation business. Foreign ownership in Qantas (which was privatized in 1995) is capped at 49 percent; no single entity is allowed to own more than 25 percent.

The purchase of urban real estate by foreign interests is closely regulated. All proposals by foreign investors to acquire developed real estate are examined. Such applications are normally not approved except in the cases of foreign companies buying temporary residences for company executives and foreign nationals temporarily resident in Australia.

OTHER BARRIERS

Bounties

Bounties in some product sectors were originally provided in lieu of tariff protection to assist domestic manufacturers to compete with foreign suppliers. The only remaining bounty provided by the Australian government is for shipbuilding, scheduled to expire on June 30, 1999. Bounties for book printing and computer and circuit board manufacture were abolished in 1997.

Commodity Boards

Several national and state commodity boards control the marketing and export of certain Australian agricultural products. Activities for these marketing authorities are financed by the producers, but some boards enjoy export monopoly powers conferred by the federal or state government. While some of the boards' domestic activities have been deregulated, the export of wheat and rice remains under the exclusive control of commodity boards. The Australian Government has indicated that the Australian Wheat Board (which strictly regulates wheat marketing abroad) will retain its export monopoly until at least 1999. The export of barley from certain states likewise remains strictly regulated. Approximately 95 percent of dairy exports are made by the private sector and about 5 percent by an arm of the Australian Dairy Corporation. Australia terminated its export support payment scheme for dairy producers on June 30, 1995, but instituted a new internal support program on July 1, 1995. The United States is closely monitoring this new program for compliance with Australia's Uruguay Round commitments.

BRAZIL

In 1997, the U.S. trade surplus with Brazil was $6.3 billion, an increase of $2.3 billion from the U.S. trade surplus of $3.9 billion in 1996. U.S. merchandise exports to Brazil were $15.9 billion, an increase of $3.2 billion (25.3 percent) from the level of U.S. exports to Brazil in 1996. Brazil was the United States' eleventh largest export market in 1997. U.S. imports from Brazil were $9.6 billion in 1997, an increase of $868 million (9.9 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Brazil in 1996 was $26.2 billion, an increase of 10.4 percent from the level of U.S. FDI in 1995. U.S. FDI in Brazil is concentrated largely in the manufacturing, financial and banking sectors.

Overview

The process of economic liberalization initiated in 1990 has produced significant changes in Brazil's trade regime, resulting in a more open and competitive economy. Imports have increased as a result of generally lower tariffs and reduced non-tariff barriers, as well as the strength of the Brazilian currency relative to the dollar. Imports are composed of a wide range of industrial, agricultural and consumer goods. Despite some restrictive measures adopted during 1996 and 1997 to slow mounting trade deficits -- measures which the Government of Brazil maintains are temporary -- access to Brazilian markets in a significant number of sectors is generally good, and most markets are characterized by competition and participation by foreign firms through imports, local production and joint ventures.

Although the Brazilian Government has initiated large-scale programs to privatize its parastatals, it still dominates certain sectors of the economy, such as the telecommunications, petroleum, and electrical energy sectors, thereby limiting trade, investment and procurement opportunities. However, the federal government is in the process of opening cellular telephone service to private investors and foreign firms and has submitted a bill to Congress to regulate privatization of remaining phone services. In addition, the Sao Paolo metropolitan area sold its "Band B" cellular concession to a U.S. company in 1997 and additional auctions in other regions of the country are being planned. Several Brazilian states have worked with the national development bank to develop privatization plans for state-controlled electric companies and five of these companies were sold in 1997. The government has introduced legislation and regulations to implement the constitutional amendments eliminating the government monopoly in the petroleum and telecommunications sectors, approved by the Brazilian Congress in 1995.

IMPORT POLICIES

Tariffs

Tariffs, in general, are the primary instrument in Brazil for regulating imports. For 1997, the average tariff was 13.8 percent and the median tariff rate was 14.0 percent.

Brazil

Brazil and its Southern Common Market (MERCOSUR) partners, Argentina, Paraguay, and Uruguay, implemented the MERCOSUR common external tariff (CET) on January 1, 1995. In response to an import surge and the resulting large monthly trade deficits in late 1994 and early 1995, in March 1995 the government raised import tariffs significantly on a range of consumer durable goods, including automobiles, motorcycles and toys. The new tariff levels, as high as 70 percent on some products, were to remain in effect until April 1996. However, in 1996 the government decided to maintain high tariff levels for both autos and toys until the year 2000.

In November 1997, after consulting with its MERCOSUR neighbors, Brazil implemented an across-the-board increase on all tariff items (inside and outside the CET), raising the ceiling from 20 to 23 percent. Only energy inputs such as coal and petroleum and agricultural inputs such as seeds were exempted. While the tariff increases have nominally affected capital goods, which constitute approximately 40 percent of U.S. exports to Brazil, the government's "ex-tarifario" regime has traditionally exempted capital goods. This regime expired at the end of 1997. The Government of Brazil issued a new regime exempting capital goods not available domestically, effective January 1, 1998. The new regime reduces tariffs as high as 20 percent down to 5 percent. Industry reports that tariffs remain high on certain food and chemical products.

The CET currently covers approximately 85 percent of 9,000 tariff items; most of the remaining 15 percent will be covered by 2001, and all will be covered by 2006. The CET levels range between zero and 23 percent, with the exception of tariffs on telecommunications equipment, computers, some capital goods, and products included on Brazil's national list of exceptions to the CET, such as shoes, automobiles and consumer electronics. These tariffs are generally higher. For products covered by the CET, the maximum Brazilian tariff is 23 percent, the most commonly applied tariff is 17 percent, and the average CET tariff is 14.7 percent.

In December 1995, the government issued regulations establishing investment incentives for the automobile sector that do not appear to conform to Brazil's WTO obligations. These measures require firms to invest in Brazil and maintain specified levels of local content in order to qualify for lower duty rates on imports of vehicles, parts and materials. The United States and Japan requested WTO consultations on this issue in August 1996, contending that the regime did not comply with WTO obligations. In October 1996, the United States initiated a Section 301 investigation into Brazil's practices. In March 1997 the United States and Brazil signed an agreement settling the dispute. Brazil committed to terminate the regime by December 31, 1999, to accelerate the deadlines for companies to apply under the regime and not to extend the trade-related investment measures to Brazil's MERCOSUR partners when they unify their auto regimes in the year 2000.

At the request of the United States and other WTO member countries, the members of MERCOSUR agreed to the formation of a WTO working party to examine the WTO consistency of MERCOSUR. The first meeting of the working party took place in the fall of 1995 and the second in the fall of 1996. The United States will continue to encourage the reduction of trade and investment barriers, including tariffs, and the creation of a customs union that is open and consistent with the WTO, specifically GATT Article XXIV.

Import Licensing

On January 2, 1997, the Secretariat of Foreign Trade implemented a computerized trade documentation system (SISCOMEX) to handle import licensing. Although import licenses are required for virtually all products, licensing generally has not posed a barrier to U.S. exports. Licenses for most products are issued automatically. However, in a move that was presented as an attempt to reduce the high prevalence of under-invoicing, in December 1997 the government removed over 300 products from lists of products receiving automatic licenses and required various ministry approvals prior to shipping. These products included food and wine, chemicals, petroleum and energy products, tapes and CDS, some textiles and vehicles. Customs officials are also reported to be using a minimum price list to fight under-invoicing.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

While progress has been made in the area of fruit and vegetable regulations between the United States and Brazil, sanitary and phytosanitary measures remain significant barriers in many cases. Brazil prohibits the entry of poultry and poultry products from the United States, alleging lack of reciprocity. The United States objects to the concept of reciprocity when legitimate health concerns based on scientific evidence should be the central issue. Brazil had previously granted conditional approval for U.S. exports which was withdrawn when the United States could not grant Brazil an exception to the standard U.S. approval process. In September 1997, Brazil banned the importation of live ostriches from the United States due to the alleged isolation of viscerotropic velogenic disease (VVND) from a dead bird that was part of a large shipment of birds from the United States. However, the United States is recognized by the International Office of Epizootics (OIE - the international standard-setting body for veterinary issues) as being free from VVND. The ban stands in the way of an estimated $10 million worth of U.S. exports of live ostriches to Brazil over the next few years.

Brazil has officially adopted the harmonized phytosanitary standards of the Southern Cone Phytosanitary Committee (COSAVE). COSAVE is composed of Argentina, Chile, Brazil, Paraguay and Uruguay. In July 1996 the U.S. Department of Agriculture and the Brazilian Ministry of Agriculture reached a bilateral agreement which enables most U.S. fruit, grain and seed exports to meet the new phytosanitary requirements. However, U.S. horticultural products still frequently face difficulties at Brazilian ports and the two governments continue to work on complete implementation of the provisions of the bilateral agreement when problems of mutual interest arise. At the time of this report, there has been a resuolution to the technical issue within COSAVE which should allow U.S. exports of wheat to Brazil, but questions remain with regard to the timing of the implementation of the technical decision by Brazil. Onerous regulations on the import of wine which Brazil adopted in 1996 may also restrict access to the Brazilian market for U.S. wines.

GOVERNMENT PROCUREMENT

The federal, state and municipal governments, as well as related agencies and companies, follow a "buy national" policy. Brazil permits foreign companies to compete in any procurement-related multilateral development bank loans and opens selected procurement to international tenders. Given the significant influence of the state-controlled sector due to its large size, discriminatory government procurement policies are, in relative terms, a substantial barrier to U.S. exports. For example, discriminatory government procurement practices govern the telecommunications, computer and computer software sectors. Though not currently applied, the rules permit the government to provide foreign companies with production facilities in Brazil preferential treatment in government procurement decisions.

Brazil

To the extent that the privatization program in Brazil continues and non-discriminatory policies are adopted, U.S. firms will have greater opportunities in Brazil. Complete implementation of the constitutional amendments passed in 1995, opening the state telecommunications, petroleum and natural gas distribution monopolies to private (including foreign) participation, may also ease some of the barriers currently faced by foreign suppliers.

Law 8666 of 1993, covering most government procurement other than informatics and telecommunications, requires non-discriminatory treatment for all bidders, regardless of the nationality or origin of product or service. However, regulations introduced in late 1993 allow consideration of non-price factors, give preferences to telecommunications, computer and digital electronics goods produced in Brazil, and stipulate local content requirements for eligibility for fiscal benefits. Decree 1070 of March 1994, which regulates the procurement of informatics and telecommunications goods and services, requires federal agencies and parastatal entities to give preference to locally-produced computer products based on a complicated and non-transparent price/technology matrix. Bidders that meet one or more of the criteria for preferential treatment -- Brazilian-owned company, Brazilian technology or products, or minimum local value-added content -- are allowed a price differential of up to 12 percent over other bidders.

It is not possible to estimate the economic impact of these restrictions on U.S. exports, as there has been little application of these rules. However, free competition could provide significant market opportunities for U.S. exports. The United States seeks adoption of competitive procurement procedures, elimination of any measures favoring domestic producers, and provision of predictable, nondiscriminatory treatment for U.S. suppliers in Brazil's government procurement. Brazil is not a signatory to the GATT Agreement on Government Procurement.

EXPORT SUBSIDIES

The Government of Brazil offers a variety of tax and tariff incentives to encourage production for export and the use of Brazilian inputs in exported products. Several of these programs have been found to be countervailable under U.S. law in the context of specific countervailing duty cases. Incentives include tax and tariff exemptions for equipment and materials imported for the production of goods for export, excise and sales tax exemptions on exported products, and rebates on materials used in the manufacture of exported products. Exporters enjoy exemption from withholding tax for remittances overseas for loan payments and marketing, as well as from the financial operations tax for deposit receipts on export products. Exporters are also eligible for a rebate on social contribution taxes paid on locally-acquired production inputs.

An export credit program known as PROEX was established in 1991. PROEX is intended to equalize domestic and international interest rates for export financing. Revisions to PROEX were announced in 1995 and 1997. The revisions expanded the size of the program and authorized coverage of additional export sectors. In 1997, $1.0 billion was initially budgeted for PROEX. As of November 1997, $1.4 billion has been budgeted. In the past, PROEX has never used more than 30 percent of its allocated budget.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Patents and Trademarks

On May 14, 1996, a new industrial property law was approved; the law went into force in May 1997. This law improves most aspects of Brazil's industrial property regime, but some problems remain. Patent protection will now be available for pharmaceutical products and processes, chemical products and other inventions that were not patentable under the prior law. A law on the protection of plant varieties was passed in 1997, bringing Brazil up to the TRIPS standard, and protection will be available for man-made plants and animals (except for man-made microorganisms), once the implementing regulation is fully in place. However, certain isolated or purified forms of substances found in nature are not patentable subject matter. The term of patent protection was extended from 15 years from the date of filing to 20 years from the date of filing, but patents in force are not expressly extended to the new term as stipulated by paragraph 2 of article 70 of the TRIPS Agreement until January 1, 2000. "Pipeline" protection is provided for inventions that were not patentable in Brazil because of limitations on patentable subject matter (e.g., pharmaceutical and chemical products) if the inventions were patented in another country and not marketed in Brazil.

Domestic working of a patented invention is required unless it is not economically feasible. Failure to produce locally could theoretically result in forfeiture of the patent, however, there has been little application of this rule. Importation does not always satisfy the working requirement as ultimately required by the TRIPS agreement. The remedies for non-working are compulsory licenses and permission to parallel import.

There is a vast network of compulsory licenses. Compulsory licenses may be granted for abuse of rights, abuses of economic power, non-working in Brazil, failure to meet the needs of the market, working dependent patents, and in national emergencies or to meet the public interest. The new law added provisions for the protection of "well-known" trademarks, but also contains a long list of categories of marks that are not registrable. A law for the protection of the layout designs of integrated circuits, introduced in April 1996, has not been enacted.

Brazil's patent office, the National Institute for Industrial Property (INPI), has had a growing backlog in processing applications for patents. The agency faces serious management and administrative problems.

Copyrights

Estimated trade losses from the piracy of computer programs and entertainment software, motion pictures, sound recordings and musical compositions continued to increase in 1997 (estimated at $666.2 million by U.S. industry), despite significant efforts by right holders to enforce their rights under the existing laws. Improved laws and more effective judicial procedures are needed to reduce these losses.

In the area of computer programs, in 1994 the government of Brazil committed itself to enact amendments to a 1987 software law by January 1, 1995. A software bill passed the Chamber of Deputies in January 1996, the Senate in January 1998 and was signed by President Cardoso in February 1998. Meanwhile, the government has used executive decrees to significantly improve protection for firms marketing computer programs in Brazil, abolishing the "law of similars," eliminating the software registration system and reducing the tax burden on remittances. The newly-passed legislation contains amendments that would introduce a rental right and increase in the term of protection to 50 years. A copyright bill passed the Senate in 1990, the Chamber of Deputies in December 1997, and was signed by President Cardoso in February 1998.

Brazil

Amendments to Brazil's copyright law were needed to bring it into compliance with the Berne Convention and TRIPS agreement, particularly to address parallel imports.

Enforcement

In the last two years, enforcement of laws against video and software piracy has gradually improved. Foreign firms have had some success in using the Brazilian legal system to protect their copyrights, and the government has initiated action to reduce the importation of pirated sound recordings and video cassettes. However, much pirated material enters Brazil from across the border in Paraguay. The government has not given police the tools or the training to enforce the law and confiscate pirated material. The penal code needs to be amended to provide higher fines that create a deterrent to infringement, increase the effectiveness of the criminal enforcement system, and decrease delays in the judicial process.

Provisions under the 1996 industrial property law establishing specialized intellectual property courts may provide some relief for copyright owners. The government is currently discussing how this provision would be implemented.

SERVICES BARRIERS

Restrictive investment laws, lack of transparency in administrative procedures, legal and administrative restrictions on remittances, and arbitrary application of regulations and laws limit U.S. service exports to Brazil. Service trade opportunities, particularly in the telecommunications, oilfield, mining and financial industries, have been affected by limitations on foreign capital participation in many sectors. The passage of constitutional amendments eliminating the distinction between national and foreign capital; opening the state telecommunications, petroleum and natural gas distribution monopolies to private participation; and permitting foreign participation in coastal and inland shipping should ease many of the current restrictions on foreign services providers. However, the degree to which some of these sectors are actually opened will depend on implementing legislation which, in most cases, has not yet been introduced.

Telecommunications

In those areas where implementing legislation has been introduced, described below, the opening to foreign participation remains limited. The 1996 law opening cellular telephone service to foreign operators requires Brazilian majority ownership (51 percent) of any company or consortium providing telecommunications services in Brazil. The entire state-owned telephone system (Telebras) may be sold by the middle of 1998, with significant opportunities for foreign participation. In the recently concluded WTO negotiations on basic telecommunications services Brazil made commitments on most basic telecommunications services and will remove its foreign investment restrictions on cellular and satellite services, contained in its 1996 law, on July 20, 1999. Furthermore, Brazil committed to bind the outcome of future reform legislation by revising its WTO commitments to incorporate such reforms within one year of enactment, i.e., by July 10, 1998. The legislation grants discretion to the Brazilian president for determination of market-opening dates for domestic and international wireline services and also with respect to foreign investment limits.

Brazil is overdue in providing to the World Trade Organization an acceptance of the Fourth Protocol to the General Agreement on Trade in Services, which is necessary to bring its commitments on basic telecommunications services into effect. The WTO Council on Trade in Services has extended the deadline for submission of the acceptance until July 31, 1998.

Maritime

The 1996 cabotage law limits foreign participation in cabotage to countries which have reciprocal cabotage arrangements with Brazil; otherwise, cabotage services are limited almost exclusively to Brazilian companies, although they may rent or charter foreign-made ships on a limited basis. Foreign companies or foreign crews may operate only with the prior approval of the Brazilian authorities.

Technical Services

Foreign companies, particularly construction engineering firms, are prevented from providing technical services in government procurement contracts unless Brazilian firms are unable to perform them. INP, which must approve all technical service contracts, has subjected foreign companies to substantial delays. However, Brazil has promulgated a concessions law (February 1995) and the law of electrical energy producers (July 1995) to promote a more transparent regulatory regime and provide a legal framework for concessionaires of public services.

Brazil restricts the private sector use of foreign-produced advertising materials through limits on foreign film footage (two-thirds of which must be produced in Brazil) and sound tracks (all of which must be produced in Brazil), limits on foreign capital participation, and requirements that the majority of the directors of a company must be Brazilian. Discriminatory government procurement practices further curtail the use of foreign-produced advertising material.

Foreign legal, accounting, tax preparation, management consulting, architectural, engineering, and construction firms are hindered by various barriers. These include forced local partnerships, limits on foreign directorships and non-transparent registration procedures. The Government of Brazil reserves the right to refuse entry of managers or executives associated with the provision of a service if they do not provide new technology, increase productivity in Brazil, or attract new investment.

Insurance

Brazil is South America's largest potential insurance market and premiums have been growing rapidly with the establishment of economic stability. In 1996, Brazil eliminated the distinction between foreign and domestic capital in this sector and a number of U.S. firms have since entered the market via acquisitions of existing firms or joint ventures with established companies. While eliminated in law in 1996, the reinsurance monopoly, the Brazil Reinsurance Institute (IRB), has yet to be ended in practice and raises costs for both domestic and foreign insurers. The government has announced plans to privatize IRB and made a WTO commitment in the

financial services negotiations to allow foreign market access for reinsurance in less than two years after passage of implementing regulations in the sector. In addition, the Government of Brazil restricts import insurance to Brazilian firms through resolution number 3/71, which denies U.S. marine cargo insurers an opportunity to compete for business and requires state companies doing business with insurance brokerage firms to use 100 percent Brazilian-owned brokerages.

INVESTMENT BARRIERS

In addition to restrictions on services-related investments, various prohibitions limit foreign investment in internal transportation, public utilities, media and other "strategic industries." In other sectors, Brazil limits foreign equity participations, imposes local content requirements, and links incentives to export performance. For example, there are equity limitations, local content requirements, and incentive-based performance requirements in the computer and digital electronics sector. In the auto sector, local content and incentive-based export performance requirements were introduced in 1995, and are expected to expire in December 1999.

Brazil's Congress passed constitutional amendments permitting foreign majority participation in direct mining operations and foreign investment in the health sector, but actual changes will not occur until the 1995 constitutional amendments are implemented through follow-up legislation. In August 1995, the government introduced a measure which permits foreign financial institutions to open new branches or to increase their ownership participation in Brazilian financial institutions. However, foreign ownership of land in rural areas and adjacent to national borders remains prohibited under law number 6634. A 1997 law allows for the state-owned oil company, Petrobras, to take a minority stake in oil ventures, something previously prohibited.

Investment restrictions are an important limitation for U.S. firms seeking to conduct business in Brazil. Despite these restrictions, U.S. and other foreign firms have major investments in Brazil. The United States will seek to ensure that implementing legislation for the constitutional amendments passed in 1995 will, in fact, lower barriers to U.S. business.

BULGARIA

In 1997, the U.S. trade deficit with Bulgaria was $67 million, a shift of $78 million from the 1996 U.S. trade surplus of $11 million. U.S. merchandise exports to Bulgaria were $104 million in 1997, a decrease of $33 million (24 percent) from the level of U.S. exports to Bulgaria in 1996. Bulgaria was the United States' one hundred and eleventh largest export market in 1997. U.S. imports from Bulgaria were $172 million in 1997, an increase of $46 million (36 percent) from the level of imports in 1996.

Overview

Bulgaria's economic crisis deepened in early 1997, and the country experienced a brief hyperinflationary period. The economic crisis was intensified by a political crisis; both ended when a new government took office and reached agreement with the IMF and World Bank on an economic program featuring a currency board system of foreign exchange linking the Bulgarian lev to the deutsche mark. The macroeconomy stabilized immediately, interest rates fell dramatically, and inflation came down sharply. Inflation was 579 percent for the year, but nearly all of the increase was due to the first few months; consumer price increases in the last three months of the year were under 2 percent per month. GDP continued to decline, and fell by an estimated 7.4 percent for the year. Most experts predict moderate inflation and modest growth for 1998.

Along with the legislation needed to implement the currency board (which went into effect July 1) the government has committed to a program of structural reforms which will accelerate privatization of the enterprise and banking sectors, and make the country more attractive to foreign investors. Bulgaria has so far fulfilled all the criteria of the fifth IMF standby arrangement and has signed a FESAL agreement with the World Bank. Several large enterprises were privatized in 1997, and the government has hired international consultants to facilitate the sale of key enterprises. One of the six remaining state-owned banks was sold in 1997, and the remaining five have been offered for sale or are scheduled to be offered within the next year.

IMPORT POLICIES

The U.S.-Bulgaria Bilateral Trade Agreement, in place since 1991, provides mutual most-favored nation (MFN) status. Extension of MFN to Bulgaria by the United States remained subject to title IV of the Trade Act of 1974 (also known as Jackson-Vanik) until September 1996, when Bulgaria was removed from the purview of Jackson-Vanik and received unconditional MFN status.

Average Bulgarian import tariffs are relatively high, including in areas of key concern to U.S. exporters, such as agricultural goods and inputs and distilled spirits. In June 1996, Bulgaria imposed a temporary import surcharge of five percent for balance of payment purposes; this surcharge was reduced, then finally removed on January 1, 1998. The Foreign Investment Law of 1997 exempted capital contributions in kind from customs, removing a long-standing barrier to investment.

Bulgaria's Association Agreement with the EU phases out tariffs between Bulgaria and the EU while U.S. exporters still face duties. This has created a competitive disadvantage for some U.S. exporters (*e.g.*, soda ash exporters). The agreement provides improved reciprocal market access to certain farm products. On January

1, 1998, Bulgaria implemented the first round of its tariff concessions to the 6-country Central Europe Free Trade Agreement (CEFTA) and is expected to join the organization during the next year. Overall, Bulgaria has reduced its tariff rates by 2-3 percent for 1998.

Other reported barriers include customs regulations and policies that are at times cumbersome, arbitrary and inconsistent. Problems cited by U.S. multinational corporations include excessive documentation requirements, slow processing of shipments, and corruption.

Bulgaria became a member of the World Trade Organization in December 1996.

GOVERNMENT PROCUREMENT

Bulgaria adopted a Public Procurement Law in January 1997, in accordance with its commitment to accede to the Agreement on Government Procurement by December 31, 1997. Bulgaria is also an observer to the WTO Committee on Government Procurement. However, bidders still complain that tendering processes are frequently subject to irregularities, fueling speculation that corruption is present.

LACK OF INTELLECTUAL PROPERTY PROTECTION

The U.S.-Bulgaria Bilateral Trade and Intellectual Property Agreement of 1995 requires Bulgaria to enact and implement laws and regulations to protect adequately and effectively intellectual property, and to accede to major international IPR conventions. Adoption of patent and copyright laws has brought the Bulgarian IPR legal system up to international standards generally, but enforcement remains seriously deficient. The U.S. copyright industry estimates total 1997 losses of $207.7 million, up from $178.9 million in 1996.

In April 1995, in a government-to-government exchange of letters with the United States, Bulgaria agreed to strengthen copyright protection and enforcement. As a result, in 1995, Bulgaria acceded to the Rome and Geneva phonograms conventions, enacted changes to the Penal Code to make IPR infringements subject to criminal prosecution and imprisonment, and took action against some producers and distributors of pirated products. In April, 1996, Bulgaria also decreed, but has not fully implemented, a title verification system for audio and video recordings in April 1996. Compact disc and computer program piracy remains a serious concern due to the lack of enforcement of IPR laws and limited use of existing measures and remedies to curb this criminal activity. Bulgaria remains the largest source of CD and CD-ROM based piracy in Europe and is one of the world's leading exporters of pirated goods. Estimated losses for sound recordings and musical compositions in 1997 were $125 million with a rate of piracy of 90 percent.

The Government of Bulgaria adopted new licensing regulations in 1998 which holds some promise that the illegal CD and CD-ROM production could finally be curtailed. Success of the new decree, however, will depend entirely on the Bulgarian authorities strict enforcement of the new licensing regime including continuous monitoring of CD and CD-ROM production facilities.

Video piracy is also reported to be extensive in Bulgaria at a rate of 80 percent and estimated 1997 losses of $5 million. Bulgarian cable and television operators transmit a large percentage of films without authorization. In addition, Bulgaria's Radio and Television law requires that a predominant portion of annual programming consist of European-produced works.

Bulgaria was placed on the Special 301 Watch List after an out-of-cycle review in September 1996. Because of continued failure to take effective enforcement actions against piracy, Bulgaria was elevated to the Priority Watch List in January 1998. In the Special 301 announcement, the United States warned that without serious enforcement actions by the Bulgarian Government, it risked identification as a Priority Foreign Country as early as April 1998.

Other U.S. industries report that lack of effective enforcement of Bulgaria's intellectual property laws prevents their greater investment in Bulgaria. They also cite the illegal use of trademarks and trade dress (characteristic product appearance) as a barrier to the Bulgarian market. Bulgaria is currently working on a new trademark law.

INVESTMENT BARRIERS

On September 23, 1992 the United States and Bulgaria signed a Bilateral Investment Treaty, which was implemented on May 3, 1994. Overall U.S. investment in Bulgaria remains low compared to other countries in the region, although the United States is the fifth largest investor in Bulgaria. A lack of transparency in the privatization process has complicated investment procedures. Privatization deals and bid selections lack clear guidelines, and little notification on the status of privatization deals is given to bidders. This lack of information-sharing contributes to the perception of official corruption. Besides the tariff and intellectual property problems cited in the previous sections, U.S. industries also report that the lack of transparency of regulations, high (and unequally enforced) tax burden and government bureaucracy create significant barriers to investment. Some companies have also reported crime as a barrier to investment. A very broad and somewhat cumbersome 1995 concessions law, under which no concessions were actually granted until late 1997, has complicated investments in sectors such as mining, oil and gas exploration, pipelines, and telecommunications.

CANADA

Canada continues to be the United States' foremost export market and single largest trading and investment partner. In 1997, total two-way trade in goods and services was nearly $1 billion per day. The U.S. trade deficit with Canada in 1997 was $17.9 billion, a decrease of $6 billion over the level in 1996. In 1997, U.S. merchandise exports to Canada were $150 billion, an increase of $17.5 billion (13.2 percent) from 1996. U.S. merchandise imports from Canada in 1997 totaled $168 billion, an increase of $11.6 billion (7 percent) from the level of imports in 1996.

The United States continues to be by far the largest foreign direct investor in Canada. In 1996, the stock of U.S. foreign direct investment (FDI) in Canada was $91.6 billion, up from $85.4 billion in 1995. U.S. investment in Canada is concentrated in manufacturing, financial, and petroleum.

The U.S.-Canada Free Trade Agreement and the North American Free Trade Agreement

On January 1, 1989, the U.S.-Canada Free Trade Agreement (CFTA) eliminated over a period of ten years virtually all tariff and non-tariff barriers to trade in goods between the two countries. The CFTA was superseded on January 1, 1994, with the entry into force of the North American Free Trade Agreement (NAFTA), which expanded the free trade area to Mexico. The NAFTA extended the CFTA to important sectors such as trade in services, investment, and government procurement. The bilateral phase-out of tariffs between Canada and the U.S. outlined in the CFTA and now the NAFTA was completed on January 1, 1998.

IMPORT POLICIES

Beer

The U.S. Government successfully challenged Canadian beer practices before the GATT in 1991. A series of negotiations led to the U.S.-Canada Memorandum of Understanding (MOU) on Provincial Beer Marketing Practices in 1993 and an annex to the MOU in April 1994 which significantly improved access to the Canadian market for U.S. beer. U.S. companies continue to harbor concerns about provincial minimum price policies and taxes.

Wine and Spirits

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

On May 28, 1996, Industry Canada issued amendments to the regulations on consumer packaging and labeling that retained the existing standard container sizes for wine. Industry Canada is currently revisiting the issue and hopes to conclude its review in 1998. Elimination of standard container sizes in Canada would allow U.S. exporters to ship wine in containers that are common in the United States but are not currently permitted in

Canada. The United States will continue to pursue removal of these barriers.

Supply Managed Products and Barley

As part of its implementation of the World Trade Organization (WTO) Agreements in 1995, Canada replaced its import quotas on certain supply managed commodities (dairy, poultry, and eggs) with tariff rate quotas (TRQs). Under the TRQ system, small amounts of imports can enter at a relatively low rate of duty, but imports above those limits are subject to prohibitively high duties ranging up to 350 percent. Canada also imposed tariffs on U.S. barley and barley products, which had been subject to import licensing, as well as on additional dairy products. In December 1996, a panel established under NAFTA Chapter 20 dispute settlement procedures upheld Canada's use of these tariffs.

In late 1997, Canada unilaterally suspended application of its tariff rate quota on barley and barley product imports from the United States.

Canada has failed to allow access for commercial fluid milk imports. In October 1997, the United States requested consultations under GATT Article 22 pertaining to Canada's compliance with its WTO obligations to limit dairy export subsidies and to provide access in the form of a TRQ for its fluid milk market. The first consultations were held in Geneva on November 19, 1997. On December 29, New Zealand also requested consultations with Canada on the same matter excluding the TRQ issue. On January 28, 1998, the U.S. participated in the consultations between New Zealand and Canada. On February 2, the U.S. requested establishment of a panel in the U.S.-Canada dispute.

Horticultural Import Restrictions

Canadian regulations on fresh fruit and vegetable imports prohibit consignment sales of fresh fruits and vegetables without a prearranged buyer. Other restrictions prohibit bulk produce imports without a special ministerial waiver of Canadian packaging regulations.

Restrictions on U.S. Publications

In March, 1996, USTR initiated a Section 301 investigation and requested consultations with the Government of Canada to address certain discriminatory practices used by the Government of Canada to unfairly protect Canada's domestic magazine industry. Subsequently, USTR requested that a WTO panel be formed to consider Canadian measures prohibiting or restricting the importation into Canada of "split-run" and other imported magazines, including a ban on imports of magazines with advertising directed at Canadians, a special excise tax on "split-run" magazines, and discriminatory postal rates on imported magazines.

WTO panel findings, as amended by the WTO Appellate Body, supported all U.S. claims. The panel recommended that Canada bring its practices into conformity with its WTO obligations. The parties agreed on a 15-month time frame (from July 30, 1997) for Canada to implement the panel recommendations.

LACK OF INTELLECTUAL PROPERTY PROTECTION

On April 25, 1997, Royal Assent was given to Bill C-32, legislation containing extensive amendments to Canada's Copyright Act. Bill C-32 is intended to further modernize Canadian copyright law and harmonize it with certain international copyright conventions.

The U.S. has expressed concerns to Canada because Bill C-32 denies U.S. copyright holders certain broadcast rights and blank tape levy payments. These payments are collected and distributed to Canadian copyright holders and to other copyright holders who are members of the Rome Convention. U.S. performers and producers are denied proceeds, which is a denial of national treatment to U.S. copyright holders. The USTR announced on April 30, 1997, that due to these provisions, Canada was placed on the Special 301 Watch List. USTR remains concerned by Canada's denial of national treatment to U.S. interests, and will continue to monitor Canada's implementation of the law.

SERVICES BARRIERS

Broadcasting

The Broadcasting Act lists among its objectives, "to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada." The federal broadcasting regulator, the Canadian Radio-Television and Telecommunications Commission (CRTC), is charged with implementing this policy. The CRTC requires that Canadian broadcasts make up 60 percent of television broadcast time-- 50 percent during prime time hours (6 p.m- 12 a.m.). Under previous CRTC policy, in cases where a Canadian service was licensed in a format competitive with that of an authorized non-Canadian service, the Commission could drop the non-Canadian service, if the new Canadian applicant requested it to do so. This policy led to one "de-listing" in 1995, and deterred potential new entrants from attempting to enter the Canadian market. In July 1997, the CRTC announced that it would no longer be "disposed" to take such actions. Nonetheless, the ruling contains a clause which allows Canadian licensees to appeal the inclusion of competitive non-Canadian services on the lists. In this connection, the CRTC will consider the removal of existing non-Canadian services from the list if they change format so as to compete with a Canadian pay or specialty service. The Broadcasting Act places the following restrictions on the carriage of U.S. signals and services by Canadian service providers: a Canadian service quota to require Canadian providers to carry a majority of domestic signals and services -- although non-programming service packages may consist of all non-Canadian signals and services. Secondly, U.S.-originated signals on non-basic pay television must be selected from a CRTC-approved list. If a competitive Canadian service is licensed, a U.S. service will not be added to the list.

Direct-to-Home Satellite Broadcasting

On December 20, 1995, the CRTC issued two national direct-to-home (DTH) satellite TV licenses, one of which went to U.S.-associated Power Direct TV. However, Power Direct TV has since abandoned its plans to launch a Canadian service because of technological issues, some of which were associated with CRTC regulations.

Simultaneously with the licensing of the two DTH systems, a number of DTH pay-per-view (PPV) services

were also licensed. The DTH licenses specify that the only PPV services the two DTH licensees may offer are those services licensed by the CRTC. The PPV licenses are further conditioned in two significant respects.

First, it is a condition of license that feature film rights must be acquired from Canadian distributors except where the film is offered by a foreign distributor who owns worldwide rights or who has provided not less than half of the cost of producing the film. The U.S. Government and the U.S. industry are concerned that this condition of license, in effect, gives Canadian companies monopoly distribution rights with respect to certain films.

Second, it is a condition of license that 100 percent of revenues earned from the exhibition of Canadian feature films be paid to the producer/distributor. However, revenues earned from the exhibition of all non-Canadian feature films offered on English language services must be split, on a title by title basis, one-third to the DTH service, one-third to the programming undertaking, and one-third to the producer/distributor. U.S. industry sources believe that the likely effect of this restriction will be to restrain competition.

The Canadian Motion Picture Distributors Association and a number of U.S.-based studios appealed the licensing conditions to the Canadian Federal Court of Appeal on January 26, 1996, and to the Canadian federal Cabinet on February 2, 1996. On March 19, 1996, the Cabinet rejected the appeal, apparently deciding that the matter would best be dealt with by the courts. On June 26, 1996, the Federal Court of Appeal also ruled against the appeal.

Canada also imposes specific and extensive content requirements on television and cable broadcasting. DTH broadcasts must contain a preponderance (more than 50 percent) of Canadian content. For some specialty services like pay audio services, the applicable percentage of Canadian content is subject to change.

USTR will continue to closely monitor the effect of these policies on U.S. commercial interests.

Basic Telecommunications Services

In the recently concluded WTO negotiations on basic telecommunications services, Canada made commitments that were substantially less forthcoming than those made by most other OECD countries, which will result in higher costs to Canadian users of basic telecommunications services. For instance, full access to the market for international services between Canada and foreign countries other than the United States is not granted until March 1, 2000. Canada retained a 46.7 percent limit on foreign ownership, a requirement for Canadian control of basic telecommunications facilities and routing restrictions on domestic and international traffic to promote the use of Canadian facilities.

In December 1997, the CRTC eliminated third country routing restrictions for international traffic except for traffic routed to or from Canada through the United States. Therefore, Canada continues to maintain its "U.S. bypass restriction" on routing traffic through the United States, although the CRTC is considering eliminating this restriction on international traffic in a separate regulatory proceeding that should be decided by mid-summer. A Canadian carrier has appealed the CRTC's decision eliminating third country routing restrictions on countries other than the United States. There is no deadline for deciding this appeal. The USTR is reviewing Canada's routing restrictions under section 1377 of the Omnibus Trade and Competitiveness Act

of 1988.

Also in its December 1997 decision, the CRTC eliminated most restrictions on how dominant firms (former monopolies) can price their long-distance services (but placed a four-year price ceiling on these firms' overall long-distance rates). U.S.-based firms in this market have expressed concern that this liberalization may be premature, allowing predatory pricing behavior by dominant firms.

Border Broadcasting

In 1976, Canada adopted a tax provision denying Canadian enterprises tax deductions for the cost of advertising in foreign print and broadcast media when the advertising is directed primarily at Canadians. The main targets of this legislation were advertisements placed on U.S. border television stations broadcasting into Canada.

Government-to-government and industry-to-industry consultations have failed to provide a compromise solution to this problem. As a result of a 1980 Section 301 determination that the Canadian law both injured and discriminated against U.S. commerce, the United States enacted mirror legislation in the 1984 Trade Act against Canada's broadcast media.

Banking and Insurance

The banking industry in Canada is governed by the federal Bank Act, which currently is in the process of being overhauled. In September 1997, Canada issued a foreign bank entry policy "Consultation Paper" as part of its efforts to develop a new financial services regime which would allow foreign banks to branch directly into Canada. The Consultation Paper sets out principles the Canadian government is using in drafting new legislation for foreign banks. Specific proposals allow for foreign banks to operate both retail subsidiaries and wholesale branches and allow for those foreign banks not establishing regulated entities to provide a limited range of unregulated financial services. U.S. banks and securities firms will continue to have a clear right of establishment and guarantee of national treatment. Presently, a foreign bank wishing to conduct business in the Canadian banking industry must establish as a subsidiary (Schedule II bank). Following implementation of new legislation, foreign banks will have expanded investor choice in establishment. New legislation is expect to be introduced in early 1998.

U.S. insurance companies may enter Canada as branches, but some provinces bar foreign companies from buying provincially-chartered insurance companies.

INVESTMENT BARRIERS

General Entry Restrictions

Canada

Under the Investment Canada Act and Canadian policies in the energy, publishing, telecommunications, transportation, film, music, broadcasting, and cable television sectors, Canada maintains laws and policies which inhibit new or expanded foreign investment.

Investment Canada Act

The Investment Canada Act requires the federal government to review proposed acquisitions by U.S. and other foreign investors to ensure "net benefit to Canada." Foreign investments in new businesses, direct acquisitions worth less than C$5 million, and indirect acquisitions worth less than C$50 million do not require prior government approval. Screening of indirect acquisitions by U.S. investors has been eliminated. However, these exemptions do not apply to foreign investments in "culturally sensitive sectors" such as publishing, film, video, music, broadcasting, and telecommunications. Any foreign investment in these sectors is subject to review.

Publishing Policy

Prior to 1992, when ownership of a firm engaged in the publication, sale, or distribution of books, magazines, periodicals, or newspapers in Canada passed to foreign investors as a result of mergers and acquisitions of foreign parent firms or “indirect acquisition,” Canada required divestiture of control to Canadian investors.

Since January 1992, Canadian book publishing and distribution firms that fall into foreign hands through indirect acquisition need not be divested to Canadian control, but the foreign investor must negotiate specific commitments to promote Canadian publishing. Foreign investors may directly acquire Canadian book firms under limited circumstances. Also, since 1993, Canada treats the publication of any new magazine title by foreign-owned firms as a new investment subject to review. Under current policy guidelines, approval for a new magazine title would not be granted. The United States is monitoring the effect of these new policies on U.S. interests.

Film Industry Investment

Canadian policies prohibit foreign takeovers of Canadian-owned film distribution firms and allow investment to establish new distribution firms for proprietary products only. Indirect or direct takeovers of foreign distribution firms operating in Canada are only allowed if the investor undertakes to reinvest a portion of its Canadian earnings in a manner specified by the Canadian Government. The European Union has requested consultations under WTO dispute settlement procedures with regard to Canadian investment limitations of foreign-owned film distribution companies.

On February 4, 1998, the Canadian government announced a discussion paper outlining how to encourage more Canadian film production. The paper proposes questions to the National Film Board’s future role on Canadian film promotion and marketing, screen time availability, and percent of film distribution availability to Canadian companies. The U.S. encourages distribution incentives for Canadian film products to any film distributor regardless of national origin. The outlined policies could possibly be harmful to the U.S. film industry.

Performance Requirements

Reviews by Investment Canada of prospective foreign investments involves an examination of the investor's business plan. Approval of the investment creates a legal obligation on the part of the investor to fulfill the business plan, which may include commitments in areas such as research and development or the promotion of Canadian authors. NAFTA represents progress toward ending the imposition of performance requirements on U.S. investors, and on third country investors when U.S. trade interests would be affected. The United States will continue to pursue the elimination of investment restrictions, including performance requirements, both bilaterally and multilaterally.

OTHER BARRIERS

Canadian Wheat Board

The Canadian Wheat Board (CWB) has exclusive authority to market western Canadian wheat, durum wheat, and malting barley for export. It also controls milling wheat and malting barley sales domestically. The United States has been working to have the export activities of state trading enterprises, such as the CWB, addressed in the WTO Working Party on State Trading Practices on Agriculture. In the October 1995 report of the private, binational Joint Commission on Grains (JCG), the JCG recommended that both countries "eliminate the excessive discretionary pricing practices of their institutions" which for Canada would mean "placing the CWB at risk of profit or loss in the marketplace, or conducting itself in an equivalent manner."

Late in 1997, at Congress' request, the U.S. General Accounting Office (GAO) initiated a study of the Canadian Wheat Board, the results of which will be reported to Congress in 1998. USTR is working with USDA to request an audit of the CWB to determine whether its pricing practices are fair and transparent.

CHILE

In 1997, the U.S. trade surplus with Chile was $2.1 billion, an increase of $200 million from the U.S. trade surplus of $1.9 billion in 1996. U.S. merchandise exports to Chile were more than $4.4 billion in 1997, an increase of $243 million (5.9 percent) from the level of U.S. exports to Chile in 1996. Chile was the United States' twenty-ninth largest export market in 1997. U.S. imports from Chile were $2.3 billion in 1997, an increase of $43 million (2.0 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Chile in 1996 was $6.7 billion, an increase of 14.7 percent from the level of U.S. FDI in 1995.

IMPORT POLICIES

Chile has a generally open trade regime. It applies a uniform ad valorem tariff of 11 percent on imports from all countries with which it has not already negotiated free trade agreements. Virtually all of Chile's tariffs are bound at 25 percent ad valorem, with the exception of tariffs for wheat, flour, vegetable oil, and sugar, which are bound at 31.5 percent. Despite Chile's relatively progressive trade regime, some significant barriers still exist.

For the above agricultural products, Chile maintains a price band system which applies the 11 percent duty plus a variable rate which may be positive or negative, to maintain domestic prices for these commodities within a predetermined range. The price band system delays the impact of changes in international market prices on Chilean producers and consumers. Chile has not applied duties on these products in excess of 31.5 percent since 1991.

Chilean law also permits the government to impose minimum customs value requirements for imports of agricultural products in response to low world prices. While Chile is not obligated to terminate this program until the year 2000 under its World Trade Organization (WTO) commitments, it has not applied the law since 1995. In addition, imports of used automobiles are prohibited.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Chile's strict animal health and phytosanitary requirements prevent the entry of some imports. In addition, announcement of proposed rule changes, notification of proposals to other members via the WTO Secretariat, and opportunity for public comment often fail to precede the actual promulgation of new requirements. Only after intense and persistent efforts by the U.S. Government on sanitary and phytosanitary issues has Chile begun to open its market to some trade in horticultural products. Chile recently granted export approval for California lemons, table grapes, kiwis, oranges, and grapefruit, but other U.S. fruits, such as apples, pears, and Florida and Texas citrus are still unable to penetrate the Chilean market due to phytosanitary barriers. U.S. exports of fresh poultry are effectively blocked from the Chilean market through a sanitary requirement that the United States considers unjustified and discriminatory. The U.S. Government has protested this requirement to the Chilean Government and has raised the issue in the WTO Sanitary and Phytosanitary Committee. U.S. beef exports have been restricted by Chilean labeling and grading regulations. Chile does not permit U.S. beef

in consumer cuts to enter the market without being graded to Chilean standards. Because Chilean meat grades originate from carcass grades at the time of slaughter, this requirement effectively blocks U.S.-produced beef from the market, although meat that will undergo further processing is not affected. The United States will continue to press Chile to implement and enforce WTO-consistent sanitary and phytosanitary requirements.

EXPORT SUBSIDIES

While Chile does not generally subsidize exports, it does employ a number of export promotion measures to help non-traditional exports. Chile provides a simplified duty drawback program for non-traditional exports which does not reflect actual duties paid on imported components.

Chile's export promotion measures are primarily intended to expedite and simplify the paperwork involved in the export process. The Government of Chile also provides exporters with quicker returns of value-added taxes than it provides to other producers. One such export promotion measure lets all exporters defer import duties for up to seven years on imported capital equipment or receive an equivalent subsidy for domestically produced capital goods. Chile has announced that, in accordance with its WTO commitments, the drawback program will be phased out over time. Chile also has an active export promotion agency which has planned expenditures of up to $10 million a year, half from government funds and half from industry contributions, for agricultural export promotion alone.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Patents

Chile implemented a patent, trademark, and industrial design law in 1991, which provides product patent protection for pharmaceuticals and a limited form of pipeline protection. While the law is generally strong, deficiencies do exist, including: a term of protection that is not consistent with the TRIPS term of 20 years from filing; lack of protection for plant and animal varieties; lack of provisions for restoring patent terms for delays in marketing due to regulatory approval processes; inadequate industrial design protection; and a lack of full "pipeline" protection for pharmaceutical products patented in other countries prior to the time product patent protection became available in Chile.

Another concern with Chile's intellectual property regime is the lack of adequate and effective protection of proprietary or test data. Article 39:3 of the TRIPS Agreement provides that if a WTO member mandates the submission of test data to obtain marketing approval for pharmaceutical or agricultural chemical products, it must protect such data against disclosure and unfair commercial use. Chile does not provide an adequate term of protection for test data that is consistent with international standards.

Copyrights

Chile revised its copyright law in 1992, extending the term of protection to the author's life plus 50 years, the standard in the TRIPS Agreement. While the copyright law, in general, provides protection that is nearly consistent with international standard in most areas, it could be improved. The Chilean law does not clearly protect computer software as a "literary work," does not provide clear rental and importation rights, allows for

inadequate penalties, has no provision for ex parte civil searches or "works for hire," is uncertain as regards the availability of injunctions and temporary restraining orders, and places unnecessary constraints on contractual rights. Despite active and effective enforcement efforts, piracy of computer software remains significant, and, while relatively low, piracy of video tapes and sound recordings exists.

Trademarks

Chile's trademark law is largely consistent with international standards, but also contains deficiencies, including: no requirement of use to maintain trademark protection; a "novelty" requirement for trademark registrations; no provision for trademarking figurative marks, color or packaging or collective marks; and no provisions for protection of "well-known" marks.

Other Intellectual Property Issues

In addition, Chile does not provide protection for semiconductor mask works or for encrypted program-carrying satellite signals. Improvements also need to be made in the protection of trade secrets so that such protection is consistent with TRIPS.

SERVICES BARRIERS

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

Chile is overdue in providing to the WTO an acceptance of the Fourth Protocol to the General Agreement on Trade in Services, which is necessary to bring its commitments on basic telecommunications services into effect. The deadline for submission of acceptance has been extended to July 31, 1998. Nonetheless, Chile has already made WTO commitments on most basic telecom services, and it adopted the WTO reference paper on regulatory commitments. Chile has made no WTO commitment for local telecommunications services. Also, discriminatory access charges for incoming international calls to Chile have cost U.S. carriers over $21 million annually, according to industry estimates.

While the Chilean financial services sector is generally quite open, the Government of Chile does not allow direct-branching into the market and instead requires foreign firms to set up local entities, "sociedades anonimas," in order to provide financial services.

INVESTMENT BARRIERS

While Chile welcomes foreign investment, controls and restrictions do exist. Under the law that regulates nearly all foreign direct investment, profits may be repatriated immediately, but none of the original capital may be repatriated for one year. Foreign direct investment is also subject to pro forma screening by the Government of Chile. All other funds that enter Chile as ordinary foreign capital are subject to a non-interest bearing reserve

deposit requirement which significantly raises the financial cost of such capital flows. This reserve requirement applies to foreign capital introduced into Chile for most lending purposes, for investment in government securities, and for other so-called non-productive, or “speculative,” purposes. There is no tax treaty between Chile and the United States, so the profits of U.S. companies are subject to taxation by the governments of both nations.

Royalty contracts must be approved by the Central Bank. Contracts may set fees and royalties only as a percentage of sales. Payments are usually limited to one percent of sales for the use of trademarks, three percent for the use of trade secrets and proprietary processes, and five percent for the use of patents. Remittances above these levels may be denied access to the inter-bank foreign exchange market and may be disallowed as expenses by the tax authorities. In the petroleum sector, oil and gas deposits are reserved for the state. However, private investors, whether foreign or Chilean, are allowed concessions in this area.

Chile has notified to the WTO measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMS). The measures deal with local content and trade balancing in the automotive industry. Proper notification allows developing-country WTO members to maintain such measures for a five-year transitional period after entry into force of the WTO. Chile therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMS to ensure that WTO members meet these obligations.

OTHER BARRIERS

Distilled Spirits Tax

Chile’s tax regime has historically imposed higher taxes on U.S. distilled spirits exports than on pisco, a spirit necessarily manufactured in Chile. The U.S. has repeatedly indicated its concern regarding the consistency of the taxes with Article III:2 of the General Agreement on Tariffs and Trade (GATT). In November 1997 the Chilean Congress passed a bill to modify the liquor tax system, which took effect December 1, 1997, with a three year phase-in period. The amended system still burdens U.S. exports. The U.S. Government has presented its concerns to the Government of Chile about both versions of the Chilean liquor tax regime, and in December 1997 requested Article XXII consultations to review the issue. The U.S. participated in these consultations together with the European Union (EU) in January 1998.

Luxury Tax

In addition to the 11 percent import tariff and the 18 percent value-added tax, automobile imports are subject to a "luxury" tax of 85 percent of C.I.F. value above roughly $10,300. This tax discourages sales of larger, more expensive vehicles, including most U.S.-made automobiles, which incorporate expensive safety features. Despite these taxes, sales of U.S.-produced vehicles are rising.

PEOPLE'S REPUBLIC OF CHINA

U.S. merchandise exports to China in 1997 were $12.8 billion, an increase of 6.9 percent from 1996. China was the United States' fourteenth largest export market in 1997. U.S. imports from China in 1997 were $62.6 billion in 1997, an increase of $11.1 billion (21.4 percent) from 1996. In 1997, the U.S. merchandise trade deficit with the People's Republic of China was $49.7 billion, an increase of $10.2 billion from 1996 and an approximate 50 percent increase since 1995, when the merchandise trade deficit with China stood at $33.8 billion.

The U.S. Department of Commerce has reported that for services trade in 1996, the United States exported $3.1 billion to China and imported $2.0 billion in services, resulting in a positive services trade balance with China of $1.1 billion.

The stock of U.S. foreign direct investment (FDI) in China in 1996 was $2.9 billion, an increase of 36 percent from the level of U.S. FDI in 1995. U.S. FDI in China has been concentrated largely in the manufacturing and petroleum sectors.

IMPORT POLICIES

China restricts imports through a variety of means, including high tariffs and taxes, non-tariff measures, limitations on which enterprises can import, and other barriers. For example:

China has used prohibitively high tariffs -- which in late 1997 still reached as high as 100 percent on some motor vehicles -- in combination with other import restrictions and foreign exchange controls to protect its domestic industry and restrict imports. These high nominal tariff rates -- to which China adds applicable value-added taxes and, on some goods, consumption taxes -- contribute to inefficiencies in China's economy and pose a major barrier to U.S. commercial opportunities.

While China has generally met the requirements of the 1992 Market Access MOU (Memorandum of Understanding) to remove various explicit non-tariff barriers, such as quotas and licensing requirements, China still maintains a large number of non-tariff administrative controls to implement its trade and industrial policies.

Tariffs and Taxes

In prior years, China's tariffs have been so high as to preclude imports. In 1996, China lowered its average import tariff from 42.1 percent to 23 percent, and on October 1, 1997, further lowered the average import tariff to 17 percent. Despite these recent tariff reductions, however, U.S. industry continues to express concern that tariff rates for sectors in which China is seeking to build its international competitiveness, such as chemicals and motor vehicles, remain extremely high. Many of China's tariff reductions in 1996 and 1997 have been on products on which China imports low volumes of goods. Indeed, China's overall increase in imports has been very modest when viewed in the context of recent reductions in China's average tariff rates.

According to China Customs trade data, China's total imports in 1996 increased 5.1 percent in 1996, while

imports from the United States increased 0.2 percent. Total imports in 1997 increased only 2.5 percent from 1996, while imports from the United States as measured by China Customs increased 0.6 percent.
In addition to high tariff rates, unpredictable application of those rates creates difficulties for companies trying to export to, or import into, the Chinese market. Tariffs may vary for the same product, depending on whether the product is eligible for an exemption from the published MFN tariff. Tariffs may also vary depending on the geographical point of entry. Also, local tariffs may be applied to imports even after the importer already paid the tariff at the port.

High-technology items whose purchase is incorporated into state or sector plans, for instance, have been imported at tariff rates significantly lower than the published MFN rate. China implemented a new import tariff-exemption plan for some goods under revised investment guidelines on January 1, 1998, which is designed to increase imports of foreign-made capital equipment and other goods. The effectiveness of this new exemption plan, however, remains to be demonstrated in light of regional economic difficulties and domestic macroeconomic uncertainties.

China's General Administration of Customs (Customs) has also granted preferential tariff rates through special exemptions or more informal means. For example, in notices issued on July 10, 1997, China Customs granted 20 percent import duty rates to two Chinese automobile manufacturers for their imports of certain automobile parts. The notices cited domestic content exceeding 80 percent in sedans manufactured by the two automobile manufacturers as the basis for granting preferential import duties on parts imported by the two manufacturers. China's 1997 import tariff schedule showed automotive part duties ranging as high as 50 percent on parts from MFN trading partners.

U.S. and other foreign businesses selling goods into China also complain about the lack of uniformity in customs valuation practices. Different ports of entry may charge significantly different duty rates on the same products. Because there is flexibility at the local level in deciding whether to charge the official rate, actual customs duties, like many taxes, are often the result of negotiation between business persons and Chinese Customs officers. Allegations of corruption often result.

China has taken steps to reduce tariffs pursuant to its bilateral commitments and in an effort to support its WTO accession bid. Many tariff reductions are still under negotiation in the context of WTO discussions with 36 trading partners. In November 1996, China's President Jiang Zemin announced that China would reduce the simple average tariff rate from the current 23 percent to 15 percent by the year 2000, as well as make further reductions in the medium-and long-term. The October 1, 1997, tariff adjustments noted above lowered China's simple average tariff level from 23 percent to 17 percent. U.S. negotiators are now working on the specific rates to be applied to the many items of export interest to U.S. companies.

In addition to tariffs, imports may also be subject to value-added and other taxes. U.S. industry has complained that the current value-added taxing system (VAT) amounts to an added surcharge on both imported goods and domestic products and discourages consumers by raising prices. China's value-added tax is usually 13 or 17 percent, and China levies that VAT after first imposing the import tariff and any applicable consumption tax and incorporating those amounts into the base on which the VAT is applied. Thus, a product subject to a 17 percent import tariff (the post-September 1997 average tariff level), a 17 percent VAT, and a consumption tax would be taxed ultimately at a rate in excess of 34 percent. Since some domestic and foreign firms are able to avoid the VAT through negotiation, U.S. firms who "play by the rules" are at a competitive

disadvantage.

In late 1997, China announced a reversal of course on its planned two-year phase-out of tariff exemption for capital equipment imported by foreign investors in China. China apparently had observed that a move to impose its nominal tariffs on foreign investors was raising project costs to commercially unacceptable levels. Contracted foreign investment (pledges of future business investments in China) has declined steeply since the planned two-year phase-out was announced in early 1996. The new tariff exemptions became available on January 1, 1998, but in early 1998 businesses were still facing some difficulties with respect to determining the availability and conditions for the tariff exemptions and procedures for applying for them.

On October 1, 1997, China introduced a sliding duty on newsprint for which the United States has been an important supplier to China. The sliding duty is sensitive to import prices, and as import prices drop, the duty payable increases to as high as 45 percent for newsprint from MFN trading partners. China's previous *ad valorem* duty rate on newsprint had been 15 percent in 1996. Even though Chinese newsprint consumers have often taken advantage of spot market volatility to import high-quality foreign-made newsprint at low prices, the October 1 imposition of a sliding duty raised the imported price of inexpensive foreign newsprint. In addition to this government action, in late 1997, Chinese newsprint producers filed China's first-ever antidumping petition. China's preliminary ruling on the newsprint case is expected in the first quarter of 1998.

Non-Tariff Measures

Non-tariff barriers are administered at national and subnational levels by the State Economic and Trade Commission (SETC), the State Planning Commission (SPC), and the Ministry of Foreign Trade and Economic Cooperation (MOFTEC). China's traditional non-tariff barriers include import licenses, import quotas, and other import controls. The levels of specific non-tariff barriers are the result of complex negotiations between the central government and ministries, state-owned corporations, and trading companies.

Central government agencies determine the levels of import quotas through data collection and negotiating sessions, usually late each year. Officials at central and local levels evaluate the need for particular products for individual projects or quantitative restrictions for the products. Once "demand" is determined, central government agencies allocate quotas that are eventually distributed nationwide to end-users and administered by local branches of the central government agencies concerned. China provides little transparency regarding the quantity or value of products to be imported under a quota.

MOFTEC uses import licenses to exercise an additional, nationwide system of control over some imports. Many products are subject both to quotas and also to import licensing requirements. For these products, after permission has been granted by other designated agencies for importation, MOFTEC must decide whether to issue a license. MOFTEC officials claim that import licenses are issued automatically once other agencies have approved an import.

While far too many NTMs still remain in place, progress is being made. For example, China abolished non-tariff barriers on schedule at the end of 1995 on 176 items specified under the 1992 Market Access MOU. Import restrictions on 13 more goods were abolished on December 31, 1997, pursuant to the 1992 Market Access MOU.

China

According to U.S. exporters and investors, new alternative measures and some aspects of China's new industrial policies may be undercutting the market access gains that had been anticipated as a result of changes obligated under the Market Access MOU. These measures include the "automatic" registration requirement, electromechanical product import control measures, regulations on the administration of medical equipment, and camera import control measures. About 400 products covered by the annex to the 1992 Market Access MOU are now subject to these "automatic registration" requirements. The implementation of this registration requirement appears to pose a new *de facto* licensing requirement.

Transparency

The 1992 bilateral Market Access MOU laid the foundation for China to improve significantly the transparency of its trade regime, including the publication of a central repository for all central government trade regulations and publications in the provinces of all trade and investment-related trade regulations. While the MOFTEC Gazette was established to carry official texts of all trade-related laws and regulations at the national level -- and has been a significant step toward transparency -- its coverage of trade-related regulations is still incomplete and not always timely. In addition, important steps toward making the import approval process transparent, especially for industrial goods such as machinery and electronics products, are offset by the opaque nature of customs and other government procedures.

As a result of the 1992 bilateral Market Access MOU and China's bilateral and multilateral negotiations and notifications on accession to the World Trade Organization, China's trade regime has become significantly more transparent in recent years. Nonetheless, businesses sometimes encounter difficulties in learning which regulations or rules apply to their operations in China.

Trading Rights and Other Restrictions

China restricts the types and numbers of entities within China which have the legal right to engage in international trade. Only those firms with import trading rights may bring goods into China. In addition, some goods that are of great commercial value to both China and its trading partners, such as grains, cotton, vegetable oils, petroleum, and certain related-products are imported principally through state trading enterprises.

In some cases, specific bureaus or ministries impose informal market access barriers for imports that fall under their jurisdictions. Some agencies require that only a certain group of companies alone be allowed to import. The State Pharmaceutical Administration is responsible for issuing quality certificates for pharmaceutical products. Some Chinese organizations require end users to acquire purchase certificates before they can receive permission to import.

As a result, China's real demand for these types of imported products greatly exceeds the supply made available through the official system. For example, U.S. industry estimates that only five percent or less of imported distilled spirits enter the Chinese market through official channels. Thus, a large illegal "grey" market for spirits has grown up around the official system. The same situation is also true for U.S. pork and citrus imports, which make their way into China from Hong Kong through unofficial channels. Sales of such products have resulted in revenue losses for China, because of rampant smuggling and the associated corruption.

In the context of its World Trade Organization accession negotiations, China has pledged to liberalize the availability of trading rights, i.e., the right to import, export and have access to China's distribution system, over a three year period. At the end of that transition period, all foreign and domestic enterprises will have trading rights. U.S. and third-country firms expect that the trading rights liberalization will enable them routinely to deal directly with customers and not be forced to go through intermediary companies that have the right to import goods into China. China's restrictive approach to licensing the scope of a business's operations (defining and limiting the types of goods a company can deal in and operations in which a company may engage in China) may prove to be a harbinger of restraint on the future expanded trading rights system.

Import Substitution Policies

Import substitution has been a longstanding Chinese trade policy. Nonetheless, in the 1992 MOU, China confirmed that it had eliminated all import substitution regulations, guidance, and policies, and that it would not subject any products to import substitution measures in the future. This constitutes a commitment, for example, that a Chinese government agency would no longer deny permission to import a foreign product because a domestic alternative exists. Despite this commitment, in 1994, China announced an automotive industrial policy that included import substitution requirements. This policy, designed to foster development of a modern automobile industry in China, explicitly calls for production of domestic automobiles and automobile parts as substitutes for imports, and establishes local content requirements, which would force the use of domestic products, whether comparable or not in quality or price.

In 1996, the State Council began reexamining its policies and regulations on pharmaceutical pricing. A series of provisional regulations and implementing provisions have been issued that discriminate against imported products and embody an import substitution policy. Price formulas vary based on whether domestic substitutes exist and receipt of certain benefits (such as exceptions from limits on profits) is conditioned on whether a product replaces an import.

The United States is consulting with China bilaterally and in the context of its WTO accession negotiations on the elimination of these policies and ensuring that any future policies do not contain such provisions.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

China maintains statutory inspection requirements (conformity assessment procedures) on about 780 imported goods, and an even greater number of items are subject to statutory inspection requirements upon export from China. In addition to these conformity assessment inspections, China also imposes safety licensing requirements on certain products.

In the context of China's WTO accession negotiations, China has identified over one hundred tariff-line items that are subject to safety licensing requirements. Major problems with China's standards system include the lack of transparency, difficulty in determining the appropriate standards, use of different standards on imports from different countries and different standards from domestic goods, and adoption of unique standards that differ from international standards for no identifiable reason.

China passed the "Import and Export Commodity Inspection Law" establishing a separate regime for safety

inspections of imported goods on February 2, 1989. The first catalog of nine commodities covered by the law was announced on August 1, 1989, with compliance required as of May 1, 1990. A second catalog of commodities covered by the law was announced on august 1, 1995, and contained a list of 38 categories of equipment, the first 20 of which became subject to safety inspection and certification on October 1, 1996. The last 18 of these equipment categories became subject to safety inspection and certification as of October 1, 1997. More commodities will be covered in future catalogs.

As noted, U.S. and other foreign traders often encounter difficulty in learning which Chinese standards apply to their goods. Officials of the State Administration for Commodity Inspection have said that, for some goods for which China has not yet developed its own standards, the standards of the country of origin will apply to that good. Therefore, a particular good from the United States may have to meet a different standard at the China's port of entry than does the same good from the European Union. This is a serious issue that goes to the heart of MFN treatment and is being taken up in the context of China's WTO accession negotiations.

For manufactured goods, China requires that a quality license be issued before the goods can be imported into China. With a few exceptions, China does not accept U.S. certification of product quality or manufacturing procedures. Obtaining quality licenses to export to China can be time-consuming and expensive. While the inspection and licensing requirements vary according to commodity, U.S. industry considers most to be burdensome and contrary the principles of the WTO Agreement on Technical Barriers to Trade.

The 1992 Market Access MOU requires that China apply the same standards and testing requirements to non-agricultural products, whether foreign or domestic. The United States and other foreign suppliers have complained however, that these safety and inspection procedures applied to foreign products are more rigorous than those applied to similar domestically produced products. Foreign suppliers have also had difficulty in learning exactly how and by whom inspections are conducted. For some types of product inspections, China does not use the same inspection agency for domestic and imported goods.

China's phytosanitary and veterinary import quarantine standards are often overly strict, unevenly applied, and not backed up by modern laboratory techniques. An example is China's use of past Mediterranean fruit fly occurrences in certain areas as a reason to ban the entry of citrus fruit from all parts of the United States. In another example, the Chinese government continues to require foreign pesticide producers to submit to costly testing and registration procedures, but it does not apply these requirements to domestic producers, U.S. companies report that complying with these regulation costs more than $5 million per agricultural chemical.

China committed in the 1992 Market Access MOU to base its agricultural import standards on "sound science." Since 1992, China has made some progress on agricultural sanitary and phytosanitary issues, signing bilateral protocols for several agricultural items, including live horses (September 1994); apples from Washington, Oregon, and Idaho (April 1995); ostriches, bovine embryos, swine, and cattle (June 1995); cherries from Washington (March 1996) and grapes from California (May 1997). However, China's sanitary and phytosanitary measures still prohibit imports of U.S. citrus, plums, and Pacific Northwest wheat.

In early 1997, China announced a one-year trial period for imports of meat for the retail market. Under this scheme, China allows meat imports into the general market from selected plants in three countries, Australia, Canada and the United States, during a trial period from June 1, 1997 to May 31, 1998. Only five U.S. plants were approved to export a total of 26,800 MT of beef, pork, turkey, and poultry. To date no meat has been

imported through this trial project. With a tariff of 45 percent and a VAT of 13 percent, the informal importing channels through Hong Kong are preferred. Access for meat and poultry from other plants is limited to use in hotels, restaurants, and food processing facilities in China. In addition, pork imports face restrictive import licensing requirements: licenses are only issued by China Animal and Plant Quarantine (CAPQ) in Beijing. While industry estimates of up to $400 million worth of U.S. chicken parts made their way to China through Hong Kong in the past year, total U.S. beef, pork, and poultry direct exports in China amounted to just over $60 million.

GOVERNMENT PROCUREMENT

China's government purchasing actions and decisions are subject to China's general laws, regulations and directives. Despite its commitment under the 1992 Market Access MOU to publish all laws and regulations affecting imports and exports, China has not published any laws or regulations regarding its government procurement practices. Although one government entity, the National Tendering Center for Machinery and Electrical Equipment, published a tendering guide, procurement procedures remain unclear and are not transparent.

The State Planning Commission began drafting a national procurement law for China in 1997. At an APEC workshop on procurement, Chinese officials identified the State Planning Commission as the agency in charge of government procurement bidding procedures. The official also noted that when promulgated, the procurement law would be accompanied by ten regulations covering: procurement of goods; procurement of goods for construction; procurement of services; procurement for key construction works; military procurement; scientific research projects; charges for bidding agencies; qualifications for bidding agencies; disputes in procurement procedures; and the establishment and discipline of bid evaluation committees.

Like many countries with developing procurement markets, two types of procurement exist in China: 1) procurement funded by the World Bank or other international organizations and 2) procurement funded by the Chinese government. For projects using foreign loans provided by international organizations such as the World Bank, a condition of the loan requires that tendering procedures comply with the standards set by the donor organization. Such procurement is overseen by either one of a handful of tendering companies that are subsidiaries of state-owned trading companies or the State Council's National Tendering Center for Machinery and Electrical Equipment. The Chinese government seldom uses these same transparent and competitive bidding procedures in procurement it funds. In fact, most of these procurements allow for preferential treatment of domestic suppliers' goods and services. Even when procurements are open to foreign bidders, such suppliers may be discouraged from bidding by the uncertainty of obtaining foreign exchange. Moreover, the Chinese government routinely seeks to obtain offsets from foreign bidders in the form of local content requirements, technology transfers, investment requirements, counter-trade or other concessions, not required of Chinese firms. In fact, bidding documents, including those for internationally-funded procurement, often express a "preference" for offsets.

Despite the promulgation of China's first law on unfair competition in December 1993, the problem of official corruption remains widespread as the government continues to call for improved self-discipline and anti-corruption efforts at all levels. For procurement made using competitive procedures, there is little direct evidence that bribery or corrupt practices have influenced awards or resulted in failure to enforce competitive measures. However, competitive procedures are not followed for the bulk of procurement in China. Given the

Chinese government's own fervent campaign to attack widespread corrupt practices of officials, the likelihood of corruption or bribery affecting procurement appears significant. U.S. suppliers have frequently raised this problem with U.S. officials, complaining that such practices in China put them at a competitive disadvantage. While this dilemma is less severe in sectors where the United States holds clear technological preeminence or cost advantages, it does undermine the long-term competitiveness of U.S. suppliers in the Chinese market.

The size and rate of growth of the Chinese economy, the proportion of the economy still falling under state control, and demand for the type of high technology goods and services that the United States provides all indicate that government procurement contracts would offer extremely significant commercial opportunities if current restrictions and non-transparent practices were removed. Sectors of highest demand include infrastructure development (especially energy, petrochemicals, transportation and environmental protection), telecommunications and value-added services, machinery, electrical equipment and precision instruments, and certain agricultural and forest products. Changes in China's government procurement practices might result in increased U.S. exports to China of over $500 million.

EXPORT SUBSIDIES

The Chinese government claims that direct financial subsidies on all exports including agricultural goods ended on January 1, 1991. While this may be true for direct budgetary outlays, China continues to use a variety of measures to support and promote exports. For example, Chinese exporters benefit from preferential loan policies (e.g., access to funds on non-commercial terms), preferential tax policies (e.g., reduced income taxes), and preferential energy and raw material supply policies (e.g., access to freight services and input supplies on non-commercial terms). State trading companies are also subject to constraints that make them export in volumes not consistent with their input costs or other commercial considerations.

The government also generates exports by imposing export requirements on Chinese foreign trade corporations (FTCs) and foreign-invested enterprises. These requirements tend to make FTCs over export, resulting in systematic financial losses. These losses are often covered by state commercial bank loans, and the chronic nature of these losses strongly suggests that much of the lending is not on strictly commercial terms. State companies are also subject to constraints that make them export in volumes not consistent with their input costs or other commercial considerations.

China is attempting to bring a greater degree of uniformity in the type and amount of taxes and duties imposed on enterprises in China, domestic and foreign-funded alike. As a result, preferential tax and duty policies that benefit exporters in special economic zones and coastal cities are being revised. It remains to be seen, however, whether uniformity will be achieved, particularly with respect to income and other direct taxes imposed on exporters. In fact, the State Administration of Taxation recently announced its decision to increase the export rebate rate for textile products, as part of an overall package of preferential policies (including export quotas and financial subsidies) to shore up the debt-ridden textile industry.

China's recent corn exports (6.6 million metric tons in 1997) demonstrate clearly the continued willingness of parts of the Chinese government to subsidize exports. Most of China's 1997 corn exports were sold at prices $20 to $30 below domestic wholesale corn prices. Chinese officials argue that there is no subsidy involved since the corn was purchased domestically in 1995 and 1996 when domestic prices were much lower than they were when exported. The Chinese government incurred a loss of as much as $50 million in 1997 through

exportation when compared to what the government might have realized by selling the corn in the domestic market.

In the context of negotiations on its accession to the WTO, China has agreed not to use export subsidies for agricultural products. Thus, reaching an understanding on what practices constitute subsidization is an important task.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Based on the 1995 and 1996 Bilateral IPR Agreements and extensive follow-up work with Chinese officials, China now has a functioning system to protect intellectual property rights (IPR). Enforcement of intellectual property rights has become part of China's nationwide anti-crime campaign; the Chinese police and court system have become actively involved in combating IPR piracy. In 1996 and 1997, the Chinese closed 62 CD/CD-ROM lines, 52 lines from underground factories and 10 lines which had been improperly registered, discovered by central authorities and then shut. The result has been a significant reduction of pirated sound recording production in South China.

Regional cooperation on enforcement of IPR at the border has also increased. However, as China has closed down illegal production lines and prevented importation of additional lines, the number of production lines and manufacture of infringing product in Hong Kong and Macau have increased. We have urged customs authorities throughout the region to work together to stop the flow of infringing product and machinery across borders.

Training on IPR enforcement has been a key part of building the necessary infrastructure for continuing enforcement efforts. More than 3,000 judges in China have received training on IPR laws. U.S. government agencies and industry groups have provided specialized IPR training and technical assistance to Chinese government personnel pursuant to the 1995 Agreement.

Despite progress, serious enforcement concerns remain. Industry reports indicate that end user piracy of business software is widespread. End user piracy takes place when a business or agency purchases a limited number of licenses to use software, and then makes unauthorized copies for use by others in the organization. Although Chinese authorities have investigated cases involving the sale of computers preloaded with unauthorized software and the National Copyright Administration has issued a directive instructing government ministries to use legitimate software, serious problems remain and we have not seen effective action against unauthorized copying. USTR is continuing to work with Chinese government officials and industry representatives to develop an effective enforcement initiative in this area.

While China has closed pirate CD production lines, the government has recently sold some of the seized machinery to other factories. USTR is monitoring the situation to determine whether these production lines are dedicated to making legitimate product in China.

Trademark piracy appears to be on the increase. USTR has raised concerns in our frequent bilateral consultations on IPR issues regarding widespread complaints regarding infringement of well-known marks and trade dress. U.S. officials have raised particular concerns about Chinese companies counterfeiting the Underwriters' Laboratory safety certification mark. U.S. customs seizures of imports from China bearing

counterfeit UL marks have soared. Other trademark protection issues, such as access to all designated trademark agents in China, protection of unregistered well-known trademarks and revision and clarification of registration standards need to be resolved.

Some pharmaceutical firms have complained about delays and inconsistencies in China's implementation of "administrative" protection for pharmaceuticals. In addition to requests to modify the process for obtaining approval of administrative protection, U.S. officials have discussed with China cases in which one Chinese agency granted production and marketing approval to a Chinese firm days before another agency granted administrative protection to the holder of a U.S. patent on the product. USTR is continuing discussions on whether the company with administrative protection for its product can require the other firm to cease activities related to the protected product.

China has agreed, in the context of the multilateral negotiations on its accession to the World Trade Organization (WTO), to implement the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) upon accession without a transition period. China's IPR experts are now reviewing and drafting IPR laws in preparation for accession. We understand, for example, that revisions to the copyright law to implement the TRIPs Agreement and other international copyright treaties are under consideration. U.S. experts will be consulting with China on these and other steps China needs to take to implement the TRIPs Agreement as part of our comprehensive IPR monitoring program.

Although some progress has been made on market access for IPR products, including software, sound recordings and motion pictures, U.S. products and companies still face market access barriers. Although formal quotas have been eliminated on imports of motion pictures and imports of videos are increasing, the number of films imported for theatrical release on a revenue sharing basis is still limited. Since only one state-owned enterprise is authorized to import films for theatrical release, China has in effect a *defacto* quota on such imports. Also of concern are high tariffs on films, customs valuation of films, and distribution rights. In addition to bilateral efforts to address these problems, USTR will continue to press for market access in China's WTO accession negotiations.

In sum, we have seen continued progress in China with respect to copyright enforcement and legal developments. However, much remains to be done to ensure consistent effective results. USTR continues to raise particular problems relating to piracy and trademark counterfeiting. Progress on market access issues remains disappointing and significant improvements need to be made bilaterally and in the WTO accession negotiations.

SERVICES BARRIERS

While China has promised to liberalize upon accession to the WTO, China's market for services today remains essentially closed. Restrictive investment laws, lack of transparency in administrative procedures, and arbitrary application of regulations and laws limit U.S. service exports and investment in China. Service trade opportunities, particularly in the financial services, telecommunications, audiovisual, distribution, professional services and travel and tourism sectors, have been affected by a variety of limitations on foreign participation throughout China's economy.

In most sectors, foreign service providers are only allowed to operate under selective "experimental@ licenses

with strict operational requirements, limits on the forms of establishment for entry, and restrictions on the geographic scope of activities. Once in the market, the lack of transparency and discretionary application of Chinese laws and regulations, along with the denial of national treatment, make doing business difficult for most foreign services companies.

Hiring issues are also complicated. Although some U.S. companies, such as those involved in joint-ventures, are allowed to hire and fire based on demand and performance and can pay wages according to market rates, the representative offices of U.S. service suppliers are still required to hire, recruit, or register all local staff through state labor services companies which collect large monthly fees for each employee hired. In some services sectors, particularly professional services, there are strict limits on the hiring of Chinese professionals.

In line with its effort to join the WTO, China has begun to allow greater foreign participation in a few services industries on a trial basis. For example, the State Council has followed up on plans announced in January 1996 to allow foreign banks in Shanghai's Pudong area to conduct local currency transactions on a restricted trial basis. To date, nine foreign banks have obtained permission to conduct local currency business in Pudong.

U.S. and other foreign financial institutions, however, still need approval for new representative offices and branches, which is granted on a discretionary, case-by-case basis. By the end of 1997, China approved a total of 142 bank branches, seven joint-venture banks, and five wholly foreign-owned banking firms in 19 cities. The scope of activities for these banks and branches is limited largely to business denominated in foreign currencies, essentially carving out the entire domestic market and leaving only international trade related business.

With respect to insurance services, China passed a new insurance law in 1993 and is taking steps to reform and develop its domestic industry. China still blocks nearly all foreign companies from the market. While China has approved to date 181 representative offices opened by 99 different foreign insurance companies, including many large U.S. insurers, only one U.S., one Japanese, and one Swiss company have been granted licenses to operate branches in China. A second U.S. company, as well as one company each from Germany, France and Canada, have been allowed to participate in joint venture insurance companies with a Chinese partner. All of the licenses granted to foreign companies restrict each company to a narrow range of operations in either Shanghai or Guangzhou. Permission to compete directly with the state-run insurance company, the People's Insurance Company, or with other quasi-private Chinese companies such as Ping An or China Pacific, has not been granted. While U.S. companies suffer under such restrictions, the new Chinese insurance conglomerates have been given free rein to set up operations and take market share.

In telecommunications services, U.S. companies continue to be closed out of the market. Current regulations governing providers of basic and value-added telecommunications services limit the management or ownership of these types of services to domestic companies. Many foreign operators, including U.S. firms, are looking for ways to get around these restrictions by forming joint ventures with local companies. For example, some foreign companies have entered into local joint ventures to construct telecom networks. These ventures are Chinese legal entities, which can then contract with Unicom, China’s second carrier, to provide telecommunications services. To date, however, the Ministry of Post and Telecommunications (MPT), China’s first carrier with the largest customer base and network, has been unwilling to participate in similar kinds of arrangements.

Information services also remain a difficult and sensitive area for U.S. firms to do business in China. In April 1996, for example, the State Council announced plans to apply severely restrictive regulations governing the activities of foreign financial information providers. U.S. diplomatic efforts in 1997, however, resulted in Chinese assurances that appear, for now, to have addressed the concerns of financial information providers and allowed their continued operations.

Audiovisual services is another sensitive area where foreign firms are almost completely closed out of the market, in part because of Chinese concerns about politically sensitive materials entering China. In April 1996, for example, the State Council announced plans to enact severely restrictive regulations governing the activities of foreign news service providers. While it appears that such action has been set aside for the time being, foreign information services providers remain wary. Other foreign audiovisual services providers, such as distributors of sound recordings, videos, movies, book, and magazines are almost completely shut out of the market. Foreign firms are denied the right of establishment. Inconsistent and subjective application of censorship regulations act as a further impediment to foreign participation in the market.

In the distribution services sector, U.S. companies are again significantly restricted in the scope of their activities. Business licenses often do not allow firms to provide the full range of services, including marketing, maintenance, after-sales services and customer support, except in collaboration with a Chinese partner. Foreign firms are not given the right to own and manage distribution networks, wholesaling outlets, or warehouses. Relatedly, foreign firms do not have access to transportation services on a reasonable and non-discriminatory basis and are required to use state-owned companies to distribute their goods, rather than being able to own or manage their own transport facilities.

In retailing, geographic and quantitative limits on the number of services suppliers prevent firms from competing effectively against local retailers. Restrictions on the ability of foreign firms to set product prices, quantity, import composition, and quality undercut any competitive advantages foreign firms might bring to the market. Foreign retailers are also only allowed to sell the products of their parent company and cannot engage in the sale of domestic goods. While direct sales companies have had broader geographic success, China has recently announced that it may take regulatory actions which could significantly undercut the economic viability of many direct sellers in China. The U.S. has urged China not to take any action against legitimate U.S. direct sellers, making the case that these firms provide China with significant investment income, employment opportunities and tax revenues.

In professional services, U.S. engineers and architects have enjoyed a relatively more cooperative and open relationship with the Chinese government. These professions have operated in the Chinese market through joint venture operations with relatively few regulatory problems. Foreign law firms and accounting firms, on the other hand, have been more tightly regulated.

China has permitted the establishment of foreign law firms in designated cities on a case-by-case basis only. As of February 1998, China has licensed 83 foreign law firms, of which almost 30 were U.S. firms, in 15 cities. China limits a firm's practice to a single city and foreign attorneys are not permitted to employ Chinese lawyers or establish partnerships or form other types of associations with Chinese lawyers or law firms. Accounting services are almost as restricted. In accounting, China limits the scope of activities for representative offices to consultancy. In order to perform statutory audits and the full range of accountancy services, foreign firms are required to set up a 50 percent joint venture that has to gradually relinquish its

control over 10 years down to 33 percent.

Finally, travel and other tourist-related services are also under tight regulation in China. Activities of foreign firms are limited to 11 areas in China. Current Chinese law prohibits non-Chinese companies from establishing full service travel agencies in China. China also imposes numerous restrictions on the guides and tourist agents that can be hired.

Since China's services sector remains underdeveloped and current foreign participation in the market is minimal, it is difficult to estimate how much such barriers to market access represent in lost U.S. exports of services. In some services sectors, such as insurance, even the most conservative estimates predict total premiums to reach $10-20 billion in the next several years. If China lifted barriers to market access in the sector, U.S. insurance providers could be expected to capture a portion of the Chinese market that would almost certainly exceed $500 million. In other services sectors, such as legal services, accountancy and consulting, while potential revenues are likely more modest, the lifting of barriers to market access would certainly result in significant increases in U.S. exports of services.

INVESTMENT BARRIERS

Although official Chinese policy welcomes foreign investment as critical to the country's economic development plans, the Chinese government continues to maintain barriers and controls on foreign investment, channeling it toward areas that support Chinese government development policies. China encourages foreign investment in priority infrastructure sectors such as energy production, communications, and transportation, and restricts or prohibits it in sectors where China's planners have not determined that China has a specific need or where China wants to protect the local industry.

China has issued new foreign investment guidelines, effective January 1, 1998, and provided an revised list of sectors in which foreign investment is encouraged, restricted or prohibited. According to the investment guidelines, the Chinese Government still prohibits foreign investment for projects with objectives not in line with national economic development under the state plan. In addition, there are many areas in which, although foreign investment is technically allowed, it is severely restricted. Restricted categories generally reflect: (1) the protection of domestic industries, such as the services sector, in which China fears that its domestic market and companies would be quickly dominated by foreign firms; (2) the aim of limiting luxuries or requiring large imports of components or raw materials; and (3) the avoidance of redundancy (i.e., excess capacity).

China has also reinstated tariff and VAT exemptions for imports of capital equipment by selected foreign-invested and domestic projects. These changes are in response to two years of declines in the number of new foreign investment projects and the value of such projects.

Examples of investment restrictions are abundant. For example, China bans investment in the management and operation of basic telecommunications, all aspects of value-added telecommunications as well as in the news media, broadcast and television sectors --citing a "national security interest." In addition, China severely restricts investment in the rest of the services sector, including distribution, trade, construction, tourism and travel services, shipping, advertising, insurance, and education, forcing foreign firms into joint venture arrangements in which they are often required to sell down to minority positions over a specified time frame. Finally, China hinders foreign investment and distorts trade by insisting on fulfillment of contract-specific local

content and mandatory technology transfer requirements if companies are to import under anything other than prohibitive tariff rates.

China's move to current account convertibility appears, in practice, to have stopped the enforcement of foreign exchange balancing requirements in existing contracts. These requirements have not been formally rescinded, and thus, could be enforced at some later time.

Once in the market, foreign ventures face numerous problems because of the uncertain investment climate created by policy vacillations and the uneven implementation of laws and regulations. China has taken steps to address investors' complaints regarding the inadequacies of protection for foreign investment, such as amending its joint venture law to prohibit the expropriation or nationalization of joint ventures without cause and compensation. While this action is a step in the right direction, the law continues to fall short of international standards sought by the United States. Other legislative actions taken by Beijing have promised greater autonomy and incentives for foreign-invested ventures, but these laws have been haphazardly enforced, if at all.

In addition, the designation of key state enterprises in many industries as the exclusive bases for the development of critical technologies limit the choice of joint venture partners. Designated partners are frequently unattractive for various business reasons such as lack of experience, inappropriate staffing levels, and outdated equipment.

While foreign-invested enterprises may have a significantly greater degree of managerial autonomy, Chinese enterprises enjoy certain advantages because they are fully integrated into the national economic system. For example, many Chinese companies are able to obtain preferential treatment in local financing, marketing, setting prices, and purchasing raw materials. Unlike many U.S. companies in China, Chinese companies have free access to the Chinese domestic market.

For many companies, the highly personalized nature of business in China and the limited number of suppliers and customers often make arbitration or other legal remedies impractical. Even when they have strong cases, foreign investors often decide against using arbitration or other legal means to resolve problems out of fear of permanently alienating critical business associates or government authorities. The lack of recourse to an impartial legal system that is not susceptible to government pressure further undermines investor confidence.

In December 1992, the United States re-established the Joint Commission on Commerce and Trade (JCCT) as a ministerial-level forum for discussion of investor and business concerns, among other things. The JCCT met most recently in September 1997 and is scheduled to meet again later in 1998 with working group sessions on trade and investment in a number of sectors. These working groups have established and continue to coordinate a range of cooperative exchanges on trade and investment issues, providing a forum to discuss specific investor and business problems.

ANTICOMPETITIVE PRACTICES

Anticompetitive practices in China come in the form of industrial conglomerates created to improve the profitability of state-owned enterprises. In some cases, the government has provided subsidies and other public benefits to such conglomerates, as well as authorizing some to fix prices, allocate contracts and, in other ways,

restrict competition among domestic suppliers. Such monopolistic or monopsonistic practices may restrict market access for imported products, raise production costs, and restrict market opportunities for foreign-invested enterprises in China.

OTHER BARRIERS

The rapid growth of the market for many products in China, while a positive sign for China's economy as a whole, has led to the creation of a large "illegal" gray market in some sectors of great commercial interest to U.S. producers and exporters. While some U.S. products are traded in the gray market, most U.S. companies either cannot or choose not to accept the risks of entering this "unofficial" market. The existence of this parallel gray market, resulting in part from controlled demand, deprives U.S. firms of sales that would otherwise occur on the legitimate market. Medical equipment is an example of this phenomenon. Similarly, restrictive import licensing requirements for low-end computers, only tardily lifted in mid-1995, appeared to allow third-country competitors to make inroads in a market that is dominated elsewhere by U.S. manufacturers.

Smuggling of both legitimate and "fake" products constitutes a formidable disincentive to engage in legitimate importation of U.S. and other foreign products and harms U.S. exporters in several ways. Smuggling diverts income from U.S. joint ventures in China or their home operations. Reportedly, many of the products smuggled into China are counterfeit or otherwise defective. In such cases, both the producer and importer of legitimate goods are harmed, as are Chinese consumers. Moreover, smuggling creates havoc for companies that try to provide after„sales service and repairs. Smuggled goods do not carry warranties, are often damaged or handled poorly, and are not serviced by trained personnel.

Satellite Launch Services

On March 13, 1995, the United States and China signed an agreement renewing the Bilateral Agreement on International Trade in Commercial Space Launch Services. The agreement covers the period from 1995 to 2001 and continues quantitative and pricing disciplines established under the first U.S.-China Space Launch Services agreement signed in 1989. The 1995 space launch agreement is covered under applicable U.S. trade laws and regulations.

The renewed agreement limits China to no more than 11 launches to geosynchronous earth orbit (GEO) over the seven-year period of the agreement. In addition, four launches in 1995/96 were counted against the quota of the first agreement since they were reviewed at that time. To balance the needs of the U.S. space launch industry with those of U.S. satellite manufacturers and users, the GEO restrictions may be increased up to a potential of 20 launches as a result of stronger than predicted growth for GEO launch services or a lack of availability of Western launch services during a special launch period.

The Agreement contains two improvements to the GEO pricing discipline: (1) a detailed annex on the adjustments which might be appropriate to make when comparing Chinese and Western launch prices and average values associated with those adjustments, and (2) a safe harbor which provides that Chinese prices falling within 15 percent of Western prices will generally be assumed to be in compliance with the "par pricing"

standard of the agreement, unless facts indicate otherwise. The former improvement will help prevent disputes with China on the nature and value of price adjustments, while the latter should aid in focusing attention on those transactions which could threaten the integrity of the “par pricing” discipline.

In light of the emergence of the low earth orbit (LEO) satellite market, the Agreement requires that Chinese participation in the LEO market segment be proportionate and non-disruptive. The U.S. may request consultations with China to establish the facts and agree on any necessary corrective action. In addition, the OEO pricing disciplines consist of the same par pricing requirements as in GEO. To further clarity these provisions, the two sides signed and annex on October 27, 1997 on specific LEO pricing adjustments, similar to those already negotiated for GEO. The annex will improve the effectiveness of the agreement by placing clear guidelines on the Chinese pricing of LEO launches and provide more information and greater certainty to industries interested in participating in this matter.

Taking into account the information supplied by China during annual consultations with regard to the prices, terms, and conditions offered by China for international commercial space launch services, the United States subsequently concluded that Chinese pricing in two GEO competitions did not appear to be justified under the pricing provisions of the 1995 Agreement. As a result, the U.S. held “special consultations” with China in November 1996 as provided for in Article IV (2) of the agreement to review its concerns. China provided additional information regarding the prices, terms, and conditions of the competitions or other factors that would further clarify the apparent price differences.

After reviewing this additional information, the United States determined that one of these contracts was in violation of the pricing provisions of the agreement, while the other no longer raised concerns regarding compliance with the Agreement. As a result of these determinations, the U.S. informed the Chinese in April 1997 that the following enforcement actions would be taken:

1. The U.S. would refuse any request by China for a discretionary increase in the limitation on launches to GEO;

2. The U.S. will insist that the automatic increase in the limitation on launches to GEO of up to to 5 launches will only occur when actual launches to GEO average 20 or more as provided in the MOA; and

3. The U.S. will monitor more closely the prices, terms, and conditions offered by Chinese launch services providers during the bid stage of international commercial competitions.

The U.S. informed China that these actions could be modified depending upon subsequent experience with China under the agreement.

Textiles

USTR engaged in several textile negotiations with China throughout 1996, culminating in a four year extension of the bilateral textile agreement, which was concluded February 3, 1997. The pact builds on the enforcement gains in the 1994 Textile Agreement, which produced USTR sanctions against China for circumvention of the agreed quotas on three different occasions, most recently in September 1996. Also, for the first time, China agreed to open its market to textile and apparel exports from the United States. Under the market access

aspects of the agreement, China has agreed to reduce tariffs and bind tariffs at applied rates, thereby increasing market access for U.S. exporters, and to ensure that non-tariff barriers do not impede the achievement of improved access. U.S. producers are confident that they can effectively export a number of products to China under these conditions.

The Agreement provides some adjustment to China's quota levels and growth rates and it addresses on-going U.S. concerns about illegal transshipment practices. The new agreement reduces quota levels in fourteen apparel and fabric product categories where there were repeated violations of the 1994 agreement through transshipment or over shipment. It maintains strong enforcement measures, including the ability to "triple charge" quotas for repeated violations of the agreement, as well as a number of procedural measures to improve the bilateral consultation process, including arrangements to implement an "electronic visa" information system to more effectively track textile and apparel shipments. The parties have also agreed to maintain the separate treatment of textiles quotas for Hong Kong, Macau, and China after July 1, 1997.

COLOMBIA

In 1997, the U.S. trade surplus with Colombia was $474 million, an increase of $39 million from the U.S. trade surplus of $435 million in 1996. U.S. merchandise exports to Colombia were $5.2 billion, an increase of $490 million (10.4 percent) from the level of U.S. exports to Colombia in 1996. Colombia was the United States' twenty-sixth largest export market in 1997. U.S. imports from Colombia were $4.7 billion in 1997, an increase of $451 million (10.6 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Colombia in 1996 was about $3.5 billion, an increase of 3.5 percent from the level of U.S. FDI in 1995. U.S. FDI in Colombia is concentrated largely in the manufacturing and petroleum sectors.

IMPORT POLICIES

Under an economic liberalization plan known as "apertura" (opening) in the early 1990's, Colombia substantially reduced tariffs, eliminated almost all import licensing requirements, simplified import and export procedures, established a free market exchange rate regime (with very few conditions), created transparent and more liberal foreign investment rules, and opened up nearly all sectors of the economy for foreign investment. The agricultural sector has been a general exception to this opening.

Tariffs

As a result of the Uruguay Round negotiations, Colombia bound most of its tariff rates at 35 to 40 percent. Currently, Colombia's average applied tariff rate is about 12 percent ad valorem, based on the CIF value. Claiming a fiscal shortfall, Colombia temporarily raised its tariffs between 2 and 5 percent for a 90-day period April through June 1997; however, at the end of this period, all tariffs returned to their earlier lower levels.

Colombia, along with Venezuela and Ecuador, implemented an Andean Community common external tariff (CET), which took effect on February 1, 1995. The CET has a four-tier structure, with duty levels of 5, 10, 15, and 20 percent for most products. In accordance with the Andean Community CET, Colombia harmonized its national four-tier tariff schedule with that of Venezuela and Ecuador, with some exceptions taken by each country.

In recent years Colombia has negotiated trade arrangements with other Latin American and Caribbean countries. Colombia has a comprehensive free trade agreement with Mexico and Venezuela, known as the G-3 Agreement, which took effect on January 1, 1995, under which most tariffs are to be reduced to zero by the year 2007. Colombia also has a partial free trade agreement with Chile. All of Colombia's bilateral and regional trade agreements are based on Latin American Integration Association (ALADI) regulations and procedures. Other agreements, such as those negotiated with Cuba, Panama, Central America, and CARICOM, have either been ineffective or have not been fully implemented. Colombia, along with the other members of the Andean Community, has entered into negotiations for a free trade arrangement with the countries of MERCOSUR.

Colombia

Colombia did not sign on to the WTO Information Technology Agreement.

Non-Tariff Measures

Colombia requires import licenses on less than two percent of products, primarily weapons and other products related to defense as well as "precursor" chemicals that may be used in refining cocaine. The majority of used goods -- used cars, tires, and clothing -- are prohibited from import, and those that are allowed, such as machinery, are subject to licensing. The agriculture sector in Colombia remains protected. Since the promulgation of Decree 2439 in November 1994, the Ministry of Agriculture has been required to approve import licenses for many agricultural items, such as wheat, poultry meat, malting barley, corn, cotton, rice, sorghum, wheat flour, oilseeds and their products, soybeans, soybean meal, and soybean oil.

Colombia has implemented absorption agreements under the Samper Administration for domestically-produced corn, wheat, sorghum, and malting barley in which both quantity and price are set. Prices for these products are fixed well above international market levels. Failure to comply with the domestic absorption agreements is likely to result in denial of import licenses. This import licensing regime appears to be discretionary and thus not consistent with Colombia's obligations under the WTO Agreement on Agriculture.

If the import licensing requirement for the products indicated above were eliminated, it is estimated that U.S. annual exports would increase by about $10 million.

Fourteen basic agricultural commodities (powdered milk, wheat, malting barley, yellow and white corn, crude palm and soybean oils, white rice, soybeans, white and raw sugars, chicken and turkey pieces, and pork meat) and an additional 120 commodities that are considered substitutes or related products are subject to a variable import tariff "price band" system. Imported wheat is also subject to minimum import prices. There are at this time no reliable figures showing how much U.S. exports would increase if the price band system were eliminated. The Colombian Foreign Trade Institute (INCOMEX) requires approval by the Ministry of Agriculture prior to the importation of chicken and turkey whole birds or parts. Under this system, the Government of Colombia has approved import licenses only when it has determined that such imports will not adversely affect Colombian producers. Since 1994, import licenses to import U.S. chicken and turkey parts have been regularly denied, and licenses for whole birds are often delayed. If the import licensing requirement for chicken and turkey parts were eliminated, it is estimated that U.S. annual exports would increase by approximately $10 million.

Valuation of imported merchandise, previously the responsibility of the customs service, can now ostensibly be done by importers who self-value, assess, and pay duties and other taxes at commercial banks. Customs clearance processes in many instances can be performed fairly rapidly. However, Colombia' s pre-shipment inspection of imported equipment must be performed by an independent testing agency which, according to U.S. industry, results in unnecessary delays. Through a series of resolutions dating back to November 1994, the Colombian Government has created a pre-shipment inspection (PSI) mechanism using private PSI companies. Upon acceding to the WTO Agreement on Pre-Shipment Inspection, Colombia took measures to allow PSI companies to perform certain direct functions under the control of the National Tax and Customs Directorate (DIAN). As of February 1, 1996, PSI companies began mandatory preclearance of all goods defined as "sensitive" by the Colombian Government. Inconsistencies on the part of customs in adhering to standardized procedures, and lack of transparency in enforcement, continues to create delays and problems.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

INCOMEX mandates compliance with specific technical standards for a variety of products. The particular specifications are established by the Colombian Institute of Standards (ICONTEC). Under Decree 300 of 1995, a certificate of conformity with Colombian standards is required prior to the importation of any good regulated by a standard. This certificate can be obtained by providing notarized documents from certifying organizations which have been previously approved or recognized by the country of production/export. Certifications from most U.S. product quality organizations are accepted in Colombia. In the past, problems had sometimes arisen due to the shortage of officially-recognized testing laboratories, but over the past two years the government's efforts to certify an increasing number of both public and private testing facilities has alleviated this problem.

The Colombian Institute of Technical Standards (ICONTEC), a private non-profit organization, has been accredited as a certification entity. It is also responsible for technical standards development, provides quality certification and technical support services, and serves as an Underwriter's Laboratories (UL) inspection center. ICONTEC is a member of the International Standards Organization (ISO) and the International Electrotechnical Commission (IEC), and recently received recognition from the German Association for Accreditation (TGA) to carry out ISO 9000 quality management certification.

Colombia's tax law, Law 223, which took effect on January 1, 1996, establishes that all distilled spirits are subject to a value-added tax of 35 percent. However, the law makes an exception for whiskeys that are aged for 12 or more years, which are subject to a 20 percent value-added tax. Bourbon and Tennessee whiskey -- both distinctive products of the United States -- are typically aged from four to eight years and, as a consequence, face a higher tax rate than most competing imported whiskeys which are aged longer. This distinction between whiskeys creates a competitive disadvantage for Bourbon and Tennessee whiskey. The United States has pointed out this inconsistency in the Colombian tax law but, to date, the Government of Colombia has not revised its law.

According to U.S. industry, Colombian requirements for phytosanitary registrations to bring new products into the market take an excessively long time (six to eight months) to fulfill.

GOVERNMENT PROCUREMENT

An October 1993 government procurement and contracting law, Law 80, provides equal treatment to foreign companies on a reciprocal basis and eliminates the 20 percent surcharge previously added to foreign bids. In implementing Law 80, the Government of Colombia instituted a requirement that companies without local headquarters must certify reciprocity in government procurement in the home country. Law 80 does not apply to contracts for the exploration and exploitation of renewable or non-renewable natural resources, their commercialization, and those activities performed by state companies involved in these sectors. Colombia is not a signatory to the WTO Agreement on Government Procurement.

Despite laws to encourage transparency, the government procurement process in many sectors of both the national and regional level still suffers from allegations of corruption. While in 1997 no official complaints were filed, in past years U.S. industry has complained of illicit payments or lack of market access in government bids for high-tech equipment and services and infrastructure projects.

Colombia

EXPORT SUBSIDIES

Colombia's tax rebate certificate program (CERT) contains a subsidy component; the Government of Colombia has committed to eliminate the subsidy and create an equitable drawback system, but has not yet done so. Colombia also has notified the WTO of its "special machinery import-export system" and "free zones" as constituting export subsidies.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Despite significant improvement in 1993 and 1994 in the area of Intellectual Property Rights (IPR), Colombia does not yet provide adequate and effective protection. As a result of its laws and practices -- especially its inadequate IPR enforcement -- Colombia has been on the "Watch List" under the Special 301 provision of the 1988 Trade Act every year since 1991. Colombia has ratified, but not yet fully implemented, the provisions of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Patents and Trademarks

Two Andean Community decisions on the protection of patents and trademarks and of plant varieties have been in effect in Colombia since January 1, 1994. The decisions are comprehensive and offer a significant improvement over previous standards of protection of intellectual property in the Andean Community countries. For example, they provide a 20-year term of protection for patents and reversal of the burden of proof in cases of alleged process patent infringement. The provisions of the decisions covering protection of trade secrets and new plant varieties are generally consistent with world-class standards for protecting intellectual property rights. However, the decisions still contain deficiencies, including overly broad compulsory licensing provisions, working requirements, restrictions on biotechnology inventions, denial of pharmaceutical patent protection for patented products listed on the World Health Organization's model list of essential drugs, the lack of transitional ("pipeline") protection, and the lack of protection against parallel imports. In June 1996, Colombia ratified the Paris Convention for the protection of industrial property, which went into effect in September 1996.

Colombia's trademark protection requires registration and use of a trademark in Colombia. In a recent decree, Colombia announced that registration of a trademark must be accompanied with its use in order to prevent parallel imports. Trademark registrations have a ten-year duration and may be renewed for successive ten-year periods. Priority rights are granted to the first application for trademark in another Andean Community country or in any country which grants reciprocal rights. Colombia is a member of the Inter-American Convention for Trademark and Commercial Protection. Enforcement in the trademark area remains weak.

The Colombian Government has made progress administering patent and trademark regulations. The backlog of pending cases with the agency in charge of patents and trademarks -- the Superintendency of Industry and Commerce -- has been coming down somewhat from earlier years. However in 1997, it increased again slightly to approximately 29,000 cases.

According to U.S. industry, Colombia maintains a policy of promoting unbranded "generic" pharmaceuticals at the expense of the brands typically produced by multinational companies. Law 100 establishes that the Colombian people will be covered by either social security or health promoting entities and that pharmaceutical

products will be supplied based on a list of only 307 generic substances. As common practice, however, Colombians are limited to the listed pharmaceuticals only in the basic medical plans due to cost constraints.

Copyrights

Andean Community Decision 351 on the protection of copyrights has been in effect in Colombia since January 1, 1994. Colombia also has a modern copyright law, Law 44 of 1993. The law extends protection for computer software to 50 years, but does not classify it as a literary work. Law 44 and Colombia's civil code include some provisions for IPR enforcement which have been used to combat infringement and protect rights. Colombia belongs to both the Berne and the Universal Copyright Conventions and provides a generally Berne-consistent system. Semiconductor layout designs are not protected under Colombian law.

Colombia's 1993 copyright law significantly increased penalties for copyright infringement, specifically empowering the Attorney General's office to combat piracy. Also, Colombia's television broadcast law potentially increases protection for all copyrighted programming by regulating satellite dishes. However, enforcement of copyright laws is still quite lacking and U.S. industry estimates that the majority of the video cassette, sound recording and business software markets are pirated. Industry estimates that in 1997, total revenue lost to copyright piracy was $151 million.

SERVICES BARRIERS

Colombia maintains barriers in a number of service areas, including audiovisual, franchising, data processing and professional services. In some industries, percentage limits are placed on foreign equity participation. In addition, a minimum of 50 percent of any television commercial for public broadcast network programming must be produced locally.

In the recently concluded WTO Financial Services negotiations, Colombia made broad-based commitments to allow the provision of all insurance services. Colombia retained its restrictions on most cross-border insurance activities with the exception of insurance of international cargo originating or terminating in a Colombian port. Colombia, in its offer, continues to require a commercial presence to sell all other insurance except international travel or reinsurance. Colombia permits 100 percent foreign ownership of insurance subsidiaries, but the establishment of branch offices of foreign insurance companies is not allowed.

Cargo reserve requirements in transport have been eliminated. However, the Ministry of Foreign Trade reserves the right to impose restrictions on foreign vessels of nations which impose reserve requirements on Colombian vessels.

Foreign law firms are not permitted a commercial presence in Colombia unless the firm is headed by a Colombian attorney. Colombia also restricts the movement of personnel in several professional areas, such as architecture, engineering, law and construction. Firms with more than ten employees can have no more than 20 percent of specialists and 10 percent of unskilled laborers who are foreign nationals.

In 1991 Colombia promulgated Resolution 51, which permits 100 percent foreign ownership in financial services, although the use of foreign personnel in the financial services sector remains limited to administrators, legal representatives and technicians. For a full discussion of the treatment of U.S. banking and securities

firms, see the Department of Treasury's 1994 National Treatment Study.

In March 1997, the Colombian Central Bank created a reserve requirement on all foreign loans over six months designed to reduce the amount of foreign private debt, which was subsequently altered slightly in May 1997. Thirty percent of all proceeds from foreign loans must be left on deposit with the Central Bank in a non-interest bearing account for 18 months. Certain loans such as for certain raw materials and capital goods are exempted from this requirement.

Basic Telecommunications Services

In the recently concluded WTO negotiations on basic telecommunications services, Colombia committed to provide market access and national treatment for private networks for voice and data, paging, trunked radio, geostationary satellite and local public voice services. Market access and national treatment commitments for long-distance and international services are subject to an economic needs test, meaning that Colombia can limit the number of suppliers arbitrarily. This is also true for cellular services and PCS as of January 1, 2000. Colombia agreed to permit 70 percent foreign ownership for all services authorized and it adopted the reference paper on regulatory commitments. Colombia specifically prohibited "call-back" services and excluded fixed and mobile satellite systems.

INVESTMENT BARRIERS

Investment screening has been largely eliminated, and the mechanisms that still exist are generally routine and non-discriminatory. Legislation grants national treatment to foreign direct investors and permits complete foreign ownership in virtually all sectors of the Colombian economy. However, since 1994, in an effort to curb money laundering, the Colombian Government has prohibited foreign direct investors from obtaining ownership in real estate not connected with other investment activities.

Under the Andean Community Common Automotive Policy, Colombia, Venezuela and Ecuador impose regional content requirements in the automotive assembly industry in order to qualify for reduced duties on imports. The local content requirement for passenger cars was 32 percent in 1997 and has risen to 33 percent for 1998. Colombia has notified to the WTO the local content requirements in the automotive sector, which are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures. Proper notification allows developing country WTO members to maintain such measures for a five-year transitional period after entry into force of the WTO. Colombia, therefore, must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO members meet these obligations.

All foreign investment in petroleum exploration and development in Colombia must be carried out under an association contract between the foreign investor and Ecopetrol, the state oil company. The terms of the association contracts were modified in 1994, 1995, and again in 1997, in an effort to continue to attract the necessary foreign investment. However, security conditions continue to be worrisome, and notwithstanding the improvements in the terms of the contracts, foreign investors will probably continue to remain cautious.

Colombia has notified to the WTO measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures. The measures deal with local content and trade balancing

requirements in the automotive and agricultural sectors. Proper notification allows developing-country WTO members to maintain such measures for a five-year transitional period after entry into force of the WTO. Colombia therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO members meet these obligations.

OTHER BARRIERS

Television local content quotas

As part of the de-monopolization of Colombia's government-owned television network, Colombia passed the television broadcast law, Law 182/95, effective January 1995, which increases protection for all copyrighted programming by regulating satellite dishes and permits private television broadcasters to compete with the government-owned broadcaster. It permits foreign direct investment in the Colombian motion picture industry, but limits foreign investment to 15 percent of the total capital of local television programming production companies. The law increases restrictions on foreign content in broadcasting, including a complicated, burdensome system of subquotas for different hours of the day. The Colombian law requires broadcasters to transmit 70 percent locally-produced programming during prime time and a range of zero to 40 percent during other times on national television, and 50 percent locally-produced programming on regional channels and local stations. Retransmission of local productions are calculated to fulfill only part of the national content requirement. Foreign talent may be used in locally-produced programming, but limits are set by the Colombian quasi-independent National Television Commission.

Law 182/95 also includes burdensome restrictions on foreign investment, mandating reciprocity requirements and requirements that foreign investors be engaged actively in television operations in their country of origin. Foreign investment also must involve an implicit transfer of technology. The National Television Commission has the authority to reduce these restrictions, but has not taken action in this area.

COSTA RICA

In 1997, the U.S. trade deficit with Costa Rica was $300 million, an increase of $140 million from the U.S. trade deficit of $160 million in 1996. U.S. merchandise exports to Costa Rica were $2 billion, an increase of $209 million (11.6 percent) from the level of U.S. exports to Costa Rica in 1996. Costa Rica was the United States' thirty-ninth largest export market in 1997. U.S. imports from Costa Rica were $2.3 billion in 1997 an increase of $349 million (17.7 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Costa Rica in 1996 was $1.2 billion, an increase of 38.5 percent from the level of U.S. FDI in 1995. U.S. FDI in Costa Rica is concentrated largely in the manufacturing and chemical product sectors.

IMPORT POLICIES

Tariffs and Other Import Charges

Costa Rica is a member of the Central American Common Market (CACM), which also includes Guatemala, El Salvador, Honduras, and Nicaragua. With the exception of certain items, notably agricultural products, there are no duties for products traded among CACM members. The CACM had a common external tariff (CET) ranging from 5 to 20 percent for most products. In 1995, the members of the CACM agreed to reduce the CET to 0 to 15 percent, but allowed each member country to determine the timing of the reductions. Costa Rica's timetable for reducing the tariffs is contingent on progress in reducing the fiscal deficit.

In the context of the Uruguay Round negotiations, the Government of Costa Rica agreed to eliminate all import quotas and currently has a tariff binding of 51 percent on most goods, excluding selected agricultural commodities which are protected with significantly higher tariffs. Examples of such protection are dairy products and poultry products, with tariff bindings of 106 and 262 percent, respectively. Under the WTO Agreement on Agriculture, Costa Rica agreed to permit imports of up to 3 percent of national consumption of these goods, growing to 5 percent in 2004. This provides opportunities for new-to-market U.S. agricultural products. During the past year, Costa Rica finally implemented all of its tariff rate quota (TRQ) commitments..

Most applied tariffs on agricultural products range from 1 to 20 percent ad valorem. The Government of Costa Rica reduced duties on imported raw materials, bulk grains, and oilseeds from 5 to 1 percent in July 1996. Imported automobiles, both new and used, are taxed heavily. Depending on the model and accessories, a new car importer can pay up to 150 percent of the c.i.f. price in import duties and taxes (excise tax, sales tax, and 1-percent general tax).

Quantitative Restrictions and Import Licensing

The Costa Rican Legislative Assembly approved legislation implementing the Uruguay Round Agreements in December 1994. The law, published on December 27, 1994, eliminates quantitative restrictions and

requirements for import licenses and permits, including for the following: pork and related by-products, poultry, seeds, rice, wheat, corn (white and yellow), beans, sugar, sugar cane, and related products, dairy products, and coffee. The import permits in many cases have been replaced by tariffs as a result of the Uruguay Round negotiations.

Customs Procedures

Costa Rican customs procedures have long been complex and bureaucratic. However, the 1995 passage of a new general customs law formalized reforms aimed at streamlining customs procedures. Much of the necessary processing is now accomplished electronically and “one-stop import and export windows” have significantly reduced the time required for customs processing.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Costa Rican law requires exclusive use of the metric system, but in practice Costa Rican officials do not challenge U.S. and European commercial and product standards. However, a “system of standards” is not uniformly implemented in Costa Rica due to a lack of adequate laboratory equipment and funds.

There are no general requirements in Costa Rica for marking the origin of goods or for labeling of general merchandise. However, special labeling requirements apply to shipments of food products, pharmaceuticals, fertilizers, pesticides, hormones, veterinary preparations, vaccines, poisonous substances, and mouthwashes. Costa Rican food-labeling law requires that all imported food products contain labeling in Spanish with the following specifications: product name, list of ingredients in quantitative order, nutritional information, name and address of importer, expiration or best-if-used-by dates, and weight.

GOVERNMENT PROCUREMENT

Costa Rica’s government procurement system is based on the 1995 reforms to the Costa Rican Financial Administration Law (Law No. 7494), which came into effect in May 1996. Government entities or ministries with a regular annual budget of more than $200 million are permitted to issue public tenders subject to publication in the official newspaper *(La Gaceta)* for purchases over $2.3 million. Entities may make purchases between $130,000 and $2.3 million through tenders circulated among a registered suppliers list. Purchases under $130,000 may be made from a list of pre-selected bidders.

EXPORT SUBSIDIES

The Export Promotion Law (Law No. 5162 of December 22, 1972), which provides for incentives such as tax credit certificates for up to 15 percent of the value of exports, is being phased out. The benefits are only granted to existing companies and are due to end within two years. Export contracts granting 12-year tax holidays (Law No. 6955 of March 2, 1984) and consolidating the rebate system for in-bond trade will be phased out by 1999.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Costa Rica is a signatory of all major international agreements and conventions on trademarks, copyrights, and

patent protection. Costa Rica became a member of the World Intellectual Property Organization (WIPO) in 1980.

Copyrights

Costa Rican copyright law is generally adequate, but not uniformly enforced. The copyright regime was revised in 1994 to provide specific protection for computer software. While piracy of satellite transmissions by the domestic cable television industry has been curtailed, some apartment buildings and large Costa Rican hotels continue to engage in satellite signal piracy. Piracy of video recording and computer software is also widespread, although some progress has been made in reducing such practices. Video piracy has been reduced of the last few years from virtually 100 percent to a lesser level.

Patents

In 1995, the Legislative Assembly ratified the Paris Convention for the Protection of Industrial Property. However, Costa Rican patent law is deficient in several key areas. Patents are granted for a non-extendable 12-year term from the date of the grant. In the case of products deemed to be in the "public interest," such as pharmaceuticals, chemicals and agricultural chemicals, fertilizers, and beverage/food products, the term of protection is only one year from the date of grant. The current patent regime also has broad compulsory licensing provisions and requires local manufacture. A new patent law is being drafted to bring Costa Rica in line with its obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), including restricting compulsory licensing provisions and extending full patent protection term for inventions designated as being "in the public interest." The bill awaits legislative action.

Trademarks

Counterfeiting of well-known marks is widespread. Legal recourse against these practices in Costa Rica is available, but may require protracted and costly litigation. In 1994, Costa Rica signed the Central American Convention for the Protection of Trademarks.

SERVICES BARRIERS

Article 46 of the Costa Rican constitution prohibits monopolies, except for public sector monopolies which the constitution establishes. It also prohibits acts deemed to restrict or endanger the freedom of trade, agriculture or industry. The monopolies created by the constitution cover insurance, telecommunications, large electrical generation plants, energy distribution, petroleum exploration, refining, distribution and marketing to the retail level, production of alcoholic beverages, and railroad transportation. In addition, restrictions on the participation of foreign companies exist in private sector activities, such as customs handling, medical services, and other professions requiring Costa Rican registration and long-term residency.

Financial reform legislation enacted in 1995 eliminated the state-owned banks' monopoly on checking accounts and savings deposits under 30 days' duration and allowed private commercial banks to access the Central Bank's discount window beginning in September 1996. To qualify for the benefits of the law, however, private commercial banks are required to lend between 10 and 17 percent of their short-term assets to state-owned

commercial banks and/or to open branches in rural areas of the country. This requirement is being appealed in the courts.

Foreign individuals wishing to participate in some sectors may be discouraged by regulations governing the practice of a profession. For example, medical practitioners, lawyers, certified public accountants, engineers, architects, teachers, and other professionals must be members of an officially recognized guild ("colegios") which sets residency, examination, and apprenticeship requirements.

The Costa Rican constitution grants a monopoly over the insurance sector for the National Insurance Institute (INS). The INS also provides fire department services and owns and manages medical/rehabilitation clinics. In the absence of an insurance monopoly, foreign companies would have the potential to capture as much as 60 percent of the market, given the financial strength, range of product offerings, and global competitiveness of the industry. Industry observers estimate that U.S. participation would account for 50 to 60 percent of the international component of the Costa Rican insurance market, or up to 36 percent of the total.

INVESTMENT BARRIERS

An expropriation law (Law No. 7495) was enacted in 1995, replacing prior legislation which allowed private property to be taken by any state institution without prior compensation. The law stipulates that expropriations are to occur only after full advance payment is made. The law applies to Costa Ricans and foreigners alike.

Despite improvements in the legal framework, many expropriations, as well as land invasions by squatters, remain unaddressed. One land invasion resulted in the death of a U.S. citizen in late 1997. As a result, the U.S. Government has placed increased pressure on the Costa Rican Government to provide prompt, adequate, and effective compensation to improve security to protect property owners.

Costa Rica affords national treatment for foreign investors who incorporate or otherwise establish their business locally, and there are no restrictions on the repatriation of investment or profits. However, private investment, both domestic and foreign, is restricted in the areas of energy, telecommunications, insurance, alcoholic beverages, railroad transportation, and petroleum (except for retailing) The U.S. Government and Costa Rica have attempted to negotiate a bilateral investment treaty, but there has been little movement in the negotiations in the past year.

While impossible to quantify with precision, existing barriers to investment in protected sectors probably have an impact on U.S. exports. While protected sectors of the Costa Rican market are favorably disposed toward purchasing supplies and equipment from the U.S., those sectors generally lack access to competitively priced capital and are limited in their ability to purchase inputs from any source -- including from the U.S.

U.S. market share in supplying equipment to the telecommunications and electrical energy sectors as a whole has traditionally run between 30 and 45 percent. However, the parastatal institution that runs the telecommunications and energy utilities traditionally purchases well over half of its equipment from U.S. sources.

Costa Rica has notified to the WTO measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures. The measures deal with local content requirements in the economy in general. Proper notification allows developing-country WTO Members to maintain such measures for a five-year transitional period after entry into force of the WTO. Costa Rica therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO Members meet these obligations.

OTHER BARRIERS

On January 9, 1995, USTR initiated a Section 301 investigation of Costa Rica's implementation of the Banana Framework Agreement (BFA) concluded by Costa Rica and the European Union (EU) on January 1, 1995. On January 10, 1996, USTR determined that Costa Rica's policies, acts and practices were unreasonable or discriminatory and a burden or restriction on U.S. commerce. Taking into account the positive steps Costa Rica had taken in revising its internal banana regime and its willingness to cooperate with the United States in seeking reform of the EU banana regime, USTR decided that the appropriate action was to implement a process aimed at addressing the outstanding issues, while stressing that additional action may still be taken. USTR continues to monitor Costa Rica's compliance with the terms of the MOU.

THE DOMINICAN REPUBLIC

In 1997, the U.S. trade deficit with the Dominican Republic was $401 million, an increase of $9 million from the U.S. trade deficit of $392 million in 1996. U.S. merchandise exports to the Dominican Republic were $3.9 billion, a decrease of $745 million (23.4 percent) from the level of U.S. exports to the Dominican Republic in 1996. The Dominican Republic was the United States' thirtieth largest export market in 1997. U.S. imports from the Dominican Republic were $4.3 billion in 1997, an increase of 754 million (21.1 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in the Dominican Republic in 1996 was $465 million, an increase of 18 percent from the level of U.S. FDI in 1995. U.S. FDI in the Dominican Republic is concentrated largely in the manufacturing and financial sectors.

IMPORT POLICIES

Tariffs on most products fall within a range of 5 to 35 percent. However, the Government of the Dominican Republic imposes a 5 to 80 percent selective consumption tax on "nonessential" imports such as home appliances, alcohol, perfumes, jewelry, automobiles, and auto parts. Late in 1996, the Fernandez administration proposed an extensive tariff reduction on so-called luxury imports (particularly automobiles) to the Dominican Congress. The Congress has not yet acted on this proposal.

U.S. producers of many products face an additional de facto trade barrier in the form of a highly-discretionary customs valuation system. In addition, import permits are required for most agricultural items and are often delayed or withheld to protect local producers. Arbitrary customs clearance procedures sometimes delay the importation of merchandise for lengthy periods. Furthermore, the Dominican Government continues to require importers to obtain from a Dominican Consulate in the United States a consular invoice and "legalization" of documents with attendant fees and delays, although this system is now under review by a Dominican Government interagency group.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Dominican Republic generally accepts U.S. certifications and standards. U.S. agricultural exports are sometimes subject to arbitrarily-enforced and non-scientifically based phytosanitary measures.

GOVERNMENT PROCUREMENT

There is no explicit "buy national" policy, however, government procurement is often conducted without the benefit of open bidding. The processes by which contractors and/or suppliers are chosen are generally opaque. The new administration in the Dominican Republic is committed to more transparent decision-making.

EXPORT SUBSIDIES

The Dominican Republic does not have aggressive export-promotion schemes other than the exemptions given

to firms in the free trade zones. A tax rebate scheme designed to encourage exports is considered a failure and is usually avoided by exporters.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Dominican law does not provide adequate and effective protection of intellectual property rights including levels of protection that are consistent with international standards such as the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). For example, the copyright law is deficient in a number of areas. The Dominican Republic has inadequate patent protection, especially for pharmaceuticals. The Dominican Republic was added to the USTR Special 301 Watch List in 1997 due to concerns about lack of TRIPs consistent laws and inadequate enforcement against piracy and counterfeiting.

Copyrights

The piracy of computer software, video and audio tapes, and compact disc technologies, as well as TV piracy continues and is not hindered by the limited enforcement action by the Dominican Government. A U.S. Government review of the Dominican Republic's trade preferences under the Generalized System of Preferences (GSP), in response to a petition from the Motion Picture Export Association of America claiming widespread cable television piracy, was terminated in 1994 when the Dominican Government took steps to address U.S. concerns. Larger cable television companies now generally pay fees and royalties, although smaller systems may still be pirating signals and programs. Therefore, the MPAA and Televisions Association of Programmers visited the Dominican Republic in 1997 to raise this recurring problem. The Dominican Government has taken some steps in response, although, such initiatives have not been enough to stem the problem.

Patents

The existing 1911 law provides for broad exclusions of subject matter from patentability, and includes onerous local working requirements. Dominican patent law continues to be inadequate with respect to term of protection. Infringement is widespread. The Ministry of Health currently is granting marketing approvals for existing pharmaceutical products, thus allowing violation of patent holders' rights.

Trademarks

Trademark enforcement is inadequate, particularly in the area of well-known apparel and athletic shoe brands, which are counterfeited and sold widely on the local market.

SERVICES BARRIERS

Until recently, foreign participation in the financial services sector was restricted by law. The 1995 foreign investment law, and a financial-monetary code still before the Dominican Congress, permit foreign involvement in the financial services sector. However, the practical impact of these provisions is not clear. There is no secondary securities market in the Dominican Republic so questions of brokerage services and securities underwriting, trading, etc., do not arise.

The Dominican Republic is overdue in providing to the World Trade Organization an acceptance of the Fourth Protocol to the General Agreement on Trade in Services, which is necessary to bring its commitments on basic telecommunications services into effect. The WTO Council on Trade in Services has extended the deadline for submission of the acceptance until July 31, 1998.

INVESTMENT BARRIERS

Foreign Investment Law

The December 1995 investment law is designed to remove barriers to investment and to provide equal access for foreign investors to all sectors of the economy except toxic waste disposal, public health and environment, and defense, for which express presidential authorization is required. Foreigners may register investments of cash, trademarks, or technology in new or existing companies or real estate (with some limitations). Implementing regulations were issued in September 1996.

Investors no longer need the authorization of the Foreign Investment Directorate to invest but must register any investment with the Central Bank within 90 days. Investors may remit the full amount of capital originally invested and capital gains as well as fees for technology transfer and royalties from previously-registered contracts. The law grants a five-year term for the gradual repatriation of non-remitted accumulated profits. Foreigners may represent their products directly without need for a local agent.

Telecommunications

In the WTO negotiations on basic telecommunications services, the Dominican Republic made limited commitments on most basic telecommunications services. It adopted the reference paper on regulatory commitments but did not guarantee national treatment for any telecommunication service. The Dominican Republic has not yet ratified this agreement.

OTHER BARRIERS

The Dominican Republic levies a value-added eight percent Tax on the Transfer of Industrialized Goods and Services (ITBIS). The ITBIS expressly taxes the importation of industrial goods. A very broad categories of domestic goods, but very few imported goods, are exempted from the ITBIS. For imports, the tax is levied on the c.i.f. value plus all customs duties and internal taxes on imports. For domestic goods, the tax base is the sales price plus related costs such as transportation. Services appear to be taxed in the same manner. The discrimination against imported products under the ITBIS effectively increases the protection afforded to many domestic industries.

ECUADOR

In 1997, the U.S. trade deficit with Ecuador was $533 million, a decrease of $126 million from the U.S. trade deficit of $659 million in 1996. U.S. merchandise exports to Ecuador were approximately $1.5 billion, an increase of $266 million (21.1 percent) from the level of U.S. exports to Ecuador in 1996. Ecuador was the United States' forty-eighth largest export market in 1996. U.S. imports from Ecuador were about $2.1 billion in 1997, an increase of $139 million (7.3 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Ecuador in 1996 was $855 million, an increase of 2.6 percent from the level of U.S. FDI in 1995. U.S. FDI in Ecuador is concentrated largely in the petroleum, manufacturing and wholesale sectors.

IMPORT POLICIES

Ecuador has substantially liberalized its trade regime since 1990, resulting in a reduction of tariffs and tariff dispersion, elimination of most non-tariff surcharges, and enactment of an in-bond processing industry law.

Tariffs

When it joined the World Trade Organization (WTO) in January 1996, Ecuador bound most of its tariff rates at 30 percent or less. Ecuador's average applied tariff rate is about 13 percent ad valorem. Since February 1995, Ecuador has applied a common external tariff (CET) with two of its Andean Pact partners, Colombia and Venezuela. The CET has a four-tiered structure with levels of 5 percent for most raw materials and capital goods, 10 or 15 percent for intermediate goods, and 20 percent for most consumer goods. Ecuador harmonized its tariff schedule with the CET but took numerous exceptions in order to maintain lower tariff rates on capital goods and industrial inputs. Agricultural inputs and equipment are imported duty-free. In February 1998 the Government of Ecuador announced that it would impose surcharges on imports, which may violate Ecuador's tariff bindings in the WTO.

Ecuador has concluded bilateral free trade agreements with Colombia, Bolivia, Venezuela and Chile. Ecuador is negotiating trade agreements with Mexico and the MERCOSUR countries.

Non-Tariff Measures

Ecuador has failed to meet deadlines for fulfilling many of its WTO obligations to eliminate remaining non-tariff barriers. Prior authorization for certain goods is required before the central bank can issue an import license. For instance, the superintendency of telecommunications must authorize the import of telecommunications equipment for standards purposes.

In spite of Ecuador's WTO accession commitment not to impose arbitrary and quantitative restrictions on agricultural imports, the Ministry of Agriculture often denies the issuance of import permits to protect local producers. The products most affected by this policy include frozen chicken parts, turkeys and, to a lesser extent, apples and fresh fruit. Import licenses require two signatures, one from Ecuadorean animal plant health

inspection service (SESA) and one from the agriculture ministry's under secretary of policy and investment. The Government of Ecuador claims its import procedures are not designed to delay imports and that the under secretary's signature is necessary to ensure the administrative import procedures are followed. However, the requirement for two approvals constitutes a non-tariff barrier.

Some 138 agricultural products, including wheat, white and yellow corn, rice, soy beans, soya and palm oil, barley, sugar, chicken parts, dairy products, and pork meat, are subject to a variable import tariff or price band system. Under this system, the ad valorem CET rates are adjusted according to the relationship between "marker" commodity reference prices and established floor and ceiling prices. The marker commodity reference prices are issued every other week by JUNAC, the office of the Andean Community. Upon accession to the WTO, Ecuador bound its tariffs plus price bands on these commodities between 20 and 95 percent. All price bands are to be phased out by 2001, with lower tariffs bound at 20 to 85.5 percent.

Through tariff rate quotas (TRQs), Ecuador has agreed to provide minimum market access at nonrestrictive tariff rates while providing a measure of protection for politically sensitive commodities. Tariff rates of 19 to 45 percent are used for seventeen agricultural products, mainly wheat, corn, chicken parts, turkey, powdered milk and soybean meal. Except for wheat, the Government of Ecuador has yet to implement the TRQ system.

The Government of Ecuador signed a side letter with the United States in June 1995 to accept the U.S. certificate of free sale, authorized by the U.S. Food and Drug Administration (FDA). To date, Ecuador has not implemented a system accepting the certificates.

Ecuador also continues to impose certain formal and informal quantitative restrictions that appear to be incompatible with its WTO obligations. Ecuador has failed to meet its WTO requirements to lift bans on the import of used motor vehicles, tires and clothing.

Pre-shipment inspection by an authorized inspection company before shipment and after specific export documentation has been completed at the intended destination results in delays far exceeding the time saved in customs clearance. Customs authorities sometimes perform spot-checking, causing even further delays. This generally adds six to eight weeks to the date when merchandise reaches the retailer. Such practices make U.S. exporters less competitive than local suppliers.

Excise taxes are levied on all liquor (26 percent), beer (30 percent), soft drinks (10 percent), motor vehicles (5 percent), and aircraft (10 percent). Since excise taxes on imports are calculated on CIF values, the effective rate is higher for imports than domestic products.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

National standards are set by the Ecuadorean norms institute (INEN) of the Ministry of Commerce, and generally follow international standards. Ecuador committed itself in its WTO accession protocol to conform with the WTO Agreement on Technical Barriers to Trade.

According to Ecuadorean importers, bureaucratic procedures required to obtain INEN clearance for imports have recently improved, but can still lead to discrimination against foreign products. A new draft law eliminating excessive requirements, such as notarization, was sent to the executive in May 1997 for approval.

However, no action has yet been taken.

The "Izquieta Perez" National Hygiene Institute (INHIP) and accredited public and private laboratories conduct tests on consumer products that are required to obtain a sanitary registration from the Ministry of Health. Sanitary registrations are required for imported, as well as domestic, processed foods, cosmetics, pesticides, pharmaceuticals and syringes, as well as some other consumer goods. Corruption and inefficiency in the sanitary registration process has delayed and even blocked the entry of some imports from the United States. Ecuador has not yet fulfilled its 1995 bilateral commitment to the United States to accept U.S. certificates of free sale as the basis for sanitary registrations. To do so, the health code must be amended. The Ministry of Agriculture is responsible for administering Ecuador's zoosanitary and phytosanitary import controls. Although Ecuador made a commitment in its WTO accession to comply with the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), denials of SPS certification often appear to lack scientific bases and have been used in a discriminatory fashion to block the import of U.S. products that compete with Ecuadorean production.

GOVERNMENT PROCUREMENT

Government procurement is regulated by the 1990 public contracting law, although Congress is considering new legislation. In some instances, the military is not required to use this law for its purchases. Foreign bidders must be legally represented in Ecuador. There is no formal discrimination against U.S. or other foreign suppliers. However, tenders are sometimes canceled. Bidding for government contracts can be cumbersome and insufficiently transparent. Ecuador is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Ecuador is considering the creation of an export credit agency. In the meantime, the National Finance Corporation (CFN) has begun to offer export financing. The government uses a drawback system to reimburse the cost of duties and taxes paid on raw material and other inputs incorporated in products that are subsequently exported.

LACK OF INTELLECTUAL PROPERTY PROTECTION

As of this report, the Ecuadorean Congress is considering comprehensive legislation that could significantly improve Ecuador's protection of intellectual property rights (IPR), including patents, trademarks, and copyrights.

Ecuadorean law does not provide adequate protection for intellectual property rights, and it can be difficult to gain protection through the legal system. In 1997, USTR placed Ecuador on the "Priority Watch List" under the Special 301 provision of the 1988 Trade Act. The United States is pursuing its IPR concerns with Ecuador, including its failure to implement the U.S-Ecuador Intellectual Property Rights Agreement and its failure to resolve the uncertainty surrounding the repeal of the WTO-inconsistent 1976 Agents and Distributors Protection Law (Dealers' Act).

The scope of Ecuador's current protection for IPR in Ecuador is provided under Andean Pact Decisions 344, 345 and 351. Ecuador has also formally announced that it will apply the WTO TRIPS Agreement. Ecuador

has ratified the Berne Convention for the protection of literary and artistic works and the Geneva Phonogram Convention, but not the Paris Convention for the Protection of Industrial Property. Ecuador is a member of the World Intellectual Property Organization (WIPO).

In October 1993, Ecuador and the United States signed the Bilateral Intellectual Property Rights Agreement (IPRA) that mandates full protection for copyrights, trademarks, patents, satellite signals, computer software, integrated circuit layout designs and trade secrets. The IPRA obligates Ecuador to establish criminal and border enforcement systems. The Government of Ecuador committed to seek full implementation of the IPRA by September 1994, but has yet to secure IPRA ratification or to implement legislation harmonizing domestic law with IPRA and TRIPS.

In response to a November 1996 Andean Pact Tribunal Decision, Ecuador repealed its implementing regulations for Andean Pact Decision 344 on industrial property, which included provisions for transitional ("pipeline") protection for previously unpatentable products. In December 1996, another decree reestablished the National Directorate of Industrial Property (DNPI) as the competent patent and trademark authority and authorized the DNPI only to administer Decision 344 as written. The Government of Ecuador states that it can resolve all the pending pipeline patents through administrative action. However, no such action has been taken to date.

Before its September 1997 prospective repeal, the Dealers' Act prevented U.S. and other foreign suppliers from terminating distributorship contracts without paying compensation, even if there was a termination clause in the contract. The law violated WTO national treatment guarantees and the U.S.-Ecuador Bilateral Investment Treaty, and was applied in ways that appeared to contravene Ecuador's obligations under the TRIPS Agreement. Despite the Act's partial repeal, it appears that the Act can still form the basis for future judicial decisions involving contracts signed before the repeal. As of the date of this report, several court cases against U.S. firms remain pending, with very large potential claims.

Enforcement of intellectual property rights remains a serious problem for Ecuador. The national police and the customs service are responsible for carrying out IPR enforcement orders, but it can be difficult to get court orders enforced or to secure effective police action. There is a widespread local trade in pirated audio and video recordings, computer software and clothing. Local registration of unauthorized copies of well-known trademarks is a problem since the government has not committed the resources to monitor and control such registrations. Some local pharmaceutical companies produce or import patented drugs without licenses and have sought to block improvements in patent protection.

Patents and Trademarks

With the repeal of implementing regulations for Andean Pact Decision 344, it is unclear what legal protection and remedies are available in Ecuador in the patent, trademark and trade secrets areas. Patent and trademark registration applications can still be filed with the national directorate of industrial property.

Copyrights

Andean Pact Decision 351 supplements Ecuador's former copyright law. Printed and recorded works are protected for the life of the author plus 50 years. Computer programs are protected, albeit as a type of work

distinct from literary works. The copyright law has been changed to cover software and satellite signals. Decision 351 assigns copyrights only to individuals, not corporations, and restricts the right of copyright holders to sell those rights.

Semiconductor chip layouts are not specifically protected, but it may be possible to register layouts under either the copyright law or the industrial designs provision of Decision 344. The Ministry of Education deals with copyright matters, while the National Telecommunications Council (CONATEL) has jurisdiction over satellite signals.

SERVICES BARRIERS

Ecuador's WTO financial services offer in the recently concluded negotiations reflects their already open regime in financial services. The 1993 Equity Markets Law and the 1994 General Financial Institutions Law established open markets in financial services and provide for national treatment. Foreign professionals are subject to national licensing legislation; accountants must be certified by the superintendency of banks. Foreign insurance companies may not present offers on government tenders.

Maritime transport services are generally open, subject to reciprocity with other countries, although the transport of hydrocarbons is reserved for a Navy-owned company. Andean Pact Decision 257 provides for freedom of land transportation within the region.

Telecommunications services are reserved to the state, but foreign companies enjoy national treatment in providing services not monopolized by the state and can participate in the planned partial privatization of the state telephone company. In the WTO negotiations on basic telecommunications services, Ecuador made commitments for domestic cellular services, but did not adopt commitments for other domestic and international services. It was one of the very few countries which chose to make market access commitments without reinforcing regulatory commitments.

INVESTMENT BARRIERS

Ecuador's foreign investment policy is governed largely by the national implementing legislation for Andean Pact Decisions 291 and 292 of 1991 and 1993, respectively. Foreign investors are accorded the same rights of entry as Ecuadorean private investors, may own up to 100 percent of enterprises in most sectors without prior government approval, and face the same tax regime. There are no controls or limits on transfers of profits or capital, and foreign exchange is readily available. There are no performance requirements, with the exception of the auto regime. A Bilateral Investment Treaty with the United States that guarantees access to binding international arbitration has been ratified and entered into force in May 1997.

Certain sectors of the economy are reserved to the state, although the scope for private sector participation, both foreign and domestic, is increasing. All foreign investment in petroleum exploration and development in Ecuador must be carried out under a contract with the state oil company. New legislation allows increased private investment in the telecommunications and electricity sectors and privatization of state enterprises. Foreign investment in domestic fishing operations, with exceptions, is limited to 49 percent of equity. Foreign companies cannot own more than 25 percent equity in broadcast stations. Foreign investors must obtain armed forces approval to obtain mining rights in zones adjacent to international boundaries. Foreigners are prohibited

from owning land on the frontier or coast.

Appropriate compensation for expropriation is provided for in Ecuadorean law, but is infrequent. The extent to which foreign and domestic investors and lenders receive prompt, adequate and effective compensation is largely related to the particular judicial process underway. It can be difficult to enforce property and concession rights, particularly in agriculture and mining sectors. Also, squatters can be a problem. Oil companies have had difficulties resolving contract issues with the state oil company. Although Ecuador deposited its instrument of accession to the International Center for the Settlement of Investment Disputes (ICSID), the government maintains that congressional ratification is necessary to make that membership effective.

Under the Andean Community Common Automotive Policy, Ecuador, Colombia and Venezuela impose regional content requirements in the automotive assembly industry in order to qualify for reduced duties on imports. The local content requirement for passenger cars was 32 percent in 1997 and has risen to 33 percent for 1998. In its WTO accession protocol, Ecuador committed to eliminate the local content requirement of its auto regime before January 1, 2000, and not to increase its inconsistency with the TRIMs agreement in the interim.

EGYPT

In 1997, the U.S. trade surplus with Egypt was $3.2 billion, an increase of $702 million from the U.S. trade surplus of $2.5 billion in 1996. U.S. merchandise exports to Egypt were $3.8 billion, an increase of $694 million (22 percent) from the level of U.S. exports to Egypt in 1996. U.S. imports from Egypt were $658 million in 1997, a reduction of $7 million (1.1 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Egypt in 1996 was $1.6 billion, compared to $1.4 billion in 1995. U.S. FDI in Egypt is concentrated largely in the petroleum, banking, and manufacturing sectors.

IMPORT POLICIES

U.S. exports face a number of import barriers, such as high tariffs and quality control requirements that discriminate against imports. In 1996, Egypt's new prime minister reaffirmed the country's commitment to an economic reform program, supported by the IMF and the World Bank, to liberalize Egypt's highly centralized and regulated economy. Trade liberalization is an integral element of Egypt's reform program. Egypt acceded to the World Trade Organization (WTO) in June 1995.

Tariffs

Egypt's current customs regime came into effect in 1986, significantly reducing tariffs. Further reductions have been made in five of the past seven years, including in 1997. With some exceptions, Egypt's maximum tariff stands at 50 percent, with a trade weighted average of 17 percent in 1996. Egyptian tariffs are still relatively high compared to other developing countries with large internal markets and diversified industrial economies.

Since 1990, Egypt has gradually rationalized and lowered its tariff schedule. In early 1993, the tariff range was narrowed to between 5 and 80 percent, although some exceptions were maintained. In March 1994, the maximum tariff rate was cut to 70 percent and tariffs between 30 and 70 percent were reduced by 10 percentage points. In February 1995, the government reduced the customs duty on 18 categories of machinery and other durable imported goods to a flat rate of 10 percent. In January 1996, the government made a similar reduction on 25 capital commodities.

Effective October 1, 1996, Egypt again reduced tariffs across the board by 10 to 15 percent, lowering the maximum tariff from 70 percent to 55 percent. The maximum tariff was further reduced to 50 percent in July 1997. Another round of cuts in August 1997 lowered rates on a number of selected capital and consumer goods. Rates went from 30 percent to 5 percent on computer software, from 30 percent to 15 percent on various processed foods, and from 35 percent to 10 percent on gold jewelry.

As for exceptions, high rates still apply to automobiles with engines larger than 1300cc (135 percent), alcoholic beverages, certain luxury items, poultry, and textiles. Egyptian customs assess a two or three percent service fee on imports, depending on the tariff applied. Items having tariffs of less than 30 percent are subject to a 2 percent service fee and items subject to tariffs higher than 30 percent are subject to a service fee of 3 percent. In addition, Egypt discriminates against some imports by imposing offsetting sales taxes. For example,

imported flour carries a 10 percent sales tax (in addition to customs duties), which does not apply to locally produced flour.

Customs Procedures

In 1993, Egypt adopted the harmonized system of customs classification. Exporters and importers claim, however, that customs duty assessment is often arbitrary, and rates charged are often higher than prescribed in the tariff code. Tariff valuation is calculated from the so-called "Egyptian selling price," which is based on the commercial invoice that accompanies a product the first time it is imported. Customs authorities retain information from the original commercial invoice and expect subsequent imports of the same product (regardless of the supplier) to have a value no lower than that noted on the invoice from the first shipment. As a result of this presumption of increasing prices, and the belief that under-invoicing is widely practiced, customs officials routinely increase invoice values from 10-30 percent for customs valuation purposes.

Import Bans

All commodities may be freely imported into Egypt upon payment of the assigned duty and provided they may meet existing import requirements, except for poultry parts and certain textiles and apparel items on a list banned from import. According to August 1993 regulations, an item may be imported if it is required for the petroleum, military, tourism or civil aviation sectors, or is a necessary production input approved by the appropriate minister. Because of these exemptions, the ban list has had a limited impact on U.S. exports.

Despite this progress, Egypt imposes obstacles to imports of previously-banned products. The tariff on whole poultry, removed from the ban in July 1997, was set at 80 percent, but also pegged to an import reference price, thus effectively raising the applicable duty rate to over 100 percent of the C&F price. The impact on U.S. export sales has yet to be calculated. Egypt is committed to cut its poultry tariff to 60 percent by 2005. Egypt has started the reduction of tariffs on 289 agricultural products and will soon start the cut in whole poultry tariffs. The U.S. will continue to monitor Egyptian progress in the WTO Committee on Agriculture.

In accordance with its obligations under the WTO agreement on textiles and clothing, Egypt lifted the import ban on most textiles on January 1, 1998. Tariffs on these items were set at 54 percent, plus a 10 percent sales tax, and a percent service fee.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Egypt requires many imports to be inspected for quality control before importation. The list now consists of 131 items, including foodstuffs, spare parts, construction products, electronic devices, appliances, and many consumer goods. Agricultural commodities have been increasingly subject to quarantine inspection, so much so that some importers have begun scheduling pre-inspection visits to the U.S. to facilitate import procedures upon arrival in Egypt.

Although Egyptian authorities stress that standards applied to imports are the same as those applied to domestically-produced goods, importers report that testing procedures for imports differ, and that tests are carried out with faulty equipment by testers who often make arbitrary judgments.

Five Egyptian ministries or agencies make rules for agricultural imports and issue permits: Agriculture, Health, Economy, Industry, and Scientific Research. The rules conflict and are not in accordance with international practice. For example, the Ministry of Health's regulations for labeling processed food conflict with those of the Ministry of Industry.

Further, Egypt sets the shelf life of processed foods by regulation, as opposed to the standard international practice of allowing producers to determine the life of their product. Early in 1994, the government decreed that (mainly food) products entering Egyptian ports must have 50 percent or more of their shelf life remaining. Egyptian shelf life standards ignore quality differences between producers and often have been established without scientific basis. An August 1994 decree extended shelf life standards to certain non-food imports, such as syringes and catheters.

Product specifications also can be a barrier to trade. For example, Egyptian Standard No. 1522 of 1991 concerning inspection of imported frozen meat requires that meat imported for direct consumption contain no more than 7 percent fat, a level virtually never reached in premium beef exports. Sales of up to $2 million of high quality U.S. beef annually have been jeopardized.

Decrees recently issued by the Ministry of Agriculture and Ministry of Trade and Supply are expected to have an immediate detrimental effect on U.S. exports of meat and poultry to Egypt, unless current efforts to have them modified or rescinded are successful. For example, a decree issued by the Ministry of Trade and Supply in November 1997 requires, inter alia, that the name and address of the Egyptian importer be included on the label which must be inserted in each package. That information often is not available at the time the product is packed. The decree signed by the Minister of Agriculture, but not yet in effect, would require Egyptian importers to cover the cost of pre-inspection at site of all consignments destined for the Egyptian market, a cost that importers who deal in small quantities will not be able to afford.

GOVERNMENT PROCUREMENT

Egypt by law gives national bidders a 15 percent price advantage on government tenders. Closed bidding is rare, as a national law requires tendering for all significant projects. The tender process is subject to frequent complaints of lack of transparency, poor enforcement of rules, and rigged outcomes. As in other markets, U.S. companies claim that European and Asian competitors make payments to win tenders that are forbidden under U.S. law. Such claims are difficult to assess. Egypt is not a signatory of the WTO Government Procurement Agreement.

The government recently proposed amendments to its 1983 procurement law to the Egyptian parliament, but withdrew them for further study before the last session ended in June 1997. However, changes to the 1994 statute governing arbitration approved in 1997 allow the parties to agree to appoint any accepted legal body to arbitrate disputes between public enterprises and private domestic and international suppliers. In the past, the only recourse was the state council, which was taking years, in some cases, to settle disputes.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Egypt, as a party to the Berne Convention for the Protection of Literacy and Artistic Works and the Paris Convention for the Protection of Industrial Property, is obligated to protect U.S. artistic works, inventions, and

trademarks. The government passed an improved copyright law in 1992 and added software protection in early 1994.

The United States is working closely with Egypt to improve intellectual property rights protection. However, due to lack of progress in this area, the U.S. Trade Representative placed Egypt on the Special 301 "watch list" in 1996 and the "priority watch list" in 1997.

Copyrights

Copyright piracy, while still an issue, has been reduced since 1993. However, it still affects most categories of works, including motion pictures (in video cassette format), sound recordings, printed matter (notably medical textbooks), and computer software, including at government ministries.

The People's Assembly passed amendments to Egypt's 1954 copyright law in June 1992. Penalties against piracy were increased and computer software was afforded specific protection. In March 1994, the People's Assembly passed additional amendments which treat computer software as a literary work, thus ensuring a fifty year term of protection consistent with the WTO TRIPs Agreement. The government initially made considerable progress in enforcing the new amendments, but suspended enforcement for a one year period beginning in June 1996. The U.S. government and U.S. firms have worked closely with Egypt in this area, and steps to combat software piracy were resumed in August 1997. However, much remains to be done, including curbing the use of unauthorized software by government ministries and providing effective enforcement against end-user video, sound recording and book piracy.

Patents

The Egyptian patent law dates from 1949 and provides protection far below international standards. It contains overly broad compulsory licensing provisions and excludes from patentability substances prepared or produced by chemical processes if such products are intended to be used as food or medicine. Moreover, the patent term is only 15 years from the application filing date, compared with the international standard of 20 years. A 5-year renewal may be obtained only if the invention is of special importance and has not been adequately worked to compensate patent holders for their efforts and expenses.

Compulsory licensing limits the effectiveness of patent protection. A compulsory license may be granted if the patent is not worked or is inadequately worked within three years following the patent grant. The law does not provide for the alternative period of four years from the date of filing, as the Stockholm Act of the Paris Convention requires. A patent may be forfeited for non-working two years after issuance of the first compulsory license. The Egyptian law's definition of infringement does not include the use, sale, or importation of a product made using a process patented in Egypt.

Since 1992, U.S. experts have met regularly with Egyptian experts responsible for revising the patent law. However, this legislation has never been finalized and submitted to the People's Assembly. The United States remains very concerned that Egypt has not yet passed a new, modern patent law. In addition, the U.S. is concerned about a delay in implementation of pharmaceutical product protection until the year 2005. The value of U.S. export sales to Egypt lost due to deficient patent protection is unknown. Egypt has indicated that it is likely to submit improved, new patent legislation to the People's Assembly soon, although it did not do so

during 1997.

Trademarks

Allegations of trademark infringement are made periodically by U.S. and other foreign firms operating in Egypt. The Egyptian trademark law is not enforced strenuously and the courts have only limited experience in adjudicating infringement cases. Fines amount to less than $100 per seizure, not per infringement, although criminal penalties are theoretically available. Egypt is currently considering completely revising its laws in order to enhance significantly legal protection for trademarks and industrial designs.

SERVICES BARRIERS

The Egyptian government maintains a monopoly on many service industries either partially or entirely, including notably airports and ports. However, private firms dominate advertising, accounting, car rental, and a wide range of consulting services. Egypt made commitments as part of the 1997 WTO Financial Services Agreement, and is currently modifying laws and regulations in accordance with its commitments.

Banking

Since March 1993, Egypt has allowed existing foreign bank branches to conduct local currency operations. Two U.S. bank branches have received licenses to do so. However, most foreign bank branch operations are subject to a government economic needs test which can be used to limit foreign access to the market. Foreign brokers are permitted to operate in the Egyptian stock exchange. In June 1996, the parliament passed a bill amending the banking law and allowing foreign ownership in joint venture banks to exceed 49 percent, thus encouraging greater competition. Egypt made commitments in the WTO which reflect this change in law.

In 1997, the privatization of one of the four national banks, which dominate the market with more than 70 percent of deposits, was under discussion. An amendment to the banking law has to be passed in order to allow the privatization.

Securities

International investors are permitted to operate in the Egyptian stock market largely without restriction. Several new entrants, including U.S. and European firms, have established or purchased stakes in brokerage firms in 1997. Egypt's WTO financial services commitments in the securities sector guarantee unrestricted market access and national treatment in the sector.

Insurance

A law passed in 1995 permits foreign companies to hold minority stakes in Egyptian insurance companies. Foreign firms may also operate as majority share holders in the free trade zones and in reinsurance, neither of which is likely to prove attractive to foreign investors since the activities in the free trade zones are limited and since Egypt requires mandatory cessions in the reinsurance market.

Four public-sector companies (one of which is a reinsurance company) dominate the market. There are five

private sector insurance companies, three of which are joint ventures with U.S. firms. Two of the joint ventures are operating in the free zones. Effective January 1, 1998, foreign insurance companies can operate in Egypt with up to 100 percent ownership, but only in free trade zones.

In the WTO financial services negotiations, Egypt committed to eliminate the 49% foreign equity restrictions for operations outside the free trade zones by December 31, 1999 and allow up to 51% foreign equity. Egypt, however, still prohibits foreign insurance companies to set up agencies or branches. In its WTO offer, Egypt committed to relax its economic needs test in life, health, and personal accident insurance in the year 2000, and in non-life insurance in the year 2002. Egypt also made commitments to allow life and reinsurance brokerage on a cross border basis but made no commitments to allow brokerage firms to establish in Egypt to provide services via a commercial presence - an aspect of the Egyptian market which still remains closed to foreign firms.

Telecommunications

Egypt has begun to open its telecommunications market to international participation by negotiating large build-own-operate-transfer style contracts with U.S. and other foreign companies. These contracts include fixed line and equivalent services as well as pay telephones. The former ARENTO (Arab Republic of Egypt National Telecommunications Organization) which became known as TELECOM Egypt in 1997, is also preparing to spin off mobile telephone operations to a new company or companies with some private ownership. Mobile telephone became available in Egypt in November 1996 and demand is high.

Egypt was not a signatory to the WTO Basic Telecommunications Agreement concluded in February 1997 and was not involved in the negotiations. Improvement in TELECOM Egypt procurement procedures and the overall regulatory framework of the multi-billion dollar Egyptian telecommunications market would help ensure that U.S. firms can compete fairly.

Maritime Transportation

Maritime transport lines have in recent history been operated as a government monopoly. As of January 6, 1998, this changed when the Egyptian parliament passed a law allowing private ownership of maritime transportation companies. Inefficient state run ports and airports have imposed heavy costs on the Egyptian economy, constituting a barrier to increased trade and investment.

Other Service Barriers

Egypt maintains several other barriers to the provision of services by U.S. firms, including a screen quota for foreign motion pictures. Private and foreign air carriers may not operate charter flights to/from Cairo except with the approval of the national carrier. Only Egyptian nationals may become certified accountants.

INVESTMENT BARRIERS

Under the 1992 U.S.-Egypt Bilateral Investment Treaty (BIT), Egypt is obliged to maintain critical elements of an open investment regime, including national and MFN treatment of foreign investment (with exceptions limited by the treaty), free financial transfers, and international law standards for expropriation and

compensation. Moreover, the BIT establishes procedures for U.S. investors in Egypt to enforce the treaty's obligations directly including through international arbitration. Generally, current Egyptian law meets or surpasses BIT standards in all categories.

In principle, investors are now assured of automatic approval for projects in sectors which do not appear on a "negative list." This "negative list" includes military and related products, as well as investment in the Sinai (except for exploration of oil, gas, and mineral resources). Amendments in 1995 permit majority Egyptian investments in the Sinai in any sector.

In May 1997, President Mubarak signed a new law reaffirming basic guarantees for investors and modifying the framework for investment incentives. It offers automatic approval for most new-to-market companies and particular advantages for investors in 16 sectors including agriculture, maritime transportation, and computer software development. Changes to Egyptian laws governing company formation were not included in the legislation as expected, but may go before the Egyptian parliament in 1998.

The new law still permits the General Authority for Free Zones and Investment (GAFI), now a unit of the Ministry of Economy, substantial discretion in granting investment incentives. In general, incentives are geographically based to encourage investment outside Cairo, with tax holidays up to 20 years available to companies located in parts of upper Egypt. As a result, grandfathering of pre-existing incentives has been denied to some recently established U.S. companies for planned expansions of operations in major cities.

Egypt has notified to the WTO measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMs). The measures deal with local content requirements in the economy in general. Proper notification allows developing-county WTO Members to maintain such measures for a five-year transitional period after entry into force of the WTO. Egypt therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO Members meet these obligations.

ANTICOMPETITIVE PRACTICES

Egypt does not have a basic law prohibiting anticompetitive practices of monopolies, cartels, or conflicts of interest. Given the relatively small size of the economy, most sectors are dominated by only a few players, whether private or public. Thus anti-competitive practices are a structural feature of the economy. Egypt hopes to pass an anti-trust law in 1998. Aspects of various laws dating from the 1960s and 1970s addressing dumping, monopolies, and price fixing will be affected.

OTHER BARRIERS

Outside of energy, pharmaceuticals is the most important area in which prices are controlled. In many instances, the government has not allowed pharmaceutical prices to rise with general inflation. As a result, Egypt has some of the lowest drug prices in the world and many foreign investors (including U.S.) companies are losing money on some products. Foreign companies occasionally allege discrimination in granting of price

increases.

While Egypt's business climate is steadily improving, the country is still in transition from a command to a market economy. Lack of transparency, excessive bureaucracy and red tape, and low- level corruption can also be seen as serious barriers to doing business in Egypt.

EL SALVADOR

In 1997, the U.S. trade surplus with El Salvador was $52 million, a shift of $54 million from the U.S. trade deficit of $2 million in 1996. U.S. merchandise exports to El Salvador were $1.4 billion, a decrease of $326 million (30.4 percent) from the level of U.S. exports to El Salvador in 1996. El Salvador was the United States' fiftieth largest export market in 1997. U.S. imports from El Salvador were $1.4 billion in 1997, an increase of $273 million (25.4 percent) from the level of imports in 1996.

IMPORT POLICIES

El Salvador is a member of the Central American Common Market (CACM), which also includes Costa Rica, Nicaragua, Guatemala, and Honduras. It is also an active member of the Central American Northern Triangle Subregional Group, formed by El Salvador, Guatemala and Honduras, which seeks to further economic, political and social integration in the region. The Northern Triangle countries hope to conclude a free trade agreement with Mexico by mid 1998. CACM members are working to reduce their common external tariff (CET) from the current range of 0 to 20 percent to 0 to 15 percent by the year 2000, while allowing each country to implement the necessary reductions at its own pace.

El Salvador's tariffs in January 1998 range from 0 to 18 percent for most products. Tariffs on capital goods and raw material currently range from 0 to 1 percent. Intermediate goods range from 5 to 13 percent. Final goods range from 15 to 18 percent. With the exceptions of a few products, most trade within CACM is duty free.

There are no legal barriers to U.S. exports of manufactured goods or bulk, non-agricultural commodities to El Salvador. Except vehicles, alcoholic beverages, and certain luxury items, U.S. exports face tariffs ranging from 0 to 18 percent, with rates scheduled to fall to a maximum of 15 percent b the beginning of the year 2000.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Generally, standards have not been a barrier to the importation of U.S. consumer-ready food products. The Ministry of Health requires a "certificate of free sale" showing that the product has been approved by U.S. health authorities for public sale. Importers also may be required to deliver samples for laboratory testing, but this requirement has not been enforced. All imports of fresh foods, agricultural commodities, and live animals must be accompanied by a sanitary certificate. Basic grains and dairy products also must have import licenses.

Sanitary Restrictions on Poultry

Since 1992, the Ministry of Agriculture has imposed arbitrary sanitary measures that restrict U.S. poultry imports. These sanitary restrictions call for zero tolerance or negative laboratory tests for diseases such as avian denovirus, chicken anemia, and salmonella. These diseases are common worldwide and are not recognized as List "A" diseases by the International Office for Epizootics. Given the ubiquitous nature of salmonella in poultry populations throughout the world, it would be difficult for any established poultry-producing country to guarantee zero tolerance or negative lab tests on meat that has not been cooked or

irradiated. These standards are applied in a discriminatory manner by El Salvador, since domestic production is not subject to the same requirements as imports. As a result of these restrictive measures, exports of U.S. poultry to El Salvador have virtually ceased. U.S. officials have met with Salvadoran agricultural officials since November 1992 to resolve this issue, with no success to date. Salvadoran officials have acknowledged that the restrictions were imposed to keep U.S. poultry out of the local market and are not intended to operate as "normal" sanitary measures. The U.S. Embassy estimates the value of lost U.S. poultry exports at $5 million per year.

EXPORT SUBSIDIES

El Salvador offers a six percent rebate to exporters of non-traditional goods based on the f.o.b. value of the export. The following products do not enjoy this rebate: coffee, sugar, cotton and metal/mineral products. However, processed coffee can apply for the rebate, if it incorporates 30 percent of national value added tax -- for instance, if it is shipped as "gourmet" coffee, or if it is "organic" coffee. Sugar can apply if it is exported as refined sugar. Maquilas are eligible if they meet the criteria of adding 30 percent Salvadoran input to the production process. Though they enjoy a ten year exemption from income tax and duty free privileges, firms operating in the free zone are not eligible to receive rebates. According to COEXPORT (The El Salvadoran Exporters Association), 500 of their registered 600 members received rebates in 1997. The Ministry of Finance is reported to have reimbursed 9.2 million dollars to Salvadoran exporters in rebates during 1997. In 1997, the government withheld 25 percent of export rebates to satisfy income tax obligations. From 1998 on, however, this withholding will no longer take place and exporters will be able to keep 100 percent of the rebate.

SERVICES BARRIERS

Foreign banks face the same requirements as Salvadoran banks and can offer a full range of services. Restrictions on foreign investment in local banks were lifted in 1995, and rules governing the opening of foreign bank branches are clear and transparent. In October 1996, the National Assembly passed legislation regulating the insurance sector. The law establishes minimum requirements for net worth and capital investments, provides for a separate supervisory function, and lays out a framework for competition and transparency.

ETHIOPIA

In 1997, the U.S. trade surplus with Ethiopia was $51 million, a decrease of $62 million from the U.S. trade surplus of $113 million in 1996. U.S. merchandise exports to Ethiopia were $121 million, a decrease of $27 million (18.4 percent) from the level of U.S. exports to Ethiopia in 1996. Ethiopia was the United States' 104th largest export market in 1997. U.S. imports from Ethiopia were $70 million in 1997, an increase of $35 million (100 percent) over the level of imports in 1996.

IMPORT POLICIES

Ethiopia has significantly reduced customs duties on a wide range of imports over the last three years. The most recent tariff reductions in January 1997 offer considerable cuts in most duties, and especially target imported goods that enhance exports. Tariff rates range from 0 to 50 percent, with an average of 25 percent. The Ethiopian government pledged to reduce import duties further to an average of 20 percent by the year 2000. Sales tax rates are 4 percent for a selected list of agricultural goods and "essential" goods such as pharmaceuticals, books and printed materials, hides and skins, and cotton. For all other goods, the sales tax rate is 12 percent. Ten excise tax rates exist (ranging up to 200 percent) that are applied equally to domestically produced and imported goods. Neither quantitative restrictions on imports nor import licensing requirements present a notable trade barrier although customs clearance remains a hindrance to the business of importing. Not only is the clearance process slow, the imported goods are sometimes charged at attributed values instead of at invoice values, even when the invoices have been certified by trade officials of the exporting country. The government requires that all imports be channeled through Ethiopian nationals registered as official import or distribution agents.

SERVICES BARRIERS

No foreign firm may participate in domestic banking or insurance services under Ethiopia's Investment Proclamation of June 1996. No regulations exist on international data flows, data processing use, or foreign firms. Providers of professional services must be licensed by the government to practice in Ethiopia.

INVESTMENT BARRIERS

In addition to excluding foreign participation in financial services (banking and insurance), Ethiopia's June 1996 Investment Proclamation prohibits participation in several other sectors, including telecommunications, large-scale (over 25 megawatts) power production, and small services (such as barber shops). Soon, Ethiopia is expected to adopt reforms to open up its energy, telecommunications and defense sectors to foreign investors. Other areas that limit foreign investor partnerships with domestic investors include engineering, metallurgical, pharmaceutical, basic chemical, petrochemical and fertilizer industries. Ethiopia and Eritrea allow the duty-free import and export of locally-produced goods across their borders; Ethiopia depends heavily on Djibouti as a transshipment port.

Ethiopia

OTHER BARRIERS

During Ethiopia's rule by a Marxist regime (1974-91), much of its formal economy came under government control. Since that time, however, Ethiopia has privatized nearly 200 state-owned firms. Although the government still owns and operates large firms in many sectors of the economy, it is steadily progressing toward its stated goal of relinquishing most of those properties.

EUROPEAN UNION

The European Union (EU) and the United States share the largest two-way trade and investment relationship in the world. In 1997, the U.S. trade deficit with the EU was $16.7 billion, an increase of $1.5 billion from the U.S. trade deficit of $15.2 billion in 1996. U.S. merchandise exports to the EU were $140.8 billion, an increase of $13.3 billion (10.4 percent) from the level of U.S. exports to the EU in 1996. U.S. imports from the EU were $157.5 billion in 1997, an increase of $14.8 billion (10.4 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) into the EU in 1996 was $348.4 billion, an increase of 10.6 percent from the level of U.S. FDI in 1995. U.S. FDI in the EU is concentrated largely in the manufacturing, financial, and wholesale sectors.

IMPORT POLICIES

Import and Distribution of Bananas

Since the late 1980's Latin American countries and the United States have urged the Member States of what is now the EU to implement the "Single Market" for bananas in a manner consistent with their international obligations under the GATT and the subsequent international agreements under the WTO. A group of Latin American countries -- Colombia, Costa Rica, Guatemala, Nicaragua and Venezuela -- tried twice in the GATT to convince the EU to reform its discriminatory and burdensome banana rules; twice GATT panels found that EU banana rules were GATT-inconsistent (1993, 1994); twice the EU ignored those GATT panels and proceeded to extend and compound unfair and discriminatory trade barriers.

On July 1, 1993, the EU implemented a new banana import regime to replace individual Member State rules for banana imports. Elements of the new regime have caused significant adverse effects on U.S. distribution companies in the EU banana market. As a result of the EU's failure to reform its discriminatory system, a case was filed by the five complaining parties (Ecuador, Guatemala, Honduras, Mexico, and the United States) with the WTO in February 1996, and a dispute settlement panel was established to review the EU banana regime on May 8, 1996. The panel's May 22 report listed violations of fundamental WTO provisions in goods and services. The Appellate Body report, released on September 9, confirmed the panel's major findings of WTO-inconsistency of the EU regime and reversed two panel findings that had been favorable to the EU.

The EU agreed to implement the WTO reports' recommendations and rulings within a "reasonable period of time," which was determined in arbitration to be the period from September 25, 1997 to January 1, 1999.

On January 14, 1998, the European Commission adopted a proposal on modifying the banana regime. This proposal contains several WTO-inconsistent elements. The U.S. government will continue to press the EU to adopt a new regime that is WTO-consistent before the EU-agreed date for implementation of January 1, 1999.

Ban on Fur from Animals Caught in Leghold Traps

European Union

In November 1991, the EU adopted a regulation banning the use of leghold traps in the EU. The regulation also requires a ban on imports of fur and fur products of certain species from countries which either do not ban leghold traps or do not conform their trapping practices to internationally agreed humane trapping standards.

After over eight years of discussions on this topic, the United States and the EU signed an agreed minute on humane trapping standards on December 18, 1997. Signature of the agreed minute should permit continuing access of U.S.-sourced fur and fur-products to the European market. Nevertheless, some problems could still emerge as the EU has not yet ended its requirement for certification as previously indicated. USTR will continue to monitor closely developments on this issue in the months ahead.

Customs Classification of Information Technology Products

Increased tariff rates resulting from the reclassification by the European Commission and EU Member State customs administrations of certain local area network equipment and multimedia personal computers have raised concern with information technology equipment manufacturers. On February 25, 1997, the WTO Dispute Settlement Body established a WTO Dispute Settlement Panel to examine whether the following measures were inconsistent with the EU's obligations under Article II of the GATT 1994: (1) Regulation No. (EC) 1165/95, which reclassifies certain LAN adapter cards from category 8471, "automatic data processing machines and units thereof," to category 8517, "telecommunications apparatus"; (2) the actions of customs authorities in Member States in reclassifying and increasing tariffs on imports of all types of LAN equipment -- including hubs, in-line repeaters, converters, concentrators, bridges and routers; and (3) the actions of customs authorities in Member States in reclassifying and increasing tariffs on imports of PCs with multimedia capacity. On March 20, 1997, the dispute settlement body modified the terms of reference of the Panel to include U.S. complaints against Ireland and the UK.

The Panel's final report, released on February 5, 1998, found that the tariff concessions on "automatic data processing machines" (category 8471) in the EU's Uruguay Round tariff schedule apply to computer networking equipment. Since the EU has been applying higher tariffs to computer networking equipment than the tariffs provided for in category 8471, the EU is in violation of its tariff obligations.

On the EU's tariff treatment of multimedia PCs, the Panel found that (1) PCs that incorporate a TV tuner can be regarded either as PCs capable of receiving TV or televisions that can also function as computers, and (2) it could not make a decision in the United States' favor on the basis of the evidence before it. However, the United States raised this issue due to concerns that the EU might treat any PC with multimedia capabilities as a television for tariff purposes. In July 1997, when the EU published its tariff rates and phase-down schedule for products covered by the Information Technology Agreement, these concerns were dispelled.

The EU now has to indicate whether or not it intends to appeal the Panel's ruling.

Tariffs on Information Technology Products

The EU is one of the signatories of the Information Technology Agreement of 1997, which eliminates tariffs on over $500 billion worth of world trade in computers, telecommunications equipment, semiconductors, and

other information technology products. The EU will eliminate tariffs on all ITA products by the year 2000.

Restrictions Affecting U.S. Wine Exports to the EU

The United States seeks assurance of long-term access for U.S. wine exports to EU markets. Current EU regulations require imported wines to be produced with only those oenological practices (i.e., wine treating materials and processes), which are authorized for the production of EU wines. Since the mid-1980's U.S. wines have been permitted entry to EU markets by means of a series of extensions to temporary EU regulatory exemptions. Without these "derogations," the majority of U.S. wines would be immediately barred from entering the EU. This leaves in doubt both the foothold U.S. exporters have secured in the EU market and the prospects for export expansion in the future. The derogations have been renewed for 1998. EU regulations also require that a wine-import certification document be provided for each wine in each shipment. While certain qualifying U.S. producers are permitted to use a simplified procedure, others must go through the full documentation and testing process. The United States has renewed consultations with the EU on these and other wine-related issues. The main U.S. objective in the consultations is to ensure that the EU market remains open to U.S. wine.

Beyond the consultations mentioned above, in late 1997, the United States proposed consideration of broad-ranging discussions on wine, potentially to include such issues as U.S. and EU oenological practices, the use of semi-generic designations in the United States, and tariffs. After further consultation with the EU and with industry, discussions could begin along the above lines.

EU Implementation of Uruguay Round Grain Tariff Commitments

During the Uruguay Round, the United States obtained a tariff concession from the EU establishing a ceiling on the duty that could be charged on grains. The ceiling is based on the duty-paid import price of grains into the EU. However, the EU subsequently established a reference price system for grain imports. The reference price system deprived U.S. exporters of the significant duty reductions that they expected to receive on high-value grains, such as malting barley and packaged rice. The United States held unproductive consultations with the EU under WTO dispute settlement procedures in September 1995 and requested a WTO Panel later that month. The United States and the EU subsequently reached an agreement under which the EU committed to establish a cumulative recovery system (CRS) for duty underpayments and overpayments on brown rice, and a side commitment to establish a system that would permit imports of a limited amount of malting barley at 50 percent or less of the duty that would otherwise be charged. After the threat of further WTO action, the EU implemented these concessions in mid-1997. The EU is currently reauthorizing the regulations regarding 1997 and 1998 imports of malting barley. On the CRS, the Commission is reviewing its operation during the last half of 1997. The United States and EU will soon begin consultations on the future of the CRS.

Implementation of EU Import Quotas for U.S. Rice

As part of the concessions made to the United States as compensation for the accession of Finland, Austria, and Sweden to the EU, the EU agreed to implement tariff rate quotas for imports of 38,000 metric tons of milled rice and 8,000 metric tons of brown rice from the United States. In late 1997, the EU, with the consent

of the United States, implemented one year's quota. While progress has been made on implementation of these tariff quotas for future years, they have yet to be made operational.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

EU Member States still have widely differing standards, testing and certification procedures in place for some products. These differences may serve as barriers to the free movement of these products within the EU and can cause lengthy delays in sales due to the need to have products tested and certified to account for differing national requirements. Nonetheless, the advent of the "new approach," which streamlines technical harmonization and the development of standards for certain product groups, based on minimum health and safety requirements, generally still points toward the harmonization of laws, regulations, standards, testing, quality and certification procedures in the EU. The European standardization process is still closed to U.S. firms' direct participation, although European standards bodies can be sympathetic to U.S. concerns when approached.

Standardization

Standardization continues to play an increasingly significant role in U.S.-EU trade relations, as evidenced by the Transatlantic Business Dialogue (TABD) adopted goal of "approved once accepted everywhere in the Transatlantic Marketplace." The United States Department of Commerce anticipates that EU legislation covering regulated products will eventually be applicable to 50 percent of U.S. exports to Europe. Given the enormity of this trade, EU legislation and standardization work in the regulated areas is of considerable importance. Although there has been some progress in implementation, a number of problems related to this evolving EU-wide legislative environment have caused concerns to U.S. exporters. These include lags in the development of EU standards; lags in the drafting of harmonized legislation for regulated areas; inconsistent application and interpretation by Member States of the legislation that is in place; overlap among directives dealing with specific product areas; grey areas between the scope of various directives; and unclear marking and labeling requirements for regulated products before they can be placed on the market. While many such problems are not deliberate "trade barriers," their existence can impede U.S. exports to the EU.

Mutual Recognition Agreements

The EU is implementing a harmonized approach to testing and certification, as well as providing for the mutual recognition within the EU of national laboratories designated by Member States to test and certify a substantial number of "regulated" products. The EU encourages mutual recognition agreements between private sector parties for the testing and certification of non-regulated products. One difficulty for U.S. exporters is that only "notified bodies" located in Europe are empowered to grant final product approvals of regulated products. While there are some laboratories in the U.S. which can test regulated products under subcontract to a notified body, the limited number of such labs means that such subcontracting procedures are unlikely to provide sufficient access for U.S. exporters. Moreover, these labs cannot issue the final product approval but must send test reports to their European affiliate for final review and approval, which delays the process and adds costs for U.S. exporters.

The U.S. and the EU have negotiated a Mutual Recognition Agreements (MRAs) for several important sectors as a means of addressing this issue. MRAs will permit a U.S. exporter to test and certify his products to the

requirements of the EU in the United States, and vice versa. Both sides have targeted mid-1998 for entering into the transition implementation periods provided for in the MRAs.

Product Approvals

Despite EU Commission approval in 1996-1997 of several agricultural and food products that contain genetically modified organisms (GMOs), the products still face lengthy and highly unpredictable approval processes that are affected by political concerns about consumer opposition in several Member States. Approval of products of modern biotechnology for environmental release and commercialization is governed by directive 90/220. However, this legislation is being revised, a process that may take several years to complete. The approval process remains the subject of internal EU executive and parliamentary debate. In the 1997-1998 crop year, four varieties of maize have been caught in the current review processes. These products have been subjected to unexplained delays, additional procedural steps added at the completion of the designated process and additional scientific reviews established for political, rather than scientific purposes. The problems are likely to intensify in 1998 as the number of products proposed for introduction increases.

The United States recognizes the right of the European Union to ensure products introduced into the market are safe and do not harm the environment. However, the EU's process has become highly politicized and the addition of procedural steps and new, additional scientific reviews at the conclusion of an already intensive scientific review process places in question the EU's impartiality in these matters. Several products have been under review for over two years, as compared to the average six to nine month processes available in Canada, Japan and the United States.

Even when products are approved, market access for products of modern biotechnology is not guaranteed. For example, Austria and Luxembourg have imposed marketing bans on GMO products. These bans run counter to EU regulations.

Labelling

In addition to directive 90/220, in May 1997, the EU adopted the Novel Foods Regulation, which governs food safety assessments and labelling for genetically-modified foods. The regulation requires labelling of all new processed foods and food ingredients, including those made from GMOs. Neither the novel foods regulation, nor directive 90/220 makes clear which products processed from GMOs must be labeled.

In July 1997, the Commission announced new EU-wide guidelines for labeling of biotechnology products, intended to provide consistency in labeling of GMO food, feed and seeds. The guidelines provided for voluntary labeling for certified non-GMO products, but gave no guidance as to who would provide the certification.

In September 1997, a new EU law provided for labeling of foods processed from Bt-corn and herbicide-tolerant soybeans (which were approved prior to the implementation of the novel foods regulation). This law became effective November 1 but failed to specify labeling criteria or label wording. In December 1997, the Commission proposed labeling criteria that would require foods containing detectable levels of DNA or protein from genetically-modified corn and soybeans to be labeled. This proposal did not meet the approval of the Member States and discussions continue on the approach to be taken. It is expected that whatever is eventually

adopted for corn and soybeans will provide the basis for labeling of other GMO foods.

In the United States, production processes do not have to be labeled. That is, companies do not have to label a product simply because it is produced through biotechnology. Rather, the United States requires labeling only for safety or health reasons. For the past several years, the United States has argued against labeling of a process. However, most European officials, including those that are pro-biotechnology, have come to believe that "process" labeling (i.e., labeling all GMOs regardless of risk) is necessary to ensure consumer acceptance.

Specified Risk Materials Ban

On July 30, 1997, the European Union adopted a ban on the use of "specified risk materials" (SRMs) for use in food and feed and medical, pharmaceutical, cosmetics and other industrial products. This measure results from EU concerns over the transmission of BSE, or bovine spongiform encephalopathy, commonly known as "mad cow disease." The ban, originally scheduled to go into effect on January 1, 1998, was subsequently deferred until April 1, 1998. Specified risk material is defined as (a) the skull, including the brains, eyes, tonsils and spinal cord of cattle, sheep, and goats aged over 12 months, and (b) the spleens of sheep and goats. The decision also prohibits the use of the vertebral column of cattle, sheep, and goats for the production of mechanically covered meat, and allows for a derogation for the feeding of fur animals. Industry sources estimate that the potential trade effect of the ban could exceed $20 billion if all products currently covered are ultimately affected.

Beyond the direct trade impact of the ban which is potentially significant, the SRM ban raises a number of concerns with respect to WTO requirements, including those set out in the Sanitary and Phytosanitary Agreement. It fails to recognize regional disease differences in animal disease status; and it fails to account for available scientific information and advice relating to the control of bovine spongiform encephalopathy (BSE) and other transmissible spongiform encephalopathies (TSE) in products of animal origin. As a result, the ban is unnecessarily restrictive. For example, products of the United States and other trading partners, which have no evidence of BSE, are currently affected.

The EU is currently examining a series of measures that would modify the ban and could minimize its trade impact. A derogation was recently adopted for tallow derivatives processed according to specified procedures, in the production of cosmetics. A similar approach is being explored for addressing problems in the pharmaceutical area resulting from the medicinal use of gelatin, tallow derivatives, medical devices and biological products that require SRMs for their efficacy. Exemption of industrial and other products containing SRMs but not used for food or feed purposes is also under consideration. At this writing, EU officials are trying to define an acceptable alternative approach to reducing the risk of BSE transmission via SRMs while at the same time minimizing the commercial implications. It is not yet clear whether this effort will be successful.

Ban on Growth Promoting Hormones in Meat Production

For almost 10 years, the EU has banned imports of beef produced with growth promoters. The United States launched a formal WTO dispute settlement procedure in May 1996 challenging the EU's ban. The WTO Appellate Body (AB) upheld the original WTO Panel finding that the EU's actions are inconsistent with the

WTO agreement on sanitary and phytosanitary (SPS) measures and calls for the EU to comply with its WTO/SPS obligations. The AB clearly affirms the earlier Panel's findings that the EU ban was imposed and maintained without evidence to indicate there were health risks posed by eating beef from cattle treated with growth promotants, and despite scientific evidence showing such meat to be safe. The EU must indicate in the near future its intentions with regard to compliance with the WTO dispute settlement results.

Veterinary Equivalency

The United States and the European Commission concluded negotiations on a veterinary equivalency agreement in April 1997 after over four years of often contentious negotiations. This agreement translates the principles of the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures into practical and workable terms. The agreement establishes a framework for the exporting Party to make an objective demonstration to the importing Party that its sanitary measures achieve the importing Party's appropriate level of protection when such measures differ. By establishing clear criteria for reaching a determination of equivalence, this agreement will facilitate trade in live animals and animal products. When implemented, the agreement will establish the terms of trade for nearly all animal products between the United States and the EU, over $3.0 billion annually.

During the negotiations, U.S. and EU officials were not able to resolve the issue on the use of anti-microbial treatments in poultry production. The EU would not accept the use of anti-microbial treatments despite the fact that such treatments significantly improve the microbiological quality of the product. As a result, U.S. poultry exports to the EU have been blocked since April 1, 1997 representing a loss of $50 million annually to U.S. poultry exporters. The EU committed to study anti-microbial treatments in use in the United States with the goal of resolving this outstanding poultry issue. Approval and implementation of the agreement, now expected in March 1998, could open new opportunities for red meat exports and preserve most pre-existing trade in products such as pet food, dairy products, fishery products, and egg products.

Proposals on Aflatoxin Limits

In January 1998 as part of the ongoing harmonization of the single market, the EU notified to the WTO a proposal setting new maximum limits for aflatoxin in several products including several grains, milk, nuts and dried fruit. The proposed new limits will severely affect EU imports of a number of U.S. products while providing no additional protection to EU consumers. In addition, the sampling procedures proposed are likely to lead to large numbers of lots being rejected when in fact the commodities are safe.

Market Access for Gas Connector Hoses in Europe

A U.S. producer of gas connector hoses has experienced difficulties in obtaining market access in some Member States for its products due to design-restrictive standards that arguably have no bearing on the safety and performance of the product. The problem has been extended to European markets generally with the establishment of a CEN (European Committee for Standardization) technical committee to begin work on a harmonized standard for Europe. Reports of initial technical discussions within the committee indicate consideration is being given to standards containing design-restrictive requirements. The initiation of work on

a European regional standard results in a "standstill" on standards work in individual Member States and thus can delay or, if it results in unnecessarily restrictive standards, prevent improved access to EU markets. The U.S. government has been actively pursuing a resolution to this problem and in cooperation with industry will be closely examining the committee's progress.

Beef Labeling

Beginning March 31, 1998, labels on beef packaged for consumer sales must be approved by EU and Member State authorities, to provide consumers information regarding the products. Although the labeling is voluntary, any claims on labels, such as country of origin or production method, must be verified. These requirements currently do not apply to sales of beef for use in hotels, restaurants or institutions in the EU.

An EU-wide compulsory beef labeling system is legislated to take effect on January 1, 2000. Detailed application procedures currently are pending within the European Commission. There is considerable concern that a lack of timeliness in announcing and transparency in implementing these regulations could disrupt U.S. beef sales to the EU. The EU and U.S. currently are discussing measures to ensure access for U.S. product.

Voluntary Ecolabeling Program

On March 23, 1992, the EU Council of Ministers approved an EU-wide ecolabeling scheme. The scheme is a voluntary program which permits a manufacturer to obtain an ecolabel for a product when its production and life-cycle meet general and specific criteria established for that particular product. The program is intended to encourage consumers to purchase products according to their overall environmental performance. EU ecolabel criteria have been adopted and published for eleven consumer product categories: washing machines, dishwashers, soil improvers, tissue paper products, laundry detergents, light bulbs (single-ended and double-ended), paints and varnishes, bed linens and t-shirts, photocopy paper, and refrigerators. The Commission plans to develop criteria for converted paper products (e.g., notepads), woolen and synthetic textiles, personal computers, and footwear.

Despite an ongoing dialogue between the EU and U.S. interest groups, the U.S. government is concerned that technical bilateral talks on concerns about the scheme that were committed to in 1996 did not materialize. Recently, however, EU representatives committed to meet on the subject in 1998.
The United States looks forward to these meetings and will continue to monitor closely the development of, and revision to, the EU ecolabeling scheme.

Packaging Labeling Requirements

In 1996, the Commission put forward a proposed directive that would establish marking requirements for packaging, to indicate recyclability and/or reusability. The United States has expressed two potential concerns with this directive. First, to the extent that the EU's new marking requirements differ from other marks widely used in the United States and being developed in the ISO, the United States is concerned that packaging, marketing and distribution operations will become more complicated and costly for both U.S. and European firms wishing to sell their products abroad, without achieving any concomitant environmental benefit.

The second concern is related to Article 4 of the proposed directive, which would prohibit the application of other marks to indicate recyclable or reusable packaging. Based on U.S. experience, this requirement is likely to pose a particular problem for glass and plastic containers, as it would require companies to create new molds solely for use in the European market. Discussions underway in the ISO may go a long way to resolving the potential problems, especially as the Commission has indicated its willingness to review the proposed EU marks in light of an eventual ISO agreement.

The European Parliament began examining the Commission's proposal in late 1997. The chief rapporteur was concerned that the Commission was not considering sufficiently the developments in ISO. Some of the Parliament's comments will be incorporated into the Commission's proposal. The U.S. government will continue to monitor this as it proceeds through the legislative process.

Metric Labeling

The 1980 Directive adopted to harmonize systems of measurement throughout the EU mandates metric-only labeling on most products entering the European Union from January 1, 2000. Exporters, both European and American, have publicly voiced their objections, citing the costs of complying with conflicting EU metric-only and U.S. mandatory dual labeling requirements. Faced with strong industry opposition, the Commission - with EU Member State backing - committed to put forward a proposal postponing the Directive's implementation date from January 1, 2000 to January 1, 2010. The U.S. government will monitor the legislative progress of this proposal, which is expected to be forwarded to the European Parliament and the Council of Ministers by the second half of 1998.

Acceleration of the Phase-outs of HCFCs

The Euroean Commission has been considering moving up the EU's phase-out of some hydrochlorofluorocarbons (HCFCs) by several years, to the year 2000 or 2001, in a proposed amendment to EU Regulation 3093/94. While the United States government is concerned about substances that deplete the ozone layer, it believes that the benefits to the ozone layer in this phase-out acceleration would be minimal and could be offset by disadvantages in terms of energy efficiency and in creating uncertainty about the future of these compounds among developing nations, who have yet to make the switch from the more damaging chloroflurocarbons (CFCs). The United States also believes that, because both the EU and U.S. have in place standards to protect the stratospheric ozone layer that go beyond the requirements of the Montreal Protocol, a high premium should be placed on the stability of regulations. As currently drafted, the proposed amendment would severely affect the export to the EU of U.S. refrigeration and air conditioning equipment. The United States has raised this issue with the Commission on a number of occasions and is continuing its efforts to press all relevant parts of the Commission to take U.S. concerns fully into account as amendments to Regulation 3093/94 are considered.

Member State Practices

Some EU Member States have their own national practices regarding standards, testing, labeling, and certification. A brief discussion of the national practices of concern to the United States follows:

France: In December 1997, the United States and France worked out an arrangement which allows U.S. pet

food exports to return to the French market. U.S. exports, valued at about $20 million annually, had been blocked since September 1996. Under the new agreement, U.S. pet food exports to France will now be accompanied by a veterinary certificate.

Greece: Greece has raised questions regarding U.S. phytosanitary certificates for U.S. wheat shipments not only to Greece but also trans-shipped through Greece to other countries. While working with Greek authorities to further their understanding of U.S. testing and quarantine procedures for karnal bunt, U.S. wheat exports have been effectively shut out of Greece and several other Balkan countries.

Italy: Italy's interpretation of EU sanitary and phytosanitary requirements has caused, or threatened to cause, problems for the following U.S. agricultural exports: processed meat products, wood products, poultry meat products, game meats, and seafood. (In the case of poultry and game meat, announcement of a veterinary equivalency agreement inclusive of poultry would help ameliorate these problems significantly.) Finally, Italy's qualitative standards for bull semen, which limit the number of foreign bulls in favor of domestic animals, and the trade-inhibiting testing and registration fees, which are used to fund the national industry association, have proven to be cumbersome and expensive. In the absence of these restrictions, U.S. exports of these products to Italy could increase by an estimated $25-100 million.

Spain: In recent years, the transparency of Spain's product standards and certification processes has improved. Difficulties faced by telecommunications equipment suppliers have eased as Spain adapted its national regulations to conform to EU directives. Despite these changes, however, there is still some uncertainty as to whether the earlier exemption from homologation and certification requirements for equipment imported for military use is still valid. Pharmaceuticals and drugs still must go through an approval and registration process with the Ministry of Health requiring several years unless previously registered in another EU Member State or with the equivalent EU body, in which case the process is shortened to a few months. Vitamins are covered under this procedure; however, imports of other nutritional supplements are restricted, and they are dispensed only at pharmacies. This has an impact on U.S. nutritional supplements exporter's efforts to develop the Spanish market.

GOVERNMENT PROCUREMENT

Discrimination in the Utilities Sector

In 1990, in an effort to open government procurement markets within the EU, the EU adopted a utilities directive covering purchases in the water, transportation, energy, and telecommunications sectors. The directive, which went into effect in January 1993, requires open, objective bidding procedures (a benefit for U.S. firms) but discriminates against non-EU bids absent an international or bilateral agreement. The directive's discriminatory provisions were waived for the heavy electrical sector in a Memorandum of Understanding (MOU) between the United States and the EU, signed in May 1993.

On April 15, 1994, the United States and the EU concluded a procurement agreement that expanded upon the 1993 MOU. The 1994 agreement extended non-discriminatory treatment to over $100 billion of procurement on each side, including all goods procurement by all EU subcentral governments, as well as to selected procurement by 37 U.S. states and seven U.S. cities. Much of the 1994 agreement is implemented through the WTO government procurement agreement which took effect on January 1, 1996. The 1994 agreement,

however, did not end the discrimination with respect to telecommunications procurement.

Member State Practices

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

Austria: In 1997, at least two Austrian government tenders were not open to U.S. bidders: procurement of the 1998 Austrian motor highway vignettes and procurement of printing paper for the printing plant of the Austrian National Bank. Both contacts were restricted to manufacturers in the European Economic Area and the European Union respectively, presumably for safety and quality control reasons. While this may be in accordance with EU regulations, it is inconsistent with the spirit of the Transatlantic Business Dialogue.

Denmark: The Danish government, its institutions, and entities owned by it are obligated to apply environmental and energy criteria on an equal footing with price, quality and delivery terms in their procurement of goods and services in a manner consistent with EU procurement rules. In practice, this will likely mean specification of products bearing the EU "eco-label" or products produced by firms with a satisfactory "ecoaudit." The environmental/energy requirement is likely also to spread to procurement by lower level governmental entities. The trend toward specification of environmentally certified products in government procurement raises concerns, given broader U.S. concerns with the EU ecolabeling scheme (see above).

Germany: After four years of German implementation of the EU Utilities and Remedies Directive, U.S. firms continue to allege irregularities in public procurement bid procedures. Under the terms of the 1993 U.S.-EU Memorandum of Understanding on government procurement (and since January 1, 1996, the WTO Government Procurement Agreement), the system established for reviewing bid awards covered by the EU Utilities Directive has also been available to U.S. firms bidding on supply contracts in the heavy electrical equipment sector. The review mechanism has provided an administrative means for challenging procurement practices in the electrical utilities sector, considered by many to be relatively closed to foreign suppliers. This review mechanism has proven ineffective because it does not contain effective remedies.

In October 1995, the European Commission formally challenged the adequacy of Germany's implementation of the EU Remedies Directive. Moreover, in April 1996, the United States Trade Representative identified Germany under Title VII of the Omnibus Trade and Competitiveness
Act of 1988 for discrimination in the heavy electrical sector. USTR suspended the imposition of the sanctions available under Title VII on October 1, 1996, following a decision by the German cabinet to address U.S. concerns and reform German procurement regulations by providing for court-based review of bid challenges, in line with EU requirements. The German government has drafted new legislation and plans to incorporate the new procurement regulations, which will combine administrative and judicial review, into existing German competition law. The draft bill entered the formal legislative process in early September 1997 and is scheduled to enter into force by late spring/early summer 1998. The U.S. government, in consultation with industry, is monitoring the progress of the legislative process.

Greece: Greek laws and regulations concerning government procurement nominally guarantee
non-discriminatory treatment of foreign suppliers. Officially, Greece also adheres to EU procurement policy, and Greece joined the WTO Government Procurement Code in 1992.

Nevertheless, many of the following problems still exist: occasional sole-sourcing (explained as extensions of previous contracts), loosely written specifications which are subject to varying interpretations, and allegiance of tender evaluators to technologies offered by longtime, traditional suppliers. It is also a widely-held belief that firms from other EU Member States have an automatic advantage over non-EU contenders in winning Greek government tenders. It has been noted that U.S. companies submitting joint proposals with European companies are more likely to succeed in winning a contract. Greece continues to insist on offset agreements as a condition for purchase of defense items.

In December 1996, the Greek Parliament passed legislation which allows public utilities in the energy, water, transport, and telecommunications sectors to sign "term agreements" with local industry for procurement. "Term agreements" are contracts to which Greek suppliers are given significant preference in order to support the national manufacturing base. This was made possible as a result of Greece's receipt of an extension until January 1, 1998, to implement the EU Utilities Directive. Actually, before expiration of the extension, numerous term agreements worth billion of dollars were signed by Greek public utilities with Greek suppliers. Some of these term agreements have no less than 3-5 years duration, with an option of extending for another 3 years, thus excluding U.S. suppliers from vital sectors of government procurement for several years.

Italy: Italy's fragmented, often non-transparent government procurement practices still present obstacles to U.S. firms' participation in Italian government procurement, despite some progress. Corruption, particularly at the local level, is still regarded as a problem in public procurement.

Most recently, American companies have reported greater access to public and parastatal contracts. Italy has implemented EU regulations relating to procurement of goods and services and has made progress, with passage of the so-called “Merloni” legislation, towards more transparent laws and regulations for public procurement and open market competition. However, Italy must still complete implementation of national, EU and WTO procurement rules and regulations, through implementing regulations which are currently being discussed in Parliament. One proposed revision would allow project management services to be contracted out to private firms -- potentially opening up an entire new market in the engineering services sector with opportunities for U.S. firms.

EXPORT SUBSIDIES

Agricultural Product Subsidies

The EU grants export subsidies (restitutions) on a wide range of agricultural products including wheat, wheat flour, beef, dairy products, poultry, and certain fruits, as well as some manufactured products such as pasta. Payments are nominally based upon the difference between the EU price and the world price, usually calculated as the difference between the EU internal price and the lowest offered price by competing exporters. The Uruguay Round Agreement requires the EU to reduce export subsidies over six years by 21 percent in volume and 36 percent in value from a 1986-90 base period. Under the agreement, the EU is required to cut export subsidies by about $ 5-7 billion from recent levels. However, in a number of areas including poultry, beef, dairy, rice and olive the EU appears to be “rolling-over” unused subsidy from one year to the next. The United States is currently investigating this action as a possible violation of the WTO Agricultural Agreement.

Processed Cheese Exports

On October 1, 1997, Ambassador Barshefsky announced that USTR was invoking WTO dispute settlement procedures in the context of a Section 301 investigation to challenge practices by the EU that circumvent the EU's commitments under the WTO to limit subsidized exports of processed cheese. Under its inward processing system for dairy products, the EU produces cheese for export from dairy components such as nonfat dry milk and butter. The processor receives a subsidy upon the cheese being exported, but the EU does not count these subsidies against its export subsidy ceiling on cheese. The United States contends this is a breach of the EU's export subsidy requirements. Initial WTO Article XXII consultations with the EU on these practices were held in November 1997. The United States is considering next steps.

LACK OF INTELLECTUAL PROPERTY PROTECTION

The EU and its Member States support strong protection for intellectual property rights. The Member States are members of all the relevant WIPO conventions, and they and the EU regularly join with the United States in encouraging other countries, primarily developing ones, to sign up to and fully enforce high IPR standards, including those in the TRIPs Agreement. However, there are a few Member States with whom the United States has raised concerns either through Special 301 or WTO Dispute Settlement, about failure to fully implement the WTO TRIPs Agreement.

Designs

The Commission's 1993 proposed directive aimed at harmonizing Member State legislation on the legal protection of designs was reviewed by the Council and went through a second parliamentary reading in 1997. The directive would provide protection for up to a maximum of 25 years for registered industrial designs. U.S. firms, while supportive of the Commission's initiative in this area, argue that certain measures will make it more difficult than at present to qualify for valid design rights. U.S. car manufacturers object in particular to the regulation's Arepair clause,A which would effectively eliminate design protection for spare styled car body parts after three years and might well encourage copying of designs. Insurance companies and spare parts manufacturers, however, do not share these objections. The Council has adopted a position against including the Arepair clause,@ but Parliament has proposed an amendment to re-insert it. In 1998, it is likely that a compromise will be required -- through a conciliation process -- for the two sides to reach agreement and finalize the directive.

Trademarks

Registration of trademarks with the European Community Trademark Office (CTMO) began in 1996. The CTMO, located in Alicante, Spain, issues a single Community trademark which is valid in all 15 Member States and in any future EU countries. National marks continue to co-exist with the Community trademark.

EU Member States are divided over the issue of trademark exhaustion, a principle that relates to limiting the trademark owner's ability to resort to remedies against persons who import or distribute goods bearing a trademark with permission outside the authorized distribution channels. Some have asked the European Commission to consider introducing the concept of Ainternational exhaustion@ into European IPR law. Essentially, international exhaustion would render a rightholder powerless to enforce trademark rights once the

trademarked goods were placed on the market in any other part of the world with the rightholder's consent. However, the Commission strongly supports ACommunity exhaustion@ (applicable in EU Member States) in all intellectual property fields and has upheld that principle in current and proposed directives and regulations. In 1998, the European Court of Justice is expected to rule on the pending Asilhouette@ case involving trademark exhaustion. Informed observers believe the court will uphold the principle of Community exhaustion.

The 1993 Council regulation setting up a centralized marketing authorization procedure for human and veterinary medicinal products requires applicants to use a single trademark. This compromises pharmaceutical companies' ability to select different trademarks in different Member States, which they might prefer to do for linguistic or legal reasons, and sets an unfortunate precedent that might in the future affect other sectors.

Patents

Patent filing and maintenance fees in the EU and in its Member States are extraordinarily expensive relative to other countries. Fees associated with the filing, issuance and maintenance of a patent over its life far exceed those in the United States However, the European Patent Office (EPO) took a first step toward reasonable patent costs by reducing fees for filing by 20 percent effective July 1997. National patents continue to exist alongside (and can conflict with) the embryonic European patent granted by the EPO in Munich.

In 1997, the European Commission approved a green paper initiated by the Internal Market Directorate General to explore the question of whether the Community patent convention, concluded by Member States in 1975, should be replaced by full scale Community legislation to ensure secure patent protection throughout the EU on the basis of a single patent application. The Commission intended the green paper to serve as a basis for consultation with industry, inventors, patent agents and other interested parties. The European Parliament will offer its opinion on the green paper some time in 1998. It is doubtful, however, that the Commission will propose a legislative initiative on a Community patent system in 1998.

Biotech Patenting

In 1997, the EU made progress toward agreement on a biotechnology patent law after nine years of discussions. The current proposed directive would harmonize Member State rules on the application of patent protection to biotech inventions. Specifically, it would allow patenting of new biological material inventions (as opposed to discoveries, or finding a substance present in nature) that may be used in industrial applications, and processes making it possible to produce, treat or use biological material. However, plant varieties and animal species, or essentially biological processes for obtaining plants or animals, would not be patentable. Neither would be inventions whose commercial exploitation would be Acontrary to public policy or morality.@ The proposal also considers unpatentable processes for cloning human beings, and processes for modifying the germ line genetic identity of human beings. The directive is expected to be adopted in 1998 and would require Member States to bring their national laws into compliance within two years.

Copyrights

In 1997 the European Commission proposed a directive to harmonize Member State legislation on copyrights and related rights intending to establish a clear definition of protected material and set an equivalent level of

protection across the EU. The proposal covers rights of reproduction, communication to the public, and distribution, and protection of anti-copying systems but does not address copyright infringement liability by on-line service providers. Copyright liability is to be included in a directive covering broader liability issues forthcoming in 1998. The directive on copyrights and related rights would also require Member States to implement the obligations in the 1996 WIPO copyright and performances and phonograms treaties, and requires approval from the Parliament and adoption by the Council before it takes effect.

Member States were required, by January 1, 1998, to transpose into national law the directive on legal protection of databases, adopted in 1996. The directive provides copyright protection to electronic and manual databases. A new Asui generis@ right extends copyright protection for 15 years to the contents of a database, whether or not the material is otherwise eligible for copyright protection. However, this right is available to non-EU creators of databases only on the basis of reciprocity. The United States business community, while supportive of protection for databases as essential to a sound legal framework for Europe's information society, remains concerned about the impact the reciprocity provisions of this directive will have on U.S. publishers of databases. Scientists worry that the directive will make access to databases prohibitively expensive although the directive allows exemptions for groups accessing data for research or education.

Member State Practices

Some EU Member States have their own special practices regarding intellectual property protection and enforcement that do not necessarily comply with international obligations. A brief discussion of those which are of concern to the United States follows:

Austria: Under Austrian copyright law Atourist establishments@ (hotels, inns, etc.) may show cinematographic works or other audiovisual works, including videos, to their guests. While the license fee to the copyright owners is mandatory, Austrian law does not require prior authorization by the copyright holder. The United States holds this provision to be inconsistent with Austria's obligations under the Berne Convention and TRIPs.

Following bilateral U.S.-Austrian talks in the summer of 1997, the Austrian Arbitration Commission determined the rates to be paid for such public showings. Austria considers this step sufficient compensation for the interests of the copyright holders and in compliance with both the Berne Convention and TRIPs. The United States expressed reservations to this position. Further talks are scheduled to be held later this year.

Austrian copyright law also requires that a license fee be paid on imports of home video cassettes and cable transmission. Of these fees, 51 percent are paid into a fund dedicated to social and cultural projects. In the United States's view the copyright owners should receive the revenues generated from these fees and any deductions for cultural purposes should be held to a minimum.

Belgium, France: Belgium and France collect levies on blank tapes and recording equipment to compensate right holders for the private, home copying of their works and to provide a source of funding for local productions. These levies are distributed by national collecting societies to the various categories of right holders according to statutory provisions. National treatment is denied to some U.S. right holders, however, and the United States motion picture and recording industries have not been able to collect their rightful share of these proceeds.

European Union

Denmark: Denmark's intellectual property laws are generally adequate. However, certain problems exist. Enforcement is made difficult by the fact that the Danish government does not make available provisional relief on an exparte basis to prevent ongoing infringement or preserve evidence in the context of civil litigation. The TRIPs Agreement requires that such provisional relief be made available in civil or criminal litigation. The availability of such relief is particularly important to the United States software industry because of the ease with which the evidence of infringing use can be eliminated if the infringers are forewarned of the right holder's interest. Furthermore, Denmark's equivalent of the Environmental Protection Agency is at present compelled by a Supreme Court ruling to permit competitors to rely upon extremely valuable test data for certain chemical products that a U.S. firm has submitted in order to receive approval to market its products in Denmark. This contravenes the objective of the TRIPs Agreement and perhaps TRIPs Article 39.3.

Greece: Greece has been on the Special 301 Apriority watch list@ since 1994. Just prior to an out-of-cycle review in December 1996, the Greek government presented an "action plan" laying out the steps it would take by April 1997 to reduce audio-visual piracy. While some of these steps were taken, the Greek government has lagged behind severely in licensing television stations in accordance with the provisions of the 1995 media law. A U.S. government team visited in November 1996 and 1997 to assess progress, and during the 1997 meetings the team informed the Greek government that the U.S. government is preparing a WTO dispute settlement case to address the continued failure to comply with TRIPs enforcement obligations that may soon be launched unless rapid action is taken to close down permanently pirate broadcasters. Two other significant IPR problems are lack of effective protection of copyright software and of trademarked products in the apparel sector.

Ireland: Ireland's 1963 copyright law does not comply with the TRIPs Agreement (which came into effect for Ireland in January 1996). Faulting cumbersome procedures for prosecuting violators and insignificant penalties, the U.S. motion picture industry estimates video piracy at 26 percent of all rentals/sales, costing the industry an estimated $15 million in lost revenue annually. U.S. software producers claim that Ireland has the highest incidence of software piracy in the EU, estimated at 70 percent.

In 1997, the United States filed a WTO case against Ireland regarding its failure to implement TRIPs. The United States and Ireland held three rounds of consultations on this issue in 1997. Due to insufficient progress in the negotiations, in January 1998, the United States requested the establishment of a WTO Panel against Ireland and the EU on the grounds that the legal regime in Ireland fails to conform to the TRIPs Agreement and nullifies or impairs benefits accruing to the United States under the TRIPs Agreement. Ireland and the EU subsequently promised to accelerate significantly work on a new copyright law to remedy the TRIPs deficiencies, and also to pass separate expedited legislation addressing two pressing enforcement problems. In view of these commitments, the United States has not proceeded further with dispute settlement proceedings as of the publication of this report. The United States will closely monitor implementation of these commitments throughout 1998.

Italy: Italy has been on the Special 301 "watch list" since 1989, primarily due to problems with protection of copyrighted audio and visual material and computer software, despite substantially increased enforcement actions against copyright piracy.

Piracy of computer software for business applications, although falling from 58 percent in 1996 to 43 percent in 1997 according to industry estimates, remains a problem. In March 1996, the Italian government raised

criminal penalties (fines and prison sentences) for software piracy. Nonetheless, duplication of software internally by some Italian companies remains a problem, and there are reports of illicit software holdings in public institutions such as schools and universities.

Film video piracy remains a serious problem. U.S. motion picture distributors estimate that some 30 percent of the video market consists of pirated material copied in Italy. U.S. industry has noted persistent enforcement efforts involving police raids and confiscation of illegal cassettes and copying equipment.

Piracy of musical recordings is also a problem and may be on the rise due to the availability of more sophisticated reproduction equipment and rapid growth of the lucrative market for compact discs. Pirated products accounted for 20 percent of the market in 1997, down from 22 percent in 1996, according to industry estimates. There have also been reports of large-scale illegal photocopying of textbooks in and around Italian universities.

The U.S. government has been monitoring the progress of an Italian government bill to enhance protection of copyrighted material in Italy. The Italian government introduced the bill in October 1996, and the Senate Justice Committee passed it in July 1997, after amending it to raise the criminal penalties for aggravated cases of copyright violation. The same committee also received the Parliament's authorization to re-examine the bill on a Afast-track@ basis, on behalf of the full senate. However, no "fast-track" activity has been observed.

Portugal: Portugal's laws on the protection of intellectual property do not provide adequate protection for test data submitted to regulatory authorities for marketing approval of certain products (including pharmaceuticals) as required by the WTO TRIPs Agreement. Portugal is currently in the process of updating several articles of its existing legislation, including the section which covers the protection of test data. The United States has informed Portugal of its concerns in this regard and will monitor the development and implementation of changes to the legislation.

Spain: In Spain, the Motion Picture Association and the General Society of Authors of Spain (SGAE) reached an agreement several years ago that grants screenplay authors access to a portion of the levies collected on blank tapes and recording equipment. More recently, the MPA and the entity that represents the rights of audiovisual producers also reached agreement on sharing levies collected. However, negotiations with the group that represents performers rights are still in progress. So far, the distribution of funds collected appears to be functioning satisfactorily.

Sweden: While Sweden's intellectual property laws are satisfactory, its enforcement of them has been problematic. The Swedish government has not provided sufficient financial or personnel resources or training to the police and prosecutor's office, nor has it indicated that IPR enforcement is a top priority. During the past year, however, the government has begun the process of changing its laws to allow for provisional relief in the context of civil searches in copyright enforcement cases, which if implemented will ameliorate considerably the software industry's greatest copyright enforcement problem. Another problem area, in which an apparent conflict exists between the constitutional guarantee of freedom of information and the rights of the copyright holder of unpublished works, remains unsolved.

SERVICES BARRIERS

European Union

Broadcast Directive and Motion Picture Quotas

In 1989, the EU issued the Broadcast Directive which included a provision requiring that a majority of entertainment broadcast transmission time be reserved for European origin programs "where practicable" and "by appropriate means." By the end of 1993, all EU Member States had enacted legislation implementing the Broadcast Directive.

The process begun by the Commission in 1993 to revise the Broadcast Directive in an effort to strengthen quotas was concluded in April 1997 through a conciliation committee that resolved differences between the European Parliament and the Council. By the time an agreement was reached on a revised directive, the divisive issue of strengthening European content quotas and expansion of the directive's scope to new services had fallen by the wayside despite the Parliament's protectionist line. The United States continues to monitor developments with respect to the Broadcast Directive.

Several countries have specific legislation that hinders the free flow of some television programming. A summary of some of the more salient restrictive national practices follows:

France: The language of the EU Broadcast Directive was introduced into French legislation in 1992. France, however, chose to specify a percentage of European programming (60 percent) and French programming (40 percent) which exceeded the requirements of the Broadcast Directive. Moreover, the 60 percent European/40 percent French quotas apply to both the 24-hour day and to prime-time slots. (The definition of prime time differs from network to network according to a yearly assessment by France's broadcasting authority, the "Conseil Superieur de l'Audiovisuel," or CSA.) The prime time rules in particular limit the access of U.S. programs to the lucrative French prime time market. France's broadcasting quotas were approved by the European Commission and became effective in July 1992.

In addition, the United States continues to be concerned about the French radio broadcast quota (40 percent of French songs on almost all French private and public radio stations) which entered into force on January 1, 1996. The measure has the effect of limiting the broadcast share of American music.

Italy: On December 18, 1997, the European Commission announced a European Court of Justice case against Italy for failing to implement fully the Broadcast Directive, including its quota provisions. The Commission said its court case is the culmination of infringement proceedings brought against Italy in January 1996, based on Italy's "incorrect transposal" of the directive in its "mammi law" of August 1990.

With regard to the quotas, the Commission cited Italy's 1990 law applying quotas specifically and solely to the broadcast time devoted to "cinematographic films," rather than "European works," as under the directive. The EU also found fault with the mammi law's reservation of more than half of the Italian European content quota (or 25-percent-plus of total broadcasting time devoted to films) to Italian product. The EU holds that this discriminates against other European product, in violation of Article 59 of the EU treaty.

In 1996, the Italian government introduced legislation to make European content restrictions more binding. (The film sector decree-law enacted on January 18, 1994, calls for application of the Italian broadcast quotas proportionally during evening hours, but its language is strictly hortatory.) The bill would apply a 51 percent European quota both overall and to prime-time specifically not counting news, sports, variety shows, and other

non-film programming. The bill would also apply quotas "as a rule," despite the European Parliament's November 1996 decision to leave in place more flexible EU quota language.

Portugal: As in the case of other EU Member States, Portuguese television legislation passed in 1990 contains language taken from the EU Broadcast Directive requiring that a "majority proportion" of works broadcast be of "Community or European" origin "whenever possible." Cinema legislation passed in 1993 includes language providing for the possibility of the introduction of distribution and screen quotas. In practice, however, these rules have not been enforced because Portuguese television and film production is minimal and production from other EU countries is inadequate to satisfy broadcasting needs. Portugal is currently considering drafts of new legislation to replace both of these existing laws. Early drafts also include language concerning quotas. The United States will monitor closely the implementation of this restrictive legislation.

Spain: Legislation implementing the 1989 Television Broadcast Directive was adopted in 1993. New legislation adopting the revised directive has been prepared and is expected to be enacted by mid-1998. The proposed new law maintains the same restrictions on non-EU programming as in the earlier law. Both government-owned and private television networks readily meet the EU content requirements and according to government officials, no operator has had to alter its programming to comply with the directive since the viewing public has a preference for content that is culturally and linguistically Spanish. Although U.S. programs might have increased sales without the quota provisions of the directive, in fact American films and popular TV serials form a sizeable portion of prime time viewing.

In January 1997, Spain issued regulations implementing the 1994 cinema law. The screen quota provision requires motion picture exhibitors in the course of each year to show one day of EU-produced films for every three days of non-EU produced films. If dubbed into one of Spain's recognized minority languages (e.g., Catalan), then the proportion becomes one for every four days of non-EU-produced films shown. In order to earn dubbing licenses for non-EU-produced films, companies must distribute EU-produced films. The law stipulates that the first license is earned when box office receipts exceed 10 million pesetas ($65,000); a second when they exceed 20 million ($130,000); and a third when they exceed 30 million ($195,000). If a film is dubbed, it must be dubbed into a minority language and earn at least 5 million pesetas ($32,500) in the minority language version to qualify for the third license.

The film dubbing license and screen quota requirements established in the 1997 regulations, reached after extensive negotiations that included film industry representatives, are less stringent than those established in the 1994 law. U.S. industry would prefer not to have to face requirements that impose additional costs and curb its freedom to make commercial decisions.

Computer Reservation Services

U.S. computer reservation systems (CRS) companies have had difficulties in the EU market, because some Member State markets tend to be dominated by the CRS owned by that Member State's flag air carrier. Most such cases have eventually been resolved to the U.S. CRS vendor's satisfaction after U.S. government intervention or recourse to national administrative and court systems.

In 1996, as a result of a complaint filed by a U.S. CRS firm, the United States Department of Justice (DOJ) asked the EU competition authority to investigate possible anticompetitive practices by a European firm. This

is the first case of its kind under the positive comity provision of the 1991 EU-US Antitrust Cooperation Agreement. The EU investigation is on track, and, while the Commission cannot say when it will be complete, the final ruling may address some of the above concerns.

There is also concern over how Swedish data protection regulations apply to U.S. CRS operations in that country. One U.S.-owned CRS firm maintains that Sweden is the only EU Member State in which it has not either already received or will soon receive data protection-related permits for its operations. Resolution of the matter is being sought in the Swedish court system and under the U.S. Sweden aviation agreement.

Airport Ground Handling

In October 1996, the EU issued a directive to liberalize the market to provide ground-handling services at EU airports above a certain size by January 1, 1998. While generally welcoming this move, U.S. airline companies and ground-handling service providers remain concerned that airports can apply for exemptions to continue to have a monopoly service provider through January 1, 2002, and can also limit the number of firms which can provide certain services on the airport tarmac (ramp, fuel, baggage and mail/freight handling) either for themselves or for other carriers. To some extent, these potential barriers are offset by more liberal provisions in the bilateral air services agreements which the United States concluded with eight EU Member States (Austria, Germany, Belgium, the Netherlands, Luxembourg, Denmark, Sweden and Finland).

In January 1998, Commission competition authorities - acting on a complaint by several EU airlines - ruled that Frankfurt Airport Terminal Two and the western portion of Terminal One would have to permit airlines to handle baggage for their clients (self-handling) and by January 1, 1999 would have to authorize a third independent baggage handling service provider. Frankfurt had requested a derogation from the directive until January 1, 2001. This is the first decision under the 1996 directive.

Postal Services

U.S. express package services like UPS and Federal Express remain concerned that the prevalence of postal monopolies in many EU countries restricts their market access and subjects them to unequal competitive conditions. Proposals to liberalize many postal services and to otherwise constrain the advantages enjoyed by the monopolies have not made sufficient progress to redress these problems.

Discriminatory Value-Added Tax Treatment

The United States continues to be concerned about proposals by the EU to allow Member States to levy a value-added tax (VAT) on offshore suppliers of telecommunications and online services (i.e., companies not established or with their principal place of business in the EU). For EU Member States to levy the VAT in this manner, suppliers of these services would become liable for the VAT on the basis of where their services are consumed and would be taxed as if they were established in the EU (versus the standard practice, applicable to European service suppliers, of levying VAT on the basis of where the service was supplied or corporation established). As the proposals are currently drafted, EU providers of similar services are already captured under existing EU VAT practices. In its schedule of commitments in the General Agreement on Trade in Services (GATS), the EU has undertaken obligations to provide national treatment to value-added telecommunications services suppliers.

Exemptions from Most-Favored-Nation Treatment

In January 1995, the EU notified the WTO of its intent to present a new draft GATS schedule, with accompanying list of MFN exemptions, to reflect the enlargement of the EU to include Austria, Finland, and Sweden. Two years later, in January 1997, the EU presented the draft document, which was discussed for the first time at a meeting of the WTO working party examining the consistency of the enlarged EU with Article V of the GATS (Article V is the services counterpart to GATT Article XXIV). At that meeting, the United States and other countries raised legal concerns that the draft expands to the three new Member States a number of MFN exemptions contained in the already existing EU-12 GATS MFN exemption list, thereby creating new opportunities for the three new Member States to discriminate against service providers of non-EU countries. The United States will seek to ensure that EU enlargement in the services area is consistent with the EU's WTO obligations.

Legal Services

France: As part of France's restructuring of its legal services regime in 1992, the "legal consultant" category, under which most American lawyers practiced, was eliminated. Since then, the number of U.S. trained attorneys able to practice in France has been severely limited by a requirement that a rigorous examination on French law be passed. A 1996 agreement between the United States and Parisian bar associations, which takes into account the professional experience of the lawyer, appears to have allowed for a higher passing rate for American lawyers. The test, however, remains ultimately subjective and the small, recent increase in the number of Americans passing the French bar could simply reflect a greater degree of personal preparedness.

Auditing Barriers

Greece: The transition period for demonopolization of the Greek audit industry officially ended on July 1, 1997. Numerous attempts to reserve a portion of the market for the former state audit monopoly during the transition period (1994-97) were blocked by the European Commission and peer review in the OECD. In November 1997, the government issued a presidential decree which effectively undermines the competitiveness of the multinational auditing firms. The decree established minimum fees for audits, and restrictions on utilization of different types of personnel in audits. It also prohibited audit firms from doing multiple tasks for a client, thus raising the cost of audit work. The government has defended these regulations as necessary to ensure quality and objectivity of audits. In practical effect, the decree constitutes a step back from deregulation of the industry.

Shipping Restrictions

Spain: In 1992, the EU established a calendar for liberalizing cabotage restrictions, but only to vessels registered in a member country. The 1992 agreement among the EU member countries on a common cabotage regime is to be implemented during a transition period from 1993 to 2004. While cabotage within peninsular Spain has been liberalized, the EU has allowed Spain to restrict merchant navigation to and within the Balearic Islands, the Canary Islands and CEUTA and Melilla to Spanish flag merchant vessels until January 1, 1999. The Spanish government has begun to liberalize merchant navigation for these routes, most recently holding

a bid for a six-year contract for routes with inadequate service levels. However, state-owned company Transmediterranea was the only bidder for these routes.

Telecommunications Market Access

U.S. telecommunications equipment industry access to EU member nations varies widely from relatively open to nearly closed. As described in the section on government procurement, most EU Member States discriminate against non-EU bids in the telecommunications sector. In addition, market access is impeded through standards and standard-setting procedures, testing, certification and attachment policies.

Under the WTO Agreement on Basic Telecommunications Services, eleven Member States made commitments to provide market access and national treatment for voice telephony services as of February 5, 1998, the date the agreement entered-into force. Four Member States will phase-in these commitments after the entry-into-force of the agreement: Spain (December 1, 1998), Ireland and Portugal (January 1, 2000) and Greece (January 1, 2003). Four Member states qualified their commitments further by maintaining foreign investment restrictions: France permits only 20% direct investment for radio-based networks and limits investment in France Telecom; Italy limits foreign investment in STET; Portugal limits foreign investment at 25 percent; and Spain limits foreign investment by government-owned operators. The European Communities and its Member States also adopted the pro-competitive regulatory commitments set forth in the Reference Paper associated with the WTO Agreement.

Belgium is the only EU Member State that has failed to give its formal acceptance to the agreement and bind itself to the commitments it promised during the negotiations. As of the date of this publication, formal ratification of the agreement appeared imminent, as the Belgian legislature had just taken action on it and the only remaining step was the King's formal approval.

The European Commission is monitoring and reporting regularly on the implementation of telecom liberalization within the EU. In its report of February 1998, the Commission found that nine Member States had not completely or adequately implemented European telecom directives that provided for an open EU market as of January 1, 1998. Greece was cited by the Commission in October 1997 for failing to allow the private mobile GSP operators to interconnect their networks directly with foreign fixed or mobile networks, and also for failure to liberalize the establishment of new infrastructure for the provision of liberalized services (all services other than voice telephony). After requesting a delay until 2003, the Commission decided that Greece will be required to open its voice telephony market to other EU competitors by January 2001.

Although the Commission found that Italy has implemented all EU directives regarding telecom liberalization, there are problems accessing the Italian market. These include a delay in granting the third cellular license (originally intended to be issued in late 1996, currently scheduled to be issued in late March or early April 1998) and the perceived competitive advantages enjoyed by Telecom Italia, including overly high interconnection fees. It is not only necessary for all Member States to transpose EU directives on the liberalization of telecom services into national telecom policies and regulations, but also just as important for the Member States to successfully apply and implement those requirements to ensure that effective competition develops in the telecom marketplace.

Implementation of the WTO agreement will present major challenges to EU Member States, most of whom had

closed markets and telecom monopolies in place until the beginning of 1998. Close monitoring by the U.S. government of this process will be necessary to ensure full compliance by Member States with their WTO commitments. Some of the earliest challenges facing the Member States will be full implementation of the pro-competitive regulatory principles in the reference paper associated with the WTO Agreement. For example, in Italy, an independent regulatory authority has yet to be established and firms are unable to apply for licenses, as rules or procedures for licensing do not appear to be in place. In Germany, the newly established independent regulator already is addressing Deutsche Telekom's attempt to impose excessive fees on customers seeking to change carriers. The issue of determining cost-oriented, non-discriminatory interconnection charges will be critical in all markets, and already controversy is developing in France and Germany over the level of and method for determining such charges. France Telecom, the recently partially privatized national carrier, has been slow in negotiating interconnection fees with new carriers. Initial agreements are expected by March 1998, at which time we will be better able to appraise market liberalization.

INVESTMENT BARRIERS

The EU has a growing role in defining the way in which U.S. investments in the Member States are treated. Although Member State governments traditionally were responsible for policies governing non-EU investment, in 1993 the Maastricht Treaty shifted competence over third country investment from the Member States to the Union. Member State barriers existing on December 31, 1993 remain in effect, but these may now be superseded by EU law. Direct branches of non-EU financial service institutions remain subject to individual member country authorization and regulation.

In general, the EU supports the notion of national treatment for foreign investors, and the Commission has traditionally argued that any company established under the laws of one Member State must, as a "Community company," receive national treatment in all Member States, regardless of its ultimate ownership. However, some restrictions on U.S. investment do exist under EU law and others have been proposed:

Ownership Restrictions

The benefits of EU law in the aviation and maritime areas are reserved to firms majority-owned and controlled by EU nationals.

Reciprocity Provisions

EU banking, insurance and investment services directives include "reciprocal" national treatment clauses, under which financial services firms from a third country may be denied the right to establish a new business in the EU if the EU determines that the investor's home country denies national treatment to EU service providers. In the recently adopted hydrocarbons directive, this notion may have been taken further to require "mirror-image" reciprocal treatment, under which an investor may be denied a license if its home country does not permit EU investors to engage in activities under circumstances "comparable" to those in the union. It should be noted, however, that thus far no U.S.-owned firms have been affected by these reciprocity provisions.

International Negotiations

The EU and its Member States are participating actively in the OECD negotiations toward a Multilateral

Agreement on Investment (MAI), which should help reduce existing and preclude any further discriminatory measures. The EU approach to the negotiations has been generally constructive, although in recent international negotiations the union has argued for an "economic integration" provision that would allow it, and its Member States, to deny U.S. firms most favoured nation treatment and potentially other rights and benefits under EU law.

The role of the EU in the treatment of foreign investment is still evolving, however, and in many instances Member State practices are of more direct relevance to U.S. investors. EU Member States negotiate their own bilateral investment protection and taxation treaties, and generally retain responsibility for their investment regimes.

Member State Practices

Principal national barriers include:

Austria: Austria's 1993 Banking Act presents a number of obstacles to U.S. banks. While EU Member States' banks may operate branches on the basis of their home country license, non-EU banks must obtain an Austrian license to open branches in Austria. In addition, as of December 31, 1998, limits for single large loan exposures and open foreign exchange positions will decrease considerably for branches and subsidiaries of banks from non-EU countries. As of that date, the capital of that parent company may no longer be included in the capital base used to calculate loan and foreign exchange position limits.

France: In 1996, the French government eliminated general screening and prior approval requirements for non-EU foreign investment. Notification requirements continue to apply to all foreign investments, EU and non-EU, which affect national defense, public safety, or public health. The French government also eliminated the restriction in the 1993 Privatization Law that prevented the French government from selling to non-EU investors more than 20 percent of state-holdings in a firm being privatized. The government retained the ability to exert influence over privatized firms through "golden share" provisions, which it has invoked in a number of cases. France continues to apply reciprocity requirements to non-EU investments in a number of sectors. For the purpose of applying these requirements, the French government generally determines a firm's residency based on the residency of its ultimate owners rather than on the basis of the firm's place of establishment or incorporation.

Greece: Both local content and export performance are elements which are seriously taken into consideration by Greek authorities in evaluating applications for tax and investment incentives. However, they are not legally mandatory prerequisites for approving investments. New investment incentive legislation is pending ratification in Parliament. Foreign exchange controls have been progressively relaxed since 1985. Medium- and long-term capital movements have been fully liberalized. Most restrictions on short-term capital movements were lifted in 1994. Remaining restrictions on short-term capital movements were lifted on August 1, 1997, although some controls still exist to facilitate enforcement of money laundering laws and tax collection. Greece's foreign exchange marker is now in line with EU rules on free movement of capital.

Greece restricts foreign and domestic private investment in public utilities. Private power production for sale to the national grid is currently limited to "non-traditional" energy sources (e.g., wind and solar). U.S. and other non-EU investors receive less advantageous treatment than domestic or other EU investors in the banking,

mining, maritime and air transport sectors, and in broadcasting. There are also restrictions for non-EU investors on land purchases in border regions and certain islands (on national security grounds).

The draft 1998 tax bill proposes to increase the corporate tax rate from 35 percent to 40 percent for all corporations which have registered shares but do not trade them on the Athens Stock Exchange (ASE). Though, in principle, this change would not violate MFN or national treatment obligations, the practical effect is to provide a tax subsidy to Greek firms based on their utilization of the ASE.

Portugal: Portugal amended its foreign investment law via decree-law 321/95, effective December 4, 1995. Foreign investments are now subject only to post facto registration. Portugal eliminated the “economic needs test” that applied to the establishment of non-EU banks as part of its commitments to greater financial liberalization in the WTO and MAI negotiations.

Portugal retains the discretion to limit foreign investment in state-owned companies being privatized on a case-by-case basis. To date this prerogative has never been exercised.

OTHER BARRIERS

Canned Fruit

The United States and five other producing countries (Argentina, Australia, Brazil, Chile and South Africa) are continuing to consult with the European Commission regarding the EU's internal support regime for canned fruit. These governments believe that the operation of the EU support regime for fresh peaches and pears has allowed EU fruit processors to unfairly undercut the domestic and export prices for canned fruit for the EU's trading partners. Despite the EU's claims of adherence to the letter of the 1985 U.S.-EC Canned Fruit Agreement, oversupply of the fresh fruit under the support regime may allow processors in certain Member States to ignore the minimum price requirements of the agreement. The industries in all five countries have been hurt by EU exports of cheap canned fruit. Modifications in the overall fruit and vegetable production scheme may improve the situation, but it is too early to tell. This issue has been raised in the WTO Committee on Agriculture, where eleven countries have asked the chairman to convene consultations with the EU to address problems arising from the EU’s regime.

France's Poultry Regulations

The United States continues to oppose the French ban on U.S. poultry, which has been in effect since the early 1960's. The French prohibition on U.S. poultry is based on U.S. poultry feed practices, practices which the United States believes to be entirely safe.

Government Support for Airbus

Since the inception of the European Airbus consortium in 1967, its partner governments (France, Germany, Spain and the United Kingdom) have provided massive support to their national company partners in the consortium to aid the development, production and marketing of large civil aircraft. At the end of 1996, support from these governments to develop new Airbus aircraft stood at over $30 billion, net of repayments to those governments by the consortium members. Since that date, the Airbus partner governments either have

committed, or are in an advanced stage of consideration of providing, additional funds for derivative models of current Airbus aircraft. On February 2, 1998, the Government of the United Kingdom announced that it has agreed to a long term loan of up to 123 million pounds (212 million dollars) toward the design and development of the new wing for the Airbus A340-500/600 aircraft. The French parliament has also budgeted for 1998, 505 million francs (87 million dollars) for this same aircraft program, and the German government has indicated that it would also provide some assistance.

Government support for Airbus has facilitated its growth and the introduction of a range of large transport aircraft by allowing its national partner companies to avoid bearing the normal commercial risks that U.S. manufacturers face when investing in new civilian aircraft programs. The Airbus partner governments bore 75 to 100 percent of the development costs for all major lines of Airbus aircraft and also provided other forms of support including equity infusions, debt forgiveness, debt rollovers and marketing assistance. The individual Airbus partner companies are leading aerospace manufacturers in their home markets and, in some cases, have substantial government participation in ownership. The French government, for example, owns 97 percent of Aerospatiale. Airbus claimed to have received approximately 50 percent of the total orders for large civil aircraft made in 1997.

Airbus has announced its intention to pursue a 550-seat aircraft despite serious questions about the market demand for a super-jumbo aircraft. A July 1997 French Senate Finance Committee report called for providing 6.2 billion francs in launch aid for the super-jumbo over the next four years. In October 1997, Airbus publicly requested that EU governments provide financial support in order to fight American "aerospace leadership" and said that the super-jumbo aircraft would require several billions of dollars in government investment.

The Airbus partners have agreed to transform Airbus Industrie into a public company, or "single corporate entity," by 1999. At present, it is an "economic interest group," meaning that all its profits and losses from sales go directly to the four manufacturing partners and work shares are allocated among the partners by capital participation rather than determined by business efficiency criteria. In January 1997, the Airbus partner companies reached a general agreement for the formation of the new single corporate entity; and in December 1997, their governments issued a statement endorsing the Airbus restructuring and requested a detailed plan by March 31, 1998.

The United States is concerned that the launch of new Airbus programs and the restructuring of the Airbus consortium may be used to justify additional government subsidies. The United States also continues to be concerned that the European Commission and its Member States may attempt to influence commercial aircraft competitions in favor of Airbus aircraft in a manner inconsistent with its obligations. The United States in the 1996 National Trade Estimates Report provided examples of such attempts. The United States will continue to monitor EU involvement in future competitions and its compliance with aircraft trade agreements.

To address U.S. concerns about the impact of European government support for its civil aircraft manufacturers, the United States signed a bilateral large aircraft agreement with the EU in 1992. This agreement expanded on the principles contained in the 1979 GATT Agreement on Trade in Civil Aircraft and contains specific disciplines on the provision of future European government support for aircraft development by Airbus and the repayment of past support. In addition, it includes a prohibition on government support for the manufacturing, marketing and sale of aircraft and a clarification of disciplines on government intervention in aircraft marketing or procurement decisions.

The United States held formal consultations with the European Commission in April and July 1997 and January 1998 under the terms of the 1992 bilateral agreement. At those meetings, the U.S. government and the European Commission exchanged information under the Agreement's transparency provisions on direct and indirect government support and discussed government involvement in large civil aircraft manufacture and marketing. Ideas for improving the operation of the agreement were also examined. Of particular concern to the United States are plans announced by European governments to provide financial support to develop new Airbus aircraft, including the A340-500/600. (In the past, some loans for Airbus programs, repayable from royalties on aircraft sold, have been effectively forgiven because projected sales did not materialize.) The U.S.-EU aircraft agreement requires that the European Union provide information to the United States on a "critical project appraisal" demonstrating the commercial viability of new aircraft programs at the time governments commit financial support to them. The EU has not yet provided the requested information.

European officials have frequently defended Airbus subsidies by asserting that the United States also funds its civil aircraft industry indirectly through NASA and Defense Department research. A consultant's report prepared for the European Commission on the level of U.S. government indirect support to U.S. manufacturers of large civil aircraft suggested that U.S. indirect supports are substantial. Careful examination of the report, which was apparently widely circulated and treated as a credible analysis in EU government circles, uncovered serious methodological and factual flaws which negate its conclusions.

In particular, the EU consultant's report applied simplistic assumptions that grossly exaggerated the percentage of the U.S. government aeronautical research and development (R&D) budget that has benefited manufacturers of large civil aircraft. For example, the report counted as U.S. indirect support the funding of internal U.S. government functions (such as program management) unrelated to the development of aeronautical technologies. The report also included R&D activity unrelated to large civil aircraft (such as contracts associated with helicopters) and R&D performed by companies which are not manufacturers of large civil aircraft. The report even counted as "U.S. benefits" R&D the results of which were provided to European manufacturers and for research projects that could improve the safety of European as well as American-made aircraft. The report also failed to utilize data on actual research contracts provided to the European Commission which, if taken into account, might have prevented many of the errors.

Contrary to the assertion that U.S. producers of civil aircraft are indirectly subsidized at an "increasing level" by NASA and U.S. military research programs, U.S. producers of large civil aircraft receive few identifiable benefits from such contracts. In addition to direct subsidies, Airbus partner companies also receive indirect benefits from European Union and Member State-funded civilian and military research and, in addition, are major suppliers to their governments. The United States is concerned that highly inaccurate information on U.S. government indirect support for the manufacture of large civil aircraft may be seen in Europe as justifying a new, wasteful round of additional European government subsidies. Such subsidies are not only unnecessary given the commercial success of Airbus, but would be contrary to the intent of the U.S. government to work with the European Union to eliminate trade-distorting government influences from commercial competition between the manufacturers of large civil aircraft.

Aircraft Certification

The United States continues to be concerned about the possibility of European aircraft certification standards being applied in such a way that they are effectively impediments to the delivery of qualified aircraft into

Europe. Processes and procedures currently employed by the European Joint Aviation Authorities (JAA) appear to be both cumbersome and somewhat ad hoc. The United States desires a transparent and equitable process for aircraft certification that is applied consistently on both sides of the Atlantic according to the relevant bilateral airworthiness agreements.

Government Support For Airbus Suppliers

Belgium: The Government of Belgium and Belgian regional authorities are reported to subsidize Belgian aircraft component manufacturers which supply parts to Airbus Industrie. According to available information, the subsidy is provided in a foreign exchange rate guarantee program under which payments are made to a consortium of Belgian companies, Belairbus, which is an "associate member" of Airbus. The Government of Belgium and Belgian regional governments provide payments to the Belairbus companies to cover the difference between actual (i.e., marketplace) foreign exchange rates and a guaranteed rate. The specific level at which the guaranteed exchange rate was established has varied by Airbus aircraft programs as well as by the number of aircraft in each program.

The Belgian program appears similar to a foreign exchange rate guarantee program provided by the German government for its Airbus partner company and its suppliers. Following a GATT Subsidies Code complaint by the United States, the German program was found to be a prohibited export subsidy by a Subsidies Code panel, the report was blocked by the EU, but the program was subsequently dismantled. The United States has undertaken consultations with the European Union in the context of the bilateral aircraft agreement on the Belgian dual exchange rate program. The United States has also posed questions to the EU under provisions of the WTO Agreement on Subsidies and Countervailing Measures which permit member countries to seek and obtain information on the nature of a practice maintained by another member and to clarify why it may not have been notified to the WTO as a subsidy. The EU's reply failed to answer U.S. questions, and further steps to resolve our concerns about this practice are under consideration.

France: In December 1997, the European Commission announced its approval of a French government "reimbursable advance" to fund the development by European avionics companies of a new flight management system (FMS) for Airbus aircraft, the development of which by these companies the Commission said "would not be possible without aid". The Commission justified this subsidy on its estimation that a specific U.S. company had a "Quasi-monopoly" on sales of FMS for Airbus aircraft and that the French government funding would help reduce Airbus's dependence on the U.S. supplier. In fact, the overwhelming proportion of Airbus avionics is already European sourced, and the FMS in question is installed in avionics equipment produced by one of the European companies designated to receive the subsidy. It thus appears that the intended effect of this subsidy is to entirely displace the U.S. company as a supplier of FMS for Airbus aircraft.

Government Shipbuilding Industry Support

Member States of the EU provide subsidies and other forms of aid to their shipbuilding and repair industries. These have included subsidized restructuring of domestic shipbuilding industries, direct subsidies for operations and investment, indirect subsidies, home credit schemes, subsidized export credits, and practices associated with public ownership of yards. The European Commission sets annual ceilings for subsidies for shipbuilding and ship conversions (but not ship repair) under its Seventh Directive. Until December 31, 1998, the ceiling will be nine percent of gross investment for new ships and 4.5 percent for conversions and small vessels (under

10 million ECU).

In June 1989, the Shipbuilders Council of America (SCA) filed a Section 301 petition, seeking elimination of subsidies and trade distorting measures for the commercial shipbuilding and repair industry. In response, USTR undertook to negotiate a multilateral agreement in the OECD to eliminate all subsidies for shipbuilding by OECD member countries. An agreement was reached in July 1994 and signed in December to take effect on January 1, 1996. To enter into force, the agreement must be ratified by all its signatories. The EU ratified it and adopted implementing legislation in December 1995. All other signatories, except the United States, completed their ratification processes in 1995-96. The United States Congress has not yet ratified the agreement. In October 1997, the Commission proposed that pending U.S. ratification, the Seventh Directive be extended through 1998. In 1999 and 2000, contract-related aid would continue at current ceilings. From 2001, the only contract-related aid allowed would be home and export credits under OECD rules on export credits for ships; operating aid would no longer be allowed, and permissible aid (e.g., for closures, R&D, the environment) would be subject to new rules. The Commission proposal also allowed increased opportunities for Member States to provide support for restructuring and other aid targeted at improving competitiveness. Discussions on possible ratification continue in the United States Congress.

Data Privacy

The Council of Ministers formally adopted the directive on the protection of personal data in October 1995. This directive tries to strike a balance between the protection of an individual's right to privacy in regard to transmission of personal data and the need to facilitate the flow of such information within the EU. The directive allows for data transfer to third countries if they provide an adequate level of protection for the data under their own laws or through international obligations they have undertaken. U.S. companies are concerned because the text lacks clarity about data transmission to non-EU countries. The ease with which data moves across borders will depend on how individual Member States define what constitutes an adequate level of protection. The U.S. government is urging officials in the European Commission and in Member States to accept company-based self-regulation on data privacy issues.

GULF COOPERATION COUNCIL

This section of the report analyzes trade policies of the six member states (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (U.A.E.)) of the Gulf Cooperation Council (GCC).

In 1997, the U.S. trade surplus with the GCC was $744 million, a shift of $124 million from the U.S. trade surplus of $868 million in 1996. U.S. merchandise exports to the GCC were $13.6 billion, an increase of $1.1 billion (8.7 percent) from the level of U.S. exports to the GCC in 1996. U.S. imports from the GCC were $12.8 billion in 1997, an increase of $1.2 billion (10.5 percent) from the level of imports in 1996. Improved U.S. export performance in the region in 1997 was in part attributable to higher export earnings of the GCC states due to sustained higher oil prices and consequently more robust economic performance in those predominantly oil-based economies.

Recent figures indicate that the stock of U.S. foreign direct investment (FDI) in Saudi Arabia had reached $3.1 billion in 1996, down 4.5 percent from 1995. U.S. FDI in the U.A.E. was $789 million in 1996, up 19.6 percent from that in 1995. In the GCC as a whole, U.S. FDI is largely concentrated in the petroleum extraction, petrochemical, and manufacturing sectors.

Overview

The GCC is an economic and political policy-coordinating forum for its members. Since it cannot impose trade policies upon its member states, each is free to pass and enforce its own trade laws. However, there has been growing cooperation among GCC members on certain issues, such as intra-GCC investments, standards-setting, and intellectual property protection. There is also continuing work on a free trade area between the GCC and the European Union (EU).

The United States favors strengthening common action among GCC members, as well as enhancing U.S.-GCC economic and commercial ties. The U.S. government engages in high-level economic policy talks with GCC members through the U.S.-GCC economic dialogue. The most recent dialogue meeting took place in March 1997 in Riyadh; a plenary meeting is planned in early 1998 in Washington.

IMPORT POLICIES

Tariffs

The GCC leadership has long discussed, but failed to attain, a unified tariff structure. Some GCC countries maintain tariffs of 15-20 percent on products similar to those produced locally. Saudi Arabia maintains a 12 percent tariff on most products but this can be raised as high as 20 percent for certain protected industries. The U.A.E., which is the regional commercial hub and has traditionally depended on foreign trade, continues to push for low tariff rates throughout the GCC. As the GCC moves to harmonize its tariff schedule, there is concern that a "highest common denominator" approach could lead to higher tariffs for a variety of imported products.

Gulf Cooperation Council

Of the GCC countries, Bahrain, Kuwait, Qatar, and the U.A.E. are members of the WTO. All four of these countries entered the GATT and WTO under simplified procedures, based on the United Kingdom's previous application of the GATT 1947 on their behalf. Saudi Arabia applied for GATT membership in July 1993 and converted this application to WTO accession early in 1996. Negotiations for the terms of Saudi Arabia's accession are now under way, and are being conducted under the standard procedures of Article XII of the WTO.

Oman became an observer to the WTO in April 1995 and submitted its formal application for WTO accession in 1996. Negotiations for Omani accession are currently under way.

Import Licensing

Except in Bahrain, varying degrees of licensing procedures are enforced to protect domestic industries or limit trade to nationals of GCC countries. In Saudi Arabia, the importation of certain articles is either prohibited or requires special approval from competent authorities. Restrictions are placed on the importation of alcohol, firearms, illegal drugs and pork products. The following products require special approval in Saudi Arabia: agriculture seeds, live animals, fresh and frozen meat, books, periodicals, movies, tapes, religious books and tapes, chemicals and harmful materials, pharmaceutical products, wireless equipment, horses, products containing alcohol, and natural asphalt. Kuwait currently restricts the importation of alcohol, firearms, and pork products. In the U.A.E., only firms with the appropriate trade license can engage in importation.

Documentation Requirements

All GCC countries impose complicated, costly, time-consuming import documentation requirements. For example, certain documents must be authenticated by the National U.S.-Arab Chamber of Commerce (or, in the case of U.S. goods destined for Saudi Arabia, by the U.S.-Saudi Business Council) and by the diplomatic mission of the importing country. In Oman, with the exception of food products, this authentication procedure is not required, if the importing company has an existing agency agreement with the U.S. exporter. In 1996, Oman began the process of simplifying customs clearance documentation to expedite the flow of goods and promote its ports and airports. Arab League boycott certification is no longer required. Only Omani nationals, however, are permitted to submit documents to clear shipments through customs.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The United States is increasingly concerned about certain restrictive GCC standards. In particular, shelf life standards are more strict than scientifically warranted and severely restrict imports of a variety of food products of interest to U.S. suppliers. Such standards also favor European companies, which face shorter shipping times than their U.S. counterparts.

The situation has deteriorated in recent years, as shelf life durations for a variety of food products have been shortened, in some cases by half, as GCC countries begin strictly to enforce Gulf Standard 150/1993, Part I. Lacking scientific justification, GCC shelf life standards appear to violate the WTO/SPS agreement. Their removal could significantly increase U.S. food exports to the region.

In Saudi Arabia, the Saudi Arabian Standards Organization (SASO) imposes shelf life requirements on food

products. Over the past few years, SASO has shortened shelf life durations for baby foods, eggs, stuffed cookies, chilled meats, and some snack foods, all products of interest to U.S. exporters. Some sources claim that SASO has shortened shelf life standards to protect Saudi Arabia's expanding food processing industry; Saudi Arabia has become self-sufficient in egg production, and is growing in importance as a biscuit and cookie producer.

In 1990, the United States entered into a highly successful arrangement with SASO to encourage cooperation in the development of standards. SASO's work frequently leads to the creation of regional GCC standards. The United States-SASO partnership, which includes a U.S. technical advisor in Riyadh funded by the U.S. government, has led to greater transparency in the Saudi system and has increased opportunities for American exporters to comment on draft Saudi standards. SASO has already adopted ISO 9000 as approved standards for Saudi Arabia and acts as an accreditation body through the Quality Assurance Department. The 1993 NIST-SASO MOU was renewed in July 1997 for another three years. The United States National Institute of Standards and Technology (NIST) and the GCC countries concluded a memorandum of understanding (MOU) on standards, metrology, and technical assistance programs at the March 1996 economic dialogue meeting in Bahrain.

In October 1995, Saudi Arabia initiated a pre-shipment certification program to monitor and control the quality of certain products imported into the country. The International Conformity Certification Program (ICCP) currently applies to 76 regulated consumer product lines. In practice, additional products have been added to the 76 regulated product categories. The ICCP is managed by Intertek Testing Services (ITS), which inspects and tests, on behalf of SASO, shipments bound for Saudi Arabia. The United States and many other exporting countries have questioned the manner in which the ICCP has been implemented. Problems include the lack of transparency, ad valorem fees, and favorable national treatment of local products manufactured in the Gulf Region. Recently, shipments valued at less than five thousand dollars have been exempted from compliance with ICCP regulations.

Standards and labeling issues are also a problem in many of the GCC countries. For example, telecommunications and computer equipment standards tend to lag behind market developments, which often results in government tenders that specify purchase of obsolete and more costly items. Concerning labeling, Saudi Arabia is proposing to introduce a 4-digit date requirement beginning in the year 2000 on all products. This would create complications for U.S. exporters to the Saudi market.

The Oman Centre for Investment Promotion and Export Development (OCIPED) has engaged U.S. technical assistance in establishing itself as an ISO certifying body.

The GCC plans to implement a system for registering companies that comply with international standard ISO 9000. The central accreditation organization will be the Gulf Standards and Metrology Organization (GSMO) for the GCC countries. An agency in each of the six countries will inspect factories, make recommendations, and issue registrations. The GSMO is negotiating with the EU to put the program in place, and the EU is sending experts to help the GCC in technical and training aspects of the program and to set up mutual recognition systems for certification and quality control mechanisms. In January 1998, a GCC standardization official reported that the GSMO had approved approximately 1000 unified standards for the GCC countries to date.

Gulf Cooperation Council

GOVERNMENT PROCUREMENT

Most GCC countries maintain preferential "buy national" policies and/or offset provisions requiring that a portion of major (and usually military) government tenders be subcontracted to local firms. Oman prefers, but does not require, that a portion of a government tender be subcontracted to local firms. Qatar is reportedly considering establishing a formal offset program. In an attempt to engineer greater technology transfer, several GCC states, including Saudi Arabia and the U.A.E., actively support the creation of offset companies in diverse fields as part of defense procurement.

Kuwaiti government procurement policies specify use of local products when available and prescribe a 10 percent price advantage for local firms in government tenders. Kuwait's offset program requires that foreign firms awarded government contracts with a single or cumulative value in any one fiscal year of kd one million ($3.3 million) or more, invest 30 percent of the contract value in an approved project in Kuwait, the GCC, or other Arab nations. Until now, the scope of the offset requirement has been limited to military sales. Kuwait's Offset Office has, however, announced its intention to expand coverage to all government contracts. This would be a negative development that would represent a significant new barrier to expanded U.S. exports to Kuwait.

Saudi Arabian government contracts on project implementation and procurement are regulated by several royal decrees which strongly favor GCC nationals. Most defense contracts, however, are negotiated outside these regulations. Under a 1983 decree, for example, contractors must sub-contract 30 percent of the value of the contract, including support service, to majority-owned Saudi firms. An exemption is granted in instances where no Saudi company can provide goods and services to fulfill the obligation. In addition, Article 1(d) of the tender regulations requires that Saudi individuals and establishments have preference over all other entities in government dealings. The same regulations also accord preference to "mixed" entities as long as Saudi nationals hold at least 51 percent of the mixed entities' capital. Article 1(e) gives preference to products of Saudi origin which satisfy the requirements of the procurement, even when the product specifications are inferior to those of a foreign counterpart.

Saudi Arabia gives priority in government purchasing programs to GCC products. These items receive up to a 10 percent price preference over non-GCC products in all government contracts contested by foreign contractors. Likewise, Oman provides a 10 percent price preference to Omani nationals for Omani goods and services. Additionally, the government considers quality of product or service and support as well as cost in evaluating bids. For most major tenders, Oman typically notifies firms either already registered in Oman or preselected by project consultants. Bidders' costs soar when some award decisions are delayed, in some instances for years, or when bidding is reopened with modified specifications and typically short deadlines. Oman is known to have an offset program only with the United Kingdom, although the investment can originate from any country. Offsets are not standard adjuncts to government contracts and have not been associated with any U.S. defense transactions, whether commercial or foreign military sales.

The U.A.E. has no requirement that a portion of any government tender be subcontracted to local firms, but there is a 10 percent price preference for local firms on procurement and tenders. The U.A.E. requires a company to be registered in order to be invited to receive government tender documents. To be registered, a company must have 51 percent U.A.E. ownership. However, these rules do not apply on major project awards or defense contracts where there is no local company able to provide the goods or services required. The U.A.E.

requires offset investments of up to 60 percent of the value of defense contracts that it awards. The requirements state that an investment must generate returns within seven years equal to a percentage of the value of the contract.

Qatar gives preferential treatment to contractors that include high local content in bids for government tenders. As a rule, bids must be submitted through local Qatari agents, but there are exceptions. For example, government procurement of defense equipment does not require use of local agents. However, local agents are often used, and have proved to be very useful in securing contracts. Qatar gives a 10 percent price preference to local firms and a 5 percent price preference to GCC firms in all government procurement.

EXPORT SUBSIDIES

While there appears to be no GCC-wide export subsidy program, certain member states have programs to support local industries that, in effect, equate to export subsidies.

Saudi Arabia contends that it has no export subsidy programs for industrial production. However, costs for establishing productive facilities in the industrial cities in Saudi Arabia are artificially low: land is available at little or no cost, utilities are priced below cost of production, and low interest loans are available from the Saudi industrial development fund. Because input prices are relatively low in Saudi Arabia, investment in the production of petroleum and related downstream products is comparatively attractive. The Saudi government contends that low input prices reflect Saudi Arabia's low costs for domestic oil production.

Saudi Arabia began a substantial reduction in wheat production subsidies in 1993. The Grain Silos and Flour Mills Organization (GSFMO) controls wheat production by assigning production quotas to each of the country's grain farmers. Farmers can only receive government support prices within preassigned quotas. GSFMO production quotas for 1997 were increased to 1.8 million metric tons, compared to 1.3 million metric tons in 1996. This conforms to current policy to produce only for domestic needs. The increase was deemed necessary because of a drawdown in stocks. Production support prices remain at $400 per metric ton, a level still well above world prices.

The Oman Development Bank (ODB) provides export payment guarantees, at below local market rates, protecting Oman's relatively few non-petroleum exporters from payment problems on transactions, subject to ODB approval of buyer and country risk.

Kuwait also offers industrial subsidies similar to those of other GCC states. The Industrial Bank of Kuwait offers below market rate loans to local industry. Land is also provided at low cost, and imports of machinery and other goods are exempted from customs duties. Industries also benefit from low cost utilities.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Some progress has been made in recent years by GCC states in adopting laws and regulations regarding the protection of intellectual property. However, most of these laws are not yet TRIPs consistent and all of these countries were identified in last year’s Special 301 review. The GCC Secretariat has declared the protection

of intellectual property rights (IPR) to be a priority and is working to facilitate this in the six member states, especially in the area of patent protection. The GCC has published a unified patent law which requires modification in a number of areas to comply fully with TRIPs, that has yet to take effect and has plans to set up a GCC patent office. In addition, all GCC states have trademark laws although they are not effectively enforced; the GCC is reportedly interested in working on a unified trademark regulation, but no technical discussions or drafting has been attempted.

The GCC countries are in various stages of acceding to international intellectual property conventions, such as the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, and the Geneva Phonograms Convention. Saudi Arabia became a member of the Universal Copyright Convention on July 13, 1994. Bahrain became a signatory of the Berne and Paris Conventions on October 29, 1996. The U.A.E. has joined the Paris Convention for the Protection of Industrial Property, the first treaty for protection of intellectual property to which the U.A.E. has acceded. Saudi Arabia is working on coming into conformity with TRIPS (Trade Related Intellectual Rights under the WTO) as part of its accession process. Oman and Qatar are not party to any of these conventions. All GCC states, except Kuwait, are members of the World Intellectual Property Organization (WIPO).

Despite the progress to date, IPR protection problems continue throughout the region due primarily to difficulties with enforcement. Pirated video cassettes, computer software, and sound recordings are available to varying degrees in all GCC countries. Counterfeit products such as clothing, auto parts, and household products are also widely available.

Saudi Arabia

Saudi Arabia enacted copyright and patent laws in 1989, and the Saudis assert the copyright law is consistent with international standards. The United States has raised a number of concerns about the law, the most important of which is that U.S. sound recordings are not clearly protected. Saudi Arabia claims that through its accession to the Universal Copyright Convention, it is obliged to protect U.S. and other non-GCC member works. However, the U.S. would like Saudi Arabia to clarify this issue, preferably through amending its legislation.

While Saudi Arabia's patent law provides a generally adequate legal basis for protection, its patent term and compulsory licensing provisions are not consistent with international norms, as set forth in TRIPS. Further, as of December 1997, the patent office had issued only four patents, and had a backlog of over 4,000 applications. Saudi Arabia has made significant progress on copyright enforcement in the video and sound recordings market, particularly in clearing shelves in retail stores of pirated video and music cassettes. However, much of the pirated video and audio material has reportedly gone "underground" in Saudi Arabia and it remains the largest transshipment point for pirated works in the region. Although Saudi Arabia has stepped up intellectual property protection efforts, U.S. software manufacturers are still looking for greater Saudi government enforcement action against software copiers and end-users of unauthorized software, including government ministries.

The United Arab Emirates

The U.A.E. enacted copyright, trademark, and patent laws in 1992. The government is now working to amend the patent law to bring it into compliance with TRIPS. The U.A.E. government has cracked down on piracy of audiovisual works and sound recordings. As a result, shops in the U.A.E. do not carry pirated audio/video works and sound recordings. Modern movie theaters have opened since September 1994 and show western movies obtained from licensed distributors. Pirate video products enter the country from neighboring Oman, but are not generally available in shops registered and licensed by government authorities. Due to confusion surrounding interpretation of protection for foreign works in the law, several recent court cases have resulted in acquittals for U.A.E. companies charged with violating U.A.E. federal copyright and trademark laws.

Underground piracy remains an issue of concern. The central government is committed to countering computer software piracy, which is widespread. In 1996, the U.A.E. recorded the largest drop in software piracy worldwide. As a result, in mid-1997, the Minister of Information and Culture was honored by international software manufacturers for his commitment to combating software piracy. The U.A.E. patent law, currently being amended, protects pharmaceutical processes but not products. A factory in the U.A.E. produces pirate versions of patented drugs.

Bahrain

Bahrain enacted a somewhat ambiguous copyright law in 1993, but has recently been aggressively and broadly enforcing it against copyright piracy in ways consistent with its WTO IPR obligations. It has been using the law to protect a wide range of intellectual property. Bahrain recently began a strong enforcement campaign to tackle video, audio, and software copyright piracy and has started closing stores and confiscating illegal copies; prosecution of pirates was set to begin in early 1998. Bahrain has a patent law, but it is not yet TRIPS consistent. Bahrain has patent offices that are grappling with a backlog of thousands of unprocessed applications.

Kuwait

Kuwait completed domestic ratification procedures for its membership in the World Intellectual Property Organization (WIPO) in December 1997 and is expected to deposit its instrument of accession in early 1998. Kuwait continues to enforce ministerial decrees against copyright violations of U.S. and U.K. audio, video, and computer program materials pending passage of an effective copyright protection law. A draft of a new law is expected to be submitted to Kuwait's parliament soon.

Kuwait has patent and trademark laws on the books, but only the trademark law is in effect, and the patent law is not TRIPS consistent. The Kuwait Ministry of Commerce established in April 1997 a committee charged with reviewing its patent legislation with the intention of making recommendations on amending it to reflect Kuwait's obligations under the World Trade Organization (WTO). No draft legislation has yet emerged from this effort. Since Kuwait does not yet offer patent protection for pharmaceuticals, Kuwait announced in September 1996 that it had established a "mailbox" for pharmaceutical products as required by the WTO TRIPS Agreement, but the Amailbox@ has not yet been implemented.

Qatar

Qatar's copyright law officially took effect on October 20, 1996, but after a recent government reorganization

there is some uncertainty as to the status of the Copyright Bureau, which has been responsible for implementation of the law. Qatar provides no patent protection for any inventions, including pharmaceutical products. Qatar provides protection for trademarks registered with the Commercial Registration Department of the Ministry of Finance, Economy and Trade. Promulgated in the early 1980s, Qatar's trademark law is known as the "commercial indications law."

Oman

Oman issued a copyright decree in June 1996, however, protection of foreign works including those from the U.S. remains in question and the decree has never been implemented. The decree also provides no more than 25 years of protection, or the balance of protection under an existing international copyright, whichever period is shorter. This is not consistent with international standards. Oman has not announced any firm timetable for effective enforcement against piracy and counterfeiting, other than that which WTO membership will entail. In the absence of copyright enforcement, imported pirate software and imported and domestic copies of video and audio cassettes remain readily available in retail outlets--particularly near the border with the U.A.E., which has recently strengthened its own copyright enforcement. Omani government offices and major firms do, however, purchase legal software copies. As part of their contract, applicants for internet access must pledge to respect international copyrights. Oman has no patent law, but points to its acceptance of future GCC patent protection, which does not exist except for a TRIPS deficient regulation that has not been implemented. Also, the Ministry of Health says it verifies patent compliance when reviewing new import applications for pharmaceutical products. However, U.S. industry has raised concerns about the verification process.

Gulf Cooperation Council

The GCC Secretariat has issued a patent law whose ultimate purpose is to create one patent system for the member states. The law has several significant TRIPS consistency problems, including a lack of protection for pharmaceuticals (products or processes for production) and biological inventions. In addition, the law contains a broad compulsory licensing regime. The GCC Secretariat Patent Office, which exists largely in name only, has no examination, granting or enforcement mechanisms. The GCC also has indicated its interest in eventually creating common trademark and copyright laws and regimes, although no progress has been made so far.

SERVICES BARRIERS

Insurance

Most GCC countries discriminate against foreign insurance companies, generally by restricting foreign participation in the on-shore market (as in Kuwait), or by requiring operation through a local sponsor (as in Saudi Arabia and Oman). (Note, however, that a sponsorship requirement is not uniquely applied to insurance firms.) Foreign insurance companies can establish a presence in the U.A.E. by operating a branch or representative office. This option allows 100 percent foreign ownership, but, in general, limits business activities to offshore operations. At present, Qatar bans the establishment of new insurance companies, and there is no indication the ban will be lifted soon. In December 1996, Bahrain issued a decree amending the country's insurance law to allow foreign companies to open life insurance businesses. The companies are being allowed to enter the life insurance sector because of a lack of local experience in the field. Prior to the new law, companies could establish only representative offices in Bahrain. While Saudi Arabia has permitted foreign

insurance companies to operate in the kingdom, there is no insurance law governing the sector. The central bank is taking the lead in formulating a regulatory framework for insurance, but this is only in the beginning stages.

Banking

Banking activity in GCC states is subject to a variety of restrictions. Saudi regulations require that Saudi nationals own 60 percent of any bank. In Kuwait, foreigners are permitted to own up to 40 percent of Kuwaiti banks. Bahrain continues as a regional financial services hub. It continues to issue new licenses to banks (11 in 1997), focusing on promoting the Islamic, offshore, and investment banking sectors. The traditional commercial banking sector remains saturated.

While Oman, Qatar, and the U.A.E. have laws permitting foreign banks to operate, these countries have barred new non-GCC banks from establishing operations on the grounds that their countries are "over-banked." In the U.A.E., foreign banks may open representative offices. Oman does not permit representative offices. The U.A.E. and Oman do not permit offshore banking. Qatar does not allow foreign banks operating in the country to open branch offices; this right is restricted to Qatari-owned banks.

Shipping

Kuwait has prevented foreign shipping lines access to government project cargo by granting the United Arab Shipping Company the right of first refusal on all such cargoes, but no longer applies this requirement to shipments from U.S. ports. Bahrain continues to favor the United Arab Shipping Company on cargo contracts for government projects. Saudi Arabia gives preferences to national carriers for up to 40 percent of government cargoes. Under these rules, the Saudi national shipping company and United Arab Shipping Company receive preferences.

INVESTMENT BARRIERS

Foreign equity is limited to 49 percent in Kuwait, Qatar, and the U.A.E., although the U.A.E. has exempted the Jebel Ali Free Zone from this barrier. Products entering the U.A.E. from the free zone are treated as foreign products. The 49 percent limit on foreign equity in Qatar can be overcome by the issuance of an emiri decree.

Oman provides national tax treatment for joint venture public shareholding firms with no more than 49 percent direct foreign investment. Corporate tax rates on net profits have dropped from 50 percent to no more than 30 percent for most other forms of foreign investment. The Sultanate is reviewing and modifying its laws and procedures as it seeks to increase Oman's attractiveness as a site for foreign investment, particularly in joint ventures. Special authorization is required for projects with majority direct foreign ownership. Five year, one-time renewable tax holidays can initially offset higher tax rates imposed on firms not granted national tax treatment.

Kuwait maintains restrictions on foreign investment, including limits on foreign ownership (a maximum of 49 percent in general, and 40 percent in the banking sector) and discriminatory taxation policies (see below). The government is developing new foreign investment legislation that would allow majority foreign ownership of Kuwaiti companies and, in some circumstances, up to 100 percent foreign ownership. It would also authorize

tax holidays of up to 10 years for foreign investors. A free trade zone, in which many of these restrictions would not apply, is expected to begin operation in 1998.

While Saudi Arabia maintains no legal restrictions on the share of foreign ownership, under current policy wholly foreign-owned investment proposals are rare. Moreover, Saudi government incentives such as tax holidays and Saudi industrial development fund lending normally are not available unless there is at least 25 percent Saudi ownership. Wholly foreign-owned branch offices are generally approved, however. The foreign capital investment regulation requires that foreign investment be made consistent with the nation's development priorities and that investments include some technology transfer. Foreigners may not invest in joint ventures engaged solely in advertising, trading, distribution, or marketing. Real estate ownership is restricted to wholly-owned Saudi entities or citizens of the GCC. Foreign equity is taxed at the rate of 40 percent of profits; Saudis are not subject to a tax on profits, although they do pay a wealth tax ("zakat"). Saudi Arabia is currently undertaking a revision of its foreign investment code.

Bahrain is discussing allowing 100 percent foreign equity ownership of direct investments but currently permits this only on a case-by-case basis. Oman permits 100 percent foreign ownership on a case-by-case basis, with approval of the Council of Ministers.

Non-GCC investment in real estate and stocks of publicly traded companies is banned in GCC countries. In Bahrain, expatriate residents with more than one year's residence may purchase stocks in some publicly traded companies under certain circumstances.

OTHER BARRIERS

Agent and Distributor Rules

In GCC countries, U.S. firms may find that compliance with U.S. law presents special challenges when selecting a local agent. Many GCC business leaders are also prominent government officials. Termination of agency agreements can be difficult in all the GCC countries and may involve considerable financial losses to the foreign supplier.

Saudi law requires that in-country distributors be licensed by the Ministry of Commerce. Only Saudi citizens can obtain licenses, although a recent GCC decision may broaden this to include GCC citizens. Direct sales are possible except in the case of sales to government agencies, where a "service agent" is required. The U.A.E. permits two types of commercial entities to import and distribute products. One is a 100 percent U.A.E.-owned business and the other is a limited liability company in which foreign ownership up to 49 percent of equity is permitted. All U.A.E. commercial agents must be registered with the Ministry of Economy and Commerce. U.S. exporters seeking U.A.E.-wide coverage must appoint a separate agent for each of the seven emirates, or appoint a master agent with offices or sub-offices in each emirate. Once chosen, agents/distributors have exclusive rights, and are extremely difficult to replace without their agreement.

Since September 1996, Oman registers non-exclusive agency agreements. Since 1993, Oman has permitted an importer to bring in goods without paying a commission to a registered agent, provided that the goods are imported through an Omani port or airport. Local agents are currently required in all sales transactions in Kuwait. However, the government is discussing elimination of agency requirements in its military procurement

contracts.

Bahrain is planning to update its commercial agency law to eliminate the sole agency requirement, bringing Bahrainis practices in line with its WTO obligations.

Corporate Tax Policies

Saudi Arabia and Kuwait tax foreign companies but not domestic entities. Additionally, several GCC countries tax royalties as if they were 100 percent profit and maintain a variety of other tax policies considered to be unfair to foreign companies. The U.A.E. imposes a 20 percent income tax on foreign banks. No tax is levied on domestic banks. Since January 1997, Oman provides national tax treatment to joint venture public shareholding firms with no more than 49 percent direct foreign investment: i.e., a maximum rate of 7.5 percent tax on net profits. The Omani branch of a foreign firm is regarded as an Omani firm for purposes of computing the 51 percent Omani ownership of the joint venture. Taxes were reduced from a maximum rate of 50 percent to 30 percent for other categories of joint ventures. These rates do not apply to foreign petroleum companies, which pay royalties per their concession agreement. Oman now levies a 10 percent tax on services performed offshore for Omani firms. The local business community anticipates that the government may further liberalize regulations governing firms with more than 49 percent direct ownership. In Saudi Arabia, foreign investors may receive incentives, including a ten year tax holiday, for approved agricultural and manufacturing projects with a minimum 25 percent Saudi participation. However, foreign equity investors in joint venture are taxed at a maximum of 45 percent of profits. Saudi Arabians are not taxed on income. Qatar levies corporate income taxes at rates from 5 to 35 percent of net profits earned by foreign firms in Qatar. While no income tax is charged to Qatari owned firms to Qatari shareholders of joint ventures, foreign firms only avoid income taxes through the issuance of an emiri decree. Kuwait currently imposes a maximum income tax rate of 55 percent on foreign firms doing business in Kuwait. Kuwaiti corporations are not subject to income tax, but are subject to a mandatory 5 percent "zakat" contribution. Kuwait has announced plans to lower the maximum tax rate to 30 percent, but implementing legislation has not yet been submitted to the national assembly. Bahrain has no personal or corporate taxation, except on oil company profits.

Procedural and Financial Irregularities

Procedural and financial irregularities can be significant barriers to trade in GCC countries. Such irregularities have resulted in lost opportunities for U.S. suppliers of goods and services and have forced some U.S. businesses out of some markets. Disregard of irregularities may subject U.S. citizens or companies to prosecution under the Foreign Corrupt Practices Act (FCPA). In August 1996, Kuwait passed Law Number 25, requiring disclosure of all commissions and other payments made in relation to securing a government contract valued at 100,000 Kuwaiti dinars or more (approximately $335,000). It is hoped that Law 25 will increase transparency in the government's procurement practices, but the jury is still out regarding its effectiveness.

On September 30, 1994, the GCC announced that it would end the Arab League Boycott of Israel adherence to the secondary and tertiary aspects of the Arab League boycott of Israel, eliminating a significant trade barrier to U.S. firms. In January 1996, Oman and Israel signed an agreement to open trade missions in the other country. In April 1996, Qatar and Israel agreed to exchange trade representation offices. Israel opened its office in May 1996. In March 1996, the GCC reiterated its commitment to end the secondary and tertiary

boycott, and recognized the "total dismantling of the Arab boycott of Israel as a necessary step in advancing the peace process and promoting regional cooperation in the Middle East and North Africa." Although all GCC states are complying with these stated plans, some commercial documentation continues to contain boycott language; consequently, U.S. companies must notify the U.S. office of antiboycott compliance. Since the adoption of these policies, the incidence of boycott language in commercial documentation is decreasing (see the Arab League chapter for further information).

Kuwait no longer applies a secondary boycott of firms doing business with Israel and has taken steps to eliminate all direct references to the boycott of Israel in its commercial documents. Kuwait still applies its primary boycott of goods and services produced in Israel.

Most recent data indicate that the number of prohibited boycott requests in the U.A.E. continues to drop. It is believed that these cases stem from bureaucratic inefficiencies, rather than from a desire to circumvent U.A.E. government stated policy terminating adherence to a secondary/tertiary boycott. The embassy continues to work closely with the U.A.E. government to eliminate these requirements.

Oman no longer enforces compliance with the boycott. Although the Omani trade representative was recalled in late 1996 and not replaced in 1997, Oman and Israel maintain trade offices in each other's country, with an Israeli representative resident in Muscat. Omani customs processes Israeli-origin shipments entering with Israeli customs documentation. Likewise, Israeli immigration stamps in third country passports are not an issue. Telecommunications links and mail flow normally. That said, Omani firms have shied from carrying any identifiably Israeli consumer products. A trade source reports that the Royal Oman Police, which operates the customs service, has fined some Omani firms 5 to 10 percent of the value of goods directly imported from Israel. It is not known what the basis of the fine was or if this is a regular practice. The firms involved have declined to contest the fine. Normal commercial ties await more favorable developments in the Middle East peace process.

GHANA

In 1997, the U.S. trade surplus with Ghana was $160 million, an increase of $36 million from the United States trade surplus of $124 million in 1996. U.S. merchandise exports to Ghana were $314 million, an increase of $19 million (6.5 percent) from the level of U.S. exports to Ghana in 1996. Ghana was the United States' seventy-seventh largest export market in 1997. U.S. imports from Ghana were $154 million in 1997, a decrease of $17 million (9.9 percent) from the level of imports in 1996.

IMPORT POLICIES

Since it began its structural adjustment program in the early 1980's, Ghana has progressively eliminated or reduced its import quotas and surcharges. Currently, tariff rates are being adjusted in harmony with the Economic Community of West African States (ECOWAS) trade liberalization program. Since the elimination of Ghana's import licensing regime in 1989, importers are now simply required to sign a declaration that they will comply with the Ghanaian tax code and other laws. Special permits, however, are still required for some imports (these include drugs, all communication equipment, mercury, gambling machines, handcuffs, arms and ammunition, and live plants and animals.) Ghana's tariff structure addresses capital goods, intermediate goods and consumer goods. Only three ad valorem import duties are currently applied: 0 percent, 10 percent, and 25 percent. In addition, a specific duty of 10 to 40 percent is applied on 16 types of merchandise, including alcoholic and nonalcoholic beverages, and textiles. These additional duties are intended to place the merchandise of local manufacturers on an equal competitive basis with imported goods. Administrative problems subsequently delayed implementation of 1996 government directives to eliminate the supplemental duties.

To develop competitive domestic industries with exporting capabilities, the Government of Ghana continues to support domestic private enterprise with financial incentives, tax holidays, and other similar programs. Nevertheless, Ghanaian manufacturers contend that the country's tariff structure places local producers at a competitive disadvantage vis-a-vis imports from countries that enjoy greater production and marketing economies of scale. Reductions in tariffs have increased competition for local producers while reducing the cost of imported raw materials. However, the steady depreciation of the cedi during the past year has had the effect of partially offsetting reduced tariffs on imports of these materials. In 1995, the government repealed a 17 percent value-added tax (VAT) immediately after it was introduced because of widespread public protests. Over the past year the government has launched an extensive public campaign to successfully reintroduce a VAT bill and begin implementation in 1998.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Ghana has issued its own standards for food and drugs under the auspices of the Ghana Standards Board, the testing authority, which subscribes to accepted international practices for the testing of imports for purity and efficacy. Under Ghanaian law, imports must bear markings identifying in English the type of product being imported, the country of origin, the ingredients or components, and the expiration date, if any. The purpose of this law is to set reasonable standards for imported foods and drugs. Locally manufactured goods are subject to comparable testing, labeling, and certification requirements.

Ghana

GOVERNMENT PROCUREMENT

Government purchases of equipment and supplies are usually handled by the Ghana Supply Commission (the official purchasing agency) through international bidding and, at times, through direct negotiations. Former government import monopolies have been abolished, but parastatal entities continue to import some commodities, although they no longer receive government import subsidies. At its peak, the Government of Ghana controlled more than 300 state-owned enterprises, and by the end of 1997, more than 200 of these had been privatized. The political leanings of the Ghanaian partners of foreign investors are often subject to close government scrutiny. The privatization of a government-controlled enterprise may be stalled if an interested party is known to be sympathetic to the political opposition.

EXPORT SUBSIDIES

There is no direct government subsidy of exports. However, concessionary credits and lower tax rates are not uncommon. The Export Processing Zone (EPZ) Law, enacted in 1995, does not tax corporate profits for the first 10 years of business operation. As with non-EPZ exporting companies, in subsequent years the corporate tax rate is 8 percent, compared to 35 percent for other non-exporting businesses.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Ghana is a member of the Universal Copyright Convention, the World Intellectual Property Organization, the English-speaking African Regional Industrial Property Organization, and the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). Holders of intellectual property rights have access to local courts for redress of grievances, although few trademark, patent, and copyright infringement cases have been filed in Ghana in recent years.

SERVICES BARRIERS

The investment code excludes foreign investors from participating in four economic sectors that are reserved for Ghanaians: petty trading, the operation of taxi and car rental services with fleets of fewer than ten vehicles, lotteries (excluding football pools), and the operation of beauty salons and barber shops.

In the recently concluded WTO negotiations on basic telecommunications services, Ghana made commitments for most basic telecom services, subject to the requirement that these services be provided through joint ventures with Ghanian nationals. It retained a duopoly for domestic and international voice services. Ghana has adopted the reference paper on regulatory principles.

In the financial services negotiations, Ghana has committed to allow 60 percent foreign ownership in terms of commercial presence. Ghana requires a high paid-in capital requirement for foreign firms, but allows them to provide a full range of services.

INVESTMENT BARRIERS

The 1994 investment code eliminates the need for prior project approvals by the Ghana Investment Promotion Center (GIPC). Registration, essentially for statistical purposes, is normally accomplished within five working days. Investment incentives are no longer subject to official discretion, as they have been made automatic through incorporation into the corporate tax and customs codes. Incentives include zero rating import tariffs for plant and generous tax incentives. Immigrant quotas for businesses, though relaxed, remain in effect.

U.S. direct investment in Ghana is predominantly in the mining and fabricated metals sector. There is also significant U.S. investment in the petroleum, seafood, telecommunications, chemicals, and wholesale trade sectors. Wage rates in the metals and mining sectors are substantially higher than other industries in the Ghanaian economy. U.S. and other foreign firms in Ghana are required to adhere to Ghanaian labor laws, including restrictions on the number of expatriates employed.

The high cost of local financing (with short-term interest rates currently between 40 and 50 percent) acts as a significant disincentive for local traders and investors. Such high interest rates and a lack of liquidity in the financial system constrain industrial growth and inhibit the expansion of most Ghanaian businesses from their current micro scale operations. The legalization of foreign exchange bureaus has made foreign currency readily available in Ghana, but strong demand for imported goods has led to a significant decline in the foreign exchange value of the cedi in recent years. Domestic inflation moderated during 1996 and is currently running at about 28 percent annually. The Bank of Ghana continues to pursue a tight money policy in an effort to contain inflationary pressures.

The residual effects of a drastically overregulated economy and lack of transparency in government operations create an element of risk for potential investors. Bureaucratic inertia is sometimes a problem in government ministries, and administrative approvals often take longer than they should. Entrenched local interests sometimes have the ability to derail or delay new entrants, and securing government approvals may depend on an applicant's contacts. Nonetheless, on balance, a positive direction is apparent in the investment climate overall.

GUATEMALA

In 1997, the U.S. trade deficit with Guatemala was $262 million, an increase of $153 million from the U.S. trade deficit of $109 million in 1996. U.S. merchandise exports to Guatemala were $1.7 billion, an increase of $164 million (10.5 percent) from the level of U.S. exports to Guatemala in 1996. Guatemala was the United States' forty-fifth largest export market in 1997. U.S. imports from Guatemala were $2.0 billion in 1997, an increase of $317 million (19.0 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Guatemala in 1996 was $217 million, an increase of 42.8 percent from the level of U.S. FDI in 1995. U.S. FDI in Guatemala is concentrated largely in the manufacturing, petroleum, and finance sectors.

IMPORT POLICIES

Tariffs

Guatemala is a member of the Central American Common Market (CACM), which also includes Costa Rica, Nicaragua, El Salvador, and Honduras. CACM members are working toward the full implementation of a common external tariff (CET), and with few exceptions there are no tariffs on goods traded among members of the CACM. Guatemala's tariffs on goods from outside the CACM are between zero and 19 percent.

Poultry Tariff Rate Quota and Customs Valuation Policies for Poultry

In October 1996 Guatemala announced a new poultry import policy that expanded the annual tariff rate quota (TRQ) from 3600 MT to 7000 MT for 1997. In addition, Guatemala reduced the in-quota tariff from 20 percent to 15 percent. The new import policy far exceeds Guatemala's negotiated WTO obligations for poultry imports. However, Guatemala still applies a valuation policy on imported poultry parts. Notwithstanding agreement to switch to transaction value for the calculation of tariffs on chicken parts as part of its Uruguay Round commitments, the Government of Guatemala continues to use a reference price methodology. For tariff purposes, poultry parts are valued at $0.56 per pound, irrespective of the actual invoice price. This policy effectively doubles the tariff on imported poultry. Guatemalan poultry producers are seeking further protection by pressing the government to increase the valuation price to $0.69 per pound and to increase the out-of-quota duty to 200 percent. If taken, these actions will effectively prohibit legal imports of poultry meat correctly valued at over $6 million the elimination of this valuation.

Grain Price Bands

Price bands for corn and rice were eliminated in late 1995. Guatemala has yet to formally eliminate price bands for sorghum. However, in view of the January 1, 1997, across-the-board reductions in tariffs on most agricultural products, price bands for sorghum have been effectively eliminated.

Apple Import Permits

Guatemala

U.S. companies have cited the uncertainty of obtaining an import license as the reason they have not expanded their investment to distribute U.S. apples. The result is an estimated loss in export sales of less than $10 million.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Under Guatemalan law, products sold in the domestic market must be tested, registered, and carry labels in Spanish. Both enforcement of and compliance with the law are irregular. If fully enforced, the requirement could restrict and/or delay the entry of an estimated $25 to $100 million of U.S. exports due to the time required to test and register products.

GOVERNMENT PROCUREMENT

Under the government procurement law, all government purchases over $160,000 must be submitted for public competitive bidding of no less than five bidders. Foreign suppliers must meet pre-qualification requirements and submit bids through locally-established representatives. The Guatemala government recently sanctioned a number of municipalities for failure to comply with the procurement law - of nearly 1500 contracts examined, over half were awarded without following prescribed procedures.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Guatemala's protection of intellectual property is inadequate. Legislation enabling accession to the Paris Convention has been pending for several years.

Copyrights

In 1992 the GOG passed a law authorizing the establishment of a regulatory agency to police the cable television industry. The regulatory entity has not been established and regulation of this industry is insufficient to protect U.S. rights holders. Piracy of signals continues, though the unauthorized retransmission of premium channels has diminished. A new law to regulate the cable TV industry has been drafted, but it contains significant deficiencies. Guatemalan law does not expressly protect computer software programs.

Patents

Guatemala's patent law is out of date and deficient in several areas, including limits on protection to only fifteen years (ten years for food, beverages, medicines, and agrochemicals), broad compulsory licensing provisions, and lack of protection against parallel imports. A number of subject areas are not patentable, including mathematical methods, living organisms, commercial plans, and chemical compounds or compositions. Under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Guatemala was required to establish a patent "mailbox" for pharmaceutical and agricultural chemical products by January 1, 1995. In addition, Guatemala does not provide exclusive marketing rights for pharmaceutical and agricultural products, which are subject to "mailbox" applications, as required by the TRIPS Agreement.

Trademarks

Guatemala's law provides insufficient protection for owners of well-known trademarks, since the right to exclusive use is granted to the first to file. This has permitted third parties to register and use (or prevent the genuine trademark holder from using) internationally-well-known trademarks. Sales of falsified name-brand clothing and other merchandise are common in Guatemala, though an amendment to Guatemala's criminal code has made it easier for license-holders or brand owners to initiate legal action against merchants who traffic in counterfeit merchandise.

SERVICES BARRIERS

Guatemala is overdue in providing to the World Trade Organization an acceptance of the Fourth Protocol to the General Agreement on Trade in Services, which is necessary to bring its commitments on basic telecommunications services into effect. The WTO Council on Trade in Services has extended the deadline for submission of the acceptance until July 31, 1998. In addition, majority foreign ownership in telecommunications services is not permitted.

INVESTMENT BARRIERS

Guatemala generally welcomes foreign investment, although the complex and often confusing welter of laws and regulations can be discouraging. On February 4, 1998 the Guatemalan Congress approved Decree 9-98, Law on Foreign Investment, which addresses some of these issues, including national treatment for foreign investors. However, restrictions on foreign investment remain in several sectors of the economy, including public utilities, auditing, insurance, mineral exploitation, forestry, and the media. In response to the need for additional investment in telecommunications and electricity supply, in late 1996 the government adopted legislation liberalizing ownership, access controls, and demonopolizing these sectors.

HONDURAS

In 1997, the U.S. trade deficit with Honduras was $309 million, an increase of $154 million from the U.S. trade deficit of $155 million in 1996. U.S. merchandise exports to Honduras were $2 billion, an increase of $373 million (22.7 percent) from the level of U.S. exports to Honduras in 1996. Honduras was the United States' fortieth largest export market in 1997. U.S. imports from Honduras were $2.3 billion in 1997, an increase of $526 million (29.3 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Honduras in 1996 was $145 million. U.S. FDI in Honduras is concentrated largely in the manufacturing, finance and banking sectors.

IMPORT POLICIES

Tariffs

Honduras is a member of the Central American Common Market (CACM), which also includes Costa Rica, El Salvador, Guatemala, and Nicaragua. CACM members are working toward the full implementation of a common external tariff (CET) between ranging from 1 to 19 percent for most products. In 1995 the members of the CACM agreed to reduce the CET to between 0 and 15 percent, but allowed each member country to determine the timing of the changes. With the exception of certain items, there are no duties for products traded among CACM members.

Agricultural Price Bands

Honduras implemented a price band mechanism for yellow corn, sorghum, rice, and soybeans in August 1992. In recent years corn flour has also been added to the list of products subject to this tariff mechanism. Similar to the price band practices of other countries in the region, the Government of Honduras calculates the price band from a time series built on international prices for the prior 60 months on a given product. The fifteen highest and lowest prices are eliminated, with the remaining highs and lows establishing the price band. Imports entering with values within the defined band are assessed a 20 percent tariff. Imports entering with prices above the band are assessed lower duties, according to a predetermined schedule; those imports priced below the band are assessed a higher tariff. However, the GOH has recently added a seasonal restriction to the price band. From September to January the minimum allowable duty is 20 percent for corn and 15 percent for all other products. From February to August duties are allowed to fluctuate freely according to the predetermined duty tables of each commodity. This seasonal restriction has been added to provide additional protection to local grain farmers during the main harvest. The United States has strongly opposed this policy, which limits access of U.S. agricultural products.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Although Honduras has eliminated all import licensing requirements, imports of certain key U.S. agricultural products continue to be blocked or limitted by phytosanitary and zoosanitary restrictions. Restrictive zoosanitary requirements have blocked U.S. poultry imports for several years. Throughout much of 1996 and

1997 Honduras also blocked imports of rough rice from the United States by imposing arbitrary phytosanitary requirements which could not be met by U.S. suppliers. After nearly a year, the GOH finally lifted the restriction, but only after the local harvest had passed. More recently, the GOH has begun requiring that the U.S. corn shipments to Honduras be inspected at the port of origin by a Honduran official. Although, this new requirement does not entirely block U.S. corn shipments to Honduras, it does create a burden to the import process and adds to its cost as well. Frequent changes in sanitary and phytosanitary requirements are seldom reported to the WTO as required, and create a great deal of uncertainty among U.S. suppliers and Honduras importers.

GOVERNMENT PROCUREMENT

The Government Procurement Law (Decree No. 148.5) governs the contractual and purchasing relations of Honduran state agencies. Under this law, foreign firms are given national treatment for public bids and contractual arrangements with state agencies. In practice, U.S. firms frequently complain about the mismanagement and lack of transparency of the governmental bid processes. These deficiencies are particularly evident in telecommunications, pharmaceuticals, and energy public tenders.

LACK OF INTELLECTUAL PROPERTY PROTECTION

In 1997, Honduras was included in the "Watch List" category of the U.S. government's annual Special 301 review due to a lack of adequate and effective protection and enforcement of intellectual property rights (IPR). Since 1992, Honduras has been the subject of a continuing review under the Generalized System of Preferences (GSP) for deficiencies in its IPR regime. On September 1, 1993, the Honduras Congress approved modern copyright, trademark, and patent legislation. The Government of Honduras has drafted and submitted to the Honduran Assembly amendments intended to address shortcomings found in Honduras' 1993 copyright law, but that legislation is stalled. During the past year, Honduras and the United States have held extensive consultations on the issue of broadcast television piracy. The United States has informed the Government of Honduras that it could face the partial suspension of GSP/CBI benefits, in the very near future, unless the piracy is terminated. While the Honduras executive branch has taken action to criminally prosecute an offender, these efforts have not yet proven effective, and the case remains before the Honduras judiciary.

Copyrights

The piracy of books, sound and video recordings, compact discs, computer software, and television programs is widespread in Honduras. Although Honduras enacted a reformed copyright law in August 1993, amendments submitted to the Congress in May 1995 that would strengthen the law are stalled. However, on February 8, 1997 Honduras, under decree number 191-96, passed amendments to the 1982 Honduran penal code which for the first time included stiff criminal penalties for violators of intellectual property. IPR violators are now subject to incarceration from three to six years. Significant progress has been made toward curbing cable piracy since 1992, and currently 90 percent of the cable market is legal. The government also conducted several raids in 1997 in which significant quantities of audio and audio-visual products were confiscated.

Despite some progress in the area of copyright protection, broadcast piracy by several local television stations remains a problem. In 1992 the U.S. Trade Representative accepted a petition filed by the Motion Picture

Export Association of America (MPEAA) under the GSP legislation which alleged widespread video/cable television piracy, estimated at $2.5 million in lost revenue per year. In May of 1997 the Trade Policy Staff Committee (TPSC) recommended the GSP and CBI benefits be partially suspended unless the Government of Honduras improved its IPR enforcement in this area. In order to implement the TPSC recommendation, on October 31, 1997, Ambassador Barshefsky initiated an investigation under Section 301 of the Trade Act of 1974 with respect to IPR protection in Honduras. The U.S. and Honduras have held extensive consultations during the past year on the matter and the Honduras executive branch has filed a criminal case against the pirates. However, these efforts to end the violations have not yet proven effective.

A report prepared by the International Intellectual Property Alliance estimated that losses in Honduras due to copyright infringement cost U.S. firms xxx million US dollars in 1997.

Patents

The patent law enacted in December 1993 provides patent protection for pharmaceuticals, although the patent term of seventeen years from the date of application must be extended by at least three years to meet international standards. Other shortcomings in the Honduran patent law are an overly broad compulsory licensing provision, potential allowance for parallel imports, no protection for products in the pipeline and limited enforcement of the law.

Trademarks

The illegitimate registration of well-known trademarks is a persistent problem in Honduras, in spite of 1993 modifications to the trademark law.

INVESTMENT BARRIERS

The Honduran Government reserves the right to reject any foreign investment based upon the effect on economic activity, market stability, and other factors. Establishment of banks and life insurance companies is subject to approval by the Central Bank, in accordance with market needs; foreign ownership of other insurance companies is limited to 40 percent. Under Honduran law, special government approval must be obtained to invest in the tourism, hotel, and banking services sectors. In addition, under the 1992 investment law, special government approval must be obtained for foreign investment in the forestry, telecommunications, air transport, and aquaculture industries. This law also requires majority Honduran ownership in certain areas, such as investments in commercial fishing, direct exploitation of forest resources, local transportation, and those areas benefiting directly from the national agrarian reform law. Foreign investors are prohibited from holding a majority stake in foreign exchange trading companies. Moreover, foreign owners may not hold a seat or provide direct brokerage services in either of Honduras' two stock exchanges. Furthermore, the Honduran Government prohibits the establishment of investments of less than 150,000 lempiras (about $11,500).

Historically, U.S. firms and private citizens have found corruption to be a problem and a constraint to foreign direct investment. Corruption appears to be most pervasive in the recurring following areas: government procurement, performance requirements, the regulatory system, and in the buying and selling of real estate, in particular, land titling. President Reina's "moral revolution" has helped thwart corruption, although it remains a serious problem.

Honduras

The United States and Honduras signed the U.S.-Honduras Bilateral Investment Treaty (BIT) on July 1, 1995. The BIT has not yet been ratified by either the U.S. or the Honduran Congresses.

HONG KONG

In 1997, the U.S. trade surplus with Hong Kong reached $4.8 billion, up $730 million from 1996. U.S. merchandise exports to Hong Kong totaled $15.1 billion (an 8.3 percent increase from the same period in 1996). U.S. imports from Hong Kong rose 4.4 percent to $10.3 billion.

The stock of U.S. foreign direct investment in Hong Kong rose to $16 billion in 1996, up from $13.8 billion in 1995. U.S. direct investment in Hong Kong is largely in the services and financial sectors.

Overview

On July 1, 1997, Hong Kong became a special administrative region (SAR) of the People's Republic of China (PRC). Under the PRC's policy of "one country, two systems," as guaranteed by the 1984 Sino-U.K. Joint Declaration and the 1990- Basic Law, Hong Kong is to enjoy a "high degree of autonomy" from the PRC in managing its trade, financial, social, legal and other internal matters for fifty years.

Although China has assumed responsibility for conducting foreign affairs and defense matters for the SAR, Hong Kong remains a separate customs territory with all of its previous border and customs arrangements. As a separate customs territory with autonomy in the conduct of its economic, trade and financial policies , Hong Kong retains independent membership in economic organizations, such as the World Trade Organization and APEC.

INTELLECTUAL PROPERTY PROTECTION

A high level of copyright piracy is a continuing and growing problem in Hong Kong. Over the past few years, the United States has urged the Hong Kong government to stop the widespread and open sale of pirated product at the retail level. Complaints about the sale of goods with counterfeit trademarks at the retail level are also increasing.

Production and distribution of pirated CDs, CD-ROMs, VCDs and LDs (optical media) has been a growing problem, as authorities in the PRC have clamped down on production of pirated optical media in South China. U.S. officials have urged Hong Kong to address the growing production of pirated product through legislative action, heightened enforcement activity and coordination with PRC officials.

In June 1997, Hong Kong's legislature enacted a new copyright law that grants customs authorities increased enforcement powers and addresses some of the problems with burdensome evidentiary requirements related to prosecuting copyright infringement cases. In addition to meeting TRIPs requirements, enforcement provisions in the copyright law are intended to address the widespread and open sale of pirated software, sound recordings and motion pictures in the various arcades in Hong Kong.

With the tremendous increase in the number of optical media production lines in Hong Kong, the United States has emphasized the need to control piracy at this level. In December 1997, Hong Kong instituted a licensing regime for the import and export of optical media production equipment. In January 1998, Hong Kong

authorities introduced new anti-piracy legislation that will further enhance enforcement officials authorities' power to investigate production facilities, gather evidence of infringement and monitor firms' activities through use of source identification codes for optical media. Hong Kong has also increased resources devoted to IPR enforcement and conducted more raids on retail outlets and production facilities, and increased seizures of pirated product. Hong Kong customs authorities are also coordinating to some extent with provincial customs authorities in mainland China. Finally, judges are beginning to impose more stringent penalties for copyright infringement, albeit at a slow pace.

So far, the government's actions have failed to control piracy at the retail level. Although Hong Kong Customs has been able to dampen the sale of pirated goods at a few major retail centers for short periods, it has been unable to reduce the overall availability of pirated goods. Industry sources believe the availability of pirated goods in Hong Kong actually increased in 1997. The government has succeeded in closing a few illicit production facilities, but the number of production lines continues to grow. Pirated product from Hong Kong, Taiwan and Macao is being discovered in other markets, such as Paraguay.

Intellectual property rights industry associations estimate the losses due to piracy in Hong Kong at well over $100 million. The challenge for the Hong Kong government in 1998 is to implement new legislation and take effective action against producers of pirated product and to achieve a sustained and substantial reduction in the availability of pirated and counterfeit goods at the retail level.

ANTICOMPETITIVE PRACTICES

Competition Policy

For years, the Hong Kong Government has tolerated and even encouraged certain anti-competitive practices in a limited number of services sectors, even while maintaining an open trade regime in the rest of the economy. More recently, it has begun to tackle these restrictive practices via sector specific initiatives, but has continued to reject calls for a comprehensive competition law.

There remain competition policy concerns especially in sectors such as telecommunications, broadcasting, and professional services. In telecommunications, the HKSAR has reached an agreement to end Hong Kong Telecom International's exclusive license for international voice services, but it remains unclear how fully it will open the market. In broadcasting, there are limitations on competition through tight restrictions on the number of licenses. The government has committed to review these restrictions in 1998. In professional services, the Government's delegation of regulatory authority to certain professional associations may have led to collusive behavior and anti-competitive practices. Lack of a comprehensive competition law is restricting the Government's ability to attack these and other restrictive trade practices.

HUNGARY

In 1997, the U.S. Trade deficit with Hungary equaled $592 million, an increase of $246 million from 1996. U.S. merchandise exports to Hungary in 1997 were $486 million, an increase of $155 million (46.8 percent) from 1996. Hungary was the United States' sixty-seventh largest export market in 1997. U.S. Imports from Hungary were $1.1 billion in 1997, an increase of $401 million (59.3 percent) from 1996.

U.S. foreign direct investment (FDI) in Hungary since 1989 totaled almost $6 billion at the end of 1997, of total FDI in Hungary of about $17 billion. Hungary is the leading recipient of U.S. investment in the region. Hungary was among the first Central and Eastern European command economies to implement some market-based reforms prior to the democratic transition in 1989-90. The current government continues to promote economic restructuring and market institutions.

Privatization and direct foreign investment are having positive multiplier effects throughout the economy. Continued foreign investment is a reflection of the government's ability to maintain economic stability, reduce inflation, and successfully complete its goal of privatizing at least 80 percent of gross domestic product (GDP) by the end of 1998.

IMPORT POLICIES

Import policies have been progressively liberalized in an effort to encourage competition and to allow imports necessary for restructuring. Over 95 percent (by value) of products can be imported without an import license. An import license is required for precious metals, military goods, and certain pharmaceutical products. The state monopoly on foreign trade was eliminated in 1989.

In January 1995, Hungary raised many agricultural tariffs to Uruguay Round binding ceilings and introduced numerous tariff-rate import quotas that are assigned to most-favored nation (MFN) or preferential suppliers. There are also high tariffs imposed on wines and spirits which is compounded by excise taxes which favor locally produced products over imports. In addition, imported, but not domestic spirits are required to carry tax stamps.

Under an agreement with the World Trade Organization (WTO), Hungary will eliminate quotas on textiles, clothing, and other industrial products by 2004. As of January 1, 1998, import quota licenses are no longer required from WTO member states for imports of new vehicles with engine capacity greater than 1500 cc, apparel, medicine, used clothes, string and thread, carpets, and those types of radio receivers not produced in Hungary. Import quotas totaling $408 million in 1998 will apply to apparel from non-WTO states, carpets, jewelry, and a handful of industrial products. However, on average, quotas are only 60 percent utilized and no quota was fully utilized in 1997, so they do not appear to limit trade in practice.

The government of Hungary will grant import licenses for up to 68,000 new and 63,000 used cars in 1998, below the 200,000 total cars imported in 1991, but well above recent import levels. Weak local purchasing power still inhibits auto imports, but is improving. The customs duty law of 1995 forbids the importation of used cars over six years old. Specialized older vehicles may still be imported after passing a technical test.

These regulations, combined with standards for used cars which tend to exclude older U.S. models, effectively curb most used car imports from the U.S.

Hungary's average most-favored nation (MFN) import duties have been cut from 13.6 percent in 1991 to eight percent in 1997. An eight percent import duty surcharge introduced in March 1995 was eliminated on July 1, 1997. Under Hungary's 1991 EU Association Agreement and subsequent accords, tariffs for industrial imports from the EU and CEFTA are being substantially eliminated by the end of 2001. Under the Pan-European cumulation system and Pan-European free trade zone, effective in Hungary since July 1, 1997, customs duty on the imported content of goods subsequently exported under preferential trade agreements is no longer refunded. However, content from any member state can accumulate to qualify for preferential treatment. The Hungarian government introduced a new EU harmonized tariff schedule for 1997 with lower tariffs for imports from EU and CEFTA members. In the past year, several U.S. exporters (e.g., of autos, electrical generating equipment, wine and commercial laundry equipment) have expressed concern over the tariff preferences provided to the EU by Hungary. A review is planned in 1998 to study the effects of such preferences on U.S. competitiveness.

On January 1, 1997, the government eliminated for WTO members a two percent statistical fee and one percent customs clearance fee. Fees totaling five percent, however, are still required of goods coming from non-WTO states. Duties and fees on re-exported content are no longer refunded as of July 1, 1997 for non-EU importers, which has adversely affected certain U.S. industries (e.g., lumber and veneer producers). Firms exporting from Hungary with inputs from non-WTO members (such as Russia) were faced with greater costs and additional customs fees. An American aluminum producer, for which unrefunded fees would have totaled over $5 million per year, secured an 18-month waiver of these fees under the modified customs law which went into force August 1, 1997.

Standards, testing, labeling, and certification importers must file a customs document with a product declaration and, upon importation, present Hungarian certified documentation from the commercial quality control institute to clear customs. This permit may be replaced by other national certification and testing agency documents, such as those of the National Institute for Drugs. Some standards are reciprocal with those of recognized U.S. standard enforcement agencies. Hungary participates in the international electro-technical commission.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Animal and Plant Health Regulations

Hungarian import regulations limit or delay imports of breeding animals, semen, planting seeds, and new plant varieties. The process of registration and testing of new plant varieties imported is time-consuming and costly. Relevant authorities (Institute for Agricultural Qualification and Ministry of Agriculture) set minimum breeding values for imported bovine semen and require repeated tests before distribution of the import shipment. In recent years, restrictive testing practices and industry association fees for imported bovine semen have made imports more costly, time-consuming, and uncertain. In late 1997, the US government received assurances that these fees and practices would be modified, but some discrimination likely remains, which affects a potential market on the order of $1 million per year for U.S. firms.

GOVERNMENT PROCUREMENT

Foreign access to government-funded construction and service or supply contracts is regulated by the act on public procurement, effective November 1995, which increased transparency in public procurement. Tenders must be invited for the purchase of goods worth over 10 million forints (currently 200 forints equal one dollar). However, bids with more than 50 percent Hungarian content are considered equal to majority-foreign bids that are up to 10 percent lower in price. Purchases deemed to be related to state security, as well as purchases of gas, oil, and electricity, remain exempt from these regulations. The U.S. pharmaceutical industry reports a lack of transparency in the selection process of government tenders.

EXPORT SUBSIDIES

Hungary maintained agricultural export subsidies in excess of its WTO commitments from 1995 to 1997, claiming that its base-period calculations had underestimated the true value and product coverage of subsidies during the Uruguay Round. Hungary proposed a revised schedule which would have substantially surpassed its original commitments in the number of items covered and monetary level. In October 1997, after formal complaints by the U.S. and other WTO members, Hungary committed to phase out excess export subsidies over a several-year period and agreed not to use subsidies to penetrate new export markets.

LACK OF INTELLECTUAL PROPERTY PROTECTION

One of the greatest intellectual property rights (IPR) problems in Hungary is the lack of effective prosecutorial enforcement. The level of piracy for motion pictures and computer programs has decreased significantly but much improvement is still necessary. The copyright legislation also needs to provide for retroactive protection of U.S. works and civil ex parte search provisions, and the pipeline protection law for patents needs some refinements.

Patent Protection

Protection of patent rights in Hungary was strengthened following the conclusion of a comprehensive U.S.-Hungary bilateral agreement on IPR protection in 1993. Under this agreement, Hungary agreed to provide patent protection for pharmaceutical products; under prior law, patents were limited to processes for producing pharmaceuticals. The bilateral IPR agreement also provides transitional pipeline protection for U.S. pharmaceutical products otherwise ineligible for new product patents in Hungary; provides that patents are available and that patent rights apply regardless of whether products are imported or locally produced; and provides limitations on the use of compulsory licenses. Implementing legislation entered into force on July 1, 1994.

There are, however, some limitations of Hungary's pipeline protection law that make pipeline protection inadequate under certain circumstances. For example, no pipeline protection can be obtained for those products where a corresponding foreign counterpart patent issues after the effective date of Hungary's pipeline law (*i.e.*, after July 1, 1994). The pipeline protection law also entails the uncertainty that a Hungarian company, once an invention is published, may have started work to develop a corresponding product before the innovator gets to file his or her pipeline application. Under such circumstances, it appears that a patent holder could then not

enforce the pipeline patent. In addition, there is also a problem with Article 20 of the new law and the apparent incorrect application of the "modification of priority" concept.

There are also persistent problems in the Hungarian judicial system which makes prevention of patent infringement difficult. U.S. interests have not been able to obtain injunctive relief prohibiting the marketing of products the courts have determined to be infringing. In 1997, the Hungarian government strengthened access to legal injunctions and acted to reduce the backlog of court cases, but this did not affect ongoing IPR disputes, including a long-standing patent infringement suit by a large U.S. pharmaceutical firm. In addition, there is lack of technical expertise in patents by the courts, which can result in patent infringement cases taking three or more years to reach conclusion. Penalties awarded in such cases are also considered too low to act as effective deterrents.

Copyright Protection

Hungary's copyright laws largely conform to international standards, but certain legislative steps still need to be taken before Hungary meets its bilateral IPR and TRIPS commitments. The 1993 bilateral IPR agreement recognizes an exclusive right to authorize the public communication of work, including to perform, project, exhibit, broadcast, transmit, retransmit or display; it also requires that protected rights be freely and separately exploitable and conferrable (contract rights), and recognizes an exclusive right to authorize the first public distribution including importation for protected works. Nonetheless, to meet its TRIPS obligations, Hungary still needs to provide full retroactivity for sound recordings and civil ex parte search provisions.

In May 1993, Hungary added stiff penalties for copyright infringement to its criminal code. Despite the law, limited enforcement resources allow piracy to continue in the gray economy and the fines actually imposed are generally too low to be effective.

The U.S. motion picture industry reports video and cable television piracy to be a continuing problem in Hungary, as well as some satellite piracy. This industry estimates annual losses due to audiovisual piracy in Hungary were approximately $18.0 million in 1997 and that 40 percent of all motion pictures are pirated.

A U.S. software industry group estimates losses due to piracy of business software were $19.6 million in 1997 and that 58 percent of business software is illegal. Under current law, employers are prevented from exercising all economic rights with respect to software created by employees, which deters foreign and local investment in software development and publishing. Protection for encryption signals also needs to be provided under Hungarian law by prohibiting unauthorized retransmission of signals and prohibiting the manufacture, distribution, possession, sale, rental and use of unauthorized descrambling devices.

The U.S. sound recording industry estimates losses due to the piracy of sound recordings and music compositions were $7.0 million in 1997 and that the audio piracy level is 20 percent. Increased border protection is necessary since pirated recordings are entering Hungary from neighboring countries (*e.g.*, Bulgaria, Romania and the Czech Republic). Finally, there are also reports of book piracy amounting to an estimated $4.5 million in losses in 1997.

SERVICES BARRIERS

The Hungarian forint is fully convertible for current account transactions. The Hungarian government has gradually eliminated nearly all restrictions on long-term capital account transactions. In particular, as of January 1, 1998, restrictions were eliminated on (a) non-resident purchase of collective investment securities to open-ended investment funds, (b) resident firms acceptance of foreign credits or loans in excess of $50 million, (c) resident firms' loan payments abroad, (d) resident persons borrowing abroad, and (e) residents' investments in instruments of OECD-based issuers of less than investment grade. Restrictions remain on non-resident investments in instruments with less than one-year maturity. In keeping with Hungary's commitments at the time of its OECD accession in May 1996, foreign financial institutions may operate branches and conduct cross-border financial services in Hungary as of January 1, 1998.

Public television is required to fill 70 percent of its air time with European production, 51 percent of which must be Hungarian, excluding advertising, news, sports, game and quiz shows. Hungarian film quotas in the 15 to 20 percent range apply to public television. These quotas are not seen as cutting actual U.S. market share. For private broadcasters, the 1995 media law reserves for Hungarian programs 10 percent of program time excluding films (increasing to 15 percent after January 1, 1999), which does not in practice limit U.S. programs. In selling licenses for two private national television frequencies in 1997, the national radio and television board (ORTT) mandated a European quota of 50 percent of total annual program time, excluding ads, news, sports, games (lesser Hungarian content quotas apply as well). It is not yet clear whether these quotas will cost U.S. market share, since U.S. feature films and television productions retain a very strong presence, especially in prime time.

The Hungarian Parliament recently passed legislation which restricts the practice of foreign lawyers or law firms. The law would require that such foreign legal practitioners establish an association agreement with a Hungarian firm or lawyer before providing legal services. Many U.S. firms operating in Hungary believe the new requirements could lead to significant restriction on their practice of law and limit future investment in Hungary.

INVESTMENT BARRIERS

After a sharp increase in privatization efforts in 1995, privatization continued strongly in 1996 and 1997. The Hungarian government passed a new privatization law in May 1995 that reduces to 25 percent from 50 percent the average amount of permanent ownership the government would retain in nearly all of the 163 companies identified as requiring permanent state participation. In 1997, the Hungarian government decided to reduce its 25 percent stock in a number of companies to a single golden share. This opened a significant number of companies to foreign investment. Small portions of other firms are being reserved for Hungarian citizens, for employee stock ownership programs and/or management buyouts.

Government delays in introducing energy price in 1995 and 1996 caused U.S. firms and foreign firms to fall short of the cost-plus-eight percent returns stipulated in energy privatizations. The introduction of regular quarterly energy price increases has improved profitability, but foreign firms still seek an eight percent return. Hungary terminated its blanket tax incentives for foreign investors as of January 1, 1994 and replaced them with incentives open to all large investors, based on export promotion, reinvestment of profits, and job creation in areas of high unemployment. Other recent tax incentives target investment to depressed eastern areas of the country. A customs law, passed in late 1995, eliminated duty-free importation of capital goods by foreign-owned companies. The law was intended to place domestic investors on an equal footing with non-Hungarian

investors, but it eliminated a prior incentive to invest in Hungary.

INDIA

In 1997, the U.S. trade deficit with India was $3.7 billion, an increase of $854 million from the U.S. trade deficit of $2.8 billion in 1996. U.S. merchandise exports to India were $3.6 billion, an increase of $298 million (9 percent) from the level of U.S. exports to India in 1996. India was the United States' thirty-second largest export market in 1997. U.S. imports from India were $7.3 billion in 1997, an increase of $1.2 billion (18.7 percent) from the level of imports in 1996. The stock of U.S. foreign direct investment (FDI) in India in 1996 was $1.1 billion, an increase of 35.9 percent from the level of U.S. FDI in 1995. U.S. FDI in India is concentrated largely in the banking, manufacturing and financial service sectors, but a substantial portion of new investment approvals are in infrastructure sectors.

IMPORT POLICIES

In June 1991, the then newly-elected government recognized that India's budget deficit, balance of payments problems, and structural imbalances would require re-evaluation of past economic policies and structural adjustment assistance from international financial institutions. As part of economic reform, the Indian Government has taken steps towards a more open and transparent trade regime, leading to a significant increase in Indo-U.S. trade and investment. With substantial additional liberalization, U.S.-India trade could become quite significant.

Despite recent tariff reductions and liberalization of quantitative restrictions, India's import licensing restrictions on approximately one -third of its imports and high tariffs remain serious impediments to U.S. exports, especially for agricultural and consumer items. The United States continues to raise and discuss India's restrictive trade practices in all trade-related meetings with Indian officials, in dispute settlement proceeding of the World Trade Organization (WTO), and in bilateral consultations.

Tariffs

The Indian Government continues to reduce tariff rates from a peak rate of 300 percent in 1991, to a ceiling (with a few exceptions) of 40 percent in the 1997/98 budget. The 1996/97 budget announced a special customs duty of 2 percent on all imports except those with a zero rate of duty or are imported duty free for export production. In September 1997, the Indian Government announced an additional 3 percent special customs duty on most non-petroleum imports. Both increases have been described by the government as temporary, but increase the ceiling tariff to 45 percent.

India has selectively lowered tariffs on some capital goods and semi-manufactured inputs to help Indian manufacturers**.** They have steadily reduced the import weighted tariff from 87 percent to the 1996/97 level of 20.3 percent. This does not include the additional 3 percent duty assessed in September 1997 on most non-petroleum imports. The Government of India has reduced the maximum and the imported-weighted average tariffs in each of its last six budgets. Despite reforms, Indian tariffs are still among the highest in the world, especially for goods that can be produced domestically. Most agricultural products face trade barriers which severely restrict or, in the case of processed foods, prohibit their import. Many consumer goods are similarly restricted.

India

India maintains a variety of additional charges on imports, allegedly the equivalent of domestic taxes on local goods (the so-called countervailing duties), further raising the cost of imports as they enter the stream of domestic commerce. For example, the increased cost of imported soda ash is estimated to be 53 percent, including a basic tariff rate of 30 percent with an additional countervailing duty rate of 18 percent and special customs duty of 5 percent. High effective rates also affect chocolate and confectionery products (53 percent); raisins (130 percent); mayonnaise (53 percent), and peanut butter (53 percent); appliances (38-63 percent); and toys and sporting goods (30 percent). Exorbitant effective rates of 283 percent are assessed on distilled spirits imports and 105 percent on still and sparkling wines, plus additional duties of $0.25 per liter for wines.

Progress made thus far in tariff reduction has helped U.S. producers, but further reductions of basic tariff rates and elimination of additional duties would benefit a wide range of U.S. exports. For example, the tariff on almonds is calculated at 55 rupees per kilogram for in shell almonds. The market potential, were the tariff removed, is estimated at up to $100 million by 2005. The U.S. has asked for a change to a specific (per kilogram) duty on pistachios, where under invoicing by competing suppliers creates unfair competition and limits U.S. market access. Other industries that might benefit from reduced tariff rates include (actual basic tariff rate in parenthesis) fertilizers (30 percent); wood products (0-30 percent); agricultural chemicals (35 percent); jewelry (40 percent); precious metal findings (65 percent); soda ash (30 percent); camera components (40 percent); instant print film (10 percent); paper and paper board (20- 40 percent); ferrous waste and scrap (30 percent); computers, office machinery, and spares (0-40 percent); motorcycles, BU and CKD vehicles and components (40 percent); large motorcycles (75 percent); air conditioners and refrigeration equipment (40 percent); heavy equipment spares (20-40 percent); medical equipment components (30 percent); copper waste and scrap (30 percent); hand tools (25 percent); soft drinks (40 percent); cling peaches (40 percent); canned peaches and fruit cocktails (40 percent); citrus fruits (40 percent); sweet cherries; vegetable juice (40 percent); processed potato products (40 percent); almonds (55 rs/kg for in shell, 100 rs/kg for shelled); still and sparkling wines (275 percent *ad valorem*); distilled spirits (264 percent *ad valorem*); carbonated soft drinks (40 percent); corn oil (30 percent); peanut butter (53 percent); pistachios (40 percent); salad dressing (40 percent) and canned soup (40 percent).

In the Uruguay Round, India undertook a two-tiered offer on industrial products, binding tariffs on items in excess of 40 percent at a rate of 40 percent and binding items with tariffs below 40 percent at 25 percent. Some industrial goods (e.g., automobiles) and all consumer products were excluded from India's offer. As a consequence, India's scope of bindings on industrial goods will increase substantially, from 12 percent of imports to 68 percent once all reductions are implemented . The overwhelming majority of these bindings exceed current Indian applied rates of duty. In agriculture, Uruguay Round tariff bindings are higher than actual rates in important sectors, ranging from 100 to 300 percent.

As a result of Uruguay Round commitments under the Agreement on Textiles and Clothing, India and the United States concluded successful bilateral textile negotiations, giving the United States significant tariff reductions on all categories of textile products. India committed to reduce and bind its tariffs over a period of seven years, with some of these reductions to have been implemented no later than the entry into force of the WTO. By January 1, 2000, Indian tariffs are to be reduced to levels no higher than 20 percent for fibers, yarns, industrial fabrics and home furnishings; 35 percent for apparel fabrics; and 40 percent for apparel. These reduced tariffs are to be applied on a most-favored-nation (MFN) basis.

Import Licensing

In addition to high tariff rates, U.S. industries must deal with India's import licensing regime. The regime has been liberalized, but still limits market access for U.S. goods which would be competitive in a more open trading environment. Importation of "consumer goods" is virtually banned with a few exceptions such as for some imports under special import licenses (SIL), which are import permits traded in the market for a 6-13 percent premium that involve export performance requirements. Consumer goods are defined very broadly as goods that can directly satisfy human needs without further processing. As a result, products of agricultural or animal origin must be licensed and are therefore, with few exceptions, effectively banned. Since India maintains a restrictive licensing regime wherein virtually no licenses are granted, the system acts as a virtual ban on imports that are licensed in this fashion. Importers of theatrical films must obtain a certificate from the Central Board of Film Certification, stating that the film is suitable for import according to guidelines laid down by the government. U.S. industry maintains that this constitutes a pre-censorship "quality check" obstacle. In addition, the Indian Government imposes a requirement to pay a fee for certification. A special import license is required for vehicle knock-down kit imports after a manufacturer signs a Memorandum of Understanding (MOU) with the Director General of Foreign Trade, covering plans on investment, capacity, local content, value of CKD imports and export earnings. Some commodity imports must be channeled ("canalized") through public sector companies, although many "canalized" items have been fully or partially decontrolled recently. Currently, the main "canalized" items are petroleum products, bulk agricultural products (such as grains), and certain pharmaceutical products.

India's import policy is administered by means of a negative list. The negative list is divided into three categories: (1) banned or prohibited items (tallow, fat, and oils of animal origin); (2) restricted items which require an import license, including all consumer goods (as defined in the "tariffs" section), such as instant print cameras, distilled spirits, canned soup, canned peaches and fruit cocktails, vegetable juice, seeds, potatoes and processed potato products, distilled spirits, plants, animals, insecticides, pesticides, electronic items and components, chemicals and pharmaceuticals, and a wide variety of other items; and (3) "canalized" items importable only by government trading monopolies (bulk agricultural commodities) and subject to cabinet approval regarding timing and quantity.

India's restriction on access for most consumer products (via the non-automatic licensing scheme) has increased concern for U.S. industries. According to company representatives, India's high tariffs and exclusive licensing system have undercut potential sales of goods. Examples of U.S. goods (estimated annual sales potential in parenthesis) affected by India's restrictive barriers are the following: fruit cocktails and canned peaches (between $500,000 to $2 million); grapefruits (less than $5 million); table grapes ($5-$10 million); large motorcycles ($5 million); still and sparkling wines ($5 million); potato products (less than $5 million), and distilled spirits ($41,000).

In October 1995, the Indian Government published for the first time a correlation between its negative list of import restrictions and India's harmonized tariff schedule (HTS) import classification scheme. This document, entitled "Export and Import Policy Aligned on an ITC (HS) Classification" was intended to instill a degree of transparency, consistency, and clarity to the importation of goods into India.

India

India has liberalized many restrictions on the importation of capital goods. The importation of all second-hand capital goods by actual users is permitted without license, provided the goods have a residual life of five years. In March 1993, India abolished the two-tiered exchange rate regime, moving to a single market-determined exchange rate for trade transactions and inward remittances. The rupee is convertible on current account transactions, with indicative limits remaining on foreign exchange for travel and tourism. Capital account transactions for foreign investors, both portfolio and direct, are fully convertible. However, Indian firms and individuals remain subject to capital account restrictions.

India has committed to remove many apparel, fabric, and yarn imports from the restricted licensing list as a result of the United States - India Market Access Agreement for Textiles and Clothing of January 1, 1995. India agreed to provide immediate "unrestricted" access for fibers, yarns, and industrial fabrics. Similar "unrestricted" access for apparel fabrics, home furnishings, and clothing will be provided as soon as India lifts its import licensing previously justified under GATT Article XVIII:B, or no later than January 1, 2000, for home furnishings and apparel fabrics; and January 1, 2002, for most apparel and other made-up textile items. Removal of these licensing restrictions will be on a most-favored-nation (MFN) basis.

Balance of Payments Justification for Restrictive Import Licensing

India has claimed that virtually all its quantitative restrictions are justified on balance of payments grounds under GATT 1994 article XVIII:B. India has invoked these justifications for over forty years. These represent significant barriers to doing business in India and removal of balance of payments restrictions would represent a significant liberalization of the Indian economy, affecting a wide range of U.S. industries. The WTO Balance of Payments Committee meeting with India in June 1997 laid the foundation for India's phased removal of quantitative restrictions on over 2.700 consumer and agricultural products justified under GATT article XVIII:B. However, a six year phaseout plan presented by India in October 1997 did not prove satisfactory to the United States. Thus, at the request of the U.S., a WTO dispute settlement panel was established in November 1997 to resolve the issue. The panel is expected to present its findings in 1998.

Customs Procedures

The opening of India's trade regime has reduced tariff levels but it has not eased some of the worst aspects of customs procedures. Documentation requirements, including ex-factory bills of sale, are extensive and delays frequent. There have also been private sector reports of misclassification and incorrect valuation of goods for the purposes of duty assessment, in addition to corruption. The Indian Customs Service would also benefit from a significant streamlining of its procedures for moving products from the border into the stream of domestic commerce.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Indian standards generally follow international norms and do not constitute a significant barrier to trade. Requirements established under India's food safety laws are often outdated or more stringent than international

norms, but enforcement has been weak. Opponents of foreign investment have tried to apply these laws selectively to U.S. firms (e.g., KFC), however these attempts have not withstood judicial scrutiny. Where differences exist, India is seeking to harmonize national standards with international norms. No distinctions are made between imported and domestically produced goods, except in the case of some bulk grains. Excessively restrictive plant protection rules have recently been introduced on soybeans and wheat. A return to more reasonable measures is being discussed by Indian and American agricultural officials.

Sanitary and Phytosanitary (SPS) Restrictions

India applies a range of SPS measures which have not been demonstrated as based on science and therefore, do not conform to international standards or the WTO SPS Agreement. India's SPS requirements are restrictive and lack transparency. For example, many of India's proposed quarantine pests are already present in India, while others do not pose a significant level of risk. These requirements are a major hindrance to U.S. agricultural exports to India, particularly for wheat and soybeans.

GOVERNMENT PROCUREMENT

Indian government procurement practices and procedures are neither transparent nor standardized, and discriminate against foreign suppliers, but they are improving under the influence of fiscal stringency. Specific price and quality preferences for local suppliers were largely abolished in June 1992, and recipients of preferential treatment are now supposedly limited to the small-scale industrial and handicrafts sectors, which represent a very small share of total government procurement. Despite the easing of policy requirements to discriminate, local suppliers are favored in most contracts where their prices and quality are acceptable. Reports persist that government-owned companies cash performance bonds of foreign companies even when there has been no dispute over performance.

A second area of discrimination affecting U.S. suppliers is the prohibition of defense procurement through agents. Most U.S. firms do not have enough business in India to justify the high cost of resident representation. Some major government entities routinely use foreign bids to pressure domestic producers to lower their prices, permitting the local bidder to resubmit tenders when a foreign contractor has underbid them. For just one large project (e.g., power projects), this could cost U.S. contractors hundreds of millions of dollars in lost opportunities.

When foreign financing is involved, principal government agencies tend to follow multilateral development bank requirements for international tenders. However, in other purchases, current procurement practices usually result in discrimination against foreign suppliers when goods or services of comparable quality and price are available locally.

EXPORT SUBSIDIES

Export earnings are exempt from income and trade taxes, and exporters may enjoy a variety of tariff incentives and promotional import licensing schemes, some of which carry export quotas. Export promotion measures include duty exemptions or concessional tariffs on raw material and capital inputs, and access to special import

licenses for restricted inputs. These subsidies have caused concern for U.S. industries particularly the agrochemical sector. According to industry representatives, since no corporate taxes are levied on income generated from exports by Indian companies, this enables them to price goods below international competitive levels while maintaining a constant profit margin. Commercial banks also provide export financing on concessional items.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Based on past practices, India was identified in April 1991 as a "priority foreign country" under the "Special 301" provision of the 1988 Trade Act, and a Section 301 investigation was initiated on May 26, 1991. In February 1992, following a nine-month Special 301 investigation, the USTR determined that India's denial of adequate and effective intellectual property protection was unreasonable and burdens or restricts U.S. commerce, especially in the area of patent protection. India is not a member of the Paris Convention, nor does it have a bilateral patent agreement with the United States.

In April 1992, the President suspended duty-free privileges under the Generalized System of Preferences (GSP) for $60 million in trade from India. This suspension applied principally to pharmaceuticals, chemicals, and related products. Benefits on certain chemicals, added to GSP in June 1992, were withheld from India, increasing the trade for which GSP is suspended to approximately $80 million. Significant revisions to India's copyright law in May 1994 led to the downgrading of India as "priority foreign country" to the “priority watch list,” a designation under which India remained in 1995, 1996 and 1997.

Patents

India's patent protection is weak and has especially adverse effects on U.S. pharmaceutical and chemical firms. U.S. pharmaceutical multinationals estimate current annual losses in India due to the lack of patent protection for pharmaceutical products at approximately $500 million. India's patent act prohibits patents for any invention intended for use or capable of being used as a food, medicine, or drug, or relating to substances prepared or produced by chemical processes. Many U.S.-invented drugs are widely reproduced in India since product patent protection is not available. U.S. agrochemical industries have joined other industries’ concern with respect to India’s inadequate intellectual property protection. As a result, industries have withheld marketing and production of produce compounds in India. Estimated export sales loss, as a result, range from $5-25 million.

Under existing law, processes for making such substances are patentable, but the patent term for these processes is limited to the shorter of five years from patent grant or seven years from patent application filing. This is usually less than the time needed to obtain regulatory approval to market the product.

Where available, product patents expire 14 years from the date of patent filing. Stringent compulsory licensing provisions have the potential to render patent protection virtually meaningless, and broad "licenses of right" apply automatically to food and drug patents. India also fails to protect biotechnological inventions, methods of agriculture and horticulture, and processes for treatment of humans, animals, or plants. Indian policy guidelines normally limit recurring royalty payments, including patent licensing payments, to 8 percent of the

selling price (net of certain taxes and purchases). Royalties and lump sum payments are taxed at a rate of 30 percent rate.

Many of these barriers must be removed as India undertakes its Uruguay Round obligations on Trade- Related Aspects of Intellectual Property Rights (TRIPS). The Indian Government has announced its intention to conform fully to the IPR-related requirements of the Uruguay Round. As a first step, the government promulgated in late 1994 a temporary ordinance and introduced in early 1995 patent legislation consistent with India's TRIPs obligations relating to the "mailbox" provisions. The patents bill failed to pass in the upper house of Parliament in 1995, leaving India in violation of this TRIPs provision since early-1995, when the patent ordinance expired. In November 1996, the WTO Dispute Settlement Body established a panel at the request of the United States to review India's failure to meet these TRIPs obligations. The final panel report on this case was issued in August 1997, and ruled that India had failed to meet its obligations under the TRIPs agreement. Following an appeal by India, the WTO's appellate body ruled in favor of the U.S. in December 1997. Indian officials have pledged to introduce a bill in Parliament that, if passed, will put India in compliance with its TRIPs obligations.

Aside from failing to meet its immediate obligations, the Indian Government has announced its intention to take full advantage of the transition period permitted developing countries under TRIPs before implementing full patent protection. The United States continues to press for passage of the "mail box"-related legislation and to urge more accelerated implementation of the TRIPs patent provisions. A small, but growing, domestic constituency, made up of some Indian pharmaceutical companies, technology firms and educational/research institutions, favors an improved patent regime, including full product patent protection.

Copyrights

Under pressure from its own domestic industry, India implemented a strengthened copyright law in May 1995, placing it on par with international standards for copyright protection. However, piracy of copyrighted materials, (particularly popular fiction works and certain textbooks) , remains a problem for U.S. and Indian producers. Video, record, tape, and software piracy are also widespread, but enforcement has improved. Indian copyright law has undergone a series of changes over the last 10 years to provide stronger remedies against piracy and to protect computer software. In 1994, Parliament passed a comprehensive amendment to the 1957 Copyright Act. India's law now provides: rental rights for video cassettes; protection for works transmitted by satellite, cable, or another means of simultaneous communication; collective administration of rights; and limiting judicial discretion with respect to the level of penalties imposed on copyright pirates. However, there is no statutory presumption of copyright ownership and the defendant's "actual knowledge" of infringement must be proven.

Indian copyright law offers strong protection, but the Indian Constitution gives enforcement responsibility to the state governments. Classification of copyright and trademark infringements as "cognizable offenses" has expanded police search and seizures authority, while the formation of appellate boards has speeded prosecution. The new law also provides for new minimum criminal penalties, including a mandatory minimum jail term, that U.S. industry believes will go far in controlling piracy, if implemented. Other steps to improve copyright enforcement include: the establishment of a copyright enforcement advisory council, including a judiciary commissioner, with responsibility for policy development and coordination; the initiation of a program for

training police officers and prosecutors concerned with enforcement of copyright laws; and the compilation of data on copyright offenses on a nationwide basis to assist in enforcement and application of penalties. However, because of backlogs in the court system and documentary and other procedural requirements, few cases have been prosecuted recently. While a significant number of police raids have been planned and executed, the law requires that in order to seize allegedly infringing equipment, the police must witness its use in an infringing act.

Cable piracy continues to be a significant problem, with estimates of tens of thousands of illegal systems in operation in India at this time. Copyrighted U.S. product is transmitted over this medium without authorization, often using pirated video cassettes as source materials. This widespread copyright infringement has a significant detrimental effect on all motion picture market segments -- theatrical, home video and television -- in India. For instance, pirated videos are available in major cities before their local theatrical release. Industry representatives estimate annual losses to the U.S. motion picture industry due to audiovisual piracy in 1997 to be $66 million. A bill to regulate the cable industry was submitted to parliament in 1993, but has been sent back to the Ministry of Information for revision with no further progress in this area since that time. Annual losses by U.S. motion picture industries due to India's import authorization policies and remittance restrictions are estimated to be $5-$10 million.

Trademarks

The Government of India has committed to upgrading its trademark regime, including according national treatment for the use of trademarks owned by foreign proprietors, providing statutory protection of service marks, and clarifying the conditions under which the cancellation of a mark due to non-use is justified. In May 1995, the Government of India introduced in Parliament a trademark bill that passed the lower house. However, opposition in the upper house of Parliament stalled discussion of the legislation, which is still pending.

Protection of foreign marks in India is still difficult, although enforcement is improving. Guidelines for foreign joint ventures have prohibited the use of "foreign" trademarks on goods produced for the domestic market (although several well-known U.S. firms were authorized in October 1991 to use their own brand names). The required registration of a trademark license (described by U.S. industry as highly bureaucratic and time-consuming) has routinely been refused on such grounds as "not in the public interest," "will not promote domestic industry," or for "balance of payments reasons." The Foreign Exchange Regulation Act (FERA) restricts the use of trademarks by foreign firms unless they invest in India or supply technology.

In an infringement suit, trademark owners must prove they have used their mark to avoid a counterclaim for registration cancellation due to non-use. Such proof can be difficult, given India's policy of discouraging foreign trademark use. Companies denied the right to import and sell products in India are often unable to demonstrate use of registered trademarks through local sale. Consequently, trademarks on restricted foreign goods are exposed to the risk of cancellation for non-use.

No protection is available for service marks. Trademarks for several single ingredient drugs cannot be registered. There have been several cases where unauthorized Indian firms have used U.S. trademarks for marketing Indian goods. However, the Indian courts have recently upheld trademark owner rights in infringement cases.

SERVICES BARRIERS

Indian Government entities run many major service industries either partially or entirely. However, both foreign and domestic private firms play a large role in advertising, accounting, car rental, and a wide range of consulting services. There is growing awareness of India's potential as a major services exporter and increasing demand for a more open services market.

U.S. motion pictures industries have expressed concern with the proposed Broadcast bill of January 1997, which would increase limitations on broadcasting. According to industry representatives, the bill contains several protectionist provisions which act to limit foreign interests in local broadcasting. The new draft bill would establish a regulatory framework for DTH services, including satellite and cable television programming, and replace the existing Cable Act of 1995. The bill is currently pending review by the Parliament.

Insurance

All insurance companies are government-owned, except for a number of private sector firms which provide reinsurance brokerage services. Foreign insurance companies have no direct access to the domestic insurance market except for surplus lines, some reinsurance, and some marine cargo insurance. A government-appointed committee recommended in 1994 that the insurance sector be opened up to private sector competition, both domestic and foreign. In December 1996, the Finance Minister introduced the Insurance Regulatory Authority (IRA) bill in Parliament. The bill was withdrawn by the government in August 1997, and has not been reintroduced. In the WTO Financial Services Negotiations that concluded in December 1997, India bound the limited range of insurance lines currently open to foreign participation. In addition, India committed to most-favored-nation (MFN) status effective January 1999 for all financial services sector, dropping a previous MFN exemption.

Banking

Most Indian banks are government-owned and entry of foreign banks remains highly regulated. The Reserve Bank of India issued in January 1993 guidelines under which new private sector banks may be established. Approval has been granted for operation of 25 new foreign banks or bank branches since June 1993. Foreign bank branches and representative offices are permitted based upon reciprocity and India's estimated or perceived need for financial services. As a result, access for foreign banks has traditionally been quite limited. Five U.S. banks now have a total of 16 branches in India. They operate under restrictive conditions including tight limitations on their ability to add sub-branches. Operating ratios are determined based on the foreign branch's local capital, rather than global capital of the parent institution.

Securities

Foreign securities firms have established majority-owned joint ventures in India. Through registered brokers, foreign institutional investors (FII), such as foreign pension funds, mutual funds, and investment trusts, are permitted to invest in Indian primary and secondary markets. However, FII holdings of issued capital in individual firms are limited; total aggregate holdings by FIIs cannot exceed 24 percent of issued capital, and

holdings by a single FII are limited to 10 percent of issued capital. Foreign securities firms may now purchase seats on major Indian stock exchanges, subject to the approval of a regulatory authority.

Motion Pictures

In the past, restrictions imposed on the motion picture industry were quite burdensome, costing an estimated $80-300 million according to industry estimates. The United States pressed for removal of these restrictions, and received commitments from the Government of India in February 1992 that addressed most industry concerns. Beginning in August 1992, the Indian Government began implementation of its commitments, introducing a number of significant changes in film import policy. The Government of India has carried out its commitments in good faith.

However, some issues of concern remain. For example, the pre-censorship "quality check" procedures entail fees, and some Indian states apply high entertainment taxes, amounting to 100 percent of the price of admittance in certain cases. High taxes not only constitute a significant disincentive to much needed construction of cinemas and theaters in India, but impede free and open trade. More significant, however, are concerns regarding the $6 million annual ceiling applied to remittances by all foreign film producers for balance-of-payments reasons. In addition, India has continued to use a 1956 cabinet resolution to bar any foreign ownership of the media, preventing even the approval of joint ventures.

Telecommunications

India has taken limited steps toward introducing private investment and competition in the supply of basic telecommunications services. However, licensing delays, based in part on uncertainties regarding fees and interconnection charges new entrants must pay, caps on the number of licenses per bidder, alleged irregularities in the tendering process, India's weak multilateral commitments in basic telecom, and the strong influence the government-owned service provider has heretofore exerted over telecom policy have limited the value of the liberalizing steps taken so far.

The national telecommunications policy announced in 1994 allows private participation in the provision of cellular as well as basic and value-added telephone services. Foreign equity in value-added services is limited to 51 percent. For cellular and basic services, the limit is 49 percent. However, as it has been difficult to raise the amounts of money need to finance the new networks, creative financing arrangements have been allowed in some cases that exceed the formal limit. Private operators can provide services within regional "circles" that roughly correspond to India's states. These operators currently are not permitted to offer domestic long distance or international services significantly restricting the market their networks could serve. The policy limits changes in partners for existing joint ventures, reducing the value of existing foreign investment. Delays in awarding and issuing licenses for both cellular and basic service, as well as the imposition of new rules, limits and restrictions, particularly for basic services, have slowed progress and created an environment that is likely to inhibit rapid growth in India's telecommunications infrastructure. Local production requirements remain an important factor in negotiations to establish service operations.

In the WTO Agreement on basic telecommunications services, India made commitments that did not address the progressive liberalization of its market but generally reflected the status quo. It adopted some pro-

competitive regulatory principles, but did not set a date certain to open up additional segments of its telecom services market on an unrestricted basis. India's WTO schedule does not guarantee resale and takes a step back by committing only to a 25 percent foreign investment stake in basic telecom. India did not make any market access commitments regarding satellite services. India mandated the GSM standard for cellular services and took an MFN exemption for accounting rates.

Access to India's market for Global Mobile Personal Communications Systems (GMPCS) services will be determined by the policy the Government of India develops on treatment and licensing of GMPCS systems. These satellite-delivered services will allow subscribers to communicate with callers anywhere in the world using a cellular-like phone, and will serve an important role in providing telecommunications services in infrastructure-poor rural areas. The policy will determine how many GMPCS providers will be able to offer these services in India. The U.S. Government is encouraging India to adopt a competitive approach and license all GMPCS providers interested in serving India. A variety of providers in the market will encourage competition and lower prices.

India has recently been working on legislation that would regulate aspects of the broadcasting industry. The draft broadcasting bill is intended to regulate all television and radio delivery services: terrestrial broadcast television, cable services, and satellite (including direct-to-home, or DTH) services. A recent version of the bill would restrict foreign equity investment, require local incorporation, require local uplink of satellite signals, and require local licensing of programs and channels. The bill is also likely to contain cross-media ownership restrictions, spectrum auctions, and program standards. As such, the bill will have a negative impact on the commercial development of India's satellite and cable industries and the ability of foreign companies to access the Indian market, both for delivery of communications services and for program access.

INVESTMENT BARRIERS

The new industrial policy announced in July 1991 marked a major shift, relaxing or eliminating many restrictions on investment and simplifying the investment approval process. However, many of these changes were instituted by executive orders and have not yet received legislative sanction through parliament. The United States and India still have not negotiated a bilateral investment treaty, although an updated agreement, covering operations of the Overseas Private Investment Corporation (OPIC), was signed in November 1997. The new agreement modernizes and replaces the arrangements that had governed OPIC operations since 1957.

Equity Restrictions

The complicated and burdensome Foreign Exchange Regulation Act has been amended to increase access for foreign investment in India. Automatic approval is granted by the Reserve Bank of India for equity investments of up to 51 percent in 35 industries. The Indian Government has also authorized existing foreign companies to increase equity holdings to 51 percent. All sectors of the Indian economy are now open to foreign investment, except those with security concerns, such as defense, railways and atomic energy. Government approval is still necessary for majority foreign participation in the passenger car sector. Proposals for foreign equity participation exceeding 51 percent and projects considered to be "politically sensitive" are considered by the Foreign Investment Promotion Board (FIPB). Through 1994, the FIPB had approved almost all the requests made for higher foreign ownership and for other "exceptional" cases, but still reserved the right to deny

requests for increased equity stakes. However, foreign firms report that increases in foreign equity, especially to 100 percent foreign ownership, have become more difficult to obtain since 1994.

Industries have expressed concern with the Indian Government's stringent and non-transparent regulations and procedures governing local share-holding. Current price control regulations have undermined incentives to increase equity holdings in India. Some companies report forced renegotiation of contracts in the power sector to accommodate government changes at the state and central levels. They report that this practice makes India an expensive, complicated and frustrating environment in which to do business.

On November 25, India's Cabinet Committee on Economic Affairs (CCEA) approved and announced specific new rules applicable to all new foreign auto investments in India. Under the new policy, all firms wishing to establish new auto manufacturing investments in India must sign a standardized memorandum of understanding (MOU) with the Government of India containing requirements regarding: $50 million minimum equity investment in joint ventures with majority foreign ownership; local content requirement including waiver of import license requirement when local content exceeds a certain threshold; export obligations; and foreign exchange balancing. Prior to this policy, auto manufacturing investors were required to conclude MOUS on a case-by-case basis. Concern has been expressed that the new policy may be violative of India's WTO TRIMS commitments in regard to both national treatment and the general elimination of quantitative restrictions as described in the illustrative list in the annex to the WTO TRIMS Agreement.

India has notified to the WTO measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures. The measures deal with local content and "dividend balancing"requirements affecting pharmaceutical products and the economy in general. Proper notification allows developing-country WTO Members to maintain such measures for a five-year transitional period after entry into force of the WTO. India therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO Members meet these obligations.

Trade Restrictions

Though not an investment barrier per se, India's import restrictions and high tariffs have constrained investors from importing competitive inputs.

ANTICOMPETITIVE PRACTICES

As in any country, private and public firms will engage in a variety of anticompetitive practices to the extent they perceive their practices are in their interest and to the extent they can get away with them. One can find examples of both state-owned and private Indian firms engaging in most types of anticompetitive practices with little or no fear of reaction from government overseers or action from a clogged court system. India suffers from a slow bureaucracy and regulatory bodies that reportedly apply monopoly and fair trade regulations selectively.

These practices are not viewed as major hindrances to the sale of U.S. products and services at this time. U.S. firms are more concerned with addressing such basic issues as market access, corruption, arbitrary or

capricious behavior on the part of their partners or government agencies, and procurement discrimination from both public and private institutions.

OTHER BARRIERS

India has an unpublished policy that favors counter trade. The Indian Minerals and Metals Trading Corporation is the major counter trade body, although the State Trading Corporation also handles a small amount of counter trade. Private companies are encouraged to use counter trade. Global tenders usually include a clause stating that, all other factors being equal, preference will be given to companies willing to agree to counter trade. The exact nature of offsetting exports is unspecified as is the export destination. However, the Indian Government does try to eliminate the use of re-exports in counter trade.

India's Drug Policy is an issue of concern for U.S. industries. The policy imposes a stringent price control regime which adversely affects U.S. companies from a commercial standpoint. There is no system allowing for automatic adjustment of prices to offset cost fluctuations. With the lack of effective intellectual property protection coupled with a rigid pricing system, U.S. industries face extreme obstacles to maintain viable businesses in India. Industries most significantly affected are pharmaceutical companies placing the best and latest innovative drugs out on the Indian market. Industry representatives have expressed interest in the Government of India proceeding to the adoption of free pricing measures.

INDONESIA

In 1997, the U.S. trade deficit with Indonesia was approximately $4.7 billion, an increase of $411 million from the U.S. trade deficit of $4.2 billion in 1996. U.S. merchandise exports to Indonesia were approximately $4.5 billion, an increase of $567 million (14.3 percent) from the level of U.S. exports to Indonesia in 1996. Indonesia was the United States' twenty-eighth largest export market in 1997. U.S. imports from Indonesia were $9.2 billion in 1997, an increase of $977 million (11.9 percent) from the level of imports in 1996. The stock of U.S. foreign direct investment (FDI) in Indonesia in 1996 was about $7.6 billion, an increase of 14.6 percent from the level of U.S. FDI in 1995. U.S. FDI in Indonesia is concentrated largely in the petroleum, manufacturing and financial sectors.

Overview

Indonesia entered a period of economic turmoil in July 1997 as Asian currencies, including the rupiah, began to depreciate. The Government of Indonesia (GOI) took a series of steps to address the increasingly serious economic and financial turmoil: in August, it floated the rupiah; in September, it tightened the budget and postponed major projects being undertaken by or in conjunction with state-owned entities; in October, it negotiated an economic reform program which the IMF board approved in November. Increasing turmoil and economic uncertainty led Indonesia to announce an enhanced IMF-supported reform program on January 15. The new program provides for unprecedented and accelerated structural reforms in virtually every sector of the economy and introduced major changes in the trade regime. Many of these changes are scheduled to take effect quickly, between February and April. If implemented they will substantially improve the operating environment for businesses in Indonesia.

IMPORT POLICIES

In recent years, Indonesia has liberalized its trade regime and has taken a number of important steps to reduce protection. Since 1996, the Indonesian Government has issued deregulation packages that have reduced overall tariff levels, simplified the tariff structure, removed restrictions, replaced non-tariff barriers with more transparent tariffs, and encouraged foreign and domestic private investment. The Government of Indonesia issued a deregulation package in July 1997 which introduced additional tariff reductions. In conjunction with its stabilization program agreements with the International Monetary Fund, the government issued additional reform packages in November 1997 and January 1998 which reduced taxes, tariffs and quantitative restrictions on exports and imports.

Tariffs

Indonesia's tariff regime is in rapid flux, having introduced accelerated tariff reductions for a broad number of products in November 1997 and January 1998. Indonesia's applied tariff rates range from 5 to 30 percent. Major exceptions to this range are the 170 percent duty applied to all imported distilled spirits and the 125 percent duty assessed built up passenger vehicles (subject also to a 75 percent import surcharge for total import taxes of 200 percent on these vehicles). In May 1995, the Indonesian Government unveiled a comprehensive tariff-reduction package covering roughly two thirds of all traded goods, designed to reduce most tariffs to

under 5 percent by 2003. The package stipulated that all tariff items with a rate of 20 percent or less would be reduced to no greater than 5 percent by 2000, and items with rates of more than 20 percent would be reduced to no more than 20 percent by 1998, and 10 percent by 2003. Exclusions from these tariff cuts for chemical, metal, and agricultural products have recently been removed, leaving in place the exclusion for automobiles. This tariff reform generally extends Indonesia's commitments under the Association of Southeast Asian Nations (ASEAN) Free Trade Area (AFTA) on an MFN basis. In February, 1998, the government reduced tariff rates on non-food agricultural products 5 percentage points and will cut them to a maximum of 10 percent by 2003. Tariffs on all food items are to be cut to a maximum of 5 percent in February 1998.

U. S. industries have expressed concern over access to Indonesian markets which remains restricted by various trade barriers. These complaints cite tariffs and taxes imposed on imported products, large motorcycles (150 percent import duty; 35 percent "luxury tax"; 10 percent value-added tax), toys (30 percent import duty), wine (40 percent import tariff; 10 percent value-added tax; 35 percent luxury tax; 2.5 percent local service tax), films and videos, distilled spirits (170 percent import tariff; 35 percent luxury tax), air conditioning and refrigeration equipment (25-50 percent tariff), forest products (0-20 percent tariff), and soda ash (5 percent tariff; 10 percent value added tax).

In 1997, Indonesia continued to reduce tariffs. In September 1997, tariffs rates on 153 items, primarily raw materials and intermediate products, were cut by between 5 and 10 percentage points. Following these cuts, 52 percent of Indonesia's tariff lines were between 0 and 5 percent. As of January 1, 1998, the average unweighted tariff was 11.7 percent, compared to 20 percent in 1994. In the Uruguay Round market access negotiations, Indonesia committed to bind 94.6 percent of its tariff items, mostly at ceiling bindings of 40 percent. Exceptions to the 40 percent binding include automobiles, iron, steel, and some chemical products. In accordance with the WTO Agreement on Agriculture, Indonesia has agreed to tariffy its non-tariff barriers on agricultural products. Some of the exceptions to the 40 percent tariff bindings are still heavily protected. For example, when the Indonesian Government lifted the import ban on completely built-up cars in 1993, the ban was replaced with duties of up to 200 percent and import surcharges of 100 percent. The import levies were decreased in a subsequent deregulation package, but tariffs of up to 125 percent are still compounded by import surcharges of up to 75 percent on completely built-up models. Indonesia has committed to remove import surcharges on items bound in the Uruguay Round by the year 2005. The pioneer auto program (see also "Investment Barriers"), currently in WTO dispute settlement proceedings and stipulated for elimination in the stabilization program negotiated with the IMF, was intended to provide tax- and duty-free treatment for one designated company which uses a unique Indonesian-owned trademark. All processed goods are subject to a 10 percent value-added tax. A luxury tax ranging from 20 percent to 35 percent is also levied on certain products.

Quantitative Restrictions

Prior to the IMF memoranda of economic and financial policy of November 1997 and January 1998, the sole importer and distributor of major bulk food commodities, such as wheat, rice, sugar, and soybeans, was the National Logistics Agency (BULOG), a state trading entity. Prices of these commodities were often higher than world market prices. Other agricultural products are subject to local purchase requirements. As a result of the IMF stabilization program, the role of the National Logistics Agency (BULOG) has been sharply curtailed. Current regulations now permit private companies to import and distribute wheat, wheat flour,

soybeans, garlic, and sugar. Because of the financial crisis and looming shortages, BULOG has been authorized to continue to import these commodities at subsidized exchange rates in an effort to stem sharp food price increases. BULOG retains the authority to manage all rice imports. Local content regulations on dairy products were eliminated on February 1, 1998.

Import Licensing

The government continues to reduce the number of items subject to import restrictions and special licensing requirements. As a result of the January 1996 reform package, 203 tariff lines still remain subject to restrictive import licenses, down from 261 in 1994 and 1,112 lines in 1990. The January package reduced restrictions on imports of 23 tariff lines, including seven categories of steel products. However, some U. S. industries continue to express concern over Indonesia's license and quota system which operates as a *de facto* ban on imports such as, motorcycles, wine, films and videos. For goods that continue to be regulated, the following import license categories exist (number of affected tariff lines provided in parentheses): registered importers -- alcoholic beverages (27), hand tools (6); producing importers -- artificial sweeteners (3), propylene granules (2),engines and pumps (5), tractors (3), knocked-down electronic keyboards (1), and scrap materials (57); approved importers/sole agents -- motor vehicles (47); BULOG -- rice (4); state oil company PERTAMINA -- lube oil (3); PT Dahana -- explosives (4). In accordance with Indonesia's WTO commitments, the non-tariff barriers on items not controlled by state trading agencies will be removed over a ten-year period.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

In May 1990, the Indonesian Government issued a decree that states that the Department of Health must decide within one year of receipt of an application whether to grant registration for new foreign pharmaceutical products. In practice, registration can take much longer, although companies report the process is slowly improving. Foreign pharmaceutical firms have complained that copied products sometimes become available on the local market before their products are registered.

New maximum pesticide residues (MRLs) for all food commodities were announced in August 1996. These MRLs are largely consistent with the international CODEX standards. The United States has commented on the unworkability of Indonesia's WTO notification that shipment-by-shipment certification would be required.

The Indonesian Government also introduced a new broadly based food law in November 1996 and now is in the process of drafting implementing regulations. Early indications of the plans for these regulations has caused concern among U.S. and other exporters, particularly about how issues such as labeling (including "halal" certifications), product expiration, and advertising will be handled.

GOVERNMENT PROCUREMENT

In 1994, the government enacted a new procurement law to regulate government procurement practices and to strengthen the procurement oversight process. Most large government contracts are financed by bilateral or multilateral donors each of which imposes its own procurement requirements. For large, government-funded projects, international competitive bidding practices must be followed. The government seeks concessional financing, which includes a 3.5 percent interest rate, a 25-year repayment period, and a 7-year grace period.

Some projects do proceed on less concessional terms. Foreign firms bidding on certain government-sponsored construction or procurement projects may be asked to purchase and export the equivalent in selected Indonesian products, but this rarely occurs. Government departments and institutes and state and regional government corporations are expected to utilize domestic goods and services to the maximum extent feasible, but this is not mandatory for foreign-aid-financed goods and services procurement. State-owned enterprises that have offered shares to the public through the stock exchange are exempted from government procurement regulations.

Some U.S. companies have expressed concern with regard to Indonesian procurement policies requiring local participation and content, that in many situations impede U.S. companies' ability to compete in this market. Non-transparent government procurement policies have also rendered competition difficult. Concerns, in particular, have focused on the engineering and construction industries.

Foreign joint ventures are not eligible to tender for government pharmaceuticals procurement. The requirement that doctors employed in government institutions prescribe only listed generic drugs also prevents the procurement of foreign pharmaceutical products. Foreign companies are generally prohibited from competing in the generic drug market.

In January 1998, the GOI issued a new presidential decree regulating cooperation between the government and the private sector in the provision and/or management of infrastructure. The decree requires that infrastructure projects be publicly tendered on a competitive basis rather than negotiated with a single preferred company. The decree also contains provisions for the legitimate use of intellectual property in projects.

EXPORT SUBSIDIES

As part of its June 1996 deregulation package, the Indonesian Government extended rediscount facilities for "special exporters" in certain industries, namely textiles and textile products, shoes, electronics, timber and rattan products, and leather goods. Eligible exporters may sell their export letters of credit or other instruments to the central bank, Bank Indonesia (BI), through foreign exchange banks. BI rediscounts the export drafts at SIBOR for special exporters and SIBOR plus one for general exporters. Through a decree issued on December 31, 1996, the Indonesian Government extended this rediscount facility to exporters of crude palm oil and its derivatives and pulp and paper products, as well as to "special suppliers" to the special exporters. BI also announced that it will rediscount in U.S. dollars, in addition to rupiah.

Companies producing 65 percent for export may apply for restitution of import duties paid on inputs that are subsequently re-exported in a finished form. Import-duty exemptions may also be granted for all capital equipment, machinery, and raw materials needed for the initial investment. Companies located in bonded or export-processing zones pay no duty until the portion of production destined for the domestic market is released, at which time duty is owed only on that portion.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Under the Special 301 provisions of the 1988 Omnibus Trade and Competitiveness Act, the U.S. Trade Representative raised Indonesia to the "priority watch list" in 1996, from the "watch list" where it had been since 1989. It remained on the "priority watch list" in 1997. In the past year developments in Indonesia's

protection and enforcement of IPR in the copyright area have shown some positive developments. In the past six months Indonesia has stepped up enforcement of intellectual property rights; eased distribution restrictions on the recording industry, made progress in updating the copyright law and adhering to treaty standards; and a launched a number of successful enforcement actions in the copyright area. Concerning enforcement actions, the police have conducted several high-profile raids on stores selling pirated music and video compact disks and computer software. The raids resulted in the seizure of hundreds of thousands of illegal copies of CDs, video compact disks (VCDs), and computer software. Criminal cases against the merchants are now being pursued in local courts.

In the copyright law amendments itself, the International Intellectual Property Alliance (IIPA) cites favorably the establishment of exclusive rental rights for computer programs and sound recordings and the extension of term of protection of computer programs to 50 years; the ratification of the Paris text of the Berne Convention and the WIPO copyright treaty. U.S. industry also noted that the new patent law is an improvement over the previous.

IPR protection shortcomings mentioned by industry include: software, book, video, VCD, drug, and apparel trademark piracy; audiovisual market access barriers; inconsistent enforcement and an ineffective legal system; and amendments to the copyright, patent and trademark laws that are not completely TRIPS consistent. The Indonesian Government often responds to U.S. companies that raise specific complaints about pirated goods and trademark abuse, but the court system can be capricious, and punishment of pirates of protected intellectual property is very rare. In the view of some U.S. firms, the lack of sophisticated intellectual property protection laws and regulations have provided much disincentive for industries to invest substantially in high technology projects in Indonesia. Amendments to the patent, trademark, and copyright laws enacted in 1997 are designed to bring Indonesia's laws into compliance with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), but industry has raised questions in certain areas.

As of July 1997, Indonesia has acceded to the following international conventions on intellectual property: the Paris Convention for the Protection of Industrial Property; Berne Convention for the Protection of Literary and Artistic Works (Paris 1971)[with a reservation on Article 33]; The Patent Cooperation Treaty; The Trademark Law Treaty; The World Intellectual Property Organization Copyright Treaty; the Nice Agreement for the International Classification of Unclassified Goods and Services; and The Strasbourg Agreement Concerning the International Patent Classification. Indonesia is a member of the World Intellectual Property Organization (WIPO).

Patents

Indonesia's first patent law went into effect on August 1, 1991. The new Patent Law amendment, which became law in February 1997, has improved the situation to some extent. For example, the term of protection has been extended to 20 years with a two- year extension period; a patent shall be canceled only in the event the patent holder fails to pay annual fees within a certain time; use of product or process invention before grant of patent shall constitute a patent infringement; and the Article in the prior law that denied the right to prevent importation was deleted to comply with Article 28 of the TRIPS Agreement. Also, Indonesia now provides product patent protection for foods and beverages. In some areas, improvements were made that were not

required by the TRIPS Agreement. For example, the definition of the term "patent examiner" was enlarged to include examiners in other industrial property offices. This could facilitate work-sharing in the search and examination process. Also, the exclusion from patentability for plant and animal varieties was deleted.

Unfortunately, some of the problems in the previous law were not corrected and new problems were introduced by the 1997 amendment. Examples include: importation still does not meet the requirement to "work" or exploit the invention domestically as required by the first paragraph of TRIPS Article 27; the right to prevent importation of products made by patented processes is only available if the process is also worked in Indonesia; the content of voluntary patent licenses is more restricted than permitted by TRIPS Article 40; there is no requirement that Government use of patented invention comply with the provisions of TRIPS Article 31; inventions that are contrary to Indonesian laws and regulations are excluded from patentability in violation of Article 4*quater* of the Paris Convention and TRIPS Article 2; and the standard for excluding inventions contrary to the *ordre public* is inconsistent with the requirements of paragraph 2 of TRIPS Article 27.

U.S. pharmaceutical industries remain concerned that, although the patent law amendment last year is an improvement, the present patent law does not satisfy the TRIPS requirements; that it includes compulsory licensing provisions, a provision allowing the import of certain patented raw materials; and law and regulations on local working requirements and patent cancellation. The Pharmaceutical Research and Manufacturers of America (PhRMA) also pointed out the incidence of smuggled counterfeit drugs from neighboring countries, the issue of corruption, joint venture requirements, generic drug prescriptions and supply to government institutions and taxation.

Trademarks

The April 1993 trademark law provides for determination of trademark rights by registration rather than by first use. The law provides for protection for well-known marks but offers no procedures or grounds for owners of well-known marks to clear the trademark register of existing registrations infringing on well-known marks. Currently, the only avenue for challenging existing trademark registrations in Indonesia is to bring a court challenge. Cancellation must be sought within five years from the date of registration. But U.S. companies have found it difficult to protect their well-known marks, since judicial and administrative processes can be very time consuming and unreliable. Injunctive relief apparently is not provided, even when a lower court invalidates false trademark registrations. The new trademark law may enhance protection by providing for administrative cancellation of registrations competing with well-known marks.

The International Anticounterfeiting Coalition (IACC) stressed the problems surrounding the protection of well known marks; specifically, the length of time it takes the system to consider challenges to trademark applications, the ability of Indonesian nationals to file applications for well known marks and the inconsistent application of trademark laws. The complaint is also that the existence of the new law has not resulted in effective protection or enforcement of IPR.

Copyrights

In 1987, Indonesia enacted amendments to its copyright law which generally brought it closer to conformity with international standards for copyright protection. The draft law includes new provisions to recognize rental

rights for copyright holders in the areas of audiovisual, cinematographic, and computer software, which are protected as literary works, adds protections for neighboring rights in sound recordings and rights of producers of phonograms, and copyright licensing, as well as, increasing the term of protection for many copyrightable works to fifty (50) years, as required under the TRIPs Agreement.

A bilateral copyright agreement between the United States and Indonesia that went into effect in August 1989 extended national treatment to each other's copyrighted works. The Indonesian Government has demonstrated that it wants to stop copyright piracy and that it is willing to work with copyright holders toward this end. There is good enforcement of the ban on pirated audio and video cassettes and textbooks, but efforts to combat software piracy are still at an early stage. In 1996, rampant piracy of video compact disks (VCDs) developed in Indonesia. This is disrupting the market for cinemas, as well as sale and rental markets for legitimate videos and laser disks. U.S. industry has expressed concern over the gradual increase in the video piracy rate, which is now 85%. Enforcement efforts targeting pirated VCDs have just begun. Two large government organizations have taken major steps toward eliminating unauthorized software from their premises.

The major problems cited by the International Intellectual Property Alliance (IIPA) with the Indonesian copyright regime are the following: copyright infringement of business software, Video Compact Discs (VCD), laser discs, video games and books; market access restrictions; insufficient enforcement efforts; an ineffective court system and deterrence penalties; restrictions on importation, distribution and retailing by other than 100% owned Indonesian companies; a ban on foreign investment in cinema construction and development of video retail outlets; and, restrictions on videocassette duplication.

New Technologies and Trade Secrets

Biotechnology and integrated circuit layout designs are not protected under Indonesian intellectual property laws. The government is in the process of preparing laws on trade secrets, industrial designs, and integrated circuits. Indonesia is a member of the World Intellectual Property Organization (WIPO) and is a party to the substantive provisions of the 1934 London Text of the Paris Convention for the Protection of Industrial Property.

SERVICES BARRIERS

Despite some loosening of restrictions, particularly in the financial sector, services trade barriers to entry continue to exist in many sectors. Foreign accounting firms must operate through technical assistance arrangements with local firms, and citizenship is a requirement for licensing as an accountant. Foreign agents and auditors may act only as consultants and cannot sign audit reports. Foreign law firms cannot establish a practice in Indonesia, and graduation from an Indonesian legal faculty or an institution recognized as the equivalent is a requirement to be admitted to the bar. Foreign consulting engineers can only operate by forming a joint-venture with local partners in Indonesia.

Indonesia

Distribution

Over the past two years Indonesia has begun to liberalize distribution in the domestic market. Liberalization is likely to accelerate as Indonesia implements the January 1998 IMF package, which calls for an end to restrictions on trade in the domestic market. On February 1, 1998, for example, according to new regulations, restrictive marketing arrangements for cement, paper, cloves, other spices and plywood were eliminated.

Indonesia is also opening wholesale and retail trade to foreign investment. In November 1997, the GOI enacted limited reforms which allowed foreign-owned factories in Indonesia to distribute their goods at the wholesale level immediately and at the retail level in the year 2000. These reforms were accelerated and broadened with the issuance of a new decree in January. The new decree allows foreign firms with a foreign investment license (PMA) to engage either in wholesale or retail trade (to engage in both wholesale and retail trade, companies must obtain separate PMA licenses) beginning March 31, 1998. Restrictions limiting PMA companies to distributing only their own products are also scheduled to be removed by the end of March 1998.

A number of U.S. companies have expressed concern that existing restrictions increase costs and impede their ability to effectively market and service their products in Indonesia, thereby limiting choice and competition, e.g., films and videos. Express delivery firms have expressed concern with their inability to wholly own or control express firms in Indonesia, obtain courier licenses, truck licenses, customs brokerage licenses or bonded warehouse licenses, and to self-handle their aircraft in Indonesia.

Financial Services

In its 1997 WTO financial services offer, Indonesia committed to allow 100 percent foreign ownership for non-bank financial companies that are publicly listed, including insurance and securities firms. The government also guaranteed the access of existing financial services firms in its market. Restrictions on joint venture banks, where the foreign ownership limit is 85 percent, were retained. Indonesia has committed to removing discriminatory capital requirements by the end of 1998. All insurance in Indonesia must be purchased from either a domestic or joint venture company. The only exceptions are for unavailability of coverage in Indonesia and total foreign ownership of the insured entity.

Banking: Any new foreign bank must be a joint venture between an Indonesian bank and a foreign bank from a country that offers reciprocity; the Indonesian partner must supply at least 15 percent of the capital. As of January 1998, the banking sector in Indonesia was undergoing a complete overhaul, with mergers and vastly revised regulations in the works. The World Bank, Asian Development Bank, and the IMF were closely involved in the restructuring plans. On January 15, 1998, the GOI announced that restrictions on branching and sub-branching for joint venture banks and foreign branches would be lifted. On January 27, the GOI announced that all restrictions on foreign investment in Indonesian Banks would be eliminated in order to attract foreign capital, management, and technology to the sector.

Securities: The 1997 WTO offer removes restrictions on foreign ownership of securities firms.

Motion Picture Market Access

Indonesia prohibits foreign film and videotape distributors from establishing branches or subsidiaries. All importation and distribution is restricted by the film law to 100 percent Indonesian-owned companies. Importation and in-country distribution of U.S. films must be handled through a single organization, the European and American Film Importers' Association (AIFEA). Annual import quotas apply to foreign films and videotapes. Duties, taxes, licensing, and other necessary payments also act as barriers to the film industry.

Telecommunications Services

In the WTO negotiations on basic telecommunications services, Indonesia made several commitments, that, with one exception, did not go beyond the status quo. Its adoption of the reference price on regulatory principles was a welcome step. It set a foreign investment limit of 35 percent for telecom services companies. Indonesia maintained excessively long periods for existing restrictions on the number of services providers and made no guarantee of allowing unrestricted market access to international services in 2005, long distance in 2006, or local services in 2001. Fixed line services, including local and domestic long distance services, telex services, etc., must be provided in conjunction with the partially privatized national firm PT Telkom. Indonesia retained an economic needs test for mobile cellular and PCS providers.

INVESTMENT BARRIERS

The Indonesian Government is committed to increasing foreign investment and to reducing burdensome bureaucratic procedures and substantive requirements for foreign investors. The most substantial measure taken in this regard were in June 1994, when the government dropped initial foreign-equity requirements and sharply reduced divestiture requirements. Indonesian law provides for both 100 percent direct-foreign-investment projects and joint ventures with a minimum Indonesian equity of 5 percent. In addition, the government opened several previously restricted sectors to foreign investment, including harbors, electricity generation, telecommunications, shipping, airlines, railways, roads, and water supply. Some sectors remain restricted or closed to foreign investment and are implemented through a "negative list." These include television and radio broadcasting, theaters and video outlets, aircraft manufacture, logging, and wood processing.

In general, foreign capital investment is primarily governed by the foreign capital investment law, as well as by presidential and ministerial decrees. The Capital Investment Coordinating Board (BKPM) and other relevant agencies must approve all proposed foreign-manufacturing investments in Indonesia. The approval process is not used to block or restrict foreign investment. Obtaining the required permits, however, can be cumbersome and time-consuming. The most often heard complaint from investors about the Capital Investment Coordinating Board is that it is not a one stop investment shop. Investment in petroleum extraction, mining, forestry, telecommunications, and banking is covered by specific laws and regulations and handled by relevant technical agencies. Joint ventures with a majority Indonesian share, or in which Indonesians own 45 percent of shares and in which at least 20 percent of total stock is sold through the Indonesian stock market, are treated as domestic companies for certain purposes. This includes the ability to borrow short-term working capital in rupiah from state banks.

Indonesia

Despite the central government's plans to reduce red tape, regional license requirements and other levies can also make investing difficult. Every foreign investment project requires presidential approval. In practice, this means that the approval of investment applications can be delayed for indeterminate periods of time.

In 1996, the Indonesian Government issued a regulation under which tax exemptions may be provided to certain companies. This "tax holiday" was apparently created to attract large investments which Indonesia believes it is losing to other countries in the region with better tax incentives. Under current procedures, companies undertaking new investment in designated industries may receive a tax holiday for 5-12 years after the start of commercial production. Applications for tax holidays are reviewed by a team of five ministers and approved by the president.

Indonesia has notified to the WTO measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures. The measures deal with local content requirements in the automotive industry, as well as for utility boilers, fresh milk, and soybean cake. Proper notification allows developing-country WTO Members to maintain such measures for a five-year transitional period after entry into force of the WTO. Indonesia therefore must eliminate these measures before January 1, 2000, and in the January 15, 1998 memorandum with the IMF committed to eliminate the requirement on dairy products by February 1, 1998. The United States is working in the WTO Committee on TRIMs to ensure that WTO Members meet these obligations.

Auto Policies: the 1993 Measures and the 1996 Pioneer Program

A WTO dispute settlement panel is scheduled to render judgement in the Spring of 1998 on the allegations of the United States, Japan, and the EU that elements of the 1996 automotive decrees and, in the case of the U.S. and EU complaints, the 1993 auto decrees, are inconsistent with Indonesia's obligations under a number of WTO provisions.

In February 1996, Indonesia's president issued a decree modifying the existing, WTO-inconsistent auto policy to grant tax and tariff exemptions to wholly owned Indonesian companies that use a unique Indonesian-owned trademark. Only one company, PT Timor Putra Nasional, was designated under the program to be exempt from the payment of any tariffs and luxury taxes if it increased the share of local content in the vehicles it produced over a three-year period. In June 1996, the government conferred further benefits on PT Timor by issuing a decree allowing the company to import from Korea, tax- and duty-free, up to 45,000 units of the "pioneer" car, during the first year of operation.

In February 1998, the government issued decrees canceling all special tax, customs or credit privileges previously granted to the national car program. Tariff preferences tied to local content levels for auto producers are scheduled to be eliminated by 2000.

OTHER BARRIERS

Transparency

A lack of transparency and corruption are significant problems for companies doing business in Indonesia, but since July the government has stepped up efforts to address these concerns. Demands for "facilitation fees" to obtain required permits or licenses, government award of contracts and concessions based on personal relations, and a legal system that is often perceived as arbitrary are frequently cited problems. A 1996 report from Bappenas (the National Planning and Development Board) recognized the judicial system's shortcomings. It noted the "need to reform judicial administration to ensure the speedy resolution of conflicts and an effective appeals system." It also called for improving " the skills and performance of legal and judicial personnel by strengthening ethical and professional standards, transparency, and accountability." Much of the substantial deregulation introduced since July 1997 is aimed at tackling some of the problems which either countenance these problems or which have arisen from them.

Indonesia's wood products sector remains heavily protected. Earlier government prohibitions on the export of raw rattan, logs, and timber were replaced with prohibitively high export taxes in May 1992. In the January 1998 IMF agreement, Indonesia committed to reducing export taxes on logs, timber, rattan, and minerals to a maximum of 10 percent and implementing a broad based resource tax that would be assessed on both exported and domestically consumed resources. The implementing decrees and regulations have not yet been issued. The Indonesian Government's practices in the wood industry have acted as obstacles not only to entry into the Indonesian market but also into the third-country markets such as Japan and Europe where U.S. finished and processed wood products compete with Indonesian products.

Some companies benefit from restrictive licensing regulations that severely inhibit competition in a number of areas in the domestic economy such as fertilizer and household gas.

Recent government decisions have reduced or eliminated a number of trade barriers, including: all budgetary and extra budgetary funding for the national aircraft company, IPTN, was ordered eliminated as of January 21, 1998; all import restrictions on new and used ships were ordered eliminated as of January 21, 1998; presidential instruction 6/1998 eliminates all barriers to foreign investment in palm oil plantations; the monopoly on clove marketing was eliminated as of January 21, 1998; the clove marketing board will be disbanded no later than June 30, 1998; the Ministry of Industry and Trade has been instructed to remove any restrictive marketing arrangements -- including export restrictions -- for cement, paper, plywood, wood, and rattan; and President Soeharto has issued instructions to all provincial governors prohibiting any intervention or restriction on trade, within or between provinces, of any commodity, specifically including cloves, cashews, oranges, and vanilla. The instructions also prohibit all provincial and local taxes on export goods.

ISRAEL

In 1997, the U.S. trade deficit with Israel was $1.3 billion, an increase of $917 million from 1996. U.S. exports to Israel during 1997 totaled $6.0 billion, a decrease of $17 million from the level of exports in 1996. U.S. imports were $7.3 billion, an increase of $900 million (14 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment in Israel was $1.9 billion in 1996, 13.5 percent more than in 1995. U.S. direct investment in Israel is largely concentrated in manufacturing and services.

The United States-Israel Free Trade Area Agreement

The United States-Israel FTAA, implemented on September 1, 1985, called for phased tariff reductions culminating in the complete elimination of duties on non-agricultural products effective January 1, 1995. The agreement eliminates most trade barriers between the United States and Israel, leaving Israel's agricultural sector as the only area where substantial non-tariff barriers and levies remain. With this in mind, on November 4, 1996, the United States and Israel signed a five year agreement which provides for gradual and steady liberalization of Israel's market for food and agricultural products through reductions in tariff levels and expanding tariff rate quotas during each year of the agreement.

The FTAA provides for a consultative mechanism between the parties. The Joint Economic Committee (JEC), created to supervise implementation of the agreement, has proved itself a useful mechanism for addressing bilateral trade issues.

Overall, the FTAA has substantially liberalized trade between the United States and Israel. Problems which remain are pursued in the bilateral FTAA framework, particularly through the JEC.

IMPORT POLICIES

Agriculture

Although the 1996 agriculture agreement provides improved market access for a large number of U.S. food and agricultural products, significant restrictions still exist. Relatively high levies limit imports on some products. Official Israeli standards on weights and measures, which mandate metric packaging, place U.S. processed food products at a disadvantage to similar products from Europe. Problems with administration of TRQs have also limited imports of some products.

U.S. beef exports to Israel are severely restricted by religious certification requirements. In December 1994, Israel implemented a complete ban on imports of non-kosher meat and meat products. The ban is maintained in violation of WTO and FTAA national treatment provisions since the Israeli government permits domestic production, sale and consumption of non-kosher meat. U.S. exports of high quality kosher beef are also restricted because Israel’s Chief Rabbinate does not recognize U.S. standards for beef and veal. These restrictions effectively negate the concessions made by Israel for chilled and frozen beef in the 1996 agriculture agreement.

Israel

Elimination of the various restrictions on agricultural imports could result in a potential increase in U.S. exports of $25-100 million.

TAMA

Israel uses a system known as "TAMA" to approximate the local wholesale price of a good by adding "estimated profits," insurance, and inland freight to the declared value of an import for purposes of calculating purchase taxes. Coefficients for calculation of the TAMA vary from industry to industry and from product to product, but the effect is to establish higher taxes on imports than are applied to domestic products. In 1991, at U.S. urging, the Government of Israel amended the system, and most registered importers now have the option of declaring the actual wholesale value of their products. However, to date not a single importer has opted for that system. Israeli officials attribute this reluctance to estimation by importers that the former TAMA rates are more advantageous to them, while importers cite a variety of problems with the optional system, including the inability to modify prices once they have been declared. As the new optional TAMA has not operated as anticipated, the United States will continue to seek to eliminate the discriminatory effect of TAMA on U.S. exports. Elimination of the impact of TAMA could result in an increase in U.S. exports of between $10 and 25 million.

Harama

In addition to the TAMA system, Israel maintains a customs practice known as "harama," meaning "uplift." Harama is applied at the pre-duty stage to the c.i.f value of goods to bring the value of the products to an acceptable level for customs valuation. Israel calculates import value according to the Brussels definition of value (BDV), a method which tolerates uplifts of invoice prices. For purposes of calculating duty and other taxes, the Israeli Customs Service arbitrarily uplifts by two to five percent the value of most products which exclusive agents import, and by 10 percent or more the value of other products. This has the effect of increasing the rate of indirect taxes which must be paid by U.S. importers, thereby making U.S. products more expensive in the Israeli market. Israel has initiated legislation which, if passed, will allow adherence to the WTO agreement on customs valuation and subsequent elimination of the "harama" practice. We are unable to quantify the impact of elimination of this barrier.

Purchase Taxes

In addition, purchase taxes of 25 to 95 percent are applied on goods ranging from automobiles to some agriculture and food items. On many other products, including consumer electronics, building inputs, and office equipment, Israel has reduced or eliminated purchase taxes. Where remaining, purchase taxes apply to both local and foreign products. We are unable to quantify the impact of elimination of this barrier.

Wharfage and Port Fees

Until 1995, Israel's customs authorities charged importers 1.5 percent of the c.i.f cost of imports into Israel for use of the ports and stevedores, whereas exporters faced no charges. In effect, imports were subsidizing exports. After several years of pressing Israel to eliminate this GATT-inconsistent discrimination, in 1995 the U.S. received a commitment from the government of Israel to equalize port fees for exporters and importers at 0.6 percent, with effect in 1996. As a first step, Israel reduced the import fee to 1.3 percent and imposed

an export fee of 0.2 percent. No further progress occurred and 1997 ended without fulfillment of the commitment. Although Israel has indicated it will narrow the gap between the two fees, the United States will continue to pursue full equalization of these fees in 1998. We are unable to quantify the impact of elimination of this barrier.

Tariffs

As noted, all remaining duties on U.S. non-agricultural products were eliminated on January 1, 1995.

Kosher Certification

The United States-Israel FTAA permits measures relating to prohibitions on religious grounds, "provided that they are applied in accordance with the principle of national treatment." In certain cases, U.S. businesses have complained that the process for granting kosher certificates in Israel is discriminatory, and serves to protect domestic products. The process for obtaining kashrut certification is not transparent, as the party seeking certification must pay the "costs" of rabbinical inspection to determine that the ingredients and manufacturing of the product satisfy religious standards. Some businesses claim that the fee charged bears no relationship to the actual "costs" of inspection (in some cases, a percentage of sales has been charged, for example). Moreover, indirect supervision by a local rabbi is permitted in some cases but not in others. Significant problems remain in these sensitive sectors. The United States is pursuing these complaints directly with the government of Israel. Elimination of this barrier could result in an increase in U.S. exports of an estimated $10-25 million.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Israel has yet to fulfil its WTO obligations to eliminate discriminatory measures on imports. In 1990, Israel agreed to harmonize standards treatment, either dropping health and safety standards applied only to imports or making them mandatory for all products. Implementation of this promise has been slow. Enforcement of mandatory standards on domestic producers can be spotty, and in some cases (e.g., refrigerators, auto headlights, plywood, carpets, and packaging/labeling for food items) standards are written so that domestic goods meet requirements more easily than imports. Israel is in the process of amending its law on standards which should facilitate entry of some standard U.S. units. Israel has agreed to notify the United States of proposed new, mandatory standards in the WTO. However, packaging and labeling standards continue to prevent the importation of a broad range of U.S. foods.

The standards institution of Israel is proposing a bilateral mutual recognition agreement of laboratory accreditation with the United States that could result in the acceptance of U.S.-developed test data in Israel. The proposed program would eliminate the need for redundant testing of U.S. products in Israel to ensure compliance with mandatory product requirements. Elimination of this barrier could result in a potential increase in U.S. exports of $25-100 million.

GOVERNMENT PROCUREMENT

Israel is a signatory to the WTO Agreement on Government Procurement, which covers most Israeli government entities and government-owned corporations. The Agreement requires signatories to apply non-

discriminatory, transparent, and open government procurement procedures. Open international public tenders are published in the Israeli press. However, government-owned corporations make extensive use of selective tendering procedures.

In accordance with the Israel public tendering law, all international public tenders with a value of at least $100,000 contain requirements for "industrial cooperation" (IC) with Israeli entities in the amount of 35 percent of the value of the total contract. U.S. companies may invest in local industry, co-develop or co-produce, subcontract to local companies, or purchase from Israeli industry to satisfy the IC offset requirement. U.S. suppliers have found the size and nature of their IC proposal to be a decisive factor in tight tender competitions, despite a recent court decision that prohibits the use of offset proposals in determining award of a bid. Strict adherence to the offset requirements is administered by the Ministry of Industry and Trade and is contrary to a GOI pledge in the FTAA to relax offset requirements on civilian purchases.

GOI agencies and state-owned companies not covered by the code follow a "buy Israel" policy designed to promote national manufacturers. The policy provides a 15-percent advantage and right of first refusal to Israeli contenders for a public tender. An additional 15-percent advantage is given to domestic suppliers located in priority development areas, a concession denied to U.S. companies in the same areas.

For civilian local currency procurement by the Ministry of Defense, a U.S.-Israeli MOU was extended in December 1997 which gives U.S. competitors equal status with domestic suppliers. Despite this MOU, few U.S. companies have been successful in supplying the MOD. Among the barriers U.S. exporters face in competing for Israeli defense contracts are: lack of transparency in the procurement process, "tailored specs," lack of timely notice of government tenders, inadequately detailed information in tender announcements caused by non-standardized procurement procedures, kashrut requirements (for food contracts), and sole sourcing. Elimination of all elements of these barriers could potentially increase U.S. exports by over $100 million.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Copyright

An inadequate copyright law and poor enforcement led to widespread and increased cable television, video, and software piracy in Israel in 1997, although some of the piracy occurred in territory controlled by the Palestinian Authority. A new draft copyright law intended to meet international standards has been under review. The proposed legislation includes enhanced rights of distribution in connection with rental rights and imports of copyrighted materials. Rental rights will cover all protected works, including sound recordings, cinematographic works, and computer programs. Protection for software has been improved, and the two major movie distribution chains generally comply with copyright requirements. A cable broadcast law is also under consideration.

Patents

Current Israeli patent law contains overly broad licensing provisions concerning compulsory issuance for dependent and non-working patents. A draft revision of Israel's patent law, now under review, would upgrade patent protection and eliminate compulsory licensing. In addition, revised laws are under consideration for the protection of industrial designs, trademarks, and integrated circuits.

In February 1998, the Israeli Knesset passed a separate amendment to the patent law which will allow non-patent holders to manufacture limited quantities of patented pharmaceutical products prior to the expiration of patent rights in order to submit data to foreign and Israeli health authorities to gain marketing approval. The amendment will also extend patent terms for pharmaceutical products. The U.S. unsuccessfully objected to the amendment and urged that Israel model its law on the comparable provisions of U.S. law.

Israel is a member of the Paris Convention for the Protection of Industrial Property, the Universal Copyright Convention, and the Berne Copyright Convention and is a signatory of the 1996 WIPO Copyright Treaty and the 1996 WIPO Performances and Phonograms Treaty. In addition, as a signatory of the WTO Agreements, Israel is obligated to implement the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) As has been noted**,** Israel is in the process of amending its IP laws necessary to meet TRIPS requirements.

INVESTMENT BARRIERS

The Israeli government actively solicits foreign private investment, including joint ventures, especially in industries involving exports, tourism, telecommunications, and high technology. Foreign firms are accorded national treatment in terms of taxation and labor relations, and are eligible for incentives for designated "approved" investments in priority development zones. There are generally no ownership restrictions, but the foreign entity must be registered in Israel. Profits, dividends, and rents can generally be repatriated without difficulty through a licensed bank. About 700 major U.S. companies have subsidiaries in Israel and some 170 Israeli companies have subsidiaries in the United States. Investment in regulated sectors, including banking, insurance, and defense industries, requires prior government approval. Israel is a member of the International Center for the Settlement of Investment Disputes (ICSID) and the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.

SERVICES BARRIERS

Barriers to U.S. firms wishing to provide services in Israel are generally being removed, although some sectors remain monopolized or largely controlled by government-owned corporations. Other individual sectors still face regulatory barriers in some cases.

Israel's telecommunications sector is gradually being liberalized, and foreign companies participate in joint ventures providing cellular and international telephone service. Domestic phone service will be opened to competition, including competition involving foreign entities, in 1999. A third cellular licensee will be brought to market in 1998, cable and internet regulations will be revised to increase competition, and DBS satellite broadcast may be permitted soon. In other sectors, a U.S.-based company was awarded the first contract for the construction of a privately-operated independent electric power generating plant in 1996. In the future, up to 10 percent of Israel's electricity will be generated by such independent producers; another 10 percent may be imported.

JAPAN

In 1997, the U.S. goods trade deficit with Japan was $55.7 billion, an increase of $8.0 billion (17 percent) from the U.S. trade deficit of $47.6 billion in 1996. U.S. merchandise exports to Japan were $65.7 billion, a decrease of $1.9 billion (2.8 percent) from the level of U.S. exports to Japan in 1996. Japan was the United States' third largest export market in 1997. U.S. imports from Japan were $121.4 billion in 1997, an increase of $6.1 billion (5.3 percent) from the level of imports in 1996. The stock of U.S. foreign direct investment (FDI) in Japan in 1996 was $39.6 billion, an increase of 3.1 percent from the level of U.S. FDI in 1995. U.S. FDI in Japan is concentrated largely in the manufacturing, finance, and wholesale sectors.

Overview

The Clinton Administration continued to make progress in 1997 on improving market access for U.S. exports of goods and services into Asia’s largest economy. While Japan’s economic stagnation depressed imports, resulting in an increase in Japan’s current account and global trade surplus, it also presented an opportunity to press the Japanese Government to address long-term, structural impediments to market access for U.S. goods and services. The United States concluded new agreements and resolved disputes with Japan in several important sectors which will offer significantly expanded opportunities for American exports to Japan. The most comprehensive of these agreements was the Enhanced Initiative on Deregulation and Competition Policy, announced by President Clinton and Prime Minister Hashimoto in June. Other bilateral agreements or settlements concluded during the past year addressed barriers affecting: wood products, sound recordings, tomatoes, telecommunications procurement, maritime and port practices, Nippon Telegraph and Telephone (NTT) procurement, distilled spirits, and civil aviation.

The Administration’s approach focused on: monitoring and enforcement of existing agreements covering a range of key sectors, from autos and auto parts to telecommunications; negotiating new agreements through bilateral, regional and multilateral approaches; and encouraging significant structural reform and deregulation to open more sectors of Japan’s economy to competition and stimulate domestic demand-led growth in Japan.

This strategy fit with the Clinton Administration’s comprehensive approach to the U.S. bilateral economic relationship with Japan, which was embodied in the United States-Japan Framework for a New Economic Partnership (“Framework Agreement”), signed by President Clinton and then-Prime Minister Miyazawa on July 10, 1993. Under the Framework Agreement, the United States and Japan have agreed to focus on increasing foreign firms’ access to the Japanese market not only by eliminating sector-specific barriers, but also by addressing structural and macroeconomic obstacles. While Japan has reduced its formal tariff rates on imports to very low levels, it has maintained non-tariff barriers, such as non-transparent,
discriminatory standards, exclusionary business practices, and a business environment that protects domestic companies and restricts the free flow of competitive foreign goods into the Japanese market. An important innovation of the Framework Agreement was its emphasis on objective quantitative and qualitative criteria for monitoring and enforcing of each agreement reached, which enables a more complete assessment of implementation of each agreement and provides a dynamic measure of the degree to which Japan’s market is opening to foreign goods and services.

Japan

A major policy goal under the Framework Agreement has been to promote regulatory reform and competition in Japan. Building on the Framework Agreement, the Enhanced Initiative on Deregulation and Competition Policy has become the vehicle for bilateral efforts to promote comprehensive deregulation and strengthen competition enforcement. This initiative supplements Japan's own efforts, under its Deregulation Action Plan, to liberalize and deregulate its economy. To this end, in November 1997, the United States presented a detailed submission proposing specific deregulatory steps for the Japanese Government to take to address burdensome regulation throughout the Japanese economy. Such over-regulation lowers the standard of living of Japanese consumers and creates market access barriers which disadvantage imports, contributing to Japan's global trade surplus.

The Administration forged several new sectoral agreements in 1997 which addressed longstanding barriers to U.S. goods and services, created new business opportunities for U.S. firms, and settled trade disputes with Japan. For example, two agreements concerning telecommunications procurement by Nippon Telegraph and Telephone (NTT) and the National Police Agency, the world's largest telecommunications equipment corporation, were designed to ensure fair access to this important market for U.S. suppliers. The United States will continue to place a high priority on further liberalization of Japan's huge telecommunications equipment and services markets. In the wake of strong action by the Federal Maritime Commission, the United States and Japan also reached two agreements in 1997 under which Japan committed to reform its highly restrictive port practices system, streamlining and liberalizing foreign shippers' access to Japanese harbor services. And in January 1998, the United States and Japan concluded a civil aviation agreement which will significantly liberalize the bilateral civil aviation market and result in benefits for both countries.

The Administration continued to focus attention in 1997 on the monitoring and enforcement of existing agreements to ensure their complete and successful implementation. U.S. and Japanese officials met throughout the year to discuss progress under important agreements covering: autos and auto parts, insurance, flat glass, construction, semiconductors, medical devices and pharmaceutical products, and government procurement of computers and supercomputers.

The United States also addressed market access barriers in Japan through the World Trade Organization (WTO) Dispute Settlement Mechanism. In January, the Administration settled a dispute over Japan's failure to adequately protect sound recordings, resolving the WTO dispute settlement proceeding against Japan. To settle this dispute, Japan adopted amendments to its Copyright Law in December 1996 to provide full protection to sound recordings produced from 1946 to 1971, addressing a deficiency which U.S. industry estimated cost it $500 million annually in Japan. In December, the U.S. reached a settlement with Japan over implementation of the WTO panel decision against Japan's discriminatory tax on distilled spirits. As a result of this settlement, Japan will dramatically lower, and in some cases eliminate, its tariffs on a wide range of white and brown spirits and eliminate its discriminatory tax system on distilled spirits.

The United States initiated WTO dispute settlement procedures against Japan in 1996 regarding market access restrictions in Japan's consumer photographic film and paper sector. The United States argued that the Japanese Government had implemented an extensive array of measures over the past 30 years to offset the effects of tariff, import, and foreign investment liberalization and limit the sale of imported consumer photographic film and paper in Japan. In its final report to the parties, issued in January 1998, the WTO panel failed to find Japan in violation of its WTO obligations. The United States was very disappointed with these findings, stating that the report sidestepped the core issues, particularly the combined effects of the numerous

measures Japan imposed to protect its market. Subsequently, the Clinton Administration announced a new market-opening initiative to continue to press for meaningful access to this market. Under this initiative, an interagency monitoring and enforcement committee will monitor Japan's implementation of its representations to the WTO panel regarding the openness of this market.

In addition to sectoral and structural initiatives, Japan also committed under the Framework to address the fundamental macroeconomic asymmetries that have afflicted Japan's international economic relations. In particular, Japan agreed to work toward reducing its global current account surplus as a percentage of its gross domestic product (GDP). While in 1992 Japan's current account surplus was 3.2 percent of GDP, by 1996, it had dropped to around 1.5 percent ($66 billion). In 1997, however, Japan's economic growth virtually stalled and its current account surplus increased dramatically once again to about 2.3 percent of GDP ($93.5 billion). The Administration has repeatedly emphasized to the Japanese Government the importance of proceeding with its commitment to ensure domestic demand-led growth and avoid a sustained and significant increase in its current account surplus.

U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy

Background -- Japan and Deregulation

Japan's recent government deregulation efforts notwithstanding, the Japanese economy is characterized by excessive, outdated regulations. Unnecessary regulations restrain economic growth, raise the cost of doing business in Japan, lower the standard of living for Japanese consumers, and impede imports. Japanese economists estimate that the government regulates about 40 percent of all economic activity in Japan. Examples of excessive regulation include price controls, unique standards, and burdensome testing and certification requirements. The Japanese Government estimates that if its deregulation plans are fully implemented, from JFY 1998-2003 the Japanese GDP would grow by an additional 0.9 percent annually, while the ratio of current account surplus to GDP would decline 0.9 percent.

Regulations lie at the heart of many of the market access problems faced by American companies doing business in Japan. Some regulations are aimed squarely at imports; others are part of a system which protects the status quo against new market entrants, disproportionately affecting foreign firms. The United States Government has aggressively pushed for elimination of regulations which impede market access for American companies, and many recent U.S.-Japan trade agreements have addressed issues related to the regulation of Japanese markets.

Since 1995, the Japanese Government has focused its energies in this area on implementation of a three-year Deregulation Action Plan. The current action plan will expire at the end of March 1998. In order to encourage Japan to adopt meaningful commitments to deregulate, the U.S. and other trading partners have provided Japan with annual submissions detailing specific deregulation requests. Unfortunately, progress under the Deregulation Action Plan has been modest.

To promote deregulation, the Government of Japan established, by law, an Administrative Reform Council, comprised of representatives from Japan's private sector, academia and the media. Many of the Administrative Reform Council's deregulation recommendations to the Japanese Government were in line with the requests of the United States and others. Given the Council's lack of authority to compel adoption of its

recommendations, however, Japanese ministries and agencies often ignored the most important recommendations. The Administrative Reform Council's mandate expired in December 1997.

In February 1998, the Hashimoto Cabinet established a Deregulation Committee, comprised of seven former members of the Administrative Reform Council's Deregulation Subcommittee. This Deregulation Committee is tasked with compiling a new three-year deregulation action plan by the end of March 1998. The Deregulation Committee's mandate beyond March 1998 is unclear. It appears the Japanese Government is considering whether and how to establish a successor entity to the Administrative Reform Council. The United States has urged that a new entity under the Prime Minister's Office be created which will have a mandate to commit Japan to implementation of new deregulation measures and monitor measures already announced.

The Enhanced Initiative on Deregulation and Competition Policy

In an effort to promote the goals of the Framework Agreement, accelerate the pace of deregulation in Japan, and increase market access for foreign goods and services, President Clinton and Prime Minister Hashimoto on June 19, 1997 agreed to establish the Enhanced Initiative on Deregulation and Competition Policy. The Enhanced Initiative addresses both sectoral and structural issues, and seeks reform of relevant government laws, regulations, and guidance which impede market access for competitive foreign goods and services. Under this initiative, five expert-level groups have been meeting: four sectoral groups in the areas of telecommunications, housing, medical devices and pharmaceutical products, and financial services; and one on structural issues, focusing on competition policy, distribution, and transparency and other government practices. Senior-level meetings, chaired by the Deputy USTR and the Deputy Foreign Minister, were held on November 14, 1997 in Washington, and March 4, 1998 in Tokyo to spur progress under this initiative. At their November 1997 meeting in Vancouver, President Clinton and Prime Minster Hashimoto agreed on the need to demonstrate concrete progress under this initiative by the next G-7 Summit in Birmingham, England in May 1998. The United States anticipates that Japan will demonstrate its commitment to carry out meaningful deregulation, to stimulate domestic demand, and to increase market access for foreign goods and services by the time of the Birmingham Summit.

In November 1997, the United States provided to the Government of Japan the "Submission by the Government of the United States to the Government of Japan regarding Deregulation, Competition Policy, and Transparency and other Government Practices." This represented a detailed submission of deregulation measures covering all of the sectoral and structural areas under the Enhanced Initiative, as well as other sectors. A summary of the key deregulatory areas follows.

Sectoral Deregulation

Telecommunications

In the telecommunications sector, the United States is seeking regulatory changes which will bring more competition to a sector long encumbered by excessive, outdated regulations and by dominant carriers (NTT and *Kokusai Denshin Denwa* (KDD)) that exercise market power to deter the entry and development of new competitors. The United States' submission targets deregulation in basic telecommunications, direct-to-home (DTH) satellite service, wireless equipment and cable television. Specific issues include over-priced interconnection rates, foreign investment restrictions, onerous tariff and licensing procedures, restrictions on

satellite services, and burdensome equipment certification procedures.

Japan has made some progress in deregulating this sector which should increase competitive opportunities. For example, as a result of bilateral consultations, direct-to-home satellite service providers will be able to offer a significantly expanded number of channels; international telecommunications service providers will be able to use leased lines to bypass the over-priced international settlement system and bring international rates in line with those of competitive markets, which are a fraction of Japan's rates; Japan will eliminate the restrictions on foreign investment in its major international carrier, KDD; it will streamline licensing and tariff procedures which unduly encumber telecommunications providers; it will eliminate restrictions on using third parties for transit for international telecommunications traffic; and it will also reduce fees and simplify procedures for testing and certifying wireless equipment. We will monitor these commitments closely.

However, ensuring a truly competitive market, especially for local telecommunications competition, will require much more. For example, the United States has urged Japan to adopt a pro-competitive interconnection regime incorporating long-run incremental cost methodology by the end of 1998, without which progress across the entire basic telecommunication sector will be in jeopardy; that Japan take action to ensure transparent, timely, and non-discriminatory access to rights-of-way for new entrants wishing to establish telecommunications or CATV infrastructure in Japan; that Japan introduce measures to ensure that dominant carriers do not engage in anticompetitive pricing; and further liberalize DTH by permitting unlimited channel use and the use of statistical multiplexing to promote more efficient use of the broadcast spectrum.

Medical Devices and Pharmaceutical Products

The United States continues to seek greater market access for U.S. medical devices and pharmaceutical products through the Enhanced Initiative on Deregulation and the Market-Oriented, Sector Selective (MOSS) Medical/Pharmaceutical talks. As Japan undertakes potentially extensive health care reforms, price reimbursement and regulatory issues remain the focus of bilateral consultations. The Administration conducted government consultations on Japanese deregulation of medical devices and pharmaceutical products in September and November 1997 and March 1998.

The bilateral consultations addressed, in particular, specific Japanese government regulatory policies that continue to hinder the ability of U.S. firms to supply innovative and cost-effective medical devices and pharmaceutical products. The United States urged Japan's Ministry of Health and Welfare to ensure that the pricing system revision under consideration follow a consistent, transparent process and not be imposed disproportionately, or inappropriately, on new and innovative medical devices and pharmaceuticals.

Of particular importance, the United States strongly opposes Japan's proposed implementation of a reference pricing system for pharmaceuticals. The United States believes that prices should be market-based.

In March 1998, in response to priority U.S. Government deregulation requests, Japan announced its intention to undertake necessary measures to expand the acceptance of foreign clinical data and expedite approvals for new drug applications. These changes, while welcome, represent only incremental improvements. The United States will continue pressing for substantive deregulatory actions on these issues, as well as other U.S. deregulation priorities.

Japan

The Administration believes that structural problems underlying Japan's health care system prevent efficient care delivery, substantially increase costs, and impede the timely introduction of new, innovative, and life-saving medical devices and pharmaceutical products. Cutting costs and improving the health care system in Japan will require the elimination of these inefficiencies and increased availability and use of competitive foreign medical and pharmaceutical products.

Housing

Under the Enhanced Initiative, the United States and Japan established a Housing Experts group which met in July and November 1997 and in February and March 1998. The purpose of the group is to promote improved market access in Japan for foreign suppliers of wood building products as called for in the 1990 U.S.-Japan Wood Products bilateral agreement, and to promote full implementation of Japan's Housing Initiative announced by Prime Minister Hashimoto in March 1996. This initiative calls for the reduction of housing costs in Japan by one-third by the year 2000, and places a special emphasis on improved access for imported building products in the short term. Improved market access for wood and other building products and performance-based standards will lead not only to increased market access opportunities for imports, but also to higher quality, safer, and more affordable housing in Japan.

To advance the work of these groups, the United States included in its November 1997 deregulation submission, a number of recommendations to expedite housing deregulation and reduce housing costs in Japan. Some of the proposed measures included: Japan's full and active participation in the APEC initiative for forest products trade liberalization, including the phase-out of tariffs on value-added wood products; expeditious approval of pending applications by U.S. grading and testing organizations, e.g., the American Lumber Standards Committee and Underwriter's Laboratories; publication of testing methods and procedures to implement the new performance based alternative for 2x4 wooden construction, based on international practice; amendment of the Building Standards Law to provide for performance-based alternatives to prescriptive building standards; and implementation of this amendment in a user-friendly manner, consistent with international practice.

While dialogue on standards-related issues has been constructive, the grademark approval process and the resolution of important technical standards-related issues has been slow. For example, while a new performance-based 2x4 construction alternative was announced in March 1997, the testing procedures required for its implementation have not yet been published. The United States is pressing for expeditious action and resolution of outstanding issues like these.

Financial Services

On February 13, 1995, the United States and Japan concluded a comprehensive financial services agreement under the auspices of the U.S.-Japan Framework Agreement. This agreement provides for the liberalization of legal and operational constraints that impeded access by foreign financial services providers in the areas of asset management, corporate securities, and cross-border financial transactions. In the two years since the agreement was concluded, the Japanese Government has implemented the vast majority of commitments within the agreed upon time frames. In some areas, Japan has either accelerated the implementation of certain commitments or expanded their scope.

The United States is monitoring the agreement to ensure that implementation remains on schedule and is assessing the effect of the actions undertaken, using the quantitative and qualitative criteria included in the agreement. At the most recent follow-up meeting in October 1997, the United States emphasized the need for further improvements in financial disclosure and transparency.

In an announcement on November 11, 1996, Prime Minister Hashimoto committed Japan to conducting broad-based deregulation of its financial sector, aimed at making Tokyo's financial markets comparable to those of New York and London by the year 2001. The Japanese Government introduced financial liberalization legislation into the Diet in March 1998.

Structural Deregulation

Competition Law and Policy

Under the Enhanced Initiative on Deregulation and Competition Policy, the United States has recommended several measures which it believes would lead to tougher Antimonopoly Law enforcement and strengthen competition policy. Despite the recent "upgrade" of the Japan Fair Trade Commission's (JFTC) organizational status, the United States continues to believe that further strengthening of competition law enforcement and policy in Japan is critical to improving market access. Foreign companies continue to face numerous impediments in accessing Japan's distribution channels for a wide range of sectors, including: the automotive, paper and paperboard, flat glass, and photographic film and paper markets. The Administration has focused on the following Antimonopoly Law and competition policy issues under the Enhanced Initiative.

Deregulation Process and the JFTC: The United States is urging more active participation by the JFTC in Japan's deregulatory process. The JFTC is the only Japanese agency mandated to promote competition, and the JFTC's low level of involvement in the deregulation debate has been noticeable. The United States has requested that the Deregulation Committee invite the JFTC to participate regularly in its meetings because the JFTC could provide important competition analysis and assistance. Also, the United States has urged the JFTC to establish a framework for proposing and reviewing deregulatory measures.

Antimonopoly Law Compliance Programs: In its November 1997 deregulation submission, the U.S. Government recommended that the JFTC initiate a review of the Antimonopoly Law compliance programs of influential companies in markets where foreign companies have experienced market access problems, e.g., flat glass, paper and paperboard. In February, 1998, the JFTC announced it would survey the top 2500 Japanese firms regarding their Antimonopoly Law compliance programs. The United States has urged the JFTC not only to publish the results of its survey but also to make specific recommendations regarding how firms can improve their Antimonopoly Law compliance programs.

Economic Surveys Transparency: The JFTC over the last few years has completed a number of economic surveys on such sectors as photographic film and paper, flat glass, and paper and paperboard in markets where U.S. companies have encountered anticompetitive activities that inhibit market access. Although these economic surveys are useful as a means to better understand an industry, it is often not known whether firms in the surveyed industry comply with recommendations or advisements made by the JFTC. To address this problem, the United States is urging the JFTC to implement a transparent follow-up procedure to monitor whether or not firms have reformed potentially anticompetitive business practices in accordance with measures

recommended or advised by the JFTC.

Private Party Injunctions: For several years, the United States has urged Japan to amend its Antimonopoly Law to make it easier for private citizens to bring lawsuits based on violations of the Antimonopoly Law. Current legal requirements discourage private citizens from filing suits. The Ministry of International Trade and Industry (MITI) established a study group in September 1997, to consider whether the Government of Japan should amend the Antimonopoly Law to allow private parties to sue for an injunction based on a violation of the Antimonopoly Law. The U.S. Government has expressed the strong hope that the MITI study group's conclusions on this issue will be supportive of amending the Antimonopoly Law. The U.S. Government also has urged the JFTC to support amending the Antimonopoly Law to provide for private injunction actions. The Japan Federation of Bar Associations recently announced its support for an amendment allowing private parties to sue for injunctions. Given the JFTC's resource and staffing constraints, and the importance of stronger competition policy and law enforcement, the U.S. Government maintains that it is important that private citizens also be able to enforce the Antimonopoly Law. In March, 1998, the JFTC announced that it planned to set up a study group to review this issue.

Antimonopoly Law Exemptions: The U.S. Government has urged that numerous exemptions to the Antimonopoly Law either be abolished or substantially narrowed in scope. In June 1997, the Diet passed legislation to abolish or narrow numerous exemptions. In December 1997, the Government of Japan announced its intent to abolish the exemptions for Depression Cartels and Rationalization Cartels, two of the more objectionable exemptions. By March 31, 1998, the JFTC will complete its review of all outstanding exemptions and is expected to recommend abolishing or narrowing additional exemptions.

Bid-rigging: Bid-rigging continues to be a serious problem in Japan. The U.S. Government has called for more aggressive enforcement actions against these activities. In order to improve enforcement, the United States has urged Japan to strengthen the JFTC's investigatory powers, proposing for example that the JFTC share power with the Public Prosecutor's Office to conduct criminal investigations. This concern regarding the JFTC's investigatory powers has been echoed in the Japanese press which suggested strengthening the JFTC's compulsory powers in line with other investigative bodies such as the Securities and Exchange Surveillance Commission.

JFTC Resources: The United States has consistently argued since the Structural Impediments Initiative that the JFTC's budget and staff must be increased to ensure that it is able to carry out its mandate. The JFTC's duties are rapidly increasing; for example, the abolition of numerous Antimonopoly Law exemptions now requires the JFTC to police more behavior. The U.S. Government has recommended that the JFTC staff increase at an annual rate of 20 persons, and that the JFTC should be exempt from the Japanese Government's present rule requiring government organs to submit zero-growth budgets.

Distribution

Japan's highly regulated, inefficient distribution system is widely recognized as a significant trade and investment barrier. In the Enhanced Initiative's Sub-group on Structural Issues, the United States targeted laws, regulations, and practices that contribute to abnormally high costs of distribution in Japan arising from slow customs processing, overregulation of the trucking and warehouse industries, and excessive regulatory

restrictions in the retail sector. In its November 1997 deregulation submission, the United States requested the implementation of significant deregulation measures to address key distribution problems faced by foreign firms.

Large-Scale Retail Store Law: This law has long been an obstacle to foreign investors and exporters by limiting the establishment, expansion, and business operations of large stores in Japan, the stores most likely to serve as distributors of imported products. Under the Large-Scale Retail Store Law, Japanese consumers also lose. By impeding the business operations of large stores, the law has reduced productivity in merchandise retailing, raised costs, discouraged new domestic capital investment and ultimately decreased the selection and quality of goods and services.

In December 1997, two MITI advisory councils issued a joint recommendation that the Large-Scale Retail Store Law be abolished, and MITI announced its intention to do so by the spring of 1999. The Government of Japan is considering replacing this law with the Large-Scale Retail Store Location Law, which would allow local jurisdictions to regulate large store openings or expansions for the purpose of maintaining the local environment, but allegedly would eliminate the supply/demand considerations of the existing law. Additionally, the Ministry of Construction has proposed the amendment of the City Planning Law to expand the ability of local authorities to regulate zoning. The United States is extremely concerned about the possibility for abuse or inconsistent application of this new legislation, and stressed the need for procedural transparency, clear and specific implementation guidelines, effective central government monitoring, and a central government process for handling grievances. The United States also has urged MITI to voluntarily use a public notice and comment process in implementing the Large-Scale Retail Store Location Law to improve transparency and promote business and consumer confidence.

The United States also is seeking the elimination of other market adjustment laws, such as the *Bunyaho* which affects the business activities of large-scale enterprises to ensure business opportunities for small and medium-sized enterprises and the *Shochoho* Retail Business Adjustment Law. The United States is particularly concerned about the *Bunyaho* being used to restrict the opening of new multiplex cinema complexes.

Customs Processing: Despite progress in recent years, Japanese import clearance procedures remain slow and cumbersome by industrial country standards, raising costs for U.S. exporters and Japanese consumers. Current U.S. and Japanese Government work to improve import clearance under the Enhanced Initiative builds on regular ongoing bilateral consultations between customs agencies and on the work of the Working Group on Import Procedures under the Structural Impediments Initiative.

These discussions have helped promote changes in Japan's import processing procedures, including the elimination of the requirement to process all air cargo through a separate cargo holding area, the institution of a computerized customs processing system, integration of that computer system with inspection authorities from the Ministry of Health and Welfare and the Ministry of Agriculture, Forestry and Fisheries, and establishment of a pre-arrival approval customs clearance procedure. Remaining problems, described in greater detail below under Import Clearance Procedures, will continue to be a priority for the Structural Deregulation Sub-group under the Enhanced Initiative.

Transportation and Warehousing: Japanese laws limit competition and raise costs in the trucking business by, inter alia, requiring new entrants to meet minimum-number-of-vehicle requirements and by imposing

burdensome rate filing requirements on companies. The United States has requested the Government of Japan to: establish a generally available nationwide trucking operating license that would be available to international companies serving Japan that wish to engage in intermodal shipping operations; remove any district licensing requirements for trucking services that specify a minimum number of vehicles; eliminate pricing restrictions on freight forwarding; and reduce significantly the restrictions on entry in the warehouse sector, including licensing and notification requirements, with the goals of reducing shortages of storage space, lowering high fees, and minimizing burdens for foreign firms related to the distribution of their products.

Transparency and Other Government Practices

Improvements in the transparency of the public policy process and increased opportunities for public participation in the administrative system are necessary counterparts of sectoral deregulation in Japan. Such improvements could play an important role in reducing market access problems of foreign firms in Japan.

Lack of Transparency in Administrative Practices: Foreign firms are disadvantaged by the lack of transparency in Japanese administrative practices. As a consequence, the United States has been pressing Japan for years to make its administrative procedures and practices more open and transparent. Recently under the Enhanced Initiative, the United States has raised specific concerns, including the following:

Lack of an Information Disclosure Law: To date, Japan has not enacted an information disclosure law, analogous to the U.S. Freedom of Information Law, which would provide foreign firms, as well as the Japanese public, with access to records and other information in the control of governmental entities. However, based upon a recommendation by the Administrative Reform Council in 1996, the Government of Japan is expected to submit information disclosure legislation to the Diet by the end of JFY 1997 (March 31, 1998). One of the U.S. priorities under the Enhanced Initiative is the expeditious enactment and implementation of an information disclosure law that would provide the public with effective access to government information in Japan.

Lack of a Public Rulemaking Process: Japanese ministries and agencies prepare regulations in a “black box” with participation generally limited to bureaucrats, former bureaucrats and special interests. Others with an interest in the proposed regulation are generally denied the opportunity to take part in the process. Under the Enhanced Initiative, the United States has set as a priority Japan’s adoption of a public rulemaking process that would enable all interested parties to participate effectively in the development of regulations. The United States notes that the Prime Minister’s Conference on Administrative Reform *(gyosei kaikaku kaigi*), in its report in December 1997, also recommended adoption of a notice and comment process in Japan. Under a notice and comment process, all governmental entities would be required to publish proposed regulations, provide a reasonable opportunity for interested parties and the general public to provide comments on the proposed regulation, and to give serious consideration to the comments in preparing the final regulation. To date, only the Japan Fair Trade Commission and the Ministry of Posts and Telecommunications have used a notice and comment process in some of their rulemaking efforts. Pending the adoption of such a system in Japan, the United States has been urging individual ministries to undertake voluntarily such a process when they develop regulations and policies of particular public interest.

Use of Administrative Guidance: The lack of transparency in the Government of Japan’s extensive use of informal directives or "administrative guidance" remains a serious concern to the United States. Despite requirements in the 1994 Administrative Procedure Law that administrative guidance be put into writing upon

the request of the private party receiving oral guidance and when administrative guidance is issued to multiple persons, according to a Management and Coordination Agency survey, there have been few instances in which it has been issued in writing. The United States has called upon the Government of Japan to increase the disciplines imposed on the use of administrative guidance.

Use of Advisory Councils: The Government of Japan often relies upon advisory councils (*shingikai)*, established by ministries and agencies to formulate policies and recommendations. While the councils have the appearance of objectivity and independence from the bureaucracy, in fact their members include former bureaucrats, their secretariats are staffed by the affected ministry, and they are essentially expected to endorse policies developed or advocated by the ministry. Under the Enhanced Initiative, the United States has called upon Japan to enhance the transparency and objectivity of the advisory councils. The Prime Minister's Conference on Administrative Reform, in its report in December 1997, called for similar reforms of the advisory council process.

Need for Improvement of the Application Process: Despite provisions of the 1994 Administrative Procedure Law, which were designed to standardize administrative procedures, and make them more transparent and fair, U.S. firms have repeatedly complained about the burdensome and unpredictable nature of the application process in Japan. Potential applicants for licenses, permits and other approvals often must engage in extensive prior consultations with governmental entities and satisfy numerous requests for additional information before they are allowed by the ministry to submit their application. These prior consultations, which may take six months to a year or more, and the repeated requests for information appear to arise because the standards, criteria and other requirements used to evaluate an application often are not adequately set out in published regulations. Under the Enhanced Initiative, the United States has called upon the Government of Japan to take measures to remedy this situation.

IMPORT POLICIES

In the Uruguay Round, Japan agreed to "zero for zero" tariff eliminations on pharmaceuticals, paper and printed products, beer, whisky, and brandy, agricultural equipment, medical equipment, construction equipment, furniture, steel, and toys. Japan also adopted the chemical harmonization initiative. Japan cut tariffs on copper and aluminum, with the top rate reduced from 12.8 percent to 7.5 percent. Japan is one of the 43 signatories of the Information Technology Agreement of 1997, which eliminates tariffs on the overwhelming majority of covered products by the year 2000. Japan's remaining high tariffs affect primarily agricultural and food products, including white distilled spirits, processed food products, wood and wood products, and leather and leather products. Tariffs on white distilled spirits will be eliminated under the December settlement of the WTO distilled spirits dispute.

In November 1997, at the APEC Leaders' meeting in Vancouver, Canada, the United States, Japan and 16 other APEC economies endorsed a program of accelerated trade liberalization measures in nine sectoral areas: environmental goods and services, the energy sector, fish and fish products, toys, forest products, gems and jewelry, medical equipment and instruments, chemicals, and a telecommunications mutual recognition agreement. As the world's second largest economy, Japan's full participation in these initiatives will be vital to ensuring their successful completion in 1998 as directed by APEC Leaders.

Distilled Spirits

Japan

In July 1996, a WTO panel ruled against Japan in dispute settlement proceedings initiated in 1995 by the United States, Canada, and the European Union regarding the discriminatory effects of Japan's excise tax system on imported distilled spirits. In October 1996, the WTO Appellate Body upheld the panel's ruling and reaffirmed that the Government of Japan's unequal taxation of domestic and imported distilled spirits is discriminatory and violates Japan's GATT obligations. The ruling required that Japan bring its liquor tax laws into conformity with GATT standards. Japan's initial proposed solution, however, maintained a three percent difference between domestic shochu and imported spirits and called for a 23-month and five-year implementation period for high grade and low grade shochu, respectively. The United States immediately requested WTO arbitration, and the arbitrator ruled that Japan had 15 months to come into full WTO compliance.

Following many rounds of negotiations in 1997, the United States and Japan successfully settled their WTO dispute. In return for allowing the Japanese Government to maintain a tax disparity between Japanese low grade shochu and imported distilled spirits beyond the arbitrator's deadline of February 1998, Japan agreed to accelerate implementation of excise tax rate increases on high grade shochu and decreases on whisky to May 1, 1998, and on low grade shochu to October 1, 2000. Moreover, the United States received a substantial compensation package, including the elimination of tariffs on all brown spirits, vodka, rum, liqueurs and gin by April 1, 2002. These measures go well beyond those taken in the Uruguay Round, in which Japan delayed to 2004 tariff elimination on brown spirits and refused to consider tariff elimination on white spirits.

The U.S. distilled spirits industry estimates that this settlement will reduce excise taxes on U.S. spirits exports to Japan by nearly 60 percent, resulting in an annual tax savings of $94 million. Annual U.S.-origin spirits exports to Japan are conservatively estimated to increase by 20 percent.

Fresh Horticultural Products

Japan continues to restrict the importation of numerous U.S. fresh fruits, vegetables and other horticultural products. Some U.S. products, like eggplant, potatoes, and plums, are totally banned due to Japanese concerns about entry of pests or plant diseases.

In instances where the United States has obtained phytosanitary protocols which permit importation of several other horticultural products, such as apples, cherries, and nectarines, these apply to only specific limited product varieties, while excluding other almost identical varieties. This has occurred despite presentation of scientific evidence to the Japanese authorities that effective treatments against pests of one variety can be extended easily to protect new varieties. Under the current system, new varieties must undergo costly and time-consuming additional scientific research and testing before they can be allowed entry under a phytosanitary protocol. U.S. experts contend these Japanese requirements are unfounded scientifically and are a barrier to trade. The U.S. Government continues to seek systemic reform in Japan's policy. After failing to reach a resolution through bilateral discussions, and through WTO consultations, the United States requested a WTO dispute resolution panel to decide the issue. The panel will hold its first substantive meeting with the parties on April 2-3, 1998.

U.S. fresh horticultural product exports to Japan are also hampered by burdensome on-site inspection requirements. Under the current policy, Japan requires inspection at the exporting country production site by Japanese Government inspectors, even when the Ministry of Agriculture, Forestry and Fisheries cannot provide

enough inspectors to accomplish the job expeditiously and at reasonable cost. In annual bilateral discussions and under the auspices of Japan's own deregulation initiative, the U.S. Government has requested that Japan allow U.S. authorities to perform the work under Japanese Government supervision. Significant progress has been made on these requests, particularly for the cherry program. The issue will continue to be discussed, however, as additional liberalization is warranted.

Another area of major, ongoing concern is the lack of transparency in Japan's fumigation policy. Japanese plant quarantine regulations require fumigation of imported fresh horticultural products if, upon import inspection, a shipment is found to be infested with live insects, regardless of whether or not such pests are already present in Japan. In addition to the added expense and delays in import clearance, this requirement has proven particularly detrimental for maintaining the quality of delicate fresh produce such as leafy vegetables, strawberries, some citrus, and avocados after import.

After repeated requests by foreign governments for reform, the Ministry of Agriculture, Forestry and Fisheries has begun to implement a non-quarantine pest list by partially amending the Plant Quarantine Law to exempt 30 pests and six plant diseases from fumigation requirements. While this appears to be an important positive step, the list does not include various commonplace pests of interest for U.S. horticultural product exports. The U.S. Government will continue to press the Government of Japan in all available technical and deregulatory fora to develop a comprehensive list of non-quarantine pests and transparent inspection procedures in an effort to reduce excessive fumigation.

Fish Products

Japan maintains nine global and two bilateral import quotas on fish products. U.S. fishery exports to Japan subject to import quotas include: pollock surimi, pollock roe, herring, cod, mackerel, whiting, squid, and several other fish products. These quota-controlled imports into Japan account for hundreds of millions of dollars in sales annually, approximately one-fourth of total fishery exports to Japan. In the past several years, there has been a downward trend in sales of these import-quota controlled items, largely due to the economic recession in Japan. In the Uruguay Round, Japan agreed to cut tariffs by about one-third on a number of fishery items, but avoided commitments to modify or eliminate import quotas. While Japan has taken steps to improve its administration of the import quotas on mackerel, jack mackerel and kelp in 1997, the application procedures and the lack of transparency on other fish products still cause concern for U.S. exporters. At the January 1997 session of the annual fishery trade consultations, the United States and Japan agreed to continue formal discussions to identify solutions to these import quota issues at the 1998 session.

The Fisheries Sector has been identified as one of the nine sectors for Early Voluntary Sectoral Liberalization under APEC. At Japan's request, a section on cooperative fisheries management was included in the proposal. The fisheries initiative will contribute significantly to trade liberalization in the region and with Japan.

General Food Products

In the Uruguay Round, Japan agreed to bind tariffs on all agricultural products and to reduce bound rates by an average of 36 percent during the six-year period 1995-2000, with a minimum 15 percent reduction on each tariff line. Japan also agreed to gradually reduce tariffs on imports of beef, pork, fresh oranges, cheese, confectionery, vegetable oils, and various other items. Even after full implementation of the Uruguay Round

cuts, however, imports of many intermediate and consumer-oriented food and beverage products will still face relatively high tariffs, including: beef, fresh oranges, fresh apples, citrus and other fruit juices, corn grits, confectionery, snack foods, ice cream, and processed tomato products.

Japan also agreed in the Uruguay Round to convert all import bans and quotas (except for rice) to tariffs, which would be reduced between 1995 and 2000. Inflexible import quotas for wheat, barley, starches, peanuts, and dairy products were replaced by tariff rate quotas. Japan retains state trading authority and price stabilization schemes for these products but is currently studying proposals to liberalize imports to a small degree.

The United States is closely monitoring Japan's implementation of the Uruguay Round measures for agriculture, particularly rice imports (and exports of imported rice) and safeguard measures for beef and pork. Bilateral efforts have also focused on countering any technical or food safety-related measures that threaten to impede imports, including product standards and labeling issues.

Import Clearance Procedures

Despite progress in recent years, Japanese import clearance procedures remain slow and cumbersome by industrial country standards, raising costs for U.S. exporters companies and Japanese consumers. Continuing U.S. and Japanese Government efforts to improve import clearance are being discussed under the Enhanced Initiative on Deregulation and Competition Policy as well as in regular bilateral consultations between customs agencies.

These discussions have helped promote changes in Japan's import processing procedures including: the elimination of the requirement to process all air cargo through a separate cargo holding area (Baraki-cargo area) 30 kilometers from Tokyo's Narita airport; the institution of a computerized customs processing system; integration of that computer system with inspection authorities from the Ministry of Health and Welfare and the Ministry of Agriculture, Forestry and Fisheries; and establishment of a pre-arrival customs clearance procedure. As a result of these changes, the cargo cleared on site at the Narita Airport has increased from 51 percent to 76 percent and the average time required for customs clearance has been reduced.

Problems remain however. For example, while the Customs Division established a new computer connection with other inspection agencies in 1997, many of the inspection agencies' automated systems still are not compatible. Average processing times remain slow relative to other OECD countries. User fees at the Narita and Osaka's Kansai Airports are still high. The application of customs regulations and rulings is not uniform throughout Japan. Customs processing hours of operation are short. An extension, from 8:30-5:00 to 7:00-8:00, for the free processing of imports would greatly benefit importers and ease the process of onward transportation. Additionally, the United States is concerned that the new Additional Tax (Law), inaugurated in October of 1997, will cause a slowdown in customs processing and result in higher costs. This law institutes an "administrative punishment" for mistakes, clerical or otherwise, which will cause importers to spend more time preparing paperwork and customs officials to spend more time checking it. Japan's current system also disadvantages imports by allowing only five high-value and 20 low-value items per import declaration, but allowing 15 high-value items and 60 low-value items on export declarations, both assessed at a rate of 7,800 yen for an hourly declaration.

Increasing the personal tax exemption for imported goods from 10,000 yen to 30,000 yen would make catalog

purchases a more attractive choice for Japanese consumers and benefit foreign catalog retailers. Japanese Customs undertook to hire temporary workers to deal with the annual backlog of packages that accumulate during the Christmas season.

Leather and Leather Products

In 1991, Japan liberalized treatment of footwear imports, setting a footwear quota of 2.4 million pairs per year which, by Japanese Fiscal Year 1997, has been raised to roughly 12 million pairs per year. In the Uruguay Round, Japan committed to reduce tariffs over an eight-year period on under-quota imports of leather footwear, crust leather and other leather categories. The U.S. Government and U.S. leather and leather footwear industries continue to push for elimination or further liberalization of the quotas.

Above-quota imports of footwear still face stiff barriers. The above-qouta tariff is currently 48.8 percent or 4,612.50 yen per pair, whichever is higher. These rates will drop to 30 percent or 4,300 yen, whichever is higher, by 2002. In principle, the over-quota tariff rate will be reduced by 50 percent and the yen minimum alternative rate by 10 percent over the eight-year phase-in period. In practice, however, the yen minimum alternative rate is applied in a manner which negates the effect of the larger tariff rate reduction. Moreover, while above-quota imports grew substantially in JFY 1996, they still totaled only about 7.7 percent of under-quota imports, suggesting that the higher rates for above-quota imports are effectively discouraging additional imports.

Low-Malt Beer

Since 1994 two major Japanese brewers have been marketing low-malt beers called "happoshu" or "sparkling brew" in Japan. One reason for producing this beer was to take advantage of a lower domestic liquor tax (excise tax). The excise tax on beer in Japan is divided into three categories according to malt content: the lower the content, the lower the tax rate. Under the 1994 Liquor Tax Law; "beer" was categorized as a beverage with malt content of 67 percent or more, and sparkling brew was categorized as "miscellaneous liquor" subject to a lower excise tax. Some imported malt beverages were categorized in the same, lower-tax sparkling brew category.

In October 1996, the Ministry of Finance redefined the categories of malt beverages to reduce the significant tax advantage enjoyed by the sparkling brews. As a result, some U.S. exporters of lower-malt content beer had to reformulate their products to retain the lower tax treatment and remain competitive with domestic sparkling brews.

Imported beverages with lower malt content are classified for customs purposes as "other fermented beverages" which, until the tariffs on beer and sparkling brews were equalized in April 1997, resulted in low-malt beer being assessed at a tariff rate approximately seven times higher than that on regular beer. This prohibitive tariff rate levied on imports prior to April 1997 greatly discouraged U.S. export sales of low-malt beer to Japan and gave the two major Japanese producers a major advantage in a growing product category for which retail sales total nearly $100 million, or six percent of the malt beverage market.

Racehorses

Japan

The Japan Racing Association restricts participation of foreign horses in Japanese races. In addition, only Japanese residents may register with the Japan Racing Association as racehorse owners in Japan. The United States and other interested countries have pressed Japan to liberalize access for foreign horses, with modest success. By 1997, nine Japan Racing Association races have been opened to foreign racehorses with race experience outside Japan. The Japan Racing Association has announced that it will increase this number to eleven by 1998.

Rice

Under the Uruguay Round Agreement on Agriculture, Japan committed to provide market access concessions for imported rice. Specifically, Japan agreed to increase the amount of imported rice to eight percent of domestic consumption by JFY 2000. For JFY 1997, Japan agreed to import 530,600 tons (milled rice basis). Within this import commitment, Japan also has established a simultaneous-buy-sell (SBS) system for some imported rice, allowing importers and exporters to set quality and other requirements, subject to Food Agency approval.

In JFY 1997, the Government of Japan conducted four "SBS" rice tenders and five "ordinary" rice tenders, totaling 543,250 tons. Of this amount, 272,128 tons (50.1 percent) originated in the United States. Overall, 489,200 tons of rice entered under the Food Agency's "ordinary" import system (U.S. share: 48.6 percent), and 54,050 tons were purchased under the "SBS" system (U.S. share: 63.3 percent).

The U.S. Government has expressed concern to Japanese officials that much of the rice purchased under Japan's WTO commitments has been put into stocks, because this policy prevents imported rice from reaching Japanese consumers, contrary to the spirit of Japan's WTO market access commitments. Further, U.S. officials remain concerned over the nature of Japan's food aid donations. We will continue to monitor closely Japan's rice purchases in the coming year.

Wood Products/Housing

The elimination of tariffs on value-added wood products has been a longstanding U.S. objective in Japan. At the November 1997 APEC Summit, APEC economies, including Japan, endorsed free trade negotiation initiatives in nine sectors, including forest products (which covers wood, paper, printed materials and wood furniture). A key component of the forest products initiative is the elimination of tariffs for wood products in the 2002-2004 time frame. Work on these sectoral trade liberalization proposals is due to be completed by the June 1998 APEC Trade Ministers meeting, with implementation due to begin in 1999.

Japan is the United States' top export market for wood products. Exports of forest products totaled $2.7 billion in calendar year 1997, down 18 percent from the level in 1996. A sluggish housing market and the continued depreciation of the yen against the U.S. dollar reduced Japan's import levels for wood last year. To expand the market for wood products in Japan, the Government of Japan must restore consumer confidence, increase competition through product standardization, and remove barriers which include restrictive codes and standards under the Building Standard Law, unjustifiably cumbersome testing methods for engineered wood products, and tariff escalation on value-added wood products.

The United States seeks greater regulatory transparency and acceptance of U.S. products for residential construction, a growing part of Japan's $140 billion building materials market. Housing has been designated as one of four priority sectors under U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy and is described in further detail in that section.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Certification problems hamper market access in Japan. In some cases, advances in technology make Japanese standards outdated and restrictive. Japanese industry often supports safety and other standards that are unique to Japan and restrict competition. In some areas, however, the Government of Japan has simplified, harmonized, and eliminated restrictive standards to follow international practices.

The principal organization that adjudicates standards and certification disputes between foreign companies and the Government of Japan is the Office of the Trade and Investment Ombudsman (OTO). In 1994, the Office of the Trade and Investment Ombudsman came under the Prime Minister's office and was authorized to recommend actions to appropriate ministries. The Office of the Trade and Investment Ombudsman has had some modest impact but still lacks formal enforcement authority.

Biotechnology

Japan has taken a scientific approach to the regulation of trade in agricultural biotechnology products produced using genetically-modified organisms (GMOs). To date, the Ministry of Agriculture, Forestry and Fisheries and the Ministry of Health and Welfare, which have regulatory responsibility for biotechnology products, have approved the importation of fifteen GMO varieties, including corn, potatoes, cotton, and soybeans.

The U.S. and Japanese regulatory approaches to biotech products are closely aligned and both countries continue to cooperate on food safety initiatives within international fora (OECD, APEC, Codex Alimentarius). However, the Japanese Government is still developing its policy on GMO regulation and labeling. In response to Japanese consumer concern about labeling foods produced using biotechnology, the Ministry of Agriculture, Forestry and Fisheries organized a twenty-member biotechnology food labeling discussion group, comprised of farmers, scholars, consumers, producers and distributors, and the Diet has created a new subcommittee to review the sufficiency of current regulations on disclosure and safety assessment.

Dietary Supplements

In March 1996, the OTO issued a ruling supporting significant deregulation of vitamins, herbs, and minerals. The OTO's Market Access Ombudsman Council recommended, among other things, that dietary supplements normally distributed and marketed overseas as foods should be treated as foods, and not as pharmaceuticals under the purview of Japan's Pharmaceutical Affairs Law. This recommendation called on the Ministry of Health and Welfare to take action to accomplish this for vitamins in JFY 1996, herbs in JFY 1997, and minerals in JFY 1998.

Ministry of Health and Welfare's actions to date raise concerns that it will not accomplish the task set for it by the OTO. The Ministry established study groups composed of government, industry, and academic experts to study each category of dietary supplement but the work of these study groups has become bogged down.

The United States views the slow pace of this process, and consequent prospects for timely reform, as a continuing concern.

The Ministry of Health and Welfare identified in March 1997 seven vitamins to be treated as foods and six other vitamins to fall between pharmaceutical and food regulations. The basis for the Ministry's decision was unclear, as is the status of the six vitamins which were not clearly reclassified as foods. A further concern arises from the fact that even those seven vitamins now treated as foods may face insurmountable barriers when marketed in tablet form due to the fact that common excipients used to make such tablets may not appear on the positive list of food additives under the Food Sanitation Law. Therefore, vitamins containing these excipients still cannot be sold in Japan.

The U.S. Government continues to work with the Ministry of Health and Welfare in the MOSS reviews, the OTO, and other fora to achieve market access for U.S. dietary supplements through full and meaningful implementation of the OTO recommendations. A major focus of attention will be the announcement by the Ministry of Health and Welfare of steps to reclassify herbal products as foods by April 1, 1998.

Food Additives

Processed food imports into Japan often are hampered by Japanese standards affecting food additives, even though those additives may be generally recognized as safe elsewhere. Japan is revising its Food Sanitation Law to bring its processes for assessing food additives into conformity with WTO Sanitary and Phytosanitary (SPS) measures. Still, Japan's regulations concerning food additives remain unusually strict. The U.S. Government encourages U.S. firms and industry associations to file applications with Japan's Ministry of Health and Welfare allowing sufficient time for assessment. The United States has raised Japan's regulation of food additives in bilateral talks on deregulation.

Pesticides Residues

The Ministry of Health and Welfare continues to establish new residue standards for pesticides, and to provide full notification to the WTO and the opportunity for comment and review. The U.S. Government is providing scientific data pertaining to relevant U.S. and international standards for the chemicals concerned.

While the Government of Japan has made progress in establishing pesticide residue standards in line with internationally recognized tolerance levels, further government action remains necessary to help counter misleading information regarding the safety of imported food and agricultural products.

Veterinary Drugs

The United States also is concerned by Japan's safety review process for veterinary drugs. Japan's practice of waiting for CODEX to adopt an international standard before evaluating scientific evidence results in unnecessary delays in establishing tolerance levels for veterinary drugs in Japan. Japan's policy of prohibiting detectable residue levels of these drugs, without conducting a risk assessment in a timely manner, appears to be inconsistent with Japan's obligations under the WTO SPS Agreement. The United States has urged Japan to undertake evaluation of scientific evidence in order to establish tolerance levels for new veterinary drugs in a timely fashion, and not to delay the process waiting for the outcome of CODEX deliberations. Japan's recent

decision to proceed with a safety review of chlortetracycline (CTC) simultaneously with the CODEX deliberations is encouraging to the extent that it reflects a decision by the Japanese Government to conduct these reviews in a more timely manner.

GOVERNMENT PROCUREMENT

Computers

U.S. makers of computer goods and services are global leaders in technology and performance and are among the largest and most successful foreign firms in Japan. However, they have long been under-represented in the Japanese Government market for computers, where their share has been one third or less of their share of the larger, more competitive Japanese private sector market. To rectify this anomalous situation, the United States and Japan concluded a government procurement agreement on computers in January 1992. Under the agreement, the Government of Japan agreed to institute changes to its procurement practices with the goal of expanding government purchases of competitive foreign computer equipment, software and services.

Results from the agreement have been unsatisfactory. Foreign computer manufacturers' share of the Japanese Government market for midrange and mainframe computers and workstations increased from 6.6 percent in 1991 to 13.7 percent in 1994, but much of this gain was reversed by 1996, as the foreign share dropped to 9.3 percent. These figures compare unfavorably with a fairly consistent foreign market share of more than 30 percent of Japan's private sector computer market. Broken down by market segments, the data reveals that from 1994 to 1996 foreign market share of purchases by national government agencies declined from 11.9 to 9.4 percent, and the foreign share of the quasi-government market (important government-related entities like Nippon Telephone and Telegraph and the Japan Rail companies) fell from 21.2 percent to 10.7 percent.

Similar trends describe the procurement of personal computers. The foreign share has declined steadily from a high of 15.0 percent in 1992 to 7.7 percent in 1996. This has occurred despite total Japanese Government spending on personal computers tripling between 1993 and 1996.

The United States expressed concern about the decline in the foreign market share of Japan's public sector procurement of computers at the annual review under the bilateral computer agreement in Tokyo on October 30, 1997. Specifically, the United States noted continuing reports of unjust low-priced sales by Japanese manufacturers, unequal access to bidding information, and sole-sourcing of procurements by government agencies, particularly for important systems integration contracts. The United States also called for expanded and improved application of the Japanese Government's "Overall Greatest Value" methodology, which allows procuring entities to give greater consideration to quality and performance factors in addition to price in evaluating bids for computer procurements. The two governments also discussed the appropriateness of lowering the 100,000 SDR threshold, which is the minimum value of procurements covered under the Agreement. This restriction is limiting the scope of the Agreement, as lower-cost personal computers, workstations, and network servers comprise an increasing proportion of purchases. These smaller computers tend to be acquired in a more decentralized manner and in lower value amounts than more traditional large computers.

In view of American computer makers' proven track record of global competitiveness, and the responsibility of the Japanese Government to ensure that its procurement is conducted in a fair and non-discriminatory manner, the limited access of U.S. computer companies to the Japanese Government market remains a matter of serious

concern. The two government are scheduled to later this year.

Construction, Architecture and Engineering

Although American firms have experienced some symbolic successes in Japan's construction, architectural, and engineering sector for public works projects over the past year, the U.S. Government continues to be concerned about the serious problems that remain. The U.S. Government will continue to work with Japan to resolve these issues and expects to see substantial improvement in this sector prior to the next annual review of the U.S.-Japan public works construction arrangements in the summer of 1998.

The United States and Japan meet annually to review two arrangements covering this sector -- the Major Projects Arrangement (MPA) and the 1994 U.S.-Japan Public Works Agreement, which includes the "Action Plan on Reform of the Bidding and Contracting Procedures for Public Works" (Action Plan). The MPA, agreed to in 1988 and amended in 1991, was designed to improve access to Japan's public works construction market and includes a list of 42 projects covered by the MPA. Under the Action Plan, Japan must use open and competitive procedures on procurements valued at or above the threshold levels of the WTO Government Procurement Agreement. Also under the Action Plan, Japan reaffirmed its MPA commitments, which will remain in effect until all projects covered by the MPA are completed.

Over the past year, U.S. firms have experienced limited success in this sector. During the third annual review of the public works construction arrangements in July 1997, the U.S. Government learned that American firms won over $100 million in contracts in Japan since the 1996 review. Although this figure was three times higher than the amount won the previous year -- when U.S. firms encountered many operational impediments in the implementation of the Action Plan -- it falls far short of the value of the contracts won by American firms during the development of Kansai International Airport in the late 1980's. The United States hopes to see substantial improvement before the 1998 review, particularly now that the procurements for the multi-billion dollar Chubu New International Airport (Chubu Airport) near Nagoya are moving forward.

The United States has been watching closely the development of Chubu Airport, an MPA project. Work on the Chubu Airport is underway and is expected to be completed prior to the World Exposition 2005, which will be hosted by Japan's Aichi Prefecture. Although the commissioning entity for this project is not expected to be formed until Spring 1998, Japan agreed in 1997 to apply MPA procedures voluntarily even before the project becomes "official" with the establishment of the commissioning entity. The U.S. Government appreciated Japan's willingness to do this and was pleased to learn in November 1997 that the first Chubu Airport design procurement covered by the MPA was awarded to a consortium that included American firms. The U.S. Government hopes this sets an important precedent for future work for American firms on this project and other airport projects.

An American company was awarded in November 1997 a public works construction project as the prime (or solo) contractor, for the first time in Japan. American firms previously have won construction contracts in Japan but always as members of joint ventures. The U.S. Government hopes this leads to future involvement of American firms as prime contractors in construction projects in Japan.

Despite such progress, many barriers that limit U.S. firms' participation in the public works market remain. For example, the U.S. Government has asked Japan during recent reviews to, inter alia: (1) eliminate overly

restrictive prequalification conditions that serve to preclude U.S. firms from participating in public works projects at the application stage; (2) simplify the complex registration and application procedures for these projects; and (3) allow for the free formation of joint ventures for public works projects. The U.S. Government believes the freedom to form joint ventures leads to the use of each company's expertise in ways that ensure that a project will be carried out as efficiently and effectively as possible -- both in terms of time and cost. Although Japan has taken some steps in these areas, problems persist and the U.S. Government looks forward to further improvement.

The U.S. Government continues to monitor developments in this sector very closely. At the 1998 annual review, the U.S. Government expects to see practical improvements in these problem areas and a significant increase in the level of foreign participation in the Japanese public works market.

Medical Technology

The United States concluded the Medical Technology Procurement Arrangement in November 1994, with the goal of significantly increasing market access and sales of competitive foreign medical products and services in the Japanese public sector procurement market. U.S. firms are the world's largest producers of advanced medical technologies. In the Japanese public sector market, however, U.S. industry's share is relatively low. This agreement represents an important step forward in the ability of foreign firms to more effectively sell medical technology products and services in Japan's public sector.

The agreement establishes fair and transparent procedures that must be used by governmental entities in procuring major medical equipment and services. The agreement also specifies a set of quantitative and qualitative criteria to annually assess its implementation, including: value and share of contracts awarded to foreign firms by each government entity; number and value of contracts awarded through single tendering; and foreign access to procurement information.

A key element of the agreement is the requirement that procurement decisions for central government purchases above a specified threshold (lowered to 385,000 Special Drawing Rights on April 1, 1998) be made on the basis of the overall greatest value method (OGVM) of bid evaluation, instead of lowest-bid. U.S. equipment is generally more innovative and offers special features or extraordinary performance. OGVM permits procurement decisions based not just on initial price, but on a complete assessment of the product's value over its life cycle. This ensures buyers the flexibility to select products based on the most favorable combination of price and performance.

Japanese central government entities use OGVM in selecting medical equipment valued above the established thresholds, and have found the methodology to be very effective in procuring the kinds of equipment they need to provide quality medical care to their patients. Prefectural and municipal hospitals, however, are obligated under Japanese law to use exclusively the lowest-bid procedure of evaluation. This hinders the ability of U.S. companies to sell in this significant portion of the Japanese market. Under the agreement, the Japanese Government is required to encourage prefectural and local governments to utilize measures similar to those adopted by the central government entities. The Ministry of Home Affairs, the agency responsible for the applicable laws on government procurement, has shown little inclination to undertake necessary legal measures to allow prefectural and local governments to use OGVM in bid evaluation. The American Chamber of Commerce in Japan has filed a complaint with the Office of the Trade Ombudsman requesting the Japanese

Government revise the relevant Cabinet order to permit the use of OGVM in bid evaluation by local and prefectural entities. As a result of Japanese Government inaction, the United States has raised this issue under the Enhanced Initiative on Deregulation.

In 1995, the estimated foreign market share of government procurement covered by the agreement totaled 38.6 percent. The foreign market share rose slightly in 1996 to 41.2 percent. Japanese public sector procurement addressed by the arrangement provisions topped 75 billion yen in 1996 -- or about $700 million.

While Japan's implementation of the Arrangement requires further improvements, the United States considers that Japan is demonstrating a general adherence to the intent of the arrangement to provide greater market access and sales in its government procurement sector. The United States will use the next review to press for greater transparency, strict compliance with arrangement provisions, and seek the expanded use of overall greatest value methodology.

Satellites

Under the 1990 U.S.-Japan satellite procurement agreement, the Japanese Government committed to open non-R&D satellite procurements to foreign satellite makers. Coverage includes procurement for broadcast satellites by NTT and NHK, the government-owned television/radio service.

From 1990 to 1997, U.S. satellite makers won all five contracts (with a combined value exceeding $1 billion) openly bid under the competitive procedures outlined in this agreement. The most recent contract was a $100 million weather/navigation satellite procurement by the Ministry of Transportation, which was won by Space Systems Loral.

Despite U.S. firms' success under this agreement, the United States continues to be concerned about Japan's National Space Development Agency (NASDA) exclusion of certain satellite procurements from coverage under the agreement as "research and development satellites." The United States recognizes that R&D satellites can be excluded from open bidding under the agreement, but has raised with the Japanese Government its concern that an overly-broad definition of R&D could unfairly deny U.S. and other foreign satellite makers access to procurement opportunities. In October 1996, the National Space Development Agency awarded a $350 million contract to a Japanese firm for two data relay satellites outside the open bidding procedures. The United States continues to closely monitor this and subsequent Government of Japan procurements to ensure that such R&D procurements are consistent with the bilateral agreement -- that they incorporate technology new to Japan, are not intended for the provision of regular services, and do not finance the development of satellites or satellite componentry that can be used in the commercial or non-R&D government market.

Supercomputers

The United States and Japan concluded the 1990 U.S.-Japan Procedures to Introduce Supercomputers to ensure fair access for U.S. supercomputer manufacturers to Japan's high-performance computer market. Results under the 1990 Supercomputer Agreement have been mixed, with the U.S. share fluctuating considerably over the period. U.S. supercomputer manufacturers were awarded only 27 percent of the procurements during the first three years of the arrangement, but U.S. market share increased to roughly 40-45 percent of procurements in JFY 1993 and 1994. However, U.S. market share has deteriorated since then, reaching only 9 percent in 1995 and

25 percent in 1996. U.S. companies did not bid on any of the four Japanese Government supercomputer procurements in 1997, although they did participate as a subcontractor in one procurement, supplying a supercomputer for a procurement awarded to a Japanese firm.

The Japanese Government has publicly announced nine supercomputer procurements for JFY 1998. The current threshold under the supercomputer arrangement is 5 gigaflops. Most of the procurements for JFY 1998 and beyond are significantly above this threshold.

The United States remains concerned about persistent market access barriers in this sector, and notes the U.S. share of the public procurement market has generally remained well below the U.S. manufacturers' 45-50 percent of the Japanese private sector supercomputer market. The United States is increasingly concerned about reports that Japanese Government entities are drafting tender specifications to favor preferred vendors and requiring proprietary design-based (rather than performance-based) features or other non-essential elements that only a specific vendor is able to provide. Moreover, despite the arrangement's goal of increasing competitive opportunities in the Japanese supercomputer market, more than half of the Japanese Government's "competitive tenders" for supercomputer procurements in JFY 1995 and 1996 have attracted only a single bidder, with other companies concluding that specifications and other factors so clearly favored one bidder that the time and expense of preparing a bid is not be justified. In addition, deep discounting of pricing by Japanese companies remains a problem, and procuring entities continue to give insufficient weight to non-price factors.

At the annual review of the implementation of the supercomputer arrangement on November 7, 1997, the U.S. Government urged the Japanese Government to address these specific issues and to intensify its efforts to ensure fair access for U.S. supercomputer manufacturers. The U.S. Government will continue to press these issues with Japan.

Telecommunications

NTT Arrangement: In September 1997, the NTT procurement arrangements were renewed for the sixth time since 1980. The renewed arrangements contained improved NTT procurement procedures designed to increase procurement transparency, enhance access to technical specifications and other information needed to prepare a bid, and promote increased reliance on international standards. In addition, the arrangement was extended to NTT Communication-ware Corporation (NTT COMWARE), which joined three other NTT subsidiaries (NTT Data Communications, NTT Mobile Communications, and NTT Power and Building Facilities) in agreeing to voluntarily adopt the measures. The current arrangement is due to expire when NTT is restructured in 1999. The two governments agreed to review the arrangement before its expiration to determine future treatment. NTT, Japan's single largest purchaser of telecommunications equipment, accounts for more than one third of Japan's $35 billion telecommunication equipment market.

The United States and Japan held a review of the NTT Arrangement in August 1997. During this review, NTT reported that its procurement of all foreign products increased from 152 billion yen in JFY 1995 to 173 billion yen in JFY 1996 (approximately $1.4 billion, at 120 yen/dollar) . While NTT's purchases of foreign telecommunications equipment also increased, the increase in market share for these products was minimal. Considering U.S. firms' competitiveness, evidenced by worldwide export growth of over 19 percent in the first half of 1997, and significantly better results in the Japanese private sector market, these results are disappointing.

Japan

The poor results U.S. companies have achieved with NTT as compared with their sales to the private Japanese telecommunications sector suggest that NTT is still captive to its monopoly legacy and is not fully responsive to market principles in its procurement. The Japanese government's reluctance to introduce real competition in the service sector appears to be fueled by a view that only NTT, with access to monopoly rents, can, in partnership with Japanese companies, develop Japan's information infrastructure. Evidence indicates that NTT continues to favor its "family companies" for the bulk of its telecommunications equipment purchases; that NTT continues to over-engineer and under-document specifications; that specifications are often Japan-specific or NTT-specific; and that allocation of supplier market share for products is often based on non-transparent criteria. These practices raise costs to NTT and its customers, impede competition, and pose significant market access barriers.

NTT's practices hamper competition not only in the market for equipment, but for services as well. In many categories of equipment, telecommunication service companies competing against NTT are required to use NTT-family developed equipment at higher costs than comparable equipment available in international markets, in some cases up to five times higher. To support a truly multi-vendor market for such equipment, and thus encourage cost-effective facilities-based competition, the standards, specifications, and interfaces for equipment connecting to the public switched network should not be determined solely by NTT and its family-companies. Rather, a neutral organization, open to all vendors or service suppliers, should be mandated.

These issues all point to the need to closely monitor procurements under the NTT arrangement and to continue to seek ways to improve the arrangement's implementation. Until vigorous competition is introduced in both the equipment and service markets, such oversight is vital. These issues will be the subject of review in mid-1998.

Public Sector Procurement Agreement on Telecommunications Products and Services: The 1994 U.S.-Japan Public Sector Procurement Agreement on telecommunications products and services was intended to improve access and sales for foreign telecommunications firms selling to Japan's public sector. Pursuant to the agreement, Japan has introduced procedures to eliminate barriers such as obstacles to participation in pre-solicitation and specification-drafting for large-scale telecommunications procurements; ambiguous award criteria; excessive sole sourcing; and the absence of an effective bid protest mechanism. The public sector procurement agreement also includes quantitative and qualitative criteria for measuring progress such as: annual value and share of purchases of foreign products; annual numbers of entities buying foreign products and services; annual numbers and values for contracts awarded as a result of single tendering; and new subcontracting opportunities for foreign suppliers.

The United States and Japan held their third annual review of this agreement in February 1998. This review covered Japanese government procurements of telecommunications equipment and services in CY 1996. The U.S. side expressed concern about the sharp reduction in the foreign share of Japanese government procurement of telecommunications products and services from 13 percent in 1995 to 3.5 percent in 1996. The United States questioned the coverage offered under this agreement and expressed concern about possible unwarranted use of operational safety and national security exemptions to avoid the need for open procurements in some cases.

The United States also has continuing concerns about the Japanese government's increased reliance on contracts awarded through sole source tendering in 1996. Despite the fact that the agreement calls for a reduction in sole sourcing, the share of total procurements for telecommunications equipment and services done through sole source tendering grew from 5 percent in 1994 to around 15 percent in 1996. The U.S. Government urged the

Japanese Government to take immediate steps to reverse this negative trend.

In 1995, the U.S. raised concerns regarding practices of the National Police Agency, which had kept a major telecommunications procurement out of the open bidding process. Following numerous consultations, the National Police Agency agreed in 1997 to revise this procurement and bid it openly. Initial steps taken by the National Police Agency were satisfactory and we will continue to monitor this procurement through its final stages to ensure it is consistent with the terms of both our bilateral and WTO government procurement agreements.

LACK OF INTELLECTUAL PROPERTY PROTECTION

In March 1997, revisions to Japanese law came into effect which will protect sound recordings produced in the United States and other WTO countries within the past 50 years. This represented the resolution of the first intellectual property dispute settlement case at the WTO, which the United States initiated against Japan in 1996 over Japan's failure to provide full "retroactive" protection to pre-existing sound recordings in accordance with the TRIPs (Trade Related Aspects of Intellectual Property) Agreement. Although the TRIPs agreement required developed countries as of January 1996 to protect sound recordings produced in other WTO countries within the past 50 years -- i.e., produced in 1946 or later -- Japan only protected foreign sound recordings produced in 1971 or later. Japan ultimately agreed to provide such protection, doing so through legislation adopted in December 1996 that came into effect in March 1997. In January 1997, the United States and Japan jointly notified the WTO that the matter had been resolved.

In April 1997, Japan was placed on the Special 301 "Watch List" of countries from which the United States seeks stronger intellectual property rights protection. This followed three years in which Japan had been placed on the "Priority Watch List;" the lowering reflected the resolution of the sound recordings dispute and improvements to Japanese trademark law over the year preceding April 1997. Japan was cited in 1997 for continuing problematic patent practices, inadequate protection of trade secrets, and high levels of end-use software piracy. Intellectual property rights issues continue to be the focus of U.S.-Japan discussions in a number of multilateral, regional and bilateral fora.

Copyrights

U.S. computer software groups remain concerned about the significant problem of end-user piracy in Japan. U.S. and some Japanese software developers seek stronger legal and procedural provisions to allow the prosecution of end-user pirates, including the establishment of a more effective system of applying for and receiving ex parte provisional relief on a timely basis. Japan also has agreed to the World Intellectual Property Organization Copyright Treaty and the Performances and Phonograms Treaty, which when ratified will provide new protection for performers and producers of sound recordings.

Patents

Even with Japan's implementation of two 1994 bilateral patent agreements, significant problems with the Japanese patent system remain. Two important examples are narrow patent claim interpretation before the Japan Patent Office and narrow patent claim interpretation in the courts.

Japan

On February 24, 1998, the Japanese Supreme Court issued its first decision to permit an infringement finding under the "doctrine of equivalents." This represents a positive step toward broadening Japanese courts' generally narrow interpretation of patent claims. The Japanese courts previously found infringement only when literal infringement of patent claims existed. As a result, competitors could avoid liability merely by changing an element of the invention even if the resulting product was substantially similar to the patented product. In contrast, courts in the United States and in most other countries, in appropriate circumstances, find infringement if the defendant has either literally or substantially infringed on the patent. That is, infringement is found even if the infringer has deviated from the patent in certain marginal and unimportant ways. This latter practice is known as the "doctrine of equivalents." The United States is pleased with the February 24 Japanese Supreme Court decision affirming the doctrine of equivalents and will follow closely future lower court treatment of such cases.

Another issue of concern to the United States for many years has been the relatively long processing time for patent examination in Japan. While noting the progress made by the Japan Patent Office in reducing the average length of patent examination from 36 months to 28 months, the U.S. Government looks to the Government of Japan to continue its efforts to reduce pendency further. It is important that Japan reduce examination pendency to levels comparable to those in other industrialized countries.

Trade Secrets

Japan's protection of trade secrets is inadequate. Because the Japanese Constitution prohibits closed trials, the owner of a trade secret seeking redress for misappropriation of that secret in a Japanese court is placed in the untenable position of not being able to protect the trade secret without disclosing it publicly. A recent amendment to Japan's civil procedures act should improve the protection of trade secrets in Japanese courts by excluding court records containing trade secrets from public access. However, this legislation does not adequately address the problem. Court discussions of trade secrets will remain open to the public and neither the parties nor their attorneys have confidentiality obligations. Thus protection of trade secrets in Japan's courts will continue to be considerably weaker than in the courts of the United States and other developed countries.

Trademarks

A number of revisions to Japan's Trademark Law came into force on April 1, 1997. The revisions are intended to accelerate the granting of trademark rights, strengthen protection of well-known marks, address problems related to unused trademarks, and simplify trademark registration procedures in order to bring Japan into compliance with the Trademark Law Treaty. These measures also increase penalties for trademark infringement. The effect of these revisions to the law is not yet clear. Historically, the trademark registration process in Japan has been slow, requiring approximately 36 months versus 16-18 months in the United States. Since trademarks must be registered in Japan to ensure enforcement, delays in registration have made it difficult for foreign parties to enforce their marks. Protection of well-known marks also has been weak.

SERVICES BARRIERS

Financial Services

Japanese financial markets traditionally have been highly segmented and strictly regulated, and as such, have

discouraged the introduction of innovative products where foreign firms may enjoy a competitive advantage and otherwise restricted business opportunities for foreign firms. Some of the restrictions that have impeded access include the use of administrative guidance, *keiretsu* (interlocking business relationships), lack of transparency, inadequate disclosure, the use of a positive list to define a security, and lengthy processing of applications for new products. These restrictions have hindered the emergence of a fully competitive market for financial services in Japan.

With a view to eliminating or reducing these barriers, on February 13, 1995, the United States and Japan concluded a comprehensive financial services agreement, "Measures by the Government of Japan and the Government of the United States Regarding Financial Services." This agreement features an extensive package of market-opening actions in the key areas of asset management, corporate securities, and cross-border financial transactions.

In the two years since the agreement was signed, the Japanese Government has implemented the vast majority of the commitments made within the specified time frames. In some instances, the timetable for implementation was accelerated. In a few areas, the Japanese Government has taken or announced additional actions for future implementation to improve the liberalization of Japanese financial markets.

The U.S. Government is currently monitoring the agreement to ensure that implementation remains on schedule and to assess the impact of the actions undertaken using the quantitative and qualitative criteria included in the agreement. At the March and October 1997 reviews, the U.S. Government emphasized the need for further improvements in financial disclosure and transparency. Japan also signed the WTO Financial Services Agreement in December 1997, thereby binding many liberalization measures agreed to bilaterally.

In an announcement on November 11, 1996, Prime Minister Ryutaro Hashimoto committed the Japanese Government to conducting broad-based deregulation of Japan's financial sector, aimed at making Tokyo's financial markets comparable to those of New York and London by 2001. The Japanese Government's "Big Bang" financial reform plans involve such major changes as allowing mutual entry across financial sectors, tax changes, liberalization of commissions, liberalization of foreign exchange transactions, tightened disclosure rules, and further liberalization of asset management regulations. These changes could create important new business opportunities for U.S. financial services providers. Despite increased attention to financial sector stability issues in late 1997 following several prominent financial bankruptcies, the Japanese government has thus far adhered to its reform schedule, with a few exceptions. The Japanese Government introduced financial liberalization legislation into the Diet in March 1998. The U.S. Government will continue to watch developments closely.

Insurance

Japan is the world's second largest market for insurance with annual premium revenues of $332 billion in JFY 1996. Ministry of Finance regulations, informal guidance, and non-transparent industry association activities all serve to limit competition and market access in Japanese insurance market. While foreign market shares of other G-7 countries' domestic insurance markets ranged from 10 to 33 percent, foreign firms' share of the Japanese market is only 3.9 percent. Foreign firms have only a 1.7 percent share of the primary life insurance market and a 2.8 percent share of the primary non-life market (mostly auto, fire and marine insurance). Together these two primary sectors account for roughly 95 percent of Japan's entire insurance market. Foreign firms have played an important role in developing new products and sales channels in the remaining five percent of the

market, the so-called *third sector*, as reflected in their 42 percent share of this sector.

On October 11, 1994, the U.S. and Japan concluded a bilateral insurance agreement under the U.S.-Japan Framework. Beginning in the fall of 1995, it became apparent to the U.S. that Japan intended to allow Japanese insurance subsidiaries to operate in the third sector in a manner contrary to key provisions of the 1994 agreement. Following a year of difficult negotiations, on December 24, 1996, the United States and Japan reached agreement on a package of "supplementary measures" which will significantly deregulate Japan's market. The Administration is committed to monitoring the implementation of these agreements closely to ensure that the anticipated opportunities materialize.

1994 Insurance Agreement: The October 1994 insurance agreement commits Japan to enhance regulatory transparency, strengthen antitrust enforcement, introduce a "notification system" for approval of insurance rates and products, and undertake specific liberalization measures. The Ministry of Finance (MOF) has, to varying degrees, implemented these provisions. The agreement also sets forth MOF’s intention to allow insurance brokers to operate in Japan. The Ministry of Finance has established the framework for a broker system, but the continued inability to differentiate product form and type has limited opportunities for brokers.

The agreement inter alia calls for five government corporations with large annual insurance requirements to use fair, transparent, non-discriminatory, and competitive criteria in their annual allocation of insurance premium shares. This remains a key concern: only one of those five government corporations (the Housing Loan Corporation) has disclosed its premium allocation criteria; and for all five corporations, the foreign share of premiums remains negligible, even relative to foreign insurers' small share of the private sector Japanese insurance market. The agreement also calls for Japanese and foreign insurers in Japan to complete by March 1995 a study of the impact of *keiretsu* business relationships and case agents on insurance purchasing patterns in Japan, and for the Japan Fair Trade Commission (JFTC) to conduct its own study of the same issues. As of February 1998, the private sector study essentially has been abandoned due to the Japanese domestic industry's obstinacy to the design of, and participation in, a meaningful study. The JFTC announced in November 1997 that it had begun its own study with a goal of its completion by the end of 1998.

Finally, the 1994 agreement contains a provision related to "mutual entry" of life insurers into non-life markets and of non-life insurers into life insurance markets. Until enactment of a new Insurance Business Law (IBL) on April 1, 1996, life and non-life insurance firms were strictly prohibited from doing business in their counterpart sectors. The new Insurance Business Law allows such activity in the form of subsidiaries and the specific parameters under which these subsidiaries will operate was addressed at length in bilateral negotiations throughout 1996.

1996 Insurance Agreement: Under the 1994 agreement, the Government of Japan committed to avoid "radical change" in the third sector until foreign, small and mid-sized insurers (which have a greater degree of dependence on the third sector markets) have had a reasonable period to compete in significantly deregulated primary life and non-life sectors. The "supplementary measures" agreed to in December 1996 define the extent and timing of primary sector deregulation by Ministry of Finance. These measures also define the scope of business activities of the Japanese insurance subsidiaries in the third sector consistent with the commitment to avoid radical change. In December 1997, the Japanese Government agreed to bind these commitments under the WTO Financial Services Agreement.

Under the 1996 agreement, the Government of Japan committed to approve by September 1997 applications for automobile insurance with differentiated rates based on a range of risk criteria, e.g., age, gender, driving history, geography, and vehicle usage. This commitment was implemented on schedule. It also committed to obtain Diet passage and implement legislation amending the Rating Organizations Law to eliminate the rating organizations' authority to set industry-wide rates for automobile and fire insurance. Currently, the rating organizations, comprised of all non-life insurers, operate as rate-setting cartels exempt from Japan's Antimonopoly Act. The Ministry of Finance recently submitted legislation to the Diet to implement these reforms of the rating organizations and has expressed its intention to have these reforms in place prior to July 1, 1998.

Japan also implemented its commitment to expand the list of products to be included under the "notification system." This has accelerated the introduction of innovative products, including several important liability lines. The Ministry of Finance also has reduced the threshold above which insurers will be permitted to offer flexible rates for commercial fire insurance from the 30 billion yen (contract value) in place at the time of the 1996 agreement, to 20 billion yen in January 1997. This ceiling will be further reduced to seven billion yen by April 1998.

With respect to the third sector, the 1996 agreement commits the Government of Japan to prohibit or substantially limit the Japanese insurers' new subsidiaries from marketing certain third sector products of particular importance to foreign insurers, e.g., cancer, hospitalization, and personal accident insurance, until foreign firms have had sufficient time to establish a presence in the deregulated primary sectors. The agreement envisions completion of Japan’s primary sector deregulation commitments by July 1998. If completed on schedule, the measures regarding the activities of the subsidiaries in the third sector would be expected to be lifted in two-and-a-half years, i.e., by January 2001, to coincide with the implementation schedule for Prime Minister Hashimoto's "Big Bang" financial services deregulation initiative.

In January 1998, the U.S. and Japan conducted their most recent biannual review of Japan’s implementation of its commitments under the insurance agreements. The U.S. raised serious concerns with the lack of transparency of Japan’s insurance reform process. In particular, foreign firms have not been given a meaningful voice in the discussions to reform the rating organizations. A similar disturbing lack of transparency is seen in the process to establish a Payment Guarantee System, revise rates for personal accident insurance, and reallocate premiums of the Housing Loan Corporation among insurance providers, and in the approval process for new products and rates. Similarly, the United States is extremely concerned with the diminution of the third sector safeguards caused by increased activity on the part of Japanese insurance firms and subsidiaries in this segment of the market. The United States is actively pursuing these issues at senior levels with Japan so as to ensure full and faithful implementation of the insurance agreements.

Professional Services

The ability of foreign firms and individuals to provide professional services in Japan is inhibited by a complex network of legal, regulatory and commercial practices barriers. U.S. professional services providers are highly competitive and the U.S. Government expects the export of such services to continue to grow in the future. These services are important, not only as U.S. exports in themselves, but as vehicles to facilitate access for U.S. exporters of other services and goods to the Japanese market. Additionally, U.S. services professionals often can contribute valuable expertise gained from operating widely in international markets and stimulate innovations for the economies in which they serve.

Japan

The Administration continues to seek improved access for professional services providers in Japan, through bilateral dialogue for construction, architectural, and engineering services (see Construction, Architecture and Engineering), under the Enhanced Deregulation Initiative for legal services, and multilaterally in the WTO for accounting and auditing services. Through the WTO Working Party on Professional Services, WTO members are developing disciplines on the regulation of the accountancy sector to make it easier for accountants to provide their services on a cross-border basis or in other countries. Forthcoming GATS negotiations in the year 2000 also will offer an opportunity for liberalization of accountancy and other professional services.

Accounting and Auditing Services

U.S. providers of accounting and auditing services face a series of regulatory and market access barriers in Japan which impede their ability to serve this important market. Regulated accounting services may be provided only by individuals qualified as a Certified Public Accountant (CPA) under Japanese law, or by an Audit Corporation (composed of five or more partners who are Japanese CPAs). To become qualified as a CPA in Japan, a foreign accountant must pass a special examination for foreigners, to obtain a professional certification. This examination was last offered in 1975. CPAs in Japan must also be registered as members of the Japanese Institute of Certified Public Accountants and pay membership fees.

Only individuals who are Japanese CPAs can establish, own, or serve as directors of Audit Corporations An Audit Corporation may employ foreign CPAs as staff, but foreign CPAs are not allowed to conduct audit activities. Furthermore, an Audit Corporation may engage in a partnership/association relationship with foreign CPAs only if the partnership/association does not provide audit services. Audit Corporations are prohibited from providing tax-related services, although the same individual may perform both functions as long as totally separate offices are maintained. Establishment is required for Audit Corporations, but not for firms supplying accountancy services other than audits.

Branches and subsidiaries of foreign firms are not authorized to provide regulated accounting services. A foreign firm cannot practice under its internationally-recognized name; its official firm name must be in Japanese and is subject to approval by the Japanese Institute of Certified Public Accountants. A firm may use its internationally-recognized name, e.g., on its letterheads or business cards, in parallel with its official firm name in Japanese. Restrictions on marketing apply to all accountancy services provided by CPAs and audit corporations.

Legal Services

Since the 1970s, U.S. lawyers have sought greater access to the Japanese legal services market and full freedom of association with Japanese lawyers. However, strong opposition from the *Nichibenren* (Japan Federation of Bar Associations) and an unwilling Japanese bureaucracy have consistently failed to address primary U.S. concerns.

Beginning in 1987, Japan has allowed foreign lawyers to establish offices in Japan and advise on matters concerning the law of their home jurisdictions in Japan, as foreign legal consultants (*gaikokuho jimu bengoshi*), subject to restrictions set out in the Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers (Law No. 66 of 1986, as amended). Since the law was enacted, Japan has liberalized several of the restrictions on foreign lawyers, including those related to the use of law firm names and the representation

of parties in international arbitrations in Japan. However, it has adamantly refused to remove the most restrictive regulatory hurdle facing foreign lawyers in Japan -- the ban on hiring or forming partnerships with Japanese lawyers (*bengoshi*) in Japan.

In 1996, the Japanese Ministry of Justice and the *Nichibenren* jointly formed a Study Committee on Foreign Lawyers (Study Committee) with a broad mandate to examine ways to liberalize the restrictions on the provision of legal services by foreign lawyers in Japan. The Study Committee focused on three issues: the partnership and employment ban; the ability of foreign legal consultants to advise on third country law (the law of countries other than Japan, the home jurisdiction or designated jurisdictions); and the length of experience required before a foreign lawyer could register as a foreign legal consultant. However, the Study Committee's final report, issued on October 30, 1997, was extremely disappointing as it recommended only marginally liberalized restrictions.

In particular, the Study Committee recommended no change in the discriminatory practice of allowing *bengoshi* to hire foreign lawyers, while forbidding foreign firms from hiring *bengoshi*. It rejected any relaxation of the ban on partnerships and employment. Instead, it recommended continuation of the current arrangement of "registered associations" *(tokutei kyodo jigyo*) between *bengoshi* and foreign legal consultants, but that they be allowed to handle a slightly broader scope of business. The foreign legal community considers the registered association to be cumbersome and inadequate, and an unsatisfactory structure for providing fully integrated transnational legal services in Japan. Its shortcomings are illustrated by the following statistics. As of July 1997, 80 foreign legal consultants were registered in Japan, representing 45 foreign law firms. However, of these, only six law firms had entered into registered associations with a Japanese lawyer since January 1, 1995, when this form of association became possible.

The Study Committee recommended liberalization of the ability of foreign legal consultants to practice third country law and reduction from five years to three years of the amount of experience required before a foreign attorney can register as a foreign legal consultant. But at the same time, it proposed that a foreign lawyer be able to count only one of the current two years spent in Japan employed by a *bengoshi* or a foreign legal consultant toward the three-year requirement.

In a November 7, 1997 submission to the Japanese Government in the context of the Enhanced Initiative on Deregulation and Competition Policy, the United States stressed that the liberalization of Japanese legal services must keep pace with ongoing deregulation and market liberalization measures to ensure that both Japanese and foreign parties are able to obtain fully integrated transnational legal services in Japan. To that end, the United States made specific proposals, with the removal of the ban on partnerships and employment as its top priority. It also called for full credit to be given to the time a foreign lawyer works in Japan for a *bengoshi* or a foreign lawyer, and urged Japan to allow foreign legal consultants to advise on third country law to the same extent as Japanese lawyers.

The United States also requested that Japan increase significantly the number of Japanese lawyers entering the practice by more than doubling the number of persons allowed to enter the Supreme Court's Legal Research and Training Institute, from the current 700 persons to at least 1,500 trainees each year. In addition, the United States has sought the removal of restrictions on the employment of related Japanese legal professionals, including tax attorneys (*zeirishi*) and patent attorneys (*benrishi*) by foreign law firms, and on the representation by foreign legal consultants of clients before Japanese governmental entities.

Japan

The U.S. will continue to press Japan to remove unnecessary and unreasonable restrictions on foreign lawyers in Japan, in particular the ban on partnership and employment.

Telecommunications Services

The United States has deep concerns about the costs and conditions associated with interconnection to the Nippon Telegraph and Telephone Corporation (NTT) network. While the Ministry of Posts and Telecommunications (MPT) has published useful guidelines on interconnection, NTT's interconnection rates are much higher than those in the United States and most European nations. As interconnection is a critical element in permitting competition, the United States is strongly urging Japan to set interconnection rates as close as possible to competitive market prices to prevent NTT from imposing excessive costs on competitors. The high costs NTT is trying to impose on its competitors derive from its monopoly legacy, when NTT was free to spend on infrastructure development without the effective discipline of market forces. This is clear in the inefficiency of the NTT network: judged by value of plant per minute of traffic, NTT's costs are about four times those of U.S. local exchange carriers -- costs which NTT imposes on its competitors by embedding them in interconnection fees.

The only recognized solution for ensuring fair, cost-based interconnection is to price it according to market-based, forward looking costs, i.e., long run incremental costs (LRIC). Japan has failed to commit to LRIC, dealing a serious blow to prospects for full-fledged competition in this sector.

Other issues of concern include high up-front costs that NTT charges its competitors for network modifications associated with interconnection, the lack of an open and transparent process for developing network interfaces, long delays by NTT in providing interconnection, and NTT's practice of levying discriminatory charges for services, such as directory assistance, on its competitors.

The United States has expressed concerns about possible anticompetitive implications of some aspects of NTT's planned restructuring, scheduled to be completed during 1999. Issues of concern include joint marketing by regional and long distance carriers, possible cross-subsidization, and personnel exchange between corporate units. The United States has urged Japan to establish stronger safeguards to guard against possible anticompetitive activities by NTT, which still controls over 90 percent of the domestic Japanese telecommunications market.

NTT's entry into international services is cause for significant concern. It must be preceded by effective, cost-based interconnection and adequate competition safeguards to prevent NTT from leveraging its de facto monopoly control over local services into anticompetitive advantages in the market for international services. The U.S. Government will be monitoring this issue closely over the next year.

The U.S. Government also has been urging the Government of Japan to abolish investment restrictions in NTT, eliminate foreign investment restrictions for cable TV providers and direct-to-home satellite broadcasters that do not provide telecommunications services, enhance access to rights of way for constructing infrastructure, streamline of burdensome licensing and equipment certification procedures, and enhance transparency in rulemaking and administrative procedures.

The U.S. Government also was active in 1997 in encouraging the Government of Japan to implement its

commitment in the WTO Basic Telecommunications Agreement to allow international simple resale (ISR) services. The United States was encouraged by Japan's final policy on ISR, announced in December 1997, which recognizes that ISR must be permitted outside of the international settlements system. The United States will closely monitor implementation of this service to ensure that U.S. companies are able to provide ISR services in a timely and commercially viable manner.

The United States also was encouraged by MPT plans, announced in late 1997, to relax rules concerning the number of channels a direct-to-home (DTH) satellite broadcaster can control, simplify licensing procedures for consignors, liberalize the setting of transponder fees, relax some ownership restrictions, and eliminate the fully allocated costing methodology for calculating transponder fees. However, the United States remains concerned about a wide range of regulatory barriers that still impede DTH and other broadcasting services. Specifically, the United States is urging Japan to eliminate all restrictions on the number of channels DTH providers can offer. One immediate action Japan should undertake, which would permit providers to offer more channels within the existing regulatory framework, is to eliminate restrictions on the use of advanced transmission technology (statistical multiplexing) which can increase efficient use of the spectrum by up to 30 percent.

INVESTMENT BARRIERS

Japan's stock of inward foreign direct investment (FDI), relative to the overall size of the Japanese economy, is minuscule compared to that of other advanced industrialized countries. In 1996, for example, the value of Japan's stock of inward FDI totaled only 0.8 percent of the nation's 1996 gross domestic product, as compared to 8.3 percent for the United States. Japan's outward investment flows, on the other hand, dwarf investment into Japan: the ratio of outward-to-inward FDI averaged 12-to-1 between 1990 and 1996. In 1996, Japanese overseas FDI was $48 billion; Japan's inward FDI was only $7 billion (actually a record high year). The scarcity of foreign investment into Japan contributes to large external trade imbalances and helps impede market access for competitive foreign companies. The Government of Japan actively discouraged foreign investment during the high growth periods of the 1950s to the early 1980s. The legacy of these policies and Japan's high-cost, over-regulated economy are low levels of investment by foreign firms in Japan.

Acknowledging that inward investment lags far behind that of other industrialized economies, the Japanese Government has taken limited steps to address the problem, aimed at making the environment for foreign investment in Japan more attractive. In July 1994, the Government of Japan established the Japan Investment Council (JIC), chaired by the prime minister and charged with identifying measures to improve Japan's investment climate, coordinating policies of ministries and agencies concerned with investment, and disseminating information on investment-promotion measures.

Although many direct legal restrictions on foreign direct investment have been eliminated, bureaucratic obstacles remain. Japan's low level of inward FDI flows in recent years also reflects the impact of exclusionary business practices, high market entry costs, and discriminatory use of bureaucratic discretion. While Japan's foreign exchange laws currently require only ex-post notification of planned investment in most cases, a number of sectors (e.g., agriculture, mining, forestry, fishing) still require prior notification to government ministries. Restrictions on foreign investment in direct broadcasting services, cable television operators, and the NTT and *Kokusai Denshin Denwa* (KDD) telephone carriers remain a concern. The Government of Japan has indicated that it will submit a bill that will eliminate foreign investment restrictions in KDD in 1998 and is studying possible further liberalization of foreign investment limits in cable television.

Japan

Difficulty in acquiring existing Japanese firms -- as well as doubts about whether such firms, once acquired, can continue productive business relations with other Japanese companies -- make investment access through mergers and acquisitions much more difficult in Japan than in other countries. As a result, few foreign companies have been able to perform mergers and acquisitions in Japan, the major avenue for FDI (some 80 percent) in other Organization for Economic Cooperation and Development (OECD) countries. Extensive cross-shareholding among allied companies and difficulties foreign firms encounter in hiring local employees also inhibit direct foreign investment. Insufficient accounting disclosure, even by listed firms, increases the risks associated with mergers and acquisitions.

Investment Arrangement: In July 1995, the United States and Japan agreed to "Policies and Measures Regarding Inward Direct Investment and Buyer-Supplier Relationships." This arrangement lays out the inward FDI promotion policies instituted by the Japanese Government during the course of the Framework Agreement investment negotiations, and commits Japan to: expand efforts to inform foreign firms about FDI-related financial and tax incentives, and broaden lending and eligibility criteria under these programs; make low-interest loans and provide tax incentives under the 1992 Inward Investment Law available to foreign investors; propose measures to improve the climate for foreign participation in mergers and acquisitions; and strengthen the FDI promotion roles of such organizations as the Japan Investment Council, Office of the Trade and Investment Ombudsman, Japan External Trade Organization (JETRO), and the Foreign Investment in Japan Development Corporation. Subsequently, the Inward Investment Law was extended from May 1996 to May 2006. In addition, MITI has lowered the interest rate charged by the Japan Development Bank to foreign investors in high-technology projects, and as of April 1996, foreign firms' eligibility for tax incentives was extended from the first five years to the first eight years of operation of a foreign firm in Japan.

In reality, however, many of Japan's FDI promotion policies are grafted onto domestic regional development promotion programs, and focus exclusively on attracting manufacturing investment. While physical infrastructure is often improved as an incentive to investors, other forms of incentives remain small in scale and relatively inflexible in application, and many investors find them insufficient to offset other major impediments to investment.

The United States and Japan held investment consultations in December 1997, which focused on labor, mergers and acquisitions, local investment incentives, land policy and sectoral restrictions on investment.

ANTICOMPETITIVE PRACTICES

Anticompetitive practices are a cross-cutting issue in U.S.-Japan trade relations. In addition to the discussion in this section, there is further discussion related to anticompetitive practices and Antimonopoly Law enforcement in other sections: the Enhanced Initiative on Deregulation and Competition Policy, Insurance, Flat Glass, Paper and Paperboard, and Consumer Photographic Film and Paper.

Exclusionary Business Practices

American firms trying to enter or participate in the Japanese market face a host of exclusionary Japanese business practices that block market access opportunities. These include the following:

Anticompetitive private practices -- such as bid-rigging, price-fixing, and refusals to deal -- that violate

the Antimonopoly Act and other Japanese laws but often go unpunished;

Corporate alliances and exclusive buyer-supplier networks, often involving companies belonging to the same business grouping *keiretsu*, that work to protect "market stability" (e.g., stable market shares and profit margins);

Questionable corporate practices that inhibit foreign direct investment and foreign acquisitions of Japanese firms (e.g., nontransparent accounting and financial disclosure, cross-holding of shares among *keiretsu* member firms, low percentage of publicly traded common stock relative to total capital in many companies, and restrictions on foreigners serving on corporate boards);

Industry associations and other business organizations that develop and enforce industry-specific rules limiting or regulating, among other things, fees, commissions, rebates, advertising, and labeling for the purpose of maintaining "orderly competition" among their members, and often among non-members.

Exclusionary Japanese business practices exact a heavy toll on the Japanese economy. By constraining market mechanisms, these practices reduce the choices available to businesses and consumers, and raise the cost of goods and services, as reflected in Japan's large internal-external price gap. Many products and services cost substantially more, often two to three times more, in Tokyo than in other international cities. In addition, by discouraging competitors who seek to break into the market with innovative products and services, these practices impede the development of new domestic industries and technologies (e.g., in software, multimedia, and telecommunications). Moreover, exclusionary business practices discourage potential foreign investors, whose market presence and technological innovation would stimulate the economy, as well as provide critical channels for exports and sales by foreign firms.

Cartels can pose serious barriers for foreign exporters and foreign companies that seek to invest in Japan. The Japan Fair Trade Commission (JFTC) is responsible for deterring and punishing illegal cartel behavior, but is an uneven enforcer with limited resources and strength to use its prosecutorial powers.

Japan Fair Trade Commission's Enforcement Record

A key reason for the prevalence of anticompetitive business practices is the JFTC's historically weak antitrust enforcement record. The JFTC routinely faces domestic criticism for its lack of bureaucratic clout and reluctance to exercise its enforcement powers aggressively. While there have been some improvements in recent years due to sustained U.S. efforts under the 1989-91 Structural Impediments Initiative, the U.S.-Japan Framework Agreement, and annual bilateral antitrust consultations, which have helped the JFTC muster domestic support for its gradual strengthening, the JFTC's enforcement efforts fall far short of those needed to ensure that Japanese markets are open to competition from U.S. and other foreign companies.

The JFTC's ability to enforce Japan's fair competition laws is hindered by its historically weak stature among Japanese ministries, shortage of personnel, and perceived lack of autonomy. The JFTC was "upgraded" in 1996 to allow the formation of an administrative general affairs bureau, an economic bureau, investigations bureau, and a new special investigation division to handle major cases. Previously, the JFTC only had departments, which relegated JFTC officials to a lower status relative to ministry officials. However, the JFTC failed to gain approval for the creation of a competition policy bureau and did not achieve the substantial gains it needs in

antitrust enforcement personnel. In JFY 1997, JFTC staff increased by only 13 members from levels of the previous year to a total of 545, of which 248 (12 more than JFY 1996) are engaged in investigation-related work. There are 55 investigators (up nine) in the special investigations department.

In JFY 1998, the Government of Japan plans to increase the JFTC's budget by 1.1 percent and increase its personnel by ten, of which seven will be assigned to the investigation bureau. All the same, these numbers remain too small for the JFTC to enforce competition laws and policies adequately. This is especially true given the potential effects on the competitive environment of the liberalization of holding companies (effective December 17, 1997), the increase in mergers (up 13.4 percent in 1997), and the continued efforts to narrow or abolish Antimonopoly Law exemptions. In its November 1997 submission to the Government of Japan under the Enhanced Initiative, the United States requested that the Government of Japan increase the JFTC staff to 700.

Although the JFTC recently has improved its enforcement performance, the enhancement has not been enough to shed its public image as an ineffective watchdog. For example, after maintaining surcharge orders for cartel practices at very low levels during the 1980s, since 1990, the JFTC has steadily increased its penalties, imposing 7.5 billion yen in surcharges against 368 companies in JFY 1996. However, the JFTC rarely criminally prosecutes antimonopoly violators -- tackling only four cases since 1990 -- and actual imprisonment for antimonopoly violations is unheard of. The JFTC's infrequent use of the Anti-monopoly Law's criminal provisions undermines deterrence of illegal business practices.

Although the JFTC is nominally an "independent" commission with "independent" enforcement authority, its leaders are often drawn from other ministries, raising doubts about the commission's autonomy. Indeed, the JFTC's commissioners always include former senior officials from trade-related ministries, notably, from the Ministries of Finance, International Trade and Industry, and Foreign Affairs. Historically, the vast majority of JFTC chairmen have been former top career officials of the powerful Finance Ministry. Japanese economic observers agree that as long as these "ex" ministry officials are involved in JFTC decisionmaking, the commission cannot be considered truly "independent." The JFTC's current chairman is a former public prosecutor and ex-official (Ministry of Justice) who has raised some public expectations of a more activist JFTC enforcement role. The United States has yet to see whether a 1996 amendment raising the mandatory retirement age of the JFTC chairman from 65 to 70 will facilitate the candidacy of non-bureaucrats for the top JFTC job, and thus questions about the JFTC's independence remain.

Laws Distorting Competition

The JFTC itself administers or assists in administering a number of laws and regulations that distort competition and often have anticompetitive effects.

Law Against Unjustified Premiums and Misleading Representations: The JFTC imposes unrealistic limits on the use of premium offers (prizes), and thereby discourages even legitimate cash lotteries and product giveaways used in sales promotions. Foreign newcomers, who depend on innovative sales techniques to market their company names and products, are severely impaired by the JFTC's restrictions on premiums. In addition, the law aims to deter misleading or fraudulent advertising and labeling, in itself a worthy policy. However, the JFTC's practice of allowing "fair trade associations" (essentially, private trade associations) to set their own promotion, advertising and labeling standards through self-imposed "fair competition codes" creates difficulties, especially for newcomers who are unfamiliar with local guidelines. Trade associations can and often do use the

cover of these codes to set additional standards that are stricter than the JFTC's regulations under the Premiums Law.

As of January 1998, there are 48 JFTC-authorized private premium codes. In April 1996, the JFTC incrementally liberalized its rules on premiums and other sales promotions, for example, by raising the maximum value of "open" cash lotteries (not requiring a purchase) to ten million yen; repealing restrictions on premiums offered by department stores; and eliminating the 50,000 yen ceiling on consumer premiums (while retaining price caps as a percentage of the transaction value). Further, over the last two years the JFTC abolished 24 of 29 industry-specific premium limits; the five industries that remain subject to stricter rules are real estate, household electrical appliances, newspapers, magazines, and hospital management. However, these changes fall short of the dramatic liberalization measures requested by the U.S. Government in Framework discussions and in the November 1997 deregulation submission to the Government of Japan.

Resale Price Maintenance: In April 1997, the Government of Japan abolished all product exemptions of the Antimonopoly Act, with the prominent exception of copyrighted products (books, magazines, newspapers, and CDs). There is no reason that retail price maintenance should be treated any differently under the Antimonopoly Act than any other practice. The JFTC currently is considering limiting or eliminating the retail price maintenance exemption for copyrighted products -- on January 13, 1998, a study group to the JFTC recommended a phased elimination of the exemption -- and will announce its decision by March 31, 1998.

Business Reform Law: On April 1, 1995 the Japanese Government implemented the Law to Promote Business Reform for Specified Industries (Business Reform Law) which authorizes MITI to implement industrial policy measures in designated industries. Under the law, in return for a firm in a designated industry adopting a MITI approved business reform plan, MITI will provide preferential measures, e.g., special depreciation allowances, company registration tax reductions, to the firm. This type of preferential treatment distorts the market mechanism and runs counter to Japan’s efforts to liberalize its economy through deregulation. Moreover, a number of the targeted industries are leading Japanese industries hardly in need of preferential treatment, e.g., automobiles, telecommunications.

Additionally, under Article 7 of the Business Reform Law, when firms in the same industry jointly submit business reform proposals, the reviewing Minister may consult with the JFTC regarding the joint applications. The JFTC may provide legal analysis to the Minister, and if an Antimonopoly Law problem exists, the Minister will have an opportunity to further consult with the JFTC. In its November 1997 deregulation submission, the United States urged the Japanese Government to abolish Article 7 of the Business Reform Law because: (1) it inappropriately diminishes the independence of the JFTC by setting up a consultation mechanism; and (2) it may be construed as an Antimonopoly Law exemption.

Cartel Exemptions: In June 1997, the Government of Japan decided to abolish numerous antitrust-exempted cartels. Still, 52 cartels retain their exemption from Antimonopoly Act application: 12 under individual laws, 7 under the Antimonopoly Act, and 33 under the Antimonopoly Exemption Act. The Government of Japan has pledged that it will review all remaining cartel systems with an eye toward elimination, and is expected to announce its decision by March 31, 1998. The Government of Japan announced in December 1997 that it plans to eliminate the exemptions for Depression Cartels and Rationalization Cartels.

Relationship Between Government and Industry

Japan

Japanese regulators view their role not simply as neutral arbiters of a legal rule-based system, but as active players in the guidance of their respective industries. The close government-industry relationship in Japan often works to the disadvantage of foreign firms trying to enter or participate in the Japanese market because the relationship favors domestic firms. Several aspects of the relationship are of particular concern.

Privatization of Regulations: The Government of Japan delegates, both formally or informally, governmental or public policy functions, such as industry standard development, product certifications and entry authorizations, to industry associations and other business-related organizations that are generally not under any obligation to conduct their operations in an open, transparent and non-discriminatory manner or to include foreign firms in their deliberations. Under the Enhanced Initiative, the United States has asked the Government of Japan to refrain from such delegations to industry associations and to ensure that, when there is a demonstrated need for such delegations, that they are carried out by the associations in an open, transparent and non-discriminatory manner and do not restrict the business activities of firms that are not members of the association.

Informal Management of Industry: Business in Japan is more heavily regulated than in the United States, with much of the regulation taking place privately and informally through cooperative consultations between a ministry or agency and the affected industry, industry association or other business-related organization; the issuance of "administrative guidance" to companies; and the placement of retired bureaucrats in companies and industry associations through a practice called *amakudari* (literally, “descent from heaven”).

OTHER BARRIERS

Aerospace

Japan is the United States' largest foreign market for aircraft and aerospace products, and many Japanese firms have entered into long-term and productive relationships with American aerospace firms. However, certain aspects of U.S.-Japan aerospace trade bear watching. The Japan Defense Agency's general preference for licensing foreign technology for production in Japan has meant that U.S. defense aerospace exports have been lower than would occur in a more market-driven environment. With respect to commercial aerospace, the Ministry of International Trade and Industry plays an active role in supporting the domestic aerospace industry, funding feasibility studies for new projects and technologies, and apportioning work among the major Japanese aerospace companies. Moreover, the Japan Defense Agency plays a role in the development of defense aerospace projects with significant commercial ramifications. Largely as a result of these policies, a significant transfer of U.S. aerospace technology to Japan has occurred, and Japan has become a major supplier of parts and components to foreign aircraft assemblers.

With respect to space systems, the Japanese Government’s focus on the development of indigenous systems disregards the frequent availability of proven U.S. technology and products. However, in 1996, Japan revised its space development policy with the aim of reducing the cost of the H-2 rocket, Japan’s indigenous launch vehicle, and as part of that revision opened procurement practices for this vehicle to non-Japanese suppliers. Partially as a result, two U.S. suppliers have won openly bid contracts for the provision of rocket parts. The United States welcomes this action, and will monitor subsequent procurements for the H-2A rocket to ensure that the procurement process is indeed open and transparent. In addition, the United States will also continue to push for greater access to areas where Japan’s preference for the development of domestic space technologies has been

most pronounced, including: space recorders and scientific instruments; sensors for earth resources and astronomical research satellites; and software and ground-based data processing, storage and distribution systems.

The U.S. Government will continue to monitor developments to ensure that the Japanese aerospace market remains open and that Japanese Government actions do not adversely affect export prospects for U.S. aerospace companies.

Autos and Auto Parts

The objectives of the 1995 U.S.-Japan Automotive Agreement are to eliminate market access barriers and significantly expand sales opportunities in this sector. Under the Agreement, the Japanese Government committed to improve access for foreign vehicle manufacturers, expand opportunities for U.S. original equipment parts manufacturers in Japan and the United States, and eliminate regulations that restrict access for U.S. automotive parts suppliers to the Japanese repair market. The Agreement included 17 objective criteria which evaluate progress toward achieving the Agreement's objectives. In conjunction with the conclusion of the Agreement, the five major Japanese auto manufacturers also announced plans to increase purchases of foreign auto parts in Japan and to expand production of vehicles and major components in the United States.

The Administration attaches high priority to vigorous implementation of the Automotive Agreement because of the importance of this sector to the U.S. economy. An Interagency Enforcement Team, headed by USTR and the Department of Commerce, was established to monitor implementation and assess progress achieved under this Agreement. This team issues a semi-annual report evaluating progress since the Agreement was reached. The fourth and most recent of these reports was issued on December 4, 1997.

The U.S. Government has become increasingly concerned over the past year about the lack of progress toward achieving many of the Agreement's key objectives, although the Agreement has generated satisfactory results in some areas. The United States relayed its specific concerns to Japan at the second annual review of the Automotive Agreement held in San Francisco in October 1997, and its concerns were echoed by representatives from the European Union, Canada, and Australia. The United States called upon Japan to take additional, concrete actions to ensure ongoing improvements in market access and sales opportunities in the Japanese automotive market and urged it to take immediate, substantial deregulatory and market-opening action to foster domestic demand-led growth.

Vehicles: After increasing 34 percent in 1996, sales in Japan of motor vehicles produced by the Big Three in North America declined 20 percent in 1997. This drop well exceeded the 5 percent contraction of the Japanese auto market. Moreover, it occurred despite the Big Three's maintenance of competitive prices in the face of a weak yen and major investments in expanded distribution networks and research facilities in Japan.

Foreign access to Japan's automotive distribution network remains a serious problem. U.S. auto companies continue to seek high-quality, high-volume dealerships, but some Japanese dealers continue to have reservations about carrying competing foreign vehicles for fear that doing so would compromise their relationships with Japanese manufacturers and thereby jeopardize their business. The Big Three U.S. automakers have added a total of 177 new outlets through direct franchise agreements with Japanese dealers since the signing of the Agreement, with the pace diminishing markedly over the past year. In response to a U.S. request, the

Government of Japan held a series of meetings with Japanese auto manufacturers and dealers to remind them that dealers are free to carry competing products of any manufacturer. Vigorous efforts in this area are critical to the ability of foreign automakers to gain direct and complete access to dealerships, which is key to achieving real access to the Japanese automotive market.

Auto Parts: Exports of U.S.-made auto parts to Japan increased 13 percent in 1997 and sales to Japanese transplants increased 4.2 percent during the first half of JFY 1997. At the same time, U.S. imports of parts from Japan fell 11.8 percent during 1997 -- in large part because Japanese transplants are substituting parts imported from Japan with U.S.-made parts. Nonetheless, sales of original equipment (OE) parts to Japan continue to be low. Furthermore, despite large percentage increases, actual U.S. aftermarket parts sales to both Japanese auto companies in the U.S. and Japanese auto companies in Japan remain small.

The Japanese auto manufacturers have made considerable progress in implementing the global business plans they announced at the time the Automotive Agreement was signed. In the United States, the automakers have boosted production of passenger cars, light trucks, and a range of components, including engines and transmissions. These production increases have and will continue to lead to new sales opportunities for U.S. suppliers and increased employment opportunities for U.S. workers.

Deregulating the certified service garage system is critical to increasing access of foreign parts suppliers to Japan's auto parts market. Restrictions limiting where and by whom repairs may be conducted restrict the creation of a competitive, independent auto parts aftermarket. Auto parts deemed by the Japanese Government to be critical to vehicle safety, or so-called "critical parts," cannot be replaced or repaired without inspection by a Ministry of Transport (MOT) Land Office official, unless repairs are conducted at an MOT-designated or certified garage. Garages that are not designated or certified may not perform such repairs. However, U.S. industry asserts, and the U.S. Government agrees, that critical parts repairs can be made with no adverse effect on safety as long as they are done by qualified mechanics. The Ministry of Transport has submitted legislation to the Diet that would permit vehicle-owners to repair critical parts on their own vehicles without the need for an MOT inspection. While a positive first step, this step alone is unlikely to result in meaningful improvements in market access for foreign auto parts manufacturers because virtually no Japanese consumers repair their own cars.

In February 1997, the Ministry of Transport introduced two new categories of service garages into the Japanese certified garage system. This action is encouraging competition and creating new opportunities for foreign auto parts producers by permitting smaller, independent garages, which are more inclined to use foreign parts, to undertake repairs previously limited to dealerships or other MOT-certified garages. To date, 205 specialized certified garages have been established. To facilitate the establishment of these new garages, the U.S. Government and industry has requested that the Ministry of Transport revise regulations regarding the certification of mechanics employed by these garages. The Ministry of Transport held public hearings on this proposal on February 9-10, 1998, but has not yet determined its response to this proposal.

The U.S. Government is extremely concerned about the lack of ongoing and significant deregulation in the automotive sector, and has strongly urged the Japanese Government to undertake additional deregulatory measures that will result in improved foreign access to the Japanese automotive market. Despite the Japanese Government’s commitment to deregulation generally and in this sector specifically, the Ministry of Transport has rejected several deregulatory requests by the U.S. Government and private sector during the past year. In

particular, the Japanese Government has not removed any additional significant items from the dissembly repair regulations since the Agreement was signed, despite its commitment under the Agreement to review the need for maintaining items on this list.

In January 1998, the Ministry of Transport informed the U.S. Government of draft legislation regarding auto parts certification and recall procedures intended to bring Japan's certification system into conformity with the UNECE 1958 Agreement for the mutual recognition of auto standards. The United States raised strong concerns regarding the lack of transparency and adequate notice it was provided on this issue, as well as concerns that the new procedures could potentially discriminate against foreign auto parts suppliers, particularly in the repair market. In early February, the Ministry of Transport dropped the recall proposal and assured the United States that the implementation process for the new certification system will be transparent and that it will give U.S. comments on the enabling ministerial ordinances full consideration. The Ministry of Transport also assured the United States that the new certification system was a first step toward international harmonization of automotive regulations and certification, and that it strongly supports the U.S. efforts to establish a global agreement on automotive standards and certification. The U.S. Government will closely monitor developments in this area.

Civil Aviation

More than 12 million air passengers travel annually between the United States and Japan; U.S. carriers transport almost two-thirds of them. U.S. carriers also are highly competitive in the cargo sector, enjoying a market share of about 55 percent. With nearly 40 percent of U.S. exports to Japan moving by air, Japan is by far the largest air freight market for U.S. carriers. U.S.-Japan air service currently earns approximately $6 billion in revenue for American carriers each year.

On January 30, 1998, the United States and Japan concluded a new civil aviation agreement which will significantly liberalize the bilateral civil aviation market. This agreement eliminates restrictions and resolves disputes for incumbent carriers. It lifts all restrictions on the number of flights operated and points served between the United States and Japan by incumbent combination and all-cargo carriers (United Airlines, Northwest Airlines and Federal Express). It also resolves the long-standing dispute over our incumbent carriers' rights to fly from Japan to other international points beyond Japan.

The agreement also opens doors for non-incumbent carriers. Non-incumbent Acombination@ carriers, currently Delta, American and Continental, gain the right to offer an additional 90 weekly round-trip flights between the United States and Japan, nearly tripling their access to this market. (Combination carriers carry both passengers and cargo.) Two new non-incumbent combination carriers will be able to enter the U.S.-Japan market, one immediately and another in two years. Non-incumbent all-cargo carriers, UPS and Polar Air Cargo, gain valuable new opportunities to transport cargo to destinations beyond Japan. An additional all-cargo carrier will be able to enter the market in four years.

Code sharing is permitted for the first time. U.S. and Japanese carriers can code share freely, U.S. carriers can code share among themselves on many operations to Japan and beyond, and U.S. carriers can code share with third-country carriers on operations to and beyond Japan. Other new service also will be available, including an increase in charter operations, from the current 400 flights per year, to 600 flights per year in two years, and rising eventually to 800 flights per year. Distribution and pricing provisions of the agreement will also promote competition. The Japanese Government has guaranteed U.S. carriers fair and equal opportunity to contract with

wholesalers and travel agents and to set up enterprises to market their services directly to consumers.

The anticipated economic benefits of this agreement will be substantial to both U.S. carriers and passengers and result in a projected increase of roughly $1 billion annually in U.S. aviation services exports.

While the United States is pleased to have reached this significantly market-opening agreement with Japan, the Administration remains committed to seeking further liberalization of this bilateral civil aviation market consistent with the Administration's global civil aviation policy of "open skies." The goal of this policy is to minimize government interference in the civil aviation market and provide full and equal opportunities for U.S. and foreign passenger and cargo carriers to compete in each other's markets. The United States and Japan have agreed to meet by May 1998 to consider further steps to liberalize pricing, with talks to resume within three years regarding a fully liberalized bilateral civil aviation agreement. If we do not reach that goal by 2002, supplemental liberalization will automatically transpire under the terms of the 1998 agreement.

Electrical Utilities

The cost of electric power in Japan is the highest in the industrialized world. Although private sector enterprises, Japan's ten electric utilities have regional monopolies and are among the largest and most profitable companies in Japan. To enhance Japan's competitiveness, the Japanese Government has sought to reform the electric power industry and introduce measures aimed at reducing electric power rates to international rates by 2001.

The United States believes that the most effective way for Japan to reduce costs in this sector would be the introduction of real competition into non-fuel procurement -- specifically, the elimination of discriminatory and nontransparent procurement practices and unnecessarily burdensome regulations and other barriers that limit the access of U.S. suppliers to this market. Non-fuel procurement presently is valued annually at approximately $25 billion, with imports representing only about 5 percent of total non-fuel procurement, which is considerably lower than the foreign share of other developed markets. With some Japanese utilities making progress in this area but others lagging behind, the United States continues to work to encourage the utilities to internationalize their procurement.

Among the barriers faced by foreign firms are standards and specifications used by Japanese utility companies that often discriminate against or otherwise disproportionately affect foreign suppliers. Particular problems in this regard are: the use of narrow, technical standards rather than performance-based standards; the lack of harmonization with standards used by other nations and even with specifications used by other utilities within Japan; and requirements that suppliers provide detailed information on standards and specifications for spare parts originating from outside sources.

The United States also seeks greater transparency and fairness in the procurement process. Expensive and time-consuming procedures are generally required for a company to be added to the list of designated suppliers for a particular utility company, including requests that suppliers submit detailed information on proprietary manufacturing processes. Equal access to procurement information also is a problem, and foreign firms often do not learn about procurements until after they have been awarded. Moreover, U.S. firms have expressed concerns that the periods allocated for bid submission and product delivery are too short and that, while many utilities make procurement information available in English, bid documents and related technical documents must be submitted exclusively in Japanese.

In addition, exclusionary business practices by Japanese company groups, including manufacturers, construction and engineering firms, and parts suppliers, impede foreign access to this market.

Some Japanese utilities have taken concrete steps to streamline and simplify their procurement standards and adopt international standards. Those that have done so have increased the range of items procured from foreign suppliers and the number of registered vendors in each of the past five years.

In addition, some Japanese utilities have taken a more active role in developing relations with potential U.S. suppliers. Through the New Orleans Association (NOA) -- a forum designed to help U.S. suppliers of power generation, transmission and distribution equipment gain access to the Japanese power equipment market -- utilities have made strong efforts to explain their procurement procedures, learn about U.S. products, and establish business relationships with U.S. suppliers. Several utilities have published procurement information in English on their internet home pages and have sent company buyer missions to U.S. trade shows. Moreover, some utilities have assisted U.S. firms in developing relations with distributors and service companies to facilitate the procurement and after-sales service process. Although representing only a small part of non-fuel procurement, telecommunications products also is an area where utilities are making notable progress in expanding foreign procurement.

While the principal focus of U.S. efforts in this sector has been the utility companies themselves, during the past year, government-to-government channels have been opened as well. The U.S. Government has initiated a dialogue with MITI's Agency for Natural Resources and Energy (ANRE) which will allow the United States to provide Japan with specific input on regulatory concerns and valuable information on the U.S. experience with electric utility deregulation. Among U.S. regulatory concerns are: equipment inspections and reporting requirements under the Electricity Utilities Industry Law, which are unnecessarily burdensome and discourage foreign firms from competing in this sector. In addition, the High Pressure Gas Law, which requires foreign manufacturers to apply for inspection of all designated equipment, includes complex and costly requirements that burden foreign suppliers to the Japanese market.

The U.S. Government also is monitoring closely the activities of the Electricity Utility Industry Council, an advisory group to the ANRE. In December 1997, the Council issued an interim report, which recommended increasing the supply of electricity by independent power producers, the introduction of greater competition in the area of thermal power generation, and a review of the bid solicitation and evaluation process. The Council is expected to issue a final report in May 1998.

Flat Glass

Japan's flat glass market was valued at $4.5 billion in 1997, the second largest in the world. Three Japanese manufacturers dominate the market: Asahi Flat Glass controls half the market, Nippon Sheet about a third, and Central Glass about a fifth. Foreign market share was about 5.7 percent in 1995, 7 percent in 1996, and 6 percent in 1997. Half or more of the import share is accounted for by transactions between affiliated Japanese parties for automotive and other uses.

Foreign access to Japan's glass market is of serious concern to the U.S. Government. In January 1995, the United States and Japan signed an agreement to open Japan's flat glass market to foreign suppliers. Pursuant to that agreement, Japanese glass distributors publicly stated that they would diversify supply sources to include

competitive foreign glass suppliers and that they would not discriminate among suppliers based on capital affiliation. Japanese glassmakers voiced support for diversifying their de facto exclusive distribution networks. The Japanese Government committed to rewrite building standards to promote increased use of insulated glass (where the United States has strong competitive advantages) and to promote increased competition in glass procurement for construction projects based on nondiscriminatory technical and performance specifications and competitive commercial terms.

Progress in implementing the Glass Agreement is measured using both quantitative and qualitative criteria, including access to public sector procurement in Japan. Consultations to assess progress are held annually. The two governments conducted the first review of the agreement in the fall of 1995 and three additional reviews since.

An important test of the Agreement's success is whether there has been a change in the extent to which Japanese distributors and glaziers deal in or use imported flat glass, considering that token dealings or use do not demonstrate diversification of supply sources. According to a March 1997 MITI survey, 80 percent of distributors surveyed planned to maintain the status quo (58.4 percent) or decrease their use of foreign glass (21.5 percent). This is a disturbing setback in meeting the goals of this agreement.

Concerns about lagging progress prompted a special review of the Glass Agreement in October 1997, at the request of the United States. The United States pointed to numerous recent reports of Japanese manufacturers' anticompetitive behavior in attempting to retain domestic market share. These practices include selective withholding of supply, use of restrictive trade associations and discriminatory pricing against customers who purchase significant amounts of foreign flat glass.

The Japanese glass distribution network remains closed to foreign glass producers through a sophisticated system of interlocking relationships. Japanese manufacturers exert control over the distribution system in many ways. Financial control has increased with respect to the larger, more efficient distributors. At the same time, financial interests in smaller, weaker distributors have been sold off. Glass manufacturers often require the payment of security deposits -- collateral equal to about 90 days' sales -- by exclusive distributors. These deposits, which began as a means of establishing credit, maintain a tangible link between distributors and manufacturers and help restrain purchases of flat glass from foreign suppliers. Established distributors are growing resentful of this system because manufacturers no longer pay above-market interest rates on security deposits and no longer uniformly require such deposits from new customers. Cutting centers are commonly owned by Japanese manufacturers and used as a means of controlling distributors. Japanese manufacturers own some 250 flat glass cutting centers throughout Japan. In about half of these, the land and warehouses are owned by a distributor. Manufacturers have changed from a unified pricing policy to one of separate pricing for each distributor.

At the October 1997 special review, the U.S. delegation recommended that the Japan Fair Trade Commission review the current state of the industry, which the agency itself described in 1993 as "highly oligopolistic." The Ministry of Construction acknowledged that it had not fulfilled its commitment to promote greater use of insulating glass by amending energy conservation standards for residential housing. The Ministry of Construction also has failed to upgrade safety standards, as it pledged to do under the agreement.

Much more remains to be done to open the Japanese retail/wholesale distribution system to competitive foreign glass products; improve access for U.S. glass products such as mirrors; and promote the use of energy efficient

insulating glass, where foreign glass companies have a strong competitive advantage. The next set of consultations under the glass agreement will be held in the spring of 1998.

Pharmaceutical Products and Medical Devices

In addition to bilateral consultations under the Enhanced Initiative on Deregulation, the U.S. Government continues to pursue improved market access for medical devices and pharmaceutical products in the context of the Market-Oriented Sector-Selective (MOSS) Medical Equipment and Pharmaceutical talks.
The U.S. Government remains concerned that a variety of obstacles significantly impede the ability of U.S. pharmaceutical and medical equipment manufacturers to sell in Japan. In addition to regulatory barriers, described in the section on the Enhanced Initiative on Deregulation, the Administration is addressing specific trade issues associated with Japan's current reimbursement system for medical devices and ongoing price revisions for drugs and devices. Japan's reimbursement system often lacks transparency. Under Japan's national health care insurance system, reimbursement prices for drugs and devices frequently do not appropriately reward the true benefits of innovative products, and prices are frequently determined and revised based on a non-transparent and seemingly arbitrary basis. Other priority issues under discussion in the MOSS talks include impediments to the sale of dietary supplements (described in the section on Standards) and greater foreign industry access to Japan's policy-making process.

Paper and Paper Products

In April 1992, the United States and Japan signed "Measures to Increase Market Access for Paper Products," a five-year agreement aimed at substantially increasing access to Japan's market for paper products. That agreement expired in April 1997. In the agreement, the Japanese Government committed to: encourage companies to increase imports of competitive foreign paper products; introduce transparent corporate procurement guidelines; encourage key end-user segments of the Japanese market to use foreign paper; and introduce Antimonopoly Law compliance programs. The Government of Japan also committed to provide assistance to foreign paper suppliers in the form of market information and low-interest loans.

There has been no meaningful increase in Japanese imports of paper and paperboard products. In 1996, Japan's import penetration in this sector was still only 5.1 percent, with the United States accounting for 1.9 percent. This level of import penetration is the smallest in the industrialized world.

Despite continued U.S. efforts to press the Japanese Government to open its market, including the citation of market access problems in Japan in this sector as a practice that may warrant future identification as a "priority" foreign country practice under provisions of the Super 301, the Japanese government has insisted that it does not maintain barriers to market access in this sector. A key problem U.S. producers have pointed to has been weak enforcement of Japan's Antimonopoly Law and exclusionary business practices. Hence, U.S. negotiators have engaged in discussions about competition issues affecting this sector under the Enhanced Initiative's expert level group on Competition Law and Policy. The United States also has sought Japan's full participation in the APEC forest products sectoral liberalization initiative which envisages, among other, the accelerated phase out of tariffs on paper and paperboard products in Japan.

Consumer Photographic Film and Paper

Japan

Foreign photographic film and paper manufacturers face a variety of barriers that restrict access and sale of their products in the Japanese market, the second largest film market in the world. These barriers have prevented foreign firms from gaining access to the main distribution channels for film. As a result, less than 3 percent of the film sold through wholesale distribution channels is imported and foreign firms are unable to gain any access to nearly two-thirds of film outlets in Japan.

On July 2, 1995, in response to a petition by Eastman Kodak, the USTR initiated an investigation under Section 302(a) of the 1974 Trade Act of barriers to access to the Japanese market for consumer photographic film and paper. After an extensive investigation, on June 13, 1996, USTR made a determination of unreasonable practices by the Government of Japan with respect to the sale and distribution of consumer photographic materials in Japan. The investigation showed that the Government of Japan built, supported, and tolerated a market structure that impedes U.S. exports of consumer photographic materials to Japan, and in which restrictive business practices occur that also impede exports of these products to Japan.

As a result of these findings, the Administration initiated dispute settlement procedures against Japan under the WTO dispute settlement mechanism alleging that Japanese Government measures were inconsistent with the General Agreement on Tariffs and Trade (GATT). The European Union and Mexico joined the United States as third parties to the case. The United States also requested consultations under the General Agreement on Trade in Services (GATS) and a GATT contracting parties' decision on restrictive business practices.

The United States argued that the Government of Japan had implemented an extensive array of measures of the past 30 years to offset the effects of tariff, import, and foreign investment liberalization and limit the sale of imported consumer photographic film and paper in the Japanese market. These measures contributed to a narrowing of distribution channels under the control of the dominant Japanese film manufacturer, restrictions on the expansion and operation of large stores, in which foreign products are more likely to be sold, and limits on the use of economic inducements, premiums and other marketing techniques to gain market recognition.

The WTO Panel on film issued its interim report to the United States and Japan on December 5, 1997, failing to find Japan in violation of its GATT obligations. The United States expressed its serious disappointment with the Panel's findings, stating that the interim report sidestepped the core issues raised by the United States, particularly the combined effects of the numerous measures Japan imposed to protect its market.

Despite the disappointing Panel results, the United States noted that pursuing the WTO dispute has led Japan to take some steps that will benefit U.S. and other foreign film manufacturers. Japan is moving toward eliminating the Large-Scale Retail Store Law, one of the measures the United States challenged. Japan also substantially relaxed impediments to foreign firms' ability to promote their products in Japan and removed film from the list of sectors covered by the Business Reform Law, which help secure financing and other assistance for firms facing declines or risks of declines in production or employment.

The final WTO film panel report, which differed little from the interim report, was issued to the parties on January 30, 1998, and the United States does not intend to appeal the decision. On February 3, the Administration announced a new market-opening initiative aimed at improving access for imported photographic film and paper in the Japanese market. The Administration established an interagency monitoring and enforcement committee to review whether Japan's implementation of the measures at issue in the WTO dispute is consistent with the formal representations it made to the WTO panel. Contrary to the experience of U.S. and

other foreign photographic film and paper manufacturers, the Government of Japan stated to the international tribunal that it neither restricts foreign imports of foreign photographic film and paper nor does it tolerate restrictive business practices by private firms that would have a similar result. For example, the Government of Japan represented to the WTO panel that it: (1) encourages imports of foreign photographic film and paper; (2) does not tolerate restraints on competition in this sector; (3) prohibits practices that discourage the opening of large stores; (4) does not discriminate against foreign firms in this sector; and (5) does not restrain price competition in the photographic film and paper sector.

The interagency monitoring and enforcement committee, co-chaired by USTR and the Department of Commerce, will review Japan's representations on a regular basis, using all relevant information. In particular, it will consider information from industry describing whether Japan's representations are being borne out in the market, information on Japanese Government actions to implement, monitor, and enforce the measures about which it made representations, and data on foreign access to wholesale and retail distribution channels to determine whether this access is improving. The committee will conduct and report on the results of the review semi-annually, with the first review to be completed in July 1998.

On June 13, 1996, the United States requested consultations with Japan under Article XXIII of the GATS, concerning measures affecting distribution services, applied by the Government of Japan pursuant to or in connection with the Large-Scale Retail Stores Law and other adjustment measures. Consultations took place on July 10 and on November 7-8, 1996. In December 1997, the Government of Japan began considering legislation to repeal the Large-Scale Retail Stores Law (see Structural Deregulation). The United States is monitoring legislative developments carefully.

Sea Transport and Freight

American carriers serving Japanese ports have encountered for many years a restrictive, inefficient and discriminatory system of port transportation services. Following extensive research and deliberation, the Federal Maritime Commission (FMC) determined in February 1997 that Japan maintained unfair shipping practices and proposed fines against Japanese ocean freight operators. The FMC delayed implementation of those fines following an understanding between the U.S. and Japanese governments reached in April, in which the Japanese Government pledged to grant foreign carriers port transport licenses and, at the same time, to reform the prior consultation system which allocates work on the waterfront and requires carriers to obtain approval for any change in their vessel operations.

Japan's failure to carry out these reforms by July 31, 1997, resulted in FMC implementation of the fines on September 4, 1997. The two governments reached an understanding in October, 1997, which was recognized in an exchange of letters between Secretary of State Albright and Japanese Ambassador Saito. The understanding noted two agreements among the Japanese Government, foreign ship owners, Japanese ship owners and the Japanese Harbor Transport Association, in which they committed to improve the current prior consultation system, and to establish an alternative method to the current prior consultation system. The Ministry of Transport also agreed to approve foreign carriers' applications for harbor services licenses if those applications satisfied the requirements set out in the April understanding. The U.S. Government believes that these actions provide a solid foundation for reform of Japanese port practices. Sanctions were suspended on November 13, 1997. The U.S. Government continues to vigorously monitor the agreement to ensure its full implementation.

Japan

Significant deregulation of port transport services is still needed, particularly elimination of the supply-demand adjustment requirement and rules that underpin allocation of port transport work. The United States has asked that this deregulation be completed by December 1998.

Semiconductors

In 1996, the United States and Japan announced a new arrangement on semiconductor trade. The new measures, like the 1986 and 1991 semiconductor arrangements which preceded them, were negotiated to address persistent problems of market access for U.S. manufacturers of semiconductors. The 1996 measures represent an innovative multi-dimensional approach to a sector in which market access is promoted not only through government-level discussion but through concrete industry-level partnership.

The cornerstone of the 1996 arrangement is an industry-to-industry agreement under which industries in the U.S. and Japan established a "Semiconductor Council" to promote cooperative activities, discuss market access concerns, and expand international cooperation. Included within the Council's scope are both a continuation of existing user-supplier cooperative activities (in the area of semiconductor technologies for telecommunications, automotive and emerging applications) and a range of new supplier-supplier cooperative activities (in such areas as standards, intellectual property, environmental and safety issues, and others). Industry experts also will collect and analyze data on the state of the semiconductor market and its prospects, and report this information quarterly to governments. The intention is to provide a complete picture of the market situation in the Japanese and other key markets. Based on their commitment to expeditious elimination of semiconductor tariffs under the WTO Information Technology Agreement, industry associations from the European Union and the Republic of Korea were invited to join the Semiconductor Council in 1997, and were present at the initial meeting of the Semiconductor Council in April 1997.

Second, the measures, through a bilateral government statement, also established a multilateral Government Consultative Mechanism, essentially to oversee and interact with the Semiconductor Council. Governments whose industries have joined the Council participate in these consultations, which occur at least once a year. The first meeting of the Government Consultative Mechanism for Semiconductors was held in May, 1997 in Hawaii, where participating governments received the reports prepared by industry and were briefed on the cooperative activities conducted by the Council members, and market trends in Japan and other major markets.

The measures also, through the bilateral government statement, established the "Global Governmental Forum" (GGF). Governments of all major semiconductor-producing nations and economies are invited to participate in this forum, which meets annually to discuss policy issues of interest to the semiconductor industry (e.g., trade and investment liberalizations, environmental issues, worker health and safety, intellectual property protection, and other matters). The second annual GGF was held in Washington in January 1998, with the United States, Japan, the EU, Korea, and Chinese Taipei attending.

Finally, subsequent to the announcement of the new arrangement on semiconductors, the Semiconductor Industry Association (SIA) and the Electronics Industries Association of Japan (EIAJ) announced an industry-level agreement on anti-dumping, which reaffirmed the need to avoid injurious dumping through effective and expeditious antidumping measures consistent with the GATT and WTO Antidumping Agreement. Consistent with this agreement, individual semiconductor producing companies are continuing to collect and maintain specified data on a voluntary basis, which can be produced in an antidumping investigation on an expedited

basis.

Due to the concerted efforts made by all parties, the 1996 measures have continued to lead to greater access to the Japanese market for foreign semiconductor manufacturers. After a slow start, industry organized a full schedule of user-supplier activities for 1997, which was complemented by a range of useful supplier-supplier activities. Foreign market share in the Japanese semiconductor market, of which U.S. producers account for approximately two-thirds, dropped from 35.8 percent in the second quarter of 1997 to 32.1 percent in the third quarter of 1997 (the last quarter for which statistics are available). The Administration will continue to work closely with U.S. industry and the Japanese Government to ensure that the commitments made in the 1996 semiconductor agreement are fully and successfully implemented.

KAZAKHSTAN

In 1997, the U.S. trade surplus with Kazakhstan was $142 million, an increase of $118 million from the $24 million trade surplus in 1996. In 1997, U.S. merchandise exports to Kazakhstan were $258 million, an increase of $120 million from the level of U.S. exports to Kazakhstan in 1996. U.S. imports from Kazakhstan in 1997 were $116 million, an increase of $2 million from the level of imports in 1996.

Overview

Kazakhstan is in the midst of its transition to a market economy. Key reforms underway include completing Kazakhstan's Privatization Program, creating a viable securities market, pension reform, modifying its trade regime so that Kazakhstan can join the World Trade Organization (WTO), consolidating the banking sector and improving Kazakhstan's investment climate.

The U.S. and Kazakhstan have several trade agreements in place, in keeping with U.S. trade policy of creating a legal framework for productive trade, investment and protection of intellectual property. There is a bilateral trade agreement between the two countries, which came into force in 1993. A bilateral investment treaty came into force in January 1994. An avoidance of double taxation treaty came into force in December 1996.

Over 95 American firms have established offices in Almaty, Kazakhstan's former capital and largest city. Major U.S. investors include Chevron, Mobil, Philip Morris, Oryx, and AES.

IMPORT POLICIES

The average weighted import tariff is approximately 12 percent. This is largely due to the fact that trade with Russia, Kazakhstan's major trade partner, is duty-free pursuant to the Customs Union Agreement. Merchandise from both CIS and non-CIS countries is subject to a value-added tax (VAT) of 20 percent at the time of importation. In addition, customs levies a 0.2 percent import processing fee, based on the declared value of the item.

According to the February 1997 law on state support for direct investment, imported goods--equipment, raw and other materials--can qualify for complete or partial exemption of duty if the goods are used as an investment in designated “priority sectors” of the economy. Priority sectors include infrastructure, agriculture, tourism and all imported goods related to activity connected with the construction of the new Kazakhstani capital at Akmola.

In April 1997, the Ministry of Finance announced that enterprises that import consumer goods used in industrial processing will be granted a three-month delay in paying VAT taxes. Of these companies, those that regularly import such items may be granted a one-year delay in paying VAT taxes.

Certain goods that are imported temporarily are exempt from payment of customs duties and taxes. These include transport vehicles, professional and office equipment, goods imported for demonstration purposes, shipping containers, and advertising materials. Such goods may remain in Kazakhstan for one year duty-free.

With some exceptions, all other goods may be imported temporarily for a period of two years under a partial duty exemption. The amount of duty payable is also equivalent to three percent of the duty chargeable for each calendar month. Goods not eligible for full or partial duty exemption are food products, industrial waste, and consumable materials.

Kazakhstan formed a customs union with Russia and Belarus in January 1995 with the Kyrgyz Republic formally joining in 1997. Under the provisions of the customs union, trade between these four countries is free of customs duties.

Customs Procedures

Kazakhstan's customs valuation rules largely conform to the GATT Valuation Agreement, and its tariff nomenclature is patterned after the World Trade Organization's harmonized system. Foreign firms can import some items for their own use duty-free. Article 22 of the 1994 Foreign Investment Law exempts from customs duties property imported by a foreign investor for the purpose of contributing it to the charter fund of a "foreign-shared enterprise" (defined as a Kazakhstani legal entity, such as a limited liability company, in which the foreign investor has an ownership interest). However, varying interpretations of Article 22 following the July 1997 changes to the foreign investment law have reduced investor confidence in this article.

U.S. companies have identified the cost of customs declarations to be an added cost of doing business in Kazakhstan. U.S. companies have also complained of a new requirement that they obtain a "transaction passport" to clear imported goods through customs. Ostensibly designed to stem the outflow of capital, the State Customs Department and the National Bank of Kazakhstan are now requiring importers to show copies of contracts and other documentation to prove the legitimacy and verify pricing on import/export transactions.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Government observance of old Soviet standards, testing, labeling, and certification requirements is uneven. Such requirements constitute a barrier when they differ significantly from U.S. and western standards. In November 1996, the U.S. National Institute of Standards and Technology signed a memorandum of understanding with the Kazakhstani Government to bring Kazakhstani metrology methods in conformity with international rules and practices.

GOVERNMENT PROCUREMENT

During ongoing negotiations to accede to the World Trade Organization, the Republic of Kazakhstan declared its intention to accede to the WTO's Agreement on Government Procurement. It is anticipated that the framework for government procurement now being developed will provide foreign bidders with enhanced access to government tenders, assurances of national and most-favored nation treatment, and international standards of transparency and public accountability.

LACK OF INTELLECTUAL PROPERTY PROTECTION

In 1992, the U.S. and Kazakhstan signed a bilateral trade agreement incorporating provisions on the protection

of intellectual property rights (IPR). In anticipation of 1992, Kazakhstan acceded to the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty (PCT) and the Madrid Agreement Concerning the International Registration of Marks and joined WIPO. It has not, however, joined the major copyright agreements such as the Berne Convention for the Protection of Literary and Artistic Works or the Geneva Phonograms Convention. Kazakhstan has signed but has not ratified the 1997 WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). In June 1996, Kazakhstan enacted a new law on copyright protection which includes sanctions for infringement.

Under the 1992 bilateral trade agreement, Kazakhstan agreed to bring its IPR regime up to world standards. Kazakhstan has fulfilled most of its obligations under the Trade Agreement, but still has steps to take, such as adhering to the Berne Convention. Under the bilateral trade agreement, Kazakhstan is required to afford full-term protection to preexisting foreign works and sound recordings, which it has yet to do. To secure full-term retroactive protection of U.S. copyrighted works, Kazakhstan needs to join and implement the Berne Convention, including Art. 18 of the Berne Convention by legislation or decree. Under the trade agreement, Kazakhstan is also obligated "to provide protection for sound recordings first fixed by their respective nationals or companies or first published in their national territory." This could be accomplished if Kazakhstan joins and implements the Geneva Phonograms Convention and ratifies and implements the WCT and WPPT.

Piracy of U.S. movies, computer software and audio-cassettes in Kazakhstan is reportedly extensive. To date, however, there have been no enforcement actions taken against anyone for IPR violations.

Kazakhstan is in the process of acceding to the World Trade Organization (WTO) and full implementation and enforcement of its bilateral IP commitments under the 1992 trade agreement with the United States would greatly assist this country in complying with the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) on the date of its accession to the WTO.

SERVICES BARRIERS

Foreign insurance companies are limited to operating in Kazakhstan through joint ventures with Kazakhstani companies.

INVESTMENT BARRIERS

There is a severe lack of capital in domestic enterprises for servicing loans and to meet equity percentages in joint ventures. In addition, in accordance with the Constitution, foreign firms currently cannot purchase land. Firms can obtain leasing rights to land only through a domestic partner for a maximum of 99 years. Kazakhstani authorities have also often insisted that U.S. firms invest in social programs for local communities.

OTHER BARRIERS

Structural Barriers

These include a weak system of business law, a shortage of domestic capital to pay for U.S. goods, lack of an

effective judicial process for breach-of-contract resolution, logistical difficulties of serving the Kazakhstani market, and an unwieldy and corrupt government bureaucracy.

KENYA

In 1997, the U.S. trade surplus with Kenya was $112 million, an increase of $114 million from the U.S. trade deficit of $2 million in 1996. U.S. merchandise exports to Kenya were $226 million, an increase of $122 million (117 percent) from the level of U.S. exports to Kenya in 1996. Kenya was the United States' ninety-first largest export market in 1997. U.S. imports from Kenya were $114 million in 1997, an increase of $7 million (6.5 percent) from the level of imports in 1996.

Kenya's economy slowed down in 1997. Following an estimated gross domestic product (GDP) growth rate of 4.6 percent in 1996, local economists estimated Kenya's growth rate to be around 2 percent for 1997. Kenya, however, anticipated a slightly higher growth rate. The slow growth rate resulted from the drought early in 1977 that interrupted power and slowed manufacturing. This catastrophe was followed by severe floods, deteriorating infrastructure, political uncertainties, and sporadic violence preceding the December 1997 general election. In July 1997, Kenya's economic status was complicated when the International Monetary Fund (IMF) allowed its assistance program to lapse after Kenya declined to address key governance problems. Tight control of the money supply by the central bank helped keep inflation moderate.

IMPORT POLICIES

Kenya progressively reduced its number of customs duty bands (including the zero rate) from 8 to 4 between June 1994 and June 1997. The maximum tariff rate fell from 45 percent in June 1994 to 25 percent in June 1997. Additional suspended duties of 5 percent or 10 percent apply to certain products including paper and paperboard, flat-rolled iron and steel, resin, yarn, cars, minibuses, pickups, and tires. Kenya's import regulations on agricultural products are constantly changing, depending on politics, domestic supply, and demand. Kenya has either frequently applied prohibitively high tariffs or outright import bans on certain agricultural imports. The 70 percent duty was suspended for imports of milk, maize, rice, sugar, and wheat. A 10 percent duty was suspended for imports of apples, pears, grapes and oranges. Kenya's dairy import ban was lifted in mid-l997. However, as of December 1997, an ad valorem duty of 70 percent was levied on rice, sugar, and milk. The tariff on wheat was the higher of the following: (a) 75% ad valorem or (b) 50% ad valorem plus 3.5 Kenyan shillings per kg (approximately $56 a metric ton).

In 1993 Kenya abolished import licensing except for certain items based on health, environmental, and security concerns. The list includes livestock and commercial seeds. To address food security concerns, Kenya routinely prohibits exports of wheat and corn.

All imports with an f.o.b. value of more than $2,000 require pre-shipment inspection (PSI). Shipments originating in the United States are inspected by the Swiss firm of Cotecna Inspection S.A. In addition to a "clean report of findings" (CRF), certifying that the goods are consistent with the invoice, the inspection agency also furnishes a "valuation certificate" that enables the Kenyan Government to determine the correct duty. The import declaration fee, which includes a PSI fee, is 2.75 percent of the export (f.o.b.) value. In addition to the import declaration fee, agricultural imports are charged a 1 percent c.i.f. value fee to support the Kenya

Agriculture Research Institute. Most of the funds collected from the c.i.f. fee are for the general treasury and not for PSI. Moreover, if importers fail to obtain an advance inspection a 10 percent penalty (20 percent for motor vehicles) is applied. Goods airlifted by courier services are not subject to PSI if their value does not exceed $10,000.

In 1997, the Kenyan government largely reversed earlier promising steps to counter corruption at the Port of Mombasa. The government replaced a well-respected businessman hired to manage the port. In early 1996, 22 officials were suspended and charged with duty evasion. Under suspicious circumstances, most of the officials have since been cleared of wrongdoing, and allowed to return to their jobs. In September 1996, the government, under pressure from international donors, turned over the management of the port container facility to the UK port of Felixstowne. Felixstowne withdrew in September 1997 after the government failed to address many deficiencies and problems at the port.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Kenya Bureau of Standards (KBS), a government regulatory body under Kenya's Ministry of Industrial Development, inspects imports to ensure conformity to International Standards Organization (ISO) product standards. The inspection fee is 1 percent of c.i.f. value. KBS conducts product testing for individual product categories and undertakes certification. KBS conducts random checks on imported products to ensure that they conform to ISO standards. Products that do not meet the standards are withdrawn from the market, and the importer is prosecuted. KBS is reviewing all standards, especially those that are ten or more years old and about 500 standards still need to be reviewed.

Certain agricultural goods are subject to further inspection by the Kenya Agricultural Research Institute (KARI). Commercial hybrid grain seed must be evaluated for a period of four years by KARI. In early 1996, Kenya, citing environmental standards, effectively banned commercial seed imports by requiring that all approved seed be grown in the country. The rule would reduce U.S. exports by less than $10 million, but the Kenyan Seed Company no longer has an absolute monopoly. Nonetheless, Kenya still carefully controls seed corn imports, and requires any company wanting to sell over 50 MT of seed corn to produce that seed corn in Kenya.

As of July 1997, the Weights and Measures Act requires a reduced list of twenty different products to be labeled with metric measurements and packaged in even units (e.g., 2.5 liters, not 2.51). Shipments in violation of these rules may not be re-exported.

GOVERNMENT PROCUREMENT

Although not repealed, Kenya's "buy national" requirement, which provides local firms with a 10 percent preference in government tenders, is no longer observed. According to government regulations, goods worth over $4,000 must be purchased through open tender. In practice, however, tenders are frequently awarded to noncompetitive firms in which government officials have a significant interest. Conflict-of-interest regulations are not enforced. Some of the largest government contracts, including those for an international airport in 1994 and for a presidential jet in 1995, have been awarded in secret. More transparent government procurement

could boost U.S. exports by $100 million to 500 million, based on available government procurement opportunities.

EXPORT SUBSIDIES

In 1992, the government enacted a duty/value-added tax remission facility that enables exporters to purchase imported inputs tax free. No general system of preferential financing exists, but sectoral government development agencies in areas such as tourism and tea are supposed to provide funds at below-market rates to promote investment and exports by Kenyans.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Kenya is a member of the World Intellectual Property Organization (WIPO) and the African Regional Industrial Property Organization. Kenya has joined both the Paris Convention on Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works. Although a unified system for the registration of trademarks and patents from Anglophone Africa was signed in 1976, the effort has not proceeded owing to lack of cooperation and funds. Future protection may be achieved through the African Intellectual Property Organization, although the enforcement and cooperation procedures are untested. Kenya, as a member of the WTO, must also implement the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).

Kenya is amending its intellectual property laws to conform to WIPO guidelines, the TRIPs Agreement, and other international conventions. The Industrial Property (Patent) and Trademark Acts are scheduled to be amended in 1998. The Copyright Act protects sound as well as video recordings. Violations are subject to a fine of up to $3,600 or imprisonment for five years or both. In practice, however, the Attorney General's office (which is responsible for copyright matters) and the police seldom enforce the laws. Pirated sound recordings are common, and virtually all videos available in shops are unlicensed.

The Kenya Broadcasting Corporation (KBC) has not paid local artists their royalties since 1994/95. For the fiscal year ending June 1997, KBC owed the artists nearly $190,000 for royalties. Some commercial theaters and a Kenyan cable television company also violated copyright norms in 1996. Given the small size of the market, improved copyright protection might increase exports by less than $10 million.

Regarding intellectual property rights for seeds, Kenya has not joined the union for the protection of new varieties and plants, and its plant variety protection laws do not conform to international regulations. The Ministry of Agriculture restricts international seed trade by setting quantitative ceilings on cereal seed imports. Moreover, the variety certification process is tedious and restrictive. A minimum of four years is needed for the government of Kenya to approve or reject a variety, a timetable that effectively restricts trade.

SERVICES BARRIERS

No explicit barriers exist on the provision of services by U.S. professionals. For example, a U.S. bank prepared flotation of shares by Kenya Airways, and a U.S. life insurance firm is the leader in its industry sector. Nevertheless, foreign companies offering services in construction, engineering, and architecture may face

discrimination when bidding for public projects. The Kenyan Bar, for example, has declined to admit foreign lawyers for over 11 years. New foreign investors with expatriate staff are required to submit plans for the gradual elimination of non-Kenyan employees.

INVESTMENT BARRIERS

For firms listed on the Nairobi Stock Exchange, non-Kenyan ownership can total up to 40 percent, with a 5 percent limit on individual foreign investment. Life insurance companies are required to have at least 33 percent local ownership. Foreign brokerage and fund management firms are allowed to participate in the local market through locally registered companies. Such companies must have local ownership of at least: (a) 30 percent in the case of fund management firms, or (b) 51 percent in the case of brokerage firms. In other industrial sectors, local partners are encouraged but not mandated. Small-scale commercial enterprises no longer require a Kenyan partner. Technology transfer requirements and foreign exchange controls have been abolished. Difficulty in obtaining clear title to land, lack of confidence in speedy and fair resolution of disputes, and requests from officials for illicit payments continue to hamper investment. If these investment barriers were lifted, U.S. investment might increase by $100 million to 150 million.

Nonstrategic Parastatals

Although Kenya, the most industrialized country in East Africa, maintains an open foreign exchange system and liberal investment regulations, its parastatal sector is large and could be reduced. The Kenyan Government began privatizing parastatals in 1992. Initially 207 "nonstrategic" parastatals were targeted for divestiture. Another 33 "strategic" parastatals were to be retained by the government. By June 1997, the government of Kenya had completed 154 divestitures, from which it received $158 million. Capitalization of the Nairobi Stock Exchange increased by $105 million. Divestiture took the form of flotations on the Nairobi Stock Exchange (10 firms), competitive bidding (12), liquidations (15), receiverships (16), preemptive rights (50), and one management buyout. The government of Kenya also divested 11 other firms. The government sold 26 percent of Kenya Airways to KLM, and an additional 48 percent of the national carrier to the public (including foreign investors) in April 1996.

Anticipated privatizations for 1998 include a large reinsurance company, and flotation of additional shares in a leading majority government-owned commercial Bank. Kenya Railways Corporation has contracted out maintenance of some of its locomotives to General Electric and may be commercialized further.

Strategic Parastatals

Although the government is committed to reform and partial privatizations in the power and telecommunications sectors, these programs are well behind schedule. The Government of Kenya has removed most of the monopolies, including all trading monopolies, formerly enjoyed by the country's "strategic" parastatals. Nevertheless, several state corporations remain barriers to open investment. The government of Kenya continues to restrict access to radio and TV licenses for independent media organizations. The government provides no clear-cut guidelines for licensing TV and radio stations, which result in a biased licensing system.

Despite licensing problems, Kenyans now have three open-air television stations: Government -owned Kenya Broadcasting Corporation (KBC) and two private stations. The owners of these private stations have close ties to the government. In addition, two other stations have been licensed but are not yet operating. Kenya now also has one private radio station in addition to several stations operated or partly-owned by KBNC. The private stations are permitted to provide only entertainment programming. The news is the sole province of KBC. The government licensed the British Broadcasting (BBC) in mid-1997 to broadcast its world service news programming. However, Kenya Posts and Telecommunications Corporation (KPTC), a government parastatal, had delayed approvals for the equipment necessary to broadcast.

Public Infrastructure Barriers

The government has been hesitant to open public infrastructure to competition, although progress may soon be made in this area. At the beginning of 1997, the Kenya Power and Lighting Company (KPLC) was split into two entities: the Kenya Power Company, to deal with all power generation, and KPLC, which will now be responsible only for distribution of electricity. Discussions have been held concerning whether to allow private firms to build and operate roads. Since 1994, refined oil products have been imported, but they are subject to high duties to protect the national refinery's market share. The state reinsurance company is still entitled to 20 percent of all general insurance business. KPTC provides both postal and telecommunications services and regulates the provision of these services. KPTC has authorized pay telephones and has entered a joint venture with a private cellular telephone operator. Several Internet service providers are operating in Nairobi. In general, KPTC has neither approved requests from foreign missions, businesses, or individuals to operate broadcast satellite dishes (VSATS) nor direct competition in telephone services. KPTC stopped licensing private telephone bureaus beginning mid-December 1996. In addition, and more damaging to U.S. firms, KPTC without warning shut down home country direct telephone services in October 1996. KPTC has allowed some competition in the area of "add ons" such as fax and telex services. KPTC currently operates an ETACS system with a capacity of over 2,000 lines. A wireless local loop is being planned to enhance countrywide telephone penetration.

KPTC is scheduled to be split into four parts at the end of December 1998: a post office, a telecommunications company (Telcom Kenya), a "national communications secretariat," and a regulatory authority--the Communications Commission of Kenya. After the split takes place, the government's current plans are to sell up to 30 percent of Telcom Kenya to a strategic partner and to sell additional shares on the Nairobi Stock Exchange. Before these steps are taken, the Kenyan parliament must pass a new telecommunications act, and the bill must receive presidential assent. Thereafter, at least a 30 percent share in the telecommunications company will be sold to the public. A consulting contract has been awarded for the separation of the three independent entities, and draft legislation is being prepared. KPTC has allowed some competition in the area of "add ons' such as fax and telex services, and a tender for a GSM cellular telephone network

OTHER BARRIERS

The state agriculture sector is an area in which trade barriers flourish. Only the National Cereals and Produce Board (NCPB) is permitted to export corn. All coffee produced in Kenya must be sold through the Coffee Board of Kenya. Kenya Seed Company and the National Dairy Cooperative are subsidized. The unclear, ever-shifting agricultural policies are a major constraint to U.S. trade with Kenya. For example, some tariffs

are variable and can change overnight; import bans come and go. Private firms do not restrict the sale of U.S. goods and services. In fact, significant demand exists for U.S. products. The difficulty lies in overcoming the preference by importers and distributors toward suppliers in Europe and the UK, Kenya's former colonial ruler, in particular.

KOREA

In 1997, Korea was the United States' fifth largest export market overall, and the fourth largest for agricultural products. Merchandise trade between the United States and Korea totaled $48.3 billion, compared with $49.2 billion for 1996. U.S. exports to Korea in 1997 were $25.1 billion -- a 5.7 percent drop from the 1996 figure of $26.6 billion. U.S. imports from Korea in 1997 were $23.2 billion -- a 2.2 percent increase from the 1996 figure of $22.6 billion. In 1997, the U.S. merchandise trade surplus with Korea was $1.9 billion, down by more than 50 percent from the $4.0 billion surplus in 1996.

The stock of U.S. foreign direct investment (FDI) in Korea in 1996 was $5.5 billion, an increase of 6.6 percent from 1995. U.S. FDI is concentrated largely in the manufacturing, banking and wholesale sectors.

Overview

Korea is one of the United States' major trading partners, but it also has been described as one of the toughest markets in the world for doing business. This year, the U.S.-Korea trading relationship is operating within the context of a new and significantly different set of circumstances. In December 1997, after a dramatic depreciation in the value of the *won*, Korea reached agreement with the International Monetary Fund (IMF) on a macroeconomic stabilization package that included conditions on financial, corporate, labor, investment, and other trade-related structural reforms. In the spirit of this agreement, Korean President Kim Dae Jung has made strong public statements about the need to attract foreign investment, accept imports, and restructure the corporate conglomerates, or *chaebols*, in Korea. President Kim has commented on the need to break ties between the government, the banks, and the *chaebols*. These linkages, central to Korea's development model for over 30 years, have impeded competition and market access, both in Korea and in other markets. If implemented fully and faithfully, the stabilization-related reforms to which Korea has committed should reduce barriers to free trade, investment, and competition in Korea.

As referenced above, the Korean *won* depreciated by approximately 50 percent between November 1997 and January 1998. Economists indicate that it will be some months before the full effect of the drop in the value of the *won* is realized in trade volumes. However, most predict negative economic growth in Korea in 1998, and a shift from surplus to deficit in the U.S.-Korea bilateral merchandise trade balance.

IMPORT POLICIES

Tariffs and Taxes

Korea bound 92 percent of its tariff line items in the Uruguay Round negotiations. Korea's average tariff was 8.44 percent in 1997, and 8.47 percent in 1998. Korea's tariffs on all agricultural products, except rice (HS 1006), are bound. Between 1995 and 2004, Korea will implement its Uruguay Round commitments to lower duties on over 30 agricultural products of primary interest to U.S. exporters. These products include intermediate and high-value items such as vegetable oils and meals, processed potatoes, mixed feeds, feed corn, wheat, fruits, nuts, popcorn, frozen French fries, and breakfast cereals.

Korea

Under its Uruguay Round commitments, Korea also established tariff-rate quotas (TRQs) that will either provide for minimum access to a previously closed market or maintain pre-Uruguay Round access. (See also "Quantitative Restrictions, TRQs, and Import Licensing.") In-quota tariff rates are to be maintained at zero or low levels, but over-quota tariff rates on some products are prohibitive. Specifically, natural and artificial honey is assigned an over-quota rate of 257 percent; skim and whole milk powder, 202 percent; barley, 345 percent; barley malt, 287 percent; and popcorn, 672 percent.

Duties still remain very high on a large number of high-value agricultural and fishery products. Korea imposes tariff rates above 45 percent on most horticultural products of interest to U.S. suppliers. These include shelled walnuts, table grapes, and citrus. Products subject to a 30 percent or higher tariff rate include certain meats, most fruits and nuts, many fresh vegetables, out-of-quota flour and starches, peanuts, various vegetables oils, juices, jams, peanut butter, beer and some distilled spirits, and dairy products.

Korea is in the process of reducing tariffs to zero on most or all products in the following sectors: paper, toys, steel, semiconductors, and farm equipment. Korea is harmonizing its chemical tariffs to final rates of 0, 5.5, or 6.5 percent, depending on the product. From pre-Uruguay Round levels, tariffs on scientific equipment are being reduced by 65 percent. On textile and apparel products, Korea has harmonized and bound most of its tariffs to the following levels: 7.5 percent for man-made fibers, 15 percent for yarns, 30 percent for fabrics and made-up goods, and 35 percent for apparel.

U.S. firms in a number of sectors continue to report that the combination of current tariffs and value-added taxes for agricultural and manufactured products is often sufficient to either keep imports out of the Korean market or to make their prices uncompetitive. For example, the Korean government assesses higher excise taxes on Western-style distilled spirits than on traditional, Korean-style spirits, *e.g.*, *Soju*. While Korean *Soju* is assessed a liquor tax of 35 percent plus an education tax of 10 percent, imported whisky and brandy face a liquor tax of 100 percent of the value (including the import duty) and a 30 percent education tax. Other Western-style distilled spirits are assessed a liquor tax of 80 percent plus an education tax of 30 percent. These Korean tax measures are similar to the Japanese tax measures on alcoholic beverages that were found by the WTO to be inconsistent with GATT Article III:2 (National Treatment Clause). After consultations under WTO dispute settlement procedures on Korea's liquor taxes, a single WTO dispute settlement panel was formed on October 16, 1997 to consider the U.S. and EU complaints against Korea's liquor taxes.

Another example of Korea's tariff/tax barriers is in the area of passenger vehicles. Imported vehicles are subject to an applied tariff rate of 8 percent, more than three times the U.S. tariff. (Korea's bound rate on passenger vehicles is 80 percent.) Korea then levies multiple, cumulative high taxes on top of the 8 percent applied tariff. Three of these taxes are based on engine size. For a car with a 2,000 cc or larger engine, nine taxes combine with the tariff to make the tax and tariff burden on the imported car significantly greater than the tax burden on its domestic equivalent.

Korea uses "adjustment tariffs" at the HS four-digit level to protect domestic producers against import surges. Under the IMF program, Korea reduced the number of items subject to adjustment tariffs from 62 to 38. Among the 38 remaining items, 17 are seafood (HS 03 and 16 categories), seven are textiles (HS 50 through 63 categories), six are mushrooms and bracken (HS 07 category), and four are wood products (HS 44 category). While Korea has not imposed any new adjustment tariffs since 1994, previous tariff increases have yet to be completely phased out. For example, in December 1997, Korea raised the applied tariff on processed

rice (HS 1904) from 8 to 50 percent. The bound tariff rate was set at 58.8 percent in 1996 and will decrease to 54 percent in 2001.

Korea initiated two anti-dumping investigations against U.S. firms in 1997. The investigation of cellulose imports was terminated on the basis of insufficient evidence of dumping. In the investigation of medium-density fiberboard, the Korean Trade Commission (KTC) made a preliminary determination that imports from the United States and Malaysia had injured domestic producers. However, in January 1998, on the recommendation of the Ministry of Finance and Economy (MOFE), the KTC made a final ruling not to impose any anti-dumping duty on U.S. exporters because their market share was under 1 percent. Finally, in January 1998, a WTO dispute settlement panel was formed to consider Korea's complaints about U.S. anti-dumping action on Korean DRAMs.

Non-tariff Measures

Import Diversification Program

Korea maintains an import diversification program, which as of December 1997, barred imports of 113 items from Japan. Under the IMF stabilization package for Korea, the government agreed to eliminate this program in three tranches, the last to be effective by June 30, 1999. In the WTO, Korea had committed to eliminating the import diversification program by December 31, 1999.

Quantitative Restrictions, TRQs, and Import Licensing

Korea implements quantitative restrictions through its import licensing system. A government export-import notice lists products that are restricted or prohibited. Most imported goods no longer require approval, but some tariff line items (mostly agricultural and fishery products) are restricted for import, that is, they are subject to quotas or TRQs with prohibitive over-quota rates.

In 1990, the United States and Korea signed a bilateral agreement on beef imports. Under this agreement, the "simultaneous buy sell" (SBS) system was established. In July 1993, the United States and Korea concluded a Record of Understanding (ROU), the second of three agreements directed toward free-market conditions for the importation and distribution of beef in Korea.

The third beef agreement, negotiated in the Uruguay Round, established the operational rules for the SBS system in greater detail. The SBS system (1) lays out annually increasing minimum access levels; (2) guarantees direct commercial relations between foreign suppliers and Korean retailers and distributors (*e.g.*, five star hotels and supermarkets); and (3) ensures that growing volumes of beef will be sold through that commercial channel, rather than through a government corporation. New retailers and distributors will be added to the direct access system over the term of the SBS agreement, and a new SBS group will become active in 1998.

Each year, the United States and Korea meet quarterly to ensure full implementation of the beef agreement provisions. The minimum import quota for beef is to expand from the 1998 level of 187,000 tons, to 225,000 tons by the year 2000. In 1998, the portion of the quota imported for private sector sales through the SBS system is 112,200 tons; this portion will increase until January 1, 2001. The markup on such SBS-imported

beef will be 20 percent in 1998, reduced to 10 percent the following year, and eliminated in 2000. Korea has agreed to remove all non-tariff barriers, including state trading, to beef imports by January 2001.

On July 1, 1997, under the U.S.-Korea 1993 ROU and under Korea's Uruguay Round commitments, the government liberalized its quantitative restrictions on frozen pork, frozen chicken, fresh oranges, orange juice, and beef jerky and offal. This liberalization was the final tranche of Korea's elimination of balance-of-payments restrictions on agricultural and fishery products. Eight remaining items, mainly live cattle (dairy and beef) and beef products (HS 0201 and 0202) will be liberalized by January 1, 2001. Korea's quantitative restrictions on rice will be liberalized by January 1, 2004.

Korea's administration of its TRQs on certain products raises additional market access problems. Per industry input, the U.S. Government has raised concerns about Korea's process for administering its quotas on rice and its TRQs, particularly, those on fresh oranges, value-added soybean products, and value-added corn products.

On rice, a state trading organization imports the product while the government assumes immediate control upon its entry into Korea. Thus, the government maintains full control over both the distribution and end-use of rice. This process effectively restricts access to the Korean market for high-quality U.S. table rice. The Korean government has repeatedly stated that it will not allow imported table rice to be directly marketed to Korean consumers.

On oranges, as mentioned above, in 1997, the quantitative restrictions on fresh oranges were liberalized to permit out-of-quota imports, which are assessed a duty of 79.3 percent in 1998, with annual reductions that will reach 50 percent (the current in-quota rate) in 2004. The in-quota quantity for 1998 will be 28,125 metric tons and will be expanded at an annual growth rate of 12.5 percent through 2004. Korea has designated its only citrus cooperative as the sole importer of the TRQ in-quota quantity of fresh oranges. The United States has repeatedly expressed its concern that such an arrangement can present a conflict of interest.

On value-added soybean and corn products, the Korean government continues to control allocation of the in-quota quantities. By aggregating raw and value-added products into the same TRQ, the Korean government effectively restricts access to the Korean market for value-added products, such as corn grits and soyflakes, while allowing entry of only the companion raw materials under the in-quota quantity.

Import Clearance Procedures

U.S. suppliers of food and agricultural products continue to encounter trade-impeding practices in Korean ports of entry, including on products for which market access was liberalized under bilateral or multilateral trade agreements. Korea has made changes to its import clearance procedures over the last year, but clearance times still are excessively slow and clearance procedures remain arbitrary. Surveys of U.S. trading partners in Asia indicate that import clearance for most agricultural products requires less than three to four days, while in Korea, import clearance typically still takes two to four weeks (except for perishable fruits and vegetables, which take a maximum of five days), and sometimes up to two months.

The Korean Ministry of Health and Welfare (MHW), including its Korea Food and Drug Administration (KFDA), and the Ministry of Agriculture and Forestry (MAF), including its National Plant Quarantine Service (NPQS) and

National Animal Quarantine Service (NAQS), account for the greatest delays. These departments share responsibility for administering Korea's food-related laws and regulations, which include requirements for ingredient listing by percentage and manufacturing process information, phytosanitary rules, and standards and conformity assessment procedures (sampling, inspection, and testing) in the Korean Food and Food Additives Codes. Both MHW and MAF impose numerous requirements that prohibit access or delay import clearance while adding costs to importers.

In April 1995, the U.S. Government requested WTO dispute settlement consultations after U.S. citrus rotted at a Korean port. In response, Korea provided expedited clearance (five days) for fresh fruits and vegetables. Between April 1995 and January 1997, the United States had several rounds of WTO consultations with Korea on the additional reforms it had promised.

At the end of 1996 and in 1997, Korea made more changes to its import clearance procedures. Specifically, Korea (1) instituted a new sampling, testing, and inspection system; (2) eliminated mandatory incubation testing for California fruit; (3) used the concept of scientific risk assessment to develop quarantine pest lists for use in determining fumigation requirements; and (4) revised some of the Korean food additives standards to bring them into closer conformity with CODEX Alimentarious Commission standards.

In WTO dispute settlement consultations in January 1997, the Korean government also indicated that it would no longer require as conditions for import clearance, (1) sorting for separation of spoiled produce; (2) manufacturing process information; and (3) ingredient listing by percentage for *all* ingredients. However, following the January 1997 consultations, Korean port inspectors continued to require manufacturing process information and ingredient listing by percentage for *all* ingredients. In addition, some of changes Korean officials *are* implementing do not adequately address U.S. concerns. For example, Korea's interpretation of the term "quarantine pest" allows arbitrary application of regulations affecting the entry of fresh produce. Also, Korea continues to require incubation testing for Florida fruit, even when shipments are accompanied by an APHIS certificate indicating that the fruit originated in a "pest-free" area.

Under the IMF stabilization package negotiated at the end of 1997, Korea agreed to bring its import certification procedures into conformance with international norms and to liberalize its import licensing procedures. At the same time, some progress was made on certain import clearance issues. At the beginning of 1998, Korea announced its intention to bring its standards on a number of agricultural chemicals into conformity with CODEX standards. This is significant for U.S. companies that have had entry problems due to restrictive standards, for example, on pesticide residue levels. Korea also has begun the process of conforming the standards in the Food Additives Code to CODEX norms, but much remains to be done in this regard.

The United States will continue its dialogue with the Korean government on its import clearance procedures until clearance times in Korean ports of entry are comparable to those in other Asian ports and Korean procedures are based on science and are more consistent with international norms. (See also "Standards and Conformity Assessment Procedures.")

Korea

Labeling Requirements

U.S. exporters also cite Korea's nontransparent and burdensome labeling requirements, which often are arbitrarily enforced. For example, Korea recently proposed expanding its domestic price labeling law to include imported products. This regulation, to be implemented April 1, 1998, requires that labels on imported products show the import price (CIF value plus duty) in Korean *won* and be updated every three months to account for exchange rate fluctuations. This regulation covers 40 products, including distilled spirits and wine. In addition, batch codes and the date of manufacture are to be included on the Korean labels. The U.S. Government has expressed its concern about these proposed changes in labeling requirements.

Customs Procedures

U.S. firms continue to encounter border entry barriers in the form of Korean Customs Service (KCS) decisions to arbitrarily and suddenly change the customs classification and border treatment (*i.e.*, tariff level) of certain products. KCS also rejects customs clearance applications on administrative grounds (wrong print, font size, erasure marks on application, etc.), thereby delaying the official start of the customs clearance process.

Standards and Conformity Assessment Procedures (Sampling, Inspection, Testing, and Certification)

Korea maintains standards and conformity assessment procedures (sampling, inspection, testing, and certification), *e.g.*, in the Korean Food and Food Additives Codes, that deviate from international norms, do not appear to be based on scientific risk assessment, and target imports. For example, Korea's standards and testing procedures on raw meat are not scientifically based. In addition, the Korean government continues to maintain trade-impeding import clearance requirements on proprietary information (ingredient listing by percentage and manufacturing process information), and has not fully addressed U.S. concerns about other sanitary and phytosanitary barriers to entry. (See also "Import Clearance Procedures.")

U.S. industry also cites Korea's subjective application of Korean Food Code rules to non-traditional foods as a barrier to the introduction of some U.S. products, such as ostrich, emu, alligator, and nuprine meats, to the Korean market. Under the Korea Food Code, raw materials originating from non-traditional animals, plants, etc., cannot be used for food manufacturing, processing, and cooking if such materials are deemed inappropriate for eating in Korean custom or tradition or in the view of the Korean Ministry of Health and Welfare (MHW).

Efforts to obtain market access for in-shell walnuts thus far have been stymied by Korea's insistence on the establishment of an onerous and unnecessary phytosanitary preclearance inspection program. In addition, through the pest risk analysis process, the United States is continuing efforts to overcome existing phytosanitary-based import bans on fresh apples, pears, and stone fruit.

Korea continues to maintain government-mandated shelf-life requirements for sterilized milk products such as ultra heat-treated (UHT) milk and bottled water.

Korean government agencies require pre-approval for cosmetics, food additives, pharmaceuticals, chemicals, electronics, personal communication services, and many other products. Other countries require pre-approval for

some products, but the range of products affected is exceptionally wide in Korea, and companies must submit documentation that is extraordinarily detailed. The information provided in the prior-approval/certification process is not protected and sometimes is "leaked" to the press. This incites opposition to imported products.

U.S. cosmetic producers cite Korea's duplicative testing requirements as impediments to trade. The Korean government requires annual testing of cosmetic products and batch testing for each shipment, including animal testing, and does not accept a certificate of analysis from a U.S. firm as a substitute. (See also “Cosmetics.”)

U.S. pharmaceutical companies report significant delays in obtaining final approval from MHW for the local sale of products developed outside of Korea within the last three years. New products developed in Korea can proceed directly from phase 1 to phase 3 clinical trials, but this still is prohibitively expensive for foreign firms. For products developed outside of Korea, MHW thus far has refused to allow phase 3 clinical trials to begin in Korea until they are completed first in a third country, and the product has received a Certificate of Free Sale (CFS) from that country. After the presentation of the CFS, there is a 145-day delay in registration approval before the approximately one-year clinical trial can begin. These requirements delay the introduction of foreign-developed products into the Korean market by about two years. As MHW has no system to differentiate between U.S. prescription and non-prescription (over-the-counter) drugs, both types of pharmaceuticals are subject to the same rigorous testing and approval process. (See also “Lack of Intellectual Property Protection” and “Pharmaceuticals.”)

Korea's motor vehicle standards and certification regulations are complex and excessive. Since the implementation of the U.S.-Korea Memorandum of Understanding (MOU) in 1995, Korea has reduced documentation requirements, eliminated five safety standards, and increased the number of vehicles subject to simpler certification procedures from 100 to 1000 vehicles per model. However, Korea’s type approval system still involves redundant and costly testing procedures and a blending of international automotive standards. (See also “Motor Vehicles.”)

Under the IMF program, the Korean government has committed to accelerate harmonization of its certification procedures with WTO standards and to strengthen their implementation. To implement this commitment, the government is now soliciting input from all relevant domestic agencies and Korean and foreign business interests on which laws and administrative guidelines require revision.

As of January 5, 1998, the Korean government simplified import procedures and improved transparency by eliminating type approval for certain imports of electronic and broadcasting equipment and by providing clearer definition of imports (for re-export) eligible for waiver of type approval, among other changes. The export recommendation system under the Petroleum Business Act was eliminated and import procedures simplified. Import and inspection guidelines for wool products and cod heads were eliminated.

GOVERNMENT PROCUREMENT

Korea began implementing the WTO Agreement on Government Procurement (GPA) on January 1, 1997. As part of its GPA commitments, Korea agreed to cover procurement of goods and services over specific thresholds by Korean central government agencies, their subordinate entities, provincial and municipal governments, and some two dozen government-invested companies.

The GPA prohibits the use of offsets as a condition for awarding contracts on covered procurement. (Military offsets are not covered procurement and therefore are excluded.) In addition, the GPA enables suppliers to pursue alleged

violations of the Agreement through bid challenge procedures. Accordingly, the Korean Ministry of Finance & Economy (MOFE) has established an international contract dispute settlement committee to deal with any foreign supplier allegations that Korean procuring entities have not complied with GPA provisions. MOFE has not received any bid challenges under these procedures since the GPA took effect.

The annexes to Korea's GPA accession document specify the thresholds for coverage of procurement contracts under the Agreement. The threshold for Annex 1 (central government entities) for supplies and services is 130,000 SDRs (151 million *won* in 1997), and for construction services, 5 million SDRs (5.83 billion *won* in 1997). The Annex 2 (sub-central government entities) threshold for supplies/services is 200,000 SDRs (233 million *won* in 1997), and for construction services, 15 million SDRs (17.49 billion *won* for 1997). For Annex 3 (government-invested corporations), the threshold for supplies/services is 450,000 SDRs (524 million *won* for 1997), and for construction services, 15 million SDRs (17.49 billion *won* for 1997).

Korea's coverage under the GPA does not extend to procurement related to national security and defense, Korea Telecom's purchases of telecommunications commodity products and network equipment, and procurement of satellites (for five years from entry into force of the GPA for Korea). Purchases by the Korea Electric Power Corporation (KEPCO) are covered, with the exception of certain equipment.

The U.S. and Korean governments are currently discussing the question of GPA coverage of the Korean Airport Construction Authority (KOACA). The United States maintains that KOACA procurement is subject to the requirements of the Agreement.

The Supply Administration of the Republic of Korea (SAROK), formerly the Office of Supply or OSROK) is responsible for the purchase of goods and incidental services required by central and sub-central government entities. SAROK also handles government construction contracts and related services, and the stockpiling of raw materials.

SAROK estimates that its total procurement of goods and services -- both GPA-covered and non-GPA-covered -- will reach $2.5 billion in 1998, a decrease from its total purchases of $3.4 billion in 1997. Of the total projected purchases for 1998, approximately $1.2 billion will be subject to international tendering procedures in accordance with GPA rules. SAROK has identified the following categories of products and equipment as open to international competitive bidding in 1998: medical, educational, and sewage treatment equipment; scientific testing instruments; and helicopters. In addition to purchases of goods and services, SAROK estimates that it will handle construction contracts valued at $5.5 billion in 1998.

In making estimates for 1998, SAROK assumed an exchange rate of about 1,700 *won* per dollar. The estimates for 1998 procurement will be affected by Korea's economic crisis. The *won*'s continuing instability, and the need for the Korean government to cut spending to stay within IMF targets, make both *won*- and dollar-denominated estimates subject to revision.

Not all GPA-covered procurement is handled by SAROK. In the case of Korean government-owned commercial enterprises (listed in Annex 3 of Korea's accession agreement), procurement is handled in-house, with these entities following the same GPA rules. Thus, tendering under open, formal procedures is required.

U.S. suppliers are required to register in advance with SAROK (or any other procuring entity). SAROK maintains lists of pre-qualified suppliers for given materials, equipment, and services. Invitations to bid are announced 40 calendar days in advance of the bid deadlines. As required by the GPA, the procuring entity must publish information on bid opportunities in at least two sources: the daily newspaper *Seoul Shinmun* and the Korean Government Gazette. While these sources are published in the Korean language, any given tender announcement must be accompanied by a summary in English, including the subject matter of the contract, the deadline for submission of tenders, and the address and contact point from which full documents relating to the contracts may be obtained. The tender announcement must contain a statement that the bid is covered by the GPA.

It appears that Korea has met the requirements described above. However, U.S. firms have noted that they may need more than 40 calendar days for translation of the extensive documentation for a project bid, home-office consideration, and drafting of bid documents in Korean.

Prior to Korea's accession to the GPA, a U.S.-Korea 1992 agreement on telecommunications provided U.S. firms with access to procurement contracts of Korea Telecom, a government-invested corporation. The United States annually reviews Korea's compliance with this bilateral agreement, as required under Section 1377 of the 1988 Omnibus Trade and Competitiveness Act. Korea was designated in July 1996 as a Priority Foreign Country under Section 1374 of the 1988 Trade Act. Bilateral negotiations in 1997 resulted in an agreement that clarified the Korean government's policy and guaranteed non-interference in the telecommunications procurement process. (See also "Telecommunications.")

EXPORT SUBSIDIES

In the past, Korea has aggressively promoted exports through a variety of policy tools. However, in the WTO, Korea committed to phasing out those programs not permitted under the WTO Agreement on Subsidies and Countervailing Measures.

Under its IMF stabilization package, Korea committed to an accelerated time line on the elimination of three trade-related WTO-prohibited subsidies. Specifically, the Korean government committed to legislating the elimination of the following provisions in the "tax exemption and reduction control law" by March 1998: (1) reserves for export loss; (2) reserves for overseas market development; and (3) tax incentives for the encouragement of investment. In the WTO, Korea had committed to eliminating these measures by December 31, 1998. Also under the IMF package, in January 1998, Korea eliminated, through administrative decree, the Ministry of Information and Communication's program to promote the use of mini-computers.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Korea has made significant efforts to strengthen its intellectual property rights (IPR) laws and the enforcement of those laws. Korean officials have placed priority on prosecution and increased penalties, and continue to sponsor public awareness seminars. In recognition of the commitments made by the Korean government to improve its IPR protection regime, Korea's Special 301 status was downgraded from "priority watch list" to "watch list" in April 1997.

Pursuant to its obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Korea passed four acts (patent, utility model, design, and trademark) in December 1995, and implemented

new copyright, computer software, and customs laws in 1996. In 1997, the trademark law was amended to afford protection to three-dimensional trademarks (registered in Korea only). A revised trademark law is expected to become effective on March 1, 1998, and the establishment of a patent court is scheduled for the same time. Korea is implementing developed-country IPR standards in many areas, but still claims developing country status with respect to its TRIPS obligations overall.

Korea's copyright law provides limited retroactive copyright protection to 1957, rather than providing 50 years of retroactive protection, as required under the TRIPS Agreement. Also, the copyright law provides protection only for cartoon characters that possess artistry and creativity. The trademark law does not protect some famous U.S. cartoon characters because they have not been registered as trademarks with the Korean Industrial Property Office (KIPO). Korean courts, in recent decisions, have declined to extend protection to textile designs and famous U.S. cartoon characters -- Mickey Mouse, Tom and Jerry -- for use in certain product categories in which a Korean firm has filed a preemptive registration. In a major setback, the Korean Supreme Court in 1997 overturned a KIPO decision in favor of a U.S. claimant in a dispute over the “James Dean” trademark.

Korean patent law is fairly comprehensive, offering protection to most products and technologies. In July 1997, the Patent Act and Utility Model Act were amended to streamline the examination and appellate process, and to boost monetary penalties for cases of patent infringement from 20 million *won* to 50 million *won*. U.S. industry believes that deficiencies remain in the interpretation of claims and in the treatment of dominant and subservient patents. Additionally, Korea’s recognition of international ownership of foreign patents has been inconsistent, and approved patents of foreign patent holders have been vulnerable to infringement in practice. For example, the U.S. Government continues to urge Korea Telecom to procure products and equipment from legal patent holders only, and not from local firms that infringe on those patent rights.

U.S. industry continues to be concerned about restrictions on patent term extension for certain pharmaceutical and agrochemical products that are subject to lengthy clinical trials and domestic testing requirements. In the case of pharmaceuticals, patent term protection for the clinical trial period is lost if that process takes less than two years. The industry average for clinical trials of imported products is generally just short of two years. During the 1997 Special 301 process, the Korean government expressed a willingness to seek a resolution of this issue. However, there has been no movement on this problem since that time.

There has been some improvement over the past several years in removing pirated and counterfeit goods from the Korean market. In particular, through administrative guidance, Korea significantly curtailed the copying and selling of certain U.S. copyrighted works created before 1987. Korea also established "special enforcement periods," during which significant resources are devoted to raids, prosecution, and other copyright enforcement activities. The Korean government reports that from January to November 1997, 14,919 individuals were subject to punishment (919 detentions) for infringement of IPR, up 11.6 percent from the same period in 1996. Enforcement against audio, video, and software piracy has improved considerably. U.S. businesses and industry groups have reported that piracy by large Korean corporate end-users has diminished. However, piracy for home use and by educational institutions reportedly continues to be a problem, and U.S. firms report that they still have difficulties bringing law enforcement action against “small-scale” infringers.

Korea has taken steps to reduce the number of cases in which Korean companies register trademarks similar to U.S.-owned marks. But cases of unauthorized registration -- so-called “sleepers” -- were still a problem in 1997. "Sleepers" are marks filed and registered by Koreans without authorization in the late 1980s and early 1990s, when

KIPO was still developing a more effective and accurate trademark examination and screening process. "Sleeper" registrations were not commercially used until the U.S. owner of the mark wanted to enter the lucrative Korean market, but found it was blocked by the previous first-to-file registration. The new trademark law, which is expected to become effective March 1, 1998, will contain provisions for prohibiting the registration of trademarks without the authorization of foreign trademark holders. However, additional progress needs to be made on the protection of famous marks (See third paragraph in this section.)

Until 1998, trade dress had been only partially protected under both the prevention of unfair competition law and the design law. The design law grants protection only after registration is completed. However, the amended trademark law will allow the registration of three-dimensional marks and trade dress. In addition, the protection of color or combination of color trademarks with a sign, character, figure, or any combination thereof was introduced in the trademark law in 1996.

Korea has long been a source of exports of infringing goods. As textile designs have not been fully protected, some Korean companies pirated U.S.-copyrighted textile designs and exported them to third countries, competing with genuine U.S.-produced goods. Some progress has been made in improving customs procedures and expanding cooperation with Korean enforcement authorities. However, the U.S. Government continues to urge Korean government officials to increase their efforts toward stopping exports and imports of counterfeit goods to and from third countries.

Although Korean laws on unfair competition and trade secrets provide some trade-secret protection in Korea, they remain deficient. For example, U.S. firms face continuing problems with government regulations requiring submission of very detailed product information (*i.e.*, formulae or blueprints) as part of registration or certification procedures. U.S. firms report that although the release of business confidential information is forbidden by Korean law, submitted information has not been given sufficient protection by government officials and, in some cases, has been made available to Korean competitors or to their trade associations.

Recent amendments to the Design Act are scheduled to become effective on March 1, 1998. Under the new amendments, KIPO is making industrial designs more competitive by extending the duration of the design right and simplifying the design application procedures. A new design registration system will be introduced to enable applications for certain goods to be registered without examination.

SERVICES BARRIERS

Korea continues to maintain restrictions on some service sectors through a "negative list." In these sectors, foreign investment is prohibited or severely circumscribed through equity or other restrictions. (See also “Investment Barriers.”)

Construction

The construction and engineering markets in Korea have been open to foreign competition since January 1, 1996. On January 1, 1997, foreign companies became eligible to bid on public projects including the massive social overhead capital (SOC) projects designed to improve basic infrastructure in Korea. Most foreign construction and engineering companies report that the difficulties encountered so far have been largely cultural, rather than legal, and that important issues, such as the manner in which companies are pre-qualified and ranked for projects, are now being

addressed by the Korean government. However, the firms also report problems with licensing procedures and bonding procedures, and attempts to renegotiate accepted bid prices.

Three separate licenses are available to foreign companies: construction, construction supervision, and design. The requirements associated with these licenses are burdensome in that they involve hundreds of pages of documentation. Additionally, few of the laws and regulations on licensing or the application forms have been translated into English. Also, prior to obtaining a license, an applicant must consult with a number of agencies, each of which has a different interpretation of the licensing rules. The Korean government has said that it will (1) prepare English language versions of its license application procedures; and (2) streamline and relax some licensing qualification procedures and requirements.

Foreign companies are required to deposit $800,000 as a bond with the Korean Construction Mutual Aid Association in order to obtain a construction license. This requirement significantly increases the start-up costs of foreign companies interested in applying for a construction license in Korea. The government has stated that the cash bond will be reduced annually and will be abolished by 2000.

Advertising

The government-affiliated Korean Broadcasting Advertising Corporation (KOBACO) has a monopoly over the allocation of television and radio advertising time. Foreign firms report that KOBACO established a constructive and open dialogue with local and foreign advertisers to discuss future plans and further opportunities for improvement. Despite this development, Korean advertising remains more regulated than most markets. American firms report that the selling of air time in packages of only three to six months has been modified so that more time is available in packages of one to two months. But, it has been difficult to purchase the best quality spots for shorter periods; this has been a problem for seasonal or new-product advertisers, who generally use short bursts of media. During the current economic downturn, airtime supply exceeds demand, and KOBACO is demonstrating considerable flexibility.

All advertising is aired between programs during lengthy commercial breaks. Korea's five-year plan for advanced broadcasting indicated that advertising would be permitted during programs and during the weekday-daytime period. This would significantly improve advertising quality. Until 1996, over 90 percent of airtime was only available in 15-20 second lengths. This resulted in a crowded and confusing clutter of advertising. Short time lengths also made it difficult to establish new products and to utilize global advertising campaigns.

The Korean Broadcasting Commission (KBC) controls advertising censorship procedures, which are non-transparent. The laws and regulations laying out these procedures are very broad and therefore allow considerable subjectivity in interpretation. All television and radio advertising has to be first submitted in its final, fully-produced form for censorship by the KBC, rather than at the "storyboard" stage. Given the unpredictability of the censorship process, this adds considerably to the risk and costs of developing new advertising campaigns and of introducing new products. A new bill abolishing pre-broadcast censorship and instituting a self-regulation system is under consideration.

Audiovisual

Screen Quota

By requiring that domestic films be shown in each cinema a minimum number of days per year (currently 146 days, with reductions to 106 days possible if certain criteria are met), Korea effectively imposes a screen quota on imported motion pictures. The quota acts as a deterrent to cinema construction and the expansion of theatrical distribution in Korea.

Foreign Content Quota for Free TV

Korea restricts foreign activities in the audiovisual sector by limiting the percentage of weekly broadcasting time (not to exceed 20 percent) that may be devoted to imported programs.

Foreign Content Quota for Cable TV

Cable channels may devote only 50 percent of air time to foreign sports, science, and documentary programs. All other types of foreign programming, including movies, are subject to an even stricter quota of 30 percent. These quotas are applied on a per-channel basis. There are only two movie channels (one basic and one premium) and a strict content quota. Additionally, cable TV programming must be translated into Korean, which effectively prevents direct rebroadcasting of satellite transmission by Korean cable TV companies. These restrictions severely limit the market for foreign programming.

Satellite Re-transmission

Korean cable TV companies reportedly are re-broadcasting satellite transmissions of foreign programming (including U.S.) without paying user fees/royalties to the foreign broadcasters. Presently, the Korean government and Korean firms are operating under the assumption that fees for such re-transmissions need not be paid.

Financial

Insurance

After Japan, Korea is the second largest insurance market in Asia and the sixth largest in the world, with $57.6 billion in premiums paid in 1996. The environment for foreign insurance companies has improved considerably since Korea first opened its market in 1986. Korea has implemented a series of regulatory changes since its 1996 accession to the OECD. Korea has pledged to reflect these and other OECD financial services commitments in a revised WTO financial services offer before the final agreement goes into effect in 1999.

Entry into the life and non-life insurance markets has been gradually liberalized, consistent with Korea's OECD commitments. Some restrictions remain with respect to partnering with local Korean insurance companies and the hiring of Korean insurance professionals. By April 1998, Korea will liberalize insurance appraisal and activities ancillary to the management of insurance and pension funds. Korea has begun to allow brokers to operate, and the brokerage market is scheduled to be opened to foreign firms in April 1998. (For example, life insurers now are permitted to sell personal accident insurance.) Several foreign reinsurance firms now have entered the market.

Despite Korean plans to deregulate insurance premium rates by 1999, it is unclear whether this will give firms full freedom to determine rates. U.S. industry, while noting the improved market access and regulatory environment that exist today, still has major concerns about restrictive rate and form regulations, limitations on investments, and lack

of transparency and due process. Industry also has expressed concern about a growing solvency problem among domestic life insurers and has offered to work closely with the Korean government on solutions that protect policyholders without damaging healthy companies in the sector.

Banking

The Korean banking sector is in the process of undergoing thorough and far-reaching structural reform as part of an agreed program between the government of Korea and the IMF. The objective of this reform is to ensure that the banking sector operates on a fully commercial, rather than industrial policy basis. The Korean government has committed to refrain from interfering in bank lending and management decisions, except with regard to prudential supervision. The government also has pledged, and is in the process of implementing, a major opening of the capital markets to foreign participation. Foreign financial institutions will be allowed to participate in non-hostile mergers and acquisitions of domestic financial institutions. Foreign banks will be allowed to establish subsidiaries in March 1998. The new government is seeking legislation to allow hostile mergers and acquisitions, including in the banking sector.

Korea continues to place various limits on the scope of bank operations based on local capital *versus* global capital reserves. These limits affect (1) loans to individual customers; (2) foreign exchange trading; and (3) foreign banks' capital adequacy and liquidity requirements. For non-top-five Korean companies and small and medium enterprises, foreign banks' operations are subject to lending ratios.

All banks in Korea continue to suffer from a relatively non-transparent regulatory system and must seek approval before introducing new products and services, an area where foreign banks are most competitive. The foreign exchange market continues to be heavily regulated, with tight controls on the introduction of new instruments, a niche where again U.S. banks would be especially competitive. According to the Bank of Korea (the Korean Central Bank), some restrictions on capital inflow have been removed. The government recently allowed foreign banks to increase their swap lines as a way to generate additional foreign exchange, but it remains unclear if these increased lines will be allowed once the current crisis is over. For the present, the government has indicated that the existing lines will not be decreased for the foreseeable future and may even be increased. The interbank money market is still underdeveloped and is not a stable source of funding for foreign bank activities.

Foreign-based, non-financial businesses in Korea are subject to high-cost procedures and restrictions on their financial activities. Such restrictions are inappropriate for Korea's level of development and financial sophistication. Virtually all intercompany transfers are subject to a foreign exchange bank's certification and the requirement to settle via documentary trade finance methods. This process is cumbersome, costly, and unnecessary, particularly for transactions between subsidiaries.

Despite a long-standing government commitment to deregulation, there have been few changes of practical importance in controls over transactions involving foreign exchange, imports, and exports. These controls create high costs and excessive risks for multinationals operating in Korea and are a disincentive to additional foreign investment.

Securities

While there has been considerable liberalization of the securities market in Korea, foreign securities firms continue to face market access barriers. The present 50 percent ceiling on foreign equity in a securities firm is scheduled to be lifted in 1998. The establishment of brokerage subsidiaries will be allowed as of March 31, 1998.

Foreign investment ceilings in Korean stocks have been considerably liberalized. The aggregate ceiling was lifted to 55 percent as of December 30, 1997, and the government has committed to lift this ceiling entirely by the end of 1998. The individual ceiling for portfolio investment was raised to 50 percent on December 12, 1997. The government has eliminated, effective December 30, 1997, all foreign investment ceilings for government, special, and corporate bonds, and has committed to permitting unlimited foreign investment in domestic money market instruments. As of December 16, 1997, the government lifted restrictions on foreign borrowing by Korean corporations for maturities greater than three years and has committed to consult with the IMF about remaining restrictions.

Foreign firms can now participate in the domestic securities "over-the-counter" market. Foreign investment restrictions, while currently in force, are scheduled to be removed in 1998. Likewise, the existing 50 percent ceiling on foreign ownership of investment advisory companies is scheduled to be eliminated in 1998.

Korea's tightly controlled financial sector and the high cost of domestic credit in Korea directly affect U.S. firms operating in other sectors. However, Korea has committed to major liberalization of its financial and capital markets as part of its IMF program, and the new Korean administration has made improving the climate for foreign companies operating in Korea a top priority.

INVESTMENT BARRIERS

Korea has removed most of its formal barriers to foreign investment, but remains relatively unattractive to foreign investors. Access to the Korean market for foreign investors continues to be highly conditioned by law and regulation, as well as by inexplicit administrative guidance and bureaucratic fiat, which are often opaque and subject to variable interpretation. Korea's investment regime is more restrictive than those of many of its Asian neighbors and falls well below the standard among OECD countries. Continuing initiatives taken by the Korean government over the coming years -- some committed to during its accession to the OECD -- may reduce this disparity. Also, Korea's investment climate may change with the new President's focus on bringing foreign investment into the economy in an effort to ensure economic stability.

As of February 1997, foreign investors are only required to notify the government of their intentions; actual applications have been eliminated. Under present law, the government can only reject a foreign investor's notification if the activity appears on an explicit "negative list" or is somehow related to national security, the maintenance of public order, or the protection of public health, morality, or safety. The Korean government is obligated to reject the notification within 50 days of its filing, or the investment can be presumed to be legal. Although the government has reduced the documentation required to invest, the notification process remains burdensome and can require submission of proprietary information, including contracts.

Under a bilateral agreement signed in 1989, the Korean government agreed to (1) eliminate all local equity participation requirements imposed by "individual laws" (apart from requirements imposed for reasons of land acquisition, exploitation of land or other resources, or national security); and (2) refrain from imposing any performance requirements (*e.g.*, on technology transfer, local content, or local manufacture). However, U.S. firms --

particularly telecommunications companies -- report that the Korean government and its public entities regularly impose a *de facto* "buy local" policy on their purchases and actively encourage private entities to follow suit.

In 1994, the Korean government revised its Alien Land Acquisition Act to permit foreign-invested firms to purchase land for business purposes, including staff housing. In 1997, the regulations were eased further to allow provision of rent-free or reduced-rent industrial premises to foreign investors willing to locate at two specific sites outside of Seoul. However, the U.S. Government remains concerned that other laws create disincentives to unfettered foreign investment by placing overly strict limits on the purchase, use, and sale of land by foreigners. In the past, stringent Korean land-use laws containing time-sensitive conditions have resulted in the assessment of substantial taxes on unused land and the forced sale of land at below-market prices.

The Korean government requires firms established for three or more years and identified by the Korean Securities and Exchange Commission to sell at least 30 percent of their stock to the public. The U.S. Government continues to urge Korea to abolish this "going public" policy for foreign firms, many of which are privately held.

Korea has not notified the WTO of any measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMs).

ANTICOMPETITIVE PRACTICES

The Korea Fair Trade Commission (KFTC) is responsible for enforcing the Fair Trade Act and improving competition policy in the Korean economy. Due to recent reform measures, the KFTC has been elevated to a ministerial-level agency and the agency's staffing has been increased. From the U.S. Government's point of view, these were necessary and welcome changes.

The Korean National Assembly passed a revision to the Fair Trade Act. Effective on April 1, 1997, this revision expanded the application of the Fair Trade Act to the financial and insurance sectors. The KFTC also was given more authority to demand changes in anticompetitive provisions in both draft and existing laws and regulations. The KFTC has investigated and sanctioned Korean firms in response to a U.S. firm's complaint that the Korean companies had engaged in anticompetitive practices.

The corporate restructuring, labor, financial sector, and foreign investment reforms to which Korea has committed under the IMF package should spur the KFTC's efforts to deter and eliminate chronic anticompetitive practices in the Korean market. If restructured in response to commercial, rather than industrial policy cues, the Korean *chaebols* in sectors such as autos, steel, semiconductors, and shipbuilding should depart from past practices of overproduction and aggressive exporting.

With respect to products such as pharmaceuticals and cosmetics, industry associations are delegated substantial regulatory authority in Korea through both formal and informal means. These associations often have abused their powers by discriminating against non-members and potential competitors, including American firms.

In 1996, the KFTC decided to regulate not only collusion between rival firms, but also trade associations that induce their members to engage in anticompetitive practices. In 1996, the KFTC ordered 60 trade associations to revise 134 anticompetitive or unfair articles or by-laws. In 1997, the KFTC investigated the internal rules and practices of 57 associations and identified 79 items needing improvement. The KFTC deregulation task force also moved to reduce

the authority delegated to industry associations. In 1997, the KFTC gave orders to discourage 40 to 50 associations from abusing authority delegated by the government. (See also "Cosmetics" and "Pharmaceuticals.")

Despite the above-mentioned improvements in competition law enforcement and policy, the United States believes that more improvements are necessary to ensure unfettered market access for foreign firms.

OTHER BARRIERS

Lack of Transparency

Many Korean trade-related laws and regulations lack specificity. Their implementation is directed by internal guidance, which is developed by the relevant ministries and often is not published. Despite this guidance, Korean port officials exercise a great deal of discretion in applying the broad rules in the laws and regulations. This leads to inconsistency of application and sometimes the most trade restrictive application, as well as uncertainty among business interests.

In the past, the Korean government has failed to produce advance or timely notice of changes to laws and regulations, either in domestic official publications or in the WTO. This has precluded interested parties from commenting on the effect of the proposed changes and made it difficult or impossible for foreign companies to adjust to the new rules when they are implemented.

Some progress has been made on such transparency issues, but additional improvement still is necessary to ensure that lack of transparency no longer impedes trade.

Frugality Campaigns and Anti-import Bias

Frugality campaigns ostensibly directed at individual consumption, but effectively targeting imported goods, are another barrier that U.S. firms face in Korea. As Korea's trade deficit rose in 1996 and the first few months of 1997, newspapers and government officials regularly pointed out the negative current account impact of rising imports of finished consumer goods, food and agricultural products, clothing, furniture, travel, and education. While the Korean government denied involvement in the anti-import aspect of the frugality campaign, complaints from U.S. firms rose rapidly as Korean officials took arbitrary actions that impeded imports. (See also "Import Clearance Procedures," "Standards and Conformity Assessment Procedures," and "Motor Vehicles.")

A more market-oriented team of economic ministers was appointed in March 1997. The Korean government publicly announced in May 1997 that imports were not the cause of Korea's economic problems, and handed down a set of guidelines warning Korean officials against actions that could be interpreted as anti-import.

The IMF program's high interest rates, strict standards for Korean banks, and reforms of the financial sector are expected to lead to low or negative economic growth, numerous corporate bankruptcies, and significantly higher unemployment in 1998. The Korean *won* lost 50 percent of its value from November 1997 to January 1998, causing prices of imported raw, intermediate, and finished goods to increase. Koreans reacted strongly to the financial crisis, turning in their gold for *won*, and embracing renewed calls from civic groups and the media to reduce consumption, especially of imports.

Korea

Partially government-owned TV stations have run public service messages in which entertainment celebrities urged people to use small, domestic cars rather than large, imported cars. Some gas stations have posted signs stating that they will not service imported cars, and dealers report an upsurge in vandalism against imported cars.
In a live, televised town meeting in December, then President-elect Kim Dae Jung called on Koreans to engage in "healthy consumption," and to base purchasing decisions on price and quality, rather than country of origin. Unfortunately, the anti-import bias remains a problem.

Internal Supports

Under the Uruguay Round, Korea agreed to reduce, in ten equal installments, its domestic support (AMS) for agricultural products from 2.182 trillion *won* in 1995, to 1.49 trillion *won* in 2004. If the Korean government does not reduce its large domestic rice and beef purchases, it will have difficulty meeting its AMS commitments in coming years.

Motor Vehicles

Korea is the fifth largest auto manufacturer in the world but imports fewer cars than any other major auto-producing country. In 1996, the foreign share in the Korean auto market was less than 1 percent, compared to 6 percent for Japan and over 25 percent for France, Germany, and the United States. In addition, Korean auto companies' expansion of production outside of Korea and exports to third-country markets have caused concern among U.S. auto producers.

Domestic production in Korea remained at 2.8 million vehicles in 1997. As the Korean economy declined over the course of 1997, Korea's sales of domestic passenger cars dropped seven percent to 1.15 million units, while sales of imported passenger cars by official dealers fell 21 percent. The market share of imported passenger vehicles had been only 0.8 percent of the total market in Korea in 1996, and fell even further in 1997 to 0.7 percent. At the same time, exports of Korean vehicles rose 9.1 percent in 1997 to 1.3 million units. Fifty-seven percent of total Korean passenger cars manufactured in 1997 were exported, an increase of 6.3 percent over 1996.

In September 1995, under a Super 301 review, the United States and Korea negotiated a Memorandum of Understanding (MOU) on market access for foreign passenger vehicles. Korea agreed to liberalize standards and certification procedures, reduce taxes that discriminate against imported vehicles, permit foreign advertisers equal access to television advertising time, allow foreign majority ownership of auto retail financing entities, and improve consumer perception of auto imports in Korea. Korea also committed to refrain from introducing any new measures that would adversely affect market access.

In bilateral negotiations between August and September 1997, the U.S. Government sought to address continuing problems in obtaining access to the Korean auto market. However, these talks failed to produce satisfactory market-opening results. Consequently, on October 1, 1997, the U.S. Government identified Korea's barriers to auto imports as a Priority Foreign Country Practice under Super 301 procedures, followed by initiation of a section 301 investigation on October 20. Specific Korean practices of concern include tariff and cumulative tax disincentives that disproportionately affect imports, onerous and costly auto standards and certification procedures, auto financing restrictions, and a pervasive climate of bias against imported vehicles.

Korea's applied 8 percent tariff is over three times the U.S. passenger vehicle tariff of 2.5 percent. Korea's bound rate under the WTO remains at 80 percent. At the purchase and retention stages, Korea imposes nine different taxes on passenger vehicles. These taxes are applied cumulatively on top of the 8 percent tariff rate. Three of the nine taxes are based on engine displacement, and are applied in a way that disproportionately burdens vehicles with larger engines (over 2,000 cc), a category in which most of the American Big-Three and other foreign products are most competitive. The compounding effect of these taxes, as they are applied on top of the tariff, significantly increases the final price of the average car exported to Korea.

On October 28, 1997, Korea equalized the subway bond tax applied to imported and domestic minivans, eliminating the discriminatory application of the tax. However, since signing the 1995 MOU, the Korean government has proposed a reclassification of minivans which would result in increased taxes on minivans. Korea also has increased taxes incrementally since April 1996 on sport utility vehicles.

Burdensome standards and certification procedures make it difficult and costly to introduce new car models into the Korean market. Significant obstacles to importation include redundant vehicle testing beyond the initial type approval certification process. Such duplicative procedures impose further cost on foreign manufacturers. Korea also blends international certification standards which makes it virtually impossible for importers to homologate vehicles without incurring considerable extra cost to modify and test vehicles for export from the United States to Korea.

Korea recently introduced legislative reforms to reduce wholesale and dealer financing restrictions that had adversely affected foreign automakers. However, financing firms are still not allowed to hold a mortgage on cars sold on an installment payment basis, rendering repossession impossible and recovery difficult and expensive. The inability to extend credit on a commercially viable basis has impeded the sales of imported vehicles in Korea.

Pervasive anti-import sentiments have limited marketing opportunities and intimidated potential customers of foreign vehicles in Korea. A perception is widely held by Korean consumers that purchasing an imported passenger vehicle could invite Korean government scrutiny and public "backlash." This perception stems from the Korean government's past association with campaigns and programs that discouraged the purchase of imported products. There have been numerous national anti-import campaigns since 1989, which have had a measurable adverse impact on the sales of imported vehicles. In addition, in December 1996 and early 1997, the National Tax Office (NTO) engaged in broad action directed at lessees of imported autos. Though withdrawn after complaints by foreign governments, the threat of tax audits for lessees of imported cars had a chilling effect on import sales. Recent frugality campaigns launched by civic organizations, ostensibly to reduce conspicuous consumption and to ameliorate Korea's trade deficit, also have contributed to an anti-import bias among consumers of motor vehicles. (See also "Frugality Campaigns and Anti-import Bias" and "Standards and Conformity Assessment Procedures.")

Pharmaceuticals

Korea's national health insurance system does not provide imported drugs with national treatment with respect to drug reimbursement and discourages hospitals and other large end-users from buying imported drugs. Under the Korean system, imported pharmaceuticals are reimbursed based on their actual transaction prices, while domestically manufactured pharmaceuticals are reimbursed on a schedule established through local price reviews. This allows hospitals, clinics, and pharmacies to profit from reimbursement from domestic products, but not from imported products. Dispensers of imported products also must comply with additional administrative procedures for

reimbursement. Recently, Korean hospitals have engaged in “buy national” behavior by delisting foreign pharmaceuticals from formularies and inventories. In addition, U.S. pharmaceutical producers face other market access barriers in Korea including requirements for duplicative testing, limitations on manufacturing, and lack of patent term extension. (See also “Standards and Conformity Assessment Procedures” and “Lack of Intellectual Property Protection.”)

Cosmetics

Impediments to entry and distribution of foreign cosmetic products in Korea include (1) restrictions on sales promotions (premiums), including on the method for valuing premium products; (2) the Korean government’s delegation of authority to the domestic industry association to screen advertising and information brochures prior to use; (3) mandatory provision of proprietary information on imports to Korean competitors; (4) redundant testing; (5) unreasonable prior-approval requirements on cosmetic tester labels; and (6) burdensome import authorization and tracking requirements. The U.S. Government cited Korea’s cosmetics-related measures as a bilateral priority in the 1997 Super 301 report. (See also “Standards and Conformity Assessment Procedures” and “Anticompetitive Practices.”)

Telecommunications

In the past, U.S. equipment and services companies encountered a significant number and range of impediments in the Korean telecommunications sector. The Korean government has targeted the telecommunications sector for industrial promotion, which explains the chronic nature of U.S. market access problems in this sector. Only a few U.S. firms operate in the Korean telecommunications service market as minority investors. Although Korea Telecom is no longer the monopoly service provider, there still are indications that it continues to pursue an unwritten "buy local" requirement for equipment procurement by service providers.

On July 26, 1996, USTR designated Korea as a Priority Foreign Country under Section 1374 of the 1988 Omnibus Trade and Competitiveness Act. Bilateral negotiations in 1997 resulted in an agreement that considerably clarified government policy and guarantees of non-interference in the procurement process. On July 14, 1997, Korea announced in a policy statement that (1) the government did not require use of local products when making decisions on licensing or spectrum allocation; (2) the licensing process would be transparent and non-discriminatory; (3) within the scope of Korea’s commitments and in accordance with its obligations under the WTO, foreign firms would receive national treatment; and (4) private sector firms would be free to make their procurement decisions independently. The U.S. Government continues to bring any instances of non-compliance by Korea Telecom to the attention of the Korean government.

Korea’s commitments under the WTO Basic Telecommunications Agreement enhance opportunities for partial foreign ownership of Korean telecommunications operators. Due to the need for foreign investment in Korea, the new government may accelerate the schedule for market opening measures agreed under this Agreement. (See also “Government Procurement.”)

MALAYSIA

In 1997, the U.S. trade deficit with Malaysia was $7.2 billion, a decrease of $2.1 billion from the U.S. trade deficit of $9.3 billion in 1996. U.S. merchandise exports to Malaysia were $10.8 billion, an increase of $2.3 billion (27.1 percent) from the previous year. Malaysia was the United States' sixteenth largest export market in 1997. U.S. imports from Malaysia were $18 billion in 1997, an increase of $192 million (1.1 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Malaysia in 1996 was $5.3 billion, concentrated largely in the manufacturing, petroleum, and finance sectors.

IMPORT POLICIES

Tariffs are the main instrument used to regulate the importation of goods In Malaysia. However, 17 percent of Malaysia's tariff lines (principally in the construction equipment, forestry, logging, agricultural, mineral, and motor vehicle sectors) are also subject to non-automatic import licensing designed to protect import-sensitive or strategic industries. Although the average applied MFN tariff rate of Malaysia has declined to approximately 8.1 percent, duties for tariff lines where there is significant local production are often higher. For example, 15.8 percent of product tariff lines in Malaysia's tariff schedule have rates over 24 percent, 25.9 percent of tariff lines have rates over 15 percent, and many lines have rates well over 100 percent.

The level of tariff protection is generally lower on raw materials and increases for those goods with value-added content or which undergo further processing. In an effort to reduce its current account deficit, the Malaysian Government, in the context of announcing its Fiscal Year 1998 budget, recently increased tariffs on several items, including construction equipment, motor vehicles, and certain appliances. Malaysia has also announced plans to eliminate non-essential construction projects, to delay importation of certain high cost items such as passenger aircraft and ships, and to promote consumer austerity. The Government urges Malaysians to purchase domestic products, instead of imports, whenever possible. Malaysia has been an active participant in multilateral and regional trade fora such as the World Trade Organization (WTO) and Asia-Pacific Economic Cooperation (APEC). Through November of 1998, Malaysia chairs the annual APEC process.

Import Restrictions on Motor Vehicles

Malaysia maintains several measures to protect the local automobile industry, including high tariffs and an import quota and licensing system on imported motor vehicles and motor vehicle parts. Malaysia also maintains local content requirements of 45 to 60 percent for passenger and commercial vehicles, and 60 percent for motorcycles. The Malaysian Government has announced that local content restrictions will be phased out by the year 2000 in accordance with its WTO commitments (see Investment Barriers). These restrictions have restricted the ability of U.S. firms to penetrate the Malaysian market. In October 1997, Malaysia announced substantial tariff increases on both completely built-up (CBU) units and completely knocked-down (CKD) units, as demonstrated in the chart below. In addition, excise duties on motorcycles will increase from a maximum of 20 percent to a maximum of 50 percent. Malaysia is also considering new emissions standards for motorcycles which could restrict market opportunities for imports.

Malaysia

Product	Old Tariff (%)	New Tariff (%)
Automobiles (CB)	140-200	140-300
Automobiles (CKD)	42	80
Vans (CBU)	35	42-140
Van (CKD)	5	40
4wd/ Multipurpose (CBU)	50	60-200
4wd/ Multipurpose (CKD)	5	40
Motorcycle (CBU)	60	80-120
Motorcycle (CKD)	5	30

Restrictions on Construction Equipment

In October 1997, Malaysia imposed a restrictive licensing regime on imports of heavy construction equipment and raised import duties for the second year in a row, as detailed below. In October 1996, it had raised duties on construction equipment from 5 to 20 percent. In addition, the initial capital allowance for imported heavy equipment will be reduced from 20 to 10 percent in the first year, and the annual allowance will be reduced from between 12 percent and 20 percent to 10 percent.

Products	Old Tariff (%)	New Tariff (%)
Heavy machinery & equipment	0	5
Multi-purpose vehicles	0-30	50
Special Purpose Vehicles	35	50
Construction Materials	5-25	10-30

Duties on High Value Food Products

Duties for processed and high value products, such as canned fruit, snack foods, and many other processed foods, range between 20 and 30 percent. The applied tariff on soy protein concentrate is 20 percent.

Plastic Resins

In December 1993, tariffs on plastic resins were increased for a five-year period from 2 to 30 percent for non-ASEAN countries and from 1 to 15 percent for ASEAN countries. In 1994, Malaysia also instituted a five-year restrictive import licensing system.

Tariff-Rate Quota for Chicken Parts

Although the Government of Malaysia applies a zero import duty on chicken parts, imports are regulated through licensing and sanitary controls, and import levels remain well below the minimum access commitments established during the Uruguay Round.

Float Glass Tariff Differentials

Malaysia levies high duties (65 sen/kilogram or 50-100 percent ad valorem equivalent) on rectangular-shaped float glass. Nearly all float glass that moves in world trade is rectangular. To qualify for the lower ad valorem MFN tariff rate of 30 percent levied on non-rectangular float glass, exporters often must resort to time-consuming, wasteful procedures such as cutting off one or more corners or cutting one edge in a slanted fashion. This is an inefficient and expensive process which requires distributors to recut each piece of glass into a rectangular shape once it has cleared customs.

Rice Import Policy

The sole authorized importer of rice is a government corporation (Bernas) with the responsibility of ensuring purchase of the domestic crop and wide power to regulate imports.

Film and Paper Product Tariffs

Malaysia applies a 25 percent tariff on imported instant print film that is estimated to cause an annual trade loss of $10-$25 million for U.S. industry. In August 1994, the Malaysian Government raised tariffs on several categories of imported kraft linerboard (used in making corrugated cardboard boxes) to between 20 and 30 percent, depending on the category. These tariff increases are to be phased out after five years and are subject to review every two years. Malaysia did not change the tariff levels after the 1996 review.

GOVERNMENT PROCUREMENT

Malaysian Government policy calls for procurement to be used to support national objectives such as encouraging greater participation of ethnic Malays (so-called bumiputra) in the economy, transfer of 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. As a result, foreign companies do not face a level playing field in competing for contracts and in most cases are required to take on a local partner before their bid will be considered. Some U.S. companies have voiced concerns about the transparency of decisions and decision making processes. Malaysia is not a party to the plurilateral WTO Government Procurement Agreement.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Malaysia is a member of the World Intellectual Property Organization (WIPO), the Berne Convention for the protection of literary and artistic works, and the Paris Convention. Malaysia provides copyright protection to all works (*inter alia* video tapes, audio material, and computer software) published in Berne Convention member countries regardless of when the works were first published in Malaysia. Trademark infringement and patent protection have not been serious problem areas in Malaysia for U.S. companies.

Malaysia

Police and legal authorities are generally responsive to requests from U.S. firms for investigation and prosecution of copyright infringement cases. Nevertheless, the presence and frequency of pirated videotapes and computer software continues to increase, in particular at the retail level. The effect of Malaysian enforcement efforts would be enhanced through the resolution of lengthy litigation and frequent court backlogs, as well as the imposition of more substantial fines against infringers. Currently, relatively minor fines are levied, even in cases involving repeat infringers, and do not have a sufficient deterrent effect.

A new and growing source of concern for the United States is the establishment of a number of plants reportedly manufacturing pirated CDs (audio and visual) and CD-ROMs. The Malaysian Government is aware of the problem and has expressed its determination to move against illegal operations. Making the suppression of CD-based digital piracy is also consistent with the Malaysia Government's objective to establish the Multimedia Super Corridor as the preeminent locus of high-technology manufacturing and innovation in Asia.

INVESTMENT BARRIERS

Malaysia encourages direct foreign investment particularly in export-oriented manufacturing and high-tech industries, but retains considerable discretionary authority over individual investments. Especially in the case of investments aimed at the domestic market, it has used this authority to restrict foreign equity (normally to 30 percent) and to require foreign firms to enter into joint ventures with local partners. Facing a tight labor supply situation, foreign companies have found it hard to operate manufacturing facilities efficiently due to the difficulty associated with obtaining permission from the Malaysian Government to bring in workers from abroad. Most foreign firms also face restrictions in the number of expatriate workers they are allowed to employ. In October 1996, Malaysia announced that high-technology companies which establish in the Multimedia Super Corridor (MSC) will be allowed attractive tax incentives.

Trade-Related Investment Measures

Malaysia has notified to the WTO certain measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMs). The measures deal with local requirements in the automotive sector. New projects or companies granted "Pioneer Status" are eligible to receive a 70 percent income tax exemption. Proper notification allows developing-county WTO Members to maintain such measures for a five-year transitional period after entry into force of the WTO. Malaysia therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO Members meet these obligations.

SERVICES BARRIERS

Basic Telecommunications

Under the WTO basic telecommunications agreement, Malaysia made commitments on most basic telecommunications services and partially adopted the reference paper on regulatory commitments. Malaysia guaranteed market access and national treatment for these services only through acquisition of up to 30 percent of the shares of existing licensed public telecommunications operators, and limits market access commitments to facilities-based providers. At least two U.S. firms have investments in basic and enhanced services sectors.

Professional Services

Foreign professional services providers are generally not allowed to practice in Malaysia. 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. Foreign lawyers may not practice Malaysian law or operate as foreign legal consultants. They cannot affiliate with local firms or use their international firm's name.

Under Malaysia’s registration system for architects and engineers, foreign architects and engineers may only seek temporary registration. Foreign architectural firms are eligible only for special projects as agreed between Malaysia and an interested foreign government. Unlike engineers, Malaysian architectural firms may not have foreign architectural firms as registered partners. Foreign architecture firms may only operate as affiliates of Malaysian companies. Foreign engineering companies must establish joint ventures with Malaysian firms and receive "temporary licensing" which is granted only on a project-by-project basis and is subject to an economic needs test and other criteria imposed by the licensing board. Foreign accounting firms can provide accounting or taxation services in Malaysia only through a locally registered partnership with Malaysian accountants or firms, and aggregate foreign interests are not to exceed 30 percent. Auditing and taxation services must be authenticated by a licensed auditor in Malaysia. Residency is required for registration.

Banking

No new licenses are being granted to either local or foreign banks; foreign banks must operate as locally-controlled subsidiaries. Foreign-controlled companies are required to obtain 60 percent of their local credit from Malaysian banks.

Insurance

Branches of foreign insurance companies are required to be locally incorporated by June 30, 1998, and foreign share holding exceeding 49 percent is not permitted unless the Malaysian Government approves higher share holding levels. As part of Malaysia's WTO financial services offer, the Government committed to allow existing foreign shareholders of locally incorporated insurance companies to increase their share holding to 51 percent, once the WTO financial services agreement goes into effect in 1999. New entry by foreign insurance companies is limited to equity participation in locally incorporated insurance companies and aggregate foreign share holding in such companies shall not exceed 30 percent.

Securities

Foreigners may hold up to 49 percent of the equity in a stockbroking firm. Currently there are 11 stockbroking firms which have foreign ownership and 20 representative offices of foreign brokerage firms. Fund management companies may be 100 percent foreign-owned if they provide services only to foreign investors, but they are limited to 70 percent foreign-ownership if they provide services to both foreign and local investors.

Advertising

Foreign film footage is restricted to 20 percent per commercial, and only Malaysian actors may be used. The Government of Malaysia has an informal and vague guideline that commercials cannot "promote a foreign lifestyle." Advertising of alcohol products is severely restricted.

Television and Radio Broadcasting

The Malaysian Government maintains broadcast quotas on both radio and television programming. Sixty percent of television programming is required to originate from local production companies owned by ethnic Malays. This share is scheduled to increase to 80 percent by the year 2000. Sixty percent of radio programming must be of local origin. The Malaysian Ministry of Information announced in January 1998 that it would study the use of the Broadcasting Act of 1988 as the means of imposing further conditions on TV stations to provide additional air time to local programming.

OTHER BARRIERS

U.S. companies have indicated that they would welcome improvements in the transparency of Malaysian Government decision-making and procedures, and limits on anti-competitive practices. A considerable proportion of government projects and procurement are awarded without transparent, competitive bidding. The Malaysian Government has declared that it is committed to fighting corruption and maintains an Anti-Corruption Agency, a part of the Office of the Prime Minister, to promote that objective. The Agency has the independent power to conduct investigations and is able to prosecute cases with the approval of the Attorney General.

MEXICO

In 1997, the U.S. trade deficit with Mexico was $14.5 billion, a decrease of $1.7 billion (10.5 percent) from the deficit of $16.2 billion in 1996. U.S. merchandise exports to Mexico were $71.4 billion in 1997, an increase of 25.8 percent from the same period in 1996. In 1997, Mexico became the second largest export market for the United States, surpassing Japan. Imports from Mexico were $85.9 billion in 1997, an increase of 17.7 percent over the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Mexico in 1996 was $18.8 billion, an increase of 17.3 percent from 1995. U.S. FDI is concentrated largely in the manufacturing and financial sectors.

North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA) between the United States, Canada, and Mexico, entered into force on January 1, 1994. The NAFTA progressively eliminates tariffs and non-tariff barriers to trade in goods; improves access for services trade; establishes rules for investment; strengthens protection of intellectual property rights; and creates an effective dispute settlement mechanism. The NAFTA is accompanied by supplemental agreements which provide for cooperation on enhancing and enforcing labor standards and for encouraging environmentally-friendly practices and bolstering environmental protection in North America.

IMPORT POLICIES

Tariffs

Under the terms of the NAFTA, Mexico will eliminate tariffs on all industrial and most agricultural products imported from the United States within 10 years of implementation of the agreement. Remaining tariffs and non-tariff restrictions on certain agricultural items will be phased out over a 15 year period.

The NAFTA parties implemented the fifth annual tariff reductions on January 1, 1998. This reduced Mexico's average duty on U S. goods from 10 percent prior to the NAFTA to below three percent. Currently, eighty percent of U.S. manufactured goods enter Mexico duty free. In 1996, the NAFTA countries completed a trilateral agreement to accelerate tariff reduction on certain goods. The United States, Mexico and Canada embarked on a second round of accelerated tariff reduction negotiations due to be completed in 1998. The NAFTA's tariff provisions also protected U.S. exporters from the Government of Mexico's 1995 response to its macroeconomic " peso" crisis when it raised tariffs from 20 to 35 percent (and applied quotas) on textile, apparel and footwear articles imported from countries with which Mexico had no free trade agreement.

Safeguard Action

On August 1, 1996, the U.S. International Trade Commission (USITC) determined that pursuant to section 202 of the Trade Act, broom corn brooms were being imported into the United States in such increased quantities as to be a substantial cause of serious industry to the U.S. broom corn broom industry and that,

pursuant to Section 311 of the NAFTA Implementation Act, imports of broom corn brooms produced in Mexico accounted for a substantial share of total imports of such brooms and contributed importantly to the serious injury caused by such imports. Under a global safeguard action, on November 28, 1996, the President proclaimed tariff relief for three years on imports of two categories of broom corn brooms. In response, on December 12, 1996, Mexico retaliated against the U.S. safeguard action by increasing preferential import duties on eight U.S. products (fructose, wine, wine coolers, brandy, Tennessee whiskey, notebooks, flat glass and wooden furniture). The United States believes that Mexico's response has been excessive; that is, its action penalizes U.S. exports to a greater extent than the U.S. action affected Mexican broom exports. The United States requested consultations under the dispute settlement provision of the NAFTA concerning Mexico's retaliatory actions. Mexico requested the establishment of a NAFTA Chapter 20 dispute panel to review the U.S. broom corn brooms safeguard action. The final report of the panel was released on February 11, 1998, with a finding in favor of Mexico based on a technical flaw in the United States' injury determination.

Antidumping Actions

The U.S. Government is concerned about the Mexican Government's application of antidumping measures on U.S. exports of high fructose corn syrup (HFCS). The U.S. Government held WTO consultations with Mexico regarding its provisional antidumping measure on HFCS. U.S. exporters have complained about a lack of transparency in Mexico's antidumping procedures, and about inconsistencies between Mexico's actions and its international obligations. U.S. exporters have also complained that the process in Mexico for appealing antidumping determinations can be time-consuming and cumbersome.

Administrative Procedures and Customs

U.S. exporters continue to register complaints about certain aspects of Mexican customs administration, including the lack of prior notification of procedural changes, inconsistent interpretation of regulatory requirements for imports at different border posts, new requirements that particular goods may enter only through certain ports, and discriminatory and capricious enforcement of Mexican standards and labeling rules. Complications and confusions have occasionally resulted in the application of harsh penalties for technical customs law violations committed as a result of simple mistakes rather than an attempt to evade Mexican customs rules. Agricultural exporters note that Mexican inspection and clearance procedures for some agriculture goods are long, burdensome, non-transparent, and unreliable. The Customs Reform Law that came into effect in April 1996 gave Mexican customs authorities the right to act in cases of suspected violations of intellectual property rights, however, they do not have the authority to seize goods on their own initiative. Several U.S. exporters have voiced concerns about border procedures in this area.

Other customs-related problems include requirements to list serial numbers on invoices, laborious inspections at the border, a requirement that importers be registered with the Ministry of Finance, difficulty in clearing low-value shipments to importers not on the importer registry, lack of standard procedures to address complaints, and unavailability of prompt and reliable information on Mexican regulations.

Exporters of agricultural products complain that the Mexican government administers NAFTA tariff rate quotas for a number of products in a trade-distorting manner. The exporters state that obtaining import licenses can be very cumbersome and time-consuming, and that the government manipulates the timing of auctions for licenses to the disadvantage of U.S. exporters.

Both the United States and Mexico maintain duty exemption limits for tourists returning from a NAFTA country. For the United States, the limit is $200 per crossing, with one $400 entry allowed each 30 day period. Mexico's per-crossing limit is $50 for land crossing or $300 for air/sea crossings. Mexico partially harmonized its personal duty exemptions for returning residents in late 1995, raising its monthly limit from $350 to the U.S. level of $400 and permitting pooling by family members (e.g., a family of four can bring back $1,600 in goods duty-free). Pursuant to the provisions included in the Treasury Department's FY 1998 appropriation, the United States remains interested in greater harmonization of these provisions by the three NAFTA countries, including broader product coverage for Mexico's duty exemptions.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Sanitary and Phytosanitary Standards

Mexican sanitary and phytosanitary (SPS) standards have created barriers to exports of certain U.S. agricultural goods, including grains, citrus, potatoes, apples, stone fruit, and meat. However, recent progress has been made in resolving SPS issues surrounding cherries, Christmas trees, and sorghum. In addition to product-specific rules, the Mexican process for establishing 'emergency' phytosanitary standards has disrupted trade, since such 'emergencies' do not follow the normal rule-making and notification process, which includes public comment periods. The United States remains concerned about the far-reaching extent of some sanitary and phytosanitary import regulations, such as those for grains. Procedural requirements regarding SPS inspections at the Port-of-Entry often do not reflect agreements reached between U.S. Department of Agriculture (USDA) officials and their Mexican counterparts, resulting in unnecessary delays at the border, seaports, and airports. U.S. Government maintains an ongoing dialogue with Mexico on these issues in the NAFTA Sanitary and Phytosanitary Measures Committee.

Conformity Assessment Procedures

Mexico's Law on Metrology and Standardization mandates that products subject to technical regulations ("Normas Oficiales Mexicanas" (NOMs)) be certified by Mexico's Direccion General de Normas (DGN) or an authorized independent certification body.

Through 1997, only Mexican entities could qualify to be recognized as competent to perform conformity assessment. The requirement to perform testing in Mexico-based laboratories had added cost and uncertainties for U.S. suppliers. Particular difficulty was experienced in sectors where Mexican technical capability is non-existent or insufficient to meet the demand, or where that capability resides solely in the laboratories of competing manufacturers. On January 1, 1998, Mexico's NAFTA obligation to accredit or otherwise recognize U.S. and Canadian bodies no less favorably than Mexican entities took effect.

Since all imports are subject to inspection at the border as well as at the retail level, and domestically produced goods face no equivalent border inspection requirement (domestic goods are subject only to spot inspections in the market), enforcement of compliance with NOM certification appears to be more stringent in the case of imports. The lack of sampling or "spot" inspection at the border results in delays and additional costs to U.S. exporters not incurred by domestic Mexican producers. U.S. exporters also report inconsistencies in certification enforcement and determination at different ports of entry.

Mexico

On October 24, 1997, the Mexican Ministry of Commerce and Industrial Development (SECOFI) published revisions to its product certification procedures for the mandatory standards under its authority. Under the previous policies, a foreign manufacturer could not directly obtain any form of certification for its product. Instead, each importer of the same product had to submit the product for testing and certification, regardless of whether or not a certification had already been obtained by another importer. On the other hand, Mexican manufacturers can simply submit products for evaluation and certification on a periodic basis to obtain product certification, and then they can distribute the product for sale throughout the country. The inability of foreign manufacturers to obtain a certification with the same ease that Mexican manufacturers can obtain product certification has caused numerous problems and costs for U.S. exporters who frequently rely upon multiple importers, as well as for exporters who wish to change their importers or distributors.

Under the revised procedures, foreign manufacturers can obtain a "report of test" (dictamen) for a product based upon the definition of a product family, which can be used by each importer of the product to obtain the product certification. However, this dictamen can only be obtained by a foreign manufacturer if it obtains quality system registration to ISO 9000 criteria from an accredited Mexican quality system registrar. A provision exists for accepting a quality system registration by a foreign organization, but only if a mutual recognition agreement exists between the organizations. It appears likely that this option provided to foreign manufacturers will only be advantageous to a very small number of manufacturers, forcing most importers to continue obtaining separate product certifications for the same products from the same manufacturers.

On May 20, 1997, Mexico published amendments to its Law on Metrology and Standardization which took effect on August 1, 1997. Among other things, the amendments foresee the privatization of SECOFI's accreditation program. Private sector accreditation body(ies) in Mexico will be able to apply for recognition to provide accreditation services for the range of conformity assessment activities: Testing and calibration laboratories, certification bodies, and verification units. This is a significant change in Mexican policy and it may take some time before bodies in Mexico are approved by SECOFI. Until the private sector accreditation body is established (currently projected for spring 1998), the DGN will continue its accreditation activities.

Labeling Requirements

Changes in Mexico's mandatory labeling requirements have been the subject of frequent discussions, both bilaterally and within the NAFTA Committee on Standards Related Measures. In particular, implementation of NOM-050 and NOM-051 on labeling of consumer products and prepackaged foods and non-alcoholic beverages, respectively, affects a broad range of industries and will continue to be monitored closely by the U.S. Government. These labeling standards took effect in 1997. Exporters have changed or are in the process of changing their packaging to comply with these standards. The difficulty and the costs that companies have experienced in complying with the new labeling standards have, in some cases, disrupted their exports to Mexico or caused them to reduce the number of products they export to Mexico.

GOVERNMENT PROCUREMENT

During the October, 1997 trilateral NAFTA government procurement meeting in Ottawa, the Governments of Canada, the United States and Mexico reaffirmed their assent -- made by ministers at the March 1997 NAFTA Commission meeting -- to raise the threshold from $50,000 to $100,000 for contracts which may be "set aside" for "national-only" bidding. Unlike Canada and the United States, which will do this by executive order,

Mexico will have to obtain congressional approval to make the same change. This amendment, when carried out, will allow NAFTA governments to simplify the procurement procedures used to purchase goods and services below $100,000 resulting in significant cost savings and a more efficient administrative procurement process.

Although Mexico had agreed under the NAFTA to complete its list of services excluded from NAFTA coverage by July, 1, 1995, the United States and Canada continue to work intensively to reduce Mexico’s overly-extensive draft list. If Mexico does not soon establish a satisfactory core priority list, Canada and the United States may have to explore other options available under the Agreement.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Under the NAFTA and the WTO, Mexico is obligated to implement and enforce a very high level of intellectual property rights (IPR) protection. Notable achievements have been passage of a new copyright law and increased penalties for copyright violations, Mexico's ratification of the international convention for the protection of new varieties of plants (UPOV), and passage of an integrated circuit designs law in December 1997. Mexico has not yet released implementing regulations for the UPOV.

In addition, the number of search and seizure actions undertaken by the PGR (Mexican federal Attorney General's office) in recent years has increased, but remains uneven. Mexico and the United States have created a bilateral working group on IPR to discuss enforcement and other matters. The group met three times in 1997, and should meet on a regular basis in 1998.

Copyright

The government of Mexico passed a copyright law on December 24, 1996, which addressed a number of inadequacies in the former law. The law substantially increased protection for computer programs, textile designs and several other types of copyrighted material. Criminal penalties in several areas were increased, and some administrative procedures were introduced as well. The legislation, while meeting many of Mexico’s obligations under the NAFTA and TRIPs, fell short in significant areas, including criminal penalties. However, subsequent modification of the law brought commercial piracy of sound recordings under coverage of criminal law. While the new law appears to provide a satisfactory legal framework, in practice, criminal penalties have been infrequent and mild.

Copyright piracy remains a major problem in Mexico, with U.S. industry loss estimates continuing to increase. Pirated sound recordings and video cassettes are readily available throughout Mexico. The International Intellectual Property Association (IIPA) estimates that trade losses due to copyright piracy in Mexico in 1996 totaled $414 million. The U.S. Copyright industry notes that in spite of numerous raids by legal authorities and extensive confiscation of pirated material (for example a January 1998 raid netted 30,000 pirated video cassettes), few convictions have resulted, and in no instance has a pirate been sentenced to jail.

Patents and Trademarks

Patents and trademarks are under the jurisdiction of the Mexican Institute of Industrial Property (IMPI), a free-standing body. An increasing number of raids have been conducted in recent years, and use of administrative

remedies are increasingly useful to U.S. trademark owners. Nonetheless, many U.S. trademark holders have encountered difficulties in enjoining former subsidiaries and franchisees from using their trademarks. U.S. firms have reported experiencing difficulty in enforcing their trademark rights when a Mexican entity has registered them, even when registration was under a different category. These anecdotal reports indicate problems are occurring, but not on a large scale.

Plant Varieties

In 1996, as required by the NAFTA, the Mexican government approved the Plant Varieties Protection Act, and in August 1997 acceded to the international convention for the protection of new varieties of plants (UPOV). Implementing regulations are still pending, however. The NAFTA also required Mexico to begin accepting, on January 1, 1994, applications from plant breeders for varieties in all plant genera, and to promptly grant protection.

Border Enforcement

NAFTA article 1718 required Mexico to have adopted by December 1995, procedures to allow U.S. rights holders to request that Mexican customs authorities suspend release of goods with counterfeit trademarks or pirated copyright goods. In December 1995, Mexico's customs law was amended to grant its customs service authority to detain infringing products. Several U.S. companies have complained that the procedure for obtaining protection via Mexican customs authorities is complicated, for a variety of reasons, including the fact that Mexican law does not recognize its customs service as an authority competent to decide infringement issues. Intellectual property rights owners seeking to use customs resources to prevent importation of infringing goods must obtain, from a competent authority, an order which directs custom officials to detain the merchandise. Thus far, few companies have requested this type of action, but those which have report positive outcomes. The United States will work closely with Mexico to assure that Mexico is providing effective border enforcement of intellectual property rights, as the NAFTA requires.

Film Dubbing

In December 1992, Mexico promulgated film industry legislation that contained a troublesome provision against film dubbing. In particular, under the provision, only children's films may use dubbing; all other films are restricted to using sub-titles. Because the market preference is for dubbed films, however, this provision would act as a barrier to U.S. (English language) films. Although Mexican trade officials gave verbal indications in the past that in order to make the law consistent with NAFTA requirements U.S. films would be exempted from this provision when Mexico promulgates its implementing regulations, Mexico has taken no corrective action yet. U.S. industry is pursuing remedies available to it under Mexican law.

SERVICES BARRIERS

Land Transportation Services

U.S. express delivery firms are experiencing significant difficulties in receiving the national treatment that Mexico is obligated to provide to them under the NAFTA. Mexico has not yet granted full operating authority to U.S. firms in this sector. This issue has been the subject of bilateral consultations between the U.S. and

Mexican governments, including formal consultations at both the staff and ministerial level, pursuant to the dispute resolution procedures of Chapter 20 of the NAFTA.

The NAFTA will eventually remove most operating and investment restrictions on land transportation services, thus facilitating the freer flow of goods and passengers across the border. On December 18, 1995, the United States and Mexico were to have permitted access to each other's border states for the delivery and backhaul of cargo. However, on that date, the United States announced it would accept applications from Mexican motor carriers to operate international services between Mexico and the states of California, Arizona, New Mexico, and Texas, but that the final processing of applications would be postponed until continuing concerns about commercial vehicle safety and security were addressed.

Telecommunications

Prior to implementation of the NAFTA, Mexico had taken steps to reform its telecommunications sector, including privatizing Telefonos de Mexico (Telmex), the national telephone company; liberating foreign investment rules in most telecommunications services; introducing competition in some telecommunications service sectors; and restructuring the sector's regulatory entities. Mexico implemented a new telecommunications law in June 1995 codifying many of these changes.

Mexico ended Telmex's monopoly on the provision of commercial long-distance telecommunications services on August 10, 1996, and allowed long-distance competitors to interconnect to the public-switched network on January 1, 1997. A number of U.S. firms, in partnership with Mexican firms, are competing for Mexican residential and commercial long-distance subscribers. Mexico allows up to 49 percent foreign investment in telecommunications networks and services, including basic telecommunications. An exception is provided in Mexico's new telecommunications law that allows consideration of a higher limit for foreign investment in cellular services.

Under the WTO Agreement basic telecommunications services, Mexico made market access and national treatment commitments on all basic telecommunication services. Mexico also adopted the pro-competitive regulatory commitments set forth in the Reference Paper associated with the WTO Agreement. Mexico, however, requires the use of Mexican infrastructure for provision of domestic satellite service until the year 2002 and it continues to restrict foreign ownership of all services other than cellular to 49 percent.

The NAFTA eliminated all investment and cross-border service restrictions in enhanced or value-added telecommunications services and private communications networks, most as of January 1, 1994. The remaining restrictions, limited to enhanced packet switching services and videotext, were eliminated on July 1, 1995.

There are several aspects of Mexico's regulation of its telecommunications market that inflate the cost of terminating intenational traffic in Mexico and exacerbate the longstanding problem of high settlement rates by preventing competitive forces from being brought to bear on these rates. (The settlement rate for U.S.-Mexico international traffic was more than 39 cents per minute in 1997, compared to U.S.-Canada rates of about 7 cents per minute. These high settlement rates resulted in outpayments to Mexico by U.S. carriers of 875 million dollars in 1996.)

Mexico

The Government of Mexico has given one carrier, Telmex, a *de facto* monopoly to negotiate settlement rates that prevents other Mexican carriers from negotiating lower rates. Mexico requires that 58 percent of the settlement rate on inbound international traffic be paid to Telmex even if Telmex is not the international carrier responsible for the traffic. This surcharge gives Telmex an additional incentive not to negotiate lower settlement rates and provides Telmex with revenue from services that are being supplied by its competitors. The Government of Mexico also has stated that it is the internal policy of the Mexican Government not to permit resale, i.e., the reselling of the long distance public network in Mexico. In the absence of this policy, carriers could use "international simple resale," a form of resale using leased lines that are not subject to settlement rates. Each of these measures and policies reinforces Telmex's market dominance and seriously erodes the basis for effective competition in Mexico's telecommunications market. The USTR is reviewing these and other aspects of Mexico's regulatory regime under section 1377 of the Omnibus Trade and Competitiveness Act of 1988.

In the 1997 section 1377 review, USTR concluded that Mexico had satisfactorily established standards for terminal attachment equipment. We continue to monitor implementation of these standards in the NAFTA Telecommunications Standards Subcommittee (the TSSC). One issue which could be problematic relates to a standard for immunity to radio frequency interference. We remain to be convinced that the standard Mexico has introduced is necessary, and plan additional consultations on this issue in the TSSC. Last year's section 1377 review also noted progress on an agreement relating to the exchange of test data relating to product safety. A final agreement was concluded on April 18. We are unaware of any problems relating to the implementation of this agreement.

INVESTMENT BARRIERS

Ownership Reservations

Mexico maintains state monopolies in a variety of sectors, including oil and gas exploration and development and basic petrochemicals, that effectively bar U.S. private investment. In addition, U.S. investment in border and coastal real estate is controlled by bank-run trusts. In May 1995, the Mexican government passed legislation to privatize the national railroad system. Mexico will allow up to 49 percent foreign control of 50-year concessions to operate portions of the railroad system, renewable for a second 50-year period. The concessions for the Northeast and Northern Pacific Railroad as well as concessions for two independent and one concession-linked short line have been awarded. Similarly, an airport law passed in December 1995 provides for renewable 50-year airport operation concessions to private investors. However, foreign ownership is limited to 49 percent in most cases (waivers are available in specific circumstances). Regulations governing the concessions are currently being drafted and the first airport concessions are not likely to be granted before mid-1998.

While Mexico actively seeks and approves foreign investment in natural gas transportation, distribution and storage systems, (for example, concessions in Mexicali, Hermosillo, and Chihuahua), Mexico continues to exclude U.S. investors from owning assets in other important sectors open to its own citizens, including oil and gasoline distribution and retailing, selected educational services, newspapers, and agricultural land.
Mexico has notified to the WTO measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMs). The measures deal with local content and trade balancing in the automotive industry. Proper notification allows developing-country WTO members to maintain such

measures for a five-year transitional period after entry into force of the WTO. Mexico therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO Members meet these obligations.

NEW ZEALAND

In 1997, the U.S. trade surplus with New Zealand was $378 million, $115 million higer than in 1996. The U.S. remained New Zealand's third largest trading partner in 1997, its second largest supplier and third largest export market. U.S. merchandise exports to New Zealand were $2.0 billion in 1997, up $230 million, or 13.3 percent, over the previous year. U.S. imports from New Zealand for 1997 totaled $1.6 billion, up $114 million (7.8 percent) over the previous year.

The stock of U.S. foreign direct investment was $5.5 billion in 1996, 13.9 percent more than in 1995. U.S. direct investment in New Zealand is largely concentrated in telecommunications, forestry and paper, food processing, manufacturing, transportation, and petroleum.

Overview

New Zealand is a valued partner in the global effort to reduce barriers to the free flow of trade and investment, working closely with the U.S. in the WTO, APEC and other multilateral fora. New Zealand's reform process has been largely unilateral, and it maintains an open trade and investment regime. Since the government's deregulation and privatization program in the late 1980s, New Zealand has become a growing destination for U.S. foreign direct investment. The New Zealand-U.S. commercial relationship has also expanded rapidly. The new National-New Zealand First Coalition Government led by Prime Minister Jenny Shipley (sworn in on December 8, 1997) appears committed to continuing New Zealand's economic reforms. Accordingly, Commerce Minister John Luxton announced December 18 that auto tariffs (currently at 22.5 percent) would fall to zero on December 1, 2000. Already scheduled to come down annually by 2.5 percentage points, tariffs will still be at 15 percent on July 1, 2000 before their one-step removal six months later. All other New Zealand tariffs will be reviewed by the government in 1998; the government has already announced its intention to abolish all remaining tariffs well before New Zealand's APEC commitment of 2010.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Environmental Regulations

New Zealand's first comprehensive environmental protection legislation, the Hazardous Substances and New Organisms (HSNO) Act, was passed by Parliament in 1996. A new regulatory body, the Environmental Risk Management Authority (ERMA) will assume responsibility for assessments of genetically modified organisms (GMO's) and establish a new product registration system for chemical and other hazardous substances sold in New Zealand.

Chemicals and hazardous substances: ERMA criteria for toxicity thresholds are being developed with the technical assistance of the industry (both domestic and foreign). Originally scheduled to enter into force on April 1, 1998, hazardous substances regulations are now scheduled to begin October 1, 1998 to take into account further comment by U.S. and European chemical firms. ERMA is already conducting internal trials on industry application procedures and plans nationwide seminars on compliance for firms in July. Others are planned right before the first public trials begin in October. ERMA is also considering sending representatives

to the U.S. and Europe for information sessions with foreign firms operating in the New Zealand market. New Zealand's stated aim is to establish a user-friendly product registration system that is compatible with and will utilize chemical data collection that firms already carry out to meet registration requirements in other developed markets. The government estimates that 99 percent of the time, chemicals will fall into this category. Only for highly toxic chemicals will registration requirements become more complicated. The Government currently plans to share with firms the compliance costs of the new regulations.

Genetically modified organisms: Also under HSNO authority, ERMA will assume responsibility for assessments of new organisms introduced into New Zealand. GMO review will become compulsory when enabling regulations are implemented on July 1, 1998. Until then the GMO review function will continue to be performed by New Zealand's Interim Assessment Group (IAG). Since its inception in 1986, the IAG has evaluated more than 40 applications involving the use of GMOs outside contained facilities. However no procedures have been created which would allow for the full release of a GMO, including importation of transgenic products such as U.S. soybeans.

Foods from GMOs: In late February, the Australia-New Zealand Food Authority (ANZFA) made recommendations on a revised standard to the Australia-New Zealand Food Standards Council. The New Zealand government accepted the recommendations, but they have not yet come into force. The ANZFA final recommendations represent a positive step on issues the United States has been discussing with New Zealand, particularly use of science-based policies to regulate foods produced using gene technology. New Zealand has concluded that labelling should be required for foods produced using gene technology specifically when those foods are not substantially equivalent to their existing conventional counterparts. We look forward to discussing with New Zealand how it intends to implement the safety standard it has set for these new products.

Sanitary and Phytosanitary Controls

New Zealand maintains a strict regime of sanitary and phytosanitary control for virtually all imports of agricultural products. Opportunities for greater access to the New Zealand market remain limited for some U.S. agricultural products, while other products are subject to rigid pre-clearance requirements. Access for some U.S. agricultural products has improved over the last year or is improving.

Poultry: New Zealand maintains a complete prohibition on all imports of uncooked poultry. In June 1996 the Ministry of Agriculture published a qualitative review which characterized the disease risk of imported poultry as negligible. However, objections from the New Zealand poultry industry have prompted the Ministry to carry out a more detailed risk assessment, which is expected to be complete in 1998.

Salmon: A draft risk assessment released in September 1997 by the Ministry of Agriculture notes that "a continuing prohibition on imports of wild Pacific salmon from the United States is inappropriate." Following a review of technical comments to the draft, the risk assessment is expected to be published in final and a U.S. import health standard issued shortly thereafter.

SERVICES BARRIERS

Telecommunications

While prospective entrants into New Zealand's deregulated telecommunications market face no legal restrictions, there has been a history of telecommunications market access complaints. When the government of New Zealand corporatized, then privatized the industry, it left all local access responsibility in the hands of Telecom New Zealand. Since then, whenever another telecommunications firm has wanted access to telephone numbers or local access, they have had to deal directly with Telecom -- not the government or a regulatory authority. If the firm cannot reach an agreement with Telecom, its only appeal has been through the court system for alleged breaches of New Zealand's commerce and/or fair trading acts. (Telecom New Zealand was sold in 1990 to a consortium of Ameritech and Bell Atlantic of the U.S. and two smaller domestic partners. In December 1997, Ameritech announced that it will sell its 24.95 percent stake in Telecom, while equal partner Bell Atlantic plans to offer an exchangeable note issue with the option of later exchanging the notes for shares.) New telecommunications market entrants have repeatedly challenged,in New Zealand courts, Telecom New Zealand's alleged abuse of its market dominance. One of the major issues has been the conditions for interconnection of competitors to the network owned and operated by Telecom. Agreements have been reached in areas such as international services, customer premises equipment, resale, and cellular services. New entrants have also sought agreements with Telecom that would enable telephone customers that change carriers to retain their old phone numbers. After 18 months of negotiation, Clear reached a number portability agreement with Telecom in November 1997, following Telecom's similar agreement with Australia's Telstra. Clear Communications and Bell South have also begun court challenges to what they charge are Telecom's anti-competitive "bundling" of its monopoly and competitive services; use of Telecom software receiving interconnection traffic data to attract competitors' customers; and flipping long-distance customers from others' long-distance services to Telecom's without notification or agreement by Clear's clients.

Pharmaceutical Management Agency (Pharmac)

Pharmac was established in 1993 as a limited liability company to manage the purchasing or funding of pharmaceuticals for the four public regional health authorities (RHAs). Replacing the RHAS in 1996, the single Transitional Health Authority (THA) is responsible for purchasing health services and supplies for all New Zealanders. Owned by the THA, Pharmac administers the national pharmaceutical schedule on its behalf. The schedule lists medicines subsidized by the government and the reimbursement paid for patients for each pharmaceutical. The schedule also specifies conditions for prescription of a product listed for reimbursement.

At its creation, Pharmac was exempted from New Zealand's normal competition laws, an exemption upheld in a 1997 High Court ruling in an umbrella court case brought against Pharmac by New Zealand's Researched Medicines Industry (RMI) Association. (That decision is under appeal.) While New Zealand does not restrict the sale of non-subsidized pharmaceuticals in New Zealand, private medical insurance companies will not cover unsubsidized medicines. Thus, Pharmac effectively controls what prescription medicines will be sold in New Zealand and, to a large extent, at what price they will be sold.

Pharmaceutical suppliers complain that it is difficult to list new chemical entities and line extensions on Pharmac's schedule. In general, Pharmac will not apply a subsidy to a new medicine unless it is offered at a price lower than currently available, subsidized medicines in the same therapeutic class or unless the producer is willing to lower its price on another medicine already subsidized on another schedule. The effect is to force down prices of all medicines in either of the two schedules affected. Pharmaceuticals can also be de-listed if

a new, cheaper alternative (either a generic or a brand-named product sold at a loss) becomes available, and if the manufacturer of the original product refuses to discount its price to that of the new lower-priced alternative. Thus, Pharmac's use of reference pricing and practice of doing trade-off deals between schedules can negatively affect a company's expected revenue return on its intellectual property.

In 1997, Pharmac suggested that it might try to control its escalating costs by tendering for a sole national supplier in some pharmaceutical classes.

The government and individual pharmaceutical firms have begun a dialogue to discuss Pharmac practices. The firms are promoting a transparent subsidies decision-making process based on sound medical evidence -- designed to divorce pharmaceutical pricing decisions (left to the market) from government decisions on how to distribute its public health budget. Some are also suggesting a type of appeal mechanism so that firms denied a Pharmac listing can bring to the government's attention additional research proving a new medication's specific effectiveness. In general, Pharmac may become part of a growing public and political discussion of health care reform and whether New Zealand's universal pharmaceutical subsidization (regardless of the ability to pay) is an efficient or sustainable use of public funds.

INVESTMENT BARRIERS

There has been an apparent change in how New Zealand handles the politically sensitive issue of rural land sales to foreigners. Beginning in September 1996, the overseas investment commission (OIC) has denied several requests by Americans (as well as other non-residents) to purchase large tracts of rural land. In all cases, the applicants wished to buy agricultural land over five hectares for vacation retreats and showed no evidence of intentions to become permanent residents in New Zealand or to use the land for productive purposes. In December 1997, the new Coalition sent to Parliament a bill that would amend the Overseas Investment Amendment Act of 1995 to strengthen the "national interest" provision for the sale of farm land to foreigners by requiring the government to consider whether the investment would, or would be likely to, bring "substantial and identifiable benefits" to New Zealand; deny OIC consent for the sale of blocks of farm land over five hectares to foreigners unless the land has first been offered on the open market to New Zealanders; and reduce the amount of foreshore requiring OIC approval from 0.4 Hectares to 0.2 hectares. Thus, unless land over five hectares is involved, U.S. investors should experience no change in New Zealand's approval process for foreign direct investment.

Competition

Another possible policy change under the new Coalition Government could provide greater market access for foreign investors and make it more difficult -- for either foreign or domestic interests -- to set up or maintain near monopolies in vertically integrated industries. The December 1996 Coalition agreement between the National and New Zealand First parties states that the government's commercial policy could "support light handed regulations with power to regulate if necessary." New Zealand's Commerce Commission filed a major lawsuit in December 1997 against corporate-giants Fletcher Challenge, Fletcher Energy, and state-owned power generator ECNZ and has asked the high court to unwind Fletcher's earlier purchase of a significant stake in the undeveloped Kupe gas field in Taranaki. The results of these actions could define the future parameters of competition in the gas market and perhaps in other vertically integrated industries. The government is also looking at the possibility of dividing ECNZ into competitive parts to ensure that the benefits of electricity

deregulation are shared by consumers.

OTHER BARRIERS

State Trading Enterprises

New Zealand maintains several agricultural producer organizations which enjoy statutory protection as monopoly sellers or which license sellers. Export monopolies remain in place for dairy, apples, pears, and kiwifruit. The government does not fund marketing board operations. Funding is provided by retained revenue or checkoffs. Legislation in 1997 removed many largely unused meat producer board authorities, including powers to acquire product, control shipping, and impose quality requirements. The Meat Producers Board retains authority to allocate quota access and carry out research and promotion. The Apple and Pear Marketing Board and the Kiwifruit Marketing Board are expected to seek amendments to their legislative authorities in 1998.

NICARAGUA

In 1997, the U.S. trade deficit with Nicaragua was $150 million, an increaset of $62 million from the U.S. trade deficit of $88 million in 1996. U.S. merchandise exports to Nicaragua were $289 million, an increase of $27 million (10.4 percent) from the level of U.S. exports to Nicaragua in 1996. Nicaragua was the United States' seventy-ninth largest export market in 1997. U.S. imports from Nicaragua were $439 million in 1997, an increase of $89 million (25.5 percent) from the level of imports in 1996.

IMPORT POLICIES

Tariffs

Nicaragua's tax reform law of May 1997 made sweeping changes in the system of import taxes, reestablishing a schedule for progressive tariff reductions through the year 2002. As of January 1998, Nicaragua imposes regular import duties (DAI) of 15 percent on final consumption goods and 10 percent on intermediate goods (there is no DAI on raw materials and capital goods). The country also levies a temporary protective tariff (ATP) of 5 to 10 percent on about 900 items. The maximum combined DAI and ATP rate is 20 percent. In addition, Nicaragua levies a specific consumption tax (IEC) of 10 percent on 750 items and a 15 percent value-added tax on most items excluding agricultural inputs. The 1997 tax reform banned the establishment of almost all the non-trade barriers on imports. It also repealed, effective July 1998, the 1980 "law of agents, representatives and distributors of foreign products." That law makes it difficult for foreign firms to terminate local distributors.

CACM members are working toward the full implementation of a common external tariff (CET) ranging between 0 and 15 percent for most products. With a few exceptions, there are no regular import duties (DAI) on products traded among CACM members. Nicaragua, in it 1997 Tax Reform Law, adopted a tariff reduction schedule beyond that called for by CACM agreements. In December 1997, Nicaragua and Mexico signed a free-trade agreement which, when ratified by their legislatures, will remove most regular import duties (DAI) on Nicaraguan exports to Mexico and do the same for Mexican exports to Nicaragua in the year 2000.

Nicaragua's domestic tax and tariff rates are higher on cars with large engines. This has the effect of discriminating against American automobiles, which typically have larger engines than equivalent competitors from other countries. In January 1998, the Nicaraguan Government sent draft legislation to the National Assembly to reduce that discrimination by sharply reducing the tariff differential between cars with large and small engines.

Agricultural Price Bands

Nicaragua's tax reform law of May 1997 replaced the price-band mechanism with tariffs. Those tariffs (for yellow corn, sorghum, rice, and soybeans) now range from 20 to 30 percent and are set to drop to 5 and 10 percent by 2000.

Nicaragua

GOVERNMENT PROCUREMENT

The 1981 Law of Administrative Contracting by the State, Decentralized/Autonomous Agencies, and Municipalities sets out clear guidelines for government procurement. However, in practice, many government agencies and parastatals engage in direct purchasing outside of the legal framework.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Bilateral Agreement

On January 7, 1998 Nicaragua signed a Bilateral Intellectual Property Rights Agreement with the United States -- the first such agreement in Central America and only the fourth in the hemisphere. The agreement, which had been under negotiation for four years, covers copyrights, patents, trademarks, semiconductor layout designs, encrypted program-carrying satellite signals, trade secrets, and industrial designs. The agreement addresses criminal and civil penalties for infractions and provides a level of protection which exceeds commitments in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The agreement, which must be approved by the National Assembly, calls for full implementation by mid-1999.

Copyrights

Piracy of video recordings, unauthorized video and sound recordings, broadcast theft, and piracy of U.S. satellite signals by the local cable television operators are widespread. The current law, which dates from 1904, does not explicitly protect computer software, which contributes to endemic piracy of these products. A draft copyright law languished in the previous National Assembly. A report prepared by the International Intellectual Property Alliance estimated that losses in Nicaragua due to copyright infringements cost U.S. firms $5.4 million annually.

Patents

The current patent law, which dates to 1899, fails to meet international standards for term of protection and for subject matter subject to patentability. Patent protection is limited to short patent terms (10 years). In 1996, the National Assembly ratified the Paris Convention for the Protection of Industrial Property. In April 1997, Nicaragua approved the technical part of the Central American Convention in Industrial Property (inventions and industrial design). However this is not yet in force, pending approval by other countries. New patent legislation is under consideration, but its prospects for passage are uncertain.

Trademarks

Nicaragua's trademark law currently provides inadequate protection for trademarks, especially well-known marks. However, in November 1994, the Central American Convention for the Protection of Industrial Property, of which Nicaragua is a signatory, was revised. The Convention has been signed by the Nicaraguan executive branch, but has not yet been ratified by the National Assembly. The Convention is intended to ensure compatibility with the Paris Convention and Uruguay Round TRIPs provisions.

INVESTMENT BARRIERS

Sandinista-era cases of expropriation of U.S. citizen-owned investments or properties are a continuing problem. Although the Aleman government said that resolution of these cases was a priority, resolution of cases has been slow during the second semester, in part because of uncertainties relating to the new property law that was being debated during the year. The United States continues to press Nicaragua to provide prompt, adequate and effective relief to affected U.S. owners and investors.

In order to receive the benefit of the 1991 Foreign Investment Law -- which provides guaranteed repatriation of profits and repatriation of original capital three years after the initial investment -- investments must be approved by an interagency foreign investment committee. These approvals can be time-consuming and contain criteria -- e.g., approval by the government's environmental agency -- which lack clear definition. Investments may be made without foreign investment committee approval, but such investments do not enjoy repatriation guarantees. The government has announced plans to review the adequacy of the investment law with the objective of removing any bias against foreign investment.

The resolution of commercial and investment disputes is unpredictable. The legal system is cumbersome, and the enforcement of judicial rulings is uncertain and sometimes subject to non-judicial considerations.

In July 1995, the Governments of Nicaragua and the United States concluded the U.S.-Nicaragua Bilateral Investment Treaty (BIT) which was designed to improved the investment climate by recognizing intellectual property rights, and by guaranteeing the repatriation of capital and compensation for damages. Nicaragua's National Assembly ratified the BIT in June 1996. The treaty has not yet been submitted to the U.S. Senate for ratification. Submission of the BIT to the Senate for ratification has been linked to Nicaraguan progress in resolving U.S. citizen property claims as well as signing a Bilateral Intellectual Property Rights Agreement with the United States in January 1998.

NIGERIA

In 1997, the U.S. trade deficit with Nigeria was $5.5 billion, an increase of $502 million from the U.S. trade deficit of $5.0 billion in 1996. U.S. merchandise exports to Nigeria were $814 million, a decrease of $2 million (1 percent) from the level of U.S. exports to Nigeria in 1996. Nigeria was the United States' fifty-eighth largest export market in 1997. U.S. imports from Nigeria were $6.3 billion in 1997, an increase of $500 million (8.6 percent) from the level of imports in 1996.

IMPORT POLICIES

As of January 1998, the importation of dozens of items, primarily agricultural products, remains banned. The official listing outlines fewer than 15 items but the definitions are so broad that the actual number of products is far greater than 15. The ban on certain agricultural imports was initially implemented to help restore Nigeria's agricultural sector, but the ban is severely compromised by widespread smuggling. Agriculture officials report that an effective tariff of 25 to 30 percent is levied on smuggled produce and livestock by those trading in banned products.

Following a reported shortfall in customs duties, the Nigerian government in April 1996 implemented an extensive port-and-customs reform to reduce congestion and corruption in Nigerian ports. The scheme involved pre-shipment inspection (PSI) and assessment of import duties. An import duty report was mandatory for all shipments. Although customs revenue following the reforms has increased by two-thirds, the revenue failed to achieve the goal of port clearance in 48 hours. Following widespread complaints from importers about lengthy delays, in January 1998 the government of Nigeria announced its intention to eliminate the PSI requirement for imports originating from all African countries and 15 other major trading partners. However, according to the government of Nigeria's 1998 budget announcement, the United States and other countries not immediately exempted from the PSI requirement will receive similar treatment during the coming year. The failure to include the United States in the PSI exemption list represents a significant nontariff barrier to U.S.-Nigerian trade. As a result, appropriate appeals were made to the government of Nigeria by U.S. embassy officials.

In January 1998, Nigeria announced a revised tariff schedule. Although higher tariffs were imposed on some items, the list of prohibited imports was reduced and all excise duties were eliminated. The following commodities duty rates apply: rice, 50 percent; day-old chicks and parent stock, 5 percent; sparkling wines, wine coolers, and champagne, 100 percent; fruits and fruit juices, 75 percent; jute, 10 percent; cotton, 60 percent; fertilizers, 5 percent; textile fabrics, 65 percent; and garments, 75 percent. For 1998, the government of Nigeria also continues a 25 percent import duty rebate, which effectively reduces these tariffs. The items that were removed from the prohibited imports list in 1998 (poultry and eggs, beer and stout, barley and malt, mineral and similar waters) do not qualify for the rebate.

GOVERNMENT PROCUREMENT

Nigeria, though a member of the World Trade Organization (WTO), generally does not use an open-tender system for awarding government contracts. Competing for government contracts continues to be made difficult

for foreign firms by the commonly used patronage system and by the need to provide "incentive" payments to Nigeria's officials.

EXPORT SUBSIDIES

For more than 20 years the government of Nigeria has operated the Nigerian Export Promotion Council (NEPC) to encourage development of non-oil exports. The NEPC administers various incentive programs, including a duty-drawback program, an export development fund, an export expansion grant fund, a duty suspension scheme, a manufacture-in-bond program, and a pioneer status scheme. The government reports that the duty-drawback and export expansion grant schemes have been the most widely utilized incentives, although each program distributed less than $1 million in subsidies annually. These schemes are largely ineffective owing to inefficient administration. Shortening the application process for subsidy consideration from 38 to 18 steps is one of the promised reforms for 1998. Exporters do not believe these steps will be effective.

LACK OF INTELLECTUAL PROPERTY PROTECTION

As a member of the World Intellectual Property Organization (WIPO) and a signatory to the Universal Copyright Convention (UCC), the Berne Convention, and the Paris Convention (Lisbon text), Nigeria is a party to most of the major international agreements on intellectual property rights (IPR). Cases involving copyright infringement of non-Nigerian materials have been successfully prosecuted in Nigeria. In 1997 reports surfaced of sporadic raids in Lagos on video stores renting pirated tapes. However, enforcement of existing laws remains weak, particularly in the patent and trademark areas. Despite active participation in international conventions and the apparent interest of the central government in IPR issues, its efforts have been ineffectual in curtailing the widespread production and sale of pirated tapes, videos, computer software, and books in Nigeria.

The Patents and Design Decree of 1970 governs the registration of patents. The Nigerian Standard Organization is responsible for issuing patents, trademarks, and copyrights. Once conferred, a patent gives the patentee the exclusive right to make, import, sell, or use a product or to apply a patented process. The Trademarks Act of 1965 governs the registration of trademarks. Registering a trademark gives its holder the exclusive right to use the registered mark for a particular product or class of products.

Nigeria's television market, once reserved for official channels, was deregulated over a year ago, resulting in the formation of 8 private television stations, over 20 satellite redistribution companies, and a number of pirate television and cable stations. Recent statutes include the Copyright Act of 1988 (amended in 1992); the National Film and Video Censors Board Act of 1993 (which reinforces the measures of the Copyright Act); and the Nigerian Film Policy Law of 1993 (which encourages the development of the Nigerian film industry).

IPR problems in Nigeria increased with the government's 1981 nationalization of the film industry (including distribution), although this policy has been officially abandoned. Motion Picture Association (MPA) member companies were not paid the contractual compensation that was promised by the Nigerian Government. The companies were unable to repatriate assets held locally at the time of nationalization. As a result of these

adverse trading conditions, no trade has been pursued in recent years between MPA member companies and Nigeria. The estimated accumulated losses to MPA member companies exceed $25 million.

Nigerian companies, including film makers, formed the Proteus Entertainment Agency to protect copyright laws in the music, video, and other industries. The Copyright Decree of 1988, based on WIPO standards and U.S. copyright law, currently makes counterfeiting, exporting, importing, reproducing, exhibiting, performing, or selling any work without the permission of the copyright owner a criminal offense. Progress on enforcing the 1988 law has been slow. The expense and time necessary to pursue a copyright infringement case to its conclusion deter prosecuting such cases.

Attorneys active in IPR issues have formed the Industrial Property Law Interest Group (IPLIG) to educate and lobby on industrial IPR issues. They have sponsored several copyright conferences throughout Nigeria and credit themselves for including an IPR course at the Lagos Law School.

In the past, few companies have secured trademark or patent protection in Nigeria because it was generally considered ineffective. Nigeria is considered to be Africa's largest market for pirated products. Losses from poor IPR protection, though difficult to estimate, are substantial. Most of the sound recordings and videotapes sold in Nigeria are pirated copies. Satellite signal piracy is also common. The manufacture and sale of pharmaceuticals and auto parts are also emerging problems.

INVESTMENT BARRIERS

Nigeria, Africa's most populous nation of more than l00 million people, offers investors a low-cost labor pool, abundant natural resources, and a large domestic market. However, Nigeria suffers from an inadequate and poorly maintained infrastructure, confusing and inconsistent regulations, endemic corruption, and a lack of confidence in the rule of law. Therefore, a considerable amount of time, money, and managerial effort must be expended by investors before they can begin operations, let alone earn a profit.

In 1997, Nigeria continued liberalizing the foreign exchange mechanism instituted in 1995. Under the Foreign Exchange Decree of 1995, the autonomous foreign exchange market (AFEM) was reestablished, allowing private companies to source foreign exchange at the parallel market rate (about 80 naira to the dollar in January 1998). The central bank intervenes weekly in the AFEM. Although expectations were high that the 1998 budget would consolidate the exchange rates, the official exchange rate of 22 naira to the dollar has been retained for some official government transactions. Companies can now hold domiciliary accounts in private banks, with account holders having unfettered use of the funds. Foreign investors may bring capital into the country to service foreign loans, and to remit dividends without prior Finance Ministry approval.

Nigeria has notified to the WTO measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures. The measures deal with local content requirements in the economy in general. Proper notification allows developing-country WTO members to maintain such measures for a five-year transitional period after entry into force of the WTO. Nigeria, therefore, must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO members meet these obligations.

Nigeria

In 1995, Nigeria promulgated the Nigerian Investment Promotion Commission (NIPC) Decree which liberalized the foreign investment regime, allowing 100 percent foreign ownership of firms. A foreign enterprise may now buy shares of any Nigerian firm except those on the "negative list" (firms producing firearms, ammunition, narcotics, and military and paramilitary apparel). The decree also abolishes the expatriate quota system (except in the oil sector) and prohibits any nationalization or expropriation of a foreign enterprise by the Nigerian government except for such cases determined to be in the national interest.

Nigeria has begun to implement the 1995 Money Laundering Decree designed to inhibit money laundering. Another decree to combat advance-fee fraud, called 419 fraud (after the section of the Nigerian criminal code that deals with it) has done little to deter 419 fraud. The scope of 419 business fraud has brought international notoriety to Nigeria and discourages investors from working there.

Establishment of a Nigerian export processing zone authority (NEPZA) in 1992 was an additional effort to attract foreign investment. The first and only zone to date is located in eastern Nigeria in the port city of Calabar. After 5 years and $50 million in investment, the zone is still not fully operational. Although the government of Nigeria reports that 16 firms have provisional authority to begin operating, only 6 firms have begun test production runs, and no exports have yet been generated.

OTHER BARRIERS

Parastatals

Although expectations were high in 1997 that Nigeria would begin to privatize portions of its state holdings, this did not occur. The 1998 budget does provide for the privatization of the telecommunications sector in 1998. The plan provides for the government to retain 40 percent equity in the state telecommunications parastatal (NITEL), reserve 20 percent equity for Nigerian citizens and public sale of the remaining 40 percent. Invitations to invest will be made to specific investors with relevant expertise. The government of Nigeria plans on using lessons learned from this "guided privatization" approach of NITEL to improve upon future sales of state assets. The 1998 budget specifically targets the reorganization of the electricity generating parastatal (NEPA) during the coming year. Nigeria's 1998 announcement on privatization is an encouraging signal, though the government's record in implementing promised economic reforms is a checkered one.

NORWAY

In 1997, the U.S. trade deficit with Norway was an estimated $2.0 billion, a decrease of $297 million from the U.S. trade deficit of $2.3 billion in 1996. U.S. merchandise exports to Norway were $1.7 billion, an increase of $162 million (10.4 percent) over the level of U.S. exports to Norway in 1996. Norway was the United States's forty-sixth largest export market in 1997. U.S. imports from Norway were $3.7 billion in 1997, a decrease of $134 million (or 3.4 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Norway in 1996 was $6.1 billion, an increase of 18.9 percent from the level of U.S. FDI in 1995. U.S. FDI in Norway is concentrated largely in the petroleum, manufacturing, and wholesale sectors.

Overview

Norway is a member of the European Economic Area (EEA) which consists of the EU member countries together with Norway, Iceland, and Liechtenstein. Inside the EEA but outside the EU, Norway has assumed most of the rights and obligations of the EU but has limited ability to influence EU decisions.

While Norway has its own tariff system, U.S. exports face most of the same trade and investment barriers which limit U.S. access to the EU. Preferential tariff rates are granted to the EU and other EEA members. The most significant EEA non-tariff barriers affecting U.S. commercial interests in Norway concern labeling and the acceptance of biotech agricultural goods primarily related to genetically modified organisms and growth hormones.

The Norwegian government has completed much of the transition required under EEA obligations to comply with EU directives. However, change is still underway. The current government, which assumed power in October 1997, has indicated it will review the application to Norway of all EU directives, including those already implemented. The government may attempt to renegotiate some aspects of Norwegian compliance with certain directives.

IMPORT POLICIES

Agricultural Tariffs

In July 1995, Norway accelerated its WTO implementation commitments for tariff reduction on agricultural commodities by immediately adopting the year 2000 bound tariff rate targets. Tariffication of agricultural non-tariff barriers under the Uruguay Round has led to the replacement of quotas with higher product tariffs. Domestic agricultural shortages and price surges have been countered by temporary tariff reductions. Lack of predictability of tariff adjustments and insufficient advance notification (generally only two to five days prior to implementation) have made imports from the United States of fruit, vegetables, and other perishable horticultural products substantially more difficult than under the previously existing import regime and favor nearby European suppliers.

Norway

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Agricultural Product Standards

In 1996, the Norwegian government banned the import of growth hormone-treated meat, including growth hormones approved in the United States for beef. In practice, the ban had minimal impact on U.S. beef imports into Norway since meat distributors had previously refused to buy hormone-treated beef based on concern that Norwegian consumers would reject it.

The government passed a law in October 1997 requiring the labeling of all products which contain a minimum of two percent material derived from a gene modified (GM) source. The law requires labeling regardless of whether the GM trait is carried into the processed product. As of December 1997, no GM labeling has appeared on the market because the government has taken the position that there are no GM products in Norway which meet the labeling threshold. No products have been tested yet within Norway for GM components.

There is strong opposition to GM food products among Norwegian consumer organizations and retail groups, with the focus currently on GM soy beans and derivative products. While the government has thus far refrained from banning such GM-commodity imports, market prospects are very limited if alternative non-GM commodities products are available. The refusal of Norwegian food processors to buy soybeans which are not certified as "GM-free" has resulted in U.S. soybean sales declining from a traditional level of about 250,000 tons annually until 1995 (before the appearance of GM soybeans in the U.S. crop) to none in 1997. On the processed foods side, the Norwegian Consumers' Council, in cooperation with the large retail food chains, has threatened periodically to boycott GM products.

Under the authority of Norway's 1993 Gene Technology Act, the government may ban the import of GM products which are not "socially justifiable" and do not contribute to "sustainable development." These criteria apply regardless of the scientific merits of the product, including safety and effectiveness. The government has used the act selectively and applies a "precautionary policy," in which GM products are generally banned if non-GM alternatives are available. In practice, this has resulted in banning some GM imports while granting exemptions for some locally produced GM products.

In the pharmaceutical sector, for example, the government banned the import of certain products such as GM rabies vaccines on the basis that the disease was not endemic to Norway and non-GM alternative pharmaceuticals were available. On the other hand, the government has granted local pharmaceutical manufacturers exemptions to produce GM pharmaceuticals for the domestic and export markets.

The impact on U.S. exports of the government's selective banning of processed GM products is unclear and so far is limited to niche markets.

The market for U.S. processed foods is impeded significantly in Norway due to the Norwegian food authorities' restrictive practices concerning the import of processed foods with contain enrichment additives. While limited exceptions are granted on a case-by-case basis, the authority generally bans or restricts the distribution of foods which contain additives not essential to the product, regardless of whether the additives are beneficial. Examples include bakery mixes with enriched flour and cereals with vitamin additives.

An additional barrier for the U.S. processed food market is the requirement that importers complete a detailed agricultural raw materials declaration. Manufacturers have declined to provide the information out of concern that it would require releasing proprietary information.

Application of Safety Certification Standards

In 1996, the Norwegian Maritime Directorate (NMD) instructed the Norwegian maritime community to discontinue use of emergency survival suits produced by a leading U.S. manufacturer and approved by the U.S. Coast Guard. The NMD's action was based on Norway's interpretation of the International Maritime Organization's (IMO's) certification and testing guidelines. The Norwegian understanding of the IMO standards differs from that of other IMO members, including the United States. This is still an open issue.

INVESTMENT BARRIERS

Norway has been an active participant in the Organization for Economic Cooperation and Development (OECD) Multilateral Agreement on Investment. In 1995, in accordance with EEA national treatment directives, the Norwegian government changed the rules governing foreign investment in industrial companies. Under the new system, foreign investors no longer need to obtain a government concession before buying limited shares of large Norwegian corporations. However, both foreign and Norwegian investors are still required to notify the government when their ownership in a large company (meeting certain size criteria) exceeds specific threshold levels of 33 percent, 50 percent and 67 percent. The Norwegian government then can take action if the purchase is considered contrary to national interests, which could include objectives such as maintaining high employment and providing some market protection to existing businesses against new market entrants.

Financial Sector

In December 1997, the government agreed to all elements of the WTO Financial Services Agreement with the exception of limiting the establishment of cross-border insurance operations to companies authorized specifically to operate in Norway. No additional implementation measures were required since the government's earlier implementation of the EEA accords and the EU's second banking directive removed many financial sector barriers for EU and EFTA member countries. Recent deregulation of financial markets appears to have eliminated nearly all of the barriers facing U.S. financial institutions seeking to operate in Norway.

Without an exemption from the Ministry of Finance due to special circumstances, no single or coordinated group of investors, Norwegian or foreign, may purchase more than ten percent of the equity of an insurance company, commercial bank or savings bank. In order for one or more foreign banks to establish a new Norwegian bank, one of the foreign banking partners must own more than 50 percent of the equity in the new bank. Without an exemption from the Ministry of Trade and Industry, half of the members of the board and half the members of the corporate assembly of a financial institution must be citizens of Norway or citizens of a state within the European Economic Area.

There are no formal, standardized performance requirements imposed on foreign investors. In the offshore petroleum sector, Norwegian authorities encourage the use of Norwegian goods and services. The Norwegian share of the total supply of goods and services to the offshore petroleum sector has been about 50 to 60 percent

over the last decade.

In the past, the Norwegian government has shown a strong preference to the three Norwegian oil companies in awarding the most promising oil and gas blocks. However, in 1995, the government implemented an EU directive requiring equal treatment of EEA oil and gas companies. American oil companies competing in the 15 concession round (completed in 1996) agree generally that they were treated on a equal basis with the Norwegian companies.

OTHER BARRIERS

Telecommunications Equipment

On January 1, 1998, Norway fully liberalized its telecom services market to comply with its WTO commitments. This ended the effective monopoly of Telenor (the state-owned telecom company) on fixed-line voice services, infrastructure, and telex services.

Equipment which has not been tested and certified under the European Economic Area's common technical regulations must be type approved by the Norwegian telecommunications authority. The Norwegian government has indicated that under normal procedures, this takes about six weeks. In the past, American companies have reported that this type approval process is slow and costly for companies offering new products.

Intellectual Property: Copyright -- Parallel Imports

Under its EEA obligations, Norway must allow parallel imports from EEA countries but may permit or ban parallel imports on a selective basis from elsewhere. Parallel imports of CD recordings from non-EEA countries are banned under a 1993 law. The opposition Conservative Party has proposed repealing the ban. It is unclear how much support this proposal will gain.

PAKISTAN

In 1997, the U.S. trade deficit with Pakistan was $208 million, a shift of $219 million from the U.S. trade surplus of $11 million in 1996. U.S. merchandise exports to Pakistan were $1.2 billion, an decrease of $43 million (3.4 percent) from the level of U.S. exports to Pakistan in 1996. Pakistan was the United States' fifty-second largest export market in 1997. U.S. imports from Pakistan were $1.4 billion in 1997, a increase of $176 million (13.9 percent) from the level of imports in 1996.

Overview

After years of inward looking trade policy that restricted participation in world markets, the Government of Pakistan (GOP) since the late 1980's generally has reduced levels of tariff and non-tariff protection and state intervention in trade as part of a comprehensive macroeconomic and structural reform program. The administration of Nawaz Sharif, approaching one year in power in early 1998, has embraced the direction of and selectively accelerated the pace of policy change toward WTO standards. Nevertheless, many of Pakistan's trade practices have not been brought into conformity with announced policy. Lags, disparity, and inconsistency have always been characteristic of implementation. However, the traditional flux and disarray have been exacerbated over the past year. Announcement of new textile reforms (November 1996), an economic revival package (March 1997), agricultural reforms (April 1997), trade reforms (July 1997), investment reforms (November 1998), and substantial reorganization (January 1998), all have impacted on trade policy. However, the fast pace of announced reforms, the slow pace of implementation, and the distraction of economic and political crisis over the past year, augmented by continued corruption, all have affected adversely the practical results.

IMPORT POLICIES

Under the IMF enhanced structural adjustment facility and extended fund facility (ESAF/EFF) initiated in October 1997, the GOP has undertaken to continue trade liberalizing reforms. The GOP had previously lowered the maximum tariff rate from 65 to 45 percent, simplified the tariff structure, and eliminated the 10 percent regulatory duty for most imports. Consequently, the average tariff rate fell from 18.2 to 16.6 percent and the GOP experienced loss of important tariff revenue equivalent to 0.5 percent of GDP per year. Despite the revenue losses, the GOP has committed to moving further along the path of tariff reduction by lowering the maximum rate of tariff to the range of 30 to 35 percent by 1999.

Also under the ESAF/EFF the GOP committed to eliminating numerous quantitative restrictions on imports by the end of the ESAF/EFF plan period. However, the GOP has not committed to removing quantitative restrictions based on "health, safety, social, national security, religious, or environmental concerns."

Current macro economic policy stresses export led growth through emphasis on higher value added to items and elimination of residual "anti-export" bias in GOP. Recent incentives include reducing the cost of export financing, and lowering duty on imported raw material incorporated into export products, especially engineering products and non-traditional exports. GOP shares the cost with exporters of some ISO certification programs.

Pakistan

Certain detrimental import restrictions, mostly questionable fees, continued into early 1998, including for soda ash (estimated U.S. export loss $25-50 million). For pharmaceutical packaging and raw materials preferential tariff rates are usually granted only if the goods in question are not manufactured locally. For example, the drug Paracetamol is manufactured in Pakistan but the local product does not meet the user's specification. Nevertheless, the imported raw material attracts a 45 percent duty as well as 12.5 percent sales tax. For other pharmaceutical raw materials or products which are not manufactured locally, the duty is 10 percent and there is no sales tax. U.S. industries have expressed particular concern with the Government of Pakistan's discriminatory application of the internal sales tax between imported pharmaceutical raw materials (taxed at 12.5 percent) and the same domestically produced raw materials (exempt from taxation). Moreover, industry believes that Pakistan's imposition of price controls on pharmaceutical end products further impedes U.S. pharmaceutical manufacturers from maintaining a constant profit margin on sales of pharmaceutical end-products. Industry estimated that removals of these barriers would result in increased sales of U.S. pharmaceutical companies' products of $50-100 million.

With the past year Pakistan did replace the previous preshipment inspection regime run by Swiss firms with an import trade price system run by Pakistan customs agency. This change has not eliminated complaints. In numerous disputes importers assert that import trade prices are set arbitrarily by customs.

The Pakistani tariff regime is generally characterized by complexity, broad bureaucratic discretionary powers, and very limited transparency. Administrative decisions frequently grant exemptions and concessions from general rules under the system of Special Regulatory Orders (SRO) that amount to temporary duty suspension decrees. As a result, different rates are applied to the same product and average applied rates are sometimes lower than statutory duties. The IMF ESAF/EFF program addresses these problems and the U.S. Embassy believes simplifying the tariff regime will benefit U.S. exporters. Other U.S. exports that continue to face market access restrictions include (actual basic tariff rate in parenthesis) instant print film (50 percent) and instant print cameras (40 percent). In addition to the range of border and internal market restrictive barriers in Pakistan on the industry's products, U.S. film and entertainment industry representatives have estimated an annual loss due to the entertainment taxes of approximately $1 million.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Pakistan's barriers to trade often are expressed as extra fees. Less frequently, usually in the context of protecting some domestically manufactured product, the U.S. exporter will encounter difficulty with "Quality" standards.

GOVERNMENT PROCUREMENT

The GOP, along with its numerous state-run corporations, is Pakistan's largest importer. Work performed for government agencies, including purchase of imported equipment and services, often is awarded through tenders that are publicly announced or issued to registered suppliers. The GOP subscribes to principles of international competitive bidding, but political influence on procurement decisions is common, and these decisions are not always made on the basis of price and technical quality alone. Charges of official corruption and long delays in bureaucratic decision-making are common. The sanctity of contracts also has been an issue for some companies dealing with the government. The U.S. Embassy estimates that if these barriers were eliminated, U.S. exports would increase by $10-25 million.

EXPORT SUBSIDIES

Pakistan actively promotes the export of Pakistani goods with measures such as government financing and tariff concessions on imported inputs, and income and sales tax concessions. Pakistan has established an export processing zone with benefits including tax holidays, indefinite carry forward of losses, exemption of imports from taxes and duties, and exemption from labor laws and various other regulatory regimes.

LACK OF INTELLECTUAL PROPERTY PROTECTION

The United States has taken various steps to ensure that Pakistan complies with its TRIPS commitment to fulfill its obligation to establish a "Mailbox" for agricultural chemical and pharmaceutical product patent applications. After repeated bilateral consultations and a U.S. request for establishment of a WTO Dispute Settlement Panel, the GOP issued an Executive Ordinance on February 4, 1997, establishing a mailbox system and granting exclusive marketing rights to patent applicants under certain conditions. U.S. and Pakistani officials notified the WTO on February 28, 1997 that this matter had been settled based on a common understanding of the appropriate implementing regulation necessary for Pakistan to meet its TRIPS obligation.

The laws in Pakistan generally provide for protection of intellectual property rights. Nevertheless, intellectual property piracy in Pakistan remains widespread. Upper level government officials are aware of the negative impact of Intellectual Property Rights violations on Pakistan's investment climate. The government has undertaken the task of rewriting legislation in the areas of copyrights, patents, and trademarks. Separate committees have been formed in each area under the leadership of the ministries of education, industries, and commerce respectively. This work is just getting underway, however, and in the meantime intellectual property piracy in Pakistan remains widespread. Authorities have taken some steps to strengthen enforcement, including raids on pirated-video rental shops. The government has pledged to continue such efforts. However, the fines applied to violators have been too small to provide a credible deterrent. In addition, continuing civil unrest has hampered enforcement efforts in general.

The U.S.-Pakistan Treaty of Friendship, Commerce and Navigation guarantees national and Most-Favored-Nation (MFN) treatment for patents, trademarks, and industrial property rights. Pakistan is a member of the Berne Convention, the Universal Copyright Convention , and the World Intellectual Property Organization, but not a member of the Paris convention for the Protection of Industrial Property.

Patents

Recently, law protected only process patents for a duration of sixteen years, although the government is committed to eventually offering product patents in accordance with its WTO obligations. U.S. Industry has complained that the right of the patentee is not adequately protected by law, permitting infringers to continue freely manufacturing illegal products. In addition, recently only the patent-owner, not licensees, could file a suit against an infringer. There also is always the threat of revocation of the patent or compulsory licensing. Further, backlogged cases in the courts result in the delay of justice. As a result, injunction orders against the infringer cannot be issued expeditiously.

Trademarks

Pakistan

There have been occasional instances of trademark infringement, involving a range of products such as toys, playing cards, and industrial machinery. In August 1994, the Pakistani Government issued new drug labeling rules requiring the generic names of substances to be printed with at least equal prominence as that of the brand name. This rule serves to dilute in the minds of consumers existing difference in quality, efficacy, and safety, and incorrectly implies total interchangeability and equality among different products. The U.S. Embassy estimates a loss of $5-10 million in U.S. exports for patent and trademark violations.

Copyrights

Violations of intellectual property rights in Pakistan are most common in the area of copyrights, where the piracy levels are exceptionally high. Th market for imported computer software has remained nearly 100 percent pirated, while U.S. industry has estimated that the piracy rate for videos has declined to around 80 percent. As a result of strengthened law enforcement (356 raids reported in first half of 1997), some video outlets are taking steps to offer legitimate products. Nevertheless, U.S. industries continue to express concern over the high rate of video piracy in the form of back-to-back copying of videos in video outlets. Piracy of copyrighted textile designs and reprint piracy of books (especially computer books, business titles, and medical texts) continue to be significant problems. Export of counterfeit products made in Pakistan have been reported.

Despite improvements in enforcement, the courts have been lax regarding successful prosecution of copyright infringement. According to industry representatives, penalties for infringement imposed by the courts are not strict enough to provide an effective deterrent to piracy. For example, typical penalties imposed on pirate video outlets have amounted to fines of only $16 and no imprisonment. Further, the courts remain extremely backlogged stemming from inefficient procedures. In the area of copyright infringement alone, in Pakistan, the International Intellectual Property Alliance estimated that piracy of films, sound recordings, computer programs, and books resulted in trade losses of $70.6 million in 1997.

SERVICES BARRIERS

The new investment policy announced in November 1997 promises liberalization, including in services, but it is too early to assess how the new policy will be implemented. Additionally, Pakistan improved its offer in the context of WTO financial service negotiations in December 1997. This promises some liberalization by granting the right of establishment for banks, as well as grandfathering acquired rights of foreign banks and foreign securities firms.

Previously, several sectors, including banking, insurance, transportation, telecommunications and entertainment have been affected by services barriers. Portions of major service industries are nationalized and run by the government.

Foreign banks generally have been restricted to few branches, faced higher withholding taxes than domestic banks, and experienced restrictions on doing business with state-owned corporations. Foreign brokers may join one of the country's three stock exchanges only as a part of a joint venture with a Pakistani firm.

New foreign entrants to the general insurance market virtually have been barred. Foreign firms wishing to compete in the life insurance market, while not barred, also faced severe obstacles. Those few foreign insurance companies operating in Pakistan faced various tax problems, long delays in remitting profits, and

problems associated with operating within the insurance cartel.

Basic telephony remains the monopoly of the majority state-owned Pakistan Telecommunications Corporation, but competition among private providers is now allowed in cellular telephony.

In WTO negotiations on basic telecommunications services, Pakistan made commitments on basic telecom services, with phase-in on some obligations. For instance, Pakistan is to provide national treatment for voice services, private leased circuit services, and telegraph services by 2004. Pakistan also agreed to permit foreign ownership or control of all telecommunications services and facilities by 2004. As part of the agreement, Pakistan also adopted certain pro-competitive regulatory principles but took an MFN exemption on accounting rates. Services barriers in the form of admission price controls by provincial governments remain a matter of concern for U.S. film and entertainment industries. Admission price controls coupled with high entertainment taxes have made it very difficult for theaters to be profitable; theater owners lack the authority to set admission prices according to market conditions.

If all service barriers were eliminated, the U.S. Embassy estimates an increase in U.S. exports of $25-100 million.

INVESTMENT BARRIERS

As mentioned above, the new investment policy of November 1997 promises liberalization of the climate for foreign direct investment. It is too early to know exactly how the announced policy will be implemented. Local content requirements can occur in the automobile, electronics, electrical products, and engineering industries under Pakistan's "Deletion Program." The program is ostensibly not compulsory. However, at least one telecom equipment producer has reported that telecom licensees must adhere to the import deletion program. Investors who "voluntarily" undertake to increase the local content of their output enjoy lower tariffs on imported inputs but are subject of fines for non-compliance with an agreed-upon import deletion schedule. In the auto sector, U.S. Industry reports that the GOP expects new motor vehicle assembly plants to achieve a local content level of at least 40 percent within five years of starting production. U.S. Industry reports further that 40 percent local content level is a firm requirement after seven years of starting production of motor vehicles in Pakistan. Local content requirements such as these will have to be phased out before January 1, 2000, in order for Pakistan to comply with the WTO Agreement on Trade Related Investment Measures (TRIMS).

Investors often face unstable policy conditions, particularly on large infrastructure projects. Changes in governments can significantly alter the conditions and assumptions under which an investment agreement was signed or is being pursued. Also, security concerns can be disruptive factors influencing company choice of location of facilities and areas of operation. Security concerns can result in changes of plan to accommodate shifting patterns of instability.

OTHER BARRIERS

Lack of transparency is a recurrent and substantial problem in many areas, including government procurement

and customs valuation. Two Federal Government bodies take an interest in this problem, in addition to various government departments that might investigate allegations of corruption under their purview. The Monopolies Control Authority is credited with being reasonably effective at combating the practices covered by the law it is charged with enforcing, although the law is narrow in scope. The Federal Anti-Corruption Commission is considered politicized, and therefore a less effective body.

Regulations governing product registration also act as a barrier to U.S. goods. U.S. industry has expressed concerns in particular to the Pakistan government's unilateral adoption of a discriminatory policy against transnational pharmaceutical companies by insisting that they can only register products that are on sale in the country of incorporation of the respective company. Local companies, however, are not held to such a standard, as they can register products from any source. This results in a policy that discriminates against the research-based companies operating in Pakistan. In addition, the time required for the registration process for many multinational pharmaceutical companies in Pakistan is often 2 years, if not longer. Further, industries have also expressed concern with Pakistan's drug labeling rules, noting that these laws appear to place Pakistan in violation of the WTO TRIPS rules protecting trademarks.

PANAMA

In 1997, the U.S. trade surplus with Panama was $1.2 billion, an increase of $138 million from the U.S. trade deficit of $1.0 billion in 1996. U.S. merchandise exports to Panama were $1.5 billion, an increase of $160 million (11.6 percent) from the level of U.S. exports to Panama in 1996. Panama was the United States' forty-seventh largest export market in 1997. U.S. imports from Panama were $367 million in 1997, an increase of $21 million (6.2 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Panama in 1996 was $18.3 billion, an increase of 12.6 percent from the level of U.S. FDI in 1995. Most U.S. FDI in Panama is in the financial, petroleum, and wholesale sectors.

IMPORT POLICIES

Panama joined the World Trade Organization (WTO) in October 1997. The WTO accession and implementation laws passed by Panama's Legislative Assembly in June 1996 liberalized several aspects of the country's trading regime, primarily in the areas of import licensing and phytosanitary standards. Subsequent reductions in tariff rates further opened trade opportunities in Panama.

Panama embarked on a program of massive tariff reductions in 1997 subsequent to the reductions implemented in joining the WTO. In July 1997, President Balladares signed a decree lowering tariff rates on selected food products and construction materials to a uniform 10 percent. A second decree, in November, lowered rates to 15 percent or below on all remaining products except rice, milk products and autos. This two-phase tariff reduction has resulted in an unweighted average tariff rate of 8.25 percent. Rice is still protected with a 50 percent tariff. Milk products are protected at 40 percent.

Panama is not a member of the Central American Common Market or any other subregional economic group. It is close to signing a free trade agreement with Chile and another with Mexico is being considered.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Panama's standards and certification regime generally conforms to WTO standards. However, application of phytosanitary standards to recent U.S. rice imports has caused problems. Rice growers claimed that imported paddy rice was contaminated by the T. Barclayana fungus. The fungus is considered harmless and is already present in Panama.

Panama requires certification by GOP officials of U.S. processing plants as a condition for the importations of poultry, pork and beef products. U.S. exporters have assisted GOP officials in making inspection visits to U.S. plants. There is no instance of U.S. plant failing to be certified.

Importers of non-agricultural products must register them before distribution or sale in Panama. Cosmetics present the only area affected by a non-standard certification requirement. Panama does not accept producer certification, requiring that all newly formulated cosmetic products be certified by the GOP.

Panama

GOVERNMENT PROCUREMENT

Panama's government procurement regime is governed by Law 56 and managed by the Ministry of Finance and Treasury. The law provides for a transparent bidding process for government contracts. However, several recent cases have raised doubts about transparency. The most prominent example is the 1996 bid in which Hutchison International Terminals won the concession to operate ports at both ends of the Panama Canal. The bidding procedure was criticized as lacking transparency. U.S. firms appeared to be disadvantaged in this instance. In contrast, the April 1997 bid for the state telecommunications company was praised by NGO Transparency International for being well organized, open and transparent.

EXPORT SUBSIDIES

Panamanian law allows any company to import raw materials or semi-processed goods at a duty of three percent for domestic consumption or production, or duty free for export production. In addition, companies not already receiving benefits under the Special Incentives Law of 1986 are allowed a tax deduction of up to 10 percent of their profits from export operations through 2002.

Because of its WTO obligations, Panama has revised its export subsidies policies. The Tax Credit Certificate (CAT), which used to be given to firms producing non-traditional exports when the exports' national content and value added both met minimum established levels, will be gradually phased out. The new policy allows exporters to receive CATs equal to 15 percent of the exports' national value added until after the year 2000, down from 20 percent prior to 1998. After 2000 the program will be eliminated entirely. The certificates are transferable and may be used to pay tax obligations to the government, or can be sold in secondary markets at a discount. The government has become stricter in defining national value added, attempting to reduce the amount claimed by exporters.

A number of industries which produce exclusively for export are exempted from paying certain types of taxes and import duties. The Government of Panama uses this policy to attract foreign investment. Companies which profit from these exemptions are not eligible to receive CATs for their exports.

Law 25 of 1996 provides for the development of "export processing zones" (EPZ's) as part of an effort to broaden the Panamanian manufacturing sector while promoting investment in former U.S. military bases reverting to Panamanian control. Companies operating in these zones may import inputs duty-free if products assembled in the zones are to be exported. The government also provides other tax incentives to EPZ companies. Thus far five EPZ's are operating, two in colon and three in Panama City. All are in early stages of development with few tenants.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Panama became a member of the Geneva Convention in 1974 and the Berne Convention in 1996 and is a member of WIPO. Recent legislation has strengthened Panama's IPR regime, but inadequate enforcement continues to be a major problem. In addition to the revenues lost by companies due to piracy and counterfeiting, deficiencies in the IPR protection and enforcement regime constitute a significant impediment to foreign investment and technology transfers.

Law 15 of 1994 (the Copyright Law) and Law 35 of 1996 (the Industrial Property Law) provide the framework for protection of intellectual property in Panama. Panama's accession to the WTO in 1996 required it to implement the WTO Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPs) upon the date of accession, with no transition.

The Government of Panama has been ineffective at enforcing intellectual property rights in the Colon Free Zone (CFZ). Although commitments have been made to improve enforcement in the CFZ on a number of occasions prior to and during its WTO accession negotiations, Panama has not fulfilled these commitments. U.S. companies, especially software, footwear and apparel, have complained about the failure of the Government of Panama to seize illegal products in the CFZ.

Copyrights

The Copyright Law, which took effect in October 1995, strengthens copyright protection, facilitates prosecution of copyright violators, and makes copyright infringement a felony punishable by fines and incarceration. The bill also protects computer software as a literary work.

Since December 1996. The 10th Prosecutor's Office (FISCALIA) of Panama City has conducted some 70 raids on video clubs, seizing approximately 30,000 videos. It has also broken up several major illicit video reproduction operations. Charges are pending against several large-scale video pirates, one of whom has been driven out of business. Several criminal and civil cases arising out of investigations of stores and businesses accused of software piracy have been settled out of court.

Patents

Law 35 of 1996 (the Industrial Property Law) provides 20 years of patent protection from the date of filing in place of the former period of 5 to 15 years for foreigners and 5 to 20 years for Panamanians. Pharmaceutical patents are granted for only 15 years, but can be renewed for an additional 10 years if the patent owner licenses a national company (minimum of 30 percent Panamanian ownership) to exploit the patent.

Trademarks

Law 35 also provides trademark protection, simplifying the process of registering trademarks and making them renewable for ten-year periods. The law's most important feature is the granting of ex-offico authority to government agencies to conduct investigations and to seize materials suspected of being counterfeited. Decrees 123 of November 1996 and 79 of August 1997 specify the procedures to be followed by customs and CFZ officials in conducting investigations and confiscating merchandise. As required by Decree 123, the Customs Directorate in February 1997 created a special office for IPR enforcement. Decree 79 requires the CFZ administration to establish a similar office, but it has not yet done so.

Trade secrets have, up to now, enjoyed little formal protection in Panama. The 1996 Industrial Property Law provides specific protection for trade secrets. It is too early to assess the impact of this law.

Law 29 of February 1996 (the Anti-Monopoly Law) provides for the establishment of special courts to deal with commercial cases, including IPR. Two district courts and one superior tribunal began to operate in June

1997 and have been adjudicating patent and trademark disputes. The Panamanian Government and private interests sponsored numerous seminars in 1997 to train prosecutors, judges, and other officials in IPR laws.

Under Law 35, IPR policy and practice in Panama is the responsibility of an Inter-institutional Committee. This committee consists of representatives of six government agencies and currently operates under the leadership of the finance minister. It coordinates enforcement actions and develops strategies to improve compliance with the law.

U.S. firms continue to complain about the lack of effective IPR protection. Nintendo of America filed a petition to withdraw Panama's GSP benefits for failure to protect IPR. In April 1997, Panama was placed on the Special 301 Watch List, but was moved to the "other observations" category in October, following an out-of-cycle review. Though the government made significant progress in fighting video piracy in 1997, it has been less successful in reducing widespread piracy of sound recordings and software. Merchandise pirated in Panama is distributed throughout Latin America. Transshipment of pirated goods through the CFZ remains a major concern and continues to receive insufficient government attention. Trademark violations in the CFZ remain a serious problem.

INVESTMENT BARRIERS

The government's economic reform program of export-led growth is dependent on foreign investment. Accordingly, Panama has an open investment regime and actively seeks foreign investment and promotes its long-standing reputation as an international trading, banking, and services center. A limitation in Panamanian law on foreign government ownership of land affects a few U.S. Government insurance programs, which require land as collateral but places no legal limitations on foreign private investment or ownership. There are no performance requirements such as minimum export percentages or significant local procurement rules. Panama does not have an investment screening mechanism.

In accordance with the terms of the U.S.-Panama Bilateral Investment Treaty (BIT), Panama places no restrictions on the nationality of senior management. Panama does restrict foreign nationals to 10 percent of the blue-collar work force, however, and specialized or technical foreign workers may number no more than 15 percent of all employees in a business. A recent revision of the labor code now makes it easier for companies to dismiss employees.

OTHER BARRIERS

The judicial system, due to poorly trained personnel, huge case backlogs, lack of independence, and vulnerability to outside influences, can pose a problem for investors.

Rumors of corruption are fueled by public bids which lack transparency, such as the ports privatization discussed under Government Procurement. The Customs Director fired over 50 officials in 1996 for corruption, which remains a continuing problem in part because customs employees are poorly paid. The perception of corruption, can deter U.S. companies from deciding to invest in Panama, and is clearly of deep concern to representatives of U.S. firms already located in Panama.

PARAGUAY

In 1997, the U.S. trade surplus with Paraguay was $872 million, an increase of $17 million (2.0 percent) from the U.S. trade surplus of $855 million in 1996. U.S. merchandise exports to Paraguay were $913 million, an increase of $16 million (1.8 percent) from the level of U.S. exports to Paraguay in 1996. Paraguay was the United States' fifty-seventh largest export market in 1997. U.S. imports from Paraguay were $41 million in 1997, a decrease of $1 million (3.1 percent) from the level of imports in 1996.

IMPORT POLICIES

Paraguay has a relatively open trade regime. As a member of the Southern Common Market, MERCOSUR, it applies a common external tariff (CET) on imports ranging between 0 and 23 percent. A WTO review of the consistency of MERCOSUR's polices with WTO rules is currently underway.

Paraguay has established almost 400 exceptions to the CET through 2006. These exceptions are applied to both capital inputs and consumer items which are mostly re-exported to neighboring countries. Items to be re-exported are subject to a flat 7 percent duty upon entry into the country. Paraguay has also been granted additional exceptions as a result of Mercosur's recent CET increase. The Government of Paraguay is currently formulating its list of exceptions.

GOVERNMENT PROCUREMENT

Paraguayan law requires bids for all purchases of goods and services in excess of $60,000. U.S. participants in bids worth several million U.S. dollars have questioned the transparency of the procurement process.

LACK OF INTELLECTUAL PROPERTY PROTECTION

On January 16, 1998, USTR Ambassador Barshefsky identified Paraguay as a Priority Foreign Country (PFC) under section 182 of the Trade Act of 1974 ("Special 301"). The decision was based on Paraguay's historically inadequate enforcement of intellectual property rights (IPR) and its failure to enact adequate and effective intellectual property legislation. Paraguay's status as a distribution and assembly center for pirate and counterfeit merchandise and the large re-export trade to other Mercosur countries were also contributing factors to this determination. As required by law, USTR initiated a Section 301 investigation of Paraguay's IPR regime and practices in February 1998. The first round of 301 consultations was held in March 1998.

In December 1997, the Chamber of Deputies approved amended trademark and copyright legislation. The Senate will now review both bills. Patent legislation, submitted to the Paraguayan Congress in October 1996, is still pending.

Patents

Paraguay

Paraguay does not provide adequate and effective patent protection, especially with regard to pharmaceutical and agricultural chemical products. A draft patent law under consideration by the Congress, while not without imperfections, could help to alleviate this problem. The Draft Law on Inventions is organized consistently with most modern laws and contains some good points. However, significant problems remain, including permission to parallel import and failure to comply with paragraph 2 of TRIPS Article 70. The bill faces significant local opposition, especially from the domestic pharmaceutical sector.

Trademarks

Infringement of well-known trademarks presents a serious problem for many U.S. companies. Existing laws greatly limit the extent to which the Executive Branch can protect trademarks. The only alternative, judicial proceedings, is cumbersome, often taking 10-15 years to resolve a complaint. The proposed trademark law, approved by the Chamber of Deputies, would give the Executive Branch greater authority to combat infringement and seize counterfeit merchandise at the border and in-country.

Copyrights

The Government of Paraguay has not provided adequate and effective enforcement of its laws to address widespread production and trade in pirated recordings, compact disks, computer software and video cassettes that continue to adversely affect U.S. industries. The principal issue is export of pirated merchandise to neighboring countries, though domestic production of illicit goods also exists in some areas. The copyright bill approved by the Chamber of Deputies, if passed by the Senate and signed by the Executive, would give the Paraguayan Government increased enforcement authority. However, effective enforcement against piracy will require a commitment by the Government of Paraguay to increase resources dedicated to this end and to strengthen its enforcement infrastructure.

According to a 1997 estimate by the International Intellectual Property Alliance, U.S. losses due to piracy within Paraguay are $117 million a year. However, the regional impact is estimated by the affected industries to be $300 million. Raids along the Argentine and Brazilian borders have uncovered and closed sizable factories for audio tapes and video games (both hardware and software), confirming the regional implications of piracy in Paraguay.

Other Intellectual Property Areas

To date, the U.S. Government has no indication that the Government of Paraguay provides TRIPS-consistent protection for industrial designs, the layout-designs of integrated circuits, or undisclosed information (trade secrets and test data) as required by TRIPS. Paraguay joined the UPOV Convention in 1997, but implementing regulations have not been promulgated to date.

OTHER BARRIERS

Paraguay's law protecting agents and distributors virtually locks exporters into a relationship with an agent or distributor. The law features severe penalties, such as a fine valued as a percentage (determined by a judge) of gross sales since the inception of the contract, that often lead to expensive out-of-court settlements. Several U.S. companies have singled out this law as a cause for concern.

PERU

In 1997, the U.S. trade surplus with Peru was $187 million, a decrease of $318 million from the U.S. trade surplus of $505 million in 1996. U.S. merchandise exports to Peru were $2.0 billion, an increase of $193 million (10.9 percent) from the level of U.S. exports to Peru in 1996. Peru was the United States' forty-first largest export market in 1997. U.S. imports from Peru were $1.8 billion in 1997, an increase of $512 million (40.6 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Peru in 1996 was about $2.1 billion, an increase of 62.2 percent from the level of U.S. FDI in 1995. U.S. FDI in Peru is concentrated largely in the manufacturing and petroleum sectors.

IMPORT POLICIES

Tariffs

A new tariff structure went into effect in April 1997, lowering the average tariff rate from 16 to 13 percent but raising tariffs on agricultural products and imposing an additional "temporary" tariff on agricultural goods. Under the new system, a 12 percent tariff applies to more than 95 percent (by value) of goods imported into Peru; a 20 percent tariff to most of the rest; while a few products are assessed rates (because of the additional "temporary" tariffs) of up to 25 percent.

In addition to the "temporary" tariffs on agricultural goods, Peru has applied another set of "temporary" import surcharges since 1991 on eighteen categories of agricultural products, covering five basic commodities: wheat, rice, corn, sugar, and milk products. These surcharges are in addition to any applicable tariff.

The surcharges are calculated on a weekly basis, according to prevailing international prices for each commodity, rather than the actual price of the commodities entering Peru. As a condition for disbursement of an Inter-American Development Bank trade sector loan, the Government of Peru began in 1994 to reduce the surcharges. Because of high prevailing international prices, surcharges were practically non-existent during 1997.

On August 1, 1997, Peru officially rejoined the Andean Community's free trade area (FTA) -- from which it had been absent since 1992 -- but will not fully participate in the FTA until 2005. A large proportion of trade between Peru and the other Andean Community members, however, is already tariff-free, and most tariffs will be eliminated by 2002. Peru does not adhere to the Andean Community's common external tariff.

Peru has partial free trade agreements which grant tariff preferences to most Latin American countries under the Latin American Integration Association (ALADI). Peru is negotiating a free trade agreement with Chile and has initiated similar talks with Mexico. Peru is also involved as a member of the Andean Community in negotiations with MERCOSUR on a free trade area.

Non-Tariff Measures

Peru

Almost all non-tariff barriers, including subsidies, import licensing requirements, import prohibitions, and quantitative restrictions, have been eliminated. However, the following imports are banned: fireworks, used clothing, used shoes, used tires, cars over five years old, and trucks over eight years old. (Note: imported used cars and trucks that meet these time limits must pay a 45 percent excise tax -- compared to 20 percent for a new car -- unless they are refurbished in an industrial center in the south of the country upon entry.)

Peru applies a value-added tax (VAT) rate of 18 percent to most products, and special consumption taxes, ranging from 10 to 50 percent, on certain items. Peru's methodology of applying a "consolidated rate" to assess special consumption and sales taxes on imported goods is burdensome, since the taxes are applied consecutively.

Under a 1992 customs reform, most imported cargo must be pre-inspected by contracted supervising firms to check for possible under-invoicing. The cost of these inspections -- as much as one percent of the f.o.b. value of the goods -- is paid by the importer. Some U.S. exporters have complained of excessive delays caused by the pre-inspection system. In particular, the Peruvian requirement that shipments be inspected by the Government of Peru-authorized inspection agencies offers U.S. exporters no guarantee that certified pricing and details of the inspection will be accepted by Peruvian customs authorities. Such practices can make U.S. exporters less competitive than local suppliers. The United States has urged Peru to adopt predictable customs inspection procedures and to meet its obligations under the WTO Agreement on Pre-Shipment Inspection.

GOVERNMENT PROCUREMENT

Government procurement is normally handled by public international tender. Contracts above a specified minimum value -- currently about $100,000 for purchases of goods and services and $250,000 for public works -- must be adjudicated by competitive bid. There is no statutory requirement to buy Peruvian goods or services. Interested companies must purchase bid documents, however, and bidders must have a local office or representative to qualify. Peru is not a signatory to the WTO Government Procurement Agreement.

EXPORT SUBSIDIES

Peru does not provide any direct payment upon export. Exporters can, however, receive rebates of a portion of the tariffs and value-added taxes paid on their inputs. In June 1995, the government approved a simplified drawback scheme which allows small exporters to claim a flat five percent rebate, subject to certain restrictions.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Peru does not yet provide adequate and effective protection of intellectual property rights (IPR). Peru passed two laws in April 1996 which improved the country's IPR regime and brought national laws into conformity with Andean Community decisions; and, in June 1997, the government issued an executive decree improving several aspects of its industrial property rights law. However, the government will still need to make further improvements to these laws - - to be in compliance with the WTO's Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) -- by the year 2000, when the transition period for developing countries ends. Peru has been on the "Watch List" under the Special 301 provisions of the 1988 Trade Act since 1992.

The enforcement of intellectual property rights in Peru in 1997 showed mixed results. The special criminal prosecutor for IPR crimes received and acted upon 30 percent more complaints than in 1997; U.S. companies successfully worked with federal prosecutors to fight piracy of their products; and the customs service and the National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI) -- the government's specialized IPR office -- improved cooperation on fighting the importation of contraband merchandise. Shortcomings in enforcement, however, continued to exist. Of special concern to U.S. companies, the administrative court within INDECOPI repeatedly lowered to meaningless levels fines on pirates which had been imposed by INDECOPI's front-line IPR offices. Piracy remains a serious problem in Peru.

Patents and Trademarks

Peru's April 1996 industrial property decree provides an effective term of protection for patents, prohibits devices that decode encrypted satellite signals, and contains other improvements, such as increasing the term of protection for industrial designs. In June 1997, based on an agreement reached with the U.S. Government, the Government of Peru published an executive decree resolving several inconsistencies in the patent area between its 1996 industrial property law and the TRIPs agreement. The government has also introduced legislation confirming its decree. Peruvian law does not provide for transitional ("pipeline") protection for pharmaceutical product patents or protection against parallel imports.

Trademark violations are also prevalent, although several cases involving counterfeiting of U.S. trademarked goods that were prominent in the early 1990s have been resolved. In 1997, U.S. trademark owners also had notable success working with Peru's criminal prosecutors to defend their trademarks.

Copyrights

Peru's 1996 copyright decree is generally consistent with TRIPs; however, it also contains provisions covering reciprocity, which appear to violate the MFN provisions in Article 4 of the TRIPs agreement. Textbooks, books on technical subjects, audio cassettes, motion picture videos, and software are widely pirated.

Losses to U.S. copyright owners and pharmaceutical companies in Peru are extensive, despite some improvement in IPR enforcement under the new laws and enforcement institutions. Industry estimates that in 1997, total revenue lost to copyright piracy was $77 million. U.S. companies have become more active in defending their interests in Peru by retaining local representation, conducting anti-piracy campaigns and investigations, and filing complaints with INDECOPI and the courts.

SERVICES BARRIERS

Basic Telecommunications Services

In the WTO negotiations on basic telecommunications services, concluded in March 1997, Peru made commitments on all basic telecommunications services, with full market access and national treatment to be provided as of June 1999. Peru adopted the reference paper on regulatory commitments.

Peru

Financial Services

In the WTO negotiations on financial services, concluded in December 1997, Peru made broad-based market access commitments in financial services -- in banking, securities, insurance and other financial services. Peru allows 100 percent foreign ownership in subsidiaries and branches in the sector and guarantees national treatment. The only restrictions Peru currently maintains are with respect to cross border provision of financial services, with the sole exception being cross-border provision of financial data.

INVESTMENT BARRIERS

Peru has greatly liberalized its investment regime since 1990. National treatment for foreign investors is guaranteed in the 1993 constitution. Foreign investment does not require prior approval, except in banking and defense-related industries. "Juridical stability agreements" are available to foreign investors whereby the Government of Peru guarantees tax, foreign exchange and regulatory stability for a period of ten years. Investors in the mining and petroleum sectors are also entitled to several tax benefits. There are no restrictions on remittances of profits, dividends, royalties or capital.

Arbitration is a constitutionally guaranteed alternative to the courts. The September 1993 establishment of the Lima Chamber of Commerce's international arbitration center has helped to institutionalize this option. Peru also is a signatory to the New York Agreement on the Enforcement of International Arbitral Awards as well as several other international dispute settlement agreements.

Rules regarding hiring foreign personnel have been liberalized, although foreign employees still may not make up more than 20 percent of the workforce of a company established in Peru -- whether owned by foreign or national interest -- and their combined salaries may not account for more than 30 percent of the total payroll. Services companies, including banks, and free trade zones are exempted from these hiring limitations. In addition, a company may apply for exemption from the limitations for foreign managerial or technical personnel.

Peru has notified to the WTO measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures. The measures deal with local content requirements in the milk and milk products sector. Proper notification allows developing-country WTO members to maintain such measures for a five-year transitional period after entry into force of the WTO. Peru therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO members meet these obligations.

PHILIPPINES

In 1997, the U.S. trade deficit with the Philippines was $3.0 billion, an increase of $970 million from the U.S. trade deficit of $2.0 billion in 1996. U.S. merchandise exports to the Philippines were $7.4 billion, an increase of $1.3 million (21.3 percent) from the level of U.S. exports to the Philippines in 1996. The Philippines was the United States' twentieth largest export market in 1997. U.S. imports from the Philippines were $10.4 billion in 1997, an increase of $2.3 billion (27.8 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in the Philippines in 1996 was $3.3 billion, an increase of 32.3 percent from the level of U.S. FDI in 1995. U.S. FDI in the Philippines is concentrated largely in the manufacturing and banking sectors.

IMPORT POLICIES

Tariffs

The Philippine Government's comprehensive tariff reform proposal, as elaborated in Executive Orders (E.O.) 264 and 288, set out to reduce on a unilateral basis applied tariff rates with the objective of establishing a two-tiered scheme of applied tariffs of 3 percent for raw materials and 10 percent for finished products by January 2003, and a uniform 5 percent tariff rate by January 2004. While the Philippines has indicated that it remains committed to these ultimate tariff levels, in 1997 it reexamined the rate reduction schedule set out in E.O. 264 for the period 1996-2000.

In response to requests from import-sensitive industry sectors (including the petrochemicals, garment and apparel, and wood products, industries) the Philippines recalibrated the rate reduction schedule for a number of product categories. E.O. 465, which became effective on January 21, 1998, modifies E.O. 264 and E.O. 288 and establishes new applied tariff rates for some items. Rates for these specified products will be reduced more gradually than the accelerated schedule set forth by E.O. 264. E.O. 465 also increased the applied duty rates for some tariff lines, including garments, textiles, and unfinished automotive vehicles imported in kit form, but reduces rates on some other items of interest to U.S. exporters, including some agricultural products. For still other tariff lines, E.O. 465 retains 1997 duty rates in 1998, or postpones until 1999/2000 reductions in duties originally envisaged for 1998 under E.O. 264. Rates for product categories not affected by the review will be reduced according to the time frames established in E.O. 264 and E.O. 288.

In late February 1988, the Philippine Tariff Commission began a series of public hearings to examine proposed changes to the rate reduction schedule established under E.O. 264 for the period 1998-2000 for a number of other products not reviewed in 1997, including a range of agricultural products, toys, and certain steel products. The review could result in additional changes to applied MFN rates.

Imports of finished automotive vehicles (completely built-up units) are subject to a 40% tariff as an incentive to promote local assembly under the Philippines' Motor Vehicle Development Program. The duty rate on automotive vehicles is currently the highest duty rate applied to a non-agricultural product, and is not scheduled to be reduced until the year 2000. As part of the Government's decision in 1997 to slow the pace of accelerated

tariff reduction, and in some cases raise tariffs, on certain items, E.O. 465 increases tariffs on completely-knocked down (CKD) automotive vehicle imports from 3 percent to 7 percent in 1998 and 10 percent in 1999.

Imports of used automotive vehicles and coal remain subject to government review and approval. Certain items, including firearms, ammunition, narcotics and other dangerous drugs, hazardous wastes, ozone depleting substances, and color photocopying equipment are subject to import regulation for public health, morality, and/or national security reasons.

Agriculture Tariffs and Import Licensing

The Philippines maintains high tariff rates on sensitive agricultural products, including grains, livestock and meat products, sugar, certain vegetables, and coffee. Examples include feed grains, particularly corn (at an in-quota rate of 35 percent, and an 80 percent out-of-quota rate), sorghum (45 percent) and potatoes (in-quota rate of 45 percent, 80 percent out-of-quota).

Fourteen tariff lines of agricultural commodities (at the 4 digit HS level) are currently subject to minimum access volume (MAV) tariff-rate quotas (TRQs). The Philippines established these TRQs during the Uruguay Round and enacted necessary implementing legislation in July 1995 under Republic Act (R.A.) 8178. Products covered by these TRQs include live animals, fresh and chilled beef, pork, poultry meat, goat meat, potatoes, coffee, corn, and sugar. Administrative Order (A.O.) 9 of 1996, as amended by A.O. 8 of 1997 and A.O. 1 of 1998, established the rules by which these TRQs implemented and import licenses are allocated. The United States was concerned with the specific manner in which the TRQs for pork and poultry meat were administered which allocated to vast majority of import licenses to domestic producers which had no interest in importing.

Due to the questionable WTO-consistency of the manner in which the Philippine TRQ system had been administered, the United States and other WTO members held formal consultations with the Philippines under WTO dispute settlement procedures in April 1997. Following intensive consultations, the Philippines in August 1997 revised aspects of its TRQ regime by issuing A.O. 8. Although A.O. 8 contained some positive reforms, the revised measure did not adequately address U.S. concerns over burdensome and inequitable license procedures. Further WTO consultations were held in November 1997 and, in response, the Philippines further amended its implementing regulations to include penalties for non-use of import licenses. The Governments of United States and the Philippines concluded a Memorandum of Understanding (MOU) in February 1998 which resolved the United States' primary concerns over the Philippine TRQ system. The reforms embodied in the MOU are expected to shift gradually import licenses from licensees not utilizing their licenses to active importers and will be closely monitored by the United States. As a result of the resolution of this dispute, the review of the Philippines' eligibility to continue to receive preferential access to the U.S. market under the Generalized System of Preferences (GSP) was terminated.

Excise Tax on Distilled Spirits

U.S. producers of distilled spirits have complained that current laws have the effect of subjecting imported

distilled spirits to a much higher excise tax than that applied to domestic spirits. Distilled spirits produced from indigenously available materials (such as coconut palm, cane, and certain root crops) are subject to a specific tax of 8 pesos ($0.20 at current exchange rates) per proof liter. However, distilled spirits produced from other raw materials (which would apply to most imports) are levied a specific tax ranging from 75 pesos ($1.85) to 300 pesos ($ 7.40) per proof liter (depending on net retail price per 750 ml bottle). Still wines with an alcohol content of 14 percent or less by volume are assessed an excise tax of 12 pesos per liter while still wines with an alcohol content greater than 14 percent but less than 25 percent alcohol content by volume are charged an excise tax of 24 pesos per liter. Fortified wines (over 25 percent alcohol content) are taxed as distilled spirits. Depending on the net retail price per bottle, an excise tax of 100 pesos or 300 pesos per liter is assessed on sparkling wines.

Excise Tax on Automotive Vehicles

The Philippine Government's excise tax regime for automotive vehicles, recently reconfirmed by Bureau of Internal Revenue Regulation 14-97, is based on engine displacement. It serves to discriminate against imports of vehicles with larger engine displacement, which includes many U.S. exports. Current tax rates for motor vehicles with gasoline engines are: 15 percent for engines up to 1600 cubic centimeters (cc); 35 percent for those with engines between 1601-2000cc; 50 percent for those between 2001-2700cc; and 100 percent for those 2701cc and above. For motor vehicles with diesel engines, excise rates are 15 percent for engines of up to 1800cc; 35 percent for those 1801-2300cc; 50 percent for those 2301-3000cc; and 100 percent for those 3001cc and above.

Quantitative Restrictions

The Philippines retains quantitative restrictions on rice. The rice quota is 68,645 metric tons for 1998, although the country is expected to import considerably more. Rice continues to be imported solely by the National Food Authority.

Customs Barriers

Exporters and importers have experienced problems with unwarranted uplifts in valuation, and with an appeal process that lacks transparency. The Bureau of Customs continues to require a preshipment inspection report ("Clean Report of Findings") issued by the Government's contracted preshipment inspection entity for all imports valued at over $500. Refrigerated products are exempt. In October 1997, pursuant to E.O. 444, the Government extended this requirement to imports bound for duty-free stores operating in free-trade zones, even though such zones are technically outside the customs territory of the Philippines. As a result, a regional court has issued a restraining order to prevent the Bureau of Customs from implementing the policy.

The Philippines has taken advantage of provisions allowing developing countries to delay implementation of obligations under the WTO Agreement on Customs Valuation, including use of the "transaction value" method of customs valuation. Republic Act (R.A.) 8181, which abolished use of "home consumption value," and adopted the use of "export value" (also known as the "Brussels definition of value") as an interim measure, and authorized a shift to the use of the WTO-mandated "transaction value" methodology before the year 2000. While this was a significant step toward removal of a valuation system previously identified as an unwarranted market access barrier, practices of the Philippines Customs Bureau under the "export value" scheme are not

transparent and may conflict with the WTO Agreement on Customs Valuation.

In other areas, the Bureau of Customs maintains a policy apparently intended to encourage the development of local auto assembly and parts manufacture. Under the policy, requests by automobile manufacturers without assembly operations in the Philippines to operate customs bonded warehouses have been denied, unless they can demonstrate plans for local assembly or other activities that are judged by customs officials to be "in the national interest." A bonded warehouse allows importers to defer payment of duty until items have been withdrawn from the warehouse for domestic sale.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Industrial Goods

Local inspection for standards compliance is required for a range of industrial and consumer products, including cosmetics, medical equipment, lighting fixtures, electrical wires and cables, cement, pneumatic tires, sanitary wares, and household appliances. For other goods, U.S. manufacturers' self-certification of conformance is accepted. Labeling is mandatory for textile fabrics, ready-made garments, household and institutional linens, and garment accessories. Mislabeling, misrepresentation, or misbranding may subject the entire shipment to seizure and disposal. The "Generic Act" of 1988 aims to promote the use of generic drugs by requiring that the generic name of a particular pharmaceutical must appear above its brand name on all packaging.

Agricultural Goods

The Philippine Department of Agriculture has established plant health regulations which allow the import of U.S. apples, grapes, oranges, potatoes, onions, and garlic, provided these products do not originate from Florida or Texas. Protocols are being negotiated for a range of other fruits and vegetables, including Florida citrus, cherries, broccoli, lettuce, and cauliflower. Additional produce items can be negotiated as the need arises.

Further, the Philippine Government's zero tolerance policy for methanol in wine products has posed a concern for exporting alcohol industries. This policy requires that a manufacturer's report on the manufacturing process be submitted to the Philippine Bureau of Food and Drug (BFAD) for evaluation.

GOVERNMENT PROCUREMENT

Contracts for government procurement in the Philippines are awarded by competitive bidding and, in general, do not discriminate against foreign bidders. However, preferential treatment of local suppliers is practiced in government purchases of medicines, rice, corn, and iron/steel materials for use in government projects. Contractors for infrastructure projects that require a public utility franchise (i.e., water and power distribution, telecommunications, and transport systems) must be at least 60 percent Filipino-owned. For other major contracts (such as build-operate-transfer projects) not involving a public utility franchise, a foreign contractor must be duly accredited by its government to undertake construction work. The Philippines is not a signatory of the WTO Government Procurement Agreement (GPA).

Executive Order 120, dated August 19, 1993, mandates a countertrade requirement for procurements by government agencies and government-owned or controlled corporations that entail the payment of at least $1.0 million in foreign currency. Implementing regulations issued by the Department of Trade and Industry set the level of countertrade obligations of the foreign supplier at a minimum of 50 percent of the import price, and provide for penalties for non-performance of countertrade obligations. The implementing agency for countertrade transactions is the Philippine international trading corporation.

EXPORT SUBSIDIES

Enterprises (including exporters) engaged in certain sectors in the Philippines which the Government has prioritized for economic development may register with the Board of Investment (BOI) to qualify for incentives under the Philippine Omnibus Investment Code. The available incentives include income tax holidays (from 4 to 8 years), income tax reductions for incremental labor expenses, and tax and duty exemptions for the importations of breeding stocks and genetic materials. A number of benefits such as tax credits for imports of raw material or components used in the manufacture of goods for export; exemption from taxes and duties on imported spare parts, and access to bonded customs warehouses, are available only to BOI-registered exporters. Firms in government-designated export processing zones, free trade zones, and other special industrial estates registered with the Philippine Economic Zone Authority (PEZA) enjoy basically the same incentives as BOI-registered firms, as well as exemption from preshipment inspection. PEZA-registered firms and free trade zone enterprises enjoy tax and duty-free importation of capital equipment and raw materials. In lieu of local and national taxes, they are subject to a 5 percent tax on gross income.

Firms that export at least 50 percent of production and are registered with the BOI, PEZA, or other government agencies may register under the Export Development Act of 1994 (EDA) for additional incentives available under that law, including a tax credit for imported inputs and raw materials not readily available locally (through December 31, 1999), and a tax credit on incremental annual export revenue. Two incentives which expired on December 31, 1997 are duty-free importation of capital equipment and, for exporters of non-traditional products, a partial tax credit for locally purchased raw materials, equipment, and spare parts.

LACK OF INTELLECTUAL PROPERTY PROTECTION

While substantial progress has been made in recent years, significant problems remain in ensuring the consistent and effective protection of intellectual property rights (IPR). A new intellectual property code (R.A. 8293), which was signed into law on June 6, 1997 and which took effect January 1, 1998, improves the legal framework for IPR protection in the Philippines. R.A. 8293 provides enhanced copyright and trademark protection, and creates a new Intellectual Property Office (IPO), with original jurisdiction to resolve certain disputes concerning licensing. The law also significantly increases penalties for infringement and counterfeiting. Passage of the law was called for under a 1993 bilateral U.S.-Philippine agreement to strengthen protection of intellectual property rights in the Philippines.

Defects in R.A. 8293 remain a source of serious concern. These included, *inter alia*, a provision permitting the decompilation of software programs as "fair-use," subject to certain restrictions; the lack of clear provisions for ex-parte relief; ambiguous provisions that fail to provide clearly an exclusive right for copyright owners over broadcast, rebroadcast, cable retransmission, or satellite retransmission of their works; and onerous restrictions affecting contracts to license software and other technology. In addition, a December 16, 1997

Administrative Order temporarily suspended the processing of patent and trademark applications under the new law, as well as the ability to file cases involving the original jurisdiction of the IPO and to request exemptions from the provisions affecting licensing agreements. The Philippines asserts that the Administrative Order was issued because needed personnel and regulations to administer R.A. 8293 are not yet in place, and that the suspension will be lifted as soon as possible. The suspension of firms' ability to request exemptions from the provisions affecting licensing agreements was lifted in January 1998, but other suspensions remain in effect.

In spite of governmental efforts, including the creation in February 1993 of the Interagency Committee on Intellectual Property Rights (IACIPR) as an entity charged with recommending and coordinating enforcement oversight and program implementation, serious problems continue to hamper the effective operation of agencies tasked with IPR enforcement. Insufficient government resources is a major problem. The IACIPR has prioritized efforts to eliminate software piracy in government agencies, but has also undertaken regional efforts within the Philippines to increase public awareness of the importance and benefits of IPR protection. Joint efforts between the private sector and the National Bureau of Investigation (NBI), the Philippine equivalent of the FBI, have resulted in a series of successful enforcement actions. The judicial system remains a stumbling block to more aggressive use of the courts to deter effectively IPR violations. The designation of 48 IPR courts to handle IPR violations has done little to speed up the process, since these courts have not received additional resources and continue to handle a heavy non-IPR workload. Because of the lengthy nature of court action, many cases are settled out of court.

The Philippine Government is a party to the Paris Convention for the Protection of Industrial Property and the Patent Cooperation Treaty; it is also a member of the World Intellectual Property Organization and the World Trade Organization.

Patents

R.A. 8293 moves the Philippines to a first-to-file system, increases the term of patents from 17 to 20 years, and provides for the patent ability of micro-organisms and non-biological and microbiological processes. The holder of a patent is guaranteed an additional right of exclusive importation of his invention. A compulsory license may be granted in some circumstances, including if the patented invention is not being worked in the Philippines without satisfactory reason, although importation of the patented article constitutes working or using the patent. Legislation is pending to include plant varieties within the definition of patentable inventions, and to provide IPR protection to layout-designs of integrated circuits.

Trademarks

R.A. 8293 no longer requires prior use of trademarks in the Philippines as a requirement for filing a trademark application. Also eliminated was the requirement that well-known marks be in actual use Philippine commerce or registered with the Bureau of Patents, Trademarks, and Technology Transfer. Trademark counterfeiting remains widespread in the Philippines, although some U.S. firms have had success in curbing trademark infringement in cooperation with Philippine enforcement agencies, particularly the NBI.

Copyrights

R.A. 9293 expands IPR protection by clarifying protection of computer software as a literary work (although

it includes a fair-use provision on decompilation of software), establishing exclusive rental rights in several categories of works and sound recordings, and providing terms of protection for sound recordings, audiovisual works, and newspapers and periodicals that are compatible with the WTO Agreement on trade-related intellectual property rights. However, as noted above, significant gaps remain, including the fair-use provision on software decompilation; a lack of clear provisions for ex-parte relief; and ambiguities concerning exclusive rights for copyright owners over broadcast and retransmission. Ratification by the Philippines of the Berne Convention (Paris Act) in June 1997 effectively ended the longstanding government practice of authorizing local publishers to reprint foreign textbooks without permission of the foreign copyright holder.

Piracy of computer software and motion pictures continues to be a serious problem, leading software owners to organize to protect their rights more effectively. The Philippine Government has committed to eliminate the use of pirated software within government agencies, ostensibly as a first step before undertaking more aggressive efforts outside government. Despite generally positive cooperation with the government's Videogram Regulatory Board (VRB) and actions by the NBI, local representatives and distributors of U.S. and domestically-produced motion pictures report that video and cable piracy continues to be widespread. Philippine courts have been reluctant to impose substantial penalties, which serve as a deterrent for infringement; often, penalties consist only of the seizure and confiscation of the video cassettes used in the unauthorized cable broadcast. It remains to be seen whether the tougher penalties contained in R.A. 8293 will enhance enforcement. Legislation to expand the VRB's enforcement powers and increase penalties was introduced in 1995 and is still pending before the Philippine Congress.
The United States remains concerned over the high level of unauthorized retail sales and distribution of audio and visual material and unauthorized transmissions of motion pictures on cable systems. In addition, significant quantities of infringing audio and video discs continue to be distributed throughout the Philippines. It is unclear whether the majority of these digital technologies are produced within the Philippines or are imported. It is estimated that the annual losses to the U.S. motion picture industry due to audiovisual piracy in the Philippines in 1997 amounted to $18 million.

Licensing of Technology

Through its Intellectual Property Office, the Philippines requires that all technology transfer arrangements (defined as contracts involving the transfer of Systematic knowledge for the manufacture of a product, the application of a process, or rendering of a service including management contracts, and the transfer, assignment or licensing of all forms of intellectual property rights, including computer software except for software developed for mass market) comply with provisions outlined in R.A. 8293, including the prohibition of the use of certain clauses in such arrangements. The scope of these provisions is extremely broad and serves to obstruct the normal contracting process between unrelated parties or as part of intracompany business.

SERVICES BARRIERS

Basic Telecommunications

The Philippine Constitution (Section 11 of Article XII) limits foreign ownership of telecommunications firms to 40 percent. During the WTO negotiations on basic telecommunications services, the Philippines made commitments on most basic telecommunications services and adopted some pro-competitive regulatory principles. The Philippines did not provide market access or national treatment for satellite services, and made

no commitment regarding resale of leased circuits/closed user groups. However, the Philippines is overdue in providing to the World Trade Organization an acceptance of the Fourth Protocol to the General Agreement on Trade in Services, which is necessary to bring its commitments on basic telecommunications services into effect. The WTO Council on Trade in Services has extended the deadline for submission of the acceptance until July 31, 1998.

Insurance

Although current practice permits up to 100 percent foreign ownership in the insurance sector, during the recently-concluded WTO financial services negotiations, the Philippines committed to provide a maximum level of equity participation at 51 percent in the insurance sector. However, the GOP did make a binding commitment to guarantee, or grandfather, the status of existing insurers with more than 51 percent foreign equity. As a general rule, only the state-owned government service insurance system may provide coverage for government-funded projects. A 1994 administrative order extended this policy to Build-Operate-Transfer (BOT) projects. Private insurance firms, both domestic and foreign, regard this as an important trade barrier. Current regulations require all insurance/professional reinsurance companies operating in the Philippines to cede to the industry-owned National Reinsurance Corporation of the Philippines (NRCP) at least 10 percent of outward reinsurance placements.

Banking

A law signed in May 1994 relaxed banking restrictions in place since 1948. The 1994 law permitted 10 foreign banks (out of 25 applicants) to open full-service branches in the Philippines. Presently, foreign entry is limited to 60 percent ownership for the establishment of either a new local subsidiary or a joint venture with an existing local bank, although again the GOP only bound shareholding at 51% in its WTO financial services offer. Foreign branch banks are limited to six branches each. Four foreign-owned banks are limited to six branches each. Four foreign-owned banks that had been operating in the Philippines before 1948 were allowed to open an additional six branches each. Current regulations also provide that majority Filipino-owned domestic banks should, at all times, control at least 70 percent of total banking system assets. The revised banking law now allows a foreign branch bank to obtain a "universal banking" license which was previously limited to Philippine-controlled commercial banks. This will allow a foreign branch bank to engage in the activities of an investment house (primarily securities underwriting for the domestic market), in addition to regular commercial banking functions.

Securities and Other Financial Services

Existing law limits foreign equity in mutual fund and trust management firms to 40 percent, and in securities underwriting companies to 60 percent. Securities underwriting companies not established under Philippine law may underwrite Philippine issues for foreign markets, but not for the domestic market. A law signed in February 1998 raises the limit on foreign ownership of financing companies to 60 percent. Although there are no foreign ownership restrictions governing acquisition of shares of mutual funds, current law restricts membership in the board of directors to Philippine citizens. Membership in the Philippine Stock Exchange (PSE) is open to any company (foreign or domestic) incorporated in the Philippines.

The Philippines took an MFN exemption on foreign equity participation in securities firms, stating that

Philippine regulators would approve applications for foreign equity only if Philippine companies enjoy similar rights in the foreign investor's country of origin.

Advertising

The Philippine Constitution (Section 11 of Article XVI) 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 (Section 11 of Article XII) specifically limits the operation of public utilities (i.e., water and sewage, electricity, telecommunications) 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

As a general rule, the Philippine Constitution (Section 14 of Article XII) reserves the practice of licensed professions (e.g., law, medicine, nursing, accountancy, engineering, architecture, customs brokerage, etc.) to Philippine citizens. Philippine law (R.A. 8182) required that preference be given to Philippine citizens in the hiring of consultants and other professionals necessary for the implementation of projects funded by foreign assistance. Legislation signed in February 1998 (R.A. 8555) gives the President of the Philippines the authority to waive this and other preferences applicable to the procurement of goods and services funded by foreign assistance.

INVESTMENT BARRIERS

The 1991 Foreign Investment Act (FIA) allows up to 100 percent foreign equity in enterprises not seeking investment incentives, provided the company does not engage in an activity that appears on the two-part "negative" list. The "A" list either restricts or bans foreign investment in certain activities or sectors because of Constitutional or other legal constraints. These include investments in, the practice of licensed professions, retail trade, the processing of rice and corn, and private security agencies, all of which are reserved exclusively for Philippine citizens. In addition to land ownership (where a 40 percent foreign equity ceiling applies), varying foreign ownership limitations are imposed on, *inter alia*, companies engaged in advertising (30 percent), employee recruitment (25 percent), private construction (40 percent), financing (60 percent), public utilities (40 percent), education (40 percent), and the exploration and development of natural resources (40 percent).

Following a Philippine Department of Justice opinion, the Government's interagency committee on infrastructure issues in January 1998 proposed elimination of private construction from the negative list and removal of the 40 percent cap on foreign ownership. These proposals require cabinet and presidential approval.

The "B" list is composed of activities regulated for reasons of security, defense, health, and moral concerns, and to protect small and medium-scale enterprises. The FIA requires a minimum paid-up capital of $200,000 for an enterprise to be more than 40 percent foreign-owned. A third category, the FIA's "C" list pertaining to activities deemed "adequately served" by existing enterprises, was abolished following March 1996

amendments to the FIA. The FIA investment restrictions stem from a Constitutional provision, section 10 of article VII, which permits the Philippine Congress to reserve to Philippine citizens certain areas of investment.

In addition to the restrictions detailed above, the Philippines generally imposes a foreign ownership ceiling of 40 percent on firms seeking incentives with the Board of Investments (BOI) under the annual investment priorities plan. While there are exceptions to the ceiling, divestment to reach the 40 percent level is required within 30 years. The BOI imposes industry-wide local content requirements under its Motor Vehicle Development program, and requires participants to generate, via exports, a certain percentage of the foreign exchange needed for import requirements. The Philippines has stated its intention to phase-out these trade-related investment measures by the year 2000, in line with WTO obligations.

As a general policy, the Philpppine Department of Labor allows the employment of foreigners provided that are no qualified Philippine citizens that can fill the position. However, the employer must train Filipino understudies and report on such training periodically. Employees of foreign-owned firms registered with the BOI may retain the positions of president, treasurer, and general manager, or their equivalents.

Trade-Related Investment Measures

The Philippines has notified to the WTO certain measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMs). The measures deal with local content and foreign exchange balancing requirements in the automotive and chemicals. Proper notification allows developing-county WTO Members to maintain such measures for a five-year transitional period after entry into force of the WTO. The Philippines therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO Members meet these obligations.

OTHER BARRIERS

The Revised Penal Code, Anti-Graft and Corrupt Practices Act, and Code of Ethical Conduct for public officials are in place and are intended to combat suspected corruption and related anti-competitive business practices. The Office of the Ombudsman investigates cases of alleged graft and corruption involving public officials. The “Sandiganbayan” (anti-graft court) prosecutes and adjudicates cases filed by the Ombudsman. There is also a Presidential Commission Against Graft and Corruption.

In spite of these government mechanisms directed at combating suspected corruption, widespread anecdotal evidence suggests that graft remains a problem at many levels in all branches of the Philippine Government. In the 1997 survey of public perceptions of corruption in 52 countries, undertaken by the non-governmental organization Transparency International, the Philippines was ranked thirteenth in terms of the perceived level of corruption. The U.S. Embassy and the American Chamber of Commerce in Manila have in the past successfully represented U.S. business interests in cases where U.S. firms seemed disadvantaged because of reportedly questionable bid/award or other government proceedings.

POLAND

In 1997, the U.S. trade surplus with Poland was $473 million, an increase of $132 million from the U.S. trade surplus of $341 million in 1996. U.S. merchandise exports to Poland were nearly $1.2 billion, an increase of $203 million (20.9 percent) from the level of U.S. exports to Poland in 1996. Poland was the United States' fifty-third largest export market in 1997. U.S. imports from Poland were $698 million in 1997, an increase of $71 million (11.3 percent) from the level of imports in 1996.

IMPORT POLICIES

In 1990 and early 1991, as part of the economic policies associated with transition from a Communist economy, Poland took bold steps to stimulate its trading sector through an open trade regime with low or suspended tariffs. Poland, however, did raise a large number of its most-favored-nation (MFN) tariffs prior to granting duty reductions for European Community (now European Union (EU)) goods under the European Community-Poland Association Agreement, which went into effect March 1, 1992.

Since then, Poland has generally lowered its tariff levels. As a result of agreements concluded in the World Trade Organization (WTO), with the EU and the members of the Central European Free Trade Agreement (CEFTA), the overall tariff level has decreased steadily since 1992, from an average duty level of 14 percent to 6.7 percent in 1997, with average rates of 4.9 percent for industrial goods and 19.8 percent for agricultural products. In some sectors, such as processed foods and alcoholic beverages, U.S. exporters face particularly high tariffs. A temporary surcharge of 5 percent imposed by Poland on all imports in 1993 was lowered to 3 percent in January 1996 and eliminated in January 1997. The abolition of this surcharge was accompanied by upward adjustments in applied custom duties. At the beginning of 1997, the Polish Government decided to change the suspension level of customs duties from 0 percent to 3 percent. At the same time, most suspensions of customs duties were lifted on commodity items for which, in 1997, the customs rate was lower than 3.9 percent.

Poland's association agreement with the EU has made many U.S. exports relatively more expensive vis-a-vis similar European products due to the preferential rates most EU products receive. This has disadvantaged U.S. high-growth sectors such as capital goods; equipment such as machinery, refinery and gas pipeline equipment; products such as certain processed food, spirits, wine, citrus fruit, fruit juices, rice, sugar-containing products and dried fruit; as well as industrial commodities such as soda ash. While overall U.S. exports to Poland have continued to rise, it is difficult to estimate the loss in potential exports caused by such preferential arrangements, particularly for agricultural products. The agreement with the EU phases in lower tariffs; the tariffs for EU products are expressed as a declining percentage of the most favored nation rate. Agricultural products are only partially covered. Poland also maintains a preferential agreement with CEFTA countries; in January 1997, industrial duties on CEFTA-originated products dropped to zero. Since January 1998, zero duties are applicable to industrial products imported from Lithuania.

By the end of 1998, tariff protection applicable to industrial products imported from the EU, EFTA and CEFTA countries will be abolished. Tariffs on imports from other countries will be reduced by 38 percent by the end of 2001. This excludes goods that will be protected longer under restructuring clauses (products of

crude oil processing until 2001 and some metallurgical products, e.g., steel, until 1999 at the latest). In accordance with worldwide trade liberalization trends under WTO auspices, 1997 saw progress in trade liberalization in the fields of information technology products (Poland's share of the worldwide technology market is 0.2 percent); financial services; and basic telecom services (as a result of February 1997 negotiations, the opening of the Polish market of long-distance and international telephone calls will occur by January 1, 2003 at the latest).

In 1995, USTR reviewed Poland's reverse tariff preferences for the EU, as mandated by an attachment to the Uruguay Round Agreements Act. The review did not find enough evidence to determine that Poland's preferential treatment of EU imports had an adverse effect on U.S. commerce. Since that time, however, some U.S. companies, including firms producing automobiles, aircraft, power generation and mining equipment, have complained that the preferential tariffs have made their products less competitive or uncompetitive on the Polish market.

In July 1995, Poland implemented its Uruguay Round agricultural commitments for about 20 percent of imported products, including those previously subject to variable levies and quantitative limitations, by establishing tariff rate quotas with out-of-quota rates at or below WTO ceiling bindings. Products subject to tariff rate quotas include beef, pork, poultry meat and live poultry, milk and cream, sugar, eggs, honey, strawberries, apples, pears, juices and extracts, cucumbers, processed or fresh tomatoes, spices, rapeseed and mustard oil, wheat and rye flour, sugar beet seeds, malt extract, gelatin, sauces, hops, wine and cut flowers. Complaints from Polish importers suggest that administration of the quotas may be neither transparent nor equitable. Several U.S. exporters have also expressed concerns about possible Polish plans to eliminate tariff rate quotas for EU products, but not those originating outside of the EU.

Poland eliminated all quantitative restrictions on industrial imports in 1990. Any firm or individual registered as a business may participate in foreign trade. Some U.S. exporters have experienced problems with the Polish customs administration due to overworked officials, outdated rules, alleged corruption, and poor communication between Warsaw and the border. A new customs code went into effect on January 1, 1998. This law and associated legislation brought Polish customs rules closer to EU standards, but did not overhaul the customs service itself. The new law also eliminated some technical barriers and introduced strict sanctions against smuggling. It should lead to substantial improvements in the functioning and efficiency of customs officials.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Poland has its own extensive system of certification and approvals of products which is not harmonized with international standards. U.S. companies have complained about the length of time for product certification, the need to leave the product at a Polish lab for the entire process, the need to have spare parts tested, the necessity of having the products tested in Poland, inappropriate testing standards for new products, vague information on costly testing fees, and a non-transparent appeals system.

The most-often cited Polish regulation, which adversely affects U.S. exports, is a requirement that many products obtain a safety (or "B") certification from the Center for Testing and Certification (PCBC) or one of the fifteen institutes supervised by the PCBC. Product testing is also required for building products at the Building Technical Institute (ITB). The Polish product certification system does not automatically recognize

the EU's "CE" mark or other international product standards, and it does not accept manufacturer self-certification in place of the "B" mark.

Since 1995, the Council for Certification has allowed companies simply to register in order to start the process to receive "B" mark certificates and avoid possible fines. This exemption is temporary and needs to be extended on a yearly basis by the Certification Council. It has been extended for 1998.

The Ministry of Agriculture along with the Ministries of Environment and Health is currently formulating regulations concerning genetically modified organisms (GMOs) and products containing GMOs. These new regulations could affect access of U.S. agricultural products to the Polish market. They are set to go into effect on January 1, 1999.

Phytosanitary Standards

Poland maintains a list of quarantined weeds which are not allowed to be in imported grain and other plant products. Among the weed seeds on the list are several varieties of a common weed known as ambrosia or ragweed. The current regulations are not consistent with the requirements of other grain trading countries throughout Europe and the rest of the world. In February 1997, Poland passed a new law on plant protection which reaffirmed a zero tolerance policy for many weed seeds which are common in grain and oilseeds imported from the United States. Prior to April 1997, a bilateral protocol was in effect between the U.S. Department of Agriculture and the Polish Plant Quarantine Service (PPQ) which allowed trade to continue. Even if U.S. shipments met the requirements established in the protocol, the PPQ required imports to be cleaned and placed limitations on inland distribution, increasing the risk and cost of U.S. grain and oilseeds to Polish importers. After the latest protocol expired in April 1997, the weed seed tolerance reverted to zero. The zero tolerance policy could result in the loss of what is, in some years, a substantial market for U.S. grains. Moreover, the weed seeds apparently present no threat to Polish agriculture. Amending the regulations to reflect EU phytosanitary standards would resolve the problem.

The Plant Quarantine Inspection Service issues a mandatory phytosanitary import permit for all imports of live plants, fresh fruits, and vegetables. The Veterinary Department issues mandatory import permits for live animals and meat. U.S. exporters have expressed concerns that Poland's new animal breeding law could potentially restrict access of U.S. animal genetic products.

GOVERNMENT PROCUREMENT

Poland's government procurement law came into effect in January 1995 at the national level and in January 1996 at the local (gmina) level. It is modeled on the UN Model Procurement Code and is based on competition, transparency, and public announcement. It does not, however, cover purchases by state-owned enterprises. The only single source exceptions to the stated preference of unlimited tender are for reasons of state security or national emergency. The law established a central policy office of public procurement listing all tenders over 20,000 ecu. This office's worldwide web page is available at: http://www.uzp.gov.pl. Poland is an observer to the WTO Committee on Government Procurement.

There are two elements of domestic preference in the procurement law. First, there is a 50 percent domestic content requirement for all goods and services provided; for construction, it is 50 percent of both raw materials

and labor. In addition, domestic bidders are given a 20 percent price preference. According to implementing regulations, companies with foreign participation organized under the Joint Ventures Act of June 14, 1991, may qualify for "domestic" status under procurement laws. There is also an appeals process for tenders viewed as unfairly awarded.

EXPORT SUBSIDIES

With its accession to the WTO, Poland ratified the Uruguay Round Subsidies Agreement. Poland has eliminated past practices of tax incentives for exporters, but it permits drawback of tariffs on raw material imports from EU and EFTA countries which are processed and reexported in finished products within thirty days. WTO-approved quotas for sugar export subsidies have been fully utilized in the past two years. Poland interpreted the WTO approval for sugar export subsidies as to allow unused quota from previous years to be carried over for use in the past two years, significantly expanding the amount of sugar which was eligible for export subsidies. Export subsidies for sugar are financed out of high domestic prices. Most Polish coal, whether sold domestically or abroad, is sold below mining cost. Some state-owned enterprises receive direct and indirect subsidies (e.g., nonpayment of taxes).

LACK OF INTELLECTUAL PROPERTY PROTECTION

The Polish Government has made important strides in improving protection of intellectual property rights. The United States and Poland signed a bilateral Business and Economic Relations Treaty in 1990 which contains provisions on the protection of U.S. intellectual property. The Treaty came into force in 1994, after Poland passed a new copyright law significantly improving the level of protection of copyright in the country.

Poland adheres to the Berne Convention for the Protection of Literary and Artistic Works (Paris text, 1971) and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. Poland has implemented most of the requirements of the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). Polish legislation must be fully compatible by the year 2000. Poland's 1993 patent law, in all other ways adequate, does not provide the 20 years of pipeline protection favored by the pharmaceutical industry, but the pipeline provisions do comply with the requirements of the bilateral Business and Economic Relations Treaty.

Piracy of U.S. copyrighted materials in Poland has decreased in recent years due to improved enforcement; U.S. industry has noted downward trends in piracy of video and sound recordings but not in computer software piracy and has also noted cross-border sales of pirated products as a continuing problem. Among the reasons piracy remains a problem is a lack of manpower and resources as well as technical barriers to prosecution. The police tend to rely on rights holders to provide preliminary evidence of violations. Most counterfeit trademarked items are not of Polish origin, but are imported from other source countries.

SERVICES BARRIERS

In the WTO agreement on basic telecommunications services that went into effect on February 5, 1998, Poland made commitments on all basic telecom services, with a phase-in of some commitments. It will provide market access and national treatment for all services by 2003. It adopted the reference paper on regulatory commitments. Poland is overdue in providing to the WTO an acceptance of the Fourth Protocol to the General

Agreement on Trade in Services, which is necessary to bring its commitments on basic telecommunications services into effect. The WTO Council on Trade in Services has extended the deadline for submission of the acceptance until July 31, 1998. Poland retained a 49 percent foreign investment limit for international and domestic long-distance services, including cellular. Poland has also issued a tender for an advisor on the privatization of Telekomunikacja Polska SA (TPSA), the state-owned telephone company which may involve a strategic investor.

Under its OECD accession agreement, Poland agreed to allow banks and insurance companies from OECD countries to have branches and representative offices in Poland as of January 1, 1999. Poland bound this commitment in its WTO Financial services offer and also made market access and national treatment commitments to allow 100% foreign owned insurers, established as joint-stock companies, to provide the full range of insurance services (with the exception of pensions). On the banking side, the National Bank of Poland (NBP) has not issued any branch bank licenses since it granted two in 1991.

Article 44 of Poland's 1994 association agreement with the EU provides for national treatment and full rights of establishment for subsidiaries, branches, and agencies to EU companies, with a five-year phase-in period (until February 1, 1999), along with a "no new restrictions" clause. Poland pledged to the OECD that all such liberalization measures would also be extended to all OECD members.

In November 1997, the Polish National Radio and Television Council adopted a regulation imposing a European content majority quota on all broadcasters, effective in 1998. The language of the Polish decree lacks the flexibility of the EU Broadcast Directive, which provides for content quotas to be applied "where practicable" and "as appropriate."

Some American law firms have expressed concern about two provisions of the new Law on Advocates and Legal Advisors: (a) that foreign law firms must switch from limited liability companies to partnerships and (b) that Polish advocates and legal advisors will only be able to cooperation with foreign firms if (1) they are admitted as partners in the foreign law firm and (2) the home jurisdiction of the foreign law firm offers reciprocity with respect to Polish lawyers wishing to practice in such jurisdiction. The first provision entails time and expense to comply with a requirement for which no justification has been offered the legal community. The second provision requires drastic and swift restructuring of firms to remain in business in Poland, since it would be impossible to operate in Poland without the assistance of Polish advocates and legal advisors.

INVESTMENT BARRIERS

Polish accession to the OECD in 1996 accelerated changes facilitating foreign investment, including national treatment, easing capital flow restrictions, and allowing foreigners to purchase small parcels of land without need for governmental approval (up to 400 square meters of urban land or one hectare of rural land). Polish law permits foreign ownership of up to 100 percent of most corporations. Foreign investors may conduct business in the form of limited liability companies or joint stock companies, as stipulated by Poland's commercial law.

The Polish Government sometimes retains a significant minority interest in enterprises being privatized. On occasion, the Polish Government has used its equity interest in a company to influence managerial decisions. In the case of a U.S. company's investment in a joint venture with Telekomunikacja Polska SA, the Polish

company used its equity position (51 percent) in a manner that induced the U.S. company to sell its investment to the other joint venture partners.

Certain controls remain on foreign investment. Broadcasting legislation restricts foreign ownership to a 33 percent stake; this forced a U.S. cable company to abandon its plans for a broadcasting operation in Poland in favor of transmitting by satellite from Hungary. The management of seaports and airports requires a special permit, and foreign stakes in air and maritime transport, as well as fisheries, are capped at 49 percent. The government has tried in various ways to encourage higher domestic value added (e.g., content requirements for the "special economic zones," and licensing requirements for auto assemblers that would have required welding and painting facilities), but these attempts have been stopped by outside pressures, including from the United States Government.

ANTICOMPETITIVE PRACTICES

On October 1, 1996, the Office for Competition and Consumer Protection was established out of the former Antimonopoly Office and State Trade Inspection Office. This new office is empowered to fine state-owned monopolies that unduly prevent competition. A 1995 amendment to the Antimonopoly Office Act removed ambiguities regarding its authority, thereby strengthening its ability to act.

U.S. and other foreign telecommunications companies have complained of strong-arm tactics on the part of the state telecommunications monopoly (TPSA) with regard to telephone interconnection agreements. As a result of such anti-competitive actions by TPSA, the Antimonopoly Office levied fines against it, disallowed planned TPSA rate increases, ruled that the new GSM licensees could not be barred from using other telephone networks (e.g., the railway telephone system), and announced its intention to continue close scrutiny of the telecommunications sector.

RUSSIA

In 1997, the U.S. trade deficit with Russia was $1 billion, an increase of $780 million from the U.S. trade deficit of $221 million in 1996. U.S. merchandise exports to Russia were nearly $3.3 billion, a decrease of $51 million (1.5 percent) from the level of U.S. exports to Russia in 1996. Russia was the United States' thirty-fifth largest export market in 1997. U.S. imports from Russia were nearly $4.3 billion in 1997, an increase of $729 million (20.5 percent) from the level of imports in 1996.

Trade relations between the United States and Russia are governed by the U.S..-Russia Trade Agreement, signed in June 1990 with the USSR and approved by the U.S. Congress in November 1991. The USSR ceased to exist before ratification of the agreement, but the United States offered the agreement (with minor technical changes) to each of the emerging states of the former Soviet Union. Russia's parliament approved the agreement, making it possible for the United States to extend most-favored-nation status to Russia on June 17, 1992. Russia is in the process of acceding to the World Trade Organization (WTO).

IMPORT POLICIES

The combination of import duties, a 20 percent value-added tax charged on most imported goods (selected food products are assessed at 10 percent), excise taxes assessed on imported goods (especially automobiles, alcoholic beverages, and aircraft) and an import licensing regime for alcohol depress Russian demand for imports. Frequent changes in customs regulations without warning have created problems for foreign and domestic traders and investors.

The government has raised import duties several times since 1992. In mid-1995, the government rationalized its duties, establishing rates of 5 to 30 percent on most goods. In 1996, the government raised tariffs on alcoholic drinks, chicken and some other food products, and now has an average weighted tariff of 13.3 percent. Only customs duties on tea were raised in 1997.

Effective February 1, 1998, a government resolution raised the minimum customs duty slightly for many agricultural goods and for manufactured goods such as audio and video cassettes, leather goods, wall coverings, apparel and mattresses. The resolution does not change the customs duty rate itself, but adds a minimum value to be paid (in either ecu per kilogram or ecu per item). The declared intent of these combined tariffs is to prevent under-payment of tariffs through under-invoicing. The Russian Government is currently considering proposals for increased tariff protection on selected agricultural products and industrial equipment and machinery.

In October 1997, the Russian Government adopted Resolution 1347, under which tariffs on particular goods may be raised no more often than every six months and may take effect only six months after publication. Duties may not be changed more than 10 percentage points at one time.

Russia maintains high tariffs and excise taxes on imported spirits, and in 1997 instituted an extensive regulatory system for alcoholic product import and sale on the Russian market. U.S. exports of vodka consequently dropped from $4.4 million in 1996 to only $110,000 in 1997. In early 1998, the prices of alcohol

licenses were raised, with annual fees for licenses to handle imported products 30 times higher than the corresponding fees for licenses for domestically-produced products. U.S. exporters have also stated that a requirement to affix a strip stamp showing that excise duty has been paid has not been applied equally to domestic producers and that excise taxation itself is sometimes not applied equally.

In March 1996, after a February announcement by the Russian Ministry of Agriculture that its veterinary service would deny import certification for many U.S. poultry processing facilities, the United States and Russia reached an agreement whereby Russia recognized the U.S. inspection system as acceptable for the Russian market. The Russian Government also withdrew a reference price system that almost doubled the actual customs value of poultry imports.

With no major disruptions to U.S. exports of meat and poultry products to Russia during 1997, exports totaled almost $900 million. Russia is the world's largest poultry importer and now represents over one-third of total U.S. exports of poultry products. However, this large volume of trade moves under a cumbersome, inefficient and mistake-prone inspection/certification system (described in next section).

In early 1997, the Ministry of Communications published a regulation entitled Order no. 8, which limits Russian purchases of foreign-made switchgear. The order is ambiguous and may have to be withdrawn in the future due to WTO obligations. Until that time, it poses a potential for significant restriction of access to the Russian market for this equipment. The order forces the 86 regional companies in the Svyazinvest group to give preference to Russian-made digital switching equipment. There is no technical reason for this requirement.

In November 1997, the Commission on Protective Trade Measures recommended establishment of a licensing regime for color television imports. The proposal is awaiting final approval by the Prime Minister.

Importers from the United States have experienced delays and unexpected costs due to individual interpretation of Russian customs codes by each port of entry.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Russia's July 1993 consumer protection law requires official certification by the State Committee for Standards (Gosstandart) of imported products for conformity to Russian technical, safety, and quality standards. Certification is based on a combination of international and Russian standards. All food items imported into Russia are subject to food quality and safety standards and require a certificate for each shipment. Manufactured items can receive certificates allowing import of a good over a three year period. Import licenses are required on the normal range of dangerous and harmful materials and goods. U.S. companies have complained of costly, nontransparent procedures and arbitrary certification requirements. Due to the many difficulties experienced by American companies in this area, the American Chamber of Commerce in Moscow has named standards and certification as one of four main obstacles to increased American trade and investment in Russia.

Russia is establishing reciprocal standardization with the United States and other countries, and acceptance of foreign certification by accredited institutions. A joint U.S.-Russia communique of December 1993 pledges cooperation on improving and simplifying certification, testing and quality assurance of U.S. and Russian

products in each others' markets. A February 1994 Memorandum of Understanding between the U.S. Food and Drug Administration and the Russian Ministry of Health and Medical Industry established a framework for cooperation and exchange of information on drugs and biological products in order to speed their importation. By the end of 1997, a federal commission on WTO policy approved an action plan to bring Russia's standards, certification and conformity assessment regime into compliance with international standards. This plan is awaiting final government approval.

Certification is a particularly costly and prolonged procedure in the case of telecommunications equipment. Telecom equipment is tested for compliance with standards established by both Gosstandart and Gostelkom, and typically takes 12-18 months. No type certification or self certification by manufacturers is currently possible. U.S. companies have recently reported that Russian government security services have imposed their own requirements on producers of exchange stations for radiocellular equipment.

Requirements of the Russian Veterinary Department are sometimes of questionable scientific or food safety value, and the Veterinary Department administers the certification system in a nontransparent and arbitrary manner. As Russia looks to WTO accession, it will need to develop a more transparent, science-based and WTO-consistent food inspection system.

Similarly, Russian sanitary and phytosanitary import requirements for certain planting seeds (notably corn, soybeans and sunflower seed), and beef and beef by-products, appear to lack a scientific basis and have blocked imports from the United States. Technical level discussions to ease or eliminate burdensome Russian sanitary and phytosanitary requirements are ongoing, but have produced no results for beef and beef by-product restrictions.

In July 1997, the Russian Government announced enactment of the current food labeling law, which requires that food imported from foreign exporters have labels in the Russian language containing information on content, nutritional value, shelf life, conditions of storage, and use of the product. The new law strengthens the role of Gosstandart in managing these requirements. However, U.S. food exporters often find compliance with the regulations difficult or impossible because they are overly stringent or vague. Importers also claim that there is not as yet an inquiry point where they can receive reliable clarification of the regulations.

Gosstandart also proposed in 1997 use of a new holographic mark of conformity with Russian regulations for a few goods. In November 1997, Gosstandart announced the holographic marks would not be required on the product if the manufacturer/importer is already attaching the current mark of conformity. However, holographic marks will be required on all copies of certification documents as of July 1, 1998. Foreign businesspeople have complained that the requirement is costly and unnecessary, the rules are unclear, and that Gosstandart has not coordinated sufficiently with the Customs Service.

GOVERNMENT PROCUREMENT

The Russian Government has virtually eliminated the Soviet practice of centralized imports through state-owned foreign trading companies. Some large-scale trade deals for state needs (such as oil-for-sugar barter deals between Russia and Cuba) still take place. Typically, however, the government awards the right to implement such deals on its behalf to private or quasi-private trading houses. Russian ministries and government agencies are frequent purchasers of equipment, goods and services for their own needs or for the

needs of various domestic organizations or groups (i.e., the military, regional health organizations, or population centers located in remote areas). In April 1997, the government established procedures for public tenders for some government procurement. A government procurement bill, based on competitive bidding, is also being considered in the State Duma. While domestic suppliers currently are not accorded any official advantages or privileges in competing for government procurement, the Russian Government's strong political bias toward supporting domestic industries probably works in favor of Russian suppliers. For example, in 1997 government agencies were directed to use only domestic automobiles (a program which ran into problems and is currently not strictly enforced).

EXPORT SUBSIDIES

The Russian Government's industrial policy guidelines appear to emphasize export promotion and import substitution. In practice, there has been limited budgetary funding for such projects, and the programs that do exist are designed to provide support to industries which export, rather than targeted export subsidies per se. Russia has no explicit export subsidies on agricultural products.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Since 1992, the Russian Government has put into place the statutory framework needed to bring the country up to modern standards in the area of intellectual property protection, including laws on copyright and neighboring rights, trademarks, industrial designs, patents, and integrated-circuit layout designs. The U.S.-Russia Bilateral Trade Agreement also requires Russia to provide high standards of protection for intellectual property. A significant gap is the lack of protection for pre-1995 U.S. sound recordings and pre-1973 U.S. copyrighted works. Russia is a member of the Paris Convention for the Protection of Industrial Property, the Universal Copyright Convention and other major multilateral intellectual property conventions. In 1995, Russia acceded to the Berne Convention for the Protection of Literary and Artistic Works and the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms.

Even though Russia has passed laws that generally meet modern standards, enforcement of those laws to date has been limited. There is currently extensive piracy of U.S. video cassettes, films, music, recordings, books, and computer software in Russia. Some U.S. companies have had difficulty registering well-known marks or have had an existing trademark registration invalidated. Fees for obtaining and maintaining patent protection in the country are among the highest in the world. Administrative and judicial review bodies are only beginning to become active in IPR protection. The United States will continue to monitor IPR enforcement carefully and will provide assistance to help the Russian Federation improve enforcement. The U.S.-Russia Bilateral Trade Agreement calls for a side letter on mutually acceptable provisions on patent compulsory licensing, similar to the principles included in the Treaty side letter on intellectual property. The text of a letter was agreed to in September 1997, but the Russian Government has not signed it.

SERVICES BARRIERS

Discriminatory measures against foreign providers of non-financial services are not so much the result of

federal laws as abuse of power, sub-national regulations, or practices that may even violate Russian law. For example, foreign providers of services have sometimes noted discrimination in obtaining licenses from local authorities, often having to pay several times the fees paid by domestic companies.

The federal law on "Banks and Banking Activity of 1996" permits foreign banks to establish branches or subsidiaries in Russia. The law allows the Central Bank of Russia to impose a ceiling on the total amount of foreign bank capital as a percentage of the total bank capital in Russia. At present, foreign banks' share of the total capital is around 4.6 percent, well below the current 12 percent ceiling even though four foreign banks received licenses in 1997. In May 1997 the CBR announced new regulations requiring foreign banks to have a minimum of ecu 10 million (about $11.5 million) in capital and that at least 75 percent of its employees and 50 percent of its management board be of Russian nationality.

In early 1998, the Russian Government enacted insurance law amendments which will prevent foreign-licensed insurers from insuring the property of Russian companies and individuals. Foreign insurers will now be limited to re-insurance and mutual insurance for Russian companies. Foreign firms can still hold 49 percent stakes in joint ventures with Russian insurers but there are few such partnerships.

INVESTMENT BARRIERS

A Bilateral Investment Treaty (BIT) was signed between the United States and Russia in June 1992. It was approved by the U.S. Senate in October of the same year, but it will not enter into force until approved by the Russian Duma.

Foreign investors in Russia have indicated their greatest concern to be the legal system, particularly shareholders' rights and weak contract law. There are a number of cases in which court decisions or arbitral awards in favor of the Western investor have not been implemented. In addition, as foreign investors must seek approval for their projects on the federal, regional and local level, the vagueness of existing laws can lead to differing interpretations and conflicting requirements on the different levels. The Prime Minister created an interministerial commission on shareholder rights in mid-1997, in order to improve government coordination in dealing with investment disputes.

The delayed passage of a federal land code allowing purchase and sale of real property has posed problems for investors in some regions of Russia, but the government may have recently found a path to resolving this highly controversial issue. On December 26, 1997, President Yeltsin and representatives of the State Duma and Federation Council agreed that the land code will be reworked to permit the buying and selling of all land, but restrictions will be placed on ownership and usage of agricultural land. The restrictions include a prohibition of foreigners from ownership; a maximum number of hectares which can be owned by a single person or entity; and a ten year waiting period after purchase before applying to change the land's usage. The revised draft will return to the Duma for a final reading in 1998.

Economic disincentives are also a key concern of foreign investors, with particular concern about the incoherence of the tax system. Crime and corruption in commercial transactions are also an inhibiting factor; in both 1995 and 1996 the government undertook highly publicized efforts to reduce corruption in the police force.

Russia

Government policies affecting foreign investment have been mixed. In February 1994, the government began to allow foreigners to purchase up to 10 percent of each month's issue of government securities, a market previously off limits to foreigners. The central bank fully liberalized this market in 1997. Non-resident investors are estimated to hold about 30 percent of the government securities market.

While legislation related to the Production Sharing Agreement (PSA) law, which was originally passed December 31, 1995, made little progress in 1997, the GOR started 1998 by introducing two bills containing long-awaited lists of nine deposits. The list includes projects with Western and U.S. participation. The Duma has tentatively scheduled consideration of amendments to the law on production sharing, the law on amending legislation and the law on state supervision of the implementation of production sharing agreements for February 1998.

The issue of local content arose during consideration of production sharing legislation in 1997. Even PSA supporters in the Duma back local content provisions, and introduced their own amendment calling for fifty percent local content in response to an initial proposal for a seventy percent requirement. Both amendments are pending. The time frame of local content requirements, with possibilities ranging between extremely onerous year-by-year compliance to lifetime-of-project compliance, is an especially important aspect. Scope of application, i.e. whether to the entire investment or to a tightly defined list of oil and gas equipment, is also significant.

Regarding purely financial disincentives, most foreign investors list concerns about profit repatriation. Since Russia has assumed obligations under the IMF's Article VIII, there are no longer any legal barriers to profit repatriation. The last restriction, involving special accounts for hard currency transactions, was eliminated as of January 1, 1998. Investors have also expressed concern about their inability to get accurate information about potential business partners.

OTHER BARRIERS

Aircraft

Russia maintains high tariffs on imported aircraft. Although these tariffs were lowered to 30 percent in 1995, they were still at a prohibitive level.

In 1996, the United States and Russia concluded a joint MOU that addresses U.S. concerns about access to the Russian civil aircraft market and the application of international trade rules to the Russian aircraft sector. Under the MOU the Russian aircraft industry will become fully integrated into the international economy and subject to the same multilateral trade disciplines as are U.S. and most other aircraft manufacturers. The Russian Federation has confirmed that it will become a signatory to the Agreement on Trade in Civil Aircraft which, together with the other WTO agreements, establishes the basic international rules governing trade in the aircraft sector.

In the interim before the Russian Federation accepts full international trade obligations, the MOU commits it to provide fair and reasonable access for foreign aircraft to its market. The Russian Government agreed to take steps, such as the granting of tariff waivers and the reduction of tariffs, to enable their airlines to meet their needs for U.S. and other non-Russian aircraft on a non-discriminatory basis. Senior Russian officials in 1997

reaffirmed their commitment to the MOU. However, the process for granting waivers remains slow and cumbersome.

On January 8, 1998, a new Russian Federal Law on State Regulation of the Development of Aviation was signed. The law stipulates preferential treatment (tax holidays, guarantees on investment) for Russian and foreign investors in aviation-related research and manufacturing ventures. The law also sets a 25 percent limit on the share of foreign capital in aviation enterprises and requires that the senior officials and management staff be Russian citizens.

SOUTH AFRICA

In 1997, the U.S. trade surplus with South Africa was $500 million, a decrease of $284 million from the U.S. trade surplus of $784 million in 1996. U.S. merchandise exports to South Africa were $3 billion, a decrease of $106 million (3.4 percent) from the level of U.S. exports to South Africa in 1996. South Africa was the United States' thirty-sixth largest export market in 1997. U.S. imports from South Africa were $2.5 billion in 1997, an increase of $177 million (7.6 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in South Africa at the end of 1996 was $1.4 billion, an increase of 12.7 percent from the level a year earlier. U.S. FDI in South Africa is concentrated largely in the manufacturing, wholesale, and services sectors.

IMPORT POLICIES

South Africa's Import and Export Control Act of 1963 authorizes the Minister of Trade and Industry to act in the national interest to prohibit, ration, or otherwise regulate imports. In recent years, the list of restricted goods requiring import permits has been substantially reduced, reflecting the Department of Trade and Industry's (DTI) preference for supply-side measures as a means of stimulating local industry. Among the products still requiring import permits are foodstuffs, used clothing, refined petroleum products, and chemicals; ozone-depleting chemicals have recently been added per the Montreal convention. DTI contends that it will phase out import permits over time in favor of tariffs. DTI is developing an electronic system to link DTI with customs and with persons applying for permits to facilitate customs application and clearing process. Import permits must be obtained from the Director of Imports and Exports before the date of shipment.

While working toward eliminating import permits in accord with WTO regulations, the South African government has also simplified its tariff structure and reduced tariffs across many product lines. South Africa, however, has recently raised tariffs on certain agricultural products in order to protect local producers. The following agricultural goods are affected:

Wine: As of January 1, 1998, duties on imported wines range upward from 25 percent FOB for ordinary wines or wines used for blending with South African wines. The highest quality wine and champagne have tariffs between 1,500 percent and 4,000 percent. DTI argues that this increase was part of South Africa's efforts to replace import permits with tariffs.

Wheat: DTI announced that a tariff designed to rise in accordance with a drop in international wheat prices is set to take effect this year. At current international prices, the tariff would be approximately $10 a ton.

Poultry: Despite strenuous lobbying by the U.S. government, the Board of Trade and Tariffs (BOTT) raised tariffs on imported frozen chicken parts from a 27 percent flat rate to 2.2 rand per kilo. For a time, importers circumvented this high tariff by bringing in "seasoned" parts that could be imported at the 27 percent rate. Recently, this loophole was closed, and all frozen chicken parts carry the higher (effectively 64 percent) rate.

BOTT took this action in response to pressure from one large South African chicken producer, which is a part of a corporate conglomerate.

Irradiated meat: Because of a Ministry of Agriculture determination that not enough information exists regarding the safety of irradiated meat and other irradiated food products, importing such goods into South Africa is prohibited.

One major U.S. chemical firm sought through its local agent to reduce the tariff on slabstock polyol (a material for producing foam rubber) from 16 percent to 10 percent. The tariff protects a single local producer. The BOTT recently refused the application to lower the tariff citing “no demand” from local foam consumers for the imported raw material (a point vehemently denied by the petitioning firm).

Overall tariff rates now average 10 percent. Although DTI and BOTT are open to U.S. government advice, no evidence exists that it is suasive in the South African decision-making process.

South Africa reduced the tariff on instant-print cameras from 6 percent to 0 percent on June 28, 1996. However, instant-print cameras and instant-print film continue to be classified as “luxury items” and remain subject to excise taxes of 15 percent. Although these excise taxes are nondiscriminatory, U.S. producers maintain that no domestic producers exist, and the the high taxes are being circumvented by illegal importers.

Any South African producer may petition the BOTT for tariff protection. Approval of such petitions is granted if the producer has a major share of the domestic market and can prove that foreign competitors are challenging its market dominance. Although public comment on tariff -protection requests is normally open for a 6-week period, South Africa introduced a 3-week public comment provision for emergency situations. In either case, the government can deliberate for an undefined period before rendering a decision.

South Africa, complying with its WTO commitments, has worked to reform a complex tariff structure. In the past 2 years, South Africa has simplified and reduced its overall tariff rate from more than 20 percent to 12 percent. Nevertheless, many industries previously protected by nontariff barriers have tried to increase industry tariffs to WTO-bound levels. DTI and BOTT, however, refused most of these tariff increase applications in favor of more WTO-consistent measures. In April 1996, BOTT and DTI turned down a request from the telephone manufacturers of South Africa to increase tariff rates on telephone sets and components from 0 and 5 percent, respectively, to 20 percent. In recent instances where domestic producers have petitioned the government for tariff increases, the government has accepted U.S. counter submissions.

Between 1992 and 1994, South Africa increased tariffs on paperboard and paper products, certain steel products, and cosmetics. South Africa instituted a general phased reduction of tariffs on paper and paperboard in 1995 that will bring most tariffs down to 10 percent ad valorem by 2000 and to 5 percent ad valorem by 2005. Both DTI and BOTT have introduced rebate provisions for many categories of paper and paperboard, authorizing full duty rebates on imports of uncoated and coated kraft paper and paperboard, coated paper and paperboard, and tarred, bituminized or asphalted paper and paperboard. Because of the complex nature of the tariff headings and rebate provisions of the paper and paperboard industry, the Government of South Africa requested that numerical tariff headings be provided to facilitate inquiries about these industries.

Although DTI maintains that no tariff increases have resulted from its tariff rationalization process since 1994, several U.S. exporters have complained of increased tariff rates on their products as a result of reclassification or misclassification into a higher tariff category. One such instance involves the misclassification of photographic film in plates into the tariff heading of photographic film in coils, which carries a significantly higher tariff rate.

DTI has instituted an export promotion scheme specifically for the textile industry whereby an exporter is permitted to import duty free an amount of raw material equivalent to 30 percent of its exports.

The SACU

U.S. officials have received several complaints from U.S. producers regarding the 10 percent tariff applied to soda ash imported into South Africa. Specifically, U.S. exporters are concerned about the amount of soda ash imported duty free into South Africa from Botswana under the Southern African Customs Union (SACU). As SACU was created in 1910 and thus predated the creation of the GATT (1947), notification of the duty-free status of goods from Namibia, Botswana, Swaziland, and Lesotho continues to be permitted under a grandfather clause. South Africa is in the process of renegotiating the SACU agreement with its partners, but it it not clear when these discussions will be completed. In the meantime, the current trading regime between the SACU countries is expected to continue. The revenue-sharing formula for the combined customs pool remains the same as that negotiated in early 1997. The sticking point in finalizing negotiations centers largely around harmonizing tariff rates.

As a result of market-access commitments made in the Uruguay Round and DTI's attempts to reform its tariff structure, South Africa is committed to:

rationalize 9,580 tariff lines down to 7,182.

bind 98 percent of its tariff lines to WTO-binding levels by 2000, up from the 55 percent currently bound.

replace all remaining quantitative controls with ad valorem duties and making formula duties WTO consistent.

cut back tariff lines from the past 80 different levels into six levels (0 percent, 5 percent, 10 percent, 15 percent, 20 percent, and 30 percent), with a few exceptions, including clothing and textiles. These tariff lines will comply with the WTO binding levels over 7 years (ending in 2002) instead of the 12 years negotiated under the WTO. Maximum tariffs in several categories will fall to levels below WTO binding levels. According to the DTI/BOTT plan, South African tariffs in textiles will fall to the following five levels:

Product	South African Plan (%)	WTO Binding Level (%)
Clothing	40.0	45.0

Made-up textiles	30.0	30.0
Fabrics	22.0	25.0
Yarn	15.0	17.5
Fibers	7.5	10.0

In accordance with the WTO Customs Valuation Agreement, customs valuation is based on the FOB price in the country of export or the transaction value, that is, the actual price paid or payable. If the transaction value cannot be ascertained, the actual price paid for similar goods, or a computed value may be used based on production costs of the imported goods. If the goods are imported into South Africa for shipment to the members of the SACU, the transaction value can be more complex and more susceptible of duty evasion.

In 1997 South African Customs was placed under the South African Revenue Service (SARS) and the position of commissioner of Customs was eliminated. This action has lowered employee morale and impaired the effectiveness of customs officials to detect illegal shipments. The U.S. Customs agent in South Africa reports that the SARS investigators review papers and accounting records in tracing funds to detect illegal activities. The customs inspectors argue that physical searches are also required, and they believe that the SARS personnel are more concerned with collecting revenue than enforcing customs regulations.

Although some South African points of entry have been closed and some customs agents redeployed, a severe shortage of customs officials remains. Establishing a border unit of the South African police in April 1997 with the mission of security and enforcement at South African ports of entry has been helpful.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

U.S. exporters of poultry products recently petitioned South Africa to rescind its requirement that chicken products be shipped in refrigerated containers rather than in bulk. Viewed by many U.S. exporters and South African importers as discriminatory, this new requirement is sharply opposed by both domestic and international industry sources. In early 1997, South Africa reviewed and maintained its decision against bulk shipment of chicken products.

GOVERNMENT PROCUREMENT

In October 1997, the Ministry of Public Works issued a green paper on reform in public sector procurement. Its aim was to make the procurement system more accessible to disadvantaged groups and to small, medium and micro enterprises. How to accomplish these goals transparently without increasing public corruption and without totally excluding large or white-owned business. A proposal presently exists to rationalize the many provincial and parastatals tender boards into one national tender board (rules and regulations setting authority).

The South African defense forces (SADF) modernization program has received bids from Spain, Italy, Germany, the UK, and Sweden for modernizing certain SADF equipment. All of the tenders have significant

offset components as required by the bidding terms. These terms took effect in September 1996 and require all government and parastatal contracts with an import content exceeding $10 million to include an offset component with a value of at least 30 percent of a bid's imported content (50 percent in the case of defense bids). By reducing the offset requirement in proportion to the amount of domestic content in a bid, the South African procurement system favors local producers.

EXPORT SUBSIDIES

South Africa has focused on means other than direct subsidies for promoting South African exports. Export Marketing Assistance (EMA) offers financial assistance for the developing new export markets through financing of trade missions and market research. The new export finance guarantee for small exporters is the government's newest means of promoting small and medium exporters through credit guarantees with participating financial organizations.

For a limited period, existing nondiscriminatory tax allowances such as the Income Tax Act for machinery and buildings used in a manufacturing process will be granted on an accelerated basis. If any new or unused plant or machinery is acquired and used for manufacturing by a taxpayer between July 1, 1996, and September 30, 1999, the cost can be written off over 3 years. A similar allowance is also granted to a lessor of manufacturing plants and machinery. Similarly, a 10-year write-off is available for erecting any building, or any improvements to a building for manufacturing during July 1, 1996, to September 30, 1999, and used before March 31, 2000. Finally, the recently enacted tax holiday scheme provides for up to 6 years of tax-free status for incipient or "greenfield" investments that qualify in "specified manufacturing concerns," satisfy a "labor intensity" formula, and promote development in an underdeveloped geographic location. For each component, the qualifying company will receive 2 years of continuous tax-free status. The tax holiday scheme is available to all qualifying foreign or domestic market-oriented investors. Other subsidies include electricity and transport rebates for businesses located in designated development corridors.

LACK OF INTELLECTUAL PROPERTY PROTECTION

In light of complaints from U.S. firms regarding lax enforcement of intellectual property rights (IPR), South Africa, which is regarded as a developed country in terms of its IPR obligations in the WTO, has introduced new legislation and enforcement techniques for IPR violations. In May 1995, the Trade Marks Act of 1993 entered into force, replacing the Trade Marks Act of 1963. Also, the 1996 decision of the South African Supreme Court Appellate Division affirmed that McDonald's is the rightful owner of its trademark within South Africa.

Two new IPR-related laws were passed on September 9, 1997: The Intellectual Property Laws Amendment Act and the Counterfeit Goods Act. The latter law provides for criminal prosecution of persons trading in counterfeit or pirated goods. However, the South African police are currently so overwhelmed with illegal activities that enforcing these laws on a consistent basis has proved difficult. Thus, one U.S. firm estimates that pirated software comprises approximately 50 percent of the local market and similar estimates are made for the percentage for recorded music and video that is pirated.

South Africa

In 1997 an American company brought suit against a South African firm for trademark infringement. The South African firm argued that the American company's trademark had become generic. On appeal, the South African court found for the U.S. firm, arguing that the company had historically utilized its trademark and had always worked to protect it as unique.

In November 1997, a bill was passed that seems to permit the Minister of Heath to abrogate the patent rights of pharmaceutical companies if deemed necessary to lower the cost of medicine in South Africa. The Ministry of Health avers that the law strictly permits parallel importation of medicine and does not to infringe on patent rights. A second concern in the bill, namely a proposed prohibition on the use of trademarks on medicines sold to the state, was removed from the legislation. USTR is discussing with the South African Government ways to clarify the law and eliminate any potential TRIPs violations before it goes into effect.

Although progress has been made in trademark protection, U.S. firms are concerned about substantial trade losses due to copyright violations. South Africa's 1978 legislation protecting copyrights has been supplemented by the proposed Counterfeit Goods Act legislation that has set up a special anti-piracy unit. In addition, South Africa's courts have fined persons who infringe copyrights. Enforcement remains a problem partly because of inadequate enforcement resources. Although U.S. businesses acknowledge that trade losses have declined from $96 million in 1995 to $77 million in 1996, they also note that continuing trade loses are significant, citing substantial software losses, book piracy, and satellite signal piracy.

SERVICES BARRIERS

South Africa made commitments on most of the basic telecommunications services in the recently concluded WTO negotiations. It adopted the reference paper on regulatory commitments. Although South Africa offered to end its monopoly of long-distance, data, telex, fax and privately leased circuits services as of 2004, it committed to guarantee only one additional operator in these areas at that time. South Africa will make commitments within one year of adopting legislation on satellite-based services.

In the WTO financial services negotiations, South Africa submitted a proposal for increased access to its market. However, to operate as a branch, a foreign bank will be required to capitalize its local operation by the greater of 8 percent of risk-weighted assets and other contingent liabilities or 50 million rand.

INVESTMENT BARRIERS

South Africa has notified to the WTO measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures. The measures deal with local content requirements in the automotive, telecommunications, equipment, tea and coffee sectors. Proper notification allows developing-country WTO members to maintain such measures for a five-year transitional period after entry into force of the WTO. South Africa, as a developing country for investment issues, must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO members meet these obligations.

Vice President Gore and South African Deputy President Mbeki signed an income tax treaty on February 17, 1997, in Cape Town. The treaty, designed to increase cross-border flows of capital, trade, and technology between the United States and South Africa, should remove certain existing tax disincentives to investment in South Africa. The treaty accomplishes these objectives by reducing tax rates on certain cross-border income flows, increasing investor confidence through protection against nondiscriminatory taxation, and providing for a dispute-resolution mechanism. This treaty was ratified by each country and entered into force on January 1, 1998.

ANTICOMPETITIVE PRACTICES

Competition Policy

Oligopolies and monopolies prevail in certain South African industries because of weak competition laws, international isolation, and the dirigiste policies of the apartheid era government. One glaring example is the beer industry. South African breweries control almost 98 percent of the South African beer market. They also control the distribution of alcoholic beverages. When a leading U.S. brewer reportedly investigated entering this market, it determined that the cost of entry, because of the difficulty of distribution, was too high to proceed.

SINGAPORE

In 1997, the U.S. trade deficit with Singapore was $2.3 billion, a decrease of $1.3 billion from the U.S. trade deficit of $3.6 billion in 1996. U.S. merchandise exports to Singapore were $17.7 billion, an increase of $1 billion (6.3 percent) from the level of U.S. exports to Singapore in 1996. Singapore was the United States' ninth largest export market in 1997. U.S. imports from Singapore were $20.1 billion in 1997, a decrease of $273 million (1.3 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Singapore at the end of 1996 was $14.2 billion, an increase of 11.5 percent from the level a year earlier. U.S. FDI in Singapore is concentrated largely in the manufacturing (notably electronics, industrial chemicals and petroleum) and the financial sectors.

IMPORT POLICIES

Tariffs

Singapore imposes tariffs on only four categories of imported goods -- cigarettes, alcoholic beverages, automobiles, and gasoline -- for public policy and environmental reasons. Approximately 99 percent of Singapore's imports enter duty-free. During the Uruguay Round of multilateral trade negotiations, Singapore agreed to bind 70 percent of its tariff lines (up from 1 percent), compared to the United States, which has bound 98 percent of its tariff lines. The Uruguay Round Agreements went into force on January 1, 1995. As an APEC participant, Singapore has also committed to eliminating all tariffs by 2010 (consistent with the agreed time frame for "developed economies"), and to bind these commitments at the World Trade Organization (WTO).

GOVERNMENT PROCUREMENT

Singapore initiated negotiations to join the WTO Government Procurement Agreement (GPA) in December 1995, and deposited its instrument of accession to the GPA on September 20, 1997. This instrument of accession entered into force for Singapore on October 20, 1997.

EXPORT SUBSIDIES

The Government of Singapore offers three export promotion schemes, available to both local and foreign firms, which fit the World Trade Organization (WTO) definition of subsidies: the international trade incentives program, double taxation deduction, and production-for-export schemes. Singapore has committed to phase out these programs by 2003, and accepted no applications in 1997 for the production- for-export scheme.

LACK OF INTELLECTUAL PROPERTY PROTECTION

The Government of Singapore has taken concrete measures to improve the protection of intellectual property rights (IPR) over the years. However, recent trends indicate that Singapore's current IPR regime does not adequately address technological and manufacturing developments as reflected by growing rates of

piracy. Singapore is a member of the World Intellectual Property Organization (WIPO), and as a member of the WTO must implement the Agreement on Trade-Related Intellectual Property Rights (TRIPS) by not later than January 2000. Singapore is not presently a party to the Berne Convention or the Universal Copyright Convention, but has announced its intention to accede to the former.

In 1987, Singapore enacted strict, comprehensive copyright legislation which relaxed the burden of proof for copyright owners pressing charges, strengthened civil and criminal penalties and made unauthorized possession of copyrighted material an offense in certain cases. In 1991, Singapore similarly strengthened its trademark law. In 1994, Singapore enacted a new patents act. Although Singapore did not implement the TRIPS Agreement by the January 1996 deadline for developed countries (Singapore has availed itself of the "developing country" transition period under TRIPS), the Government introduced amendments making the patent law fully TRIPS-consistent, effective January 1996. In January 1998, Singapore submitted to parliament draft amendments intended to bring its copyright law into conformity with TRIPS. The amendments were considered by the Parliament on an expedited basis and were enacted in February 1998. The United States is currently evaluating the amended copyright law.

Despite these legislative efforts, however, U.S. industry reports an upsurge in pirated software, video and music CDS and CD-ROMs in the Singaporean market since 1995. U.S. industry estimates that a substantial and growing proportion of these infringing products are produced domestically, but most pirated goods are probably imported into Singapore. This underscores the need for both effective regulation of manufacturing and adequate border enforcement measures. U.S. companies have generally cited the inadequacy of Singapore's "self-policing" system, and are pressing Singapore to assume an even more active and direct role in the investigation and prosecution of IPR cases.

A successful series of raids conducted by the police, assisted by a trade association, in July 1997 resulted in the confiscation of 78,000 pirated music CDs. In another instance, however, an association was unsuccessful in prosecuting a case against a local CD-ROM manufacturer when the association was not permitted to retain relevant business documents seized during the raid of a CD production facility. The Government of Singapore has formed an IPR task force and initiated a number of police raids in early 1998. These efforts, if sustained, are helpful but do not address the need to shift the burden of IPR enforcement which currently rests with rights holders under the self-policing policy to Singaporean authorities. Other outstanding issues include: requirements for licensing CD manufacturers and use of source identification codes, inadequate protections against the trade of bootleg recordings of live musical performances, the limited scope for copyright protection for cinematographic works, and overly broad exceptions from copyright protection.

Recent estimates by trade associations show software piracy losses rising to U.S. $56.5 million in 1996 from U.S. $40.4 million in 1995 and U.S. $37.3 million in 1994. Singapore's piracy rate was estimated to have risen to 59 percent in 1996 from 53 percent in 1995 and 61 percent in 1994. In the area of music CDs, it is estimated that Singapore's CD piracy level (including audio and video CDs, and CD-ROMs) to have risen gradually from 12 percent in 1994 to nearly 17 percent in 1996.

SERVICES BARRIERS

Basic Telecommunications

Singapore's telecommunications sector has been steadily liberalized since 1989. Restrictions on the sale of telecommunication consumer goods and the provision of value-added network services (VANs) have been lifted. Singapore Telecom (SingTel) has been privatized, its monopoly ended, and its regulatory functions assumed by the Telecommunications Authority of Singapore (TAS).

Singapore committed to all regulatory principles in the WTO basic telecom agreement reference paper. Singapore made comprehensive market access commitments in basic services but excluded resale via leased lines connected to the public switched network, for both domestic and international services. Foreign equity limits were liberalized to allow 73.99 percent ownership (49 percent direct and 24.99 percent indirect) in domestic basic telecom service providers. Singapore's WTO commitments require it to issue new licenses for up to two new basic telephone service providers to begin operation in 2000, and additional ones after the year 2000. One U.S. company has formed a joint venture to bid for a basic services license. TAS has not provided specific information regarding further liberalization of fixed-line services, and has stated only that it would consider issuing additional licenses in 2002. TAS has announced that new licenses for up to two more public cellular mobile telephone service operators will be issued in 1998, to begin operation in April 2000. Another U.S. firm has also formed a joint venture to bid for one of the mobile phone service operator licenses to be selected in 1998.

Legal Services

At present, foreign law firms may only set up offices in Singapore to advise clients on their domestic or international law. They cannot hire or form partnerships with Singaporean lawyers to practice local law in Singapore. In September 1997, however, the Government appointed a committee chaired by the Attorney-General to study the possibility of allowing foreign law firms to practice local banking and corporate law in order to enhance the country's competitiveness in financial services. The report of the committee is expected during 1998. Beginning in 1997, no foreign university law degrees, with the exception of those from some British universities, are recognized for purposes of admission to practice law in Singapore.

Engineering and Architectural Services

In April 1995, Singapore amended to its law to allow engineering firms to be 100 percent foreign-owned. However, the chairman and two-thirds of the board of directors must be comprised of engineers, architects, or land surveyors registered with local professional bodies. In the case of a partnership, only registered engineers may have a beneficial interest in the capital assets and profits of the partnership, and the business of the partnership must be under control and management of a registered professional engineer which ordinarily reside in Singapore. Similar requirements apply to architectural firms.

Accounting and Tax Services

Public accountants and at least one of the partners of an accounting firm must be effectively resident

in Singapore. Only public accountants registered with the Public Accountants Board of Singapore can practice as tax consultants.

Insurance

Singapore has determined that the local insurance market is saturated; as a result, no new licenses for foreign or domestic firms seeking access to Singapore's insurance market had been issued for several years up to 1995. In 1996 and 1997, however, the Monetary Authority of Singapore (MAS) issued new licenses to two foreign-invested companies, *i.e.*, Asia Securitization and Infrastructure Assurance (ASIA) and Global Guaranty Assurance (GGA), which are specialist financial guarantee insurers deemed to fill a niche in the market as a whole. In January 1998, One U.S.-based insurance group acquired a 49 percent stake in a local insurance company. Current MAS policy is that acquisition of a domestic company by a foreign company would be permitted, but limited to a minority stake, only if the domestic company needed additional capital and/or expertise. The existing branch operations and stakes of foreign firms above the 49% limit, however, were protected under Singapore's WTO financial services offer. The reinsurance market in Singapore is open to new entrants and captive insurance licenses are available to subsidiaries of multinationals to underwrite their own risk.

Banking and Securities

The MAS has not issued any new licenses for local retail banking over the past two decades (to either foreign or domestic institutions) because it considers Singapore over-banked. As it stands, foreign penetration of the banking system of Singapore is comparatively high. Foreign banks currently hold 22 of the 34 full (local retail) banking licenses. They account for almost half of all nonbank deposits from residents, more than half of all nonbank loans to residents, 70 percent of total trade financing business in Singapore, and 60 percent of banking profits.

The Government of Singapore, however, does impose some restrictions on foreign banks. Those foreign banks that already have full licenses do not enjoy full market access--especially in the area of retail banking. Foreign banks cannot open new branch offices, freely relocate existing branches, or freely operate off-premises automated teller machines (ATMs). They are permitted to install electronic terminals at their corporate clients' premises as well as provide home banking services through telephone and personal computers. In addition, foreign banks are restricted to an aggregate 40 percent equity share in domestic banks in the full license category. Meanwhile, the MAS actively encourages the growth of the offshore banking market in which U.S. and other foreign banks have a substantial presence. Offshore banking licenses for the Asian dollar market are available to new entrants. The MAS recently raised the Singapore Dollar (SGD) lending limit for offshore banks (to Singapore-based firms) from SGD 100 to SGD 200 million.

In the securities area, foreign direct equity ownership of members of the Stock Exchange of Singapore (SES) is limited to a minority stake, although foreign firms can join the Exchange as an "international member" with 100 percent foreign equity. Two SES members have foreign equity ownership (direct and indirect) of up to 70 percent, and another eight members have foreign equity ownership of up to 49 percent. There are currently seven SES international members which are permitted to trade freely in Singapore Dollar and foreign currency-denominated SES-listed securities for both residents and non-residents. Transactions in Singapore

Dollar-denominated shares for residents, however, must exceed SGD 5 million per transaction.

OTHER BARRIERS

Singapore is well-regarded for its strong stand and track record against corruption in government and business. In international surveys, Singapore is regularly identified as among those countries with the lowest levels of corruption. When cases of corruption are uncovered, Singapore deals with them harshly, swiftly and publicly. The Prevention of Corruption Act and the Corruption (Confiscation of Benefits) Act provide the legal basis for government action by the corrupt Practices Investigation Bureau, a division of the Prime Minister's Office. These laws cover acts of corruption committed by citizens of Singapore at home and abroad.

SWITZERLAND

In 1997, the U.S. trade deficit with Switzerland was $85 million, a shift of $663 million from a $578 million surplus in 1996. U.S. merchandise exports decreased by 1 percent to $8.3 billion. Switzerland was the United States' nineteenth largest export market in 1997. Imports from Switzerland were $8.4 billion in 1997, an increase of $599 million (7.7 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Switzerland in 1996 was more than $35.7 billion, an increase of 7.2 percent from the level of U.S. FDI in 1995. U.S. FDI in Switzerland is concentrated largely in the financial, wholesale, and manufacturing sectors.

Since the rejection of the European Economic Area (EEA) Treaty by the Swiss electorate at the end of 1992, the Swiss government has sought to reduce potential discrimination against Swiss products by EU countries through bilateral sectoral negotiations with the EU. The negotiations encompass seven sectors: road transport and civil aviation, freedom of movement for persons, research, public procurement markets, agriculture and dismantling technical barriers to trade. The negotiations have been stalled on the issue of land transport, specifically, over the fee that Switzerland will charge EU trucks to transit the country. These negotiations are continuing in 1998, and there are signs that an agreement will be reached. Any eventual deal with the EU could cause collateral damage to U.S. interests in some of the areas under negotiation. This phenomenon has already been seen in cases where Switzerland has adopted EU standards and regulations.

IMPORT POLICIES

According to the Organization for Economic Cooperation and Development (OECD), Swiss farmers are one of the most highly protected producer groups in the world. Switzerland is self-sufficient in pork, dairy and other agricultural commodities, but imports approximately $6 billion in agricultural products annually, accounting for over 40 percent of total food consumption. The U.S. share of the agricultural import market is 5.3 percent, which makes the U.S. the sixth most important exporter of agricultural goods to Switzerland and the largest outside the EU.

Switzerland is a relatively difficult market for many U.S. products to enter because of the high tariffs on agricultural products and preferential tariff rates for other countries, such as members of the European Union. It is not clear if these special tariff rates fully conform to World Trade Organization (WTO) rules, since numerous agricultural products are excluded from the arrangements. It is particularly difficult to export prepackaged food products because of the Swiss customs practice of charging tariffs on the gross weight of imports (including packaging).

Administration of agricultural tariff-rate quotas has also presented problems for U.S. exports because Swiss regulations often allocate the quotas to importers that purchase domestic products. This requirement has increased the level of protection for domestic producers and in some cases, such as potato products, has meant that it was not possible for U.S. exporters to ship under the tariff-rate quotas.

Switzerland

Switzerland is one of the signatories of the Information Technology Agreement of 1997, which eliminates tariffs on over $500 billion worth of world trade in computers, telecommunications equipment, semiconductors, and other information technology products. Switzerland will eliminate tariffs on all ITA products by the year 2000.

Standards and Product Labeling

Swiss technical standards and testing requirements for such key products as automobiles have long been an expensive and difficult hurdle for foreign suppliers. In 1995, Switzerland adopted automobile standards modeled after those of the EU. As a result, cars made in the EU can now enter the Swiss market without additional testing. This development threatened to put U.S. manufacturers at a competitive disadvantage. As a result of action by the United States, Switzerland agreed that U.S.-made cars imported directly by individuals can be registered with only minimal modification and testing. However, the United States is still seeking complete parity with the favorable access now enjoyed by EU models and is encouraging the Swiss government to recognize U.S. auto standards and test results.

Genetically engineered food products from the U.S., such as genetically modified corn and soybeans, are subject to a relatively slow approval process and face strong opposition from Swiss consumer groups and retail organizations. Approval has generally been slower than in the United States and European Union, which has led to situations in which products approved elsewhere were banned in Switzerland. A shipment of soybean meal was seized in December 1996 because it contained genetically engineered soybeans and was only released after Swiss officials approved the soybean. More recently, the slow approval of genetically engineered corn from the U.S. has raised significant uncertainty about importing U.S. products containing corn or corn by-products, although the situation has improved with the approval of Novartis Bt corn in January 1998. Once approved, genetically engineered food products are subject to strict labeling requirements.

Swiss implementation regulations for many agricultural products is leading to some of the same problems in Switzerland that U.S. exports face the EU. Certification of pet food continues to be a problem for U.S. exports. Although the problem for pet food containing poultry was resolved in 1997, the problem with pet food containing beef continues.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Switzerland has one of the strongest regimes in the world for the protection of intellectual property rights and has shown a willingness to enforce its laws effectively. A 1993 copyright law stiffened penalties for the illegal copying and distribution of video cassettes. While some illegal importation and copying may still occur, video piracy appears to have been driven entirely underground and does not have a significant market impact. Software piracy was a problem in the early 1990s, but a large and well publicized corporate raid in 1993 appeared to have made a significant dent in corporate copying. A public information campaign waged over the last year by the Business Software Alliance (software trade association) and aimed at small and medium-sized businesses appears also to have reduced the problem. Industry sources estimated lost sales due to software piracy at $121 million in 1996.

SERVICES BARRIERS

U.S. airlines are prohibited from providing ground handling services to third-country airlines at Zurich airport. The United States is pressing the Swiss authorities to eliminate this barrier.

Telecommunications and information services have been dominated by the Swiss Post, Telephone, and Telegram Administration's statutory monopoly over most of the telecommunications market. In 1996, parliament approved a reform package which is similar to current European Union initiatives. The new legislation ends much of the PTT monopoly. We hope that the new communication commission implements the new legislation in a way that gives private firms equal access and opportunity in the Swiss telecom market. In the WTO negotiations on basic telecommunications services, Switzerland made commitments on all basic telecom services, subject to legislative approval. It also adopted the reference paper on regulatory commitments associated with the WTO Agreement.

ANTICOMPETITIVE PRACTICES

There has been a very high degree of cartellization in the Swiss economy. A new law came into force on July 1, 1996, which deals much more harshly with cartels and similar associations than did the previous law. While cartels will still be permitted under certain limited circumstances (as they are in many countries), it should now be much more difficult for companies to justify to the authorities their continuation. The newly established competition commission has thus far only handed down a few decisions so it is too early to judge how quickly or extensively the cartel situation in Switzerland will change. The existence of cartels likely does hinder some U.S. exports to Switzerland.

TAIWAN

In 1997, the United States' trade deficit with Taiwan reached $12.2 billion, up $738 million from 1996. U.S. exports in 1997 were $20.4 billion, up 10.7% from the previous year. U.S. imports from Taiwan were $32.6 billion, up 9.1 percent. Taiwan is currently the 7th largest trading partner of the United States.

The stock of U.S. foreign direct investment (FDI) in Taiwan in 1996 was $4.5 billion, an increase of 7.1 percent from 1995. U.S. FDI in Taiwan is concentrated largely in the manufacturing, banking, and wholesale sectors.

Overview

During the past year, significant progress was made with Taiwan on market access issues involving computers, telecommunications, government procurement, and the protection of intellectual property in some areas such a sound recordings.

Bilateral negotiations have just been completed in the context of Taiwan's negotiations to accede to the World Trade Organization (WTO). In these WTO-related talks, significant progress has been made to open or expand Taiwan's market for U.S. agricultural products, services (especially construction and financial services), beer, wine and spirits, automobiles, and a wide range of other U.S. products. Significant trade issues remain, however, as described in the following paragraphs.

IMPORT POLICIES

Tariffs

Many agricultural tariffs were cut as part of Taiwan's 1995 unilateral tariff reductions. U.S. exporters nevertheless consider that many of the tariff reductions were not deep enough to have real commercial effect, and that the present tariff structure on these items, as well as other agricultural tariffs, continue to be a significant barrier to exports. Some examples include: fresh fruits (40-50 percent tariff), processed vegetables, including vegetable juices (35-40 percent), and sunflower seeds and oil (21-24 percent). Many of these tariffs will be lowered in the context of the WTO bilateral agreement.

In addition, U.S. agricultural exporters continue to report instances in which the customs authorities on Taiwan have reclassified import items to lines with higher tariffs, often after years of trade history. This practice is most prominent in agricultural commodities, such as mixed feed stuffs, tallow and grease, and intermediate ingredients. Such a practice negates some of Taiwan's tariff cuts.

In 1997, Taiwan authorities proposed legislation that will cut tariffs on 1,130 items. It is expected that the legislation will pass and go into effect in 1998. The proposed cuts include many items of concern to the United States, such as buses, agricultural products, fruits and vegetables, and camera film.

Under the Information Technology Agreement (ITA), Taiwan has also agreed to phase out tariffs on 289

information technology products. The first tranche of ITA-related cuts was implemented on a temporary basis on July 1, 1997 under Administrative Order. A second tranche went into effect on January 1, 1998. While the vast majority of tariffs on these products will be phased out by the year 2000, for some products reductions will not be completed until 2002. The Administrative order will have to renewed annually until Taiwan enacts permanent reductions in connection with accession to the WTO.

Licensing and Other Restrictions

Taiwan has greatly reduced the number of items requiring import licenses. The share of import categories exempt from control was increased from 34 to 85 percent with the introduction of a "negative list" in July 1994 and its expansion in 1995, at present, there are 878 categories that require approval from the relevant authorities in order to clear customs. Another 287 require pro-forma notarization from local banks or import permits from the board of foreign trade (BOFT).

Taiwan restricts the importation of 264 items, which may not be imported without special permission from the Taiwan authorities. Included in this category are agricultural items that can only be imported pending the agricultural authorities' prior approval. This amounts to a *de facto* ban on imports of many of these products since import approval is normally not granted. Quarantine requirements also block imports of certain plant and animal products. Items under *de facto* bans include chicken (fresh and frozen), certain cuts of pork, peanuts, and adzuki beans. Rice and rice products are considered to be exceptional items requiring approval from Taiwan's provincial food bureau. Imports of animal offal (beef, pork, and poultry), sugar, and selected dairy products are banned. Taiwan has agreed to remove these bans upon accession to the WTO. Some market access for U.S. products in this group will be provided in the interim.
In addition to these restrictions on agricultural items, the Council of Agriculture also implements what amounts to a *de facto* ban on the importation of fishing boats (including sport fishing boats), which has frustrated the export efforts of several U.S. firms. For some products where licenses are required, the importer may be required first to obtain the authorization of numerous agencies such as Taiwan's Department of Health (DOH) for medical equipment, the Council of Agriculture for certain fertilizers, and the Department of Environmental Protection for waste and scrap copper, aluminum, lead, and zinc. Often these additional approvals and documentary requirements add to the administrative burdens of importing the products into Taiwan or make importation effectively impossible for small exporters without the appropriate connections with the relevant authorities.

Medical Devices and Pharmaceuticals

Other than WTO accession issues, medical devices and pharmaceuticals have been one of the most contentious trade issues between the United States and Taiwan over the last two years. Taiwan has declared both the medical device and pharmaceutical sectors as areas warranting priority for development. Favorable measures have been introduced by Taiwan agencies to promote growth and technological development in these areas.

Medical Devices:

The Taiwan market has been an important one for the U.S. medical device industry. Taiwan is the third largest emerging market in Asia for U.S. medical device industry exports. At present, the U.S. medical device industry exports approximately $150 million worth of product to Taiwan and commands a 40 percent market share.

Discriminatory practices now threaten about two-thirds of U.S. exports, and prospects for substantial growth.

Because Taiwan maintains a national health insurance system with universal coverage, it acts effectively as the exclusive buyer for all medical device products used in Taiwan. As the sole effective buyer, Taiwan authorities can (and do) set prices for all medical devices.

On September 30, 1996, the United States and Taiwan concluded an agreement on medical device pricing with specific measures to be achieved regarding national treatment, transparency, openness, predictability, and functionality. Taiwan has thus far not taken adequate measures to establish differentiated pricing for devices based on the relative value to technology (the "functionality" measure). Significant differences exist between the functionality of imported products and those made in Taiwan.

In December 1997, Taiwan's National Health Insurance Bureau (NHIB) introduced a diagnostic-related group case payment system for medical device products. This system assigns "generic" pricing, counter to the principle of creating value-based pricing for devices as stated in the agreement. This unexpected change in reimbursement systems was accompanied by drastic price cuts for foreign manufactured orthopedic products to levels nearly identical to those for domestically produced orthopedic products, thus eliminating the distinction between products based on quality and relative value.

The change to generic rather than quality pricing for medical devices threatens to reduce dramatically the market for advanced foreign medical device products, at the same time that it provides ample profits to local Taiwan companies for development of more advanced medical devices. USTR is requesting that Taiwan adopt special measures that will recognize the value of the technology embodied in U.S. and other foreign medical devices -- especially in orthopedic knee and hip implants.

<u>Pharmaceuticals:</u>

The U.S. pharmaceutical industry faces price controls similar to those encountered by U.S. medical device manufacturers. Under Taiwan's pricing system, producers of "generic" pharmaceuticals are reimbursed at a set percentage of the price set for a proprietary drug. This system discriminates against patented and brand-name pharmaceuticals that are typically imported, by, providing a higher rate of return on "generic" products that are produced in Taiwan. Since Taiwan producers do not have to pay for research, development and testing (but are entitled to a high price), they can offer "unofficial" discounts on their products. Although Taiwan authorities have addressed the situations in which generic producers received the same price as producers of patented pharmaceuticals, price differentials between products remain narrow.

Taiwan's Ministry of Health requires registration materials which are duplicative and onerous. The Ministry will also not grant foreign pharmaceutical companies regulatory approval to manufacture or market more than one brand of a drug with the same active ingredient and dosage form. Lastly, for all but new chemical entities, pharmaceutical companies are still not allowed to import drugs which are produced using multi-site sourcing. Regulatory burdens imposed by the Ministry on pharmaceuticals, however, have been significantly reduced over the last year.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Taiwan

Although Taiwan has enacted laws designed to improve intellectual property protection, enforcement of those laws remains problematic. Export of pirated products is a growing problem as Customs authorities in the United States and other countries have seized shipments of pirated CDs, CD-ROMs and other material. In 1997, U.S. Customs seizures of pirated products from Taiwan increased five-fold so that the value of seized pirated product from Taiwan was the second largest after China. We have also received more complaints about the export of infringing components for video games to mainland China for assembly and export.

In addition, owners of U.S. patents and trademarks have experienced difficulty in obtaining and enforcing rights in Taiwan. The general lack of transparency and predictability in the system for obtaining trademarks is a continuing problem. In addition, we are concerned that Taiwan authorities are either permitting or acquiescing in abuses of Taiwan's patent law which impede or prevent foreign right owners from enforcing their patent rights.

Standards, Testing, Labeling, and Certification

Industrial products (such as air-conditioning and refrigeration equipment) are required to undergo testing to verify energy efficiency and capacity before clearing customs. Recent efforts to enforce compliance of some imported products with Taiwan standards have resulted in long delays at customs for some U.S. products entering the market, as testing facilities are inadequate and testing procedures slow and inefficient.

The most prevalent restrictive standards and testing requirements exist for agricultural goods. Taiwan's lack of an internationally based set of pesticide tolerance levels for imported fruits and vegetables sometimes impedes trade in these products. In addition, imported agricultural goods are routinely tested while domestic products are not as closely monitored or tested. Similarly, stringent microbiological and chemical residue testing of imported food products, such as turkey, pork, and game meat, limits imports. On a related issue, Taiwan often fails to notify its trading partners of changes in sanitary and phytosanitary (SPS) import regulations, despite pledges to abide by international norms as embodied in the WTO Agreement on Application of SPS Measures. Standards on preservatives for soft drinks preclude the import of certain beverages.

Registration procedures for imports of pharmaceuticals, medical devices, and cosmetics are both complex and time consuming, and have been the subject of a number of complaints by U.S. firms. Foreign medical device manufacturers must also re-register second or third generation versions of previously approved products, and the Taiwan Ministry of Health also requires the registration of individual products instead of entire product lines. Pharmaceutical companies claim that clinical trial requirements in Taiwan for drugs that have been approved in other major markets add 2-3 years to the approval time. All of these requirements limit U.S. firms' access to Taiwan's market.

In 1997, the Taiwan authorities promulgated new electromagnetic compatibility (EMC) standards for computer and other electronic goods. Bilateral discussions led to a grace period prior to implementation of the new rules. The grace period allowed affected U. S. firms to comply without a disruption of U.S. computer exports to Taiwan.

GOVERNMENT PROCUREMENT

U.S. and foreign construction companies have encountered very substantial problems in performing government

contracts in Taiwan. These problems are severe enough to be considered trade barriers.

The most common pattern of difficulty consists of frequent and unreasonable change orders introduced during performance of the contract. Performance bonds are forfeited and contracts canceled when foreign construction companies are unwilling to accommodate substantially increased costs within the originally agreed payment. Lack of timely and effective arbitration procedures prevent satisfactory resolution of contract disputes. Some major international contractors will no longer undertake significant contracts in Taiwan.

U.S. industry has also been hindered in bidding on major projects by nontransparent procurement procedures, which include the use of invisible ceiling prices on bid tenders and unlimited potential damages and contingent liability requirements which are inconsistent with international practices. Other problems include: expensive bond requirements, short lead times on major tenders, non-transparent and lengthy warranty provisions, unclear payment schedules, and pre-qualification requirements which limit experience to similar projects in Taiwan and disqualify related overseas experience. Additional limitations include a requirement that foreign firms have a local construction license or else establish a local subsidiary in order to bid on public projects. Possible exceptions to current laws involve construction services requiring new technology or cases where foreign firms provide consulting and other services.

In connection with its accession to the WTO, Taiwan has agreed to join the Agreement on Government Procurement (GPA). Adherence to the GPA's procedures should improve the transparency of the bid process on major government procurement contracts. In addition, Taiwan has agreed to new dispute settlement procedures on major government contracts. Legislation establishing new procurement rules and a new dispute settlement system, operated by the Taiwan authorities, is now pending in the Legislative Yuan.

THAILAND

In 1997 the U.S. trade deficit with Thailand rose to $5.2 billion, up from $4.1 billion in 1996. U.S. merchandise exports to Thailand were $7.4 billion, up $146 million from the level of exports in 1996. U.S. merchandise imports from Thailand were $12.6 billion, up $1.2 billion from 1996.

The stock of U.S. foreign direct investment, calculated on a historical-cost basis, was $5.3 billion in 1996, an increase of $939 million (21.8 percent) from the level in 1995.

IMPORT POLICIES

Tariffs

In the Thai fiscal year (TFY) 1997 (October 1996 to September 1997), the average Thai tariff was 5.5 percent, calculated as a ratio of import duties collected to total imports arriving in Thailand (including imports of goods on which tariffs were waived as part of the Royal Thai Government's (RTG) program of investment incentives. This compares with a figure of 6.7 percent in TFY 1996. The difference between these figures reflects the continuation of Thailand's tariff reduction policies, designed to bring them into line with their ASEAN Free Trade Area (AFTA) and World Trade Organization (WTO) obligations. The average trade weighted tariff for dutiable items was 15.2 percent in 1997, down from 17.01 percent in 1996-97. Tariffs accounted for 11.9 percent of government revenues during TFY 1997, compared to 14.9 percent in 1996.

Thailand is continuing with tariff reform begun at the end of 1994; although progress was impeded during 1997 due to shortfall in government revenue. The total number of tariff rate bands has been reduced from 39 to 6, with the following rates: zero percent for certain goods such as medical equipment and fertilizer; 1 percent for raw materials, electronic components, and vehicles for international transport; 5 percent for primary and capital goods, such as machinery, tools, and computers; 10 percent for intermediate goods; 20 percent for instant print film and certain finished products; and 30 percent for goods "needing special protection," including items such as fabrics, clothing, refrigerators, and air conditioners. Since 1997, tariff rates on almost 4,000 items were reduced. Overall, duties that had ranged between 30 to 60 percent were cut to between 1 and 45 percent.

During 1997, Thailand increased tariffs, surcharges, and excise taxes on a number of items. Tariffs on automobiles were increased to 80 percent, and tariffs for perfume and cosmetics, some leather products, crystal, jewelry, cameras, watches and clocks, pens, lighters, and spectacles are currently applied at 30 percent. In addition, a new surcharge equivalent to 10 percent of the applicable tariff is levied on imports, except those items on which the customs duty is less than 5 percent. In addition to automobiles, auto parts, alcoholic beverages, certain agricultural products and other sensitive products are not included in the current tariff reform program.

Tariffs on petrochemical products are gradually being reduced. In January 1998, the petrochemical tariff was reviewed, and reductions were affected as follows: petrochemicals from 27 to 23.5 percent, plastic pellets from 40.5 to 30 percent, and other plastic products from 40.5 to 35.25 percent. Another review is expected during mid-1998, when further reductions to 20 percent and 30 percent for petrochemicals and plastic products,

respectively, are planned.

There are anomalies in the Thai tariff schedules. In some cases, import duties on unfinished materials have been higher than on finished products. Most of these problems are to be addressed through Thailand's adoption of the tariff codes and nomenclature of the Harmonized System, a move being undertaken by the Thai Government.

Agriculture and Food Products

Import duties on high-value fresh and processed foods remain the main constraint on U.S. exports of these products. With the exceptions of wine and spirits, there are no longer specific duties for most agricultural and food products, and ad valorem rates are slated to decline between 35 and 50 percent under WTO rules. Nevertheless, import duties are currently high. In particular, duties on many high-value fresh and processed food products will remain high even after the reductions of current rates by 50 percent or more under Thailand's Uruguay Round schedule. U.S. agriculture exporters are concerned that Thai tariffs on agriculture upon full implementation of Uruguay Round commitments will still remain relatively high, with bound rates on many products, such as imported frozen processed potatoes/french fries, in the 30 to 40 percent range by the year 2004.

Thailand's tariff-rate quotas for a selected number of agricultural products were adjusted in 1996. In some cases, Thailand has lowered applied tariffs on agricultural and food products below its WTO commitments. For example, in October 1996 Thailand eliminated the quota for soybeans and reduced tariffs on soybean meal, when specific domestic purchase requirements were met. For corn, however, Thailand continues to require that imports arrive between February and June. Corn is also subject to a tariff-rate quota based on domestic wholesale corn prices. Rice is subject to a "safeguard" on importation and price levels, pursuant to WTO rules.

Phytosanitary standards continue to a source of concern for the United States. After years of effort, the United States in 1995 was able to obtain Thai approval for the importation of fresh citrus fruit from Florida and California. Since then, however, efforts to obtain approval for citrus from Texas and Arizona have been underway, but have stalled for unsubstantiated technical reasons.

In addition to high tariffs, Thailand maintains substantial taxes on imported wines. These include excise, value-added and municipal taxes, which are assessed through a complex equation. The excise tax for wine was doubled from 20 to 40 percent in 1996, raised to 50 percent in 1997, and increased to 55 percent in early 1998. A case of wine with a CIF invoice value of $100 invoiced now costs more than $400 prior to retail mark-up.

Quantitative Restrictions and Import Licensing

Thailand is required to conform its import license procedures to WTO obligations. However, progress to date has not been only incremental. Import licenses are still required for 42 categories of items, 23 of which are agricultural. Licenses are required for many raw materials, petroleum, industrial, textile, and agricultural items. All items of food for human consumption require licenses. U.S. companies are concerned that import licenses can be used to protect unproductive local industries and to encourage greater domestic production. Ten categories of items for which import licenses are not required must, nevertheless, comply with ministerial

regulations, and are subject to administrative fees, or certificates of origin requirements.

Customs Barriers

The Thai Customs Department enjoys an unusual degree of autonomy, and some of its practices appear to be arbitrary and irregular. The current fiscal crisis has added to the influence of this revenue-generating department, making implementation of some newly promulgated reforms difficult. The Customs Department may use the highest previously invoiced price of any product imported from any given country as a check price, disregarding actual invoiced values in favor of this check price to assess import value. This practice often results in over-valuation. It also fails to take into account differences in quality and seasonal fluctuations in prices of agricultural goods. Many foreign and Thai importers have stated that Customs Department procedures are nontransparent, arbitrary and inconsistently applied. Demands for unrecorded cash "facilitation fees" throughout various steps in the clearance procedure are common.

During 1997, at the urging of the international business and diplomatic community, the Thai Government undertook to enact some customs reforms. Although arbitrary customs valuation procedures continue to be a barrier to U.S. exports, there are signs of improvement. The Thai Customs Department has agreed to use the Harmonized System, and has begun the installation of an electronic data interchange (EDI) system. A training program for personnel to administer EDI is under way. Administrative responsibility for the EDI rests with a semi-public corporation, the Trade Siam Company, which was incorporated during the closing months of 1997. Full and effective implementation of EDI could reduce the possibility of inconsistent or arbitrary customs-related abuses and opportunities for procedural irregularities.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

The Thai Food and Drug Administration (TFDA) requires standards, testing, labeling, and certification permits for the importation of all food and pharmaceutical products. This requirement can restrict trade by raising costs, lengthening the process of bringing a product to market, and additional regulatory obstacles associated with occasional demands for the disclosure of proprietary ingredient information.

Food licenses cost about $300 and must be renewed every three years. Pharmaceutical import licenses are expensive and must be renewed every year. Licenses for sample food products imported in bulk, and sealed packaged foods are also costly. Pharmaceuticals must be registered, and must be inspected and analyzed, with additional fees assessed at each step. The process can take more than three months to complete.

Effective November 1997, the registration and inspection process for pharmaceuticals may be expedited upon application and payment of a fee which is determined by the type of product under consideration. A new brand-name pharmaceutical costs 40,000 baht for each application. A request to expedite a generic drug costs 2,500 baht, and a traditional medicine costs 1,500 baht. Some TFDA procedures have been streamlined, but delays of up to a year have occurred. All processed foods must be accompanied by a detailed list of ingredients and a manufacturing process description. U.S. manufacturers are reluctant to disclose trade secrets and, as a result, some U.S. products are not marketed in Thailand for this reason.

GOVERNMENT PROCUREMENT

Thailand

In 1995, Thailand approved a policy requiring countertrade on government procurement contracts valued at more than 500 million baht, on a case by case basis. This threshold was increased to a one billion baht in April 1996. A counter purchase of Thai commodities valued at 20 to 50 percent of the principal contract may be required. As part of a countertrade deal, Thailand may also specify markets into which commodities may not be sold in order to minimize adverse effects in markets where Thai commodities already enjoy significant access. The countertrade requirement is a disadvantage to U.S. suppliers, and the provision for a case-by-case approach is nontransparent and unnecessarily burdensome.

EXPORT SUBSIDIES

Thailand maintains several programs that benefit manufactured products or processed agricultural products and may constitute export subsidies. These include subsidized credit on some government-to-government sales of Thai rice (agreed on a case-by-case basis), preferential financing for exporters in the form of packing credits, tax certificates for rebates of packing credits, and rebates of taxes and import duties for products intended for re-export. In September 1993 Thailand established an Export-Import Bank which administers some of these programs, particularly that of packing credits (usually charging interest at LIBOR plus 3.0 to 3.5 percent). In reaction to the current economic climate in Thailand, the packing credit program is being expanded for the period between October 22, 1997 through September 18, 1998. The Thai Government has approved additional packing credit loans through commercial banks totaling $500 million (at LIBOR plus 3.0 to 3.5 percent). The Thai Ex-Im bank offers a 9.0 to 9.5 percent interest rate (LIBOR plus one percent), quoted and repaid in U.S. dollars, but paid out in baht.

LACK OF INTELLECTUAL PROPERTY RIGHTS PROTECTION

Despite the passage of significant legislation protecting the rights of copyright, patent, and trademark holders in Thailand, enforcement of intellectual property rights continues to be one of the leading trade issues between the United States and Thailand. Problems remain with substantive aspects of the Thai copyright law and the enforcement of existing legislation, and large quantities of infringing goods continue to be sold at the retail level. Since November 1994, Thailand has been on the Special 301 "watch list." In September 1996, the Thai parliament passed a long-awaited law establishing an intellectual property and international trade court, which began operations in December 1997. The IPR court is intended to provide a “one-stop shop” which should make it possible to obtain a warrant, conduct a raid, and arrest and sentence an infringer in one day. Appeals procedures at the trademark and patent offices have also been streamlined. Although allegations of irregularities continue to undermine confidence in local police authorities, cooperation and coordination among enforcement officials has improved as a result of the creation of an interagency committee on the suppression of IPR piracy. Seizures of infringing materials in 1997 more than tripled over the previous year (from 168,000 to 568,000), while arrests grew by 48 percent, according to Thai Ministry of Commerce statistics.

Patents

In September 1992, Thai legislation extended protection to pharmaceuticals and agricultural machinery and increased patent protection to 20 years. In 1993, following complaints from private industry about inadequacies in the law, Thailand established administrative measures to provide a degree of market exclusivity for pharmaceutical products not eligible for protection under the 1992 law ("pipeline protection"), narrowed

the scope of compulsory licensing provisions, and restricted the authority of the pharmaceutical patent review board. These measures, however, are not fully consistent with the growing international consensus on protecting pharmaceutical products. For example, the market exclusivity period is only five to six years.

Although the Thai Government recognizes importation as "working the patent," this policy position is not uniformly understood by Thai officials. The Thai Government has long promised to amend its patent law to comply with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), including the abolition of the Pharmaceutical Review Board. Due to domestic opposition and frequent changes of government, it has failed to do so. The Thai Government also refuses to exercise discretionary power to amend pending patent applications under the 1979 law. Such action would provide enhanced protection under the 1992 patent law and would permit coverage of the pharmaceutical product, as well as the production process.

Copyright

Thailand's new copyright law, which became effective in March 1995, brought Thailand into closer conformity with international standards under the TRIPS agreement and the Bern Convention (Paris Act). The legislation also increased fines and lengths of sentences for offenders. With active support from U.S. industry associations, the Thai police have conducted scores of raids on pirates in recent years. The incidence of pirated materials in the marketplace has fallen, and sales of legitimate audio cassettes, video cassettes, and software are growing.

Nonetheless, the vagueness of certain provisions of the law, particularly regarding decompilation and government use of software, continue to be areas of concern. The law does not clearly define what acts constitute infringement of software. Moreover, judicial proceedings are slow and the fines actually imposed are too light to deter offenders. Piracy in certain areas, such as CDs and CD-ROMs (containing application software), has increased since 1996. U.S. software producers estimate that piracy cost its members $86.5 million in lost sales of entertainment software and $75.5 million in business applications in 1997. U.S. motion picture exporters estimate damages to U.S. film makers at $19 million in 1997, and the recording industry estimates that piracy resulted in trade losses of $15 million in 1997. Book piracy remains to be a substantial target of pirates which is estimated to have cost U.S. publishers $32 million in 1997.

Trademarks

Amendments to the trademark law enacted in 1992 provide higher penalties for infringement and extend protection to services, certification, and collective marks. While these amendments seem to have created a viable legal framework and have led to some improvements in enforcement, trademark infringement remains a serious problem. U.S. companies with an established presence in Thailand and a record of sustained cooperation with Thai law enforcement officials have had some success in defending trademarks, but the process remains time-consuming and expensive. There are also concerns with respect to the trademark appeals board, whose actions, often lack transparency and consistency. Trademark infringers are also using Thailand as a platform to export counterfeit goods, such as apparel and watches.

SERVICES BARRIERS

Thailand

Telecommunications Services

Telecommunications services in Thailand are state-controlled, although the government has allowed increased private sector participation since 1989. Currently, at least two U.S. companies operate through minority-owned affiliates in Thailand.

The communications authority of Thailand imposes equity and revenue sharing requirements on international value added network service (IVANS) providers. The privatization of the two existing state-owned telephone companies was part of a telecommunications master plan, which was approved in late 1997. In addition, the Thai Government's agreement with the IMF contains a commitment to accelerate the privatization of state holdings in the telecommunications sector. As a first step, the two state telecommunication operators are expected to form strategic alliances with foreign operators, in preparation for liberalization of the sector in line with the country's WTO commitments.

Thailand's WTO basic telecommunications commitments cover only facilities-based services. Market access provisions become effective in 2006, predicated on passage of legislation to permit broader competition. Regulatory commitments are subject to the same conditions. Thailand committed in the WTO to permit foreign equity participation in this sector only up to 20 percent.

Accounting Services

Foreign accountants are not allowed to obtain licenses in Thailand. Consequently, the rendering of accounting services is essentially reserved to Thai nationals with foreign accountants serving only as "business consultants." Also, foreign firms may not hold more than 49 percent equity in a Thai accounting firm.

Legal Services

The Alien Business Law prohibits foreign equity participation in a law firm from exceeding 49 percent; however, U.S. investments are exempted from this restriction under the U.S.-Thai Treaty of Amity. Therefore, while U.S. investors may own law firms, U.S. citizens may not provide services in Thailand. The Thai Government admits only Thai citizens to practice law and, since 1973, prohibits foreign lawyers from providing legal or litigation services in Thailand (with the exception of those non-citizens that immigrated and were "grandfathered").

Construction, Architectural and Engineering Services

Foreign construction firms must be registered and establish a commercial presence in Thailand. The Thai Government regulates the billing rates of foreign architectural, engineering and construction firms (*e.g.*, a ceiling applies to billing rates of foreign firms). There is a nationality requirement to be licensed as an architect or engineer in Thailand; however, U.S. firms receive certain preferences under the U.S.-Thai Treaty of Amity.

Financial Services

Under a 1979 Thai law, aliens are forbidden to engage in the brokerage business. Foreign ownership of Thai finance and credit firms is limited to 25 percent for companies formed after the law was passed, and 40 percent for those formed before.

Thai law and regulations also limit foreign equity in new local insurance firms to 25 percent or less. Although the Thai government has pledged to eventually raise the limit to 49 percent, Thailand did not commit to do so in the WTO financial services negotiations.

The Thai government did make significant commitments to liberalize the banking industry in the WTO Financial Services negotiations, however. Foreigners are permitted to own up to 100 percent of Thai banks and finance companies for 10 years, and then will only have to reduce toward a floor of 49 percent as they add new capital. Partly because of the regional financial crisis, the Thai government is encouraging foreign banks to assist in the recapitalization of Thai financial institutions by taking large equity positions in them. Already, one U.S. insurance firm has taken a controlling interest in a Thai finance company, and U.S. banks have shown interest in substantial equity participation in Thai banks.

Foreign banks are still disadvantaged in a number of ways, notably limits on branching. Although foreign banks may operate an on-site ATM and take part in a local ATM network, they may not participate in the nationwide ATM network without the approval of domestic Thai banks. Foreign banks must maintain minimum capital funds of $5 million invested in low yield government securities, or directly deposited in the bank of Thailand. The number of expatriate management personnel is limited to six in branches and two in Bangkok International Banking Facilities (BIBFs).

INVESTMENT BARRIERS

Upon exchange of the instruments of ratification in December 1997, a new tax treaty between the United States and Thailand entered into force. Smaller U.S. firms, in particular, had been disadvantaged by the lack of a reciprocal tax agreement between the two countries. The new treaty provides for the elimination of double taxation and gives U.S. firms tax treatment equivalent to that enjoyed by Thailand's other tax treaty partners.

The Thai cabinet has indicated it may revise the current (1972) alien business law, and to replace it with a new law during 1998. The old law restricts aliens from holding a range of occupations in Thailand. The new law is expected to reduce these restrictions and to create two categories of restricted occupations. The first includes those occupations which exploit Thai natural resources or are concerned with national security. The second category, which is more likely to constitute a barrier to U.S. business and investment, includes jobs in which the Thai are not competitive with foreigners but which they wish to protect, including farming, handicrafts, transportation, and construction. Foreigners are expected to be permitted to file for exceptions to these rules.

The new law would also create a range of businesses in which foreigners would be permitted up to 49 percent ownership, to include many kinds of service-sector operations. A provision will be tabled for allowing specific businesses to be added or deleted from this list every four years, by a committee designated by the Ministry of Commerce.

Trade-Related Investment Measures

Thailand

Thailand has notified to the WTO certain measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMs). The measures deal with local requirements in various sectors such as automobiles, engines and components, television picture tubes, milk/milk products, aluminum sheeting, and others. Proper notification allows developing-county WTO Members to maintain such measures for a five-year transitional period after entry into force of the WTO. Thailand therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO Members meet these obligations.

OTHER BARRIERS

Several government-controlled firms are protected from foreign competition in Thailand through equity ownership limits, operating approval and other regulatory measures. However, the Thai Government's 1997 stabilization agreement with the IMF contains a commitment to accelerate the privatization of state holdings in the areas of energy, telecommunications, and transportation.

The current economic crisis has led to a “Buy Thai” campaign, which is intended to promote domestic production or locally owned and operated businesses. For example, recent procurement guidelines issued by the Ministry of Public Health include instructions for government-controlled hospitals and clinics to remove foreign-made pharmaceuticals from their formularies, or lists of drugs approved for purchase. This effectively denies foreign firms a large proportion of the Thai market for medicines. This program is expected to gather momentum throughout 1998, as the devalued baht makes imports prohibitively expensive. The preference for "Thai-owned" businesses is of great concern to foreign investors.

Allegations of impropriety in government procurement and in the Customs Department, two areas affecting U.S. business, are common. The new constitution, passed in October 1997, contains a chapter on corruption in government. The status and powers of the Office of the Counter Corruption Commission (OCCC) have been enhanced, giving it independence from all branches of government. The members of the new Commission serve for a term of nine years with no renewal, and report to their own chairman. Persons holding high political offices, and members of their immediate families, are now required to list their assets and liabilities before taking office and upon leaving office.

TURKEY

In 1997, the U.S. trade surplus with Turkey was $1.4 billion, an increase of $312 million from 1996. U.S. exports to Turkey during 1997 totaled $3.5 billion, an increase of $653 million (22.6 percent) from the level of exports in 1996. U.S. imports were $2.1 billion, an increase of $342 million (19.2 percent) from 1996.

The stock of U.S. foreign direct investment in Turkey was $1.0 billion in 1996, 8.1 percent more than in 1995. U.S. direct investment in Turkey is largely concentrated in the manufacturing, petroleum, and wholesale sectors.

IMPORT POLICIES

Tariffs and Quantitative Restrictions

The introduction of Turkey's customs union with the European Union (EU) in 1996 resulted in substantial revisions to Turkey's tariff regime. Turkey now applies the EU's common external customs tariff for third country (including U.S.) imports, and imposes no duty on non-agricultural items from EU and European Free Trade Association (EFTA) countries. Turkey eliminated its mass housing fund surcharge on almost all imports except for agricultural products and used construction machinery. The weighted rate of protection for industrial products from the U.S. and other third countries dropped from 11 to 6 percent with the introduction of the customs union. Higher transitional protection for imports of sensitive goods (including automobiles, leather and ceramics) from third countries are being phased out over a five year period; a ten percent reduction in these duties in 1998 lowers the average rate of protection to 5.3 percent. By 2000, this rate is set to fall to 4 percent.

Although EU/EFTA countries have received preferential tariff treatment on industrial and agricultural products for several years, the introduction of the customs union led to a shift in Turkey's import pattern in 1996. The EU's share of total Turkish imports rose to 52.9 percent from 47.2 percent in 1995, while the share of U.S. goods fell from 10.4 percent to 7.7 percent. However, this trend appears to have reversed in 1997: in the first nine months of the year the share of U.S. goods in total imports was 9.0 percent (versus 7.8 percent in the first nine months of 1996), while EU exports accounted for 47.0 percent (versus 50.1 percent).

Turkey maintains high tariff protection on many agricultural and food products. Because of high support prices well above world levels, Turkey recently adopted high, although WTO-consistent, applied tariffs on grains and oilseeds to discourage imports and encourage consumption of local crops. Since 1996, Turkey increased its applied tariff on milling wheat (currently 45 percent), corn (35 percent), sorghum (30 percent), rice (35 percent) and sunflower seed (29 percent). The new tariffs have adversely affected U.S. exports of these products. Improved market access for U.S. bulk commodities would help the growth and modernization of Turkish livestock and poultry sectors and would reduce inflationary pressures within the Turkish economy. In late 1996, responding to an outbreak of hoof and mouth disease, Turkey imposed a "temporary" ban on cattle and beef imports. Although U.S. cattle poses no health threat to Turkish livestock, the government has failed to make good on its promise to lift the ban.

Turkey

Turkey is one of the 43 signatories of the Information Technology Agreement that will eliminate tariffs on over $500 billion of world trade in computers, telecommunications equipment, semiconductors, and other information technology products. Turkey will eliminate tariffs on all ITA products by the year 2000.

Import Licenses

The Government of Turkey requires certification that quality standards are met for importation of human and veterinary drugs and certain foodstuffs. Import certificates are necessary for most products requiring after-sales service, including telecommunications and electronic equipment and vehicles. Importers are also required to establish repair facilities in all seven regions of Turkey. Some telecommunications equipment related to radio frequencies require type approvals.

GOVERNMENT PROCUREMENT

Turkey normally follows competitive bid procedures for domestic, international, and multilateral development bank-assigned tenders. U.S. firms sometimes become frustrated over lengthy and complicated bidding/negotiating processes. Military procurements generally require an offset provision in tender specifications when the estimated tender value exceeds one million dollars.

A bilateral tax treaty between the United States and Turkey became effective in 1998. U.S. bidders for Turkish government service contracts will benefit through an exemption from a 20 percent withholding tax which made U.S. bids less competitive than those from countries with a tax treaty.

EXPORT SUBSIDIES

Turkey's generous export subsidy programs were reduced in 1995 in order to meet commitments to the EU and WTO. The government still provides cash subsidies to a limited number of agricultural exporters . Domestic producers and exporters can take advantage of a number of state programs designed to support production for domestic and export markets, including cash and credit assistance for R&D projects, environmental projects, participation in trade fairs, market research, and establishment of branch offices overseas. Exporters also benefit from export credit schemes and guarantees provided by the Turkish Export-Import Bank.

SERVICES BARRIERS

Businesses in certain sectors, particularly finance and banking, must obtain special government permission before commencing operations in Turkey.

Basic Telecommunication Services

In the recently concluded WTO negotiations on basic telecommunications services, Turkey made commitments on all such services, and will provide market access and national treatment for them as of 2006. Subsequently, however, Turkish officials have said the market for basic services could be opened to competition as early as 2002. Turkey adopted only two of the WTO Agreement's pro-competitive regulatory principles: establishment of an independent regulatory authority and public availability of licensing criteria. Turkey currently has a 49 percent foreign investment limit on telecom services.

LACK OF INTELLECTUAL PROPERTY PROTECTION

In 1995, as part of Turkey's harmonization with the EU in advance of the customs union, the Turkish parliament approved new patent, trademark, copyright and other laws, as well as Turkish acceptance of a number of multilateral intellectual property conventions. While some of these laws still require amendments to meet international standards, the laws have given Turkey an improved comprehensive legal framework for protecting intellectual property rights. However, with the exception of the patent law, enforcement of the new laws has been uneven and, on the whole, insufficient. Efforts are underway to educate businesses, consumers, judges, prosecutors and others regarding the implications of the new laws. The Turkish judicial system, however, remains overburdened and it will likely be some time before the necessary elements for a smoothly functioning system are in place.

In January 1998, the U.S. announced that, as a result of the December Special 301 "out-of-cycle" review, Turkey would remain on the Priority Watch List for failure to achieve progress on a number of benchmarks for improving protection of intellectual property. As part of this decision, the United States announced that it will not consider requests to augment Turkey's benefits under the U.S. Generalized System of Preferences until further progress is made on the benchmarks.

Copyrights

The 1995 amendments to Turkey's 1951 copyright law introduced the following improvements: (1) term of copyright protection extended from 20 to 70 years; (2) computer software protected; (3) fines increased, but not to levels sufficient to deter piracy; and (4) many previous exemptions to full copyright protection were abolished. Turkey also acceded to a number of international copyright conventions during 1995, including the Paris Act (1971) of the Berne Convention and the 1961 Rome Convention. The amended copyright law, however, did not address all of the deficiencies in Turkey's copyright regime.

Patents

The 1995 patent law replaced Turkey's nineteenth century patent law. Turkish officials insist the law is fully compatible with the WTO agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), although U.S. officials have questioned a number of provisions, including the law's broad compulsory licensing provisions and whether importation satisfies the working requirements of those provisions. The Turkish Patent Office has assured the U.S. that importation would constitute working and has promised to issue a regulation to that effect.

The new law is clearly deficient in one significant respect: coverage for pharmaceutical products and processes will not begin until 1999. This date is in accordance with Turkey's commitments to the EU for the customs union. The legislation also does not contain pipeline protection for pharmaceutical products. The Turkish Patent Institute is now accepting applications for pharmaceutical patents in accordance with the TRIPs Agreement's "mailbox" provisions. U.S. industry has also indicated that Turkey fails to protect test data submitted to the regulatory authorities to support applications for marketing approval of pharmaceutical and agricultural chemical products, as required by Article 39.3 of the TRIPs Agreement.

Trademarks

Turkey

Along with the patent law, Turkey replaced its trademark law in 1995. Here, too, it remains to be seen how effective the Turkish bureaucracy and legal system will be in controlling the spread of counterfeit foreign trademarked products.

Turkey acceded to a number of international patent and trademark conventions in 1995, including: (1) the Stockholm Act (1979) of the Paris Convention for Protection of Industrial Property, (2) the Patent Cooperation Treaty (1984), (3) the Strasbourg Agreement on International Patent Classifications, (4) the Geneva Act (1979) of the Nice Agreement on International Classification of Goods and Services, and (5) the Vienna Agreement Establishing an International Classification of Figurative Elements of Marks.

INVESTMENT BARRIERS

Turkey has a liberal investment regime in which foreign investments receive national treatment. The Treasury Undersecretariat screens foreign investment proposals, but this appears to be a routine and non-discriminatory process which does not impede investment or limit competition. Almost all areas open to the Turkish private sector are also fully open to foreign participation. Establishments in the financial and petroleum sectors require special permissions. The equity participation ratio of foreign shareholders is restricted to 20 percent in broadcasting and 49 percent in aviation, telecom services, and maritime transportation; in other sectors, 100 percent foreign ownership is permitted.

A significant barrier to foreign investment has emerged in the area of public utilities, particularly power projects: Turkey's constitution defines private investments in public utilities as "concessions" which require administrative court ("Danistay") review of contracts and forbid international arbitration. The "Danistay" approval has slowed progress on many power investments; the provisions on international arbitration could make many projects unfinanceable. The Turkish government is considering the possibility of legislation to either streamline the "Danistay's" role or eliminate the "concession" classification.

ANTICOMPETITIVE PRACTICES

As part of its customs union agreement with the EU, Turkey has pledged to adopt EU standards concerning competition and consumer protection . In 1997 a government "competition board" commenced operations, putting into force the 1994 competition law. Government monopolies in a number of areas, particularly alcohol, and telecommunications services, have been scaled back in recent years, but remain a barrier to certain U.S. products and services. Privatization and liberalization in these sectors remain slow.

UKRAINE

In 1997, the U.S. trade deficit with Ukraine was $10 million, a decrease of $103 million from the U.S. trade deficit of $113 million in 1996. U.S. merchandise exports to Ukraine were $404 million, an increase of $10 million (2.7 percent) from the level of U.S. exports to Ukraine in 1996. Ukraine was the United States' seventy-first largest export market in 1997. U.S. imports from Ukraine were $414 million in 1997, a decrease of $93 million (18.3 percent) from the level of imports in 1996.

Trade relations between the United States and Ukraine are governed by the U.S.- Ukraine Trade Agreement, signed on May 6, 1992 and approved by a resolution from the Cabinet of Ministers that same year. In the first paragraph of this bilateral agreement, both countries grant each other MFN status. Ukraine is in the process of acceding to the World Trade Organization (WTO).

IMPORT POLICIES

Most MFN tariffs in Ukraine range from zero to 30 percent, although tariffs on some items are 40-50 percent. In November 1997, Ukraine raised its tariffs on a number of agricultural products. Imports are also assessed a 20 percent VAT and, in some instances, an excise tax. In some instances, the VAT and excise tax are not applied in an even handed way to imports and domestic products. Among the products facing discriminatory taxation are agricultural products, alcoholic beverages, automobiles and electronic goods. The Cabinet of Ministers recently decreed that, as of February 1, 1998, VAT would not be applied to Russian imports in accordance with the terms of the Russian-Ukrainian Agreement on Free Trade and agreements reached by the two presidents during their meeting on November 16, 1997. Rather than basing customs levies and excise duties on the invoiced value of a product, the Ukrainians have begun applying minimum customs duties to certain products. Moreover, according to U.S. exporters, the minimum values are tied to specific marks, which can have the effect of discriminating against well-known U.S. brands.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

There are numerous problems associated with certification and licensing procedures in Ukraine: 1) lack of consistent, clearly defined standards and regulations; 2) registration schemes unfeasible for mass trade; 3) lack of procedural flexibility; 4) complex and lengthy import license procedures; 5) overly complex and expensive certification requirements; 6) uneven enforcement of requirements; and 7) inordinately high certification and licensing fees. The Ukrainian system of standardization, certification, and licensing of imported goods, because of its unpredictable processes, lack of transparency and overall complexity, has been a major hindrance to trade and investment in Ukraine and has been cited as a difficult problem by the U.S. business community there. Consumer goods and telecommunications equipment are two particularly problematic sectors. Many problems stem from certification procedures. The procedures are poorly defined and difficult to discover, and regulations are evolving constantly, often with little advance notice. For many imported products, multiple certificates are required and multiple agencies are involved in the certification process. Local, regional and municipal authorities frequently request additional documentation beyond what is mandated by the central agencies.

Sanitary and phytosanitary measures are another area of concern. Ukraine applies a range of measures which

are not based on science or supported by risk assessment and which differ substantially from international standards. The certification and approval process is lengthy, duplicative and expensive. A new food law will apparently open the way for highly subjective interpretations of food safety regulations and could be used as a device for keeping imports out of the Ukrainian market.

GOVERNMENT PROCUREMENT

Ukraine has no central public procurement law with uniform standards. Regulations are the responsibilities of individual ministries, and are often not followed in practice. Among the problems faced by foreign firms are a lack of public notice of tender rules, the failure to state tender requirements, covert preferences in tender awards, awards made subject to conditions that were not part of the original tender and the lack of an effective avenue for firms to air grievances over contract awards or an effective means to resolve disputes.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Ukraine in a member of the World Intellectual Property Organization (WIPO) and has acceded to the Paris Convention for the Protection of Industrial Property, the Universal Copyright Convention, the Berne Convention for the Protection of Literary and Artistic Works, the Madrid Agreement Concerning the International Registration of Marks, the Patent Cooperation Treaty, and the Convention for the Protection of New Varieties of Plants (UPOV), and is a signatory to the Trademark Law Treaty. With the help of appropriate legal bodies and comment from U.S. officials, Ukraine has implemented over the last five years a set of intellectual property laws that generally meets modern standards, including laws covering patents, industrial designs, trademarks, plant varieties, and copyrights. Among the gaps in the legislation is a lack of protection of U.S. copyrighted works created prior to 1973, however. The WTO TRIPs agreement (Ukraine is currently applying for WTO membership) requires protection of works created within the last 50 years as long as this work remains protected in the country of origin.

Enforcement of intellectual property legislation remains sporadic and severely inadequate. There is currently extensive piracy of U.S. video cassettes, films, music, recordings, books, and computer software in Ukraine. Television and radio outlets have been known to broadcast pirated products. The sale of imported counterfeit trademarked goods also is a problem.

INVESTMENT BARRIERS

Ukraine passed a law on foreign investment in 1997 (the current foreign investment law is the fourth of its kind in nearly five years) which provides certain protections, including general guarantees against expropriation, unhindered transfer of profits and post-tax revenues, and a ten-year guarantee against changes in legislation that affect companies operating in Ukraine. The United States and Ukraine have a Bilateral Investment Treaty in effect.

Major obstacles to investment are related to legislative instability, the absence of clear mechanisms to enforce intellectual property rights, a weak legal system, poorly defined and overly complex certification procedures, and retroactive changes in rules regarding investment. Investors have also expressed concerns about the incoherence and complexity of the taxation system and about pervasive corruption. Several U.S. companies have been involved in investment disputes in Ukraine which have centered around these issues.

UZBEKISTAN

In 1997, the U.S. trade surplus with Uzbekistan was $195 million, an increase of $1 million over the surplus level in 1996. In 1997, U.S. exports to Uzbekistan totaled $234 million, down $118 million (33.5 percent) from 1996. U.S. imports from Uzbekistan in 1997 were $39 million, a decrease of $118 million (75.1 percent) from the level of imports in 1996.

IMPORT POLICIES

In an attempt to husband its foreign currency reserves, the GOU has implemented a system of import contract licensing which severely restricts imports by restricting the availability of foreign exchange. In 1996, the GOU was well on its way to creating a convertible currency, but poor harvests that year, and the ensuing foreign exchange shortfalls, inspired the GOU to enlarge an earlier system of foreign exchange quotas into the restrictive system of today. Each strengthening of the system comes at a time of new foreign currency shortfalls. The GOU claims that these import contracts are intended to allow it to supervise and thus guarantee the quality of imports. However, independent business observers as well as the diplomatic community in Uzbekistan recognize that the procedure is an import restriction tool. A recent formal survey of foreign businesses concluded that the GOU's foreign currency restrictions are the greatest single barrier to doing business in Uzbekistan.

This system of import contract registration also applies to foreign companies or foreign joint ventures trying to import capital goods with their own funds sourced from outside of Uzbekistan. Every import is scrutinized by the GOU for being a threat to the nation's foreign currency reserves.

Once over this hurdle, imports face the next -- the State Customs Committee. Customs clearance is a tedious and capricious bureaucratic process. Even capital equipment imports for U.S.-Uzbek joint ventures are not exempt from substantial processing delays and often remain in customs for two to three months. In one recent case, a major American investor waited for three months to process equipment worth four million dollars through customs and then was forced to pay 2,500 dollars in customs storage costs. This is part of a general problem applicable to all imports and there is no procedure for releasing goods under bond. The overall result is an expensive delay and an additional disincentive to investing in Uzbekistan.

STANDARDS, TESTING, LABELING, CERTIFICATION

Uzbekistan does not accept international certifications, even such universal ones as ISO 9000 standards. Instead, it requires its own which are not only particular to Uzbekistan, but can be changed without notice by decree. Certificates of quality and technical standards from other countries are not accepted by the GOU. Customs officials view perishable goods as fair game, imposing burdensome phyto-sanitary tests and refusing all foreign certificates of quality. Foreign businesses see such customs practices as one of their greatest barriers.

Recently, the GOU established two joint ventures with the Swiss firm Societe General de Surveillance (SGS) designed to meet international quality and price competitiveness standards. Some U.S. businesses complain

that the SGS joint venture puts pressure on buyers not to buy top of the line products (*e.g.,* computers). Also, in 1997, USTR expressed concern about SGS's ability to protect business proprietary information -- particularly pricing information.

The GOU claims that the SGS joint ventures will significantly expedite the import contract approval process. A presidential decree of December 3, 1997, created a supposedly voluntary pre-inspection system via SGS whereby MFER must approve pre-inspected imports within two days. The new approval process should be set up by April 1998. Two other GOU joint ventures with foreign import process firms are in the offing.

GOVERNMENT PROCUREMENT

GOU procurement practices are similar to those of many countries, with tenders, bid documents, bids, and a contract awarded. Again, similar to practices in some countries, many tenders are announced with suspiciously short deadlines and are awarded to an insider company.

At present the GOU is considering a draft "government procurement law" produced by an inter-ministerial working group with support from a USG-provided advisor. The goal of this project is legislation conforming to international competitive bidding standards.

EXPORT POLICIES

The GOU does grant some tax benefits such as tax holidays for Uzbek or foreign joint venture exporters. However, on the negative side, the GOU has imposed a foreign currency surrender requirement on exporters. Under this, an exporter must convert 30 percent of foreign currency receipts at the official exchange rate. As the official rate is in the range of 45 percent of the actual market rate, this conversion requirement means that exporters must increase their export prices to compensate. This is in effect a tax on exports and hurts Uzbek competitiveness in export markets.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Uzbekistan does not have an intellectual property piracy “industry” of its own, but the sale of and the broadcast of pirated material is common. The GOU appears to be making progress at establishing a legal system of IPR protection. It is passing the pieces of legislation that will be required for World Trade Organization accession. In order to teach both GOU officials and ordinary citizens alike the concept of IPR protection, the GOU is organizing a series of IPR seminars around the country.

This process, however, is far from complete. On the streets, pirated audio tapes, video tapes and compact discs are sold with impunity. Uzbek television news uses CNN footage without acknowledgment (the logo remains in the corner), and the Tashkent Cable TV company (a U.S.-Uzbek joint venture) routinely airs pirated films, received from a Russian feed. These films include subtitle warnings that they are not for public viewing.

SERVICES BARRIERS

There are several matters which are of concern to the insurance industry and indeed to both local and foreign investors. One is that insurance premiums are currently not a tax deductible expense.

There is a 10 percent withholding tax imposed on reinsurance premiums, effective January 1, 1998. It is not levied on reinsurers in countries which have a double tax treaty with Uzbekistan, but it will be levied on reinsurance premiums ceded to U.S. insurance companies. Reinsurers generally quote net premiums, and therefore this will increase the cost of insurance for foreign investors and will discriminate against U.S. insurers.

There is current uncertainty whether reinsurance premiums will be subject to a 30 percent customs duty. If this is the case, it will have a significant impact on the cost of insurance in Uzbekistan. Large investment projects require substantial amounts of reinsurance, as the Uzbek insurance market does not have the security or capacity required by foreign investors.

A presidential decree dated February 18, 1997 provides that claims paid in the (mostly unconvertible) Uzbek currency by the state-owned insurance company Uzbekinvest may be converted into freely convertible currency. This privilege has not been granted to foreign insurance companies operating in Uzbekistan and is therefore contrary to Article 7 of the Foreign Investment Law of May 5, 1994, which states that the legal regime for foreign investors cannot be less favorable than that which Uzbeks enjoy.

A yet unpublished provision of the amendments to the insurance law of December 25, 1997, is that mandatory state insurance will be provided by state insurance companies or by other state organizations indicated in the legislation. This prohibits private insurance companies and foreign insurance companies from competing in this business and is contradictory to Article 7 of the Foreign Investment Law.

INVESTMENT BARRIERS

The GOU's Foreign Investment Act of October 1996 defines enterprises with foreign investment as companies with a $300,000 capital fund which includes at least 30% foreign ownership. At present, there is no legal means for smaller foreign-owned companies to register. The GOU seeks foreign investment and new jobs, but this law essentially excludes small companies which have proven to be engines of growth and job creation in other countries.

Uzbekistan's new tax code is a great improvement over its predecessor. However, it misses a few important provisions, normal in most countries, that are part of a normal business environment. For example, it allows no relief (credit) for VAT on capital item purchases. This is particularly important for big items - such as plant, machinery and buildings. In other countries, neighboring Kazakhstan for example, the VAT will "flow through" the normal VAT mechanism and will not be a cost to the business. Businesses investing in Uzbekistan are put at a 20 percent (Uzbekistan's VAT rate) disadvantage.

The GOU also places a 30 percent "import duty" on the salaries of expatriate staff, causing the employers to increase salaries correspondingly. Also, Uzbeks face a 45 percent income tax on salaries as low as 1,200 dollars annual gross earnings. While Uzbeks and Uzbek companies normally fail to comply with their tax obligations, foreign investors feel obligated to adhere to the law, causing them to increase local salaries as well.

Uzbekistan

Business people in Uzbekistan note that if they are engaged in an activity (*e.g.*, sales or services) in which the GOU is either the business competitor, or partner in a joint venture in competition, they face more than the usual amount of bureaucratic hurdles and currency conversion problems.

OTHER BARRIERS

Bribery/corruption

While bribery is not unique to Uzbekistan, bribery and corruption are endemic. A bribe will solve virtually any problem, and some problems can only be solved by bribes. American companies clearly are not allowed corrupt practices, but other foreign business people privately confirm that they pay bribes regularly.

GOU Restrictions on Private Bank Accounts

American investors unanimously complain that they do not control their corporate bank accounts in Uzbekistan. Every routine banking operation requires official permission. Businesses find that enormous amounts of senior staff time are consumed processing simple and straightforward transactions. The GOU imposes ceilings on how much money can be withdrawn to pay local staff salaries. All purchases must be made via bank transfers because the GOU uses the banking system to do tax accounting. It is not possible to process a corporate expense account. Basic requirements, such as withdrawing funds to pay for airplane tickets for business travel, are tedious or impossible. There is no allowance for petty cash -- a normal business requirement. Uzbek companies handle this problem with pay withdrawals for nonexistent staff. Western accounting practices prevent American companies from using these deceptive practices to evade the banking system's restrictions.

VENEZUELA

In 1997, the U.S. trade deficit with Venezuela was $6.8 billion, a decrease of $1.3 billion from the U.S. trade deficit of about $8.2 billion in 1996. U.S. merchandise exports to Venezuela were more than $6.6 billion, an increase of $1.9 billion (39.4 percent) from the level of U.S. exports to Venezuela in 1996. Venezuela was the United States' twenty-second largest export market in 1997. U.S. imports from Venezuela were about $13.4 billion in 1997, an increase of $545 million (4.2 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Venezuela in 1996 was nearly $3.6 billion, an increase of 11.6 percent from the level of U.S. FDI in 1995. U.S. FDI in Venezuela is concentrated largely in the manufacturing and petroleum sectors.

IMPORT POLICIES

Tariffs

Venezuela has continued its efforts to conclude trade arrangements with other countries in Latin America and the Caribbean. Venezuela extends preferential tariffs on a limited variety of products to member states of the Latin American Integration Association (ALADI). Venezuela signed a partial Free Trade Agreement with Chile in 1993, but the two countries agreed in 1997 to expand the treaty's scope by eliminating the list of goods excluded from free-trade treatment. Venezuela, along with Colombia, has also concluded a Free Trade Agreement with Mexico (the "G-3" agreement), which entered into force January 1, 1995, under which most tariffs are to be reduced to zero by 2004. Venezuela also has a preferential agreement with the Caribbean Common Market (CARICOM), under which CARICOM will start reducing tariffs on Venezuelan goods in 1998. Venezuela, jointly with Colombia, in 1994 signed a framework agreement on free trade with several Central American countries, but has not yet negotiated schedules on tariff reduction and trade liberalization. Venezuela is currently negotiating a free trade accord with the Southern Common Market (MERCOSUR) in conjunction with other Andean Community members.

These preferential trade arrangements put U.S. exports at a disadvantage. For instance, Venezuela maintains tariffs of 20 percent ad valorem on imports of U.S. beer, wines, and all distilled spirits, while some categories of wine from Argentina, Chile, and Mexico are subject to duties of only 4, 0, and 5.6 percent respectively. Under the G-3 agreement, duties on almost all imported alcoholic beverages from Mexico will be reduced to zero by 2004. Venezuela also imposes a 15-percent duty on imports from the United States of compound preparations and undenatured ethyl alcohol used in the production of spirits. Reducing the non-preferential tariff rate could increase U.S. exports by $1-5 million.

Venezuela also maintains 20 percent ad valorem duties on canned soups, mixed vegetable juice, biscuits, and cookies; a reduction in the tariff would result in a potential increase of $1-5 million in U.S. exports. The Andean Community tariff on soybeans and its byproducts is variable (set by the price band system), but it is usually 15 percent. Soybean oils from Paraguay, Argentina and Brazil are subject to lower duties of 1, 8, and 10 percent respectively as a result of trade preference agreements. Soybean meal from Paraguay is assessed a 3.75 percent tariff. Eliminating these preferences could increase U.S. exports by $5- 10 million.

Venezuela

Similarly, Venezuela maintains a 15-percent duty on fresh and dried fruit from the United States. Under the Venezuela-Chile free trade agreement, all fresh fruit from Chile is subject to a 2-percent tariff, while most dried fruit enters duty free. Elimination of these preferences could increase U.S. exports by $5-10 million.

The reduction of the 20-percent tariff on film and cameras would result in a potential increase in U.S. exports of $5-10 million in each category.

Non-Tariff Measures

Venezuela prohibits the importation of used cars, used tires, and used clothing. There are virtually no other quantitative import restrictions for industrial products.

The government implemented a yellow corn import licensing system in February 1997, ostensibly to administer its WTO tariff rate quota for sorghum and yellow corn, but in actuality to enforce domestic sorghum absorption requirements. Under this system, feed manufacturers must purchase a government assigned amount of domestic sorghum, at the official price, in order to obtain import licenses for yellow corn. The government has announced that it may establish similar import license requirements for white corn, rice and powdered milk.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Venezuela's sanitary restrictions on U.S. poultry products lacks a scientific basis and is discriminatory. Venezuela refuses to issue certificates for imports of U.S. poultry and poultry products on the basis that there is a history of avian influenza in the United States. Venezuelan agricultural authorities, however, have failed to establish that imports of U.S. poultry would pose a risk to the Venezuelan poultry industry. If the ban were lifted, U.S. exports of poultry and poultry products could amount to $5-20 million a year. The government had a similar ban in place against U.S. pork and swine, but that ban was lifted in April 1997 after the government was presented with evidence that porcine reproductive and respiratory syndrome (PRRS) already exists in Venezuela. However, the government still requires import licenses for pork and swine and these are rarely granted.

In 1993, the Venezuelan Commission for Industrial Standards (COVENIN) began to apply obligatory domestic standards for commodities to certain imports; by the end of 1995, there were nearly 300 standards. Some Venezuelan importers of U.S. products have alleged that the Government of Venezuela applies these standards more strictly to imports than to domestic products. The certification process is at times expensive, increasing the cost of U.S. exports vis-a-vis domestic products. COVENIN requires certification from independent laboratories -- which is often impossible in the United States. According to the U.S. cosmetic industry, Venezuela maintains qualitative restrictions which, if lifted, would increase U.S. exports by less than $5 million a year.

GOVERNMENT PROCUREMENT

The 1990 law of tenders, its associated regulations, and its modifying decree of 1991, together establish three classifications for government procurement based principally on the value of the goods and services being

procured: general tenders (more than $21,200), selective tenders ($2,120 to $21,120), and direct purchases (less than $2,120). For general and selective tenders, the law states that for offers that are within a "reasonable" range of each other for similar conditions, preference will be given according to various criteria, including national content, labor impact, national value added, local participation, and technology transfer. For the purchase of goods, the government also applies a policy, not stated in the law of tenders, that local goods should be purchased, unless the price of such products is 25 percent more than the landed cost of competing foreign products.

In the petroleum industry, the state oil company, PDVSA, is required to purchase national materials and supplies. However, PDVSA is permitted to make foreign purchases if domestic firms cannot meet quantity, quality, or delivery requirements. In addition, imported materials supplied by local representatives of foreign manufacturers are classified as "domestic purchases." Firms that supply PDVSA must register with PDVSA's "unified suppliers registry" or with the "unified contractors registry." Venezuela is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Venezuela has reduced the number of export subsidies it provides, but retains a duty drawback system. Exporters can also get a rebate of the 16.5 percent wholesale tax paid on imported inputs.

Foreign as well as domestic companies are eligible for these drawback privileges, but U.S. firms located in Venezuela complain of long delays in receiving rebates. Exporters of selected agricultural products -- coffee, cocoa, some fruits, and certain seafood products -- receive a tax credit equal to 10 percent of the export's f.o.b. value.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Despite significant improvements -- especially in the enforcement of copyright law -- Venezuela does not yet provide adequate and effective protection of intellectual property rights (IPR). There is still widespread piracy of well-known trademarks, videos, satellite signals, and other protected works. Moreover, the Venezuelan court system has proven to be an unreliable means for pursuing IPR claims. As a result of its laws and practices, Venezuela has been on the "Watch List" under the Special 301 Provision of the 1988 Trade Act since 1989.

The government created a new intellectual property office (SAPI) in March 1997, which merged the existing industrial property office (SARPI) with the national copyright office. SAPI, which is expected to focus and improve enforcement efforts, is slated to become operational in June 1998. Under the new SAPI, the government plans to expand the mandate of COMANPI to include the enforcement of patents and trademarks as well as copyrights.

Venezuela is a member of the Paris Convention for the protection of industrial property and the Berne Convention for the protection of literary and artistic works. Venezuela has ratified, but not yet fully implemented, the provisions of the WTO Agreement on Trade-related aspects of Intellectual Property Rights (TRIPS).

Patents and trademarks

Venezuela

Two Andean Community decisions on the protection of patents and trademarks and of plant varieties have been in effect in Venezuela since January 1, 1994, and October 29, 1993, respectively.

The decisions are comprehensive and offer a significant improvement over previous standards of intellectual property protection provided by the Andean Community countries. For example, they provide a 20-year term of protection for patents and the reversal of the burden of proof in cases of alleged patent infringement. The provisions of the decisions covering protection of trade secrets and new plant varieties are generally consistent with world class standards for protecting intellectual rights. However, these decisions remain deficient with respect to patents and trademarks. The deficiencies include overly broad compulsory licensing provisions, working requirements, restrictions on biotechnology inventions, denial of pharmaceutical patent protection for patented products listed on the World Health Organization's model list of essential drugs, lack of transitional ("pipeline") protection, and lack of protection against parallel imports.

The fines provided in the 1955 industrial property law for patent and trademark infractions are minimal. They have never been increased to account for inflation and devaluation. The government proposed legislation in early 1996 to update the entire law, but the bill is still awaiting action by Congress.

Copyrights

Venezuela's 1993 copyright law and a 1995 implementing regulation substantially improved protection of copyright products and enhanced penalties for copyright infringement. An Andean Community decision on copyright protection, which complements Venezuela's domestic copyright law, has been in effect since 1994 and has established a generally effective and Berne-consistent system.

A national copyright office, established in October 1995, is responsible for controlling, overseeing, and ensuring compliance with the rights of authors and other copyright holders. It can issue opinions, serve as an arbitrator, and impose fines for copyright infringements. The government formed a special antipiracy police unit (COMANPI) in July 1996 to act as an enforcement arm of the copyright office. The eight-officer police unit has the power to seize goods, make arrests, or close establishments for violations of the law. However, it can only act based on a complaint by a copyright holder; it cannot carry out an arrest or seizure on its own initiative. COMANPI works closely with private sector representatives of the U.S. copyright industry, who provide the unit with intelligence information, financial backing, and training.

COMANPI made 60 arrests and seized 70,800 pirated videotapes, 60,500 illicit audio cassettes, and 10,216 illegally copied books in 1997. It also shut down a number of underground laboratories where large quantities of copyrighted material were being illicitly reproduced. Inadequate border controls against the import of pirated material hampered efforts to improve copyright protection still further. A customs bill, which includes measures to strengthen border enforcement, passed the lower house of Congress in 1997 and is expected to be approved by the Senate in early 1998.

COMANPI made notable strides in 1997 to improve the protection of encrypted satellite signals, which until recently was practically nonexistent. Venezuela is within the footprint of U.S. satellite television transmission and unauthorized reception and distribution of U.S. signals has traditionally been widespread. During 1997, COMANPI seized 56 unauthorized decoders and 20 parabolic antennas. COMANPI also began to focus on cable television piracy in 1997. In July, a person convicted of the unauthorized retransmission of television

signals was sentenced by a court to twelve months in prison.

SERVICES BARRIERS

Venezuela maintains barriers in a number of service sectors. For example, all professions subject to national licensing legislation (e.g., engineers, architects, economists, business consultants, accountants, lawyers, doctors, veterinarians, and journalists) are reserved for those who meet Venezuelan certification requirements. Imports receiving government-approved tariff reductions or government financing, or those which are government-owned, must be insured by local insurers.

Basic Telecommunications Services

In the WTO Negotiations on Basic Telecommunications Services, which were concluded in February 1997, Venezuela made commitments on all basic telecommunications services. It will provide market access and national treatment for these services as of November 27, 2000, when the monopoly granted to the privatized national telephone company (CANTV) ends. Venezuela adopted parts of the reference paper on regulatory commitments.

Financial Services

In the WTO Negotiations on Financial Services, which were concluded in December 1997, Venezuela made commitments on banking, foreign exchange houses, capital markets, life insurance, reinsurance and brokerage. It will provide market access and national treatment for these services upon entry into force of the agreement. Venezuela, however, did not make a commitment on pensions or on maritime, aviation and transportation insurance, and its offer includes an economic needs test and an MFN exemption.

INVESTMENT BARRIERS

The state continues to control key sectors of the economy, including oil, gas, iron ore, and much of the coal and petrochemical industries; parastatals dominate others, like aluminum. The government, however, plans to privatize several major state enterprises in 1998, including a four-company aluminum complex and a ferrosilicon plant. The government also introduced legislation in 1997 proposing that a minority share of PREQUIVEN, the state petrochemical company, be sold to private investors via domestic and international capital markets. Foreign investment continues to be restricted in the petroleum sector, with the exploration, production, refining, transportation, storage and foreign and domestic sales of hydrocarbons reserved to the Venezuelan government and its entities (state oil company PDVSA) under the 1975 Hydrocarbons Law. However, private companies may engage in hydrocarbons-related activities through operating contracts or, when found to be in the public interest, through equity joint ventures as long as the joint ventures guarantee state control of the operation, are of limited duration, and have the prior authorization of Congress meeting in joint session.

Since 1993, the oil sector has been opened to increasing amounts of foreign investment through operating contracts and equity joint ventures. In 1996, the government awarded foreign investors equity participation in eight concessions for the exploration and production of light and medium crude. Several equity joint ventures between PDVSA and private companies involving natural gas and extra-heavy crudes also have been

approved by the Congress. In addition, 33 "marginal" or inactive oil fields have been opened to national and foreign investors under operating contracts. Eighteen fields were auctioned in 1997 and more could be opened for bidding in 1999. During the 1997 bidding, the government set aside a quarter of the "marginal" fields for national companies, but the national companies were allowed to take on foreign partners, who could supply up to 70 percent of the capital of the partnership. In 1997, the government also moved to liberalize the domestic gasoline market by issuing a decree to permit foreign companies to own and operate service stations and by introducing legislation to end government-set prices. As part of its plans to more than double oil production by 2007, PDVSA expects a total of $75 billion to be invested in the oil sector over the next decade, with at least $35 billion coming from joint ventures with foreign firms.

Venezuela also limits foreign equity participation (except that from other Andean Community countries) to 19.9 percent in enterprises engaged in television and radio broadcasting, Spanish language newspapers, and professional services whose practice is regulated by national laws. The level of foreign investment is unrestricted in other sectors of the economy. Foreign investors in the mining sector are subject to Venezuela's 1944 Mining Law and a complex set of executive decrees which require them to secure a concession from the government. Finally, in any enterprise with more than ten workers, foreign employees are restricted to 10 percent of the work force, and Venezuelan law limits foreign employee salaries to 20 percent of the payroll. The law also requires that all industrial relations managers, personnel managers and foremen be Venezuelan. The law provides for temporary exceptions to the restrictions on foreign employment when qualified Venezuelan candidates are not available.

Venezuela also maintains several other investment-distorting measures. Preferential tax credits and credit access are accorded to export-oriented firms; other investment tax credits are directed to producers and purchasers of locally-produced capital goods. Under the Andean Community Common Automotive Policy, Venezuela, Ecuador and Colombia impose regional content requirements in the automotive assembly industry in order to qualify for reduced duties on imports. The local content requirement for passenger cars was 32 percent in 1997 and has risen to 33 percent for 1998. Venezuela has notified to the WTO the local content requirements in the automotive sector, which are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures. Proper notification allows developing country WTO members to maintain such measures for a five-year transitional period after entry into force of the WTO. Venezuela, therefore, must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO members meet these obligations.

The government enforces a "one-for-one" policy which 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; a requirement that at least half of the television programming must be dedicated to national programs; and a requirement that at least half of the FM radio broadcasting from 7 a.m. to 10 p.m. be dedicated to Venezuelan music.

ZIMBABWE

In 1997, the U.S. trade deficit with Zimbabwe was $57 million, an increase of $15 million from the U.S. trade deficit of $42 million in 1996. U.S. merchandise exports to Zimbabwe were $82 million, a decrease of $9 million (9.9 percent) from the level of U.S. exports to Zimbabwe in 1996. Zimbabwe was the United States' one-hundred-nineteenth largest export market in 1997. U.S. imports from Zimbabwe were $139 million in 1997, an increase of $6 million (4.8 percent) from the level of imports in 1996.

IMPORT POLICIES

Zimbabwe's economy, including its tariff regime, is in transition from a highly-controlled, statist model to an open, market-based economic system. During the first phase of its structural adjustment program that ended in 1995, Zimbabwe abolished quantitative restrictions in favor of a tariff-based trading system. In early 1996, Zimbabwe undertook a comprehensive review and rationalization of its tariff policies and rates with substantial World Bank input and the cooperation of the Confederation of Zimbabwe Industries (CZI). A new tariff regime, effective March 1, 1997, lowered duties on raw materials and other inputs, thereby removing the previous anomaly of higher duties on raw materials than on finished products. Raw materials now incur a duty rate of 5%. New rates are zero for most capital and merit goods, 15 percent for partly processed goods, 20-30 percent for intermediate goods, and 40-85
percent for finished goods. In addition, the 10 percent surtax now applies to finished goods only.

Tariff rates applied to processed agricultural imports are high, ranging from 20 to 45 percent. As of early 1996, the tariff on ready-to-eat cereals was 25 percent, plus an import tax of 15 percent, and a 10 percent surcharge on production cost, insurance, and freight (c.i.f.) basis. The effect of such high tariffs has been to preclude U.S. firms from pricing specific processed agricultural goods within reach of the average consumer, thereby rendering them uncompetitive. The high rates on agro-processing products reflect the power of the commercial farmer lobby in Zimbabwe. On the other hand, free access to foreign exchange, abolition of import licensing, and establishment of the Zimbabwe Investment Centre (ZIC) have greatly increased U.S. firms' access to the Zimbabwe market. Export processing zones (EPZ) and certain related tax concessions should boost foreign investment, but a trade performance requirement compels eligible companies to export at least 80 percent of output. The EPZ authority, operational since early 1996, approved 19 projects by the end of the year.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Since independence, Zimbabwe has joined several international patent and trademark conventions. It is a member of the World Intellectual Property Organization, the Paris Convention for the Protection of Industrial Property (Stockholm Text), and the Berne Convention for the Protection of Literary and Artistic Works (Rome Text). However, some enforcement problems exist. Audio and videocassette piracy is the most widespread IPR issue in Zimbabwe, but the volumes involved are relatively small. While software bootlegging undoubtedly occurs by users, pirated software is rarely sold commercially.

Zimbabwe

INVESTMENT BARRIERS

The Government of Zimbabwe has lifted some of its most onerous restrictions on foreign investment. It permits pre-independence investors to remit 100 percent of declared dividends, no longer imposes restrictions on local borrowing. Since September 1995, the Reserve Bank of Zimbabwe (RBZ) began liberalizing blocked accounts, allowing repatriation of certain blocked funds (profits and dividends accrued on pre-1993 investments, corporate funds in Government of Zimbabwe external bonds, and accounts with authorized dealers.) In addition, the RBZ government permits Zimbabweans to take up to $500 in cash or its equivalent in other foreign currencies and to use credit cards when they travel abroad. Nonetheless, because of Zimbabwe's end of 1997 financial crisis (cumulative drop in currency of 22 percent) there is a concern that the government may resort to the reimposition of foreign exchange restrictions in an effort to stabilize the situation.

Zimbabwe has signed investment agreements with the Overseas Private Investment Corporation (OPIC) and the World Bank. Notwithstanding such commitments to investment liberalization, Zimbabwe has yet to embrace the concept of national treatment or discontinue its sizable "reserved list" of sectors that are closed to all but domestic investors and foreign investors in joint ventures with local partners. Furthermore, remittances for royalties, technical services, and management fees are still subject to RBZ approval.

Other problem areas remain. U.S. firms and various national governments, including those of the United States, Great Britain, France, Belgium, and Italy, have voiced serious complaints about the lack of transparency and fairness in the Government of Zimbabwe's tender process. In one example, the government not only disregarded established tender procedures in the proposed privatization of the Hwange power generation facility but also dismissed the responsible board for criticism of its unilateral decision and lack of transparency. Similar criticism about the lack of fairness in dealing with other energy and telecommunications tenders highlights the potentially adverse impact these procurement procedures can have on foreign investment. In one instance, however, when the U.S. and German Embassies protested lack of transparency in a cellular tender award, the Government of Zimbabwe canceled the decision and reissued the tender, which was then won by the German company and its U.S. subcontractor.

An RBZ ruling on the amount and rate of disinvestment is blocking free access by U.S. petroleum companies to their share of almost $3 million in funds paid by the Government of Zimbabwe for use of storage facilities at a refinery owned but closed down by the investors. While the RBZ has approved release of the funds to the refinery owners over 20 years at 4 percent interest, it steadfastly refused to authorize, as requested in this case, the "currency switch deal" option preferred by the investors. This authorization would have allowed the investors to swap currency in the account with that of investor outside the refinery deal who have sought access to Zimbabwe dollars. The RBZ discontinued currency switch deals in December 1994 after reported abuse.

Another roadblock to foreign investment is the delay and lack of transparency by the Government of Zimbabwe in processing work permits for representatives of U.S. firms. In one example, a senior executive in a major U.S. corporation was denied renewal of his work permit purportedly on the basis of his age (63). The case is ongoing. Delay and lack of transparency are often encountered in RBZ approval
of investments in both new and existing operations. U.S. firms have complained of problems in processing work permits for representatives of U.S. firms. One case cited involved a senior executive in a major U.S. corporation who was denied renewal of his work permit, purportedly on

the basis of his age (63).

Land Reform: The redistribution of large commercial (mostly white-owned) farms to small-scale black farmers has long been a stated goal of the Zimbabwe, although little progress has been made in achieving this. However, during the second half of 1997, there has been repeated and increasingly insistent rhetoric on the part of President Mugabe, that some 1,500 commercial farms will be seized imminently and without compensation to their owners for redistribution to black farmers. Letters
to this effect have already been sent to the owners of these farms. Such extensive expropriation of land would have a crippling effect on local and foreign investor confidence and would seriously disrupt Zimbabwe's large and economically significant agricultural sector.

Privatization

The Government of Zimbabwe has not had a well-defined privatization program, largely due to the absence of a single organizational entity with overall responsibility for the design and implementation of the program. However, the Zimbabwe government has now approved the creation of an independent privatization unit charged with identifying and expediting the privatization of public enterprises. A key goal set by the Zimbabwe government is to increase black ownership of economic assets via its privatization/indigenization program. The National Investment Trust (NIT) has been set up in order to facilitate the participation of the economically deprived indigenous population in the privatization process. The NIT is buying an assigned percentage of shares in privatized public enterprise to hold in trust for Zimbabwe's indigenous population, as was recently done with 10% of the shares of Dairibord Zimbabwe.

Zimbabwe’s commitment to its stated privatization/indigenization policies has been called in to question on several occasions. Critics assert that the implementation of these policies has been slow, uneven, and has tended to favor government friends and ruling party allies at the expense of independent black entrepreneurs. For example, the pace of privatization slowed after President Mugabe criticized a late 1995 sale of government shares in the Delta Corporation (a large conglomerate) on the Zimbabwe stock market because revenue generated from the sale did not support the government's indigenization efforts. However, in December 1996, the government sold a portion of its Delta holdings on the open market to a foreign concern. While some again asserted that the sale undermined the government's indigenization plans, President Mugabe was not among them. U.S. firms have also complained of official attempts to dictate their choice of local partners (a local partner is required in certain reserved sectors) under the guise of indigenization enforcement.

As part of the ongoing commercialization/privatization program, all parastatals must now pay taxes and declare dividends. Zimbabwe has commercialized all of its agricultural marketing boards and privatized several of them. The Cotton Company of Zimbabwe (Cottco, formerly the Cotton Marketing Board), and Dairibord Zimbabwe (DZL, formerly the Dairy Marketing Board) were commercialized in1996 and partially privatized in 1997 through share flotations. The Zimbabwe government has retained 25% of Cottco and 40% of Dairibord. A consortium of three banks has been appointed to assist the Zimbabwe government in privatizing the Cold Storage Commission (CSC), which currently has an export monopoly on beef. The planned 1997 privatization of the long-troubled Zimbabwe Iron and Steel Company (ZISCO) could not be completed due to a lack of acceptable bids.

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APPENDIX

US Data for Given Trade Partners in Rank Order of US Exports

(Values in Millions of Dollars)

Country	Trade Balance 1996	Trade Balance 1997	Change 1996-97	Exports* 1997	Change 96/97 Value	Change 96/97 Percent	Rank	Imports** 1997	Change 96/97 Value	Change 96/97 Percent	FDI*** 1996	% Change 1995-96	FDI Area
World	(168,488)	(182,615)	(14,127)	687,598	64,771	10.40		870,213	78,898	9.97	796,494	11.00	Manuf., Finance, Wholesale
Canada	(23,922)	(17,926)	5,996	150,124	17,540	13.23	1	168,051	11,545	7.38	91,587	7.19	Manuf., Finance, Petrol.
Mexico	(16,202)	(14,494)	1,708	71,378	14,617	25.75	2	85,872	12,909	17.69	18,747	17.32	Manuf., Finance, Other Ind.
Japan	(47,683)	(55,687)	(8,004)	65,673	(1,863)	-2.76	3	121,359	6,141	5.33	39,593	3.09	Manuf., Finance, Wholesale
United Kingdom	2,024	3,746	1,722	36,435	5,519	17.85	4	32,689	3,797	13.14	142,560	16.12	Finance, Manuf., Petroleum
Republic of Korea	3,916	1,908	(2,008)	25,067	(1,516)	-5.70	5	23,159	492	2.17	5,510	6.60	Manuf., Banking, Wholesale
Germany	(15,469)	(18,602)	(3,133)	24,467	993	4.23	6	43,069	4,126	10.60	44,259	0.07	Manuf., Finance, Wholesale
Taiwan	(11,498)	(12,236)	(738)	20,388	1,975	10.73	7	32,624	2,713	9.07	4,509	7.10	Manuf., Banking, Wholesale
Netherlands	9,997	12,543	2,546	19,822	3,207	19.30	8	7,278	661	10.00	44,667	13.53	Manuf., Finance, Wholesale
Singapore	(3,655)	(2,340)	1,315	17,727	1,042	6.25	9	20,067	(273)	-1.34	14,150	11.51	Manuf., Petrol., Finance
France	(4,202)	(4,743)	(541)	15,982	1,554	10.77	10	20,725	2,095	11.24	34,000	3.19	Manuf., Finance, Wholesale
Brazil	3,938	6,283	2,345	15,912	3,213	25.30	11	9,630	868	9.90	26,166	10.38	Manuf., Finance, Banking
Hong Kong	4,088	4,818	730	15,115	1,159	8.30	12	10,297	430	4.36	16,022	12.78	Wholesale, Finance, Manuf.
Belgium	5,741	5,521	(220)	13,431	911	7.27	13	7,910	1,131	16.68	18,604	3.53	Manuf., Finance, Wholesale
People's Republic of China	(39,517)	(49,747)	(10,230)	12,805	827	6.91	14	62,552	11,057	21.47	2,883	35.54	Manuf., Petrol., Other Ind.
Australia	8,137	7,439	(698)	12,041	49	0.41	15	4,601	747	19.39	28,769	15.06	Manuf., Finance, Other Ind.
Malaysia	(9,303)	(7,189)	2,114	10,828	2,307	27.07	16	18,017	192	1.08	5,277	25.64	Manuf., Petrol., Finance
Italy	(9,437)	(10,387)	(950)	8,973	188	2.14	17	19,361	1,139	6.25	18,687	6.25	Manuf., Wholesale, Finance
Saudi Arabia	(1,486)	(1,113)	373	8,451	1,156	15.84	18	9,563	782	8.91	3,098	-4.53	Manuf., Petrol., Other Ind.
Switzerland	578	(85)	(663)	8,306	(64)	-0.76	19	8,392	599	7.68	35,751	7.19	Finance, Wholesale, Manuf.
Philippines	(2,038)	(3,008)	(970)	7,427	1,302	21.26	20	10,436	2,274	27.85	3,349	32.32	Manuf., Other Ind., Banking
Thailand	(4,125)	(5,238)	(1,113)	7,357	146	2.03	21	12,595	1,259	11.11	5,254	21.76	Petrol., Manuf., Banking
Venezuela	(8,162)	(6,841)	1,321	6,607	1,866	39.37	22	13,448	545	4.23	3,592	11.55	Manuf., Other Ind., Pertoleum
Israel	(417)	(1,334)	(917)	5,992	(17)	-0.27	23	7,326	900	14.01	1,886	13.48	Manuf., Services, Finance
Argentina	2,237	3,595	1,358	5,808	1,292	28.61	24	2,212	(66)	-2.88	8,060	7.52	Manuf., Finance, Petrol.
Spain	1,205	938	(267)	5,544	58	1.05	25	4,605	324	7.58	11,393	5.78	Manuf., Banking, Wholesale
Colombia	435	474	39	5,199	490	10.40	26	4,724	451	10.56	3,468	3.46	Manuf., Petrol., Other Ind.
Ireland	(1,139)	(1,232)	(93)	4,641	981	26.81	27	5,874	1,076	22.42	11,749	39.87	Manuf., Finance, Services
Indonesia	(4,248)	(4,659)	(411)	4,532	567	14.29	28	9,190	977	11.90	7,571	14.59	Petrol., Other Ind., Finance
Chile	1,876	2,076	200	4,375	243	5.88	29	2,299	43	1.89	6,745	14.75	Other Ind., Finance, Manuf.
Dominican Republic	(392)	(401)	(9)	3,928	745	23.41	30	4,329	754	21.09	465	18.02	Manuf., Finance

* US Total Exports (f.a.s.); ** US General Imports (customs value); *** US Foreign Direct Investment Abroad.

APPENDIX

US Data for Given Trade Partners in Rank Order of US Exports

(Values in Millions of Dollars)

Country	Trade Balance 1996	Trade Balance 1997	Change 1996-97	Exports* 1997	Change 96/97 Value	Change 96/97 Percent	Rank	Imports** 1997	Change 96/97 Value	Change 96/97 Percent	FDI*** 1996	% Change 1995-96	FDI Area
Egypt	2,481	3,183	702	3,840	694	22.06	31	658	(7)	-1.13	1,647	18.66	Petrol., Banking, Manuf.
India	(2,851)	(3,705)	(854)	3,616	298	8.97	32	7,321	1,152	18.67	1,139	35.92	Banking, Manuf., Finance
Turkey	1,109	1,421	312	3,539	653	22.64	33	2,119	342	19.23	1,025	8.12	Manuf., Petrol., Wholesale
Sweden	(3,730)	(3,986)	(256)	3,316	(113)	-3.30	34	7,302	144	2.01	7,629	3.95	Manuf., Finan., Services
Russia	(221)	(1,001)	(780)	3,289	(51)	-1.53	35	4,290	729	20.47			
Republic of South Africa	784	500	(284)	3,000	(106)	-3.42	36	2,500	177	7.63	1,437	12.71	Manuf., Wholesale, Services
United Arab Emirates	2,031	1,686	(345)	2,606	79	3.11	37	920	424	85.40	789	19.55	Petrol.,Wholesale, Other Ind
Austria	(190)	(292)	(102)	2,073	64	3.20	38	2,365	166	7.54	2,902	4.50	Finance, Manuf., Wholesale
Costa Rica	(160)	(300)	(140)	2,023	209	11.55	39	2,323	349	17.70	1,205	38.51	Manuf., Chemical Products
Honduras	(155)	(309)	(154)	2,014	373	22.70	40	2,322	526	29.29	145	-24.08	Manuf., Finance, Banking
Peru	505	187	(318)	1,960	193	10.91	41	1,773	512	40.57	2,075	62.24	Mauf., Petrol., Other Ind.
New Zealand	263	378	115	1,957	230	13.30	42	1,578	114	7.82	5,519	13.91	Manuf., Other Ind., Petrol.
Denmark	(408)	(381)	27	1,758	28	1.65	43	2,140	3	0.12	2,171	2.26	Finance, Wholesale
Finland	93	(657)	(750)	1,741	(697)	-28.59	44	2,397	52	2.23	1,033	25.21	Manuf., Wholesale, Services
Guatemala	(109)	(262)	(153)	1,728	164	10.47	45	1,990	317	18.95	217	42.76	Manuf., Petrol., Finance
Norway	(2,312)	(2,015)	297	1,720	162	10.40	46	3,735	(134)	-3.45	6,103	18.90	Petrol., Manuf., Wholesale
Panama	1,032	1,170	138	1,538	160	11.59	47	367	21	6.17	18,256	12.58	Finance, Petrol., Wholesale
Ecuador	(659)	(533)	126	1,523	266	21.14	48	2,055	139	7.28	855	2.64	Petrol., Manuf., Wholesale
Jamaica	652	680	28	1,417	(74)	-4.94	49	738	(101)	-12.05	1,675	19.47	Manuf., Finance
El Salvador	(2)	52	54	1,398	326	30.43	50	1,347	273	25.38			
Kuwait	340	(420)	(760)	1,394	(585)	-29.56	51	1,814	174	10.60			
Pakistan	11	(208)	(219)	1,234	(43)	-3.37	52	1,442	176	13.93			
Poland	341	473	132	1,171	203	20.93	53	698	71	11.26			
Trinidad and Tobago	(352)	(27)	325	1,106	441	66.32	54	1,133	116	11.40	1,057	25.09	Finance, Services
Portugal	(56)	(183)	(127)	955	(5)	-0.50	55	1,138	122	11.98	1,854	5.64	Manuf., Wholesale, Services
Greece	324	501	177	954	134	16.30	56	453	(43)	-8.66	506	19.34	Manuf., Banking, Wholesale
Paraguay	855	872	17	913	16	1.80	57	41	(1)	-3.14			
Nigeria	(5,033)	(5,535)	(502)	814	(2)	-0.21	58	6,349	500	8.55	978	38.53	Manuf.
Luxembourg	38	473	435	712	470	194.15	60	239	36	17.61	6,377	8.88	Finance, Other Ind.
Algeria	(1,471)	(1,744)	(273)	695	63	9.96	61	2,439	336	15.96			
Lebanon	586	474	(112)	551	(76)	-12.05	63	78	37	89.73			
Hungary	(346)	(592)	(246)	486	155	46.77	67	1,078	401	59.26			

* US Total Exports (f.a.s.); ** US General Imports (customs value); *** US Foreign Direct Investment Abroad.

APPENDIX
US Data for Given Trade Partners in Rank Order of US Exports
(Values in Millions of Dollars)

Country	Trade Balance 1996	Trade Balance 1997	Change 1996-97	Exports* 1997	Change 96/97 Value	Change 96/97 Percent	Rank	Imports** 1997	Change 96/97 Value	Change 96/97 Percent	FDI*** 1996	% Change 1995-96	FDI Area
Morocco	224	139	(85)	435	(41)	-8.60	69	296	44	17.38			
Bahrain	129	288	159	406	162	66.33	70	118	3	2.25			
Ukraine	(113)	(10)	103	404	10	2.66	71	414	(93)	-18.34			
Jordan	320	377	57	402	57	16.62	72	25	0	1.36			
Qatar	50	203	153	360	153	73.89	73	157	0	0.24			
Oman	(195)	100	295	342	127	59.04	74	242	(169)	-41.04			
Ghana	124	160	36	314	19	6.54	77	154	(17)	-9.90			
Nicaragua	(88)	(150)	(62)	289	27	10.40	79	439	89	25.48			
Angola	(2,419)	(2,504)	(85)	281	13	4.71	81	2,784	97	3.62			
Kazakhstan	24	142	118	258	120	87.12	85	116	2	2.06			
Tunisia	113	188	75	251	62	32.91	87	63	(13)	-17.07			
Uzbekistan	194	195	1	234	(118)	-33.48	90	39	(118)	-75.11			
Kenya	(2)	112	114	226	122	116.94	91	114	7	6.51			
Syria	211	153	(58)	180	(46)	-20.14	94	28	13	85.84			
Yemen (Sana)	228	138	(90)	154	(102)	-40.03	98	16	(11)	-40.72			
Georgia	75	134	59	141	59	71.46	101	7	(1)	-13.12			
Ethiopia	113	51	(62)	121	(27)	-18.38	104	70	35	99.06			
Bulgaria	11	(67)	(78)	104	(33)	-23.85	111	172	46	36.35			
Zimbabwe	(42)	(57)	(15)	82	(9)	-9.94	119	139	6	4.78			
Iraq	3	(204)	(207)	82	79	2631.64	120	286	286				
Armenia	56	56	0	62	5	9.02	126	6	5	500.49			
Sudan	32	25	(7)	37	(13)	-25.34	143	12	(7)	-36.27			
Mauritania	10	21	11	21	6	38.98	163	0	(5)	-95.19			
Moldova	(8)	(32)	(24)	20	(2)	-10.45	165	51	21	71.48			
Djibouti	8	7	(1)	7	(1)	-8.18	187	0	0				
Somalia	4	2	(2)	3	(1)	-31.10	196	0	0	0.00			
Arab League	(15,208)	3,501	18,709	20,218	1,773	9.61		16,717	1,882	12.69			
European Union - 15	(15,208)	(16,741)	(1,533)	140,803	13,292	10.42		157,544	14,826	10.39	348,391	10.56	Manuf., Finance, Wholesale
Gulf Cooperation Council	868	744	(124)	13,558	1,091	8.75		12,814	1,215	10.48			

* US Total Exports (f.a.s.); ** US General Imports (customs value); *** US Foreign Direct Investment Abroad.